**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, Pennsylvania 17105-3265**

Public Meeting held June 30, 2011

Commissioners Present:

Robert F. Powelson, Chairman, Statement

John F. Coleman, Jr., Vice Chairman, Statement

Tyrone J. Christy

Wayne E. Gardner, Statement

James H. Cawley

Investigation Regarding Intrastate Access I-00040105

Charges and IntraLATA Toll Rates of

Rural Carriers and The Pennsylvania

Universal Service Fund

AT&T Communications of Pennsylvania, *et al.* C-2009-2098380, *et al.*

v.

Armstrong Telephone Company -Pennsylvania, *et al.*

**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Commission for consideration are the Recommended Decisions (R.D. or collectively, R.D.s) of Administrative Law Judges (ALJ or, collectively, the ALJs) Susan D. Colwell and Kandace F. Melillo in the above-captioned access charge investigation and complaint proceedings. We consider here the Exceptions filed by the Pennsylvania Telephone Association (PTA),[[1]](#footnote-1) The United Telephone Company of Pennsylvania, LLC d/b/a CenturyLink Pennsylvania (CTL),[[2]](#footnote-2) and the Office of Consumer Advocate (OCA) to ALJ Colwell’s R.D. and the associated Replies to Exceptions filed by AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh, Inc. and TCG New Jersey, Inc. (collectively AT&T), Verizon Pennsylvania Inc., Verizon North Inc. and MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services (collectively, Verizon); the Broadband Cable Association of Pennsylvania (BCAP), the Office of Small Business Advocate (OSBA), and the OCA. ALJ Colwell’s R.D. was issued on July 23, 2009, in the limited issues aspect of the investigation.[[3]](#footnote-3)

In this Opinion and Order we also consider and render a decision on the related and more extensive investigative/complaint proceeding litigated before ALJ Melillo. The Commission issued ALJ Melillo’s R.D. on August 3, 2010. Exceptions to the R.D. were filed by AT&T, Verizon, CTL, Qwest Communications Company (Qwest), the OCA, the OSBA, Sprint Communications Company LP, Sprint Spectrum, L.P., Nextel Communications of the Mid-Atlantic, Inc. and NPCR Inc. (collectively Sprint), and the PTA. Replies to Exceptions were filed by AT&T, Verizon, CTL, the OSBA, the OCA, Sprint, and the PTA. In a letter to the Commission, Qwest indicated that it would not be filing Replies to Exceptions.

**I. History of the Proceedings**

In the *Global Order*[[4]](#footnote-4)entered on September 30, 1999, the Commission directed all incumbent local exchange carriers operating in Pennsylvania to reduce their access charges. The *Global Order* also called for an investigation to be initiated in January 2001 to further refine a solution to the question of how the carrier charge (CC) pool could be reduced and to consider the appropriateness of a toll line charge to recover any resulting revenue reductions. That order also directed that a Pennsylvania Universal Service Fund (PaUSF) be established on a revenue-neutral basis to enable the RLECs and Sprint/United (*i.e.*, CTL)[[5]](#footnote-5) to reduce access charges and intraLATA toll rates, while at the same time ensuring that residential basic local service rates did not exceed the designated price cap of $16.00 per month.

When the Commission established the PaUSF we stated:

The USF is a means to reduce access and toll rates for the ultimate benefit of the end-user and to encourage greater toll competition, while enabling carriers to continue to preserve the affordability of local service rates. Although it is referred to as a fund, it is actually a pass-through mechanism to facilitate the transition from a monopoly environment to a competitive environment – an exchange of revenue between telephone companies which attempts to equalize the revenue deficits occasioned by mandated decreases in their toll and access charges.

*Global Order* at 142.

Thereafter, in January 2002, this Commission initiated a formal generic access charge investigation at Docket No. M‑00021596 in order to accommodate the access charge investigation that was required by the *Global Order*.

On March 22, 2002, AT&T filed a Formal Complaint at Docket No. C‑20027195 against Verizon North seeking to have Verizon North’s access charges reduced to Verizon PA’s levels pursuant to the requirements in the Bell Atlantic -Pennsylvania, Inc.-GTE North, Inc. *Merger Order* at Docket No. A-310200F0002, *et al.*[[6]](#footnote-6) AT&T’s Formal Complaint was initially dismissed by then Chief Administrative Law Judge Robert Christianson, but was later reinstated by an Order entered on December 24, 2002. The December 24, 2002 Order also bifurcated the access charge investigation so that all Verizon matters (*i.e.*¸ those access charge matters pertaining to Verizon PA and Verizon North, including AT&T’s Formal Complaint) as well as all matters relating to access charge parity between Verizon North Inc. and Verizon Pennsylvania Inc. resulting from the *Merger Order* at Docket No. A-310200F002, *et al.*, would be litigated at Docket No. C‑20027195;[[7]](#footnote-7) and the *Rural ILEC Access Charge Investigation* would continue to be litigated at Docket No. M‑00021596.

By Order entered on July 15, 2003, at Docket No. M‑00021596 (*July 2003 Order*), the Commission granted a Joint Procedural Stipulation filed by the Rural Telephone Company Coalition (RTCC), The United Telephone Company of Pennsylvania (*i.e.*, CTL), the Office of Trial Staff (OTS), the OCA and the OSBA with regard to the pertinent unresolved issues in that proceeding. The *July 2003 Order* closed the investigation at Docket No. M‑00021596 and increased the residential price cap to $18.00 per line per month for the RLECs.

Subsequently, by Order entered on December 20, 2004, at Docket No. I‑00040105 (*December 2004 Order*), the Commission instituted a further investigation for consideration of whether there should be additional intrastate access charge reductions and intraLATA toll rate reductions in the service territories of RLECs[[8]](#footnote-8) and all rate issues and rate changes that should or would result in the event that disbursements from the PaUSF were reduced. The *December 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 six issues that were to be addressed in the investigation:

1) Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the RLECs’ territories?

2) What rates are influenced by contributors to and/or disbursements from the PaUSF?

3) Should disbursements from the PaUSF be reduced and/or eliminated as a matter of policy and/or law?

4) Assuming the PaUSF expires on or about December 31, 2006, what action should the Commission take to advance the policies of this Commonwealth?

5) 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?

6) What regulatory changes are necessary to the Commission’s PaUSF regulations at 52 Pa. Code §§ 63.161 – 63.171 given the complex issues involved as well as recent legislative developments?

Following the institution of this investigation, on March 3, 2005, the Federal Communications Commission (FCC) instituted an intercarrier compensation proceeding at CC Docket No. 01-92 (FNPRM).[[9]](#footnote-9) The FCC presently is examining a proposed series of reforms relevant to intercarrier compensation and the federal universal service fund (USF) within the scope of its jurisdiction.

By Order entered on August 30, 2005 (*August 2005 Order*), this Commission stayed the instant investigation for a period not to exceed twelve months unless extended by Commission order, or until the FCC issues its ruling in its *Unified Intercarrier Compensation* *Proceeding*. The *August 2005 Order* also noted that the FCC proceedings had significant potential to directly impact if not render moot the issues in the instant proceeding. As such, the Commission entertained future requests for further stays of this investigation for good cause shown and for the purpose of coordinating this Commission’s action with the FCC’s ruling in its *Unified Intercarrier Compensation* *Proceeding*.

On or about August 30, 2006, a joint status report was submitted to the Commission by the RTCC, the OTS, the OCA, and CTL. Status reports were also filed by Verizon, Sprint/Nextel Corp.,[[10]](#footnote-10) the Wireless Carriers, and Qwest Communications. Additionally, the RTCC, the OTS, the OCA and CTL filed a Joint Motion for further stay of investigation to which the other parties filed status reports in objection. The Joint Motion was granted by this Commission’s Order dated November 15, 2006 (*November 2006 Order*), which again stayed the access charge investigation pending the outcome of the FCC’s *Unified Intercarrier Compensation Proceeding* at CC Docket No. 01-92, or until November 15, 2007, whichever was earlier. The *November 2006 Order* further directed that, upon expiration of the twelve-month stay, the parties should again submit status reports to the Commission pertaining to common or related matters in the investigation and the FCC’s proceeding and the need for any coordination of those matters or any new matters that may arise once the investigation is reinstituted. Ordering Paragraph No. 4 of the *November 2006 Order*. The Commission granted the stay, but allowed for a limited investigation into the rate caps on residential and business rates, as well as the PaUSF.

By Order entered on April 24, 2008, at Docket No. I-00040105, *et al.* (*April 2008 Order*), the Commission reopened the *RLEC* *Access Charge Investigation* and assigned the matter to OALJ for the development of an evidentiary record and for the issuance of a Recommended Decision on certain limited issues. The delineated purposes of the reopened *RLEC Access Charge Investigation* were detailed in the *April 2008 Order* as follows:

1. To address 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 PA USF should be increased, and whether or not a “needs based” test (and applicable criteria) for rural ILEC support funding from the PA USF 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 PA USF funding as described in the body of the *April 2008 Order*; and

2. The proceedings shall also address the following issues:

1. Whether the Commission has the authority under Chapter 30 and other relevant provisions of the Public Utility Code to perform a just and reasonable rate analysis of the rural incumbent local exchange carriers’ (ILECs’) residential rates for basic local exchange services when such rates exceed the appropriate residential rate benchmark.
2. The appropriate benchmark for the rural ILEC residential rate for basic local exchange service taking into account the statutory requirements for maintaining and enhancing universal telecommunications services at affordable rates.
3. Whether PA USF funding support should be received by rural ILECs that incrementally pierces the appropriate residential rate cap because of the regular annual Chapter 30 revenue increases, and whether the Commission’s PA USF regulations at 52 Pa. Code § 63.161 et seq. should be accordingly revised.
4. Whether the potential availability of PA USF support distributions to those rural ILECs that pierce the appropriate residential rate cap because of their respective annual Chapter 30 annual revenue increases has any anti-competitive or other adverse effects, especially with respect to the currently established PA USF support contribution mechanism and its participating telecommunications utility carriers.
5. The “needs based” test should address the following interlinked areas that involve the operations of the rural ILECs:

(i) The Chapter 30 annual rural ILEC price stability mechanism revenue increases;

(ii) The annual federal USF support that the Pennsylvania rural ILECs receive;

(iii) The fact that most of the Pennsylvania rural ILECs are “average schedule” telephone utility companies that do not jurisdictionalize a number of revenue, expense, and asset parameters for their regulated operations;

(iv) Whether there is any relevance that rural ILEC assets and facilities may be used both for the provision of regulated intrastate telecommunications services, but also for the provision of non-jurisdictional services that potentially include unregulated services;

(v) Whether the overall financial health of the rural ILECs that continue to get both PA USF and federal USF support should play a role for continuing to receive PA USF support distributions; and

(vi) Whether the PA USF level of support distributions to the recipient rural ILECs should be adjusted in relation to the revenue increases in local exchange rates that have been or are implemented through their respective Chapter 30 modified alternative regulation plans and price stability mechanisms.

Ordering Paragraph Nos. 1 and 2 of *April 2008 Order*.

By Order entered on October 9, 2008 (*October 2008 Order*), at Docket No. I‑00040105, *et al.*, the Commission provided clarifications prompted by two Petitions for Reconsideration and Clarification (*Petition for Reconsideration*) filed by: 1) Sprint Communications Company, L.P., Sprint Spectrum, LP, Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively Sprint), and, 2) AT&T Communications of Pennsylvania, LLC. Through its *Petition for Reconsideration*, Sprint sought clarification as to whether the re-opened investigation will include a consideration of PaUSF contribution obligations of Commercial Mobile Radio Service (CMRS) providers. The Commission clarified that the re-opened investigation would not include a consideration of PaUSF contribution obligations of CMRS providers. AT&T sought clarification as to whether the Parties could introduce evidence on both decreasing and increasing the size of the PaUSF. The Commission clarified that when it stated that the investigation was opened for the purpose of addressing whether funding for the PaUSF should be increased, it did not intend there to be a preclusion of evidence that the funding for the PaUSF should decrease, which could be part of the needs-based test conclusion. Accordingly, the Parties were given the opportunity to introduce evidence on both decreasing as well as increasing the size of the PaUSF.

The limited reopened investigation was assigned to ALJ Colwell for hearing and decision. The remainder of the investigation was stayed until the earlier of April 24, 2009, or the outcome of the *Unified Intercarrier Compensation* *Proceeding* at CC Docket No. 01-92, whichever came first. On July 23, 2009, ALJ Colwell’s R.D. on the limited reopened investigation was issued.

On March 19, 2009, during the third *RLEC Access Charge Investigation* stay, each of the three AT&T companies (*i.e.*, AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh, Inc. and TCG New Jersey, Inc.) filed individual complaints (AT&T Complaints) with the Commission against thirty two Pennsylvania RLECs[[11]](#footnote-11) for a total of ninety-six complaints[[12]](#footnote-12) (referred to collectively as AT&T Complaint proceeding). The AT&T Complaints, which were filed pursuant to 52 Pa. Code § 5.21 and Sections 701 and 1309 of the Public Utility Code (Code),[[13]](#footnote-13) involved alleged intrastate access charge violations of 66 Pa. C.S. §§ 1301 and 3011(3), (4), (5), (8) and (9) by certain RLECs. As relief, AT&T requested that the RLECs be required to reduce intrastate access rates to levels which correspond, both in rate levels and in rate structure, to the rates each company assesses for interstate switched access. The AT&T Complaints were initially consolidated into three lead dockets, and assigned to ALJ Melillo, who subsequently consolidated them into one lead docket at C‑2009-2098380.

On June 26, 2009, the PTA and CTL submitted a Petition Requesting Interlocutory Review and Answer to Material Questions regarding issues arising from the AT&T Complaints. The material questions for review included whether the ALJ erred in denying the Preliminary Objections against the AT&T Complaints filed by the PTA, as to whether the Commission should stay or consolidate the AT&T Complaints with the pending *RLEC Access Charge Investigation*, and whether the retroactivity provision in Section 1309(b) applied to the AT&T Complaints.

By Order entered on July 29, 2009, at C-2009-2098380, *et al*. (*July 2009 Order*), the Commission denied the request for stay of AT&T Complaints and also consolidated the case with the *RLEC Access Charge Investigation*. The Commission also extended the statutory time limit for ALJ Melillo to complete the investigation and the issuance of a Recommended Decision by three months. *July 2009 Order* at 16, n. 8.

On August 5, 2009, the Commission issued an Order denying the March 25, 2009 Joint Motion of the PTA, the OCA, and CTL for a fourth stay of the *RLEC Access Charge Investigation* (*August 2009 Order*). We assigned the matter to OALJ for development of an appropriate evidentiary record and the issuance of a Recommended Decision within twelve months from the date of entry of the Order or by August 5, 2010. In the *August 2009 Order* the Commission expressed its concern with any further delay by the FCC:

However, ongoing proceedings both before the Commission and the Pennsylvania Commonwealth Court (footnote omitted) have provided serious indications that, in the absence of substantive FCC actions in the areas of national intercarrier compensation reform and the federal USF, this Commission may need to again undertake the initiative of reexamining the area of intrastate carrier access charges for the RLECs. The AT&T complaint underlines the need for such action.

*August 2009 Order* at 18.

The Commission also ordered that, absent extraordinary circumstances, the issues already adjudicated by ALJ Colwell need not be relitigated in the re-opened investigation. *August 2009 Order* at 21.

The full *Rural Access Charge Investigation* case (beyond the limited issues that had been assigned to ALJ Colwell) was assigned to ALJ Melillo. ALJ Melillo conducted a Prehearing Conference on August 19, 2009. At the Prehearing Conference the Parties disagreed as to the specific issues to be litigated which resulted in ALJ Melillo issuing an Order on September 15, 2009 (*September 2009 Order*), addressing the scope of the consolidated proceeding. ALJ Melillo ruled as follows with regard to the scope of the proceeding:

1. That the scope of this proceeding shall include, consistent with the discussion herein: (1) the issues set forth in the *December 2004 Order*, except for those matters that have been adjudicated by ALJ Colwell (unless extraordinary circumstances are shown); (2) the issues set forth in Ordering Paragraph #5 of the *August 2009 Order*, except for those matters which have been adjudicated by ALJ Colwell (unless extraordinary circumstances are shown); (3) derivative issues which have been specifically permitted herein; and (4) the AT&T Complaint issues.

*See September 2009 Order,* Ordering Paragraph No. 1.

The Parties then filed a Petition Requesting Interlocutory Review and Answer to Material Question of the *September 2009 Order* and by Order entered on December 10, 2009, the Commission agreed with the scope outlined in the *September 2009 Order*, but clarified that the issues regarding intraLATA toll service rate reductions and wireless and VoIP carrier contribution to the PaUSF need not be investigated.

Evidentiary hearings were held and ALJ Melillo’s R.D. was issued on August 3, 2010. We now consider the entirety of the access charge investigation and all of the thorny issues exhaustively litigated before ALJs Colwell and Melillo.

**II. Background**

While labeled an access charge investigation, the primary issue to be addressed in these proceedings is how the cost of joint and common network plant will be recovered. The OCA cogently framed the issue in the testimony of witness Dr. Robert Loube:

Given the long history of the proceeding, with all of its twists and turns, it is easy to lose sight of the primary cause of the debate. That primary cause is the question of how will the cost of the joint and common network plant be recovered? The joint and common network plant is the outside plant that connects each customer to a central office. The plant consists of cables and wires, poles, trenches and conduit, and electronic equipment that is situated in the field. This plant is used to provide all of the services the customers wish to consume and all of the services that other carriers wish to provide. This plant allows the customer to make a local call and it also allows a long distance carrier or a wireless carrier to complete a call. This plant is not directly assignable to any one service such as access or local exchange or data transport service. However, none of those services can be provided without it.[[14]](#footnote-14)

The term “access charges” refers to the compensation paid to local exchange companies for the use of their network by other telecommunications service providers. Interstate access charges apply to calls that originate and terminate in different states, and intrastate (jurisdictional) charges apply to calls that originate and terminate within the state, but in different local calling areas (*i.e.*, non-local calls). The rates at issue herein are switched access rates that RLECs charge to other carriers to originate and terminate non-local calls to or from an RLEC customer that begin and end in Pennsylvania.

In the *Global Order*,[[15]](#footnote-15) the Commission indicated that ILECs incur both traffic-sensitive (TS) costs and non-traffic-sensitive (NTS) costs in providing switched access for the completion of a toll call. NTS costs are primarily those associated with providing and maintaining the local loop and other outside network plant facilities that provide connectivity between end-user consumers and the central office of a telecommunications carrier. In most circumstances, NTS costs do not vary with the number or length of ordinary telephone calls. TS costs, on the other hand, vary with the amount of usage of the telephone network and cover the costs of, for example, switching equipment that must be sized to meet the volume and length of calls.

NTS network costs are properly characterized as joint and common costs, and this Commission has a long-established policy that permits the recovery of such costs from *all* users of such joint and common telecommunications plant and facilities, and not by end-users of regulated telecommunications services alone. Joint and common facilities and plant enable not only the provision of various local and long-distance telecommunications services by a number of entities, but they also facilitate retail broadband access to the Internet and various data and communication services.

In general, the RLECs have TS intrastate switched access rates for the switching function and any transport functions provided to interexchange carriers (IXCs), which range from about $0.01 to as high as $0.11 per minute for either originating or terminating access. AT&T St. No. 1.0 at 34. In addition, most RLECs have a “Carrier Charge” (or equivalent) which is an NTS charge for access on a per line/per month basis.

RLEC NTS charges, often termed carrier common line charges or carrier charges (CCLC or CC)[[16]](#footnote-16) range from $0.17 for Frontier-Oswayo River to $17.99 for Ironton. Armstrong North and most of the Frontier Companies have a $0.00 CCLC. *See*, AT&T St. No. 1.0, Exhibit (Ex.) E; Verizon St. No. 1.0, Ex. 3.

With fundamental changes in the evolution of the telecommunications industry from a monopoly to a competitive environment came the acknowledgement that access charges contain implicit and explicit support for local service rates – support that has kept basic local service rates lower than they otherwise might have been in rural areas with lower subscriber densities and longer loop distances.

Intrastate and interstate access charge mechanisms were established so that telecommunications carriers could be compensated for the use of their facilities when handling traffic on behalf of other telecommunications carriers and/or providers of various communications services. Intrastate and interstate access charges are a significant source of revenues for ILECs, and especially RLECs. ILEC carrier access rates in general, and those of RLECs in particular, were often set at a higher level than conventional measures of economic cost. This facilitated the achievement of both national and state-specific goals for preserving and enhancing universal telephone service, especially in high-cost rural areas of Pennsylvania and the nation where geographic population densities are lower and the costs of deploying appropriate telecommunications plant infrastructure are higher. Intrastate and interstate access charge reforms that were implemented by states, including Pennsylvania, as well as the FCC, have gradually lowered the level of intrastate and interstate access charges. Such reform efforts were invariably accompanied by associated effects of increased rates for basic local exchange service either through rate restructuring in the states, or through the imposition of an increased level of federal subscriber line charges (SLCs) by the FCC. In addition, state-specific USFs, such as the PaUSF, and the federal USF have assisted these reform efforts.

The General Assembly’s addition of Chapter 30 to the Code in 1993[[17]](#footnote-17) facilitated the early deployment of a universally available state-of-the-art broadband network in Pennsylvania. In order to accomplish that fundamental objective, Chapter 30 encouraged the Commission to grant petitions by ILECs for an alternative form of rate regulation, such as price cap regulation for non-competitive services, provided that the ILECs also committed to a Network Modernization Plan that provided broadband service to 100% of its customers by 2015.[[18]](#footnote-18)

In addition to the Commission’s actions on the intrastate side, the FCC instituted numerous proceedings aimed at further addressing an orderly transition from a monopoly environment to a more competitive environment.

In 1996, the FCC enacted the Telecommunications Act of 1996 (TA-96) which provided more opportunities for competitive carriers to operate in ILECs’ territories. Recognizing the vulnerability of implicit subsidies to competition, TA-96 requires that the FCC and the states take the necessary steps to strive to replace the system of implicit subsidies with “explicit and sufficient” support mechanisms to attain the goal of universal service in a competitive environment. As such, with the passage of Chapter 30 and TA-96, the Commission’s policy on access charge pricing shifted toward promoting competitive local and toll markets by bringing the ILECs’ access charges closer to cost.

Pursuant to TA-96, the FCC undertook reform of both interstate access charges and federal universal service support mechanisms. Beginning in 1997, the FCC adopted several measures to move interstate access charges for price cap carriers toward lower, cost-based levels by revising the recovery of loop and other NTS costs from per-minute charges to flat per line charges thereby aligning rates more closely with the way the costs are incurred.

In order to phase out interstate carrier common line charges, the per-minute charges assessed on IXCs through which ILECs recover their residual NTS interstate loop costs that are not recovered through their capped federal SLCs, the FCC created the presubscribed interexchange carrier charge (PICC), a flat, per line monthly charge imposed on IXCs. The FCC also shifted the NTS costs of the line ports from per-minute local switching charges to the common line category and established a mechanism to phase out the per-minute transport interconnection charge (TIC).[[19]](#footnote-19) The FCC held that more rate structure modifications would be required to create a system that accurately reflects the true cost of service in all respects.

In its *Interstate Access Support Order*[[20]](#footnote-20)the FCC continued the process of access charge and universal service reform for price cap local exchange carriers. That order prescribed a more straightforward, and purportedly economically rational, common line rate structure by increasing the caps on the SLC, a flat monthly charge assessed directly on end-users to recover interstate loop costs, and phasing out the PICC, which the FCC viewed as economically inefficient due to the indirect flow of loop costs to end-users through IXCs. The FCC also revisited the controversial “X-factor,” in the federal price cap mechanism by changing its function from a productivity offset to a tool for reducing per-minute access charges to target levels proposed by parties participating before the federal agency.

The FCC also established a new interstate access support mechanism, capped at $650 million annually, to replace what the FCC deemed implicit support included in the interstate access charges of price cap carriers, finding $650 million to be a reasonable amount that would provide sufficient, but not excessive, support. In this regard, the FCC observed that a range of funding levels might be deemed “sufficient” for purposes of TA‑96, and that “identifying an amount of implicit support in our interstate access charge system to make explicit is an imprecise exercise.”[[21]](#footnote-21)

In recognition of the need for a more comprehensive review of the issues of access charge and universal service reform for the remaining 1,300 or so RLECs serving less than 2% of the nation’s access lines, the FCC placed such reforms for the non-price cap carriers on a separate track. It is well-understood that RLECs generally have higher operating and facilities costs due to lower subscriber population density, smaller exchanges and limited economies of scale.[[22]](#footnote-22) Significantly, RLECs rely more heavily on revenues from access charges and universal service support in order to provide ubiquitous and affordable local service.

On May 23, 2001, the FCC released its *Fourteenth Report and Order and Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, Multi-Association Group (MAG)* P*lan for Regulation of Interstate Services of Non-*P*rice Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC RCD 11244 (released May 23, 2001) (“*Rural Task Force Order*”). The *Rural Task Force Order* changed the manner in which rural interstate universal service support is currently calculated and applied. Among other things, the *Rural Task Force Order* endorsed use of a modified embedded cost mechanism for RLECs, as opposed to a forward-looking cost mechanism required for price cap carriers, to determine rural carrier support, and included implementation of a rural growth factor (the sum of annual line growth and a general inflation factor) and a “safety net” additive and “safety valve” to provide support for new investment and growth above stated thresholds. While created as an interim plan, the FCC also made clear its intention to develop “a long-term plan that better targets support to carriers serving high-cost areas, while at the same time recognizing the significant differences among rural carriers, and between rural and non-rural carriers.”[[23]](#footnote-23)

The FCC also took major steps in beginning to reform interstate high-cost support, interstate access charges and universal service support systems for non-rural carriers through a series of reports and orders in the matter of *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45 and the *Interstate Access Support Order.* Through the *Rural Task Force Order*, the FCC began to address the matter of interstate access charge and universal service support reforms for the rural carriers. On November 8, 2001, the FCC issued its *Second Report and Order* at CC Docket Nos. 01-304, 00-256 (MAG Plan), 96-45 (USF), 98-77 (Access Charge Reform) and 98-166 (Authorized Rate of Return), in what is referred to as the *MAG Order*. In the *MAG Order,* the FCC stated its intent to align the interstate access rate structure with a lower, more cost-based level, remove what the FCC deemed to be implicit support for universal service and replace it with explicit, portable and competitively-neutral support. Specifically, the *MAG Order* lowered interstate access charges from approximately $0.046 per minute to possibly as low as $0.022 per minute, increased the interstate SLC over a period of time, and phased out the CCL by July 1, 2003, replacing it with a portable interstate common line support (“ICLS”) universal service mechanism. In addition, SLC caps were increased effective January 1, 2002, raising monthly per line SLC rates from a range of $3.50 - $5.00 for residence and single line business to a range of $6.00 - $6.50. These interstate changes have resulted in significant increases to most Pennsylvania consumers, which are in addition to the intrastate increases in local service rates under Pennsylvania’s intrastate access charge reforms and the rate effects of Chapter 30.

RLEC intrastate access rates have been reduced in Pennsylvania on an RLEC-industry wide basis[[24]](#footnote-24) two times in the past ten years – in the *Global Order* and in the *July 2003 Order* (pursuant to approval of a settlement).

In the *Global Order*, total RLEC access revenues, including CTL’s, were reduced by $21 million on a revenue-neutral basis, and the PaUSF was instituted to mitigate the local rate impact resulting from rebalancing. PTA Ex. GMZ-2.[[25]](#footnote-25) The Commission stated that it would consider further access charge reductions in a subsequent investigation (Phase II) which was then projected to be concluded no later than December 31, 2001. *Global Order*, 93 PA PUC 172, 207.

As indicated by PTA witness Gary M. Zingaretti, the *Global Order* also adopted the RLECs’ proposal to mirror intrastate and interstate TS rates, and the NTS component was restructured to a flat-rated CCLC on a per line per month basis. The PTA previously recommended, and the Commission agreed, that the TS component should be recalibrated periodically to match the interstate component to help reduce arbitrage. This was done in 2000 and 2003, but there was no requirement that the intrastate TS component continue to mirror the interstate component and there has been a deviation over time. PTA St. No. 1 at 6-7, 15.

After the *Global Order*, the Commission postponed initiation of Phase II of access charge reform until January 2002, to allow for settlement negotiations. An investigation was subsequently instituted at Docket No. M-00021596, and resulted in a settlement proposal, which was approved by the Commission in the *July 2003 Order*. Pursuant to that settlement, RLEC access rates, including CTL’s, were further reduced by $27.2 million on a revenue-neutral basis, although the PaUSF was not increased in size due to an internal restructuring of the PaUSF’s distribution. PTA St. No. 1 at 9-10. In its *July 2003 Order*, *slip op.* at 12, the Commission stated as follows:

[W]e 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 in Pennsylvania in an efficient and productive manner.

In its *December 2004 Order* initiating the instant access charge investigation, the Commission reiterated its position that the *Global Order* and *July 2003 Order* represented additional steps but not the final word on access reform. In a subsequent July 11, 2007 Order,[[26]](#footnote-26) the Commission noted its policy goal of reducing dependence by ILECs on access revenue from other carriers and rebalancing that revenue.

The *April 2008 Order* initiated the limited reopening before ALJ Colwell and therein, the Commission acknowledged that it did not favor the arbitrage brought about by non-mirroring of intrastate and interstate access charges. The Commission stated as follows:

It has been, and continues to be the intention of this Commission, since the *Global Order* of 1999, to gradually lower intrastate access charges so as to allow for greater competition in the intrastate and interexchange toll markets.

*April 2008 Order* at 26.

In that same *April 2008 Order*, the Commission noted a concomitant policy goal of “assuring that local service rates do not become unreasonably high in those incumbent service territories, and that there are always reasonably affordable phone carriers operating in all areas of this State.” *Id.*

Most recently, in its *December 2009 Order*, the Commission acknowledged the potential implications of ALJ Colwell’s R.D. on the remaining issues and indicated that access reform in Pennsylvania may or may not depend upon continuation of the PaUSF.

In the *Global Order,* the Commission provided the following explanation of how the PaUSF should operate:

In addition, the Fund permits the small ILECs to restructure and reduce their access and toll rates as follows: (a) Intrastate traffic sensitive switched access rates and structure (including local transport restructure) will be converted to the interstate switched access rates and structure that were in effect on July 1, 1998; (b) The Carrier Common Line Charge (CCLC) for BA-PA and the small ILECs will be restructured as a flat –rated Carrier Charge (CC) and reduced to an intrastate rate of approximately $7.00 per line to be recovered from all toll carriers on a proportional minutes of use basis; (c) The small ILECs will be given the opportunity to reduce their toll rates to an average rate not lower than $0.09 per minute; (d) Small ILECs will be permitted to increase their residential one-party basic, local rates up to an average monthly charge of at least $10.83, to the extent necessary to offset the reduced toll rates and any excess needed to fund the toll rate reduction is designed to come from the Fund; and, (e) Small ILECs with average monthly residential one-party basic local rates above $16.00 at the time the Fund is implemented will provide a Universal Service credit in an amount that will effectively reduce the rate to $16.00 with business rates receiving a proportionate credit.

*Global Order,* 93 PA PUC at 203-204 (footnote omitted).

The Commission subsequently adopted regulations governing the purpose and operation of the PaUSF.[[27]](#footnote-27) The PaUSF rules are found at 52 Pa. Code §§ 63.161-63.171.

The Commission’s *July 2003 Order* at Docket No. M 00021596, *et al.*, granted the Joint Procedural Stipulation that was filed by the RTCC, Sprint/United (*i.e.*, CTL), the OTS, the OCA, the OSBA, AT&T, Verizon and MCI WorldCom Network Services, Inc. further reducing intrastate access charges for the RLECs operating within the Commonwealth and increasing the cap on basic residential local service rates from $16.00/month to $18.00/month. The $18.00/month residential cap was to remain in effect for a minimum three-year period, from January 1, 2004 through December 31, 2006. The size of the PaUSF was not changed. The PaUSF and its governing regulations were not changed by the *July 2003 Order* and, thus, remain intact today as originally promulgated.

As noted above, the revised Chapter 30 was enacted through the passage of Act 183.[[28]](#footnote-28) Act 183 provides that the terms of an ILEC’s Chapter 30 Plan:

shall govern the regulation of the local exchange telecommunications company and, consistent with the provisions of this chapter, shall supersede any conflicting provisions of this title or other laws of this Commonwealth and shall specifically supersede all provisions of Chapter 13 (relating to rates and rate making) 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).

66 Pa. C.S. § 3019 (h).

The RLECs subsequently filed their amended alternative regulation and network modernization plans (NMPs) to conform to the provisions of Act 183. Essentially, Act 183 provided the opportunity for revenue and rate increases for those RLECs with price stability

mechanism (PSM)[[29]](#footnote-29) plans and price cap formulas, where the statutorily-mandated inflation offset values have been reduced to 0%. Act 183 also imposed the affirmative obligation for the participating RLECs to deploy broadband facilities and retail access availability throughout their respective service areas with a 1.544 megabits per second (Mbps) downstream capability within certain time completion deadlines. *See* 66 Pa. C.S. §§ 3012 and 3014(b). The amended PSM plans allowed for a restructuring of rates on a revenue-neutral basis so long as local rates were not increased by more than $3.50 per month. The amended plan provisions also allowed changes to access service rates in order to ensure each access service rate element recovered its cost. However, RLECs were required to provide a cost study in conjunction with their amended PSM plans to support the changes. With respect to RLECs’ noncompetitive services, the amended plan provisions mandated that the RLECs shall not use revenue earned or expenses incurred in conjunction with noncompetitive services to subsidize competitive services. Under the RLECs’ amended plans, all tariff filings for noncompetitive services would be subject to review of the PSM plan, and subject to the requirements of Chapter 13 of the Code, particularly, Section 1301’s requirement that rates be just and reasonable.

The majority of the Chapter 30 RLECs have reported to the Commission that they have completed their respective broadband deployment and availability as of December 31, 2008. Certain operations of CTL and Windstream are expected to finalize their respective broadband deployment and availability by December 31, 2013.

The Commission’s *December 2004 Order* instituted an investigation into whether there should be further intrastate access charge reductions and intraLATA toll rate reductions in the service territories of the RLECs*.* This investigation was instituted as a result of the Commission’s *July 2003 Order*, which provided for continuing access charge reform in Pennsylvania. The *July 2003 Order* also provided that a rulemaking proceeding would be initiated no later than December 31, 2004, to address possible modifications to the PaUSF regulations and the simultaneous institution of a proceeding to address all resulting rate issues should disbursements from the PaUSF be reduced in the future.

These proceedings have resulted in the R.D.s now before us for disposition.

**III. Discussion**

As a preliminary matter, we note that it is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Any Exception or argument, which has not been specifically addressed herein, shall be deemed to have been duly considered and denied without further discussion.

This investigation presents issues the majority of which are policy matters set against legal backdrops. As noted above, in our prior Orders reopening the *RLEC Access Charge Investigation*, we summarized the relevant issues in each aspect of this investigation. ALJ Colwell and ALJ Melillo are to be commended for their management of a massive amount of information and their exhaustive and detailed consideration of the parties’ arguments on the many legal and policy issues. Both ALJs presented well-reasoned and thoughtful recommendations for our consideration and ultimate resolution. The substantial effort undertaken by the ALJs has not only informed our decisions, but made our work here manageable and for this we are grateful. We find the majority of the ALJs’ decisions to be sound and, thus, we adopt a majority of their recommendations with certain modifications and clarifications, as discussed below.

**A. ALJ Colwell’s Limited Investigation**

This section addresses the positions of the Parties, ALJ Colwell’s recommendations, and the parties’ Exceptions and Replies to Exceptions on each of the issues addressed in the limited investigation. In general, ALJ Colwell recommended that “the Commission should open a rulemaking which proposes changes to its universal service regulations to reflect the Commission’s policy regarding universal service in Pennsylvania.” Colwell R.D. at 191. She further recommended that, pending the outcome of the rulemaking, the RLECs should neither be held to an $18.00/month rate cap nor should they be permitted to take funding from the PaUSF in order to obtain the revenues which would represent the difference between the $18.00/month rate and their Chapter 30 plan entitlements. Instead, they should be permitted to raise rates consistent with their Chapter 30 plans, with the Commission performing a just and reasonable analysis where the increase is not consistent. Colwell R.D. at 91.

**1. Whether the Commission Has the Authority Under Chapter 30 and Other Relevant Provisions of the Public Utility Code to Perform a Just and Reasonable Rate Analysis of Rural ILECs’ Residential Rates for Basic Local Exchange Service When Such Rates Exceed the Appropriate Residential Rate Benchmark?**

**a. Positions of the Parties**

The OCA averred before ALJ Colwell that the Commission has a continuing obligation to ensure that the ILECs only charge rates which are just and reasonable. The OCA averred that this should be accomplished by recognizing that an appropriate just and reasonable rate analysis in the context of Chapter 30 must be guided by the obligation to maintain universal telephone service at affordable rates. OCA Main Brief at 53. Application of the $18.00/month cap and support from the PaUSF to provide credits when the average residential rate exceeds that cap provides a means to assure that residential consumers served by RLECs pay only just and reasonable rates. OCA Main Brief at 56.

According to the PTA, the Commission’s administrative discretion under the just and reasonable standard is limited by the express terms of the RLECs’ Chapter 30 plans that have been approved by the Commission. The PTA submitted that the just and reasonable standard for RLEC rate making must be in concert with the companies’ Chapter 30 plans, and the rates developed in accordance with the annual rate change limitations of an alternative regulation plan are deemed to be just and reasonable. The PTA also argued that the rates established in accordance with the terms of a Chapter 30 plan are *per se* compliant with Section 1301 of the Code.[[30]](#footnote-30) PTA Main Brief at 38-39.

According to CTL, the Commission’s ability to perform a just and reasonable rate analysis is governed by the terms of the CTL Chapter 30 plan. CTL Main Brief at 5-6.

The OSBAnoted that the Commission has little discretion regarding the computation of the overall revenue increases made in the annual PSM filings submitted by the RLECs as long as proper data is used and the calculations are performed correctly. OSBA Main Brief at 27. However, the OSBA believes that the Commission has the authority to review the *allocations of overall noncompetitive service revenue increases* submitted by the RLECs in their annual PSM filings. For example, the OSBA points out that allocation of the entire revenue increase to one single class could be reviewed and a determination made as to whether that allocation was discriminatory. OSBA Main Brief at 28.

BCAP argued that it is well-established that the Commission has a duty to determine the public interest.[[31]](#footnote-31) BCAP cited to Section 501 of the Code[[32]](#footnote-32) and noted that the Commission has a duty to ensure that the public interest is advanced in its regulation of entities that fall within the statutory definition of a public utility. According to BCAP, that public interest is not advanced by constraining the Commission’s rulemaking authority vis-à-vis universal telephone service solely to what one segment of stakeholders is willing to accept; rather, the views of all interested stakeholders must be considered, with the Commission using its judgment to determine a reasonable result. BCAP Main Brief, BCAP Reply Brief at 7.

Verizon pointed out that this Commission had already decided that it has the statutory mandate, authority and responsibility under 66 Pa. C.S. § 3019(h) to adjudicate whether proposed rates are just and reasonable and non-discriminatory under Sections 1301 and 1304 of the Code, 66 Pa. C.S. §§ 1301, 1304. *See Commonwealth Telephone Company PSI/SPI Filing for Year 2005,* Docket No. R‑00050551 (Opinion and Order entered August 31, 2005 at 7). Verizon has also noted that this legal issue was then pending before the Commonwealth Court in *Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company, and Denver and Ephrata Telephone and Telegraph Company v. Pa. Publ. Util. Comm’n, and Irwin A. Popowsky v. Pa. Publ. Util. Comm’n,* No. 847 C.D. 2008. The Commission had argued to the Court that the Legislature preserved in Sections 3019(h) and 3015(g) of the Code[[33]](#footnote-33) the Commission’s ability to conduct a just and reasonable analysis in order to protect ratepayers of noncompetitive and protected services under 66 Pa. C.S. § 1301. Verizon observed that any such finding of reasonableness must be based on substantial evidence, however, and not the simple fact that the rate exceeds the rate cap. Verizon Reply Brief at 18-19.

AT&T averred that the Commission absolutely retains the ability to determine whether any regulated company’s noncompetitive rates are just and reasonable. AT&T noted that Chapter 30 does not eliminate the legal requirement that regulated rates charged by a public utility be just and reasonable. 66 Pa. C.S. § 1301. AT&T also cited to Sections 3015(g) and 3019(e) of the Code[[34]](#footnote-34) to support this conclusion. AT&T Main Brief at 20.

**b. ALJ Colwell’s Recommendation**

With regard to the question of whether the Commission has the authority under Chapter 30 to perform a just and reasonable analysis of the RLECs’ basic exchange services rates when they exceed the appropriate residential rate cap, ALJ Colwell concluded that Sections 1301 and 3015(g) of the Code preserve the Commission’s authority to conduct a just and reasonable analysis of ILEC rates. 66 Pa. C.S §§ 1301, 3015(g), Conclusion of Law No. 8; Colwell R.D. at 91.

The ALJ noted that Act 183 replaced the previous Chapter 30 statute in its entirety. The ALJ referenced the specific language of Section 3019(h) of the Code, noting that it superceded Chapter 13 of the Code with particular enumerated exclusions. One such exclusion of note was Section 1301 of the Code (regarding just and reasonable rates). Colwell R.D. at 73‑74.

The ALJ also noted that the Commission had previously determined on two separate occasions that Act 183 had preserved the Commission’s ability to conduct a just and reasonable rate analysis. Colwell R.D. at 74. The ALJ first cited to the Orders pertaining to the D&E Companies’ 2006 PSI/SPI filings,[[35]](#footnote-35) where the Commission rejected the D&E Companies’ argument that the Commission had no authority for oversight of rates for protected and noncompetitive services.

The ALJ also cited to the Commission’s Order in Commonwealth Telephone Company’s 2005 PSI/SPI filing, where the Commission affirmed that it has the statutory mandate, authority and responsibility under 66 Pa. C.S. §§ 3019(h) to adjudicate whether the proposed rate changes are just and reasonable and non-discriminatory under Sections 1301 and1304 of the Code, 66 Pa. C.S. §§ 1301 and 1304.[[36]](#footnote-36) Colwell R.D. at 74.

The ALJ further noted that the rate change limitations that are set by prior orders of the Commission are preserved by Act 183. The ALJ quoted the following relevant statutory language:

**(g) Rate change limitations –**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). Colwell R.D. at 76.

The ALJ explained that the limitations set forth in Section 3015(g) are associated with an RLEC’s ability to change its rates, which limitations are clearly to be within the confines of a finding of “justness and reasonableness,” as determined by the Commission. The ALJ further concluded that the RLECs should be permitted to raise rates consistent with their Chapter 30 Plans, with the Commission performing a just and reasonable rate analysis. Colwell R.D. at 90.

**c. Exceptions**

In its first Exception, the PTA states that it does not argue with ALJ Colwell’s recommendation that the Commission find that there is Commission authority for a just and reasonable analysis of ILEC rates in Chapter 30. However, the PTA faults ALJ Colwell for failing to define the scope of the Commission’s authority for such an analysis and the PTA claims that such broad recommendation leaves open the question of whether there are any limits to the Commission’s conduct of such an analysis. According to the PTA, Act 183 presented a more circumspect and defined role for the Commission’s analysis. The PTA opines that while Section 3015(g) of the Code acknowledges the just and reasonable ratemaking standard of Section 1301 of the Code, its application is restricted by the declaration that rates established in accordance with the terms of an alternative regulation plan are deemed compliant with Section 1301 of the Code. PTA Exc. at 11.

The PTA claims that the limitations set forth in Section 3015(g) of the Code are not on an RLEC’s ability to change its rates, but with regard to the Commission’s ability to undertake a just and reasonable analysis of ILEC rates. The PTA views the Commission’s role as limited – *i.e.,* at most, the Commission has the administrative discretion to review the justness and reasonableness of a rate change made under Chapter 30. The PTA argues that administrative discretion is limited to the express terms of an ILEC’s Chapter 30 plan[[37]](#footnote-37) and that the rates established in accordance with the ILEC’s Chapter 30 Plan are *per se* deemed compliant with Section 1301. The PTA also states that Section 3019(h) preserves the Section 1301 just and reasonable standard subject to the provision of Section 3015(g) and that the preservation does not override the specific language of Section 3015(g). PTA Exc. at 11‑12.

CTL states that it is uncertain of the meaning of ALJ Colwell’s Conclusion of Law No. 8, and notes that ALJ Colwell has erred if she concluded that the Commission is authorized to disallow an RLEC’s rate change when such rates are consistent with its Chapter 30 Plan. For CTL, the Commission’s “just and reasonable analysis” is confined to the determination of whether an RLEC’s rate change is consistent with the RLEC’s Chapter 30 plan, and that if the rate change is consistent with the plan, the rate change is automatically deemed just and reasonable. According to CTL the usage of the term “shall” in Section 3015(g) of the Code must mean that, if the rate change is consistent with the approved Chapter 30 plan, then the rate change must be deemed just and reasonable. CTL Exc. at 3-5.

Verizon submits that the Commission continues to have the authority to ensure that end user rates are just and reasonable, and that the Commission’s decision in this regard must be based on substantial evidence. Verizon claims that, in light of the evidentiary record developed here, it would be arbitrary and capricious for the Commission to presume that any RLEC rate above $18.00/month is by definition unjust and unreasonable. Verizon pointed out that the Commission has already rejected the RLECs’ argument that the Commission lacks authority for a just and reasonable analysis of its rates in *Commonwealth Telephone Company PSI/SPI Filing for Year 2005*, Docket No. R-00050551, Opinion and Order entered August 31, 2005. Verizon states that, in that case, the Commission held that it has statutory mandate, authority and responsibility under 66 Pa. C.S. 3019(h) to adjudicate whether the proposed rate changes are just and reasonable and non-discriminatory. Verizon also points out that this very legal issue was then pending before the Commonwealth Court in the D&E Companies appeal of the Commission’s Order which disallowed its 2006 price change opportunity filing where the D&E Companies had advanced the same interpretation of the scope of the Commission’s “just and reasonable” rate analysis authority which the RLECs have advanced here.[[38]](#footnote-38) Verizon R.Exc. at 13-14.

The OSBA avers that the RLECs are no longer subject to the traditional rate base/rate of return regulation and that the Commission has held that the PSM process employed by the ILEC is a complete substitution of the rate base/rate of return regulation. The OSBA submits that the Commission has little discretion in regard to the overall noncompetitive service revenue increase made in the annual PSM filing as long as the proper data is used in the PSM and the calculations are performed correctly; however, the Commission is responsible for reviewing and approving the revenue requirements. The OSBA also submits that in allocating the overall increase among the ILECs’ noncompetitive services, Act 183 grants the Commission specific authority. Citing 66 Pa. C.S. § 3019(h), the OSBA notes that the Commission has retained its authority to examine the allocation of the PSM revenue increase to both an RLEC’s rate classes and among an RLEC’s rate classes. The OSBA contends that if an RLEC allocated the entirety of an annual PSM revenue increase to one single class, the Commission would have the authority to examine the allocation under Section 1301 as to whether it is just and reasonable and, under Section 1304, as to whether such an allocation is discriminatory. OSBA R.Exc. at 23, 24.

**d. Disposition**

Upon review of Parties’ Exceptions and Reply Exceptions, we reject the PTA’s and CTL’s interpretation of Act 183. Contrary to the PTA’s and CTL’s claims, Act 183 did not so markedly constrain the Commission’s ability to perform a just and reasonable analysis of the RLECs’ rates. As pointed out by Verizon, this very legal point was decided by the Commonwealth Court in the D&E Companies’ appeal of the Commission’s Order in its price

change opportunity filing.[[39]](#footnote-39) The Court issued its Order on December 16, 2009, subsequent to the filing of Parties’ Exceptions and Replies to Exceptions to ALJ Colwell’s R.D. In affirming the Commission’s *D&E Companies* Order the Commonwealth Court stated as follows:

This Court agrees with the Commission that when read in its entirety, Act 183 does not speak in terms of limiting the Commission’s authority. To the contrary, the statute expressly preserves the Commission’s authority and responsibility to protect all ratepayers and protected services to ensure rates from proposed annual revenue increases are “just and reasonable.”

. . . The General Assembly expressly preserved the Commission’s authority to protect ratepayers of noncompetitive and protected services and retained that aspect of the Commission’s ratemaking authority that authorized it to ensure that any particular increase was just and reasonable under 66 Pa. C.S. § 1301, even if that increase was proposed as part of an annual price change filing.

. . . This Court also finds that Petitioners misconstrue that phrase “rate change limitations” in 66 Pa. C.S. § 3015(g). A rate change limitation refers to the principles and procedures which are applicable to changes in a rural LEC’s rates. These new provisions (alternative form of regulation) replace the provisions of Chapter 13 of the PUC Code that would otherwise govern.

. . . The Commission did not, in fact, add or delete any condition to the Amended Plans. Rather, the Commission examined the substantial increases to switched access rates as compared to the negligible increases to determine if those proposed changes were just and reasonable. That type of oversight was clearly preserved throughout the Amended Plans which tracked Act 183’s method for the proposal, approval and implementation of rate changes and make repeated references to the Commission’s authority.

*Buffalo Valley Tel. Co. v. Pa. PUC*, 990 A.2d 67, 79-80, 2009 Pa. Commw LEXIS 1728 (Pa. Commw. Ct. 2009) (“*Buffalo Valley*”)(footnote omitted).

We also note that, consistent with the OSBA’s argument, through the enactment of Act 183 and specifically through the promulgation of Section 3019(h), the Commission has retained the authority to examine the allocation of PSM revenue increase and the allocation for the PSM revenue increase both within an RLEC’s rate classes and among an RLEC’s rate classes. The Commission has traditionally struck a balance between the allocations of the automatic Chapter 30 rate and revenue increase entitlements for the RLECs and the need to preserve the necessary reforms and rate restructuring that have been achieved in the area of intrastate carrier access charges. Thus, the majority of the annual Chapter 30 rate and revenue increases for the RLECs and other ILECs have not been allocated to their protected intrastate carrier access services. The Commission also maintains its statutorily-granted authority under Section 1301 of the Code[[40]](#footnote-40) to examine whether the allocation is just and reasonable, and under Section 1304 of the Code,[[41]](#footnote-41) as to whether such an allocation is discriminatory.

Accordingly, we find the PTA and CTL’s Exceptions unpersuasive, and thus, they are denied. The ALJ’s recommendation finding that there is Commission authority for a just and reasonable analysis of ILEC rates in Chapter 30 is adopted.

**2. Whether the $18.00 Cap on Residential Monthly Local Service Rates and Any Corresponding Cap on Business Monthly Local Service Rates Should be Raised and What is the Appropriate Benchmark for the Rural ILEC Residential Rate for Basic Local Exchange Service Taking into Account the Statutory Requirements for Maintaining and Enhancing Universal Telecommunications Services at Affordable Rates?**

**a. Positions of the Parties**

While the OCA did not advocate raising the $18.00/month cap now, it advocated adoption of a test to determine whether the cap should be raised in the future. The OCA recommended that the local exchange rate not exceed 120% of the Verizon weighted average basic local exchange rate, constrained so that the overall local telephone bill of a rural customer (including basic service charges, taxes and fees) is no more than 0.75% of the Pennsylvania median rural household income. The OCA claimed that application of the test using today’s numbers does not support raising the cap. OCA Main Brief at 13.

The PTA submitted that the $18.00/month rate cap should not be modified. The PTA argued that raising the residential cap renders the RLECs’ rates both less affordable and less competitive. It claimed that rate caps are good public policy and continue to be vital to Pennsylvania’s rural telephone consumers. The PTA voiced its concern that higher rates would result in diminished telephone penetration rates. PTA Main Brief at 29.

The PTA also argued that its members are carriers of last resort in areas of Pennsylvania where little or no competition exists from cable broadband or wireless services. PTA Main Brief at 30-32. The PTA detailed at length the competitive pressures on RLECs brought about by the introduction of cable broadband service and wireless service in rural Pennsylvania. The PTA noted that the RLECs continue to be guarantors of universally available voice service in rural areas.

According to CTL, there is no need for the Commission to make a decision to increase the $18.00/month presently. CTL stated that it is not currently seeking to increase the $18.00/month rate cap for residential service and that were no current widespread requests by RLECs to pierce the $18.00/month rate cap. CTL also stated that the FCC is also considering extensive reform of intercarrier compensation and changes to the federal universal service fund and that if the FCC decides on a benchmark rate, that decision may influence the policy decisions that this Commission makes regarding affordability standards and the PaUSF. CTL claimed that the pendency of these issues at the federal level, combined with the lack of any widespread effort by Pennsylvania’s RLECs to pierce the $18.00/month residential rate cap, demonstrate that it is simply premature for the Commission, at this time, to decide whether to increase the rate cap. CTL Main Brief at 4-5.

The OSBA noted that the question of whether rate caps exist was then pending before the Commonwealth Court in the appeal filed by D&E Companies in *Buffalo Valley*. Nevertheless, the OSBA took the position that no rate caps exist because Chapter 30 does not provide for them. According to the OSBA, the revised Chapter 30 provisions under Act 183 have changed the method of determining rates for telecommunications carriers in Pennsylvania from the rate base/rate of return regulation to its present alternative form, which allows the ILECs to adjust revenues each year to keep pace with inflation. Essentially, the OSBA pointed out that the present form of rate regulation supersedes the prior form and each ILEC’s rates are set according to the Commission-approved Chapter 30 plan. The OSBA recognized that, as of November 30, 2004, Act 183 grandfathered rate caps that were present in the Chapter 30 plans of the ILECs as well as any rate cap in effect as a result of Commission Orders. Therefore, the OSBA contended that Commission Orders and the ILECs’ Chapter 30 Plans must be reviewed to determine whether rate caps were in effect on November 30, 2004. OSBA Main Brief at 3-7.

BCAP argued that, in order to facilitate the opportunity for further access charge reductions, the $18.00/month cap on residential monthly service rates and any corresponding cap on business monthly rates should be raised. The original $16.00/month rate cap in the *Global Order* and the increase to $18.00/month authorized by the *July 2003 Order*, were not based on an empirical study or model but were the products of settlement. Therefore, in BCAP’s view, the rate cap is not related to affordability. At minimum, BCAP argued that the rate cap, which is arbitrary and outdated, should be increased at least to reflect the level of inflation since 2003. Even if the Commission does not expand the purpose of the PaUSF, BCAP averred that increasing the cap will enable further access charge reductions to move rates closer to cost and interstate access charge levels. BCAP Main Brief at 6-7.

Verizon maintained that the existing residential rate caps were established for the limited purpose of controlling rate rebalancing where access or toll rate reductions are offset by funding from the PaUSF in lieu of retail rate increases and not for the purpose of providing new RLEC revenue under their Chapter 30 plans. Verizon claimed that the RLECs want to use the rate cap as a means to obtain a guaranteed, risk-free, competition-proof stream of subsidies from other companies, including from their own competitors, instead of having to make the decision of what local service price increase the market will bear. Verizon added that the establishment of the $18.00/month rate cap in conjunction with the receipt of subsidies from the PaUSF by those carriers that increase their residential rates to that capped level, may have the unintentional effect of encouraging RLECs to increase their rates when they may not otherwise have done so. Verizon argued that this would be anti-consumer, anti-competitive and contrary to the very premise of alternative regulation. Verizon Main Brief at 8-10.

Verizon advocated rejecting the rate cap scheme as advanced by the RLECs and the OCA. If, however, the Commission wishes to establish a residential benchmark, Verizon suggested that it should be higher than $18.00/month and should operate as a safe harbor, where rates falling below it are automatically deemed to be just and reasonable and only if the RLEC proposes to increase residential rates above the benchmark would the Commission conduct an analysis of whether the rates are just and reasonable. Verizon Main Brief at 11.

AT&T advocated elimination of both residential and business service rate caps for three reasons: (1) the fixed rate is not adjusted based on the rate of inflation and thus, is actually a declining rate; (2) the rate cap is no longer needed to protect customers because the Pennsylvania telecommunications market is sufficiently competitive in ensuring that consumers pay affordable, market-based rates; and (3) the existing $18.00/month rate cap is contrary to the language and policy of the law, which grants RLECs an opportunity to raise end-user rates each year by the rate of inflation. AT&T Main Brief at 7.

AT&T posited that the continuation of the rate cap creates an artificial regulatory protection against competition. While the RLECs support a rate cap, AT&T claimed that they do not support limiting their revenues to the amount received up to the cap. Consequently, those RLECs that recover revenues from the PaUSF beyond the rate cap are effectively being funded from other carriers, including the RLEC’s own competitors. Over time, an increasing portion of the RLEC costs would be borne by other carriers. AT&T noted that, if an $18.00/month rate cap is maintained, on the condition that RLECs are permitted to recover any revenues for rates above the rate cap from the PaUSF, RLECs would have the incentive to immediately raise their rates to the rate cap so that they can recover all further revenues from other companies. AT&T Main Brief at 7-13.

In addition, AT&T argued that it makes little sense for the Commission to artificially constrain basic local rates at $18.00/month when a preponderance of Pennsylvania consumers are buying bundled wireline and wireless plans that give them both local and long distance calling at bundled rates that often exceed $50.00/month. AT&T Stmt. 1.0 at 13-14.

**b. ALJ Colwell’s Recommendation**

ALJ Colwell concluded that there is a rate cap in effect but no longer a need for it in the context of this part of the investigation. Colwell R.D. at 66. The ALJ explained that the rate cap was established to balance the revenue-neutral requirement of access charge and toll reduction, and that since that part of the investigation was still stayed, the rate caps are now superfluous. Colwell R.D. at 66, 75.

The ALJ also concluded that the Commission-ordered rate cap or any other rate change limitations imposed on ILECs were preserved under Section 3015(g) of the Code. The ALJ noted that such rate change limitations were not codified in the law, and that it would defy both logic and the principles of statutory construction for the Commission to determine that the Legislature had intended a permanent rate cap at the existing $18.00/month level as argued by the PTA.[[42]](#footnote-42) Colwell R.D. at 76-77.

The ALJ further noted that the $18.00/month rate cap was the product of a settlement and that consistent with the whole statutory scheme, at some point the market is to rely on competition to keep rates affordable. She reasoned that institutionalizing the PaUSF in its present form to provide subsidies to companies who do not have to prove their need will not assist the market in reaching its goals, but will instead, provide barriers to entry for new carriers. ALJ Colwell recommended that, if the Commission is not convinced that competition has reached a point where it adequately controls the rates, and is in need of a rate cap, a method for deciding the amount of the cap should be developed by the Commission through a rulemaking. Colwell R.D. at 70-82.

**c. Exceptions**

The PTA excepted to ALJ Colwell’s conclusion and recommendation by stating that one of the reasons that the ALJ did not support a rate cap is that the access charge reduction aspect of this case had been stayed; but shortly after the ALJ’s R.D. issued, the Commission lifted the stay on the access rate reduction aspect of the case and, thus, the ALJ’s reasoning has become moot. PTA Exc. at 12-13.

The PTA claims that, through the enactment of Act 183, the Legislature re-codified the Commission’s policy mandating affordability and universal service for local exchange services including a rate cap. The PTA further states that, although the PaUSF regulations do not mention the rate cap and do not specifically address support for rate increases above the rate cap resulting from RLECs’ PSI filings, the regulations do not defeat the overall scheme for funding for rate increases above the rate cap.

The PTA further argues for a benchmark rate, which it claims is needed to satisfy the legal constraints of both affordability and comparability. The PTA states that the current statutory scheme in Pennsylvania requires that the local rates are to be affordable, and that the companion federal law requires local rates to be comparable to urban rates. Citing Section 3015(g) of the Code, 66 Pa. C.S. § 3015(g), the PTA claims that language adopting the annual rate change limitations set forth in an ILEC’s Chapter 30 plan is an endorsement of the Commission’s rate caps and underlying affordability standards. The PTA also cites to Section 254(b) of the federal statute,[[43]](#footnote-43) to argue that the FCC has acknowledged the states’ responsibility to set local rates to meet comparability standards. Without suggesting that this Commission has adopted such comparability standards, the PTA notes that several other states have expressly adopted the federal comparability standard in their states. PTA Exc. at 15-19.

The PTA stated that, even at the current $18.00/month local service rate cap, the actual monthly cost to the customer is much higher with additional fees such as the Federal Subscriber Line Charge ($6.50), 911 Surcharge (between $1.25-$1.50), Relay Service Surcharge ($0.08) and Federal Universal Service Fee ($0.734). This translates to approximately $26.57/month plus taxes. The PTA states that raising the residential benchmark would render the RLECs’ rates both less affordable and less competitive. The PTA is thus of the opinion that competition is not ready to be a complete substitute for regulation, and the PTA notes that, even though competition is becoming more prevalent in the RLEC territories, there remain some areas without viable alternative service. The PTA favors the continuation of the rate cap at the current $18.00/month level at this time, but would not object to the Commission conducting a periodic review of that rate cap level and considering appropriate adjustments. PTA Exc. at 14.

The PTA further contends that simply applying the Chapter 30 allowed rate increases based on a set annual inflation rate to the current rate cap of $18.00/month does not measure affordability because local rates are not set to follow inflationary indices. The PTA states that the current rate cap is almost $2.25 higher than the Verizon’s urban rate of $15.72/month. The PTA submits that the existing $18.00/month residential benchmark for rural consumers is reasonable and need not be increased. PTA Exc. at 18‑19.

The PTA, however, agrees with the ALJ’s alternate suggestion for a rulemaking to determine an appropriate rate benchmark if the Commission decides to maintain the rate cap. The PTA claims that this record supports the appropriate level of rate cap and the means for determining the rate cap should be addressed here. PTA Exc. at 12-13.

In its Exceptions, the OCA states that ALJ Colwell’s R.D. does not recognize the uniqueness of telephone service and the vital public importance of the RLECs as the provider of last resort throughout their rural service territories. The OCA states that the existing rate cap on rural residential basic local exchange service has been aiding the Commission in meeting its statutory requirement of maintaining and enhancing universal telecommunications service at affordable rates. OCA Exc. at 5-7.

The OCA states that the ALJ erred by failing to consider the comparability analysis that the OCA presented through its witness Dr. Robert Loube and the testimony of Mr. Roger Colton regarding affordability. According to the OCA, the rate cap on rural residential basic local exchange rates should not exceed 120% of the Verizon PA weighted average basic local exchange rate. As to affordability, the total customer bill for basic local exchange service including all mandatory taxes and fees should be at or below 0.75% of the median rural Pennsylvania household income. The OCA, however wants the Commission to adopt a methodology that allows for periodic adjustment of the residential rate cap to ensure that the rate continues to meet the comparability and affordability standards in the future. The OCA advocates continuation of the $18.00/month rate cap until it is changed through a rulemaking proceeding. OCA Exc. at 5-17.

The OCA agrees with the PTA that the current $18.00/month residential rate benchmark for rural consumers is appropriate at this time and believes it is reasonable when compared to Verizon PA’s weighted average basic local exchange rates. The OCA opines that the current $18.00/month rate cap is affordable for rural customers. OCA Exc. at 7‑9.

The OCA also takes issue with the ALJ’s determination that, with the implementation of Chapter 30, RLEC rate caps have become superfluous or superseded. According to the OCA, the local service rate cap is an integral part of Chapter 30 and a vital consumer protection measure to meet the Commission’s obligation to maintain and enhance universal telephone service in Pennsylvania. The OCA argues that the rate caps on basic local exchange rates are codified in Section 3015(g) of the Code. OCA Exc. at 4, 18-19.

In its Replies to Exceptions, the OSBA supports the ALJ’s recommendation not to hold an RLEC to rate caps for rate increases resulting from RLEC’s Chapter 30 annual PSM filings. In support of its position, the OSBA provided a detailed discussion of various Commission Orders and actions related to rural access charges, toll charges and rate caps in Pennsylvania. According to the OSBA, Act 183 does not contain any explicit cap on local exchange rate increases, but grandfathers rate caps that were present in the RLECs’ Chapter 30 plans as well as rate caps from any Commission Orders that were in effect at the time Act 183 was enacted. Therefore, the OSBA claims that an examination of each RLEC’s Chapter 30 plan and Commission Orders is required to determine what rate caps existed when Act 183 became law. OSBA Exc. at 2-20.

The OSBA submits that the PTA ignores the fact that the Commission has already held in the case of *Denver and Ephrata Conestoga Telephone & Telegraph Company, the Conestoga Telephone & Telegraph Company and Buffalo Valley Telephone Company (D&E Companies)* that those Companies’ Chapter 30 Plans did not contain such rate caps as of November 30, 2004.[[44]](#footnote-44) The OSBA adds, that in contrast, the D&E Companies’ Chapter 30 plans refer to the rate caps established in the *Global Order* and in the *Rural Access Settlement Order,* and are limited to local exchange rates increase following access charge and toll rate reductions. OSBA Exc. at 6.

Additionally, the OSBA maintains that based on the *January 2000 PaUSF Proposed Rulemaking Order* and the *March 2000 Order*, it is reasonable to conclude that in the early part of 2000, the Commission supported allowing ILECs that exceeded the rate cap as a result of their annual PSM to obtain compensation from the PaUSF. However, following the recommendation of the Independent Regulatory Review Commission (IRRC), the Commission deleted the proposed rulemaking language that originally proposed extended use of the PaUSF beyond access charge and toll reductions. Accordingly, the OSBA concludes that because of the deletion of “new Program” language from the proposed rulemaking, no source of funding from the PaUSF existed to reimburse RLECs for increases in local exchange rates above the rate caps as a result of the ILECs’ annual PSM filings.[[45]](#footnote-45) OSBA Exc. at 18-19.

In its Replies to Exceptions, AT&T supports the ALJ’s recommendation and avers that a rate cap is neither necessary nor consistent with the law. AT&T posits that the ALJ was correct when she recognized that the existing $18.00/month cap is contrary to the language and policy of the law, which granted the RLECs the opportunity to raise end-user rates each year by the rate of inflation. AT&T also states that the PTA’s and the OCA’s Exceptions in this matter misrepresent facts or ignore critical evidence presented in this case as well as the provisions of Act 183. AT&T believes that the Pennsylvania telecommunications market is sufficiently competitive to ensure consumers pay affordable market-based rates. AT&T faults the PTA and the OCA for not accepting changes in the marketplace that have occurred in the past ten years since the settlement rate cap was initially established. AT&T is of the opinion that Act 183 contemplated that RLECs would raise their rates each year, and that a fixed rate cap cannot exist under such a statute that allows for rate increases. AT&T R.Exc. at 3.

AT&T opines that it may have been appropriate to have rate caps during the monopoly era, when customers could only obtain local service from one provider, to ensure basic local exchange rates were kept affordable. AT&T maintains that the PTA and the OCA proposal for continuing the rate cap is nothing more than a thinly-veiled attempt to continue to receive subsidies from other carriers rather than recover a greater share of their costs from their end use customers. AT&T R.Exc. at 4.

AT&T supports the ALJ’s conclusion that, as a result of the implementation of the RLECs’ Chapter 30 plans, the rate caps are now unnecessary. AT&T points out that no party has presented any compelling arguments to reject the ALJ’s recommendation. AT&T states that when Act 183 was enacted, it eliminated the ILECs’ productivity offset that had been larger than the inflation rates, thus causing local rates to remain steady if the ILEC was willing to agree to accelerate its broadband deployment throughout its service territory. However, AT&T argues that by eliminating the productivity offset, the Legislature effectively allowed ILECs to raise their local rates each year. AT&T claims that there is no evidence that the Legislature ever intended to pass on the RLEC’s broadband deployment cost to other telecommunications carriers in Pennsylvania who receive no benefit from the RLEC’s commitment to accelerate their broadband deployment. AT&T R.Exc. at 6‑7.

AT&T also challenges the OCA’s and the PTA’s claim that the $18.00/month rate cap has been made law, stating that the PTA and the OCA were unable to point to any provision in Act 183 that expressly retains an $18.00/month rate cap. AT&T derides the OCA’s citation to one sentence from the legislative debate on Act 183 that referenced the Commission’s $18.00/month rate cap as being in existence in 2004. AT&T states that sentence was nothing more than a snippet from the debate in the statute’s legislative history, and not part of the law itself. AT&T R.Exc. at 7.

AT&T characterizes the OCA’s and the PTA’s affordability and comparability argument as flawed and states that the OCA’s own affordability analysis concluded that the affordable rate for a local service customer is $32.00/month.[[46]](#footnote-46) Tr. at 132. AT&T suggests that the Commission can determine affordability by looking at what customers are willing to spend on their telephone service. It claims that evidence demonstrates that the vast majority of customers are spending well over $18.00/month for local services. AT&T notes that according to the data provided by CTL, an average customer spends $30.19/month for local services and $57.63/month for bundled services. AT&T also notes that the PTA refused to provide affordability data regarding its own customers in this regard. AT&T R.Exc. at 9-10.

Citing Sections 3011 (2) and (8) of the Code,[[47]](#footnote-47) AT&T points out that Pennsylvania law only requires that rates be affordable; it does not require comparability of rates. AT&T states that the PTA and the OCA cannot cite to any single state law that requires a comparability analysis for rates. The only law that refers to comparability is the federal law, specifically, 47 U.S.C. Section 254(b)(3). AT&T points out that the federal law on comparability is not a rate setting mandate for the state Commissions to follow and is not used in relation to the imposition of a rate cap; rather the federal comparability analysis is used to determine where the cost of providing telephone service is high so that the federal universal service funds can be used to target such high cost areas. AT&T R.Exc. at 11.

In its Replies to Exceptions, Verizon also agrees with ALJ Colwell that there is no need for any rate cap in the context of the RLECs’ Chapter 30 annual rate increases. Verizon replies that the PTA wrongly argues that the ALJ predominantly relied on policy grounds to recommend discontinuation of rate caps. Verizon maintains that the evidentiary record clearly refutes the RLECs’ and the OCA’s argument to impose an $18.00/month rate cap to limit the RLECs’ annual residential rate increases and that it also does not support any business rate cap. Verizon requests that the RLEC’s alternative regulation revenue increases take their natural course constrained by the inflation-based formula and the disciplines of the competitive market. Verizon R.Exc. at 3-4.

Verizon provides several reasons for the rejection of a rate cap. First, Verizon submits that Act 183 contains its own safeguards limiting the pace and magnitude of annual rate increases that are based on inflation. Verizon explains that the total amount of new revenue each year is statutorily limited and the RLECs do not have discretion to increase revenue arbitrarily. Verizon R.Exc. at 4.

Second, Act 183 relies on competitive pressures to control rates. Verizon posits that the Act 183 scheme is designed to allow a carrier to exercise its own discretion to choose which of its noncompetitive service rates to increase or to choose not to increase, based on its own assessment of the marketplace. Verizon further submits that the competitive pressures are already constraining the RLECs to the point that many of the RLECs have chosen to bank their revenue increase opportunities even though their resulting residential rates are still below the $18.00/month rate cap. Verizon R.Exc. at 4‑5.

Verizon’s third argument is that, notwithstanding the safeguards mentioned above, if a particular RLEC determines to increase its basic retail rates to a level that potentially raises a concern for the Commission, the Commission still retains its authority under Section 1301 of the Code, 66 Pa. C.S. § 1301, to review those rate levels on a case-by-case basis and investigate whether the rate increase is just and reasonable to end users. *Id.*

Verizon claims that Act 183 does not impose a cap on the RLECs’ rate increases and does not provide for other carriers to subsidize such rate increases, but presumes that the new revenues are secured through rate changes. Verizon also contends that the RLECs want to use the rate cap as a means to obtain a guaranteed, risk-free, competition-proof stream of subsidies from other companies, including their own competitors, instead of having to make the decision of what retail rate increase the market will bear. Verizon submits that the establishment of a residential rate cap at $18.00/month or some other level, together with the prospect of PaUSF subsidies for carriers that increase their residential rates to that level, may have the unintentional effect of encouraging RLECs to increase their retail rates when they might not otherwise have done so. This proposal is anti-consumer, anti-competitive and contrary to the very premise of alternative regulation. Verizon R.Exc. at 6.

Verizon agrees with the ALJ that the rate caps are superfluous and are not needed in this context because the record shows that the $18.00/month cap is not reasonable and there is no danger of RLEC rates becoming unaffordable in the near future if the RLECs’ alternative regulation revenue increase opportunities are permitted to take their natural course with small, inflation-based rate increases each year at the carrier’s option, constrained by the inflation-based Chapter 30 formula and the discipline of the competitive market. Verizon R.Exc. at 6.

Verizon argues that the RLECs continue to appeal to the general concept of affordability as the primary basis to support an $18.00/month cap on residential rates and that the PTA suggests the rate caps are needed to maintain telephone penetration at its current high levels in Pennsylvania, but nothing in the record shows or even suggests that increasing RLEC basic residential rates over $18.00/month would reduce telephone penetration. In fact, Verizon notes that FCC statistics show that on a statewide basis, the annual average telephone penetration rates for Pennsylvania increased from 95.6% to 97.7% as of March 2008, at a period when regulated basic exchange rates have also generally been increasing under the Act 183 inflation-based formula. Accordingly, Verizon argues that the evidence of affordability does not support the RLEC/OCA position to maintain an $18.00/month rate cap, but rather, conclusively refutes those arguments and shows that customers can reasonably afford to pay rates well above $18.00/month. Verizon R.Exc. at 7-8.

Verizon rejects the OCA’s and the RLECs’ argument that the Commission has a legal obligation to limit the RLEC rate increases to maintain comparability to Verizon PA’s urban rates. Verizon states that nothing in the Code authorizes the Commission to mandate that RLEC rates be reasonably comparable to any other carrier’s rates and that section 254(b)(3) of the federal law[[48]](#footnote-48) is not a mandate to state commissions regarding intrastate rates. Verizon’s position is that the OCA’s and the RLECs’ comparability analysis is irrelevant because Verizon’s rates have been kept artificially low by many years of regulatory limitations and do not provide a valid point of comparison. Verizon R. Exc. at 8-11.

Verizon counters the OCA’s argument that the ALJ did not consider the only record evidence in this case regarding affordability presented by its witness Roger Colton. Verizon states that the OCA’s witness Colton admitted under cross-examination that, even under his absolute most conservative analysis, the affordability level in Pennsylvania is a rate of $32.00/month, and that Mr. Colton conceded that every single one of the RLECs currently has basic service rates below the affordability level. Verizon further states that Mr. Colton was forced to concede on cross-examination that he was not testifying that there should or should not be a retail rate cap or whether the rate cap should at $18.00/month or some other number, but rather, his testimony was limited to the affordability analysis. Verizon R.Exc. at 11, n. 14.

Verizon argues that even the limited number of states that voluntarily adopted a reasonable comparability standard with urban rates do not insist on strict equality and have set margins as high as 130% and 150% range, and that neither the OCA nor the PTA asserted that these states are violating the principle of comparability by using these ranges. Verizon further argues that even using the PTA’s arbitrarily low 115% margin over Verizon PA’s current urban density rate of $16.21/month for cells 1 and 2, the comparable rate is already more than $18.00/month, and would be expected to increase over time as Verizon exercises its own price change opportunities. Verizon also points out that using the OCA’s 120% over Verizon PA urban rate margin would produce a comparable rate of $19.45/month. Verizon R.Exc. at 10.

Verizon points out that the fatal flaw in the RLECs’ and the OCA’s arguments is that those Parties did not submit record evidence to support a corresponding cap on basic business rates. The RLECs themselves conceded that the national average single line business rate was $36.59/month in 2007, which is $10.00 higher than CTL Pennsylvania’s rate of $26.23/month and $13.00 higher than D&E Telephone and Telegraph Company’s rate. Without a corresponding business rate cap, an RLEC could still increase its basic business rates to implement its revenue increase opportunity and the RLECs have advanced no argument that would support requiring other carriers to reimburse the RLECs so they may avoid increasing business rates that are presently far below the national average. Verizon R.Exc. at 12.

Verizon avers that the Commission had directed the parties to address the appropriate benchmark for the RLEC residential rate for basic local exchange service and evaluate the evidence regarding an affordable RLEC residential rate. Verizon argues that any rate benchmark that would result out of this investigation must be supported by substantial evidence. Verizon contends that, while the OCA and the RLECs ask the Commission to set an $18.00/month cap on RLEC rates, the record evidence does not support their arguments. Verizon requests that, if the Commission wishes to establish any residential rate benchmark, the record evidence does not support a benchmark level lower than $23.00/month. Further, Verizon requests that any residential benchmark should function as a safe harbor rather than an absolute cap. Verizon adds that, so long as an RLEC’s rate remains below the safe harbor level, any increases are automatically deemed just and reasonable and do not require further scrutiny; however, if the RLEC proposes to increase rates above the safe harbor level, the Commission may conduct a more detailed analysis of whether the resulting rates will be just and reasonable considering the particular facts and circumstances relating to that RLEC and its customers. Verizon R.Exc. at 4, 13.

**d. Disposition**

Based on our review of the PTA’s and the OCA’s Exceptions on this matter, we are not persuaded by their arguments that the ALJ erred in her conclusion that there is no longer a need for a rate cap in the context of this part of the investigation. It is important to note that the limited investigation was specifically ordered for the review of whether there is a need to fund ILECs that incrementally pierce the appropriate residential rate cap from their regular annual Chapter 30 revenue increases. We do not share the PTA and CTL’s view that the RLECs are entitled to draw from the PaUSF for rate increases employed in their annual Chapter 30 revenue increases. Neither did we consider it as a model when we granted credit in our *Global Order* to the customers of the three ILECs whose local rates had already exceeded the $16.00/month residential benchmark level established at that time. Those rates were already in effect at that time, and the credit given was to bring those rates to the proposed $16.00/month rate cap level. The rates at issue here are those allowed annual rate increases pursuant to Act 183. We agree with the arguments set forth by Verizon, AT&T, and the OSBA in their Reply Exceptions in this matter that Act 183 does not impose a cap on the ILECs’ Chapter 30 allowed annual rate increases and does not provide for other carriers to subsidize such rate increases, but presumes new revenues secured through rate increases will be recovered from the ILECs’ own customers.

We also agree with the ALJ, Verizon, AT&T and the OSBA that the rate cap has become unnecessary, and that the provisions of Act 183 limit the pace and magnitude of annual rate increases that are based on inflation. The total amount of new revenue that RLECs can collect each year is statutorily limited and the RLECs do not have discretion to increase revenue arbitrarily.

The OCA cites to § 3015(g) of the Code[[49]](#footnote-49) to support its claim that the rate cap has become a statutory “policy” and that the rate benchmark in the Commission’s *Global Order* established an annual rate change limitation. We disagree. Even though Section § 3015(g) relates to “annual rate change limitation,” we did not consider the $16.00/month and $18.00/month rate cap to be a rate change limitation for an ILEC in its Chapter 30 annual rate increases. The rate cap we established in the *Global Order* was set in the context of setting parameters for rate rebalancing purposes intended for reducing access rates and toll rates. As clearly stated in 66 Pa. C.S. § 3015(g), the annual rate change limitations are set forth in an ILEC’s effective Commission-approved Chapter 30 plan. Further, as stated by the OSBA, the rate caps were intended to be transitional rather than permanent. As will be discussed further, the Commission retains its powers and responsibilities to review rate increases for just and reasonableness under Section 1301 of the Code.[[50]](#footnote-50)

In their appeals before the Commonwealth Court, three of the RLECs (*D&E Companies*) who are also represented here by the PTA, along with the OCA, raised similar arguments seeking reversal of the Commission Order that denied funding from the PaUSF for RLEC annual Chapter 30 rate and revenue increases. In interpreting Act 183, the Commonwealth Court stated the following:

This Court agrees with the Commission that when read in its entirety, Act 183 does not speak in terms of limiting the Commission’s authority. To the contrary, the statute expressly preserves the Commission’s authority and responsibility to protect all ratepayers and protected services to ensure rates from proposed annual revenue increases are “just and reasonable. This protection extends to services provided to other telephone carriers, *i.e.*, “ratepayers,” for Petitioners’ switched access service. The General Assembly expressly preserved the Commission’s authority to protect ratepayers of noncompetitive and protected services and retained that aspect of the Commission’s ratemaking authority that authorized it to ensure that any particular increase was just and reasonable under 66 Pa. C.S. § 1301, even if that increase was proposed as part of an annual price change filing. (footnote omitted)

This Court concludes that the Commission’s interpretation of the phrase “annual rate change limitations” was reasonable. The rate cap at issue was predetermined by the Commission and remained fixed until it expires by its terms. The Court agrees that the $18.00 residential rate cap set by the Commission did not constitute “an annual rate change limitation” and there was nothing in 66 Pa. C.S. § 3015(g) which prohibited the Commission from granting a particular carrier a waiver of the cap if it determined such a waiver was necessary to keep rates fair and reasonable.

*Buffalo Valley Tel. Co. v. Pa. PUC*, 990 A.2d 67, 79, 84, 2009 Pa. Commw. LEXIS 1728 (Pa. Cmwlth. Ct. 2009).

The affordability and comparability arguments advanced by the OCA and the PTA are not sufficient for us to change our view on the rate cap.[[51]](#footnote-51) According to the OCA’s analysis, the affordability rate for a residential customer is $32.00/month and CTL provided data in this case indicating that an average customer spends $30.19/month for local services and $57.63/month for bundled services. The current rate cap of $18.00/month, with the added cost for federal subscriber line charge and other surcharges equals $26.57/month. This amount is much lower than the record evidence establishing what defines affordability from a basic service standpoint. As to the comparability argument raised by the PTA, it is based on federal law pertaining to federal universal service, and is not a mandate to state commissions. The *D&E Companies* had raised the “affordability” and “comparability” argument before the Commonwealth Court in the afore-mentioned appeals. The Court has accepted the Commission’s rationale that the federal law pertains to federal universal service and is not a mandate to state commissions. Nothing in the PTA’s or OCA’s arguments dictates a contrary conclusion.

**3. Whether PaUSF Funding Should be Received by Rural ILECs That Incrementally Pierce the Appropriate Residential Rate Cap Because of the Regular Annual Chapter 30 Revenue Increases and Whether the Commission’s PaUSF Regulations at 52 Pa. Code § 63.161, *et seq*., Should be Accordingly Revised?**

**a. Positions of the Parties**

The OCA asserted that the Commission established the PaUSF for two purposes: rate rebalancing associated with access and toll rate reductions, and to provide an overall cap on residential rates. The OCA believes that the funding for the PaUSF should be increased as necessary to accommodate the RLECs’ Chapter 30 annual revenue increases when such rates exceed the benchmark rate. The OCA opines that this is appropriate because maintaining a reasonable rate cap for basic local exchange service rates is consistent with the rate cap established by the Commission in the *Global Order.* OCA Main Brief at 61.

The PTA averred that its members are entitled to obtain support from PaUSF for rate increases that exceed the rate cap. The PTA noted that this is due to provisions in numerous Commission Orders, the inclusion of express language in the ILECs’ Chapter 30 plans and Act 183. The PTA cited to the *Global Order*, the PaUSF/Access Phase II proceeding in July 2003, and the discontinuance of the RLEC appeal of the *Global Order* as a result of their settlement with the Commission. PTA Main Brief at 39. The PTA stated that the PaUSF must be increased if the support for weighted average local rate increases breaching the cap is provided from the PaUSF. Therefore, either the contribution rates must be increased or the base of funding must be expanded to include additional carriers. PTA Main Brief at 42.

CTL advocated that the Commission defer any major decisions regarding the PaUSF because of potential reforms of intracarrier compensation at the federal level and two appeals pending before the Commonwealth Court that could affect the PaUSF. CTL Main Brief at 7-8. In the alternative, CTL recommended the fund be increased in order to ensure maintenance of universal service at affordable rates in rural Pennsylvania. CTL stated that support from the fund is required and is critical to long-standing legislative policies concerning universal service and affordable rates in rural and high-cost areas of the state. CTL Main Brief at 8.

The OSBA stated that, if caps exist, then the PaUSF must be reformed to permit the RLECs to collect the difference between the cap and the rates which would otherwise exceed the cap in order to have funding necessary to finance the accelerated broadband deployment mandated by Chapter 30. However, it is unreasonable for ILECs to subsidize each other’s deployment of broadband, which necessitates reforming the PaUSF itself. The OSBA recommended that, if the Commission allows RLECs to receive money from the PaUSF to compensate for not exceeding rate caps, the Commission should institute reforms to keep the overall size of the PaUSF unchanged. The OSBA averred that the concept of universal service is best fulfilled by creating a fund which targets the lower income customers, not by creating a system of subsidizing RLECs based on nothing other than their designation as an RLEC. OSBA Main Brief at 30.

Noting that the PaUSF was originally designed to fund access rate reductions and intraLATA toll reductions, BCAP asked that the Commission address a more fundamental issue prior to considering the size of the fund by looking to its purpose. BCAP posited that, ultimately Pennsylvania must move towards a PaUSF that ensures universal service on a competitively-neutral basis. BCAP asserted that guaranteed Chapter 30 price change opportunities are dictated by the rate of inflation, not by actual costs, and allowing RLECs to use PaUSF funds to offset local rate increases, as permitted under their Chapter 30 plans, will increase the disconnection between the purpose of the current fund and the goals of universal service. BCAP argued that the Commission should refrain from expanding a fundamentally flawed mechanism by adding Chapter 30 price change opportunity increases that cannot be implemented due to the residential cap. BCAP recommended that the size of the PaUSF should not be increased. BCAP Main Brief at 7.

BCAP further noted that the expansion of the PaUSF for additional purposes is not a zero-sum game – the additional revenues given to the RLECs from the PaUSF must come from Verizon and the RLECs’ competitive carriers and their respective customers. According to BCAP, this result is inequitable when Verizon’s customers and the customers of competitive carriers do not receive a correlating benefit of lower intrastate access charges.[[52]](#footnote-52) BCAP argues that such a result is contrary to the intent of Act 183 and contrary to the intention of parties like BCAP that agreed to create the current PaUSF as part of the *Global Order* Settlement. BCAP Main Brief at 8-9.

Verizon was adamant that the PaUSF funding should not be increased because it is funded by other carriers and was originally created to be “a passthrough mechanism to facilitate the transition from a monopoly environment to a competitive environment – *i.e.*, an exchange of revenue between telephone companies which attempts to equalize the revenue deficits occasioned by mandated decreases in their toll and access charges.” Verizon St. 1 at 27‑28, citing *Global Order,* 93 PA PUC at 238.

Verizon pointed out that the RLECs and the OCA are seeking to transform the PaUSF from its current form, based on the *Global Order*, which provides the RLECs with approximately $30 million in revenue each year, tied to specific access and toll reductions from the 1999/2000 timeframe. The proposed PaUSF would increase unpredictably every year based on the RLECs’ calculated revenue increase opportunities under their Chapter 30 plans, and the PaUSF would provide a new stream of subsidy revenues to the RLECs each year. Verizon Main Brief at 21. This is inconsistent with the original intent of the Commission to establish a temporary mechanism to replace the revenue from a discrete set of access and toll rate reductions to help the RLECs transition to a competitive market, funded by the carriers who would benefit from those reductions.

Verizon explained that under the terms of the settlement that was adopted by the *Global Order* that created the PaUSF, all revenues received from the fund, are to be used to rebalance, on a revenue neutral basis, the rates/revenues derived from access and/or other services. The Commission’s PaUSF regulations also recognize the limited scope and purpose of the fund. The regulations do not provide for expansion of the PaUSF or for a claim for new subsidies to fund the RLECs’ alternative regulation revenue increases. To the contrary, the stated purpose of the fund is to maintain the affordability of local service rates for end user customers while allowing RLECs to reduce access charges and intraLATA toll rates, on a revenue-neutral basis, thereby encouraging greater competition. 52 Pa. Code § 64.161(3).

Citing the Commission’s Order in the D&E Companies 2006 PSI filing Order, entered on December 7, 2007, Verizon further noted that this Commission itself recognized that the request to recover the amount above the benchmark/rate caps for residential and business customers from the PaUSF is contrary to the intent of the PaUSF and that the PaUSF was not intended to be a permanent arrangement whereby RLECs could receive compensation for revenue shortfalls. Verizon Main Brief at 22.

Verizon also noted that the OCA/PTA/CTL plan would increase the size of the PaUSF as illustrated by this example: in ten years’ time, a single RLEC generating a constant new $2 million revenue increase opportunity each year for which it claims against the PaUSF would be receiving $20 million annually from the fund by year 10, turning the $30 million fund into a $50 million fund, without accounting for the claims of the other 31 RLECs. Verizon Main Brief at 23. “Indeed, with the prospect of no-risk money available through this RLEC/OCA PaUSF, the RLECs will have a powerful incentive to raise their rates to the cap levels in order to begin claiming this free money.” Verizon Main Brief at 23.

Verizon pointed out that the RLECs’ claim is that Commission approval of their Chapter 30 plans requires the Commission to allow them to withdraw revenues from the PaUSF when their Act 183 local rate increases causes them to exceed the rate cap. Verizon argued that the RLECs were using vague and general language referring to PaUSF recovery from an interim fund nearly ten years ago under a very different Chapter 30 legal framework, to claim that this Commission and other carriers are now bound to write the RLECs a blank check of unlimited PaUSF funding for their hefty annual revenue increases under Act 183. Verizon submitted that, neither the Commission nor the other carriers that consented to the creation of the PaUSF in 1999, and to its continuation in 2003, could have consented to the interpretation of the PaUSF that the RLECs now advance. Verizon Reply Brief at 22.

AT&T agreed with Verizon and stated that it would be directly contrary to sound public policy and to the Commission’s own rules and orders to increase the PaUSF so that RLECs can insulate themselves from competition. The PaUSF was created to reduce access charges and intraLATA toll rates and was intended to operate in a manner encouraging local telephone competition. Increasing the PaUSF to fund Chapter 30 retail rate increases would be counter to the regulations establishing the fund and contrary to its purpose and intent. AT&T Main Brief at 21.

AT&T also argued that, if the PaUSF were expanded to fund the capital network improvements of the RLECs, the result would be a distortion of full and fair competition by allowing those carriers to keep their local rates artificially low by having other carriers and their customers subsidize the RLECs. AT&T Main Brief at 22.

AT&T noted that if CTL’s position was adopted, the PaUSF would grow to an outrageously large size, and that would only fund CTL’s Chapter 30 plan. AT&T submitted that CTL calculated that if the PaUSF is used solely to fund CTL’s Chapter 30 rate increases, CTL *alone* would need nearly $50 million each year from the fund. AT&T Main Brief at 23 citing Embarq Statement 3.0 (Londerholm Rebuttal) at 13‑15. AT&T argues that this would more than double the size of the current PaUSF for one company alone, and would increase CTL’s draw from the fund by six-fold, or approximately $42 million/year. CTL has not even remotely demonstrated that it needs this unbelievable sum of money annually in order to maintain affordable residential rates.  *Id.*

Comcast argued that in no case should the Commission agree to any automatic or fixed increases in the PaUSF to support Chapter 30 rate increases. The potential effect of increasing PaUSF support would be to create an escape valve, so that RLECs could use the headroom under the nominally-increasing price cap index to increase revenues *without* increasing local rates above the caps. This is a doubly implicit subsidy that distorts the rural market. Comcast Main Brief at 6.

**b. ALJ Colwell’s Recommendation**

The ALJ concluded that the rate cap was established to balance the revenue-neutral requirement of access and toll rates reduction, and that looking back over the Commission’s Orders leading to this investigation, there was no expectation by the Commission that the PaUSF would be institutionalized in its present form, or that the ultimate PaUSF would be used, to compensate telecommunications carriers for the difference between their Chapter 30 plan allowed increases and the $18.00/month rate cap. The ALJ recommended that, until such time as a rulemaking proceeding is conducted, the RLECs should not be held to the $18.00/month rate cap, and that ILECs may not be provided funding from the PaUSF for ILEC rates exceeding the $18.00/month rate cap. Colwell R.D. at 75, 88.

The ALJ noted that the *Global Order* anticipated the RLECs drawing from the PaUSF when the required revenues exceeded the rate cap when their revenue requirement was short-changed by reduced access rates; however, after Act 183 was enacted, rate caps were replaced by the ILEC’s annual price changes permitted by the Chapter 30 plans [[53]](#footnote-53) Colwell R.D. at 88. The ALJ also noted in Conclusion of Law No. 7 that the preservation or protection of the ILEC’s revenues and profits should not be confused with achievement of universal service goals which is geared towards enabling end-users to obtain reasonably-priced telecommunications services. Colwell R.D. at 92.

The ALJ further noted the somewhat conflicting factors that must be weighed in determining the temporary or permanent nature of the PaUSF. On the one hand, the Commission establishment of the PaUSF via an Order instead of through a rulemaking weighs in favor of the PaUSF as a temporary measure, but the Commission’s promulgation of regulations for the administration of the PaUSF[[54]](#footnote-54) weighs in favor of a conclusion that the fund is permanent. The ALJ also noted, however, that the Commission had intended to adopt a permanent funding mechanism following an investigation, but that investigation had been stayed pending the outcome of FCC action. Colwell R.D. at 67-72.

The ALJ observed that the form of the PaUSF is a matter of public policy, and that the Commission is free to design its PaUSF in a form which suits the needs of the Commonwealth. To this end, the ALJ recommended that the Commission institute a rulemaking proceeding to change its PaUSF regulations to reflect the Commission’s current policy in this matter. Colwell R.D. at 88-90.

**c. Exceptions**

The PTA claims that the ALJ erred in concluding that the PaUSF established by an order and not by regulation is not binding on all parties. The PTA also excepts to the ALJ’s conclusion there was no expectation that the PaUSF would ever be used to support rate increases allowed through Chapter 30 Plans and the $18.00/month rate cap. PTA Exc. at 19.

In its first point, the PTA states that the *Global Order* was not a typical adjudication, and that all parties to this proceeding participated in the Global proceeding directly or indirectly, in one capacity or another, and thus, all parties were on notice and understood the implications of the prospective rate cap upon the PaUSF. PTA Exc. at 22.

PTA next avers that the *Global Order* acknowledges the two competing petitions wherein the Small Company Plan contained a permanent $16.00/month cap on end user rates for all companies and provided for the offset for the duration of the fund for ILECs whose approved rates exceeded $16.00/month. The PTA quotes portions of the *Global Order*, which stated “that if such ILEC’s one party residential rate is above $16.00/month and is found to be just and reasonable by the Commission the revenue associated with the difference between the rate ceiling and the approved rate will be recovered from the Pennsylvania USF.” With the above quoted language, the PTA argues for funding from the PaUSF for rate increases above the current $18.00/month cap. PTA Exc. at 20-22.

The PTA also argues that, in order to withdraw its appeal against the Commission’s *Global Order*, the RLECs sought and the Commission’s Chief Counsel signed a Settlement Agreement in which was included a provision that permits RLECs anticipating local rate increases to recover the difference from the interim PaUSF.[[55]](#footnote-55) Finally, the PTA quotes language from certain RLECs’ Chapter 30 plans which retains the RLECs’ right to change or rebalance intrastate rates in accordance with their Price Stability Plans if such rates are found to be just and reasonable. The PTA argues that the RLECs’ thus have reserved their rights to funding from the PaUSF. PTA Exc. at 22-25.

CTL also excepts to the ALJ’s conclusion that the PaUSF is limited only to offsets for the reduction of intrastate access charges. CTL generally points to the *Global Order*, but without specifically citing to any language, makes the claim that the RLECs should be allowed to recover the difference between the rate cap and the approved rate from the PaUSF. CTL also makes a distinction that the draw from the PaUSF is not limited to offsets for the reduction of intrastate access charges by pointing to three companies that received funding at the time of *Global Order* whose residential rates exceeded the applicable rate cap. CTL Exc. at 7-8.

CTL points to the PTA’s Main Brief at 15 and PTA Exhibit JJL-4 at 2, in support of its arguments. Like the PTA, CTL states that the ALJ’s conclusion contradicts a settlement agreement of the ILECs’ appeals of the *Global Order*. CTL also states that it is incorrect to assume that competition will suffer if RLECs are permitted to draw from the PaUSF, and CTL claims that competition in Pennsylvania is robust. CTL Exc. at 8.

The OCA assigns error to ALJ Colwell’s alleged failure to recognize that the rate rebalancing associated with use of the PaUSF to offset reductions in toll and access rates has the same impact as the rate rebalancing that occurs with the use of the PaUSF to maintain the cap on rural residential basic local exchange rates. The OCA explains that when total revenue from noncompetitive services must increase under the company’s PSM, and one of the two sources of revenue is considered off limits, and cannot be increased, the company must increase the other source of revenue by twice the rate of inflation. As such, the OCA submits that, if the Commission will not permit access rates to go up under the PSM filing, the company must rebalance rates so that basic local service rates increase to recover the full increase allowed. OCA Exc. at 22‑26.

The OCA cites a Reconsideration Order in *Petition of ALLTEL Pennsylvania, Inc. for Approval of an Alternative Form of Regulation and Network Modernization Plan*, Docket No. P-00981423, and claims that the Commission had addressed and allowed the utilization of the PaUSF to maintain a cap on basic local exchange service rates. The OCA also cites the “Consumer Protections” portion of Buffalo Valley Telephone Company’s Chapter 30 plan as support for its claim that the Commission reaffirmed the use of the PaUSF to maintain the residential rate cap to offset rate increases caused by the implementation of an RLEC’s PSM when it approved the RLEC’s revised Chapter 30 plan following the passage of Act 183. OCA Exc. at 26-28. The OCA maintains that the ALJ erred in determining that the PaUSF may not be used to offset reductions in intrastate access and toll rates. The OCA concludes that the Commission-established rate cap should be maintained regardless of what causes the rate to reach the cap. OCA Exc. at 26-27.

Verizon replies to the PTA’s and the OCA’s arguments stating that rather than attempting to present a valid case on the merits, the RLECs and the OCA instead argue that the Commission is obligated to provide funds from the PaUSF through the Commission’s adoption of settlements and alternative regulation plan language that predate Act 183 and references in RLEC Chapter 30 plans. Verizon states that the Parties to the Global Settlement thought they were signing up for interim and transitional funding that is directly tied to the revenue neutral rate rebalancing expected under the original Chapter 30. Verizon adds that the RLECs now contend that what the parties really agreed to was the unlimited and ever increasing new revenue stream for the RLECs every year in perpetuity. Verizon R.Exc. at 21-22.

Verizon states that the RLECs are attempting to rewrite history by arguing that the RLECs may derive rate increases from the PaUSF that originated from the *Global Order*. However, Verizon argues that, if one looks into the *Global Order* in detail, one would see that the Commission only contemplated the PaUSF being used to support a rate rebalancing of access and toll rates that is revenue neutral. Verizon also states that the Global Settlement made quite clear that all revenues received from the PaUSF shall be used to rebalance on a revenue neutral basis, and that the PaUSF was clearly intended for this limited purpose of supporting rate rebalancing. The PaUSF regulations contain no reference to use of the PaUSF to fund general rate or revenue increases under the ILECs’ Chapter 30 plans. Verizon cites to the Commission’s regulations at 52 Pa. Code § 63.161(3), and states that the purpose of the PaUSF is to maintain the affordability of local service rates for end user customers while allowing RLECs to reduce access charges and interLATA toll rates on a revenue-neutral basis, thereby encouraging greater competition. Verizon R.Exc. at 22.

Verizon points out that the RLECs unjustifiably attempt to rely on a settlement agreement entered between the Commission and the RLECs in 2000, that allegedly guarantees the RLECs PaUSF funds if they chose to increase rates over the applicable rate cap in a general revenue increase. This settlement was entered into as the *quid pro quo* for the RLECs’ withdrawal of their appeal of the *Global Order*. Verizon adds that the language in the 2000 settlement cannot be read to expand or alter the *Global Order* to allow positive revenue draws from the PaUSF; rather, it should be read in the context of the Commission’s reasonable understanding and expectation based on the law of alternative regulation as it existed at the time when large annual revenue increases outside of the access or toll rate rebalancing context were highly unlikely. Under the Act 183 regime, RLECs are more likely to be permitted large revenue increases each year as a result of the inflation off-set being eliminated. Verizon asserts that this Commission and other carriers are not bound to provide the RLECs unlimited PaUSF funding for their hefty annual revenue increases due to vague and general language regarding PaUSF recovery from an interim fund that was created nearly ten years ago under a different Chapter 30 legal framework. Verizon R.Exc. at 23.

In its Replies to Exceptions, the OSBA states that neither the *Global Order* nor the *Rural Access Settlement Order* provides any basis for concluding that ILECs should be funded for their broadband deployment from the PaUSF through their annual PSM filing to increase noncompetitive service rates. The OSBA also states that the PaUSF regulations do not permit the funding of rate increases due to PSM filings and, therefore, no current authorization exists for the relief requested by the excepting parties. OSBA R.Exc. at 9-13.

Furthermore, the OSBA adds that the rate caps were intended to be transitional rather than permanent. According to the OSBA, the PaUSF was created on a transitional basis through the *Global Order* specifically for use in conjunction with toll and access charge reductions and not in conjunction with the RLECs’ annual PSM rate increases. Accordingly, the OSBA argues that there is no support in the *Global Order* or the *Rural Access Settlement Order* for the RLECs’ proposition that the rate caps should be applied to anything other than access charge and toll rate reductions. OSBA R.Exc. at 9-13.

**d. Disposition**

We agree with the ALJ’s conclusion that, until a rulemaking proceeding is conducted, the RLECs should not be held to the $18.00/month rate cap, and that RLECs may not be provided funding from the PaUSF for RLEC rates exceeding the $18.00/month rate cap as claimed by the RLECs. It is important to note that the PaUSF was established in the *Global Order* to balance the revenue-neutral requirement of access and toll rates reduction. At that time, the Commission and industry stakeholders sought to collaboratively resolve issues related to a state-specific universal service fund in Pennsylvania, including the size and structure of the fund and its interplay with access and toll rate reduction, rate caps, rate balancing, and other complex issues. In the *Global Order*,we directed the affected companies to file with the Commission their pertinent rate rebalancing or restructuring tariffs for Commission approval.

At that time we also stated:

The associated revenue neutral rate rebalancing filings may include: (1) the reduction in the average toll rate to $0.09 per minute, (2) the allowed increase to one-party residential local exchange base rates with touch-tone and usage to $10.83 per month, and (3) the associated USF funding allowed for each ILEC. After the access, toll, and local rate rebalancing or restructuring

filings have been made in accordance with the discussion above, we will permit the ILECs to increase their local rates, if we find those rates to be just and reasonable.

*Global Order*, 93 PA PUC at 242.

We do not find, as claimed by CTL, that the *Global Order* specifically stated that an RLEC whose one-party residential rate exceeded the $16.00/month cap would be allowed to recover the difference between the rate cap and the $16.00/month benchmark/rate cap for residential local rates for all RLECs. In fact, as stated below, the *Global Order* provided that any rural company whose rate rebalancing resulted in the average monthly residential rate above the benchmark/rate cap shall be permitted to recover the difference from the PaUSF:

As set forth below, if such ILEC’s one-party residential rate is above $16.00 per month, and is found to be just and reasonable by the Commission, the revenue associated with the difference between the rate ceiling and the approved rate will be recovered from the Pennsylvania USF.

*Global Order,* 93 PA PUC at 263.

It is important to note that this offsetting revenue recovery from the PaUSF was only applicable to the local rate increases prevailing at that time and only for those local rate increases that were filed in compliance with the *Global Order* that resulted from offsetting reductions in toll rates and access charges. Contrary to the PTA’s arguments, nothing in the *Global Order* addresses the PaUSF recovery of local rate increases for rates beyond the benchmark/rate cap that are a result of an RLEC’s annual PSM filing.

The current structure of the PaUSF is not *per se* dedicated to the broadband deployment of the RLECs. It is likely that both Pennsylvania and federal USF support to qualified RLECs operating in Pennsylvania as well as revenues from other sources have been and may be used in their totality not only for the provision of basic services at affordable rates but also for continuous network infrastructure improvements and broadband deployment. Through our prior Orders, we have allowed RLECs to receive additional PaUSF support for local rates that exceed the residential rate ceiling for *rate rebalancing* purposes, and then only if those rates are “found to be just and reasonable.” Rate rebalancing in this context refers to revenue neutral filings in which RLECs propose to decrease toll rates and access charges with corresponding offsetting increases to local service rates. In this regard, we note that the PaUSF established pursuant to the *Global Order* pertained to revenue neutral rate rebalancing filings andwas never intended for the recovery of local rate increases beyond the benchmark/rate caps resulting from an RLEC’s PSM filing.

Without the benefit of any supporting citation, the PTA makes the claim that Act 183 codified the existing rate cap of $18.00/month. The PTA also makes the broad assertion that the PaUSF funding for rate increases above the rate cap was a limitation found in Chapter 30. We disagree. In light of the above, we reject the PTA’s arguments that RLECs are entitled to collections from the PaUSF for any local rate increases that arise from an RLEC’s annual PSM filing, especially when those local rate increases do not result in simultaneous, offsetting decreases to toll rates and access charges.

We also note that our PaUSF Regulations were promulgated as a result of the *Global Order* and at a time when the provisions of original Chapter 30 limited local rate increases based on a much higher than zero inflation or productivity offset factor in the then-existing price cap formulas of the respective RLEC PSMs. With the passage of Act 183, RLECs are now able to increase rates equivalent to the percentage of the inflation experienced in the prior year with a zero inflation offset factor adjustment. If the RLECs are permitted to draw additional funds from the PaUSF, it would lead to substantial increases in contributions to the PaUSF, without any equivalent benefit to the contributing carriers.

Act 183 contains safeguards limiting the pace and magnitude of rate increases which are largely tied to the changes in inflation indexes issued by the U.S. Bureau of Economic Analysis (BEA), U.S. Department of Commerce.. We agree with Verizon that the total amount of new revenue each year is statutorily limited and the RLECs do not have discretion to increase revenue arbitrarily. We also agree with Verizon that Act 183 does not impose a cap on RLECs’ rate increases and does not provide for other carriers to subsidize such rate increases, but presumes that the new revenues are secured through rate changes.

Furthermore, we cannot conclude, as claimed by the PTA, that a Settlement Agreement entered by the RLECs and the Commission’s Chief Counsel under the old Chapter 30 regime, constitutes authorization for RLEC recovery from the interim PaUSF for rate increases from PSM annual filings made possible through changes in law from the passage of Act 183. The referenced Settlement Agreement, signed by certain Parties in May 2000, refers to rate increases and rate rebalancing resulting in rates above the $16.00/month cap when such rates have been found to be just and reasonable, and not for rates that are only proposedfor Commission consideration. In addition, the Settlement Agreement pre-dated Act 183 and the new regulatory scheme.

Finally, we note that on page 87 of her R.D., ALJ Colwell discusses the OCA’s position regarding three small telecommunications companies that were authorized to provide credits on the bills of their respective customers so that their basic local exchange rates could be reduced to $16.00/month at the time of the *Global Order*. In her discussion, ALJ Colwell stated that “permitting RLECs to draw upon the PaUSF for increased revenue entitlements would not be a new use for the Fund.” We clarify that the prevailing local rates for the three small companies at issue were already above the $16.00/month level, and credits were given as a one-time event in order to bring the existing rates down to the $16.00/month level. This should not be construed or seen as the Commission permitting RLECs to draw from the PaUSF for revenue entitlement due from rate increases under RLECs’ Act 183 plans where such rates are not yet found to be just and reasonable. To the extent ALJ Colwell’s R.D. could be read as such, it is clarified.

Accordingly, we conclude that the rate caps were established in the context of setting parameters for rate rebalancing to reduce switched access rates and not intended as a broader limitation on the RLECs’ implementation of annual revenue increases under their Chapter 30 plans. We agree with the ALJ, the OSBA, AT&T and Verizon that the evidence in this proceeding does not support a finding that RLECs are entitled to funding from the PaUSF for local rate increases above the $18.00/month rate cap. For all of the foregoing reasons, we shall deny the PTA’s, CTL’s and the OCA’s Exceptions on this issue.

**4. Whether a “Needs-Based” Test is Necessary to Reform the PaUSF to Provide Monetary Assistance to Only Those RLECs for Service in High Cost Service Areas and/or for Assistance to Low-Income Customers and Whether the** **Commission Should Institute a Rulemaking for the Purpose of Defining the Specific Form of the Pennsylvania Universal Service Fund?**

**a. Positions of the Parties**

According to the OCA there is no place for a needs-based test. The framework proposed by the OCA is directed at assuring RLEC residential customers are required to only pay amounts which are affordable and reasonably comparable with Pennsylvania urban local service rates. OCA argued that it is difficult to see how a “needs-based” approach to universal service funding can be reconciled with non-cost based price cap regulation under Chapter 30. OCA Main Brief at 62.

The PTA firmly opposed a needs-based test other than those methods set forth in the RLECs’ Chapter 30 plans. For the PTA, a needs-based test applied to the price cap Companies to justify PaUSF support at this time would be inconsistent with the goals of incentive regulation and contrary to both the letter and spirit of Chapter 30 and the plans adopted under its terms. PTA Main Brief at 44. The PTA noted that the plans clearly define price cap regulation as being the exclusive form of regulation, prohibiting cost-based ratemaking. PTA St. 1SR at 11.

If, however, the Commission imposes a needs based test, the PTA argued that it should be as reasonable, simple, and as easy to administer as possible without requiring a cost/investment prudency determination, imputed costs/revenues, or complicated separations studies. PTA Main Brief at 45.

CTL stated that the Commission should not and need not adopt a new needs based test for RLEC support funding. CTL noted that its need is calculated using the price stability mechanism contained in CTL’s Chapter 30 plan and is based on its commitments and obligations such as broadband build-out. CTL asserted that the current plan is working and adequately addresses CTL’s total non-competitive revenues need. CTL Main Brief at 9-10.

CTL also submitted that the need for PaUSF support was determined when the fund was created and, therefore, no new needs-based test is necessary. The need for support stems from the access charge and toll rate reductions and those two reductions remain in effect today. CTL Main Brief at 10.

The OSBA advocated a needs-based test if the Commission expands the PaUSF to support caps on local exchange rate increases from an RLEC’s annual PSM filing. The OSBA suggested that the Commission establish an “affordable rate,” and then reform the PaUSF:

The Commission needs to take a hard look at the PA USF; based on what has been provided in this case, the PA USF should be phased out. To continue to ask all rate payers to fund the PA USF without examination of each recipient’s costs is wrong. The PUC has no knowledge of whether these ILECs today need a subsidy. In addition, the PA USF could be having the unintended consequence of keeping lower-cost competitors out of the rural areas, rather than promoting competition. It may be hard for competitors to enter a market when the ILEC is being subsidized. There is no reason to provide a general subsidy to all rural ILECs; each ILEC’s costs and particular operating conditions must be examined by the PUC to justify a subsidy in today’s market.

OSBA St. No. 2 at 6; OSBA Main Brief at 31.

Mr. Buckalew also stated on behalf of the OSBA:

That’s Chapter 30 regulations. You’re allowed to increase rates based on inflation. You have other obligations based on the fact that you’re a telecommunications carrier and you’re getting federal money. You have other obligations because the Commission lowered your access charges and in compensation for that gave you Universal Service money. I’m saying that simply it’s time to look at that entire picture over again and see whether, in fact, you, know, you need that money to continue the operations on a profitable basis.

Tr. at 214.

In its Reply Brief, the OSBA examined the recent Embarq-CTL merger[[56]](#footnote-56) where $400 million worth of savings are expected to be generated each year as a result of the transaction. OSBA pointed out that CTL draws significant support from the PaUSF and it is an RLEC whose local service rates will soon reach the cap level. OSBA noted that, at that point, with over $400 million in savings, CTL would be permitted to draw more money from the PaUSF if CTL’s position is adopted here.

Verizon stated that there should not be a needs-based test for an RLEC to collect subsidies from the PaUSF for purposes of exercising its annual revenue increase opportunity under alternative regulation because the Commission should not require other carriers to fund the RLECs’ annual revenue increases under any circumstances. According to Verizon, it makes no sense to create a new passthrough mechanism that forces an exchange of revenue between telephone companies to prop up a failing RLEC business plan. Rather, the correct action should be to return such an RLEC to rate-base, rate-of-return regulation where a comprehensive rate review can be utilized to establish reasonable end-user rates for that company, in which case the need to fund annual inflation-based revenue increases would no longer be an issue. Verizon Main Brief at 29‑30.

Verizon witness Price stated:

Primarily that without evidence of some form that the carrier needs that funding, additional funding in order to meet its operational requirements, then what we’ve done is you’ve essentially taxed all of the other customers in the state without any basis, without any need, without any showing.

Tr. at 305.

Verizon pointed out that none of the RLECs have alleged or proven a need for increased subsidies, which means that there is no real regulatory problem which needs a solution here. Verizon Main Brief at 30.

AT&T pointed out that not all PTA companies are similarly situated and that only eleven of them qualify under the federal USF as high-cost companies. AT&T contends that there is no basis to provide a subsidy to a carrier that does not need it. AT&T claimed that the evidence it submitted in this case shows:

* There are some PTA members whose service areas are *more* densely populated than Verizon-PA, even after factoring in Philadelphia and Pittsburgh.
* Ironton Telephone Company has a density of 235.6 households/square mile – 43% more densely populated than Verizon-PA’s service area.
* Denver & Ephrata Telephone & Telegraph Company has a density of 197 households/square mile – also 20% more densely populated than Verizon-PA’s service area.
* North Pittsburgh Telephone Company has a density of 164 households/square mile – essentially equal to Verizon-PA.
* Verizon’s density is 165 households/square mile, which given the enormous density of Pittsburgh and Philadelphia metro areas, means Verizon must serve some substantial quantities of very sparsely populated areas in order to have an average density of 165 households/square mile.

These facts were undisputed. This all points to the ridiculousness of a policy whereby Verizon’s customers, including both the urban poor and the rural customers Verizon serves, are subsidizing the PTA companies, who, in some cases, serve more highly or comparably dense areas on average, and whose rates often are lower than what Verizon charges its customers.

AT&T Main Brief at 25-26.[[57]](#footnote-57)

AT&T stated that the federal model would be an example of the way to restructure the state fund because federal universal service funding is based on a company’s actual costs. AT&T Main Brief at 26. AT&T argued:

Universal service funding should be targeted to ensure that customers in high cost areas, or even low income customers, are supported. The current system is not at all targeted towards *customers*, but is instead targeted toward protecting *companies.* That system should change, and is exactly why simply increasing the PaUSF to give additional funding to *companies* without any evidence that such funding is necessary to support a particular group of *customers* is the wrong way to go.

AT&T Main Brief at 27.

Comcast endorsed a needs-based test but pointed out that it must examine the totality of the carrier’s operations not just its traditional telephone service operations. Because the ILEC business model has changed significantly over the past several years, Comcast claimed that the overall financial condition of Pennsylvania RLECs has diversified beyond plain old telephone service. Data shows that at least some of the RLECs now use their local loop facilities to deliver a variety of unregulated services each of which contributes to the RLEC revenue growth. A needs-based test which focuses only on regulated intrastate services would create a skewed picture of the actual use of and cost recovery for the Company’s local loop. Comcast Main Brief at 8.

Comcast witness Dr. Pelcovits stated:

I recommend the Commission end all support payments that are based on revenue offset or make whole payments calculated in reference to the ILEC’s regulated accounts or regulated revenues. So, yes. I do recommend to the Commission and (*sic*) the current program and establish a much more tailored, directed Universal Service subsidy program.

\* \* \*

As far as reforming the system as a whole, I believe it has to be reformed, it should be reformed . . . .

Tr. at 240.

Comcast pointed out that the RLECs are no longer providers of “just plain old telephone service” but receive large portions of their revenue from sources other than switched local and access service, in addition to being PaUSF recipients. Comcast stated:

But any new needs based test must be realistic. Fundamental changes to each RLEC’s business make it impossible to compute the amount of subsidy needed to offset a regulatory objective or pricing constraint by reference solely to the intrastate regulated accounts of the incumbent LEC. [Comcast St. 1.0 at 23]. As Dr. Pelcovits summarized, absent examination of non-regulated revenues derived by Pennsylvania RLECs, “any estimate of the subsidy needed for a subset of services will not correspond to the type of analysis used in business decisions made by the carriers whether to build facilities.” [Comcast St. 1.0 at 18]. As a rational economic actor, an incumbent LEC makes a business decision based on its effect on the expected profits of the entire firm. These decisions reflect a rapidly changing business model, which bears less and less resemblance to a regulated provider of POTS. Therefore, as Dr. Pelcovits rightly concluded, it would be meaningless to compute the subsidy required to serve a customer (or group of customers) without taking into account the entire financial and business relationship with that customer or group. [Comcast St. 1.1 at 18].

Comcast Main Brief at 8 (footnote references omitted).

**b. ALJ Colwell’s Recommendation**

The ALJ concluded that the PaUSF was intended to be an interim measure for easing RLECs away from high access charges by compensating them for the reduction in access charges while competition was being introduced into the market. The ALJ noted that the “interim measure” has continued for ten years, which was considerably longer than what was originally anticipated. According to the ALJ the market expects to rely on competition to keep rates affordable and institutionalizing the PaUSF in its present form to provide subsidies to companies who do not have to prove a need will not assist the market in reaching its goals, and instead will provide barriers to entry for new carriers. Colwell R.D. at 87-88.

The ALJ opined that the PaUSF exists because the ratepayers of other telecommunications providers have paid the money, unwittingly, as a hidden tax. She noted that distributions from the fund are not “free money” to be plundered at will and without concern for its origins or for whether it is the best use of the money. Colwell R.D. at 88.

The ALJ explained that the Commission’s goal at the time of establishing the PaUSF in the *Global Order*[[58]](#footnote-58) was to allow rural telephone companies to reduce access charges and toll rates as an implicit recognition that competition is affected adversely when telecommunications companies charge each other higher access rates in order to keep the local rates artificially low. The ALJ noted that the PaUSF was created by a Commission Order but the administration of the fund was codified in this Commission’s Regulations. The ALJ opined that the latter fact supported her finding that the PaUSF was not intended to remain in its initial form permanently but, instead was intended to become permanent later in a form to be established following further investigation. Colwell R.D. at 70-85.

The ALJ found that there is basic disagreement among the parties regarding the definition of what basic universal service should be in Pennsylvania. The OCA believes that it means the provision of service to all those who rely upon basic local exchange service and may have no other option, which makes it vital that the consumer protections offered by a rate cap and the PaUSF be preserved. OCA advocated the continuation of a system which keeps rates comparable from company to company albeit through a system designed to charge customers from one company in order to subsidize other companies. ALJ Colwell stated that AT&T, Verizon, and Comcast believe that universal service means that the RLECS should charge the rates necessary to garner the revenue needed to survive and then target for assistance those low-income customers who would have difficulty paying the rates. ALJ Colwell summarized the PTA/CTL’s position as believing that universal service means subsidizing the rates of theRLECs who are charged with providing service in rural areas in order to keep the rates of the RLECs comparable to Verizon’s rural rates. Colwell R.D. at 80.

The ALJ agreed with AT&T’s conclusion, which she opined provides an accurate summary:

The evidence demonstrates that the conundrum the Commission initially thought it was faced with as a result of the issues in this case is one that can be easily resolved while still preserving the goals of universal service and promoting a fully competitive environment. With respect to the basic local service rate cap, there are fewer and fewer customers who are purchasing basic local service anymore, which means there is no longer a need to protect all of the RLECs’ customers – the protection should be much more targeted to those customers who really need it. In addition, the evidence shows that competition is already providing an effective “cap” on rates the RLECs charge their customers, and there is no need for the Commission to continue to maintain an artificial rate cap. . . . With respect to the PaUSF, expanding the PaUSF in order to fund the RLECs’ network modernization commitments would be contrary to [the] (sic) purpose of the fund, contrary to the regulations establishing the fund, contrary to the legislation, and would be anti-competitive. If anything, the Commission should abolish the fund in its current form, and should establish a fund that is actually directed at protecting low-income consumers, or those consumers who are truly in rural, high cost areas.

AT&T Main Brief at 30; Colwell R.D. at 89.

As such, the ALJ recommended that the PaUSF should be reconfigured to provide assistance to low-income customers as well as to RLECs who can show that their specific circumstances in a particular area merit such assistance. Colwell R.D. at 90.

According to the ALJ, the form of the PaUSF is a matter of public policy and the Commission is free to design its PaUSF in a form that suits the needs of the Commonwealth. To this end, the ALJ recommended the institution of a rulemaking proceeding to consider proposed changes to the universal service regime, consistent with her R.D., to reflect the Commission’s current policy regarding universal service in Pennsylvania. Colwell R.D. at 77-89.

**c. Exceptions**

The PTA, the OCA and CTL all claim that ALJ Colwell erred in suggesting that the present PaUSF can be reduced, or even possibly eliminated without any replacement funding.[[59]](#footnote-59) They contend that this part of the recommendation is beyond the scope of the proceeding and, thus, the parties were not given the opportunity to present evidence regarding whether a surcharge is appropriate or how the surcharge is to be determined. PTA Exc. at 27; OCA Exc. at 37-38; CTL Exc. at 1-2.

In this regard, the PTA argues that reconfiguration of the PaUSF is outside the scope of this limited investigation and that, if the current PaUSF were to be decreased with no replacement support provided, there would be ramifications, including immediate increases to local exchange rates and access rates. PTA Exc. at 27.

The OCA points out that the structure of the PaUSF was never at issue in the proceeding, and that there was no mention of reducing or otherwise revising the current structure or distributions from the PaUSF. The OCA also avers that there was no indication that PaUSF monies that fund prior access charge reductions would be taken away and that future access reform was expressly ruled to be off the table to the extent the Commission was soliciting input on the structure of the PaUSF. The OCA argues that the Commission clearly contemplated that further access reform and its implications on the existing PaUSF were stayed issues that would be heard in the second phase currently pending before ALJ Melillo. OCA Exc. at 37-38.[[60]](#footnote-60)

CTL argues that the scope of the Commission’s *April 2008 Order* was limited to whether there is a need to raise the rate cap of $18.00/month on residential service and equivalent business service rates; whether funding for the PaUSF should be increased; and whether a “needs based” test (and applicable criteria) for RLEC support funding from the PaUSF in conjunction with the federal USF support payments that the RLECs receive should be established in order to determine which RLECs qualify for PaUSF funding. CTL also contends that the *April 2008 Order* did not ask the OALJ to address the question of whether a rulemaking should be opened to define the specific form of the PaUSF or its uses. CTL Exc. at 1-2.

CTL submits that changing the PaUSF in the manner recommended by the ALJ would be inconsistent with the rationale under which the PaUSF was created, which was to offset revenue to compensate RLECs for the reduced intrastate access charges and toll rates. CTL also submits that those reductions remain in effect today and thus the need for offsetting revenue from the PaUSF still exists. CTL adds that previous access charge reductions were accomplished in a revenue neutral manner because the PaUSF was used to offset the access charge reductions and absent a substitute revenue source, Section 3017(a) of the Code[[61]](#footnote-61) would be violated. CTL Exc. at 3. Similarly, the PTA contends that the RLECs were not compelled to reduce access rates without having some assurance that the support for the lost revenues would continue. The PTA avers that under the terms of the Small Company Plan adopted by the Commission, the access and toll reductions undertaken in 1999 are reversible at each RLEC’s option. The PTA opines that, by redefining the eligibility criteria for the current PaUSF, the ALJ effectively eliminates that support. PTA Exc. at 29-31.

CTL also avers that, even if the recommendation was within the scope of the issues to be addressed by the ALJ, there is no evidence that the current PaUSF is broken and that the pending proceeding at the federal level will have a significant effect upon both the PaUSF and on benchmark rates. Pointing to the testimony of its witness, Mr. Gutshall,[[62]](#footnote-62) CTL asserts that the issues pending before the FCC involve reform of intercarrier compensation and changes to the federal universal service fund. CTL adds that because those matters have the potential to significantly affect intercarrier compensation, universal service funds at the state level and benchmark rates, the Commission should not act at this time.[[63]](#footnote-63) CTL Exc. at 2-3.

Finally, the PTA and the OCA take exception to ALJ Colwell’s remarks in her R.D. that the PaUSF support acts like a hidden tax for rate payers. The PTA asserts that there is no evidence that any RLEC has plundered its current PaUSF receipts or that any RLEC lacks concern for the origins of the support. The PTA disagrees that the cost of contributing to the PaUSF is a hidden tax on the other carriers’ consumers. Indeed, the Commission specifically prohibited collecting this charge from customers via surcharge on the RLEC bills and, therefore, it cannot be recovered from customers; rather the contribution is considered part of doing business in Pennsylvania. The PTA submits that the support is provided only to those carriers who were compelled to arbitrarily reduce their access rates and PaUSF contributions are required from only those carriers who benefit from the reduced access charges. PTA Exc. at 36-37.

The OCA argues that the ALJ is wrong in stating that if the RLECs’ and/or PTA’s position were to prevail, the PaUSF would be a guaranteed ever-increasing revenue stream and constitute a hidden tax. OCA Exc. at 35. Quoting from its witness’ testimony, the OCA claims that some increase in the PaUSF may be necessary in the initial stage, but it would become smaller over time because the OCA proposal would allow for adjustments on an annual basis to incorporate changes in both the Verizon PA average basic local exchange service rate and the Pennsylvania rural median household income. The OCA also expects more RLEC customers to switch to bundled service offerings of alternative service providers, and that the RLECs’ draw from the PaUSF will decrease. OCA Exc. at 36-37.

In its Replies to Exceptions, Verizon submits that, while the RLECs claim to advance the interests of local service customers, they reject out of hand the ALJ’s recommendation that the Commission convene a rulemaking to reform the PaUSF so as to provide monetary assistance to only those RLECs for service in high-cost service areas and for assistance to low income customers. Verizon asserts that, contrary to CTL’s contention that there is no evidence that the PaUSF is broken, record evidence shows that the PaUSF is indeed broken. Verizon asserts that, if the RLECs had rebalanced their access and toll reductions with basic local service rate increases in 1999-2000, the approximately $30 million in authorized annual fund disbursements from the PaUSF from 1999-2000 would have decreased by approximately 20%, or by $24 million, due to the line loss. Similarly, if the RLECs had not rebalanced the revenue at all and left the toll and access rates the same, given industry trends, the RLECs’ access and toll minutes of use over this time would have decreased, which would have reduced their operating revenues from access charges and toll rates. Extrapolating the annual average decline in minutes of use for toll and switched access through the end of 2008 would result in a 29.5% decline in minutes of use. Verizon Main Brief at 34. Verizon submits that the RLECs had no incentive to act in this manner because they are receiving the replacement revenue from other carriers who cannot choose to stop paying; the RLECs are still receiving a constant $30 million a year nearly ten years later, when they otherwise would not have been receiving that level of revenue in the absence of the PaUSF. Verizon R.Exc. at 24-25.

Verizon further avers that the Commission would be well-justified in reducing each RLEC’s PaUSF draw by nearly 30% or alternatively by the individual RLEC’s percentage of line loss since 1999. The Commission should also seriously examine why it is still necessary to require other carriers to provide millions of dollars in annual subsidies to the larger RLECs. Verizon R.Exc. at 25.

AT&T states that the PaUSF is limited to funding access and toll reductions and that the ALJ properly recommended that the Commission should not expand the PaUSF in order to fund the Chapter 30 Plan increases of the RLECs. AT&T also asserts that the ALJ’s recommendation to restructure the PaUSF is consistent with state and federal principles to advance the goals of both competition and universal service. Furthermore, AT&T replies that the ALJ did not provide a recommendation beyond the scope of this case when recommending that the PaUSF be restructured in a way that requires RLECs to demonstrate an actual need for funding in order to support high-cost and low-income customers. AT&T refers to the Commission’s Reconsideration Order at 5-6 that clarified that parties could argue whether the USF should decrease as part of the needs-based test analysis. AT&T R.Exc. at 16-17.

BCAP disagrees with the Exceptions of the PTA, CTL and the OCA. BCAP states that the current PaUSF subsidy is not only outdated, but also not tied to a demonstration that the costs to serve a particular customer or region are higher than the customers in that region can afford. The BCAP submits that the Commission must look into the fundamental issue of the purpose of the PaUSF before addressing its appropriate size. BCAP also suggests that Pennsylvania must move forward toward a PaUSF that ensures universal service on a competitively-neutral basis. BCAP opines that a universal service goal of providing access to telephone service for all Pennsylvanians and a legitimate claim of an inability to pay should not prevent a person from having telephone service. BCAP submits that the parties to the *Global Order* proceeding envisioned that the Commission would revise the structure of the PaUSF long before 2009, and accordingly, the ALJ’s recommendation that a rulemaking for purposes of defining the specific form of PaUSF and its uses be undertaken should be adopted by the Commission without modification. BCAP R.Exc. at 5.

The OSBA states that the parties’ various Exceptions ignore the fact that any universal service funding must be structured in a way that protects consumers and not companies. The OSBA argues that the excepting parties’ desire to place rate caps on residential local exchange rate increases as well as their desire to thwart the ALJ’s proposed revision to the PaUSF treats all residential customers as low income customers. The OSBA adds that such a policy would elevate telephone service to a higher priority than electric and gas service and would create additional inter-ILEC subsidies that could jeopardize the ability of some ILECs to meet their broadband deployment obligations. The OSBA thus supports the ALJ’s recommendation to revise the PaUSF in order to make it consistent with the low-income program that the Commission has established for electric and gas customers, stating that Commission’s universal service regulation for the electric and natural gas industries is consistent and clear and would serve as a good starting point. OSBA R.Exc. at 22.

**d. Disposition**

We believe that the purpose, establishment, evolution, and operation of the PaUSF cannot be characterized in simple terms. The existence of the PaUSF must be viewed from multiple perspectives and the potential need of its reform must be addressed in an integrated fashion. The General Assembly in its “Declaration of Policy” in Act 183 “finds and declares that it is the policy of this Commonwealth to:”

(2) *Maintain universal telecommunications service at affordable rates* while encouraging the accelerated provision of advanced services and *deployment of a universally available, state-of-the art, interactive broadband telecommunications network in rural, suburban and urban areas*, including deployment of broadband facilities in or adjacent to public rights-of-way abutting public schools, including the administrative offices supporting public schools, industrial parks and health care facilities.

66 Pa. C.S. § 3011(2) (emphasis added).

This Commission’s landmark *Global Order* explicitly acknowledged:

The USF is a means to reduce access and toll rates for the ultimate benefit of the end-user and to encourage greater toll competition, *while enabling carriers to continue to preserve the affordability of local service rates.* Although it is referred to as a fund, it is actually a passthrough mechanism to facilitate the transition from a monopoly environment to a competitive environment — an exchange of revenue between telephone companies which attempts to equalize the revenue deficits occasioned by mandated decreases in their toll and access charges. For purposes of this Order, the word “fund” actually refers specifically to the amount of money that equals the net revenue deficit resulting from revenue neutral rate structure and rebalancing changes of the companies.

\* \* \*

With the subsequent enactment of Chapter 30, the Commission now has explicit regulatory authority to take appropriate actions to *maintain universal service at affordable rates.* In particular, we note the *legislative objective of “maintaining universal service at affordable rates”* statewide, the requirement that telecommunications customers pay only “reasonable charges” for local service, and that the Commission “may establish such additional requirements and regulations as it determines to be necessary and proper to ensure the protection of consumers.” 66 Pa. C.S. §§ 3001(1), 3001(2), 3009(b)(3). Indeed, we view the establishment of a Universal Service Fund as an essential element of the series of rate level and rate structure changes embodied in this opinion and order.

*Global Order*, 196 PUR 4th 172, at 236, 239 (emphasis added, footnotes omitted).

The Commission’s Revised Final Rulemaking Order establishing the PaUSF regulations stated the following:

For several years, the Commission has been examining the need for a USF or Fund in an effort to both reduce and restructure access charges and establish the appropriate level playing field for the development of local competition. The USF is a means to reduce access and toll rates for the ultimate benefit of end-users and to encourage greater toll competition while *enabling carriers to continue to preserve the affordability of local service rates*. The State USF, as currently constituted within the parameters of the instant rulemaking, can best be described as a revenue-neutrality fund designed to neutralize LEC [local exchange carrier] revenue short-falls resulting as a consequence of ordered access charge and intrastate toll revenue reductions. Although it is referred to as a fund, it is actually a pass-through mechanism to facilitate the transition from a monopoly environment to a competitive environment — the USF provides for an exchange of revenue between telephone companies which attempts to equalize the revenue deficits occasioned by the mandated decreases in toll and access charges receipts.

*Rulemaking Re Establishing Universal Service Fund Regulations at 52 Pa. Code §§ 63.161‑63.172*, Docket No. L-00000148, Order entered March 23, 2001, at 1-2, 31 Pa.B. 3402 (June 30, 2001) (*PaUSF Rulemaking Order)* emphasis added.

As we move forward, interacting market realities – inclusive of intermodal wireline and wireless competition – as well as changing policy goals at the national and Commonwealth levels, affect the purpose, existence and the operation of the PaUSF. The goal of preserving and enhancing competition among various wireline and wireless telecommunications services providers cannot be and is not the sole purpose for the existence and operation of the PaUSF. Rather, we find that the purpose, existence and operation of the Pa. USF are inextricably linked with the provision of affordable *universal service* to end-user consumers under Pennsylvania *and* federal statutory mandates, as well as this Commission’s regulations. The concept of universal service itself may be redefined through the proper interaction of applicable Pennsylvania and federal law. Therefore, this Commission must retain the necessary degree of flexibility to utilize the PaUSF mechanism in an appropriate fashion. *See generally* 47 U.S.C. §§ 254(c) and 254(f), and 66 Pa. C.S. § 3011(2).[[64]](#footnote-64)

Even though the PaUSF mechanism implements multiple public policy goals statutorily prescribed by Pennsylvania and federal law, we specifically reject, at this juncture, that the PaUSF is somehow no longer needed, that it has outlived its usefulness, and/or that it has anticompetitive effects in the operation of the wireline and wireless telecommunications services marketplace within the Commonwealth. Rather, we defer consideration of these issues to the upcoming rulemaking that will address the necessary PaUSF reforms.

We take into account the positions of interested parties that the PaUSF may not in and of itself be operating in the most optimal fashion under the design parameters of the 1999 *Global Order* and the 2001 *PaUSF Rulemaking Order*. For example, as it has been pointed out, although the RLECs have suffered conventional access line losses, the current PaUSF continues to provide annual support distributions at a rather constant $33-$34 million level. Furthermore, the PaUSF computational mechanism itself that is contained in the Commission’s regulations is not prone to easy change when addressing rate rebalancing or restructuring. Therefore, we are in full agreement with the recommendation of ALJ Colwell that our PaUSF regulations must be re-examined anew through a proposed rulemaking.

In this manner, both the Commission and interested parties will be able to address in a coherent and integrated fashion the sought reform of the PaUSF. The future reform of the PaUSF must include multiple goals and objectives that are prescribed by existing Pennsylvania and federal law, and must anticipate potential changes in federal law. Thus, we find that the future examination of the PaUSF mechanism can and will include discussion of targeted support for low-income customers and high cost areas as well as other factors. The contemplated reform rulemaking effort should be broad, considering such areas as changing concepts and definitions of universal service, carrier and/or provider of last resort (COLR/POLR) obligations, linkages and interaction with potential federal USF reforms, competitive implications, broadband deployment and availability and its interaction with evolving federal standards, potential alteration of the existing PaUSF computational mechanism, and other issues of appropriate relevance. However, we stress that the contemplated PaUSF rulemaking will not necessarily follow the federal USF reform schedule.

We are persuaded, however, by the OCA and PTA positions that take issue with the conclusion of ALJ Colwell’s R.D. that the contribution assessments to the PaUSF support mechanism for the Pennsylvania RLECs somehow constitute a “hidden tax.” With approval we note OCA’s reference to the Commonwealth Court decision that upheld the Commission’s *Global Order* and rejected the argument that the contribution obligation to the PaUSF amounted to an illegal tax. OCA Exc. at 36-37 and n. 61-63, referencing 763 A.2d 493, 497-498. Furthermore, the PTA correctly points out that the Commission “specifically prohibited collecting this charge from customers via a surcharge on their bills, and therefore it [*sic*] not to be recovered from customers directly or indirectly.” PTA Exc. at 37, *see also* 52 Pa. Code § 63.170.

We also note that this Commission has taken a number of actions in individual adjudication proceedings to introduce facilities-based wireline competitive alternatives in the service areas of the RLECs.[[65]](#footnote-65) Such competitive entry in the RLECs’ service areas and the access line losses that the RLECs have sustained constitute concrete evidence that the PaUSF is not a barrier to competition in Pennsylvania’s wireline and wireless telecommunications services marketplace.

**B. ALJ Melillo’s Investigation on Remaining Issues**

This section addresses the positions of the Parties, ALJ Melillo’s recommendations, and the Exceptions and Replies to Exceptions addressing the investigation on the remaining access charge issues.

In summary, as will be discussed *infra*, ALJ Melillo’s primary recommendation is that access charge reductions and associated revenue neutral rebalancing, be phased in without additional PaUSF funding at this time. ALJ Melillo’s primary recommendation would require,[[66]](#footnote-66) *inter alia*, the following:

* that the RLECs listed in attached Annex B to her R.D. shall commence the process of revising their intrastate tariffed switched access rates to mirror their interstate tariffed switched access rates and rate structures, and to rebalance noncompetitive rates, in accordance with the schedule, terms and conditions set forth in attached Annex C to her R.D;
* that the RLECs’ weighted average residential and business local service rates be permitted to increase, for purposes of revenue neutrality, above the residential and business rate caps currently in effect as a result of the Order of the Pennsylvania Public Utility Commission entered July 15, 2003, at Docket No. M-00021596;
* that within thirty days of the date of entry of this Opinion and Order, the Bureau of Fixed Utility Services will post a notice on the Commission’s website, depicting the manner and format of the rate rebalancing calculations to be performed and documented by the RLECs;
* that within sixty days of the date of entry of this Opinion and Order, the RLECs shall file their rate rebalancing calculations with the Commission, with a copy to the Bureau of Fixed Utility Services, Telecommunications Division, in accordance with the above-described notice, demonstrating the impact of the rate rebalancing on local rates and intrastate switched access rates and projecting the proposed tariff revisions to implement Phase I in Annex C;
* that technical conferences be held with the parties, coordinated by and through the Commission’s Bureau of Fixed Utility Services, for the purpose of discussion and finalization of the procedures for implementation of the access charge reductions and rate rebalancings, consistent with the provisions contained in her R.D., and that these technical conferences be concluded no later than within 120 days of the date of entry of the Final Commission Order;
* that upon receiving approval of the finalized calculations and projections from the Commission’s Bureau of Fixed Utility Services, the RLECs shall commence the notice process to their retail customers, in accordance with their respective Chapter 30 Plans, concerning the upcoming rate changes, and shall provide this notice prior to each of the rate changes required in Annex C. This notice may be presented as a bill insert over the course of a full billing cycle;
* that within six to twelve months of the date of entry of this Opinion and Order, the RLECs shall file tariff supplements, effective on one day’s notice, and in accordance with Annex C, implementing the rate revisions for Phase I of the access rate revision/rebalancing process. Copies of these tariff supplements must also be provided to the Bureau of Fixed Utility Services, Telecommunications Division. Thereafter, tariff supplement filings in accordance with Annex C are to occur every six to twelve months. RLECs shall file their rate rebalancing calculations for subsequent phases at least ninety (90) days in advance of the schedule in Annex C to allow for Commission staff approval followed by customer notification. Tariff supplements for Phases II, III, and IV filed under this procedure may become effective on one (1) day’s notice;
* that upon receipt of an RLEC’s tariff revisions reducing intrastate switched access rates, the Secretary’s Bureau shall issue Secretarial Letters, in consideration of 66 Pa. C.S. § 3017(c), notifying those CLECs approved for operation in the RLEC’s service territory of the access charge reductions;
* that the Commission Investigation at Docket No. I-00040105 be marked closed upon the completion of all tariff revisions in Annex C and any rulemaking associated with that docket.

**1. Overview of the Parties’ Positions**

ALJ Melillo included a section in her R.D. explaining the Parties’ positions. Excerpted portions of the summaries are provided here for a better understanding of each Party’s position. The parties aligned with AT&T (Sprint, Comcast, Verizon, and Qwest), each of which provide IXC services, have advocated for immediate reductions in intrastate access charges either to parity with interstate access rates (AT&T, Sprint and Comcast) or to Verizon’s intrastate access charges (Verizon and Qwest) with various proposals for rate rebalancing. The RLECs (the PTA and CTL) and two of the statutory advocates (the OTS and the OSBA) have generally asserted a lack of justification for the access charge reductions sought by others and argue that further proof is needed or that any access reform should be phased in slowly. The OCA proposes a four-part access charge reform plan, but its “package deal” requires certain action in other proceedings and thus cannot be fully implemented at this time.

**a. AT&T**

AT&T advocated for immediate reductions to intrastate access rates so as to mirror interstate rate levels and structures. *See*, *e.g.,* AT&T St. No. 1.0 at 4-6.

For revenue rebalancing purposes, AT&T originally proposed that any access charge reductions be recovered only through increases to local service rates, which it calculated to be an average increase of no more than $5.31/month. AT&T St. No. 1.0 at 54-55. In its rebuttal testimony, AT&T modified its position and provided a four-year transition that would require temporary increases in the PaUSF to ameliorate local rate impacts. Under this modified proposal, RLECs would be permitted to increase basic local service rates up to a $22.00/month retail rate benchmark, and to recover any remaining revenue deficits from the PaUSF. Each year after setting the initial benchmark of $22.00/month, the Commission would increase the monthly benchmark by $1.00 for the next three years, and the draw from the PaUSF would correspondingly be reduced. Thereafter, if necessary, the benchmark would increase by the Gross Domestic Product-PI rate of inflation. AT&T St. No. 1.2 at 20-21. The maximum temporary increase in the PaUSF necessary to implement AT&T proposal was estimated to be $19.6 million in the first year of transition, and would be reduced in subsequent years. AT&T St. No. 1.2 at 14.

**b. Sprint**

Sprint did not make a specific rebalancing proposal, it supported a residential basic local service rate affordability benchmark initially set at $21.97/month (the equivalent of the $18.00/month rate cap if it had been allowed to increase with inflation), but adjusted for inflation annually to protect residential consumers that want only basic local service. Sprint St. No. 1.2 at 45. If an RLEC could prove that the cost of intrastate local service was higher than the local service benchmark, the RLEC would be permitted limited recovery via the PaUSF for the difference between the benchmark rate and the cost of service. Sprint St. No. 1.3 at 13. Sprint averred, and believed the record demonstrated, that RLECs have the financial strength to complete the transition of intrastate access rates to interstate rate levels in Pennsylvania in a revenue-neutral fashion without actually increasing basic local service rates. Sprint Main Brief at 8.

**c. Comcast**

Comcast advocated reductions in RLEC intrastate switched access rates to interstate switched access charge levels (AT&T’s proposal) as a good first step in reform. Comcast St. No. 1.0 at 6-13.

Comcast found it unlikely that RLECs would need to raise local service rates to offset reductions in access charges, and emphasized the RLECs’ diversification into many unregulated services that provide a substantial and growing percentage of their revenue and profits. It noted also that local service is often “bundled” with competitive offerings and that the overall price of the bundle, which is constrained by competition, would be unlikely to change. In addition, Comcast presented a statistical analysis to dispute the RLECs’ contention that their less dense service territory required greater cost support from access charges. Comcast St. No. 1R at 6-7. Comcast supports targeted funding from the existing PaUSF if access charge reductions result in unaffordable local service rates. Comcast St. No. 1.0 at 13-21.

**d. Verizon**

Verizon asked the Commission to establish a statewide uniform intrastate switched access rate set at Verizon’s current intrastate switched access rate level. Verizon St. No. 1.0 at 17-18.

If the Commission is reluctant to move the RLEC access rates to Verizon’s benchmark rate at this time, Verizon argued that the RLECs’ rates should initially be lowered to their interstate levels as recommended by AT&T. Verizon St. No. 1.0 at 22.

However, Verizon argued that the RLECs should have the opportunity and flexibility to rebalance access charge reductions among their retail regulated services, but Verizon opposes an expansion of the carrier-funded PaUSF under any circumstances. Verizon suggested that the Commission could adopt a phase-in of local rate increases associated with a step-by-step reduction in a particular RLEC’s access rates in order to ameliorate the rate increase impact. Verizon St. No. 1.2 at 7.

**e. Qwest**

Qwest agreed with Verizon that the RLECs’ intrastate switched access rates should be moved to Verizon’s intrastate access levels. Qwest St. No. 1 at 1, 6-7.

Qwest advocated achieving revenue-neutrality by offsetting access charge reductions through increases in local service rates and, if necessary, the PaUSF. It proposed that as a first step, RLEC local rates should be permitted to increase to a Commission-set benchmark rate of 125% of the average Pennsylvania RLEC residential rate and 125% of the average Pennsylvania RLEC business basic exchange rate. Qwest St. No. 1 at 9. As an alternative, Qwest would not object to a benchmark set at 120% of the Verizon Pennsylvania levels, as proposed by the OCA. Qwest St. No. 1-R at 5. Qwest argued that the PaUSF should fund rate increases above the benchmark level. Qwest St. No. 1 at 8.

**f. PTA**

The PTA’s primary position is that, until the FCC gives a clearer indication of the direction that it intends to pursue, the Commission should retain the status quo. PTA Main Brief at 1, 10-14, 32-38.

In the event that the Commission concludes that access charges must be reduced, the PTA would support a collaborative process to arrive at a solution. The PTA argued for access charge reductions to reach interstate parity in a seven to ten year period. Tr. at 691-692. The PTA advocated a benchmark rate of $18.94/month with the remainder to be recovered from PaUSF through increased funding. PTA St. No. 1-SR at 48; Tr. at 690‑691.

**g. CTL**

CTL argued that it would be unwise to act now in light of the FCC’s upcoming rulemakings. CTL Main Brief at 1-2. It highlighted a CTL consumer survey of Pennsylvania residential customers which showed that a large percentage of customers (41.4%) would be highly likely to leave with just a $3.00 local rate increase. CTL St. No. 2.0 at 8.

CTL concluded that rebalancing access rate reductions with local rate increases is not a viable option and will not achieve revenue neutrality. The only viable and sustainable option, if the Commission determines that access rates must be reduced, is to maintain the $18.00/month benchmark and rebalance rates through the PaUSF, as existing or as expanded if necessary. CTL Main Brief at 1-2.

**h. OCA**

The OCA defined the essential inquiry in this proceeding as being how the cost of the joint and common plant of the public switched telecommunications network (PSTN) of the RLECs will be recovered. The OCA observes the following:

The joint and common network plant is the plant outside the customers’ homes that connects each customer to a telephone company’s central office. The plant consists of cables and wires, poles, trenches and conduit, and electronic equipment that is situated in the field. This plant is used to provide all of the services the customer wishes to consume and allows telephone companies to provide all of the services that they wish to provide. This plant allows the customer to make a local telephone call and it also allows a long distance carrier or wireless carrier to complete a call. This plant is not directly assignable to any one service, such as access, local exchange or data transport service. None of those services, however, can be provided without this plant.

Revenue to pay for the joint and common network is obtained from local and access rates. Local rates are those rates paid by retail customers, both residential and business, for the ability to make local telephone calls and to receive calls. Access rates are those rates paid by long distance, or toll, companies to both originate and terminate long distance calls on the local network in order to provide service to end users.

\* \* \*

For a variety of reasons, various parties wish to change the relative burden associated with the recovery of the common cost of the network. In particular, the long distance carriers wish to be relieved of their obligation to support the joint and common cost through access charges. If the long distance carriers are relieved of that obligation, then someone else must pay for the cost of the network. The cost could fall on the local telephone company, the affiliates of the local telephone company, the basic local exchange customers of the local telephone company or a universal service fund.

OCA Main Brief at 1-2.

To address these challenges, the OCA proposed the following comprehensive, four-part, interlocking plan which must be adopted in its entirety for access charge reductions to be approved:

1. RLEC intrastate access rates should be set equal to their respective interstate rates, including the elimination of the carrier common line charge;

2. RLEC residential basic local service rates that are below 120 percent of the Verizon weighted average residential basic local service rate should be increased to that value while RLEC rates that are above 120% of the Verizon weighted average rate remain at their current levels;

3. Any remaining revenue required to offset the revenue decrease associated with access rate reductions should be recovered from the Pennsylvania universal service fund; and

4. The revenue base of the Pennsylvania universal service fund should be enlarged to include any service provider that uses the public switched telecommunications network at any point in providing their service.

OCA St. No. 1 at 10 (footnote omitted).

OCA witness Dr. Loube calculated the increased pay-out from the PaUSF necessary to implement the OCA proposal and reduce intrastate access rates to parity to be approximately $63.4 million.[[67]](#footnote-67)  OCA St. No. 1 at 16.

The OCA understood that, based upon the Commission’s *December 2009 Order*, a recommendation to enlarge the PaUSF contribution base may not be within the purview of this proceeding. However, the OCA’s recommended comprehensive plan was contingent on the Commission addressing this issue in another proceeding of its choice and finding in that proceeding that it is necessary to increase the size of the contribution base. OCA St. No. 1 at 16‑17.

**i. OSBA**

The OSBA’s position is that access rates reductions are not needed to spur competition. Rather than further reduce access charges, the Commission should reverse its policy and allow increases to help fund network costs. OSBA Main Brief at 19-21.

If the Commission decides that the RLECs’ access charges should be reduced, the OSBA submitted that the reductions should be made on a case-by-case basis for each individual RLEC, and should be set at the level necessary to recover 25% of each individual RLEC’s total loop costs. OSBA St. No. 1 at 14-15. The OSBA explained that this could be accomplished by developing intrastate access rates individually to recover the same amount of total revenue (including the SLC) which is being recovered for interstate access. OSBA Main Brief at 22-23.

Any access charge reductions must be revenue-neutral through increases to the RLECs’ noncompetitive service rates, increased PaUSF support, or, most likely, both. OSBA Main Brief at 28. The OSBA does not favor the continuation of rate caps, but if a rate cap is used, it should be increased from $18.00/month to about $21.00/month, and further PaUSF support should not be provided without a cost of service needs test. OSBA St. No. 2 at 21-22.

**j. OTS**

The OTS contended that RLEC intrastate access rates have not been proven to be excessive or subsidy-laden in the absence of cost studies and therefore should not be reduced. OTS St. No. 1 at 9. Any rebalancing of local service rates to offset access charge reductions would be unjustified and unfair to basic local exchange service customers. OTS St. No. 1 at 11. Also, the OTS argued that shifting the common carrier line charge, which is comprised mostly of local loop cost recovery, from carriers to end users would inappropriately allow IXCs to use the local network for free. OTS St. No. 1‑SR at 10. Expansion of the PaUSF, which is an important vehicle for achieving revenue neutrality of any access charge reductions, is to be addressed in ALJ Colwell’s proceeding; therefore, current access charges should be maintained pending resolution of that companion proceeding. OTS Main Brief at 21.

**k. BCAP**

BCAP did not submit testimony but filed a Reply Brief which expressed concern about adoption of certain parties’ positions which could inappropriately impact the ALJ Colwell R.D. regarding the PaUSF. BCAP noted that some parties’ proposals herein are based on the assumption that the current PaUSF will continue to exist and be expanded. Because the ALJ Colwell R.D. remained pending and would potentially revise the PaUSF if adopted, BCAP urged the Commission to ensure that any decision made in this proceeding would not prejudice future arguments regarding the size, structure and purpose of the PaUSF. BCAP Reply Brief at 4-6.

**2. Legal Standard**

In this proceeding we consider access charge changes. In order to maintain access charges at existing levels, the justness and reasonableness of existing access rates must be supported by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania,* 72 PA PUC 196 (1990). A preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602, *alloc. den.*, 602 A.2d 863 (1992). In addition, the Commission’s decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere “trace of evidence or a suspicion of the existence of a fact” is insufficient. *Norfolk and Western Railway v. Pa. P.U.C.*, 489 Pa. 109, 413 A.2d 1037 (1980).

In *Waldron v. Philadelphia Electric Company* (*Waldron*), 54 PA PUC 98 (1980), the Commission explained the process of meeting the burden of proof. In accordance with *Waldron*, the RLECs have the burden to put forth evidence establishing a *prima facie* case concerning the justness and reasonableness of their intrastate switched access rates. If the RLECs establish a *prima facie* case, the burden of going forward, but not the ultimate burden of proof, shifts to the opposing parties to rebut the *prima facie* case with evidence which is at least co-equal.[[68]](#footnote-68) If the RLECs’ evidence is rebutted to the legally required extent, the burden of going forward shifts back to the RLECs, which must rebut the adverse party’s evidence by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company* (*Poorbaugh*), 1994 Pa. PUC LEXIS 95.

**3. Burden of Proof**

**a. Positions of the Parties**

The RLECs, in their respective briefs, acknowledged that they carried the burden of proof in this investigation which was initiated upon the Commission’s own motion in its *December 2004 Order*. We note that the positions taken by the OSBA and the OTS are based, at least in part, upon the faulty argument that the IXCs[[69]](#footnote-69) bore the burden of proof as to the unreasonableness of existing access charges.

**b. ALJ Melillo’s Recommendation**

In her R.D., ALJ Melillo concluded that the RLECs have the burden of proof with respect to the “justness and reasonableness” of their existing intrastate switched access rates, which rates are being investigated. The ALJ cited to the Commission’s *December 2004 Order* that mandated the *RLEC Access Charge Investigation*. However, the ALJ noted that if the RLECs failed to meet the burden, and the RLECs’ access rates are to be reduced, the burden of proving the reasonableness of a specific rate reduction and the methodology for achieving that reduction would be on the proponent of the proposed rate and methodology, on a going forward basis.[[70]](#footnote-70)

ALJ Melillo also confirmed that the burden of proof with regard to AT&T’s Complaints was bestowed upon the RLECs when the Commission consolidated those Complaints with the ongoing *RLEC Access Charge Investigation*. Melillo R.D. at 46‑50.[[71]](#footnote-71)

The ALJ cited *Waldron v. Philadelphia Electric Company*, 54 PA PUC 98 (1980), for the conclusion that, in order for the RLECs to satisfy the burden of proof, the RLEC must demonstrate that their existing intrastate access rates are just and reasonable, pursuant to 66 Pa. C.S. § 1301. If the RLECs establish a *prima facie* case, the burden of going forward, but not the ultimate burden of proof, shifts to the opposing parties to rebut the *prima facie* case with evidence which is at least co-equal. While the burden of persuasion may shift back and forth during a proceeding, the burden of proof always ultimately remains on the party with that burden; in this case, the RLECs, as to the justness and reasonableness of their rates. *Milkie v. Pennsylvania Public Utility Commission*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

**c. Exceptions**

The OSBA excepts to ALJ Melillo’s assignment of the burden of proof and argues that the Commission’s order instituting the investigation appears to contradict the ALJ’s conclusion. The OSBA cites to language from the *Investigation Order* and states that unlike the *AT&T v. Verizon* proceeding, the *Investigation Order* does not appear to contemplate specific RLECs reducing their access charges by specific amounts. The OSBA adds that the *Investigation Order* speaks in generalities and directs the provision of evidence on the issues listed and it appears to contemplate the creation of a record from which the Commission will update its access reform policy with the possibility of new regulations or further proceedings to address specific reductions by specific RLECs. The OSBA cites *Milkie v. Pennsylvania Public Utility Commission*, 768 A.2d 1217 (Pa. Cmwlth. 2001) in support of its argument that the burden of proof should remain on AT&T as the party seeking affirmative relief from the Commission. OSBA Exc. at 7-10.

AT&T agrees with the ALJ’s conclusion and states that, as in the *AT&T v. Verizon* case, this case originated from the *Global Order* and continues the Commission’s policy established in that decision to implement further access reform. AT&T states that the exact details of what the reform would look like could not be determined until a record was developed and the fact that the Commission did not order specific reductions before this case started does not shift the burden of proof away from the RLECs. AT&T claims that the RLECs themselves have acknowledged that they have the burden and that the OSBA’s claim otherwise should be rejected. AT&T R.Exc. at 47-48.

**d. Disposition**

We do not find merit in the Exceptions. The primary purpose of this investigation has not changed with the consolidation of the AT&T Complaints. ALJ Melillo has correctly stated that the main issues in this consolidated *Investigation* and AT&T Complaints proceeding include: (1) the justness and reasonableness of existing switched access rates for RLECs; (2) that if existing rates are not just and reasonable what are the just and reasonable levels; (3) the timing for implementing these levels; and (4) what is the appropriate methodology for rebalancing access charge reductions to achieve just and reasonable access rate levels? Melillo R.D. at 49. The burden of proof in this *Investigation* rests with the RLECs, which they have readily conceded.

**4. Investigation of “Justness and Reasonableness” of Existing RLEC Access Rates**

**a. Positions of the Parties**

The RLECs, represented by the PTA and CTL, acknowledged their burden of proof with respect to existing switched access rates and made the following arguments to demonstrate that their existing rates are “just and reasonable:”

(1) Existing access rates have been determined to be “just and reasonable” by the Commission, and remain “just and reasonable” as they are in full compliance with Commission Orders, statutes, and Chapter 30 Plans;

(2) Existing access rates are necessary to support the critical regulatory and legislative priorities of universal service, carrier of last resort (“COLR”) obligations, and broadband deployment commitments; and

(3) There has been no proof of competitive or other benefits to be realized by proposed access charge reductions, and consumers will be harmed.

The PTA and CTL contended that the rates currently charged are as set forth in Commission-approved tariffs, which have the force and effect of law, and are binding on both the utility and the customer. *Pennsylvania Electric Company v. Pa. P.U.C.,* 663 A.2d 281 (Pa. Commw. 1995). In addition, the PTA and CTL argued that the RLEC access charges are in compliance with their respective Chapter 30 Plans and are, therefore, deemed to be just and reasonable, in compliance with Section 1301 of the Code, pursuant to 66 Pa. C.S. § 3015(g). The PTA also alleged that the RLECs’ access rates are non-discriminatory, as required by 66 Pa. C.S. §§ 1304 and 3019(h), because all IXCs pay the same Commission rate for intrastate calls.

The PTA noted that, in most cases, the RLECs’ intrastate rates are higher than their interstate rates and that the interstate rates are lower due to the FCC’s access reform proceedings, particularly the *CALLS Order[[72]](#footnote-72)* and *MAG Order*,[[73]](#footnote-73) which included additional universal service support. The PTA and CTL also noted that there has never been any requirement of parity of intrastate and interstate rates. The PTA emphasized that it does not oppose eventual movement to parity, but takes the position that it should only happen if PaUSF support is used to compensate for access charge revenue reductions. The PTA argued that, as a matter of equity, the PaUSF should be supported by all carriers that benefit from the interconnected network, including wireless and VoIP carriers.[[74]](#footnote-74)

CTL stated that the existing RLEC intrastate switched access rates are just and reasonable becausethose rates help provide critical revenue support for RLECs to comply with COLR/universal service policies and to undertake legislative requirements such as Act 183’s broadband commitments. The PTA emphasized the rural nature of its service territory with lower customer density and associated higher costs. According to the PTA, the RLECs are still expected to meet COLR obligations while their competitors do not have to do so.

The PTA responded to the IXCs’ argument that RLECs cannot quantify COLR costs because such costs do not exist or are *de minimus*, by claiming that just because the COLR costs may be impossible to accurately calculate does not mean they are non-existent. The PTA further asserted that regulation itself imposes costs which are excluded for competitors such as wireless, cable voice and broadband VoIP providers. The PTA concluded that the revenue from higher access rates is appropriate and should continue unless funded through explicit universal service funding mechanisms or through contributions from other rate elements.

The PTA emphasized that Act 183 does not set forth any requirement as to access rate levels and asserted that the Commission today must balance the difficult and conflicting interests of access charge reductions, revenue-neutral rebalancing, and universal service, in setting access rate levels. The PTA argued that a reduction in one rate must be balanced by increases in other noncompetitive rates.

In response to the RLECs’ assertions, AT&T and Sprint presented extensive arguments and contended that:

(1) The Commission’s authority to determine the “justness and reasonableness” of existing protected service rates such as intrastate switched access rates, is preserved under Chapter 30 and access rates are indisputably unreasonable as being well in excess of any reasonable measure of cost;

(2) The RLECs have failed to establish the necessity for excessive access charges to support universal service/COLR obligations; furthermore, broadband deployment should not be subsidized by noncompetitive access revenue; and

(3) There are extensive benefits established of record which will result from reductions in access charges.

Sprint also responds to the RLECs’ contentions as to the presumed legality of their access rates by excerpting a portion of the *Global Order*, wherein the Commission expressly discounted the relevance of any previous “just and reasonable” rate determination, indicating that existing rates may be re-evaluated and modified based upon changed circumstances. AT&T and Sprint, as well as Comcast, contended that comparisons of RLEC interstate access and reciprocal compensation rates conclusively prove that the RLECs’ intrastate rates are excessive and well above cost-based levels.

AT&T contended that the RLECs have not identified COLR obligations or provided any cost studies to support their universal service/COLR expense claims. Also (as AT&T is treating the intrastate access charge revenue in excess of interstate mirroring as a “subsidy”), AT&T emphasized the lengthy amount of time the RLECs have had to prepare for access reform and the support they have already received from the PaUSF and federal funds. AT&T claimed there is no evidence that this funding is inadequate for COLR purposes. AT&T claimed that the RLECs now receive approximately $124.7 million in universal service/COLR subsidies within the state ($91.7 million associated with the gap between intrastate and interstate access rates plus about $33.0 million in PaUSF pay-outs). Tr. at 587-588; AT&T Main Brief at 32. AT&T argued that continued subsidization at this level, without any identification of the COLR obligations or costs, is completely inappropriate and provides support for access reform. It noted that federal universal service funds are also available to RLECs.

AT&T also emphasized that universal service must be about ensuring that customers have access to affordable telephone service, not about protecting individual companies. AT&T pointed out the complete lack of credible evidence to support the RLECs’ claims that universal service will be destroyed in Pennsylvania if access reform is implemented, and emphasized that the dire consequences predicted by the RLECs have not materialized anywhere that access charge reform has been implemented.

AT&T highlighted the inconsistency in the RLECs’ contentions where, on the one hand, the RLECs claim that universal service will be harmed because of insufficient competitive options for consumers to avoid the higher local rates associated with access reform, but on the other hand, the RLECs claimed they cannot effectively increase local rates to offset access charge reductions because there is too much competition. The IXCs also claimed that access rates are diminishing their competitive options. AT&T contended that none of the growing competitive alternatives are saddled with access charges in the same way as traditional wireline long distance, placing a disproportionate and unfair subsidy burden on the IXCs. AT&T St. No. 1.0. AT&T noted that wireless carriers generally pay only the very low reciprocal compensation rates of $0.0007 to $0.0028 per minute; whereas, intrastate per minute access rates range anywhere from $0.01 to as high as $0.11 per minute. AT&T St. No. 1.0 at 33-34. According to AT&T and Sprint, the providers in a competitive market should be recovering the costs of their retail services from their own retail customers, rather than relying on hidden subsidy payments from other carriers through unjust and unreasonable access charges. AT&T Main Brief at 20; Sprint Reply Brief at 4.

AT&T indicated that the Commission has acknowledged in the *Global Order*, that there is no material technical difference between terminating an interstate long distance call and terminating an intrastate long distance call. Therefore, AT&T argued that when there is no material technical difference between terminating interstate or intrastate access services but a vast difference in the compensation levels, the vastly higher intrastate rates are unjust and unreasonable and must be reduced to the more reasonable interstate levels.

Furthermore, Sprint noted that the Commission’s *July 2007 Order* was appealed, and that Commonwealth Court in that case (*Buffalo Valley*, *supra*) confirmed that Act 183 did envision access charge reductions and offsetting revenue neutral increases to other noncompetitive rates, as indicated by Section 3017(a) of the Code.[[75]](#footnote-75)

In response to the RLECs’ contentions regarding need for access charge support, Comcast witness Dr. Pelcovits presented a regression analysis to test whether there was a correlation between RLEC density and the level of access charges needed to support the RLECs’ universal service/COLR obligations. The result was that the cross-subsidy provided by access charges was not related to the density (and thus cost) of the RLEC serving area. Comcast St. No. 1.0R at 6-8; Comcast Main Brief at 6. Thus, Comcast concluded that intrastate access charges are *not* being used to provide a targeted subsidy to the RLECs serving the highest cost (*i.e.*, least dense) areas in Pennsylvania; rather the amount of the subsidy was quite random in relationship to density. In Comcast’s view, this undercuts the RLECs’ key policy justification for continuation of present access charges. Comcast Main Brief at 6-7.

With respect to the RLECs’ CCLC, which recovers NTS loop costs and ranges from $0.17 to $17.99, Sprint asserted that it was unreasonable to recover costs of the monopoly-controlled loop through charges that are not subject to the discipline of the market. It contended that these costs must be included in rates that are explicit, apparent to customers, and subject to competitive forces. According to Sprint, the Commission must be sure that any access charges currently contained in the CCLC will be reduced to just and reasonable levels. Sprint Main Brief at 19-23. AT&T reiterated that, even with its proposed elimination of the CCLC to mirror interstate rates, the RLECs’ access rates will still include a contribution to local loop costs. AT&T St. No. 1.3 at 6, 8.

AT&T and aligned parties also pointed to multiple benefits resulting from access charge reductions. First, AT&T claimed it has reduced retail rates, including rates in Pennsylvania, even more than access charges may be reduced. AT&T referenced promised reductions to be implemented in the In-State Connection Fee and prepaid calling card charges. AT&T also contended that its mirroring proposal would produce further benefits in the form of potential billing cost reductions and arbitrage mitigation. It alleged that call pumping[[76]](#footnote-76) is still occurring in Pennsylvania, and that access charge reductions would lessen the incentive of carriers to engage in this unscrupulous practice. AT&T further asserted that, to the extent access charges are subsidizing local service, RLEC rates are being artificially maintained and RLECs are insulated from having to improve efficiency and offer better service. Thus, consumers are being denied the real benefits of competition.

The OCA agreed that it may be time to consider reductions in intrastate access rates despite the lack of a specific mandate to that effect in Act 183. OCA Main Brief at 24.

**b. ALJ Melillo’s Recommendation**

ALJ Melillo concluded that the RLECs failed to meet their burden to prove that their current intrastate switched access rates are just and reasonable. The ALJ also concluded that the IXCs presented more than co-equal evidence so as to rebut any *prima facie* case the RLECs had attempted to present. The ALJ noted the lack of affirmative and credible evidence presented by RLECs[[77]](#footnote-77) to establish a *prima facie* case of access rate reasonableness. She emphasized that the RLECs instead relied on statutes, prior Commission rulings, or Chapter 30 Plan language in support of their arguments. The ALJ also concluded that the RLECs failed to provide evidence as to how their existing access charges would promote the Commission’s competitive public policy objectives of universal service/COLR obligations. Melillo R.D. at 74‑77, Conc. of Law No. 14.

The ALJ opined that prior Commission determinations as to the justness and reasonableness of RLEC access charges are not conclusive in the context of the instant investigation, and that existing rates once found to be reasonable may become unreasonable due to changed circumstances and are subject to re-evaluation and modification. The ALJ also noted the Commission’s authority to consider the just and reasonableness of the RLECs’ intrastate access charges is preserved despite any carriers’ Chapter 30 plan language to the contrary. Melillo R.D. at 74.

The ALJ indicated that she is unaware of any cases where regulated rates have been determined to be just and reasonable solely because an excess amount was necessary to provide affordable rates to other classes of customers. The ALJ cites to the Commonwealth Court’s decision in *Lloyd v. Pa. P.U.C. et al.* (*Lloyd*), 904 A.2d 1010, 2006 Pa. Commw. LEXIS 438 (2006), where the Court ruled against subsidization for an extended period of time. The ALJ observed inconsistency in the RLECs’ position, where, on the one hand, they claimed rate increases would harm local exchange customers, and on the other hand, that RLECs cannot effectively increase local rates to offset access charge reductions due to competition in the marketplace. Melillo R.D. at 75-76.

ALJ Melillo acknowledged the important public policy objectives of Section 3011 of the Code[[78]](#footnote-78) promoting competition along with universal service/COLR obligations. The ALJ specifically noted that Section 3011 declares that it is the policy of the Commonwealth to promote competitive fairness, provide diversity in the supply of existing and future telecommunications services and products, and encourage the competitive supply of services in any region where there is market demand. The ALJ concluded that the RLECs have failed to provide any evidence demonstrating how their existing intrastate access charge levels promote these important competitive public policy objectives. Melillo R.D. at 76-77.

ALJ Melillo determined that the IXCs have demonstrated public interest benefits of competitiveness and reduction in arbitrage through access charge reform. She also noted that none of the wireless carriers are burdened by access charges in the same way as traditional wireline carriers, and that this places a disproportionate and unfair subsidy burden on the IXCs. Melillo R.D. at 77.

**c. Exceptions**

The PTA takes exception to ALJ Melillo’s conclusions by stating that she erroneously applied an improper evidentiary standard by looking for detailed cost studies for each of the individual RLECs to demonstrate that their access rates do not exceed the cost of providing access service. The PTA adds that a cost study is not a condition precedent to the RLECs’ satisfaction of their burden to prove the justness and reasonableness of intrastate access rates and that the “just and reasonable” standard for price cap companies are judged on the basis of the terms of their Chapter 30 Plans. The PTA reiterates its claims that, if the Companies are compliant with such terms of their Chapter 30 Plans, the rates are deemed just and reasonable. PTA Exc. at 9-21.

The PTA also states that the RLECs’ current charges were previously found to be just and reasonable by the Commission, and thus they are in compliance with the Code. The PTA states that it recognizes that the justness of rates may change over time, however the PTA disputes ALJ Melillo’s conclusion that the existence of the current investigation is an implicit Commission mandate for further access charge reform unless cost justified. The PTA argues that Act 183 provided that the rates that the Commission has declared to be just and reasonable as well as those that are set pursuant to the terms of Companies’ Chapter 30 plans are deemed just and reasonable pursuant to Section 3015(g) of the Code.[[79]](#footnote-79) PTA Exc. at 10-13.

The PTA argues that the relevant statutes and/or prior Commission rulings mandating access rate decreases and that the legislative intent of Act 183 for accelerated broadband deployment were both aligned with the goals of end user consumer protection including affordable rates and universal service for end users. The PTA contends that, while Act 183 did provide for revenue neutrality in the event of some level of access charge reduction, it did not intend to place sizable local rate increases on rural Pennsylvanians to benefit IXCs with no discernible benefit to the consumer. PTA Exc. at 14.

The PTA also asserts that the ALJ’s recommendation relies heavily on a single passage in the FCC’s National Broadband Plan (NBP) to justify mirroring of interstate access rates without understanding the context. The PTA notes that the FCC’s NBP is only a recommendation and that the FCC’s Initial Notice of Proposed Rulemaking is expected in the fourth quarter of this year.[[80]](#footnote-80) The PTA states that the NBP also recommends the establishment of a benchmark residential local rate and support from the Universal Service Fund for some carriers to ensure adequate cost recovery and that it targeted states with artificially low $8.00-$12.00/month local residential rates. The PTA argues that it is better for Pennsylvania to await the FCC’s action rather than to rush ahead with access reform. PTA Exc. at 14-16.

The PTA states that the public interest benefits of further access reform touted by the ALJ are overstated, and that the ALJ did not rely on actual evidentiary proof of benefits. The PTA submits that the IXCs have refused to explain or commit to any real benefits in the toll market and, instead have raised rates for their bundled services in Pennsylvania. The PTA also submits that there was no calculation in the record demonstrating that the benefits to the rural customers of lower toll rates will come close to or equal the attendant local rate increases. The PTA points out that only AT&T has offered to reduce its In-State Connection Fee and that only those AT&T customers subscribing to AT&T’s stand-alone long distance service will see a benefit that would not remotely approximate in value the level of local rate increases being proposed for RLEC customers. PTA Exc. at 21-26.

The PTA opposes the IXCs’ public benefit claim of reduced rate arbitrage. The PTA agrees that arbitrage between interstate and intrastate compensation is one reason to bring the two rates closer to parity, but states that the RLECs have sought to address these problems through enforcement and that arbitrage by itself is not a basis for lowering intrastate access rates. PTA Exc. at 26-27.

CTL disagrees with the ALJ’s finding that the RLECs failed to meet their *prima* *facie* case sufficient to shift the burden of going forward with evidence to the IXCs. CTL claims that the RLECs’ existing switched access rates are deemed just and reasonable upon Commission approval and are consistent with the Commission’s pricing decisions designed to provide revenue support for high-cost local telephone rates in rural and less dense areas of the Commonwealth. CTL argues that the RLECs that serve in high-cost areas are the instruments of the Commission’s universal service policy and that RLECs’ existing switched access rates support affordable local service rates and universal service/COLR obligations. CTL Exc. at 4-7.

CTL argues that the ALJ improperly relied upon the *Lloyd* case to draw conclusions not applicable to telecommunications – *i.e.*, concluding that, in order to meet their burden of proof, the RLECs had to present cost information to quantify the value of universal service/COLR. CTL also argues that costing has not been a standard for pricing of access or other telecommunications services and that the Commission has routinely priced such rates based upon policy objectives. CTL added that there has been no Commission-recognized single cost model for establishing a just and reasonable telephone rate and the Commission cannot hold the RLECs to such a standard. CTL also claims that the ALJ failed to provide a comprehensive ruling which appropriately balances access charges, local service rates and the PaUSF or a net benefit analysis from the stand point of the consumer – particularly consumers in rural areas. CTL Exc. at 6‑25.

AT&T disputes the RLECs’ argument that they will not be able to meet COLR obligations if access reform is implemented, agreeing with the ALJ that the claim had no merit. AT&T claims that the PTA and CTL misrepresented the ALJ’s rejection of their COLR arguments as being based solely on the fact that the RLECs failed to present a formal cost study proving the exact amount of their COLR obligations. Instead, the ALJ had quite clearly explained that the RLECs failed to provide cost information regarding their universal service /COLR responsibilities or other proof that universal service/COLR would be adversely impacted. So, according to AT&T, the real problem which the RLECs simply ignore is not the absence of a formal cost study, but the RLECs’ complete failure of proof to support the heart of their case. AT&T submits that the RLECs should have presented at least some evidence to show what those COLR obligations are and how much they cost in order to prove that the current access rates are necessary to support them. AT&T R.Exc. at 5-20.

AT&T also argues that, even though the RLECs are making the claim that access rates must be maintained at their current high levels in order to support COLR obligations, the RLECs failed to identify with any specificity what their COLR obligations are in Pennsylvania and the current amount of subsidies in access rates needed to maintain and support COLR obligations. Accordingly, AT&T opines that the ALJ properly found that the RLECs did not adequately support their claims that high access rates are needed to meet COLR obligations. AT&T also claims that the PTA and CTL misrepresent the ALJ’s determination as a requirement that the RLECs provide a detailed and specific cost study identifying the exact cost of each and every COLR obligation. AT&T points out that the PTA and CTL could not even provide an estimate of the COLR obligations. When asked whether COLR obligations are $10.00, $10 million, $30 million or $100 million, its witness could not answer. AT&T R.Exc. at 5‑20.

Verizon avers that the Commonwealth Court has flatly rejected the RLECs’ justification made here when PTA raised it in *Buffalo Valley*. That is, RLECs cannot rely upon the switched access rates stated in their filed tariff and recognized by their Chapter 30 plans as proof that those rates are just and reasonable. Verizon adds that the Court has found that the Commission is empowered independently to evaluate whether the rates are just and reasonable pursuant to the authority preserved to it under 66 Pa. C.S. § 1301. Verizon R.Exc. at 6.

Verizon also observes that the ALJ merely opined that one way the RLECs could prove that their access rates are just and reasonable was to present cost data to establish that rates are not excessive in relation to costs. Verizon adds that the lack of cost data was only one factor in the totality of the record that supported the ALJ’s overall conclusion that RLECs’ access rates are not just and reasonable and must be reduced. Verizon Exc. at 6-7.

By way of example, Verizon points to the case of Ironton Telephone Company and Citizens of Kecksburg, in arguing that RLECs collect an unreasonably high portion of their revenue from IXCs. Verizon indicates that certain RLECs actually collect more per-line from IXCs than they collect from their own retail end users. Verizon states that Ironton Telephone Company charges IXCs a $17.99 carrier charge per line per month while its own end-users pay only $13.50 for monthly stand-alone basic residential service. Verizon states that Citizens of Kecksburg charges its own local service end users $11.00 per month and charges IXCs $11.18 per month for the carrier charge. Tr. at 582, Verizon Main Brief at 23, Verizon R.Exc. at 8.

Verizon submits that the excessive intrastate access charges of the RLECs have caused other carriers to divert large sums of revenue away from their own operations to fund the RLECs’ operations, thus depriving those carriers of revenues that could be used to improve products, services or networks, or even to reduce rates – all to the ultimate detriment of their customers. This irrational access rate structure has lead to what the FCC has termed inefficient and undesirable economic behavior. Verizon R.Exc. at 9-10.

Verizon points out that all customers in the RLECs’ service territories will benefit as competition is enhanced by reducing undue subsidies to RLEC operations, and that this enhancement of the competitive market will provide more robust competitive choices for service and will put pressure on the RLECs themselves to improve their own service offerings. The Commonwealth Court recently recognized that Chapter 30 expressly preserves the Commission’s authority and responsibility to protect all ratepayers and this protection extends to services provided to other telephone carriers. Verizon R.Exc. at 10-11.

In reply, the PTA states that AT&T exaggerates the competitive effects resulting from RLEC access rate reduction and that the $83 million savings from the reduction will have no effect on further promotion of wire-line toll competition, particularly in rural service territories. The PTA adds that access charge reductions will only aid in the transfer of hundreds of million dollars from rural local service providers to big long distance carriers. The PTA submits that the IXCs are not losing money on intrastate toll service and that toll revenues exceed their access-related expenses by a comfortable margin. The PTA argues that reducing RLEC access rates while simultaneously increasing RLEC customer’s local rates simply benefits the IXCs through a cost savings from access charges and their wireless affiliates who are direct competitors of RLEC wireline providers. PTA R.Exc. at 8-14.

With regard to any alleged benefit of reduced billing costs from one set of rates, the PTA claims that there is no record quantification to support such a benefit. With regard to allegations that having the same intrastate and interstate access charges will eliminate any potential arbitrage that currently exists, the PTA argues that any correction to the potential arbitrage will be minimal and will not resolve this problem in light of the fact that some carriers also disguise traffic as local or decline to include their carrier identifications to prevent the call from being billed to them. In addition, in some cases, the PTA notes that other carriers simply refuse to pay. PTA R.Exc. at 16.

Sprint counters CTL, the PTA and the OSBA’s burden of proof arguments by quoting Section 315(a) of the Code[[81]](#footnote-81) and explaining that the RLECs whose existing rates are being examined here bear the burden to prove that their rates are just and reasonable. Sprint also cites to the Commission’s Order dated December 30, 2006, in which the Commission reversed the ALJ in the Verizon Access Rate Case and explained that the burden of proof rested with Verizon, whose rates were being examined. Sprint R.Exc. at 20-21.

Sprint also rejects the RLECs’ claim that their intrastate access rates once declared just and reasonable by the Commission are deemed just and reasonable under the provisions of Act 183. Sprint points out that the Commission rejected a similar argument raised by certain PTA members[[82]](#footnote-82) and that Commission’s Opinion and Order has withstood appellate review before the Commonwealth Court. In light of the Court ruling, Sprint suggests that the Commission must reject the RLECs’ exception on this point. Sprint R.Exc. at 22-23.

**d. Disposition**

We find that the PTA’s and CTL’s Exceptions are not meritorious. The RLECs have failed to establish a *prima facie* case. The RLECs also have not made an adequate showing how their existing intrastate carrier access charges continue to balance the interests of the competitors for reasonably priced intrastate access to the RLECs’ networks while maintaining affordable universal service in accordance with applicable Pennsylvania and federal statutory directives. *See generally* 66 Pa. C.S. § 3011(2). Although it is intuitive that RLEC intrastate carrier access charge revenues obviate the need for increased basic local exchange rates, thus assisting the maintenance of affordable universal service for the RLECs’ end-users, the issue of who pays and by how much for the RLECs’ joint and common NTS network costs is one of preserving a sound balance among various objectives of regulatory policy. The record before us indicates that this balance is not adequately preserved under the existing level of the RLECs’ intrastate carrier access charges.

At the same time we are not absolutely convinced that potential reductions in the intrastate carrier access charges of the RLECs will fully inure to the benefit of Pennsylvania end-user consumers of long-distance services. As the PTA correctly observed, in sharp contrast to the Commission’s enforcement of its 1999 *Global Order* where intrastate carrier access charge reductions flowed to the end-user consumers of IXCs and intrastate long-distance services,[[83]](#footnote-83) the Commission no longer regulates IXC rates under Act 183. *See generally* 66 Pa. C.S. § 3018(b)(1). For example, interested parties in this proceeding with large and integrated wireline and wireless telecommunica­tions and retail broadband access operations are essentially free to utilize the bulk of the potential RLEC intrastate carrier access rate reductions to the benefit of their respective national customer bases notwithstanding self-professed commitments to do otherwise in a limited fashion for Pennsylvania consumers. Although the Commission does not exercise jurisdiction over the level of IXC rates, it is our expectation that intrastate carrier access rate reductions should flow through to the benefit of Pennsylvania end-user consumers of intrastate long-distance services.

Although the record before us does not contain overwhelming evidence of the costs that relate to the RLECs’ immediate COLR obligations – and more specifically the joint and common NTS network costs – this does not mean that the RLECs *lack* such obligations. RLECs are required *universally* to provide adequate, safe and reliable service and facilities for the convenience of the public *and* the interconnected telecommunications carriers *throughout* their respective service areas. Such COLR obligations extend to the provision of retail telecommunications services anywhere within the RLEC’s service territory, include service quality requirements and public safety obligations in terms of handling 911/E911 call traffic, and telecommunica­tions carrier connectivity requirements that are governed by both Pennsylvania and federal law. Other competitive wireline (CLECs) and wireless carriers often depend and rely on the RLECs’ switched access and “last mile” transport and distribution facilities for respectively originating or completing wireline and wireless call traffic. Under applicable federal law that is enforced by this Commission, the RLECs also have federal eligible telecommunication carrier (ETC) designations and thus qualify for the receipt of certain types and amounts of support from the federal USF. Thus, the RLECs’ COLR obligations under state regulation are combined with federal ETC obligations. CTL’s Exceptions note the following:

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

Moreover, the statutory and regulatory COLR/universal service obligations require that CenturyLink continually upgrade and maintain its facilities even for customers who have departed our network for the services of another carrier. This is an important point to stress: Costs to serve per the COLR/universal service requirements do not go away as customers leave CenturyLink. When a CenturyLink customer disconnects from its highly-fixed cost network, a proportional amount of costs are not eliminated.

CenturyLink Exc. at 36-37 (footnotes omitted).

Finally, the RLEC participants in this proceeding with NMPs committing to a December 31, 2008 completion date have reported that they have met and finalized their respective broadband deployment and availability commitments under Act 183. 66 Pa. C.S. § 3014(b)(1)(i). Although the introduction of appropriate cost evidence in this proceeding in relation to the RLECs’ immediate COLR obligation would have been helpful, the totality of the evidence does not preclude us from reaching the conclusion that the RLECs’ intrastate carrier access rates are in need of reform.

**5. The Just and Reasonable Level of Intrastate Access Rates**

**a. Positions of the Parties**

In this proceeding, two main proposals were presented concerning the RLECs’ just and reasonable access rate levels. AT&T presented a proposal that was generally supported by Sprint and Comcast. AT&T’s proposal parallels certain elements in the OCA’s proposed comprehensive plan for intrastate access charge reform. AT&T advocated for immediate reductions in RLEC intrastate access charges to be in parity with their interstate access rates. The second proposal was presented by Verizon and supported by Qwest. It would require the RLECs’ intrastate access rates to be set at Verizon’s intrastate rate levels.

AT&T advocated the RLECs’ intrastate access rates mirror each RLECs’ corresponding interstate access rates in rate level and structure. Under AT&T’s proposal, each of the RLECs’ intrastate access rates would mirror its corresponding interstate access rates for both Traffic Sensitive (TS) access rates and the CCLC. This would entail setting intrastate TS rates at interstate levels, with the elimination of the CCLC. AT&T claimed that for thirty of the RLECs in this proceeding (excluding Armstrong North[[84]](#footnote-84)), the mirroring of interstate access charges would result in an intrastate access charge rate decrease. AT&T St. No. 1.3, Attachment 2.

For revenue rebalancing purposes, AT&T proposed that the RLECs’ access rate reductions be recovered through increases to local service rates. However, in order to ameliorate local rate impacts, AT&T provided for a four-year transition period that would also require temporary increases in the PaUSF. Under AT&T’s proposal, RLECs would be permitted to increase basic local service rates up to a $22.00/month retail rate benchmark, and to recover any remaining revenue deficits from an expanded PaUSF. Each year after setting the initial benchmark of $22.00/month, the Commission would increase the monthly benchmark by $1.00 for the next three years, and the draw from the PaUSF would correspondingly be reduced. Thereafter, if necessary, the benchmark would increase by the GDP-PI rate of inflation. AT&T St. No. 1.2 at 20‑21. Under the AT&T proposal, the maximum temporary increase in the PaUSF necessary to implement the revenue rebalancing was estimated to be $19.6 million in the first year of transition, and would be reduced in subsequent years. AT&T St. No. 1.2 at 14.

In support of mirroring of interstate access rates as a reasonable level of intrastate access rates, AT&T noted that interstate rates cover their costs plus provide a reasonable return, and would include a contribution to the cost of local loops. Tr. at 608‑609; AT&T St. No. 1.3 at 6, 8. In addition, AT&T observed that there is no material technical difference between the termination of an interstate long distance call and the termination of an intrastate long distance call, and that the rates, therefore, should be the same. AT&T St. No. 1.0 at 36.

Comcast, Sprint and the OCA also agreed that interstate parity was the proper approach for access reform in Pennsylvania, although the OCA conditioned its support on the approval of all parts of its access reform proposal. Verizon was not opposed to adopting AT&T’s mirroring proposal as an interim measure, if the Commission does not adopt its proposal for a uniform rate at Verizon’s access rate level. However, Verizon suggested a phased-in reduction is appropriate for some RLECs.

The PTA and CTL criticized AT&T’s proposal as failing to consider the universal service support provided by their intrastate access rates. CTL claimed that the federal regime is an interconnected system and cannot be separated and considered compensatory. CTL compared AT&T’s proposal unfavorably to the FCC’s *CALLS Order* which set forth the federal switched access regime, and contended that AT&T, unlike the FCC, had failed to include critical interrelated universal service support in its proposed resolution. CTL Reply Brief at 41.

AT&T clarified that its proposal was that both TS access rates and the CCLC should be mirrored, which would entail the setting of intrastate TS rates at interstate levels, and the elimination of the CCLC. AT&T Reply Brief at 34-35. Sprint responded that neither CTL nor the PTA have quantified their access costs in this proceeding, even when asked for this information and, therefore, any contention that interstate rates are not compensatory must be considered baseless. According to Sprint, if interstate rates do not cover costs, it was incumbent upon the RLECs with the burden of proof to so indicate through record evidence, and they failed to do so. Sprint noted that Pennsylvania law requires revenue neutral access charge reductions and therefore, if RLECs cover their costs today based on intrastate access revenues, then their revenues will continue to cover costs after rebalancing, with the only difference being the source of the revenue. Sprint stressed that RLECs should not be permitted to continue to recover their costs from their competitors rather than from their own customers, as is occurring with the current level of intrastate access rates. Sprint Reply Brief at 28-31.

Under Verizon’s proposal, the RLECs’ intrastate access rates would be set at Verizon’s own intrastate rate levels. Verizon claimed that a benchmark access rate at that level would be a simple and effective means to quickly move switched access rates in Pennsylvania to more efficient and equitable levels, and would be consistent with 66 Pa. C.S. § 3017(c) regarding competitive carriers. Verizon also noted that by adopting Verizon’s rate, any future Commission action may be considered on an industry-wide basis. Verizon Main Brief at 21-25.

Verizon proposed that revenue recovery from increased local rates would occur up to an initial benchmark rate of $23.00/month, net of taxes and other fees, with no corresponding limit on business rate increases. Verizon proposed that RLECs have the opportunity and flexibility to rebalance access charge reductions to retail regulated services, but Verizon opposed an expansion of the current carrier-funded PaUSF under any circumstances. It suggested the adoption of a phase-in of local rate increases associated with a step-by-step reduction for individual RLEC access rates in order to ameliorate the local rate increase impact. Verizon St. No. 1.2 at 7-8, 22.

Qwest advocated that RLEC access charge reductions be recovered through increased local service rates up to a benchmark rate of 125% of the average RLEC residential rate, including a similar benchmark for business rates. Qwest St. No. 1 at 9. As an alternative, Qwest would not object to a benchmark set at 120% of the Verizon Pennsylvania levels, as proposed by the OCA. Qwest St. No. 1-R at 5. If an RLEC revenue deficiency remained after its rates have been increased to the benchmark level, this deficiency would be addressed via funds from the PaUSF. Qwest St. No. 1 at 8.

AT&T indicated that Verizon’s proposal does not address the disparity between interstate and intrastate access rates, and therefore does not fix the arbitrage problem. It also noted that Verizon’s intrastate rates are higher than most RLEC interstate rates, so mirroring Verizon’s rates would not constitute appropriate and necessary access charge reform.[[85]](#footnote-85) AT&T further contended that Verizon’s proposal would result in higher administrative costs and inefficiency because carriers would be required to implement new procedures to charge rates that only Verizon charges today. AT&T St. No. 1.3 at 15-16.

The PTA and CTL criticized Verizon’s benchmark proposal, claiming that Verizon’s access rates are based on wholly different cost characteristics and are not at all reflective of the rural markets, and thus, Verizon’s rates should therefore not be used as a proxy. The PTA contended that, for this reason, the FCC did not require that rural companies operating under price caps adopt the Regional Bell Operating Companies’ (RBOCs’) access target rates, and the Commission should not do so here. CTL contended that the use of an inapplicable rate benchmark would not promote equity and competitive parity for consumers in rural Pennsylvania.

The OSBA proposed that, if the Commission decides to reduce RLEC access rates, the reductions should be made on a case-by-case basis dependent upon each company’s own rates and access costs. Its witness, Dr. Wilson, testified that these individual rates should be set at the level needed to recover 25% of each RLEC’s total loop costs, based on the residual percentage of 75% after initial FCC assignment of 25% to interstate toll use. OSBA St. No. 1 at 15. The OSBA indicated that the simplest way to set an RLEC’s intrastate access charges would be to total all revenue currently collected for interstate access charges (including the $6.50 SLC and usage charges) and develop a new intrastate access rate to produce the same amount of total revenue. OSBA Main Brief at 23.

The OCA proposed a four-part interlocking plan which must be adopted in its entirety for its access charge reduction plan to be approved. More specifically, the OCA proposed that RLEC intrastate access rates be equal to their respective interstate rates and the revenue offset from the PaUSF be above a local benchmark rate set at 120% of the Verizon weighted average rate. The OCA proposal also would require the enlargement of revenue base for the PaUSF so as to include any service provider that uses the PSTN. OCA Main Brief at 57, OCA St. No. 1.

The PTA argued in favor of retaining the *status quo* until the FCC gives a clearer indication of the direction that it intends to pursue on access reform. However, if the Commission concludes that access charges must be reduced, PTA supports a collaborative process to arrive at reasonable solutions to the complex and difficult public policy issues presented herein. PTA St. No. 1-SR at 48; Tr. at 690-691.

For CTL, the only viable and sustainable option is to maintain the $18.00/month benchmark rate and rebalance rates through the PaUSF. CTL Main Brief at 1-2.

**b. ALJ Melillo’s Recommendation**

ALJ Melillo concluded that AT&T and aligned parties had demonstrated that their proposal for intrastate access rates to mirror the RLECs’ respective interstate access rate levels and structure is reasonable.[[86]](#footnote-86) The ALJ also found that AT&T’s proposed access rates are just and reasonable as required by Section 1309(a) of the Code,[[87]](#footnote-87) and recommended their approval. The ALJ noted that AT&T’s unrebutted testimony established a *prima facie* case of reasonableness because there is no material technical difference between the termination of an interstate long distance call and the termination of an intrastate long distance call. The ALJ also noted that the interstate rates are already approved access rates at the federal level, and are currently being charged by the RLECs for interstate calls and that the RLECs’ interstate access rates cover their costs and provide a reasonable return. Melillo R.D. at 90-91. The ALJ noted AT&T’s extraction on cross-examination of an acknowledgement from PTA’s witness that, in effect, interstate access rates cover their costs and a reasonable return, Tr. at 608-609, and AT&T’s unrebutted evidence that, even at the interstate level, intrastate access rates will still include a contribution to the local loop. Melillo R.D. at 91.

ALJ Melillo further noted that the adoption of symmetrical rates and rate structures for interstate access services and intrastate access services would minimize problems associated with arbitrage schemes in which carriers attempt to disguise the intrastate nature of the traffic to avoid higher rates. The ALJ also observed that unification of rates has the potential to reduce RLEC administrative costs by calling for a single set of billed access rates and by creating a more stable and predictable system of levying access charges. The ALJ also recommended commencing the process of mirroring of RLEC intrastate and interstate access rates now, but phasing the implementation consistent with her rate rebalancing recommendations.[[88]](#footnote-88) Melillo R.D. at 90-93.

**c. Exceptions**

The PTA disagrees with the ALJ’s conclusions and states that mirroring of intrastate and interstate access rates without matching federal programs and methods would compel local ratepayers to pay for the entire amount of state loop costs. PTA avers that this is contrary to prior Commission rulings and fair rate design. The PTA states that there are principal differences between the RLECs’ intrastate access charges and interstate charges, in particular, intrastate access rate design consists of a combination of traffic sensitive usage-based rates and the non-traffic sensitive monthly flat CCLC. PTA Exc. at 27-29.

The PTA argues that the FCC has transitioned away from the CCLC part of access rates by a combination of both increases in end user rates through an increase in the federal Subscriber Line Charge and a universal service support mechanism. The PTA notes, in particular, that the FCC’s *CALLS Order* in 2000, and the *MAG Order* in 2001, made specific reductions to interstate access rates through an increase to the federal Subscriber Line Charge from $3.50 to a cap of $6.50 per line, that is paid by end-user customer. The PTA also notes the use of two federal funds, the Intercarrier Access Support Fund and the Interstate Common Line Support Fund, for price cap carrier and rate of return carriers, respectively, both of which are similar to the PaUSF. PTA Exc. at 32-34. Thus, the PTA makes the argument that forcing local rate increases without assigning any revenue recovery from the PaUSF to absorb the difference between intrastate and interstate access rates, compels local ratepayers to pay for the entire amount of the loop costs. The PTA requests that if the Commission is determined to undertake access reform, it should follow the FCC’s path more fully and spread recovery between rational rate increases and increased PaUSF support. PTA Exc. at 27-34.

Citing a prior decision of the Commission,[[89]](#footnote-89) the PTA argues that the Commission had not moved away from its stated position that loop cost is a shared cost and the fixed cost associated with the loop plant and facilities of ILECs should be allocated and recovered by services that utilize the local loop. PTA Exc. at 27-29.

CTL excepts to the ALJ’s recommendation and states that the ALJ erred in concluding that interstate switched access rates and structure are compensatory or provide sufficient cost recovery without explicit PaUSF support. CTL states that the interstate switched rate contains no CCLC; however, the FCC had implemented explicit support by increasing the SLC and other supports to recover the interstate cost of the local loop. CTL adds that the revenue support provided through intrastate switched access rates provided critical revenue support for CTL for serving customers in high-cost, less dense areas per universal service/COLR obligations and CTL requires viable and sustainable replacement of revenue support to continue with those obligations. CTL Exc. at 8-19.

CTL submits that the functionality or lack of technical differences between interstate and intrastate calls is not a basis upon which to require that intrastate switched access rates be priced at the interstate rate and structure. CTL avers that the functionality used for interstate and intrastate calling remains an incomplete basis upon which to exercise expertise and discretion when making pricing decisions. CTL also submits that, although the ALJ’s conclusion is correct, CTL is not aware that the Commission has utilized such a conclusion as a rationale for its pricing decisions. Further, CTL states that adoption of ALJ Melillo’s position could justify the re-pricing of local exchange rates and other services. CTL Exc. at 17-19.

CTL also disagrees with the ALJ’s conclusions that IXC competitors are burdened by access charges in the same way as traditional wireline carriers, that access charges place a disproportionate and unfair subsidy burden on IXCs, and that IXCs are at a competitive disadvantage due to RLEC intrastate switched access rates. Referring to its own witness, CTL submits that the wireless market and wireless subscribers in Pennsylvania has grown from fewer than three million in 1999, to nearly ten million in 2008, and that local competition is flourishing in dense areas of Pennsylvania. CTL concludes that its existing intrastate switched access rate levels provide needed critical revenue support and do not appear to be burdening IXCs. CTL Exc. at 19-22.

CTL also argues that, at the federal level, the CALLS election process for price cap carriers such as CTL, requires that CTL adopt TS rates at the holding company level. As such, CTL’s various companies operating in eighteen states had to adopt the switched access rates at the holding company level of $0.0065. CTL argues that participating in the CALLS plan cannot be used as evidence that CTL’s $.0065 rate represents its cost of providing switched access in rural Pennsylvania. CTL Exc. at 12‑13.

The OCA submits that, under the access reform plan recommended by ALJ Melillo, details regarding the PaUSF need not be determined until after the RLECs have completed the first stage of access charge reductions and offsetting increases in basic local exchange rates. The OCA claims that reducing the RLECs’ intrastate access charges without support from the PaUSF is premature in light of ALJ Colwell’s recommendation for a proceeding to study the specific use, structure and size of the PaUSF. As such, the OCA believes the ALJ’s determination not to expand the PaUSF to offset reductions in intrastate access rates in future years is premature. OCA Exc. at 20‑24.

The OCA asserts that the ALJ failed to recognize that all users of the PSTN should contribute to pay their share of the joint and common costs of the network. The OCA contends that if IXCs did not contribute to support their share of the network, local rates would become unjust, unreasonable and unaffordable. The OCA states that, if the Commission is reducing access charges, it should do so in a manner that requires all users to pay a reasonable share of those costs rather than imposing all those costs on non-competitive basic exchange rates. OCA Exc. at 25-28.

The OSBA excepts to the decision by stating that the adoption of the RLECs’ interstate access rate levels as appropriate intrastate access charges would in fact eliminate CCLC, thereby reversing the Commission’s current policy of having the IXCs contribute toward the cost of the loop in any significant fashion. The OSBA believes that this would allow the interexchange carriers to use the RLECs’ networks without contributing toward the non-traffic sensitive costs of the loop, thereby resulting in significant increases in local exchange rates. OSBA Exc. at 10-13.

The OSBA states that, under its proposal, each RLEC’s intrastate access rate would be set so that it recovers intrastate access revenue equal to its total interstate access revenue from both traffic-sensitive charges and the federal SLC. The OSBA states that the additional access revenue under its proposal would provide significantly more contribution to the RLECs’ loop costs, comport with Commission precedent on this issue and significantly mitigate the increases in local exchange rates. OSBA Exc. at 13-15.

Verizon excepts on a limited basis and states that the Commission should recognize the ALJ’s recommendation to adopt AT&T’s proposal for mirroring RLEC interstate access charges as an interim step and the Commission should leave open the possibility of setting a uniform statewide benchmark intrastate switched access rate for RLECs in the future. Verizon argues that setting a uniform access charge benchmark will eliminate disparities in what carriers will be permitted to charge for the same intrastate switched access service and allow the Commission to address access pricing issues in the future on a more equitable industry-wide basis. Verizon Exc. at 2-3. Verizon also requests that the Commission clarify the technical conference process detailed by the ALJ to ensure that the technical conferences and related tariff filings of RLECs do not end up delaying unnecessarily access charge reform in Pennsylvania. Verizon Exc. at 4.

AT&T disagrees with the PTA’s and CTL’s arguments that access charge reform in Pennsylvania that does not rely on the expansion of the state PaUSF would be at odds with federal access charge reform. AT&T states that the FCC specifically recognized that it is best for carriers to first look to their own customers for cost recovery and the FCC increased the SLC at the time it reduced interstate access rates. AT&T also states that under its proposal, the benchmark is initially set at $22.00/month, which is simply the $18.00/month local rate cap established in 2003, brought forward for inflation. The $22.00/month benchmark rate would keep all RLEC local rates below the affordability level and would bring intrastate access rates to just and reasonable levels immediately while maintaining affordable retail rates and minimizing harmful and anti-competitive subsidies. Thirteen PTA Companies will still have rates below the $22.00/month benchmark after full rate rebalancing. After one year, the benchmark will rise to $23.00/month and another seven companies will be fully rebalanced after reaching the $23.00/month benchmark. Only six RLECs would even have to reach the $25.00/month benchmark in the fourth year in order to rebalance their local rates under its plan. AT&T R.Exc. at 20-21.

AT&T also argues that, although the FCC established federal universal support mechanisms, those programs are not the same as what the RLECs are requesting in this case and they are not a revenue guarantee program as the RLECs have advocated here. AT&T states that the FCC reform was designed to provide the largest amount of support for the highest cost areas, based on the cost of providing service in rural areas. However, in contrast to the federal USF programs, the RLECs in this case did not present any Pennsylvaniacost data; and they did not advocate a PaUSF that leads to targeted support for high cost areas. Instead, the RLECs want a dollar-for-dollar matching of universal service funds that is based on historic pricing from a monopoly era, rather than based on providing support to high cost and low income customers that actually need assistance. In addition, the federal plan called for universal service funds to be portable, meaning that, if a competitor serves a customer in a high cost area that is deemed eligible for support, a competitor can also obtain federal USF support. That is not the case in Pennsylvania where only the RLECs receive universal service funding. AT&T R.Exc. at 40-41.

AT&T replies to CTL that it is attempting to introduce additional evidence into the record by claiming in its Exception No. 2 (B) at 12-13, that its interstate access rates may not recover the cost of intrastate rates in Pennsylvania because the FCC recently required CTL to adopt an average rate for all CTL operating companies. That rate was $0.0065. AT&T complains that CTL did not bother to raise this matter through the past year while this case was being litigated and no party had any opportunity to engage in discovery, or cross-examine CTL’s claim. AT&T argues that it is entirely inappropriate to raise new and unsubstantiated claims in Exceptions. In addition, AT&T notes that the FCC’s *CALLS* Order makes it clear that CTL voluntarily chose to use the national average TS rate it now attacks while CTL had the opportunity to submit cost studies showing its actual rates. CTL never complained in any forum that this average rate does not recover its costs. AT&T notes that at no time did CTL ever present any type of cost information to show that CTL’s interstate rate would not be high enough to cover its intrastate access costs. AT&T R.Exc. at 41-42.

Sprint responds to the PTA, CTL and the OCA’s exceptions advocating expansion of the PaUSF for rebalancing purposes if access charge reductions are ordered by stating that such an approach cannot be deemed access charge reform. Sprint notes that, by expanding PaUSF, the subsidy streams will continue to be collected from competitors and this will stymie the healthy development of competition. Sprint also notes that ALJ Melillo’s findings in this regard are entirely consistent with ALJ Colwell’s Recommended Decision – *i.e.*, that the current PaUSF should be reformed and funding should target primarily consumers in need of support and secondarily to companies in need of support. Sprint R.Exc. at 12-17.

Sprint responds to the PTA, the OCA and the OSBA’s exception regarding the IXC contribution for local loop costs by stating that such allocation is inappropriate. Sprint states that the allocation of PaUSF funds is flawed and that the FCC has long laid to rest this argument for loop cost which is non-traffic sensitive. Sprint adds that the FCC has 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 that does place calls over the local loop. Sprint states that the FCC has concluded that every ILEC customer causes 100% of the local-loop expense upon ordering the loop and does so regardless of local-loop usage. Sprint adds that the FCC has never wavered from this conclusion and when challenged, the federal appeals courts[[90]](#footnote-90) have upheld the FCC’s position. Sprint R.Exc. at 26-30.

Sprint refers to the Commission’s *Global Order* discussions[[91]](#footnote-91)and argues that the Commission is well aware that the local loop is a non-traffic sensitive network element and there is no credible dispute that the RLEC end user causes the entire cost of the local loop. Sprint contends that local loop cost must be included in basic service rates that are explicit, apparent to the customer and subject to competitive forces. Sprint R.Exc. at 26-30.

CTL opines that, contrary to Verizon’s arguments, it is premature to decide whether there should be targeted movement toward additional RLEC access charge reductions and the establishment of a uniform benchmark rate later. CTL argues that such an action would not be viable because carriers have widely disparate costs. Thus, CTL contends, the only viable option would be to use the PaUSF to support the remainder of costs. CTL argues that the Commission should not fashion future policy for re-pricing RLEC intrastate switched access rates at this time and the Commission should not limit future potential reforms to one specific outcome (*i.e.*, a party seeking a specific rate would have the burden of proof to demonstrate the justness and reasonableness of the proposed rate and Verizon or any other carrier would not be foreclosed from making such rate proposals in the future). CTL also disagrees with Verizon’s request to leave the option open for a higher affordability level beyond the ALJ’s recommended residential affordability level of $23.00/month because it claims that it is premature and the record does not support such a proposal. CTL R.Exc. at 27-30.

**d. Disposition**

In reaching the disposition of the Exceptions in this area, we are guided by the long-established principle and regulatory policy of this Commission, which has been upheld upon appellate review, that the RLECs’ intrastate carrier switched access service NTS joint and common costs primarily associated with the RLECs’ local loop plant must be recovered from all users of the RLECs’ network. In this respect, our conclusion differs materially from those that have been adopted by the FCC in the past. The FCC has shifted the burden of NTS joint and common network costs in the interstate intercarrier compensation mechanism for switched access services totally and exclusively upon the end-user through the initial imposition and subsequent increases to the federal SLC. We note the OCA Exceptions in this area:

In supporting her position not to expand the PA USF, the ALJ states that “the RLECs’ interstate rates required to be mirrored herein do provide a contribution to the joint and common costs of the network and therefore, IXCs will continue to support that network, albeit at a lower level.” R.D. at 133. This statement is not accurate. Interstate access rates recover costs assigned to traffic sensitive functions of the network and a return on the investment needed to provide traffic sensitive functions. *There are no joint and common loop facilities or expenses assigned to those access functions*. Therefore, interstate access rates *do not help recover the joint and common costs of the PSTN*, and placing 100% of the burden to reduce the RLECs intrastate access rates to their interstate levels on basic exchange rates is not reasonable.

OCA Exc. at 30 (emphasis added, footnotes omitted).

We also note that the FCC interstate switched access rate reforms were accompanied by corresponding and major changes to the federal USF support mechanism. The CTL Exceptions observe the following:

The ALJ erred in failing to recognize in the Decision the underlying methods by which those low interstate rates were achieved. The FCC not only reduced interstate access charges they increased [federal] SLC charges established the IAS and established ICLS for price cap and non-price cap companies in its [FCC’s] MAG and CALLS orders. As pertinent to CenturyLink, the CALLS plan adopted by the FCC was a single comprehensive reform plan for price cap carriers that encompassed all, then existing, interstate switched access elements. In describing the plan, the FCC stated “CALLS is most appropriately judged as a single, cohesive proposal, because the underlying issues it addressed are themselves interrelated.” The CALLS reform plan not only created a target rate for switching and transport, but also implemented an interrelated plan that *eliminated any minute of use based common line (“CCL”) charges,* and *increased* [federal] Subscriber Line Charges – creating a $650 million interstate access support (“IAS”) fund and also creating the interstate common line support (“ICLS”) fund – within the overall federal USF funding system to offset the revenue not recovered from the measured increases in [the federal] SLC.

CTL Exc. at 9-10 (emphasis added, footnotes omitted).

For reasons explained elsewhere in this Opinion and Order, although the PaUSF can lawfully be utilized in the present RLEC access reform, we decline to use it in such a fashion. Because existing precedent and policies mandate the sharing of the NTS joint and common costs by all the users of the RLECs’ intrastate access services, the complete elimination of the per access line intrastate CC rate element for the RLECs cannot be condoned. Such an approach would lead to the inequitable, discriminatory, and unlawful result of potentially “loading” 100% of the recovery of the RLECs’ joint and common NTS costs associated with intrastate access upon end-user consumers alone. However, the totality of the evidentiary record strongly suggests that the existing high levels of the intrastate CC rate element for certain RLECs are clearly unsustainable. Therefore, we find that it is appropriate to gradually reduce these intrastate CC rate levels to $2.50 per access line per month (for those RLECs that currently have a CC intrastate carrier access rate element above the level of $2.50 per access line per month) while also gradually moving the RLECs’ intrastate TS switched access rate elements to their interstate equivalent levels to the extent necessary and in an integrated fashion. The “mirroring” of the intrastate traffic sensitive intrastate carrier access rates shall be implemented based on the federal traffic sensitive access rates in effect as of December 31, 2010. This approach accomplishes multiple objectives while fostering the achievement of several important goals.

First, the recovery of the NTS joint and common costs of the RLECs’ intrastate carrier access services will not be borne by end-user consumers alone. Instead, such recovery is shared by all those who use the RLECs’ network. Second, the non-elimination of the intrastate switched access CC rate and the gradual realignment of the RLECs’ intrastate carrier switched access TS rate elements will bring the overall intrastate switched access rate structures of the RLECs to a more reasonable level with concomitant benefits for those telecommunications and communications carriers that utilize the RLECs’ intrastate access services and, potentially, for Pennsylvania end-user consumers of telecommunications and communications services. Third, in this manner, the associated revenue neutral adjustments to the RLECs’ noncompetitive rates for local exchange services for residential and business users will remain within acceptable boundaries of affordability without adverse impacts on the important goal of preserving and enhancing universal service within Pennsylvania. Fourth, this gradual approach will provide the RLECs with the necessary flexibility to adjust their operational and business plans as well as with the required financial stability to continue meeting their COLR obligations. Fifth, the PaUSF mechanism will not be implicated in the present RLEC intrastate access reform and it will be kept at a stable level pending its future reform through a rulemaking proceeding. Finally, this approach will enable the Commission to better respond to potential federal law changes that may impact intrastate intercarrier compensation and/or the PaUSF.

The retention of a uniform CC rate of $2.50 per access line per month is a balancing act that takes into account the interests of maintaining competitive equity, collecting a fair share of the intrastate RLEC joint and common costs from carriers that utilize the RLECs’ switched access network facilities, and not impacting the existing PaUSF mechanism which is in need of reform in accordance with the discussion in this Opinion and Order. We note that the OCA itself did not refrain from suggesting the elimination of the CC rate element on the basis of competitive equity albeit in the context of OCA’s broader and integrated proposal that also implicated the PaUSF and which we presently decline to adopt. OCA’s testimony correctly pointed out that “because the Commission has been preempted by the FCC from applying the carrier common line charge [CC rate] to intra-MTA wireless minutes, the OCA is now recommending that the [CC] charge be eliminated in order to create greater fairness among the carriers that interconnect with the RLECs” and that elimination of “the carrier charge creates greatest fairness because not all long distance carriers pay it.”[[92]](#footnote-92) The restructuring of the RLECs’ CC rates to a uniform $2.50 per access line per month along with the other measures of intrastate access reforms that we are hereby adopting will better accomplish the goals of competitive equity among the intermodal providers of long distance telecommunications services within the Commonwealth.

We also believe that a CC rate level of $2.50 per access line per month constitutes a fair share payment by those carriers for the NTS joint and common loop costs of the RLECs. As previously explained, these carriers that provide long distance telecommunications services utilize the NTS joint and common loop plant and facilities of the RLECs for the origination and termination of long distance calls. Although there will be reductions for most of the currently existing CC rates for the RLECs in the general manner prescribed by 66 Pa. C.S. § 3017(a) and a shift of associated NTS costs to the end-users of the RLECs’ retail services, the NTS loop costs in question will continue to be adequately supported while basic residential and business local exchange services will continue to remain affordable for the RLECs’ own end-user consumers. The newly prescribed CC rate level of $2.50 per access line per month along with other sources

of revenue for the RLECs, inclusive of federal USF high cost support and PaUSF distributions, are deemed sufficient for the overall support of the total NTS joint and common loop costs of the RLECs.[[93]](#footnote-93)

Consistent with our prior decisions and long standing policy that the recovery of the joint and common NTS costs of the loop plant must be shared among all services and users that utilize such plant, the RLECs with a current level of the CC above $2.50 per access line per month will be directed to lower this rate to a $2.50 level per access line per month. This transition will take place in conjunction with the gradual movement of the TS intrastate carrier access rate elements of the RLECs to their interstate equivalents where such movement is necessary. We note that the intrastate CC level for certain RLECs is already at or close to a zero (0) level. These RLECs will be permitted if they so choose to introduce a CC level of no higher than $2.50 per access line per month in conjunction with the gradual or continuous mirroring of their respective TS intrastate access rate elements with their interstate equivalents.[[94]](#footnote-94) We do not agree with the PTA’s position that the intrastate carrier access charge reform for the RLECs should be further delayed pending FCC action in this area. Our action in this regard can proceed independently from the eventual outcome of the FCC’s NPRM that was recently initiated.[[95]](#footnote-95)

The approach that we adopt with this Opinion and Order with respect to the intrastate access rate reform for the RLECs maintains this Commission’s flexibility to adequately respond to potential changes in applicable federal law. We again note the presence of the FCC’s NPRM that proposed a series of reforms on intercarrier compensation and the federal USF within the scope of the FCC’s jurisdiction. We are of the opinion that we can proceed independently from the eventual outcome of the FCC’s NPRM that is dealing with interstate intercarrier compensation and federal USF reforms. However, we reserve the right to initiate subsequest proceedings and issue appropriate Orders that will seek to coordinate the potential outcomes of the FCC’s initiatives with our decision today to the extent necessary, while also safeguarding the due process rights of all interested and participating parties.

**6. Revenue Neutral Recovery of Access Charge Reductions**

In accordance with Section 3017(a) of the Code, 66 Pa. C.S. § 3017(a), the RLECs cannot be required to reduce intrastate access charges except on a revenue neutral basis. The ALJ indicated that although all of the parties agree that the recovery of access charge reductions must be revenue neutral, the difficulty is with regard to the interpretation of “a revenue neutral basis,” which has not been defined in the legislation.

In addressing the revenue neutral recovery of access charge reductions, the ALJ identified disagreements in the interpretation of the statute in two critical areas:

(a) whether non-jurisdictional revenues can also be considered in determining revenue neutrality; and,

(b) whether recovery of reduced access charge revenues through offsetting revenue increases must be provided through the PaUSF rather than through local rate increases.

The ALJ also addressed the following additional issues brought forward by the Parties in the proceeding in making her specific revenue neutral rate rebalancing recommendation:

(c) comparability and affordability of local service rates;

(d) increases to business rates as well as R-1 rates; and,

(e) increased PaUSF support for access charge rebalancing (AT&T and OCA proposals) versus no additional PaUSF support (Verizon proposal).

We will now consider the Exceptions to the ALJ’s R.D. regarding these issues.

**a. Consideration of Non-Jurisdictional Revenue Sources in Revenue Neutrality**

**i. Positions of the Parties**

Sprint and Comcast argued that revenue from non-jurisdictional and competitive services which utilize the same facilities as regulated services should be considered in determining revenue neutrality with respect to access charge reductions.

Sprint contended that the RLECs have distorted their financial picture by hiding a significant portion of their revenues from consideration in the revenue neutrality equation. Sprint claimed that the Commission frequently has considered non-jurisdictional revenue that is generated on public utility plant when determining just and reasonable rates. Sprint cited to the Commission’s inclusion of revenue for ratemaking purposes with respect to cable TV pole attachments,[[96]](#footnote-96) yellow pages advertising revenue,[[97]](#footnote-97) and billing and collection services rendered by an ILEC.[[98]](#footnote-98)  Sprint also noted that broadband service provided by RLECs, either separately or in bundles, was analogous to yellow pages advertising revenue as it was added to the services offered over the network and was 100% dependent upon the local network for its provision. Tr. at 549, 654. Sprint also cited to the U.S. Supreme Court case of *Federal Power Commission v. Conway Corp.,* 462 U.S. 271 (1976) in support of its contention that a regulatory agency could consider non-jurisdictional transactions in setting rates within its jurisdictional sphere.

Comcast argued that Section 3017(a) of the Code[[99]](#footnote-99) is silent about the type of “revenues” available for offsets, and the provision clearly does not limit these types of revenues to local service rates or PaUSF receipts as claimed by the RLECs. Comcast claims that the RLECs are not rate-of-return regulated so there is no process for automatic adjustment and the RLECs have diversified into many unregulated services that provide substantial profits which should be reflected in a revenue neutral analysis.

In contrast, the PTA, CTL, Verizon, the OCA, and the OSBA contended that only noncompetitive (*i.e.*, jurisdictional) revenue may be considered in a revenue neutrality analysis. The PTA cited to *Brooks-Scanlon v. Railroad Commission* (*Brooks-Scanlon*)*,* 251 U.S. 396 (1920), for the proposition that only those rates that the regulator controls may be considered in determining whether the regulator has met its obligation to provide just compensation. It further cited to *Smith v. Illinois Bell Telephone Company (Smith),* 282 U.S. 133 (1930), as holding that the regulatory body may only consider revenues from the services within its jurisdiction.

The PTA also contended that Sprint had relied on a faulty analysis, which it did not present for the record, concerning its claims of revenue concealment, and that Sprint’s argument should be disregarded. It further indicated that Sprint’s proposed revenue substitution represents all of the revenues received by RLECs and their affiliates from all services, and that the Commission has no jurisdiction to impute revenues from interstate access charges, Digital Subscriber Line, or affiliated video to recover access revenue losses. Both the PTA and CTL argued that the cases cited by Sprint concerning recognition of yellow pages advertising and other non-jurisdictional revenue sources are not relevant to a consideration of Section 3017(a)’s revenue neutrality requirement as those cases did not deal with alternative regulation contemplated under Act 183.

The OSBA and the OCA also disagreed with Sprint and Comcast’s reliance on competitive and non-jurisdictional revenue to support access charge reductions. The OSBA referred to the price stability mechanism (PSM) under Section 3015(a)(1) of the Code,[[100]](#footnote-100) which permits an RLEC to increase its noncompetitive revenues based on an annual PSM filing. The OSBA noted that intrastate access charges are part of the noncompetitive service total used in the PSM calculation and if access revenues are reduced, this revenue must be offset by other noncompetitive service revenue increases as competitive service revenue cannot be reflected in the PSM.

Verizon cited to the Pennsylvania Commonwealth Court ruling in *Buffalo Valley*, *supra*, and noted that in that case the Court has ruled that the offsetting increases should be made to other noncompetitive rates and that the Commission has no authority to regulate rates for competitive services.

In response to PTA’s reliance upon *Brooks-Scanlon,* Sprint claimed that PTA misstated the holding and that the Court therein has addressed very different circumstances than those facing the Commission today. It claimed that *Brooks-Scanlon* involved whether a state commission could require a saw mill and lumber company to operate a passenger rail line at a loss when the corporation’s primary use of the rail line for its business had ceased. The Court held that a constitutional violation would occur if the regulator forced the enterprise to offer a service which could not be operated independently at a profit. Sprint argued that in considering non-jurisdictional revenue, the Commission would not be forcing an entity whose primary business was not public utility service to operate a public utility at a loss, as was the case in *Brooks-Scanlon*, and that PTA did not explain how that case related to the instant situation.

Comcast reiterated its position that the Commission should not limit its consideration of revenue neutrality to regulated services because the RLECs do not operate their diversified businesses in such a manner. It distinguished the 1930 Supreme Court case (*Smith*, *supra*) cited by the PTA as inapposite because the regulator therein had ignored the distinction between intrastate and interstate operations. In contrast, in the instant case, Comcast claimed that it is merely requesting the Commission to recognize non-jurisdictional revenue in the calculation of Section 3017(a) revenue neutrality.[[101]](#footnote-101) Accordingly, Sprint and Comcast urged the Commission to issue a finding that revenue neutrality can be achieved by consideration of RLEC revenues derived from all other services earned through use of the local network and that local service rate increases beyond the benchmark will not be necessary.

**ii. ALJ Melillo’s Recommendation**

The ALJ concluded that revenue neutrality under Section 3017(a) of the Code[[102]](#footnote-102) must be achieved only with jurisdictional revenues. The ALJ noted that Section 3017(a)[[103]](#footnote-103) emphasizes that the Commission is only authorized to require access rate reductions on a revenue neutral basis, and that the Commission only has jurisdiction with respect to noncompetitive service rates. The ALJ pointed out that the Commission has no authority granted to it by the General Assembly to direct LECs to increase rates for non-jurisdictional services and therefore, the Commission cannot require access charge reductions on that basis. Melillo R.D. at 98.

The ALJ noted that the Commonwealth Court in *Buffalo Valley* confirmed that revenue neutrality must be accomplished through consideration of noncompetitive service revenue only. The ALJ also cited ALJ Fordham’s R.D. on remand, dated November 30, 2005, in the *Verizon Access Charge Proceeding*, at 67, in which ALJ Fordham concluded that the legal authority for the Commission to order Verizon to include competitive services in a rate rebalancing had not been established. Melillo R.D. at 99.

**iii. Exceptions**

No Exceptions were filed with regard to the ALJ’s recommendation on this matter.

**iv. Disposition**

We shall adopt the ALJ’s recommendation that concluded that revenue neutral rebalancing may be accomplished only through allowed increases in noncompetitive services to offset reductions to access charges, rather than through consideration of non-jurisdictional or competitive revenues. *See* Melillo R.D. at 98‑99.

**b. Revenue Neutrality**

**i. Positions of the Parties**

CTL raised the following four points with respect to the RLECs’ ability to achieve revenue neutrality to offset access charge reductions: (1) revenue neutrality must take into account the ILEC’s circumstances as to scale and scope of operations; (2) revenue neutrality must consider all of the broadband, universal service, and COLR obligations of carriers; (3) revenue neutrality must be realizable; otherwise, constitutional due process violations are implicated; and (4) CTL cannot simply rebalance revenues by increasing local rates.

CTL argued, in light of the four considerations above, that rebalancing through the PaUSF, as expanded to account for access charge reductions, was the only means by which to uphold universal service at affordable rates, continue the provisioning of just and reasonable service in high-cost rural areas, and provide the means for RLECs to comply with Act 183’s broadband commitments. CTL Main Brief at 55-56. CTL characterized its request as an “opportunity” for revenue neutrality and not a revenue “guarantee.”

CTL presented the results of a Pennsylvania-specific consumer survey it conducted to assess how its residential customers would react when faced with rate increases and, specifically, how likely they would be to leave CTL if the price of their service increased by various amounts monthly. The act of “leaving” CTL was described as either (1) “cutting the cord” and relying solely on wireless service, or (2) switching to an alternate wireline provider. As shown on a table at page 59 of its Main Brief, CTL noted that the survey results showed that the percentage of customers “highly likely to leave” CTL if monthly rates were increased by $2.00, $3.00, $4.00, and $5.00 would be 29.5%, 41.4%, 53.1%, and 61.5%, respectively. *See also*, CTL St. No. 2.0. CTL claimed that many of its customers clearly will not accept local rate increases and that because of this, it would not actually be able to recover lost access revenue in this manner.

The PTA also made similar claims about the uncertainty of revenue neutral recovery and, citing to *Smith* and *Brooks-Scanlon, supra*., noted that the RLECs must be afforded a realistic opportunity of revenue recovery. The PTA also referenced “banked” revenue increases of almost $30 million which the RLECs have accumulated under Chapter 30 plans but have been unable to use due to competitive pressures.

AT&T responded that the RLECs’ request that each lost dollar be recovered from the PaUSF rather than from their own customers, would be a guarantee on revenue recovery and that such guarantees were not even provided for under traditional regulation and are not supported by Section 3017(a) of the Code.[[104]](#footnote-104) It further noted that RLEC access lines and revenues have been steadily declining each year, and the RLECs should not be permitted to use this case as a way to lock in revenues and be shielded from market reality. AT&T averred that its recommended rebalancing proposal, which would require local rate increases to a reasonable benchmark and transitional PaUSF support be available for increases in excess of the benchmark, is a fair solution in addressing this matter.

AT&T criticized CTL’s customer survey as results-oriented, timed to coincide with holiday shopping in December when consumers’ budgets are already stretched, and prepared solely for litigation purposes. AT&T referenced e‑mail exchanges wherein Jason Grant, CTL’s market research manager, indicated to Dr. Brian Staihr, CTL’s original witness and sponsor of the survey, that he wanted “to make sure the survey output gets you what you want.” AT&T Cross Ex. 1. In addition, AT&T provided a list of numerous, other survey flaws that denigrated the manner in which CTL prepared and conducted the survey. *See* Melillo R.D. at 102-103; AT&T St. No. 1.2 at 39-41, Attachment 6. AT&T disputed the PTA’s claim that its member companies would obtain the same results if it were to undertake the CTL survey in light of evidence in the case that showed that there was virtually no change in Denver and Ephrata’s line loss when it increased its price by over 35% in 2002. Tr. at 604-605.

With regard to the PTA’s contentions that there was little or no “headroom” for local rate increases to offset access charge reductions, AT&T argued that the PTA’s claims rang hollow as PTA witness Zingaretti acknowledged during the hearing that its position would support a benchmark of $18.94/month. Tr. at 585.

Sprint also discounted the RLECs’ claim about customer losses and agreed with AT&T’s assessment about the “headroom” for local rate increases. It referenced AT&T’s testimony that CTL customers purchasing only local service spend an average of $30.19/month, and that the majority of CTL customers are bundle customers that spend an average of $57.63/per month. AT&T St. No. 1.2 at 10. It noted OCA witness Dr. Loube’s testimony that $23.14/month (net of taxes and other fees) was an affordable rate. Tr. at 508.

Verizon responded by asserting that the least valid reason for looking to the PaUSF instead of local rate increases to fund revenue rebalancing is to protect RLECs from competitive losses. Verizon claimed that the CTL survey shows that consumers do have competitive choices and, therefore, universal service would not be jeopardized by a price increase. According to Verizon there is no reason to require other ILECs such as itself to guarantee the RLECs’ revenue through the PaUSF. As such, Verizon opined that the PaUSF should not be expanded as a result of this proceeding and noted that the pending Colwell R.D. correctly calls for a complete overhaul and a refocus of the PaUSF to target high cost areas and customers with need.

Verizon also contended that the RLECs made no effort to design a rate rebalancing scheme that would minimize residential rate increases, for instance by allocating more revenue to business rates and/or allocating some of the revenue to other non-competitive services. Verizon submitted that each and every RLEC has room for some access rebalancing if the matter is approached with an open mind to the optimum rate design.

The OSBA recommended that PaUSF monies only be disbursed to the RLECs after an adequate “needs” analysis is conducted. In this regard, the RLECs would not necessarily be “made whole” from the PaUSF and those RLECs simply wishing to keep local service rates low for competitive reasons would not receive funding.

**ii. ALJ Melillo’s Recommendation**

ALJ Melillo concluded that the PaUSF should not be utilized as the exclusive funding source for RLECs to offset access charge reductions. Melillo R.D. at 108. She opined that the RLECs are essentially seeking a revenue neutrality guarantee through the PaUSF in their arguments and that Section 3017(a) of the Code[[105]](#footnote-105) does not provide that level of certainty. Melillo R.D. at 106.

ALJ Melillo also noted that traditional regulation afforded a public utility an opportunity to earn a reasonable rate of return as allowed by the Commission, but did not guarantee that the utility would, in fact, earn that rate of return.[[106]](#footnote-106) The ALJ pointed out that alternative regulation under Act 183 provides no guarantee either, and neither do the U.S. Supreme Court cases cited by the PTA. Melillo R.D. at 106.

ALJ Melillo noted that, while the RLECs have claimed they cannot realistically recover lost access revenue through local rate increases for competitive reasons, the regulatory response should not be to guarantee any competitive losses through the PaUSF. In this regard, ALJ Melillo agreed with ALJ Colwell that the PaUSF should be retooled to focus on customer support and not on RLECs that have failed to prove need due to high costs. Melillo R.D. at 107.

In response to CTL’s and the PTA’s contentions that compliance with their universal service/COLR obligations would be in jeopardy if lost access revenue is not realistically recovered, ALJ Melillo acknowledged that the RLECs have failed to produce any cost information regarding these universal service/COLR responsibilities or other proof that universal service/COLR would be adversely impacted. Tr. at 632. Furthermore, ALJ Melillo noted that the PTA’s contention that perhaps 40% of rural customers are without competitive options also is not supported by the record. ALJ Melillo indicated that there simply is no substantial basis on which to conclude that the PaUSF must “guarantee” revenue replacement for RLEC access charge reductions to protect universal service/COLR obligations. Melillo R.D. at 107.

ALJ Melillo further concluded that there is not sufficient evidence to conclude that RLECs would be unable to realize additional revenue through local service rate increases. She noted that, as recognized by AT&T, there are a wide range of R-1 rates among the various RLECs, and hardship claims regarding $18.00/month local service rates cannot be equally valid as to $11.00/month rates. The ALJ also noted Verizon’s position that RLEC business rates are relatively low (*see*, ALJ Colwell record, PTA St. No. 1R at 22) and could be increased as well as with other noncompetitive service rates. Melillo R.D. at 107.

ALJ Melillo also concluded that CTL’s survey is flawed for the reasons stated by AT&T and the study does not adequately support CTL’s alleged inability to recover lost access charges through increased local service price increases. Melillo R.D. at 108.

In light of the foregoing reasons, the ALJ concluded that the PaUSF should not be utilized as the exclusive funding source for RLECs to offset access charge reductions and that the opportunity for revenue neutral rebalancing provided by Section 3017(a) of the Code[[107]](#footnote-107) can be satisfied by permitting rate increases for noncompetitive services rather than guaranteeing dollar for dollar revenue recovery. Melillo R.D. at 108.

**iii. Exceptions**

The PTA and CTL except to the ALJ’s conclusion that there is insufficient evidence to conclude that RLECs would be unable to realize additional revenue through local service rate increases. In this regard, the PTA and CTL except to Findings of Fact Nos. 44, 45 and 46, which stand for the proposition that RLECs should not expect to seek a guaranteed dollar-for-dollar recovery of access charge revenue losses under access rate reform and access rate reform should not be used as a windfall to the RLECs or to lock in their current levels of access revenues which are otherwise declining. PTA Exc. at 49-55; CTL Exc. at 49. CTL contends that there is currently no windfall and the current PaUSF operates as ordered by the Commission and produces the amount of support established by the Commission. CTL argues that rebalancing of RLEC access charge reductions through the PaUSF also is not equivalent to requesting a guarantee of revenues or a guarantee of dollar-for-dollar revenues. CTL Exc. at 49.

CTL also argues that the ALJ erred in interpreting and applying Section 3017(a) of the Code[[108]](#footnote-108) and in not relying upon the PaUSF to mitigate retail rate impacts. CTL is of the view that the “revenue neutral” provision in Act 183 requires the Commission to guarantee that any revenue reduction from access charges will be recovered and simply allowing RLECs the opportunity to increase local rates will not be sufficient to meet the revenue neutral requirements of Act 183. CTL Exc. at 45-49. CTL claims that the ALJ blatantly ignored the realities when she stated “[t]here simply is no substantial basis on which to conclude the PaUSF must “guarantee” revenue replacement for RLEC access reductions to protect universal service/COLR obligations.” CTL opines that the ALJ’s Decision would result in unfunded regulatory mandates and is both contrary to Section 3017(a)[[109]](#footnote-109) and Act 183’s overall regulatory compact. CTL Exc. at 45-46. CTL argues the express language and the spirit of Section 3017(a)[[110]](#footnote-110) are violated when access charge reductions create a loss of revenues. CTL Exc. at 47.

The PTA is concerned that further increases to local service rates and other noncompetitive services to offset access charge reductions is not sustainable. With regard to Verizon’s claim, which was adopted by the ALJ, that “other noncompetitive services” can absorb some of the rate shock created by interstate parity, the PTA asserts that the RLECs have already maximized the revenue available from these other services, such as vertical features, non-recurring charges and the like.[[111]](#footnote-111) PTA Exc. at 52.

Verizon contends in its reply, that the RLECs did not demonstrate that it is impossible for them to recover a reasonable level of revenue from retail rate increases. Verizon submits that the RLECs also have not demonstrated that access charge rate rebalancing would cause them to operate their regulated business at a loss. Instead of developing a proposal on rebalancing that would maximize their chances of recovering the revenue from retail rates, Verizon avers that the RLECs chose to take an “all or nothing” position by insisting that rebalancing is impossible through further increases to local rates. Verizon contends that the RLECs’ argument that retail increases are impossible is unreasonable, particularly where the record shows that many Pennsylvania RLECs are charging fairly low retail residential rates and that all of them are charging business rates well below the national average. Verizon R.Exc. at 15-17.

As an example to demonstrate the unreasonableness of the RLECs’ arguments, Verizon points out that PTA argued that Citizens Telephone Company of Kecksburg faces “stiff competition from the local cable company” and so cannot increase its extremely low $11.00/month residential rates and is entitled to disproportionate subsidies from other carriers in order to keep its rates artificially low and prevent this cable company from making competitive inroads.[[112]](#footnote-112) However, at the same time, a number of other RLECs charge rates that are $6.00 to $7.00/month higher than Citizens of Kecksburg in the face of similar competition, and the PTA presented no evidence that competitors were actually charging such low rates in Citizens’ territory. Verizon R.Exc. at 17. Verizon argues that this scheme is used by the RLECs to prevent competition from gaining market share in their territories at the expense of those carriers that must pay higher access charges than they should be paying. Verizon claims that this is contrary to the goals of Act 183. Verizon R.Exc. at 17.

Sprint argues that the RLECs’ claims that they cannot increase their rates without risking line losses, are misleading in light of the fact that the record shows that CTL is losing 7% to 8% of its access lines annually and that the cause of these line losses, according to PTA, is that competitive services offer mobility, convenience, high tech functionality, camera service, availability of applications, web browsing, data transmission and VoIP and “[t]his overall maturation of technology has driven growth of competitors lines, including wireless carriers, at the expense of traditional lines.[[113]](#footnote-113) Sprint submits that in light of the obvious advantages of alternatives to basic wireline service, the question is not whether RLECs will lose customers following rate rebalancing attendant to access reform, but how many of those customers would have left regardless of rate increases. Sprint opines that maintaining inflated access rates will not prevent that exodus and neither will offsetting access charge reductions with another anti-competitive subsidy such as the PaUSF. As such, Sprint avers that no evidence exists that supports the RLEC position that rate rebalancing to accomplish access reform would not conform to statutory revenue neutrality obligations. Sprint R.Exc. at 18-19.

The PTA is concerned that the ALJ disregarded its testimony that substantially higher prices are not recoverable in the areas where there is competition. The PTA submits that the RLECs’ local service territories are not fully competitive, but yet there is substantial competition and if rates are set too high it will accelerate customer losses. The PTA claims that the behavior of its own member companies proves that there is little or no “headroom” in the market for higher local rates in light of the fact that, as of June 2008, there was approximately $22 million of banked revenue allowed, but unused, for revenue increases. That amount subsequently increased to almost $30 million as of January 2010, from which only $18.8 million in rate increases were taken mostly to ancillary services. PTA Exc. at 50-51. The PTA provided three examples involving its RLEC members (Citizens Telephone Company of Kecksburg, Consolidated PA, and Denver and Ephrata) who chose to forego using all of their banked revenues for rate increases due to competition in their service areas. The PTA submits that ALJ Melillo did not consider this aspect of the RLECs’ concerns in her R.D., except to note that the PTA raised it. The PTA claims these pricing limitations are typical situations among the RLECs.  *Id.*

The PTA declares that the access revenues that the RLECs receive are important to their day-to-day operations and maintenance of their networks and that any shortfall in revenue will compel the RLECs to reduce the capital expenditure needed to continue to provide quality service to rural customers in Pennsylvania. The PTA also notes that the ‘exogenous change’ clauses contained in Act 183 plans recognize a dollar-for dollar recovery for regulatory and legislative changes which affect revenues or expenses. With the concept of revenue neutrality codified into Pennsylvania law, the PTA avers that the Commission must provide a realistic opportunity for the RLECs to recover revenues that are regulated by the Commission in a manner which will offset access charge reductions on a dollar-for-dollar revenue basis. PTA Exc. at 51-55.

AT&T replies that the ALJ properly rejected the RLECs’ claims that the market will not allow them to raise local rates to recover access rate reductions. More specifically, AT&T argues that the ALJ properly ruled that § 3017(a)[[114]](#footnote-114) requires that the RLECs must be given an opportunity to recoup lost access revenues on a revenue neutral basis, but that each RLEC’s response to access reform is left to the RLEC’s discretion. Furthermore, AT&T submits that, because RLECs voluntarily chose to operate pursuant to price cap regulation under Act 183, there are no guarantees that revenue reductions will be recovered in a competitive environment. AT&T argues that the RLECs’ access revenues have already been decreasing for years, yet no one would seriously contend that the Commission must reimburse the RLECs for those market losses. AT&T R.Exc. at 33.

In its Exceptions, the PTA also submits that the RLECs it represents are required to be COLRs in order to fulfill regulatory requirements. In this regard, the PTA objects to the ALJ’s rejection of its estimate that “perhaps 40% of rural customers are without competitive options” because it is unsupported by the record.[[115]](#footnote-115) The PTA defends its statement by claiming the competitive presence is difficult to establish and is not always known. The PTA admits that although 40% is an estimate, the lack of competitive coverage in rural Pennsylvania was fully explored in the record and showed that there are still sizable rural areas where other carriers have chosen not to serve, particularly residential customers. In support of this Exception, the PTA notes that the record shows that cable voice service is only in 58.5% to 75% of the total households in Pennsylvania[[116]](#footnote-116) and the Legislative Budget and Finance Committee’s (LB&FC) study of cellular coverage found that wireless service overlap is not complete, especially in the northern tier of the state where “dead zones” exist.[[117]](#footnote-117) Even if the degree of competition cannot be determined exactly, the PTA avers that the Commission must continue to be mindful, as it always has been, about the customer who has no option. PTA Exc. at 47‑48.

Verizon replies that the PTA makes the wholly unsupported claim that the RLECs are the only service provider, i.e., that there are no competitive options for “perhaps, forty percent (40%)” of the RLECs’ customers. Verizon asserts that the RLECs provided no evidence of what portion of their customers lack competitive options and that the PTA’s witness admitted at the hearing that PTA had not done any studies to quantify where competition exists in Pennsylvania.[[118]](#footnote-118) With the RLECs conceding that competitive options are present in every single one of their exchanges,[[119]](#footnote-119) Verizon opines that this unsubstantiated guess, that as many as forty percent of customers lack competitive options, is overstated and cannot be relied upon as evidence. Verizon R.Exc. at 18, n. 23.

In its Exceptions, CTL argues that the ALJ erroneously concluded that the RLECs failed to produce any cost information regarding their universal service/COLR responsibilities or other proof that shows that universal service/COLR would be adversely impacted. CTL submits that the R.D. effectively discounts universal service/COLR obligations by requiring cost studies to demonstrate the value of universal service/COLR. CTL believes that the ALJ’s rationale is flawed and inconsistent with the long-standing polices of this Commission and should be rejected. CTL Exc. at 35-36.

CTL submits that Section 1501 of the Code[[120]](#footnote-120) need not contain the words “COLR” or “carrier of last resort,” because it already contains the requirement that utilities provide safe, adequate and reliable utility service. CTL maintains that it adheres to this part of the Code and the fixed cost nature of the network and COLR responsibility require continued PaUSF funding for CTL to ensure that its network is maintained, even for those customers who have departed it for the services of another carrier. CTL Exc. at 36-37. To the extent that universal service/COLR requires cost support, CTL avers that the record in the Colwell investigation demonstrates that revenues from CTL’s residential end-user revenues are insufficient to recover the cost of providing their service.[[121]](#footnote-121) CTL Exc. at 37-38.

With regard to the RLECs’ contention that the R.D. improperly presumed that the only way they could satisfy their burden of proof was to submit cost studies,[[122]](#footnote-122) Verizon replies that the R.D. simply observed that one way the RLECs could have attempted to prove that their access rates were just and reasonable was to “present cost data to establish that rates are not excessive in relation to costs,” and they did not so. Melillo R.D. at 75. Verizon notes that the lack of such cost data was only one factor in the totality of the record that supported the R.D.’s overall conclusion that the RLECs’ access rates are not just or reasonable and must be reduced. Verizon R.Exc. at 6.

Regarding CTL’s reasoning that it did not submit cost studies because it believes the pricing of switched access should be based on “policy objectives” rather than “cost studies and cost support,” Verizon submits that even viewed as a matter of policy, the record contains more than ample evidence demonstrating the public harm caused by allowing the RLECs to continue to charge excessively high access rates. By contrast, Verizon argues that the RLECs presented no real evidence to verify vague claims in support of exorbitant access rates. With regard to CTL’s argument that “[e]xisting RLEC intrastate access rates are just and reasonable because those rates help provide critical revenue support for RLECs to comply with COLR\universal service policies and to undertake legislative requirements such as Act 183’s broadband commitments,” and that the “social benefits” of high access charges” more than outweigh the economic inefficiencies” of requiring other carriers to subsidize RLEC operations, Verizon opines that CTL inexplicably faults the R.D. for expecting CTL to “prove up via a cost study” that the revenues actually are providing “critical revenue support” to CTL. Melillo R.D. at 8. Verizon submits that the R.D. did not hold that the RLECs should be prohibited from recovering this revenue; it simply found that RLECs should recover more of their operating revenue from their own end users and less of it from other carriers. Verizon R.Exc. at 6-7.

CTL argues that the ALJ erred in dismissing its Consumer Survey. CTL submits that the Consumer Survey demonstrates significant customer defection upon increases to their monthly bills. In dismissing the Consumer Survey, CTL claims that the ALJ rejected the only piece of evidence in this record that gauged the impact of access charge reductions on residential customers. CTL Exc. at 31.

CTL contends that the ALJ also erred in improperly finding and concluding that CTL’s consumer survey was “seriously flawed as it was results-oriented, timed to coincide with holiday shopping when consumers’ budgets were already stretched, and prepared solely for litigation.[[123]](#footnote-123) It argues that the ALJ erred in finding that CTL has not used a similar survey to determine whether to implement a price increase and, therefore, does not rely on this type of survey to make its own retail rate decisions.[[124]](#footnote-124) In support of these Exceptions, CTL claims that no other party presented a consumer survey to support their position. Contrary to the ALJ’s finding, CTL submits that the survey is not “results-oriented” or otherwise flawed as it was prepared for litigation and was done in real time and included real-world rates. CTL argues that AT&T provided no supporting evidence that the survey results were inaccurate due to its timing. CTL contends that it could be argued that those customers that responded could have been still in the “holiday cheer mode” since the celebration was yet to come and the bills were not yet due as opposed to the ALJ’s reasoning that consumer’s budgets were already stretched because of the holidays. With regard to the ALJ’s finding that no attempt was made to account for possible rate decreases to long distance rates, CTL argues that the net increase to customer bills would exceed $3.00/month, even if AT&T followed through on its promised reductions in its in-state access fee. As such, CTL opines that there was no need to explain to survey respondents any complicated scenarios when the outcome remains an overall increase in a customer’s bill. CTL Exc. at 33‑34.

AT&T replies that the ALJ properly rejected CTL’s survey due to its numerous flaws, and the Commission should similarly reject it. AT&T submits that the survey was conducted solely for the purpose of supporting CTL’s attack on access charge reductions in this case and that in e-mails exchanged between the survey company and CTL, the CTL market research manager told CTL’s original witness, Dr. Brian Staihr, that he wanted to “make sure the output gets what you want. . . .”[[125]](#footnote-125) AT&T R.Exc. at 35. AT&T reiterated the multiple problems it had with the study and which the ALJ adopted as her basis for rejecting the survey. *Id.* In addition, AT&T notes that CTL failed to provide any empirical evidence based on a recent rate increase in New Jersey to see if experienced line losses matched what its survey claimed. AT&T alleges that if empirical evidence supported CTL’s case, it would have introduced that evidence rather than relying on a flawed, hypothetical survey. AT&T points out that CTL itself previously acknowledged that a Commission cannot rely on elasticity studies to determine how customers react to price when Dr. Staihr, who oversaw CTL’s Pennsylvania survey, previously testified that “elasticity studies tend to overestimate the responsiveness of customers to price changes for basic telephone service….”[[126]](#footnote-126)

AT&T contends that PTA’s claim, that if it undertook the same survey for its member companies, the results would be the same, is highly speculative and demonstrably false in light of data provided by the PTA that indicates that PTA’s line losses over the years have nothing to do with changes in price. AT&T cites to AT&T Cross Examination Exhibit No. 5, which shows that Denver and Ephrata experienced virtually no change in its line loss in 2002 when prices were raised by over thirty-five percent and Attachment 3 to AT&T Statement 1.2, which shows large percentages in the number of line losses for Citizens of Kecksburg even though it had maintained an $11.00/month rate for many years. AT&T claims that this data shows that line losses or gains have little relation to price and further demonstrates the invalidity of the survey itself and support for the ALJ’s ruling. AT&T R.Exc. at 37.

**iv. Disposition**

We are persuaded by Verizon’s argument that the RLECs failed to demonstrate in this proceeding that it is impossible for them to recover a reasonable level of revenue from retail rate increases. As noted by Verizon on page 16 of its Replies to Exceptions, the record shows that many of the RLECs have not even increased their residential rates to the $16.00/month level allowed by the *Global Order* more than ten years ago, and that only four of them have increased to the $18.00/month level permitted in 2003.[[127]](#footnote-127) In this regard, we find merit with Verizon’s argument that, if two RLECs (*i.e.*, Buffalo Valley and Denver and Ephrata) can charge almost $18.00/month for basic residential service, then other RLECs should be able to raise their rates to that level. In addition, ALJ Melillo noted in her R.D., the single line business rates of CTL and many of the RLECs is $10.00 below the national average business rates.[[128]](#footnote-128)

In light of the above, we find that ALJ Melillo correctly determined that the RLECs made no effort to design a rate rebalancing that would minimize residential rate increases.[[129]](#footnote-129) We also agree with ALJ Melillo that “[e]ach and every RLEC has room for access rebalancing if approached with an open mind to optimum rate design.” ALJ Melillo also correctly observed that the RLECs’ business rates could be increased in greater proportion to residential rate increases, if needed to keep residential rates lower.[[130]](#footnote-130) For these reasons, we find that the Exceptions on this matter are meritless and they are, therefore, denied.

Regarding the arguments that the RLECs believe they are entitled to a guarantee of recovering lost revenues from access charge reform, we agree with AT&T that the ALJ properly ruled that Section 3017(a) of the Code[[131]](#footnote-131) gives the RLECs the *opportunity* to recover lost access revenues on a revenue neutral basis, but that each RLEC’s response to access reform is left to the RLEC’s discretion. Section 3017(a) states: “[t]he commission may not require a local exchange telecommunications company to reduce access rates except on a revenue neutral basis.”[[132]](#footnote-132) Nothing in this provision guarantees that all access revenue reductions will be revenue neutral. Such a definition that guarantees revenue recovery would be illogical under Act 183, especially in the existing telecommunications markets, which are becoming more competitive each year. The PTA concedes as much in arguing that “[r]evenue neutrality must provide the PTA Companies with a *realistic* opportunity for recovery of revenues that are regulated by this Commission….” PTA Exc. at 54.

We emphasize that the revenue neutral rate rebalancing called for in this Opinion and Order does not implicate the RLECs’ various Chapter 30 exogenous event provisions and we forewarn the parties hereto that any attempt to claim that our action today constitutes an exogenous event in future PSI/SPI filings will not be considered. It is the revenue neutral nature of the rate changes contemplated by this decision that set this action apart from other regulatory action that could negatively impact RLECs revenue streams and thereby be subject to an exogenous event claim for recovery.

With regard to the PTA’s concern that the ALJ rejected its competition estimate, we are not persuaded that the estimated forty percent is reliable. The record shows that the RLECs declined to undertake any granular studies of competition in their territories,[[133]](#footnote-133) but conceded that competitive options are present in every single one of their exchanges.[[134]](#footnote-134) We agree with Verizon’s argument in its Replies to Exceptions that if the RLECs were truly concerned that a small subset of their customers required extra attention to universal service needs, they could have presented evidence to allow a targeted solution, but they did not. Verizon R.Exc. at 19.

We acknowledge that the service areas of the RLECs are subjected to intermodal competition by providers of wireline and wireless telecommunications and other communications services. CTL Exc. at 3, 20-21. To the extent that the RLECs themselves provide retail broadband access links to their end-user consumers consistent with the goals and policies of Act 183, these consumers themselves may choose to obtain certain types of communication services and applications from providers other than the RLEC or any of its affiliates. The primary focus of this proceeding has been the intrastate access charges of the RLECs. Based on the evidence before us, we cannot readily ascertain at this time what locations or what proportions of the service areas of the RLECs are or are not subject to intermodal competition and to what degree. For example, facilities-based wireline competitors such as cable (CATV) companies that are unaffiliated with an RLEC may be present in one or more urban markets of an RLEC. However, the same CATV competitor may not have extended its network facilities and may not be present in the more rural areas of the RLEC’s service territory. Under the existing regulatory framework, the presence of intermodal competition does not obviate the COLR obligations that the RLECs currently have because of applicable Pennsylvania law and Commission regulations. Furthermore, such competition does not retire the RLECs’ Act 183 obligations to continue operating their respective and “universally available, state-of-the-art, interactive broadband telecommunications” networks or finalize and meet their respective commitments for deploying such networks. The same RLEC networks are also obliged to interconnect and adequately, safely, and reliably handle originating, transiting and terminating traffic of various protocols and for various wireline and wireless providers of telecommunications and communications services, under the statutory mandates of both federal and Pennsylvania law and relevant bi‑jurisdictional regulations. *See generally* 47 U.S.C. § 251(a).[[135]](#footnote-135)

The RLEC intrastate carrier access charge reforms that are being directed through this Order and the interpretation of Section 3017(a), 66 Pa. C.S. § 3017(a), will provide the RLECs with the appropriate opportunity to recover monetary streams in response to these access reforms in a revenue neutral manner. In this manner, we preserve the necessary balance between the need to implement reasonable prices for the intrastate carrier access services of the RLECs, the RLECs’ need to maintain an adequate revenue stream in order to carry out their statutory and regulatory public utility operational obligations, and the need to continue preserving the concept of universal service among Pennsylvania’s end-user customers.

We also reject the PTA’s contention that the R.D. improperly presumed that the only way the RLECs could satisfy their burden of proof was to submit cost studies. We concur with Verizon’s appraisal that the R.D. simply observed that the submission of cost studies was just one way the RLECs could have attempted to prove that their access rates were just and reasonable. Contrary to the PTA’s interpretation of the R.D., the ALJ did not insist that the parties present cost data to establish that rates are not excessive in relation to costs.

Finally, based on the record evidence, we conclude that the ALJ correctly rejected CTL’s Consumer Survey. The major flaw that we find with the survey is that it is not backed up by empirical data. In addition, we find convincing AT&T’s observation that CTL’s witness Dr. Staihr had testified previously that a Commission cannot rely on elasticity studies to determine how customers react to price because elasticity studies tend to overestimate the responsiveness of customers to price changes for basic telephone service. This contradictory testimony erodes Dr. Staihr’s credibility in proffering a different conclusion with regard to CTL’s survey in this case.

We determine that complete elimination of the CC is not appropriate. As noted previously, the Commission has traditionally treated local loop costs as joint costs.[[136]](#footnote-136) Presently, Verizon PA recovers a portion of its own local loop costs through its intrastate access rates. As noted, this Commission has consistently held in many telecommunications cases that the fixed costs associated with the loop plant and facilities of ILECs should be allocated and recovered by services that utilize the local loop, including the ILECs’ intrastate carrier access services.[[137]](#footnote-137)

Moreover, although the Commission’s *Global Order* proceeding and subsequent case adjudications undertook extensive access charge reforms, ILEC loop plant and facilities costs were always considered joint. The *Global Order* held that the recovery of the jurisdictional non-traffic sensitive costs of such loop plant and facilities should continue from all intrastate services that utilize them including access.[[138]](#footnote-138) This led to substantial reform of the intrastate carrier charge component of the switched carrier access services of both major and rural ILECs, but it did not result in its outright elimination. The Commonwealth Court of Pennsylvania upheld the retention of the CC in its in-depth review of the *Global Order*.[[139]](#footnote-139)

Under Section 254(k) of TA-96, 47 U.S.C. §254(k), both this Commission and the FCC “shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service *bear no more than a reasonable share of the joint and common costs* of facilities used to provide those services.” 47 U.S.C. §254(k) (emphasis added). Our action today is consistent with that mandate. While our approach is not entirely in step with the FCC and some other states where the CC has been eliminated in its entirety, we must consider what is reasonable for Pennsylvania consumers.[[140]](#footnote-140) We adhere, therefore to the concepts of gradualism and avoidance of rate shock to residential consumers as we move through the process of access charge reform in Pennsylvania and in so doing, retain the CC as a fair means by which the ILECs may recover local loop costs from entities using those facilities.

Despite concluding that the CC should not be eliminated, we nevertheless find that the gradual reduction of the CC to a $2.50/line/month level is appropriate.[[141]](#footnote-141) Our review of the record as a whole and our consideration of the RLECs’ argument that they must be given a reasonable opportunity to undertake revenue neutral rate rebalancing has informed our decision. Put simply, under Section 3017(a), an ILEC is not entitled to a guarantee of revenue neutrality – *i.e*., dollar for dollar recovery, but, instead, an opportunity for revenue neutrality.[[142]](#footnote-142) The opportunity to increase local rates to and beyond[[143]](#footnote-143) the levels discussed in this Order will be one tool in the toolbox for ILECs to achieve revenue neutral rate rebalancing. We find that the CC is a second useful tool that will assist the ILECs as an additional revenue source and will require the IXCs to provide a reasonable contribution to the local loop costs for facilities that are used to provide their services. Thus, the IXCs get no “free ride” and the ILECs are provided another means to offset access charge revenue reductions.

**c. Comparability and Affordability of RLEC Rates**

**i. Positions of the Parties**

The OCA stressed the importance of recognizing both comparability and affordability standards in setting basic local exchange rates in order to maintain universal telephone service at just and reasonable levels. The OCA presented a four-part integrated plan for access charge reform and rate rebalancing which is to be adopted in its entirety for access charge reductions to be approved. Step two of that proposal, concerning comparability and affordability of RLEC residential basic local exchange rates, provided for rate increases up to OCA’s affordability benchmark (which also was raised before ALJ Colwell), limiting the entire customer basic local telephone bill to no more than 0.75% (three-quarters of one percent) of the Pennsylvania median rural household income.[[144]](#footnote-144) OCA St. No. 1 at 9-18.

The OCA’s comparability position, is premised on 47 U.S.C. § 254(b)(3) and based on a benchmark of 120% of the Verizon weighted average residential basic local exchange service rate (currently $17.09/month) based on Verizon’s weighted average rate of $14.25/month. Regarding its affordability position, the OCA cited to 66 Pa. C.S. § 3011(3), which required telephone companies to ensure that customers pay only reasonable charges for protected services which shall be available on a nondiscriminatory basis. As noted in ALJ Colwell’s R.D., at Finding of Fact No. 17, the OCA’s affordability rate is $32.00, inclusive of all taxes and other fees.[[145]](#footnote-145)

The OCA responded to Verizon’s criticism of its proposal that Verizon’s rate was not a reasonable benchmark because it had been constrained through the years by regulation. OCA asserted that, as testified to by its witness Dr. Loube, Verizon’s rates were, if anything, too high, and its urban rates were especially too high in relation to cost as they were based on value of service pricing. OCA St. No. 1‑S at 9.

The PTA proposed a slightly higher comparability rate of $18.94/month, which was computed using the 115% comparability adjustment testified to by Mr. Laffey (Colwell Investigation) and the simple average of Verizon’s Density Cell 1 and 2 (urban) rates. While the PTA recognized that comparability had been rejected by ALJ Colwell, it noted that her R.D. was pending and that it would be good public policy to adopt the comparability standard.

CTL asserted that aligning prices with cost was contrary to universal service. It averred that, in accordance with universal service policy, prices for the highest-cost customers must be below cost to support comparability and affordability objectives. CTL does not support any benchmark other than the current residential rate cap of $18.00/month.

Qwest advocated for RLEC access charge reductions through increases in local service rates up to a benchmark rate of 125% of the average RLEC residential rate, including a similar benchmark for business rates. Qwest St. No. 1 at 9. As an alternative, Qwest would not object to a benchmark set at 120% of the Verizon Pennsylvania levels, as proposed by the OCA. Qwest St. No. 1-R at 5. If an RLEC revenue deficiency remained after its rates have been increased to the benchmark level, this deficiency would be addressed via funds from the PaUSF. Qwest St. No. 1 at 8.

**ii. ALJ Melillo’s Recommendation**

The ALJ recommended that the Commission use the OCA affordability rate of $23.00/month.[[146]](#footnote-146) (net of taxes and other fees of about $8.86) and $32.00/month on a total bill basis for analyzing the affordability of local service rates for revenue rebalancing purposes.[[147]](#footnote-147) The ALJ noted that the only affordability analysis was provided by the OCA’s witness Mr. Colton for the investigation in the ALJ Colwell portion of the proceeding. OCA St. No. 2 (Colwell Investigation) at 20.[[148]](#footnote-148) Melillo R.D. at 115-116.

ALJ Melillo declined to use any comparability analysis in considering a benchmark level for rate rebalancing purposes, consistent with ALJ Colwell’s determination in the limited investigation. ALJ Melillo rejected the RLECs’ and the OCA’s proposed comparability standard that was based on the federal statute at 47 U.S.C. § 254(b)(3). The ALJ also concluded that Verizon’s rates are not an appropriate benchmark, as they are subject to modification in the pending *Verizon Access Charge Proceeding* and that the $14.25/month weighted average Verizon rate includes density cells which are not urban. Melillo R.D. at 115‑116.

The ALJ further recommended that the Qwest rebalancing proposal be denied as it was inadequately supported. Melillo R.D. at 116.

**iii. Exceptions**

In its Exceptions, the PTA avers that the ALJ erred by proposing that local rates be set without also considering comparability and sustainability. The PTA submits that the dollars at issue in this proceeding are substantial from the RLECs’ vantage point and that applying the PTA RLECs’ interstate rates to intrastate access minutes will result in an immediate revenue reduction of $63.9 million, or 17.5% of their total intrastate revenues. PTA Exc. at 36.

The PTA points out that revenue recovered through local rate increases would amount to an average tariff rate increase of $7.32/month and cause the local service rates for several of the PTA Companies to more than double. The PTA submits that the national average tariffed rate for local services in 2008, was $15.03/month per line and that under the ALJ’s recommended revenue neutral recovery, the average PTA RLEC residential tariff rate would increase to $23.00/month, which far exceeds Verizon’s own Pennsylvania rural rates. PTA Exc. at 36-37.

The PTA avers that setting rates by comparison is standard ratemaking practice for telephone ratemaking and a hallmark for universal service support. The PTA contends that the ALJ rejected the RLECs’ proposed comparative standards as being not legally required without discussing the merits of the concept. The PTA cites to federal law regarding rate comparability at 47 US.C. § 254(b)(3) and argues that if the $23.00/month (minimum) tariff rate proposed in the R.D. is adopted, Pennsylvania will have created RLECs with very high local rates. The PTA also notes that the FCC had subsequently reaffirmed that the primary responsibility for ensuring reasonable comparability standard lies with the states. The PTA opines that RLEC rates set at $23.00/month are not comparable to Verizon’s statewide weighted residential rate. The PTA recommends that the Commission adopt its proposed comparability rate of $18.94/month. PTA Exc. at 44-46.

CTL argues that the ALJ erred when ordering a new $23.00/month “affordability” residential rate and assuming increases to other noncompetitive services for rebalancing purposes, thereby failing to consider revenue neutrality through the PaUSF. CTL submits that the ALJ simply accepted Verizon’s unsupported statements that rate increases can be minimized as Verizon asserted. CTL claims that the Commission has every reason to be concerned with the ALJ’s $23.00/month residential “affordability” rate and presumed rebalancing through noncompetitive services. CTL Exc. at 25-26.

CTL avers that if the retail benchmark rate is set above market levels, and if no explicit support from the PaUSF is provided, then there is no realistic way in today’s marketplace that the $23.00/month recommended benchmark can be a viable revenue-neutral opportunity. CTL Exc. at 27.

CTL also contends that the ALJ erred in dismissing CTL’s consumer survey, which demonstrated significant customer defection upon increases in monthly bills from CTL. CTL claims that, in doing so, the ALJ rejected the only piece of evidence in this record gauging the impact of access charge reductions on residential customers. CTL submits that the ALJ improperly concluded that CTL’s consumer survey was “seriously flawed as it was results-oriented, timed to coincide with holiday shopping when consumers’ budgets were already stretched, and prepared solely for litigation.” CTL points out that no other party presented a consumer survey to support their position. CTL Exc. at 29, 32.

The OCA avers that the ALJ erred by recommending that basic local exchange rates can be raised based solely on an affordability analysis without consideration of a comparability analysis. The OCA argues that the ALJ’s recommendation to increase basic local exchange rates without considering a comparability benchmark should be modified. The OCA opines that the RLEC basic local service rates should not exceed 120 percent of the Verizon PA weighted average residential rate with affordability serving as a constraint on such rates. OCA Exc. at 6‑7.

The OCA also requests that the ALJ’s recommended affordability rate of $23.00/month rate be clarified on two points. The OCA submits that ALJ Melillo’s R.D. is unclear in that it does not affirmatively state that the affordability rate should not be exceeded and that any additional amounts beyond the affordable rate would be offset by the PaUSF. Also, the OCA notes that, the ALJ does not clearly recognize that the individual line items on the basic local telephone bill can, and do, change. The OCA argues that the Commission should clarify these points by specifically stating in its Order that the RLECs’ basic local exchange rate cannot exceed the affordability rate and that the affordability rate should be periodically refreshed to address changes in the taxes, fees and surcharges required to receive basic local telephone service. OCA Exc. at 14.

OSBA excepts to the ALJ’s creation of a new rate cap by way of an “affordability standard.” The OSBA advocates that the rate caps on local exchange service be removed in their entirety for all noncompetitive service residential and business customers. The OSBA does not see any conflict between achieving universal service and affordability and eliminating all caps on residential local exchange rates. The OSBA states that every residential customer is not a low-income customer in need of assistance and that there is no obvious or compelling reason why non-low income residential customers should be protected from paying the full cost of local exchange service when they are subject to paying the full cost of even more fundamental utility services like water, heat and light. OSBA Exc. at 15-18.

AT&T excepts to the ALJ’s ruling that the highest affordability rate is $23.00/month. AT&T notes that the first problem with the conclusion is that the actual minimum affordability rate is $23.43/month and the PTA’s testimony was that its fees and surcharges add up to $8.57/month and not $9.00/month as used by the ALJ. AT&T notes that the second problem is that the $23.43/month is only a minimum of ranges of rates for affordability and that the ALJ had missed the mark by refusing to recognize the maximum affordability rate of $34.34/month. AT&T Exc. at 35.

AT&T also notes that ALJ Melillo improperly accepted an affordability rate at 0.75% of the average monthly Pennsylvania household income. AT&T submits that there is ample evidence to show that 1% of the average monthly Pennsylvania household income is a reasonable and acceptable number to determine an affordability rate. AT&T avers that it had presented evidence in the case before ALJ Colwell that showed a large percentage of consumers already spend well in excess of $23.43/month for telephone service. AT&T also avers that CTL’s customers pay an average of $30.19/month for local services and that a majority of its customers pay even more. AT&T Exc. at 36.

Sprint posits that an affordability rate that is unnecessarily low could serve as an unintended impediment to full interstate mirroring. Sprint argues that overly conservative estimates should be rejected. Sprint submits that the record evidence indicates that the national average expenditure for telephone services for rural households is 2.62% of average household monthly income, or $86.50/month. Accordingly, Sprint avers that the Commission should reject the overly conservative $23.00/month affordability level. Sprint Exc. at 5-6.

Verizon submits that it does not object to the limited use of the ALJ’s recommended $23.00/month benchmark; however it requests two clarifications with regard to the use of $23.00/month benchmark. First, Verizon wants the Commission to instruct the RLECs to design their rate rebalancing to minimize residential rate increases and take reasonable steps to avoid rates exceeding the $23.00/month level. Verizon also wants RLECs to increase their business rates in a greater proportion to residential rates until they reach the national average of $36.59/month, and also to consider additional increases to other noncompetitive rates. Verizon Exc. at 5-6.

Second, Verizon argues that, even if the Commission uses $23.00/month as a benchmark to control residential rate increases, it should not assume or conclude that $23.00/month is the limit of affordability. Verizon notes that the $23.00/month figure is based on testimony of OCA witness Mr. Colton in the earlier phase of the case before ALJ Colwell and it relied on a very conservative assumption that the average customer would spend only 0.75% of his/her monthly income on basic local service. Verizon submits that the record shows that the affordability level, based on the OCA’s methodology, may be much higher. Verizon Exc. at 6-7.

Verizon avers that the ALJ erroneously concluded that no record evidence supports an affordability level other than 0.75% and so she could not have considered any other affordability level above $23.00/month. Verizon points out that its witness Price, in Rebuttal Testimony at 25-26 and Exhibit 3, testified that, according to FCC’s data, households in the lowest quintile of household income in 2006. spent an average of 3.11% of their total household expenditures on telephone services and the average household expenditure for telephone services for rural households was 2.62% of total household expenditures. Thus, Verizon surmises that one could reasonably conclude that a household could afford to spend 2.6% on local telephone service and that even if only half the average rural household expenditures were used for basic local service, that would be $43.25/month. Verizon Exc. at 6-7.

Verizon additionally requests that the Commission leave the option open to use a higher affordability level in the future. Verizon Exc. at 7.

In its Replies to Exceptions, Verizon states that the ALJ did not recommend imposing a cap of $23.00/month on RLEC residential customers but, instead, uses the $23.00/month as the level at which the Commission would have to undertake a more in-depth individual analysis of that RLEC before more rebalancing could occur. Verizon reiterates that ALJ Melillo made it very clear that she is not treating the $23.00/month rate as a benchmark for purposes of triggering USF support and concludes that the PaUSF should not be expanded to fund RLEC access charge reductions. Verizon R.Exc. at 23.

Verizon submits that neither the law nor the record supports the RLECs’ argument to limit their local exchange rates to $18.94/month as proposed by the PTA or $17.09/month as proposed by the OCA. The PTA has used 115% of Verizon’s Density Cell 1 and Cell 2 and the OCA used 120% of Verizon’s statewide average rates to arrive at their respective numbers. Verizon notes that both the PTA and OCA have brought the same argument of comparability that was rejected by ALJ Colwell in her part of the proceeding. The argument was based on a comparability component to RLEC rate benchmarks based on a federal statute listing governing principles for the FCC and the Federal-State Joint Board on Universal Service that rates in rural areas should be reasonably comparable to rates charged for similar services in urban areas. 47 U.S.C. § 254(b)(3). Verizon states that the Code does not mandate that the RLECs rates must be reasonably comparable to any other carrier’s rates. Verizon adds that in *Buffalo Valley* the Commonwealth Court agreed with the argument of this Commission’s Law Bureau that Section 254(b)(3) is not a mandate to state commissions. Verizon R.Exc. at 25-26.

In response to the OCA’s request for clarification that the RLECs are forbidden from increasing their rates above the $23.00/month level, Verizon contends that the OCA is seeking an absolute cap. Verizon argues that a reasonable reading of the record evidence based on the OCA’s own methodology, is that an affordable rural residential basic service rate would be substantially higher and, therefore, the record supports a $23.00/month rate cap. Verizon notes that, as the OSBA observed, rate caps erroneously presuppose that “[e]very rural residential customer is ... a low-income customer in need of rate assistance.” Verizon notes that the OSBA argues that the Commission should “eliminate[e] all caps on residential local exchange rates” as unnecessary and inappropriate. Verizon agrees with the OSBA that a rate cap is unnecessary and inappropriate. Verizon R.Exc. at 27.

Qwest excepts to the ALJ’s conclusion that its proposed benchmark of 125% of the average Pennsylvania RLEC residential service rate was inadequately supported and is therefore unavailable for consideration. Qwest states that its benchmark approach would provide a less significant increase in the PaUSF than would the OCA’s proposal. Qwest refers to *Buffalo Valley,* and notes that the Commonwealth Court affirmed that the $18.00/month rate cap can be exceeded for such purposes. Qwest Exc. at 3.

Qwest notes that the benchmark rate proposed by the OCA would be below the $18.00/month, and if adjusted for inflation would result in a rate of $22.00/month. Qwest avers that its proposed benchmark level, based on 125% of RLEC average rate, would be below the $22.00/month level, but taking a reasonable middle ground, it proposed a rate not to exceed $20.00/month. Qwest reiterates that its benchmark proposal can be discerned from the evidentiary record, is a reasonable compromise between the parties’ varying positions, and gives the Commission a great deal of flexibility in setting a benchmark rate. Qwest Exc. 3-5.

The OCA contends that the ALJ’s conclusion in her R.D., that the $18.00/month cap on residential basic local exchange rates should be abolished for rebalancing purposes, effectively replaces the $18.00/month rate cap with a $23.00/month affordability constraint. The OCA argues that it is incorrect for the Commission to abolish the rate cap altogether. The OCA submits that, while it is appropriate under certain circumstances to increase the $18.00/month rate cap over time to the ALJ recommended $23.00/month affordability level, the Commission should not abolish the concept of a cap or a constraint. OCA notes that the basic local service residential rate cap established by the Commission in its *Global Order* is an important consumer protection. OCA Exc. at 31-32.

The OCA further notes that the ALJ continues to use the rate cap in her proposal in this proceeding by allowing rate increases to the local exchange up to $18.00/month level to offset reductions in intrastate access rates and, thus, her reference to abolish the basic local exchange rate cap seems inconsistent.[[149]](#footnote-149) The OCA argues that while it might be appropriate, under certain circumstances, to increase the $18.00/month rate cap over time to the $23.00/month affordability level recommended by the ALJ, it would be incorrect for the Commission to abolish the rate cap altogether. The OCA requests that the Commission reject or clarify the ALJ’s conclusion. OCA Exc. at 31‑32, 35.

The OCA is of the opinion that the ALJ did not intend to “abolish” the rate cap in its entirety but, rather, to raise the cap from its current level to a level based on the OCA affordability constraint:

the ALJ’s proposal in this proceeding is to allow increases in the basic local exchange rate to offset reductions in intrastate access rates first by increasing the basic local exchange rate to $18.00, then by increasing the basic local exchange rate in 1/3 increments necessary beyond the $18.00 level to reduce the RLECs’ intrastate access rates to their interstate levels constrained by an affordability level of $23.00. R.D. at 138-139. As such, the ALJ’s recommendation does not “abolish” the residential basic local exchange rate cap but increases the level of the cap. The cap is a vital consumer protection as an affordability constraint that should be maintained by the Commission as part of this proceeding. The OCA agrees that it is reasonable that a constraint should be maintained and adjusted, in reasonable increments, over time as

circumstances (*i.e.*, inflation, median income, etc.) change over time. Doing so will help maintain universal telecommunications service. The ALJ’s reference to “abolish” the basic local exchange rate cap seems inconsistent with the rest of her decision.

OCA Exc. at 35.

In support of its position that the existing caps should not be abolished, the OCA refers to the statements made by Representative William Adolph when House Bill 30 (the legislation that ultimately became Act 183) was initially debated in November 2003, and again in November 2004, which it claims, that while not carved in legislative stone, the principle of a cap to protect rural customers was reflected in Section 3015(g),[[150]](#footnote-150) which “grandfathered” into law the existing protections from the previously approved Chapter 30 Plans. OCA Exc. at 33-34.

The OSBA retorts in its Replies to Exceptions that Representative Adolf’s comments provide insight into how Section 3015(g) of the Code would operate. However, the OSBA is of the opinion that the *Rural Access Settlement Order*[[151]](#footnote-151)subsequently raised the caps that were originally established in the September 3, 1999 *Global Order “*for a minimum of three (3) year period January 1, 2004 through December 31, 2006,” and thus claims that 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.* The OSBA argues that it significant that 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. OSBA R.Exc. at 17‑18.

In response to the OCA’s request for clarification as to whether the $23.00/month level is a cap, Verizon replies that there is no record support to demonstrate that the $23.00/month is a rate cap. Verizon submits that it does not oppose the R.D.’s proposal to use the OCA’s most conservative affordability level of $23.00/month as a point to trigger more in‑depth Commission scrutiny, but disagrees with the OCA’s argument that RLEC rates should be capped at $23.00/month, because it is not supported by substantial evidence. Verizon R.Exc. at 26‑27. Furthermore, Verizon submits that the OCA’s contention that Act 183 effectively codified a cap on RLEC residential rates, (OCA Exceptions at 23), was rejected by the Commonwealth Court.[[152]](#footnote-152) Verizon R.Exc. at 27, n. 32.

In its Exceptions,[[153]](#footnote-153) the OSBA argues that the ALJ erred when she created a new rate cap by way of an “affordability standard.” The OSBA notes that it advocated that the rate caps on local exchange service be removed in their entirety for all noncompetitive service residential and business customers because local exchange rate caps have the effect of treating all residential and business noncompetitive service customers as low-income customers in need of assistance to pay their monthly bill. The OSBA submits that treating all residential customers as though they were low-income is not rational and is not the practice of the Commission in either the natural gas or electric industries.[[154]](#footnote-154) OSBA Exc. at 15.

In light of the above, the OSBA recommended that the Commission focus customer assistance programs on those low-income residential customers that can demonstrate a need for support. The OSBA avers that ALJ Melillo agreed with its position and recommended:

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

Melillo R.D. at 118.

In its Replies to Exceptions, AT&T suggests that the Commission should accept the R.D.’s limited use of a $23.00/month residential rate level, but should not declare any rate caps. AT&T also submits that there is no legal or factual basis to suppress RLEC residential rates to keep them comparable to Verizon’s rates. AT&T R.Exc. at 23-24.

**iv. Disposition**

We are not persuaded by the RLECs’ argument that RLEC rates must be set based on parameters in a federal statute. We agree with Verizon that the Code does not mandate that RLECs’ rates must be comparable to Verizon’s or to any other carrier’s rates. The appropriate inquiry is the affordability of local service rates to maintain universal telecommunications service. While we acknowledge that the FCC and the Federal-State Joint Board on Universal Service have suggested that rates in rural areas should be reasonably comparable to rates charged for similar services in urban areas. 47 U.S.C. § 254(b)(3), we take note of the Commonwealth Court’s ruling in this matter in *Buffalo Valley,* where the Court confirmed that Section 254(b)(3) is not a mandate to state commissions.

Universal service and affordability were the very foundation of our *Global Order*. We determine based on the record constructed in this investigation that a $23.00/month benchmark, exclusive of federal SLC, 911/TRS and taxes, for local service rates is affordable, and is thus, reasonable and appropriate. For those customers that may not be able to afford such a rate, the impending PaUSF rulemaking will examine whether it is appropriate to direct PaUSF support to such customers or their ILEC in order to advance the continuing goal of maintaining universal telecommunications service.

We agree with OCA that the level of customer affordability can change over time. According to the testimony of OCA witness Colton in the ALJ Colwell proceeding, the total bill affordability rate for a residential customer is $32.00/month, which when calculated net of taxes and fees of $8.86, can be rounded down to arrive at an affordable local service benchmark rate of $23.00/month. Melillo R.D. at 42, Findings of Fact Nos. 72-74. We find this testimony persuasive. However, by this Opinion and Order we do not establish a $23.00/month rate cap, but instead, a benchmark rate of $23.00/month exclusive of taxes and fees.

We also agree with Verizon, however, that it is logical to conclude that some RLECs may be able to charge in excess of this benchmark because a rate in excess of $23.00/month may be affordable for customers. We find that it is also likely that further examination of this benchmark may be advisable after it (or local rates in excess of it) have been in place for a period of time.

In establishing the $23.00/month benchmark, we note that we have retained the RLEC CC at a level of $2.50 per line per month in recognition of the joint and common loop cost responsibility for all users.[[155]](#footnote-155)

We are in complete agreement with the OSBA that Section 3015(g) of the Code[[156]](#footnote-156) grandfathered the current caps on local exchange service for residential and business customers only as set forth in the *Rural Access Settlement Order.* As such, we find that this Commission retains the authority to either modify or abolish them.

We also agree with the OSBA that there are conflicts between achieving universal service and affordability and eliminating all caps on residential local exchange rates. We take note of the OSBA’s argument that every residential customer is not a low-income customer in need of assistance and protected from paying the full cost of local exchange service. The PaUSF rulemaking ordered herein will explore these and other issues further.

Accordingly, we agree with the ALJ that a $23.00/month affordability level based on 0.75% of statewide median household income is appropriate for rural local exchange services in Pennsylvania. As such, we shall adopt the ALJ’s proposed affordability level of $23.00/month. We agree with Verizon that the R.D. did not actually impose a “cap” of $23.00/month on RLEC residential rates, but rather uses the $23.00/month benchmark.

**d. Business Rate Increases in Providing Revenue Neutrality**

**i. Position of Parties**

Verizon asserted that there is no record support to limit increases on business service rates to the same dollar amount by which residential rates are increased in any rate rebalancing. It also argued that nothing in Act 183 prohibits a carrier from making a higher per-line increase to business rates.

Verizon referred to the PTA’s testimony from the ALJ Colwell proceeding wherein PTA witness Laffey conceded that the national average single business rate was $36.59/month in 2007, which is $10.00 higher than CTL’s business rate of $26.23/month, and higher than many of the other RLECs’ business rates. *See*, PTA St. No. 1R at 22 (Colwell Investigation); Price (Verizon) Rebuttal Ex. 1; AT&T St. No. 1.2, Attachment 5.

In response to Verizon’s position, the OSBA indicated that it has provided testimony on continuing the business rate caps, and that the *July 2003 Order* established a business rate cap as follows:

Increases to weighted average business rates on a dollar basis will be less than or equal to the increases to weighted average residential rates on a dollar basis.

*July 2003 Order*, Attachment A, Conditions of Proposal, Paragraph 5, *slip op*, at 20.

The OSBA advocated the abolishment of business rate caps along with residential rate cap. However, it contended that Verizon’s apparent proposal to increase the RLECs’ business rates “without any constraint” would violate Section 1304 of the Code, 66 Pa. C.S. § 1304, in that it would permit RLECs to discriminate against business customers in favor of residential customers. It noted that Section 1304 of the Code was specifically incorporated into Act 183 by Section 3019(h) of the Code, 66 Pa. C.S. § 3019(h). The OSBA’s position is that, regardless of how the Commission rules on the issue of residential and business rate caps, Verizon’s proposed unfettered increases to business customers are discriminatory and unlawful. OSBA Reply Brief at 21-23.

**ii. ALJ Melillo’s Recommendation**

The ALJ agreed with the OSBA that the cap on business rate increases should be abolished, along with the $18.00/month residential cap, for rebalancing purposes. With respect to business rate increases, the ALJ recommended that RLECs be provided flexibility to design a rate rebalancing for the various companies within “just and reasonable” parameters (discussed *supra*). The ALJ agreed with the OSBA that residential rate affordability and avoidance of rate shock cannot be accomplished through unreasonable increases to business rates. Melillo R.D. at 118.

**iii. Exceptions**

The OSBA avers that it had advocated that the noncompetitive business service customers should not become the “payors of last resort,” *i.e.,* business rates should not be raised without limit in order to keep residential rates low, because this would result in a discriminatory treatment of business customers that would violate Section 1304 of the Code, 66 Pa. C.S. § 1304.[[157]](#footnote-157) OSBA Exc. at 15-16.

The OSBA notes that the ALJ agreed with the OSBA on this issue, when she recommended:

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.

Melillo R.D. at 118.

However, in contrast to her recommendation to remove the rate caps on noncompetitive residential and business services, the ALJ recommended the adoption of an “affordability” rate for residential customers of $23.00/month:

. . . 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.

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

Melillo R.D. at 116.

The OSBA is concerned that the ALJ is removing the rate caps for both noncompetitive residential and business service customers on one hand, and establishing a new $23.00/month rate cap for residential customers, but none for business customers on the other. This would allow the $23.00/month affordability level to operate as a residential-only rate cap, and leave it to noncompetitive business customers to absorb any shortfall in revenue caused by the decrease in intrastate access charges. OSBA Exc. at 17.

In light of the above, the OSBA asserts that such a result would be discriminatory and violate Section 1304 of the Code.[[158]](#footnote-158) OSBA Exc. at 15-17. As such, the OSBA requests that the Commission reject the ALJ’s proposed affordability rate and develop a customer assistance program for RLECs’ low-income residential customers, and provide them with help if they can demonstrate a need.

In reply to the OSBA Exceptions, CTL notes that the OSBA does not go so far as to request that the Commission impose limits on business rates, but only reiterates its position that all caps on residential local exchange rates should be eliminated. CTL is of the opinion that a reasonable rate limit on residential rates is appropriate when rebalancing RLEC switched access rates and is consistent with prior access reform actions. CTL R.Exc. at 36-37. CTL is of the opinion, however, that the $23.00/month rate is too high and flawed.[[159]](#footnote-159) However, to the extent the Commission adopts the ALJ’s mirroring recommendation and does not rely upon the PaUSF as recommended, CTL believes that the OSBA’s approach of eliminating all retail rate benchmarks, notably the residential retail rate benchmark, may be required, at least conceptually, in those instances where a RLEC is faced with a very small base of customers. In those instances, CTL avers that the RLEC will have to rely solely upon those customers to meet its universal service/COLR obligations. CTL R.Exc. at 37.

**iv. Disposition**

We do not believe that the ALJ’s recommendation to eliminate the rate cap of $18.00/month along with the establishment of a recommended affordability rate $23.00/month for residential customers, was intended to result in business customers being the “payors of last resort,” or that business rates will be raised without limit. In fact, the ALJ agrees with OSBA’s position, “… that residential rate affordability and avoidance of rate shock cannot be accomplished through unreasonable increases to business rates.” Melillo R.D. at 118.

We agree that any RLEC’s switched access rate rebalancing should result in proportionate rates change for both residential as well as business customers. This is consistent with our prior access charge reform rulings.

**e. PaUSF Support for Further Access Rebalancing**

**i. Position of Parties**

In its rebalancing proposal, AT&T proposed increases in PaUSF support temporarily, after local rates are increased or imputed to a benchmark level of $22.00/month in the first year and then reductions to the funding as further rate increases are gradually implemented. During each of the next three years, the monthly benchmark would be increased by $1.00 and PaUSF support would correspondingly be reduced. Accordingly, the RLECs would recover access revenue reductions from local rates up to a benchmark with the remainder from a transitional PaUSF. AT&T St. No. 1.2 at 20‑21.

AT&T explained that its proposed benchmark would not act as a “cap” on local service rates; instead, it would determine the rate at which carriers could begin to recover lost access revenues from the PaUSF. AT&T’s plan does not mandate that a carrier raise rates but, instead allows the carrier to decide. Under its plan, AT&T calculated that the PaUSF would need to be increased by $19.6 million in the first year, but by the end of the four year transition, the increase would be less than $1 million, and only six carriers would continue to draw additional funds from the PaUSF. AT&T St. No. 1.2, at 14; Attachment 5; AT&T Main Brief at 59-61.

The OCA opposed AT&T’s proposal primarily based on AT&T’s suggested benchmark level that OCA considers to be unreasonable and unaffordable. OCA Main Brief at 43‑47.

Verizon strongly opposed any increase in the PaUSF, even on a temporary basis, for several reasons. Verizon Main Brief at 41-58. First, Verizon cited to ALJ Colwell’s R.D. where she had characterized the PaUSF as a “hidden tax” on the ratepayers of other telecommunications providers which was not targeted to need and recommended that it be reformed through a rulemaking process. ALJ Colwell R.D. at 87. Verizon also cited to ALJ Colwell’s R.D., where she concluded that the PaUSF was hopelessly flawed and in need of reform, and argued against an expansion of it and stated that it was unsupportable from both a policy and legal basis.[[160]](#footnote-160)

Next, Verizon presented legal argument that the expansion of the PaUSF, as sought by both AT&T and the OCA, was not authorized by current law. According to Verizon, the PaUSF was instituted by the Commission in the *Global Order* as a temporary measure designed to facilitate the transition from a monopoly environment to a competitive environment.[[161]](#footnote-161) Verizon noted that as was concluded by ALJ Colwell in her R.D., there was no expectation by the Commission that it would be institutionalized in its present form. ALJ Colwell R.D. at 88. Verizon also explained that the old Chapter 30 rules contained certain language which the Commonwealth Court had accepted as providing sufficient authority for a fund to offset access charge reductions and thereby protect consumers.[[162]](#footnote-162) However, in contrast to the old Chapter 30, Act 183 specifically provides for revenue neutral rebalancing for access charge reductions and does not provide for a PaUSF to rebalance those reductions. Verizon interpreted the Legislature’s silence as indicating a lack of statutory authorization for PaUSF expansion. Verizon Main Brief at 41-58.

Verizon continued with its legal analysis that, even if the Commission had the statutory authority to increase the PaUSF, the current regulations make no provision for increasing the size of the fund to account for future RLEC access charge reductions. It claimed that the regulations determine the size of the PaUSF each year based on the prior year’s size minus the estimated surplus or plus any shortfall from the prior year. 52 Pa. Code § 63.165(b). Verizon argued that the only provision to increase the size of the fund is growth in access lines of recipient carriers, but as indicated by the RLECs, the recipient carrier lines are declining. Therefore, Verizon concluded that the size of the fund cannot be increased without a rulemaking to specifically allow for a fund increase, and thus, the AT&T and OCA proposals cannot be approved in this proceeding.

Verizon also emphasized the huge regulatory burden that the PaUSF would impose on the Verizon ILECs and other regulated carriers including adverse consequences to those companies and their customers. According to Verizon, it is not reasonable or supportable to expect other carriers and their customers to fund the RLECs’ operations through access charges and/or the PaUSF in today’s competitive environment. It cited to *Brooks-Scanlon, supra*, as holding that regulators cannot force public utilities to operate their regulated business in Pennsylvania at a loss. Verizon further indicated that its own customers and customers of other carriers would be negatively impacted if these carriers were forced to divert even more resources to other carriers and have fewer resources for their own product development and investment. Verizon St. No. 1.1 at 48‑49. Verizon cited to AT&T’s testimony that the responsibility for RLEC cost recovery belongs with the RLECs’ own retail customers. According to Verizon, expansion of the PaUSF would just be substituting one anticompetitive, anti-consumer system of subsidization through excessive access charges for another anticompetitive, anti-consumer system, and consumers will be harmed as a result.[[163]](#footnote-163)

With respect to claims of universal service impact without PaUSF expansion, Verizon highlighted the evidence of record, which shows that universal service is not in jeopardy in the RLECs’ territories. Verizon contended that competition is robust, as conceded by the RLECs themselves, and that, as stated by ALJ Colwell, “the market is meant to rely on competition to keep rates affordable” and that subsidies without proven need “will not assist the market in reaching its goals and will, instead, provide barriers to entry for new carriers.” Colwell R.D. at 87. According to Verizon, to the extent there are any isolated low-income individuals that don’t have competitive options, this can be addressed through the rulemaking recommended by ALJ Colwell. Verizon Main Brief at 41‑58.

In its Reply Brief, Verizon further explained how AT&T’s proposal, even though temporary, would cause substantial expense to the Verizon ILECs and their customers. It contended that, if $19.6 million is transferred to a temporary PaUSF under the first year of AT&T’s plan, under the same rules that apply to the current PaUSF, the Verizon ILECs would pay $10 million of that $19.6 million, where they would only have paid $1.5 million if the revenue was obtained through access rates – a net increase in the Verizon ILECs’ funding burden of $8.5 million. Verizon St. No. 1.2 at 12.

Verizon also suggested that, if the initial benchmark under AT&T’s proposal was increased by $1.00 to $23.00/month, then the revenue left unrecovered from retail rate increases would be cut by more than half. In that case, at step 2 of the AT&T proposal, nineteen of the RLECs would be able to rebalance their access rates to match their interstate rates if they increased their residential rates to $23.00/month and made an equal increase to business rates. AT&T St. No. 1.2, Attachment 5.

In its Reply Brief, AT&T primarily provided reasons why the OCA proposal, which in its view would triple the size of the PaUSF permanently, should not be adopted. AT&T asserted that its proposal represented a reasonable and balanced approach to universal service concerns. AT&T Main Brief at 62; AT&T Reply Brief at 53.

In response to Verizon’s legal argument that a rulemaking is required to expand the PaUSF, AT&T asserted that the PaUSF was specifically intended to be used for access charge reductions and, therefore, there is no need for a rulemaking to increase the size of the fund for that purpose. It contended that the PaUSF Administrator and the Commission must calculate the impact on carrier assessments and must collect such assessments in accordance with the normal practice and procedures for administering the PaUSF.

In its four-part proposal, the OCA seeks to increase the PaUSF by $63.4 million, without a termination date, to meet a reduced benchmark level of $17.09/month as required under the OCA proposed comparability benchmark. The OCA’s proposal also suggested the enlargement of the PaUSF revenue base by capturing any service provider that uses the PSTN, including wireless carriers and VoIP providers. According to the OCA, all parts of its proposal must be adopted in their entirety in order for the OCA plan to be approved. OCA Main Brief at 2, 50-52.

As was stated in AT&T’s rebuttal testimony, the calculations of the revenue impact of interstate mirroring range from $76.85 million (OCA calculation) to $91.67 million, with an intermediate AT&T calculation of $82.6 million. According to AT&T, these differences were the result of different data sources, such as different dates for line counts and access minute volumes, which can be resolved in the implementation process. AT&T St. No. 1.2 at 22-23.

In contrast to the AT&T and the OCA rate rebalancing proposals, Verizon’s plan does not require any increase in the existing PaUSF. Instead, it advocated access charge reductions and associated revenue neutral increases to noncompetitive rates phased in over time as much as needed. Verizon proposed that each RLEC submit a rebalancing plan in a compliance filing which initially assumes a $23.00/month residential rate and reasonably maximizes the revenue allocated to other noncompetitive service rates. Each RLEC should be evaluated on a carrier-by-carrier basis. Verizon opines that the Commission can then, consistent with AT&T’s proposal, address whether it is reasonable for any RLEC to implement a transition plan reducing access rates in steps or take some other reasonable approach. AT&T St. No. 1.2, Attachment 5. Verizon also noted that allocations of revenue could also be made to other noncompetitive service rates such as ancillary services. Verizon Main Brief at 37-38.

In response to AT&T’s and the OCA’s plans to mitigate initial rate impact through use of an expanded PaUSF, Verizon offered a funding alternative that would use approximately $8.4 million in alleged excess funds from the current PaUSF for a short transition period (*e.g.*, during the rulemaking) without requiring any carrier to increase its current PaUSF contribution (and, therefore, not requiring any change to current regulations). Verizon computed the $8.4 million through a process described at footnote 78 to its Main Brief (*see also*, Verizon St. No. 1.2 at 14-16). According to Verizon, the current PaUSF provided approximately $33.6 million to RLECs as replacement revenue removed from the RLECs’ access reduction in 2000, following the *Global Order.* However, because the RLECs have experienced a 20-28% line loss since that time and access minutes have declined by 31.6%, no downward adjustment to the size of the fund has been made for such losses and this has been a constant revenue stream to the recipient RLECs. Verizon calculated this adjustment to be $8.4 million, which represents a 25% reduction in the PaUSF. According to Verizon this money could be redirected from the PaUSF to assist specific RLECs with phasing-in revenue neutral increases. Verizon Main Brief at 28‑29, 37-39, 55-58.

The PTA responded to Verizon’s criticisms of an expanded PaUSF and urged the Commission not to abandon funding of access charge reductions because such support was needed to further universal service goals. PTA also responded to Verizon’s legal contentions that Act 183 provides no support for the expansion of the PaUSF, contending that the slight change in verbiage was insufficient to signal a major policy shift away from universal service. PTA agreed with AT&T’s position that there was no need for a rulemaking to increase the size of the PaUSF because the original intent of the fund to support access charge reductions was being followed. PTA Main Brief at 79-83; PTA Reply Brief at 55-59.

The PTA further contended that a reduction in PaUSF funding would require a rulemaking and would be prohibited without replacement funding. The PTA argued that Verizon’s proposal to redirect use of $8.4 million from the fund would disregard the Commission’s own universal service regulations. The PTA asserted that the regulations provide a fixed contribution adjusted for access line growth, but contained no adjustment downward for access line losses. *See,* 52 Pa. Code § 63.165. The PTA noted that its witness, Mr. Zingaretti, specifically recognized that RLEC access lines have been declining for competitive reasons, and proposed that, going forward, the PaUSF be held harmless through reductions in funding as price cap companies experience access line reductions. PTA St. No. 1-SR at 61-62.

CTL agreed that if the PaUSF and access charge reductions are linked, it would be willing to revise the PaUSF’s fund support to a per line charge. CTL Reply Brief at 61. CTL responded to Verizon’s proposal that $8.4 million of the PaUSF be used to offset access charges reductions and agreed with the PTA that the money was appropriately collected in accordance with the PaUSF parameters. It contended that redirecting the $8.4 million would negatively impact the RLECs’ ability to comply with regulatory and legislative objectives. CTL Main Brief at 74-76.

In its Reply Brief, CTL agreed with the OCA that Verizon was advocating a short-sighted, interim solution for long-term access reform. It contended that Verizon had failed to address how, without a PaUSF and with sizable access charge reductions, the RLECs can recover their universal service/COLR costs, meet broadband commitments, and continue to price competitively. CTL Reply Brief at 56‑61.

In its Reply Brief, Verizon reiterated its arguments that a rulemaking is required to expand the PaUSF. Verizon asserted that AT&T’s position is wrong and that the plain language of the regulations limits the size of the fund to the size of the previous year’s fund. Verizon further contended as follows:

As a practical matter, increasing the assessments to the state USF will require a rulemaking and will bring unnecessary administrative complexity to this case and the potential for continued litigation, appeals and delay, particularly if the Commission attempts to expand the contributing base. By far the simpler approach, if it is concluded that a transition period is needed for some RLECs, is to leave the revenue in their access rates and take those rates down in defined steps over a period of time. There is no reason to add the complexity and extra step of

first transferring the revenue to the state USF. Moreover, transitioning the revenue to another carrier-funded source does not address the problem at hand – which is reducing the RLECs’ dependence on revenues from other carriers – and so is not needed.

Verizon Reply Brief at 26-27.

Finally, Verizon asserted that no party has demonstrated any public benefit to increasing the PaUSF by tens of millions of dollars to fund RLEC access charge reductions whether on a permanent or temporary basis. Verizon concluded that any such expansion would be contrary to current law and bad for consumers and competition. Verizon Reply Brief at 28.

**ii. ALJ Melillo’s Recommendation**

As a primary matter, the ALJ recommended that access charge reductions and associated revenue neutral rebalancing be phased-in without additional PaUSF funding at this time. The ALJ concluded that Verizon has met its burden of proof as to the reasonableness of its proposed phased-in rebalancing by substantial evidence. The ALJ also recommended that the proposals for additional funding from the PaUSF of AT&T and OCA be rejected. Melillo R.D. at 131.

However, the ALJ noted that her recommendation for rebalancing should be coordinated to coincide with ALJ Colwell’s recommended rulemaking process to reform the PaUSF so as to target support to low-income customers and high cost areas. Melillo R.D. at 131.

With regard to the legal issues raised by Verizon about the proposed expansion of the PaUSF to fund further access charge reductions, the ALJ noted that her recommendation is not to expand the PaUSF, and, therefore, the attendant legal issues need not be decided here. However, the ALJ provided her analysis on Verizon’s legal issues in the event the Commission may reject her recommendation. The ALJ also noted that this legal analysis should be considered *dicta,* however, pursuant to 52 Pa. Code § 1.96, to the extent the Commission agrees with the ALJ’s primary recommendation that the PaUSF should not be expanded. *See also*, *City of Lower Burrell v. City of Lower Burrell Wage & Policy Committee*, 795 A.2d 432 (Pa. Cmwlth. 2002). Melillo R.D. at 131.

As an alternative, ALJ Melillo recommended the adoption of AT&T’s modified proposal, in the event the Commission decides to expand the PaUSF despite the pending recommendation by ALJ Colwell for a rulemaking to reform the PaUSF. ALJ Melillo noted that AT&T’s proposal requires an initial increase in local service rates up to a $22.00/month benchmark to qualify for PaUSF funding and that AT&T’s proposal would not be her preferred approach, but is more reasonable than the OCA proposal and requires a much smaller expansion of PaUSF funding.The ALJ noted that, in the event the Commission adopts her alternative recommendation to accept the AT&T proposal, then a ruling on the Verizon legal issues will be necessary. Melillo R.D. at 131. The ALJ also noted that after a four-year transition, AT&T’s proposed expanded PaUSF would be reduced to less than $1 million, with only six (6) carriers still receiving contributions. Melillo R.D. at 131.

The ALJ pointed out that Verizon contended that Act 183’s silence with respect to universal service funding mechanisms was indicative of the Legislature’s disfavor of PaUSF expansion. The ALJ submitted that the critical question in her view is not whether PaUSF expansion is legislatively authorized, but whether the expansion of the PaUSF is reasonable and should be approved. Melillo R.D. at 132.

The ALJ found meritorious Verizon’s argument that current universal service regulations make no provision for increasing the size of the fund to account for future RLEC access charge reductions. As such, the ALJ found that the PaUSF Regulations do not expressly provide for an increase to fund further access charge reductions. The ALJ disagreed with AT&T’s assertion that expansion is within the scope of the existing regulations because expansion would be consistent with the original purpose of the fund, to offset access charge reductions and, thereby, avoid additional rate increases. The ALJ submitted that there is no language in the regulations to allow for such funding increases even if such increases are determined to be consistent with the original intent of the fund. The ALJ pointed out that a clear advantage to adopting Verizon’s position is that this legal stumbling block is avoided. Melillo R.D. at 132.

The ALJ explained that she is not recommending PaUSF expansion due to the compelling record evidence of its negative impact on Verizon ILEC customers, many of whom are also rural, and the lack of countervailing evidence that these PaUSF payments are necessary to fulfill RLEC universal service/COLR commitments. To the extent any subsidies are needed by consumers, the ALJ noted that they should be provided by targeted subsidy mechanisms through a PaUSF reformed in a rulemaking, as was recommended by ALJ Colwell. Melillo R.D. at 132-133.

The ALJ noted that Verizon presented unrebutted testimony that the OCA’s PaUSF proposal, which would require expansion of the PaUSF by $63.4 million, would result in a nearly $27 million net increase in the Verizon ILECs’ PaUSF annual funding responsibility. The ALJ also noted that the AT&T proposal, with a more moderate PaUSF expansion of $19.6 million in the first year, would still result in a first year net funding increase for the Verizon ILECs of $8.5 million. The ALJ concluded that there simply has been no showing of need for these massive subsidy transfers. The ALJ pointed out that in a competitive environment, the market should be relied upon, in large measure, to keep rates affordable and there has been no proof of any RLEC service area that lacks sufficient competitive options. Melillo R.D. at 133.

The ALJ agreed with Verizon that the PaUSF is not currently structured to require support commensurate with usage. She noted that the RLECs’ interstate rates, which she is recommending to be mirrored herein, do provide a contribution to the joint and common costs of the network and, therefore, IXCs will continue to support that network. Melillo R.D. at 133.

The ALJ disagreed with Verizon that each RLEC should immediately propose a plan which assumes an increase of $23.00/month to residential rates. Instead, the ALJ recommended, for all RLECs, that the mirroring of interstate access rates and structure, with offsetting revenue neutral rebalancing of noncompetitive rates, be phased-in over a reasonable 2 – 4 year period (four phases). The ALJ noted that this transition period is also consistent with the time period recommended under the FCC’s NBP for mirroring of interstate access rates. NBP, Recommendation 8.7. The ALJ noted that in order to coordinate the access rebalancing with the two-year time frame for ALJ Colwell’s recommended rulemaking, the phase-in of access charge mirroring will not be required to be completed in less than two years. Melillo R.D. at 134.

The ALJ also rejected Verizon’s proposal to make available excess funds from the PaUSF of $8.4 million to assist with the transition which would require a retroactive revision to the PaUSF regulations. Melillo R.D. at 134.

Instead of the $22.00/month or $23.00/month initial rate advocated by AT&T and Verizon, respectively, the ALJ recommended that RLECs be given the opportunity to initially (Phase I) increase residential rates to the $18.00/month rate cap set by the Commission as a “just and reasonable” rate in its *July 2003 Order,* with nondiscriminatory increases to business rates. Melillo R.D. at 134-135.

The ALJ noted that the impact of rate rebalancing at each stage can be considered in technical conferences to evaluate whether mirroring can be accomplished sooner than the designated number of stages. The ALJ pointed out that an RLEC may also file a petition with the Commission for a limited waiver if it is unable to accomplish access reform within the time frames set forth herein. Melillo R.D. at 135.

To address potential rate shock for some RLECs, the ALJ considered whether six-month phase-ins should be considered in certain circumstances so that the next twelve-month phase of a rebalancing is accomplished in two stages. The ALJ noted that if a rebalancing requires an increase to residential basic local exchange rates of more than $3.50/month that increase is to be taken in two approximately equal increases six months apart. Melillo R.D. at 135.

As was noted earlier, the ALJ opined that the phase-in also needs to be coordinated with ALJ Colwell’s rulemaking, which is projected to involve a two-year process. The ALJ noted that, at the conclusion of the two-year rulemaking process, Phase II of the recommended phase-in will have commenced. The ALJ concluded that it does not appear that any RLEC will reach the $23.00/month affordability level ($32.00/month total bill) until Phase II. The ALJ noted that at Phase II, one or more RLECs (*e.g.*, Marianna & Scenery Hill) may reach the $23.00/month affordability level, however, by that time, as the rulemaking recommended by ALJ Colwell may have concluded, the PaUSF may have been reformed to provide assistance to customers if the $23.00/month affordability level is exceeded. To the extent offsetting revenue is not available from a reformed PaUSF or otherwise when an RLEC reaches the affordability level with respect to its local service rates, the ALJ stated that the Commission will need to consider whether complete mirroring can be accomplished for that particular RLEC, consistent with universal service goals. The ALJ also expects the affordability level will needed to be reconsidered at some future point, based upon new or additional affordability studies. Melillo R.D. at 136.

The ALJ cautioned that the current PaUSF regulations are silent with respect to fund expansion for additional access charge reductions. Moreover, the ALJ pointed out that the AT&T proposal provides for immediate rather than phased-in access charge reductions as she had recommended, and an initial increase in local service rates (or revenue imputation) to a $22.00/month benchmark to qualify for PaUSF funding. Based on current residential rates, the ALJ submitted that this would create rate shock for some RLEC customers (*See* OCA Schedule RDC-4). Accordingly, the ALJ noted that the Commission may want to consider a moderate expansion to the PaUSF as per the AT&T approach, but with phased-in access charge reductions and rebalancing as suggested by Verizon. Melillo R.D. at 136-137.

**iii. Exceptions**

The PTA excepts to the R.D. on the basis that it incorrectly rejects any funding from the PaUSF to mitigate end user impact. The PTA takes exception to the ALJ’s primary recommendation that additional RLEC access charge reductions be achieved solely through rate rebalancing. PTA Exc. at 55-56.

The PTA opines that additional PaUSF support to accommodate additional access charge reductions is appropriate. The PTA submits that universal service must be balanced with and not forsaken for competition. The PTA argues that the PaUSF was never set to expire without some form of replacement funding. PTA Exc. at 56-57.

The PTA submits that the ALJ’s reliance on Verizon’s claim of a negative impact on Verizon’s customers is misplaced and overstated. As to the reasonableness of the level of PaUSF support that Verizon currently pays and would pay under an expanded PaUSF, the PTA avers that the ALJ disregarded two relevant points raised by the PTA. The first point is that the current PaUSF support is precisely what Verizon agreed to in the *Global Proceeding*. The second point is that the structure of the PaUSF and its manner of funding was also of Verizon’s own design. PTA Exc. at 58-59.

The PTA opines that the current PaUSF regulations do not present a regulatory hurdle to expansion of PaUSF funding to support access charge reductions. The PTA argues that the ALJ’s recommended rejection of additional PaUSF support on the basis that the current regulations do not provide a mechanism to account for additional access charge reductions is an overly restrictive recommendation. PTA Exc. at 59.

The PTA argues that the R.D. fails to adopt a rational and balanced resolution of access charge reductions. The PTA urges that the Commission adopt the same rationale and pragmatic approach to reducing access charges that prevailed in 1999 (*Global Order*) and again in 2003 (Phase II). The PTA avers that the ALJ’s recommendation to precipitously reduce access rates to interstate levels without PaUSF support forces RLEC local rates to escalate dramatically. According to the PTA, the Commission should not force rapid escalations in local rates. The PTA argues that, if the Commission does not want to expand the PaUSF, then a lesser access charge reduction should be considered that would increase local rates only up to an acceptable benchmark. PTA Exc. at 61.

The PTA suggests that the parties agree to a collaborative process, where the parties work out their differences instead of engaging in litigation. The PTA proposes the following principles for the accommodation of all parties:

* **Benchmark Rate**. The PTA states a reasonable current residential benchmark rate is $18.94/month, which would be revised based upon Verizon’s urban rate changes.
* **Intrastate Switched Access Rates**. The PTA states that intrastate access rates should be reduced to interstate parity over a reasonable period of time, offset by a combination of local rate increases and PaUSF support.
* **Local Rate Increases and PaUSF**. The PTA states that, subject to working out specific numbers and details, retail rates up to the benchmark rate, as adjusted every year, would be the first source of access charge reduction revenue neutrality, with the incremental PaUSF only relied upon after the benchmark is reached.
* **PaUSF Design for Price Cap Companies**. The PTA states that any incremental amounts distributed from the PaUSF to offset intrastate switched access charge reductions (after retail increases are accounted for) should be reduced as Price Cap Companies experience reductions in the number of access lines.
* **Broadening the Contribution Base**. The PTA states that the contribution base for the PaUSF should be expanded to include wireless carriers and VoIP service providers.
* **Federal Changes**. The PTA states that any Pennsylvania changes need to be harmonized with the Federal outcome.

The PTA opines that this template should be adopted by the Commission, and that the parties should be allowed to develop the details to present in an implementation plan. PTA Exc. at 63-64.

CTL avers that the ALJ erred when assuming that competition is a substitute for universal service/COLR obligations. CTL believes that the Commission must either reject the ALJ’s misstep or relieve RLECs of COLR/universal service obligations. CTL maintains that the PaUSF is the only realizable means by which to comply with revenue neutrality under Section 3017(a) of the Code.[[164]](#footnote-164) CTL Exc. at 40.

CTL opines that the ALJ wrongly views the PaUSF and RLEC intrastate switched access charges, as money provided to a “competitor.” CTL argues that the ALJ seems to give considerable weight to Verizon’s significant contributions to the PaUSF. CTL Exc. at 49-50.

CTL submits that the Commission need not require that RLEC intrastate switched rates be priced at interstate rates. CTL opines that the Commission can reduce RLEC intrastate switched access rates toward interstate or it can reduce RLEC rates without making interstate the end goal of its future pricing decisions. The PaUSF should be part of any continued access reform going forward, argues CTL. CTL Exc. at 56.

CTL points out that its local rates for residential consumers are already at $18.00/month and if the R.D. is adopted, this would require CTL to begin increasing its local rates during each of the next three (3) years (Phases II through IV) so as to transition to mirroring in three (3) approximately equal stages of access charge reductions. CTL Exc. at 59.

The OCA argues that the ALJ’s determination that access charge reductions should be offset without additional funding from the PaUSF is premature. Instead, the OCA submits that, details regarding the specific use, structure and size of the PaUSF should be resolved in the further proceeding recommended by ALJ Colwell. OCA Exc. at 20-21.

The OCA also claims that using the PaUSF to offset further reductions in access charges is consistent with the universal service process at the federal level. The OCA points out that the FCC did not reduce interstate access rates without also ensuring a replacement universal service mechanism and the Commission should do the same here. OCA Exc. at 23-24.

The OCA requests that the Commission consider the expansion of the base of PaUSF contributors to include any service provider that uses the PSTN at any point in providing their service. OCA Exc. at 24.

The OCA states that interstate access rates do not help recover the joint and common costs of the PSTN, and placing one hundred percent of the burden to reduce the RLECs’ intrastate access rates to their interstate levels on basic exchange rates is not reasonable. OCA Exc. at 30.

The OCA states that the ALJ’s conclusion that the $18.00/month cap on residential basic local exchange rates should be abolished for rebalancing purposes effectively replaces the $18.00/month rate cap with a $23.00/month affordability constraint. The OCA argues that it is incorrect for the Commission to abolish the rate cap altogether. The OCA opines that, while it is appropriate under certain circumstances to increase the $18.00/month rate cap over time to the ALJ’s recommended $23.00/month affordability level, the Commission should not abolish the concept of a cap or a constraint. This is because the basic local service residential rate cap established by the Commission in its *Global Order* is an important consumer protection. OCA Exc. at 31‑35.

The OCA further notes that the ALJ continues to use the rate cap in her proposal in this proceeding by allowing rate increases to the local exchange up to the $18.00/month level to offset reductions in intrastate access rates, but she rather inconsistently references abolishing the basic local exchange rate cap. The OCA requests that the Commission reject or clarify the ALJ’s conclusion. OCA Exc. at 31-35.

AT&T avers that RLECs should recover their costs primarily from their own customers to promote accurate pricing signals in the market. AT&T submits that this will create a more conducive environment to the development of competition. AT&T adds that in an equitable competitive marketplace, all carriers must be able to price and compete according to their own efficiencies. AT&T Exc. at 15.

AT&T argues that the Commission should adopt its proposal that access charge reductions be recovered through a transitional mechanism that: (a) increases basic local service rates gradually; and, (b) allows RLECs to draw a greater amount from the PaUSF initially, but then reduces each RLEC’s PaUSF draw as the RLEC increases its local rates. AT&T opines that, unlike the R.D.’s recommended approach, AT&T’s proposal immediately reduces RLEC intrastate access rates to just and reasonable levels – *i.e*., parity with interstate rates. AT&T Exc. at 26.

AT&T opines that the ALJ’s concern is misplaced about the possibility that a legal battle may ensue over whether the current PaUSF regulations permit an expansion of the PaUSF. AT&T argues that the PaUSF’s governing regulations clearly identify its purpose. AT&T Exc. at 29.

AT&T states that, if the Commission is inclined to adopt a phased-in approach to access charge reductions, the Commission could simply require carriers to increase retail rates up to $3.50/month/year and reduce their intrastate access rates accordingly. AT&T Exc. at 34.

Verizon agrees with the ALJ that the PaUSF should not be used to provide any funds to replace the RLECs’ access revenue reductions and that the RLECs should look to their own retail rates for other noncompetitive services to rebalance the reduced revenue. Verizon states that the ALJ’s primary recommendation to avoid any use of the PaUSF is the correct one and the ALJ’s alternative recommendation should be rejected. Verizon opines that attempts to expand the PaUSF would be bad for consumers and competition and nevertheless, it is not authorized by current law. Verizon Exc. at 8.

In response to the OCA’s exception seeking clarification on whether the ALJ’s proposed affordability level of $23.00/month replaces the current $18.00/month cap, Verizon states that the record does not support a $23.00/month rate cap. Verizon states that it does not oppose the ALJ’s proposal to use OCA’s most conservative affordability level as a point to trigger more in-depth Commission scrutiny, but that a rate capped at $23.00/month is not supported by this record. Verizon R.Exc. at 26-27.

AT&T submits in its Reply Exceptions that the ALJ correctly rejected proposals to replace reduced RLEC access revenue with funds from the PaUSF. AT&T R.Exc. at 35-36.

**iv. Disposition**

The statutory declaration of policy contained in Act 183[[165]](#footnote-165) clearly calls for promoting and encouraging universal service, competition, broadband deployment and local service rate affordability. The telecommunications market has changed considerably since the establishment of the PaUSF. While we do not find a legal impediment prohibiting the use of PaUSF funding to offset the access charge reductions we order today, allowing for dollar-for-dollar recovery of such reductions is not statutorily mandated either. Recovery of the revenues allegedly “stranded” through access charge reductions is appropriately addressed through local service rate increases, adjustments to other jurisdictional service rates, and maintenance of a certain level of the restructured CC rate. In light of the above, we reject those parts of AT&T’s and the OCA’s proposed intrastate access charge reform plans that would require additional funding from the PaUSF for the revenue neutral access charge reductions called for in this Order. We grant the Exceptions of the PTA and CTL, however, to the extent they request maintenance of some level of CC in order to provide contribution to the joint and common costs of local loop plant.

We are in full agreement with ALJ Colwell’s conclusion that it is time to review the PaUSF and the associated regulations to determine how the PaUSF may best work in today’s telecommunications market. We anticipate an expansive inquiry with input solicited from all market participants on the appropriate structure and size of the PaUSF going forward which will necessarily involve a close examination of the appropriate base of contributors and recipients.

We have further considered record evidence presented by Verizon and others reflecting the negative impact on Verizon and other carriers who may bear the brunt of an expanded PaUSF for the RLECs’ access charge revenue reductions. In this regard, we will not expand the PaUSF nor permit its use for purposes of intrastate access charge rate rebalancing at this time. We will, however, as discussed previously, further examine the purpose of the PaUSF in the rulemaking proceeding instituted herein as we evaluate the PaUSF regulations on a going-forward basis.

As noted, in order to permit this and further rate rebalancing, we shall modify the existing $18.00/month residential rate cap and corresponding business rate cap, by removing the “cap” status and substituting it with a benchmark rate of $23.00 per month for residential local service and a corresponding business benchmark and an allowable maximum CC of $2.50 per line per month. As noted, we decline to authorize PaUSF support for the intrastate access charge rebalancing as requested by the RLECs in this proceeding.

In crafting this decision, the Commission has made every attempt to meet the “revenue neutral” requirement found in Chapter 30.[[166]](#footnote-166) The potential, however, exists that a very small number of the RLECs may still face certain issues while implementing the directives of this Opinion and Order regarding the revenue neutral intrastate carrier access charge reforms. Following the initial quantitative submissions relevant to the staged implementation of our access charge reform directives, any such affected RLECs may at their discretion request appropriate relief from this Commission. Such a request must be in the form of individual petitions requesting extensions of the applicable implementation periods for their respective access charge reform and transition time periods until such a time as the proposed rulemaking reforming the PaUSF is completed. These individual requests must clearly and materially demonstrate that these RLECs are not capturing, and will not be able to substantially capture, the revenue effects of the applicable intrastate access charge reforms. In other words, in order to obtain relief, an RLEC must clearly and materially demonstrate that the use of all available lawful remedies available under this Opinion and Order, *e.g.*, full use of the benchmark $23 per month basic local exchange residential service rate and the CC rate of $2.50 per access line per month, will not achieve a desirable level of revenue neutrality during the contemplated time period of the access reform implementation.

**f. Details of Recommendation on Revenue Neutral Rebalancing**

**i. ALJ Melillo’s Recommendation**

The ALJ recommended that mirroring of intrastate access charges with interstate access charges, with offsetting revenue neutral rebalancing, be accomplished in four phases over a two-to-four year period. The ALJ also recommended that associated access charge reductions resulting from the mirroring be done without additional funding from the PaUSF. The ALJ noted that the transition period would be consistent with the time period recommended under the FCC’s NBP for mirroring of interstate access rates. NBP Recommendation 8.7. The ALJ also noted that the transition period provides time for the RLECs to adjust their business plans and avoid consumer rate shock and also provides an opportunity for notice to CLECs operating in RLEC territory as they may be required to lower their access rates to match the RLECs’ lower access rates. Melillo R.D. at 131‑137.

The ALJ also recommended that the implementation of mirroring of RLEC interstate access rates should be coordinated with the PaUSF rulemaking process recommended by ALJ Colwell in the limited investigation. The ALJ noted that the transition period would allow coordination of the access charge rebalancing with the two-year time frame for the recommended PaUSF rulemaking, because the phase-in is not required to be completed in less than two years. Melillo R.D. at 131‑137.

The ALJ’s timeline for the four phases of the access reduction/rebalancing phase-in is as follows:

Preliminary matters Technical conferences will be scheduled for all parties, through the Commission’s Bureau of Fixed Utility Services (FUS), to be completed within 120 days from entry of the Final Commission Order. FUS may require additional data to be supplied in connection with these conferences. (footnote omitted) It is not anticipated that further technical conferences will be needed prior to each of the four (4) stages, but the parties shall consider the rate impact at each of the stages during the technical conferences to determine whether mirroring can be accomplished sooner than in four (4) stages. Notice to customers will also be addressed at this stage.

Phase I Within 6-12 months from entry of the Final Commission Order, RLECs with weighted average R-1 rates below $18.00 (Group A) may increase R-1 rates in a manner to achieve a weighted average R-1 rate of $18.00. Business rates and ancillary service rates may also be increased. Offsetting access reductions towards mirroring of interstate access charge rate levels and structure will be implemented at the same time. If an RLEC chooses not to implement the allowed increases, it will be assumed, for purposes of access rate reductions, that a weighted average R-1 rate was increased to $18.00 and that business rates received an equal increase.

Within 6-12 months from entry of the Final Commission Order, RLECs with weighted average R-1 rates at or above $18.00 or which require access rate increases for mirroring purposes (Group B) will be required to commence the first one-third of the transition to mirroring, in three (3) approximately equal stages of access reductions, with offsetting rate rebalancing permitted for other noncompetitive services (offsetting is required if rebalancing requires noncompetitive rate decreases).

If a rebalancing as noted above requires an increase to R-1 rates of more than $3.50/month, that increase, with associated access reductions, is to be taken in two (2) approximately equal increases six (6) months apart, with the first half of the increase/reduction to be implemented six (6) months from entry of the Final Commission Order, and the second half to be implemented six (6) months thereafter.

Phase II Within 18-24 months from entry of the Final Commission Order, RLECs in Group A shall commence the first one-third of the implementation of any remaining mirroring in three (3) approximately equal stages of access reductions, with offsetting rate rebalancing permitted for other noncompetitive services.

Within 18-24 months from entry of the Final Commission Order, RLECs in Group B shall commence implementation of the second one-third of the transition to mirroring, with offsetting rate rebalancing permitted for other noncompetitive services (offsetting is required if rebalancing requires noncompetitive rate decreases).

If a rebalancing as noted above requires an increase to R-1 rates of more than $3.50/month, that increase, with associated access reductions, is to be taken in two (2) approximately equal increases six (6) months apart, with the first half of the increase/reduction to be implemented eighteen (18) months from entry of the Final Commission Order, and the second half to be implemented six (6) months thereafter.

Phase III Within 30-36 months from entry of the Final Commission Order, RLECs in Group A shall continue with implementation of the second one-third of the transition to mirroring, with offsetting rate rebalancing permitted for other noncompetitive services.

Within 30-36 months from entry of the Final Commission Order, RLECs in Group B shall commence implementation of the final one-third of the transition to mirroring, with offsetting rate rebalancing permitted for other noncompetitive services (offsetting is required if rebalancing requires noncompetitive rate decreases).

If a rebalancing as noted above requires an increase to R-1 rates of more than $3.50/month, that increase, with associated access reductions, is to be taken in two (2) approximately equal increases six (6) months apart, with the first half of the increase/reduction to be implemented thirty (30) months from entry of the Final Commission Order, and the second half to be implemented six (6) months thereafter.

Phase IV Within 42-48 months from entry of the Final Commission Order, RLECs in Group A shall continue with implementation of the final one-third of the transition to mirroring, with offsetting rate rebalancing permitted for other noncompetitive services.

If a rebalancing as noted above requires an increase to R-1 rates of more than $3.50/month, that increase, with associated access reductions, is to be taken in two (2) approximately equal increases six (6) months apart, with the first half of the increase/reduction to be implemented forty-two (42) months from entry of the Final Commission Order, and the second half to be implemented six (6) months thereafter.

Melillo R.D. at 138-140.

**ii. Exceptions**

AT&T agrees with the ALJ’s recommendation to set RLECs’ intrastate access rates at parity with their respective interstate access rates. However, AT&T excepts to the implementation schedule as too long. Citing to 66 Pa. C.S. § 1301,[[167]](#footnote-167) AT&T argues that utilities are only to charge just and reasonable rates and that if the Commission makes a finding of unjust and unreasonable rates, the Commission must take immediate action to establish new rates as prescribed under the law. AT&T points out that the ALJ’s recommendation does not require some carriers to do anything to reduce access rates for six months to a year after the final order has been entered, and that it would take eighteen months to two years for meaningful access charge reduction to be effectuated under the proposed schedule. AT&T Exc. at 5-8.

AT&T also excepts to the ALJ’s recommendation to separate carriers with current retail basic local rates less than $18.00/month and those with rates greater than $18.00/month. AT&T avers that this will lead to absurd results and cites as an example that D&E has a local retail rate of $17.96/month and, thus, it need only adjust its rates by a mere 4 cents in Phase I. Since the second access charge decrease under the ALJ’s recommendation would not occur for another full year, D&E’s access rates would essentially be undisturbed for nearly two years. AT&T Exc. at 30-31.

Sprint also takes exception to the ALJ’s recommended phasing-in of access charge reduction and rate rebalancing over a period of two to four years. Sprint notes that, as recognized by the Commission, an entire decade has passed since the Commission began access charge reform and many of the same areas of concern still persist. Sprint argues that the Commission should not delay industry-wide access charge reform any longer. Sprint requests that the Commission adopt a reform proposal that does not exceed two years. Sprint Exc. at 3.

Verizon asserts that with appropriate rate design, it is possible to maximize the potential to recover access revenue from local service rate increases. It proposes that each RLEC submit a rebalancing plan that initially assumes a $23.00/month residential rate and reasonably maximizes the revenue allocated to other noncompetitive services, such as business and ancillary services. According to Verizon, the Commission can then evaluate, on a carrier-by-carrier basis, whether it is reasonable for any RLEC to implement a phase-in of access charge reductions, coordinated with a phase-in of revenue neutral increases. Verizon also proposes that $8.4 million in allegedly excess funds from the PaUSF be made available to assist with the transition. Verizon R.Exc. at 14. Verizon also requests that the Commission clarify in its Order: (1) instructions on the manner and format of RLEC rate rebalancing calculations; (2) the RLECs’ obligations surrounding the rebalancing calculations; and (3) that in no event will the technical conferences delay rebalancing because the Commission is mandating that Phase I of rate rebalancing shall occur within six months of final order entry. Verizon Exc. at 3-4.

The PTA excepts to the ALJ’s recommendation to reduce access rates to interstate levels because it believes that local rates will escalate dramatically without PaUSF support. The PTA suggests a more moderate glide path with the parties undertaking a collaborative process to work toward access charge reform. PTA Exc. at 61-64; R.Exc. at 31-42. The PTA generally does not oppose the technical conference process but strenuously objects to what it claims are drastic reductions in access charges not ever before considered by the Commission.

CTL claims that the implementation schedule is unreasonable, fails to pass muster under Section 3017(a) of the Code[[168]](#footnote-168) because certainty of revenue neutrality will be at risk, and is contrary to the measured decision making historically undertaken by the Commission with regard to gradual reductions in intrastate access charges. CTL Exc. at 59-64.

The OCA claims in reply to the Exceptions of AT&T and Sprint on this use that the ALJ’s “glide path” is reasonable in the absence of additional support from the PaUSF and the pace of access charge reform should not be accelerated. OCA Exc. at 16‑20.

**iii. Disposition**

Having considered all of the various claims by all parties, we conclude that, with some adjustments, the detailed process set forth by ALJ Melillo for the commencement and phased implementation of access charge reductions and rate rebalancing is logical, fair and consistent with ALJ Colwell’s tandem recommendation for a PaUSF rulemaking. We have examined all sides and find no valid basis to slow the process down. We have adjusted ALJ Melillo’s suggested timeline, as reflected in Annex C of this Opinion and Order, to allow for adequate RLEC planning and development of appropriate submissions and customer notifications and at the same time provide relatively speedy access charge relief for carriers that have been paying access charges in excess of just and reasonable levels.

First, the revenue neutral rate rebalancing resulting from this proceeding will be implemented in three phases spread over a four-year time frame, at which point the majority of RLECs intrastate TS switched access rates will mirror their interstate TS switched access rates,[[169]](#footnote-169) along with an intrastate NTS CC rate not to exceed $2.50 per line/month to cover the joint and common costs of the local loop. We believe that a four-year completion date for rate rebalancing is a reasonable period for a glide path for access charge reform.

With regard to the technical conferences recommended by ALJ Melillo, we will not require such conferences. The schedule that we have established in the Ordering Paragraphs, as well as our modified timeline in Annex C, should be sufficient for Staff and interested parties to obtain adequate and pertinent data from the RLECs in a timely manner for review of the resulting rate rebalancing tariff filings. The schedule should also ameliorate any concerns of Parties who have argued that the technical conferences may inordinately delay access charge rate rebalancing.

More specifically, the Ordering Paragraphs establish a timeline for interested Parties to file comments and reply comments on a Staff–proposed template that will set forth the manner and format of the RLEC rate rebalancing calculations. The Ordering Paragraphs establish deadlines for the RLECs to file their rate rebalancing calculations and illustrative tariff supplements with the Commission using the most recent available data demonstrating the impact of the rate rebalancing on local rates and intrastate switched access rates and projecting the proposed tariff revisions to implement Phase I, as described in Annex C. Upon receiving Commission approval of the finalized calculations, projections and illustrative tariff supplements, the RLECs shall commence the notice process to their retail customers (in accordance with their Chapter 30 Plans), their access charge customers and other competing CLECs in their respective service territories. The Ordering Paragraphs also establish a timeline for Commission review and approval of the RLECs’ rate rebalancing calculations and illustrative tariff supplements. Upon such approval, the RLECs will be permitted to file their compliance tariffs to become effective on one day’s notice. Thereafter, the tariff supplement filings made in accordance with the remaining Phases detailed in Annex C will occur in eighteen-month intervals, consistent with the filing deadline in the Ordering Paragraphs. In addition, the Ordering Paragraphs require that the RLECs serve copies of their rate rebalancing calculations and subsequent tariff supplements on the OCA, the OSBA and the OTS with the condition that all documents designated and qualifying as proprietary shall be accorded confidential treatment under any existing Protective Orders.

For all of the reasons in the foregoing discussion, the Parties’ Exceptions are granted in part and denied in part consistent with ALJ Melillo’s recommended timeline, as modified herein.

With regard to Verizon’s request for specific delineation of the RLECs’ obligations with regard to implementation, we decline to provide a line item list of anticipated RLEC filing guidelines. We emphasize, however that delay by any of the Parties will not be tolerated and that the deadlines set forth in this Opinion and Order for access charge reductions are firm.

**7. General Legal Issues**

**a. Retroactivity Issue**

**i. Positions of the Parties**

Sprint was the only party to actively seek retroactive rate relief (back to December 19, 2009) for excessive intrastate access rates, pursuant to 66 Pa. C.S. § 1309(b). Sprint argued that, under Section 1309(b) of the Code, whenever the Commission receives a Complaint seeking a reduction in existing rates, as was filed by AT&T on March 19, 2009, the Commission is required to either issue a ruling on such Complaint within nine months (by December 19, 2009), or to make such rate reductions that are eventually awarded retroactive to a date nine months after the Complaint was filed. Section 1309(b) of the Code provides in relevant part as follows:

[A] final decision and order of the commission which determines or fixes a rate reduction shall be retroactive to the expiration of such nine-month period. . . .This subsection shall apply only when the requested reduction in rates affects more than 5% of the customers and amounts to in excess of 3% of the total gross annual intrastate operating revenues of the public utility, provided that, if the public utility furnishes two or more types of service, the foregoing percentages shall be determined only on the basis of the customers receiving, and the revenues derived from, the type of service to which the requested reduction pertains.

66 Pa. C.S. § 1309(b).

Sprint claimed that the above-cited statutory test for retroactive relief was met in this case with respect to the affected customer percentage and the gross annual intrastate operating revenues requirement. According to Sprint, one hundred percent of RLEC customers receiving intrastate switched access service will be affected by the requested reduction in RLEC intrastate switched access service, as confirmed by CTL witness Bonsick (Tr. at 454), and therefore, the five percent of customers test is met. Sprint also asserted that the requested intrastate switched access charge reduction meets the excess of three percent of intrastate operating revenues test and that it applies to the type of service at issue, which is intrastate switched access service. Sprint noted that PTA Ex. GMZ-10 confirmed that the requested reduction amounts would be in excess of three percent of the total gross annual switched access revenue of the affected public utility.

Accordingly, Sprint asserted that retroactive rate relief under Section 1309(b) of the Code is applicable, if the Commission determines that the RLEC intrastate switched access rates are unjust and unreasonable. However, Sprint indicated at the hearing that it would be willing to forego insistence on retroactive relief to obtain expeditious access charge reductions on a going forward basis. Tr. at 251.

All other parties taking a position on this issue either disagreed with Sprint’s interpretation of Section 1309(b) of the Code as applied to this case (PTA, CTL, OCA, Verizon, OSBA, Comcast) or declined to pursue retroactive relief (AT&T). PTA Main Brief at 87-89; PTA Reply Brief at 59-60; CTL Main Brief at 77-81, CTL Reply Brief at 62-63; OCA Main Brief at 53-56, AT&T Main Brief at 61; Verizon Main Brief at 58; OSBA Reply Brief at 24; Comcast Reply Brief at 13.

**ii. ALJ Melillo’s Recommendation**

The ALJ concluded that, because Sprint had agreed to forego insistence on retroactivity in order to secure prompt access charge reform on a going forward basis and that is what she was recommending, the issue was basically moot. She noted, however, that in the event a ruling was required, she would conclude that Section 1309(b) of the Code[[170]](#footnote-170) is not applicable to a proceeding such as this wherein rate reductions are to be offset, on a revenue neutral basis, with rate increases. In such case, ALJ Melillo reasoned, the 3% of total gross operating revenue threshold cannot be met when there is to be no net revenue decrease, regardless of the definition of service “type.”

**iii. Disposition**

No party took exception to the ALJ’s conclusions on this issue and we adopt her reasoning as sound. The issue is moot in view of our disposition of the access charge reform scheme we have ordered here.

**b. Compliance Issue**

**i. Positions of the Parties**

AT&T offered certain compliance and implementation details concerning its own proposal. It stated that, once a final Commission decision is issued, the RLECs will need to provide updated intrastate access information (such as minutes of use and access lines) for the most recent time period available. Other parties would be given an opportunity to review the updated data and ask questions if necessary, prior to implementation. AT&T indicated that compliance and implementation should not be a lengthy process and should not be used to delay reform.

Sprint reiterated its position on implementing access charge rebalancing, and indicated its support for AT&T’s mirroring proposal and compliance proposal. Like AT&T, Verizon detailed how compliance with its own proposal would be accomplished in the event the Verizon reform proposal was adopted. It proposed that each RLEC be required to submit a compliance filing, subject to comment and various assumptions, within a specified time after the Commission’s Order.

The PTA and CTL disagreed with Verizon’s proposed compliance filing process, and the PTA proposed, with CTL’s concurrence, that technical conferences be convened with the parties and Commission staff, as was done in both previous rural access charge reform proceedings. PTA St. No. 1-RJ at 11-12.

**ii. ALJ Melillo’s Recommendation**

The ALJ agreed with the PTA’s and CTL’s proposal to have technical conferences and she recommended that the Commission’s Bureau of Fixed Utility Services be directed to conduct them. The ALJ detailed in her proposed Ordering Paragraphs the timeframes for submission of calculations regarding the numerous tariff filings to be made during implementation, and the concept that further information on the required format would be available on the Commission’s website within thirty (30) days of entry of the final Commission Order.

**iii. Exceptions**

Several Parties filed Exceptions regarding the length of time for RLEC compliance and the manner in which the technical conference process will be undertaken.

**iv. Disposition**

The Exceptions regarding compliance issues are addressed in Section 6.f. of this section of the Opinion and Order, above. We emphasize to the RLECs that, when they make their rate rebalancing filings, they be mindful of the prohibition in Section 3016(f)(1) of using revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize competitive services.[[171]](#footnote-171)

**IV. Conclusion**

Upon review and consideration of the two R.D.s, the associated record evidence, Exceptions and Replies, we conclude that the Exceptions are granted in part and denied in part, as discussed in the body of this Opinion and Order. We adopt ALJ Colwell’s R.D., as clarified, and we adopt ALJ Melillo’s R.D., as modified herein; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions of the Pennsylvania Telephone Association, the Office of Consumer Advocate and The United Telephone Company d/b/a CTL Pennsylvania to the Recommended Decision of Administrative Law Judge Susan D. Colwell, issued on July 23, 2009, are denied, consistent with the discussion in this Opinion and Order.

2. That the Recommended Decision of Administrative Law Judge Susan D. Colwell in the above-referenced proceeding is adopted and clarified, consistent with this Opinion and Order.

3. That a rulemaking proceeding shall be instituted to consider changes to the Commission’s PaUSF Regulations, consistent with this Opinion and Order.

4. That the Exceptions of the Parties to the Recommended Decision of Administrative Law Judge Kandace F. Melillo, issued on August 3, 2010, are granted in part and denied in part, consistent with the discussion in this Opinion and Order.

5. That the Recommended Decision of Administrative Law Judge Kandace F. Melillo in the above referenced proceeding is adopted, as modified consistent with this Opinion and Order.

6. That the Formal Complaints filed by AT&T Communications of Pennsylvania, LLC, TCG New Jersey, Inc., and TCG Pittsburgh, Inc. against Citizens Telephone Company of New York at Docket Nos. C-2009-2098526, C-2009-2100107, and C-2009-2101274, respectively, are deemed to be withdrawn and the corresponding dockets are marked closed.

7. That the Formal Complaints filed by AT&T Communications of Pennsylvania, LLC, TCG New Jersey, Inc., and TCG Pittsburgh, Inc. against the various rural local exchange companies (RLECs) at the docket numbers in the attached Annex A to this Order are sustained, to the extent consistent with this Opinion and Order.

8. That the RLECs listed in attached Annex B shall commence the process of rebalancing their intrastate tariffed switched access rates and their other noncompetitive rates, in accordance with this Opinion and Order and the schedule, terms and conditions set forth in attached Annex C.

9. That any RLEC, which may encounter difficulty in implementing the rate rebalancing and revenue neutral requirements of this Opinion and Order, may file, at its discretion, a request for relief of such requirements. Any RLEC seeking such relief must clearly and materially demonstrate that the use of all available, lawful remedies under this Opinion and Order, *e.g.*, full use of the benchmark $23 per month basic local exchange residential service rate and the CC rate of $2.50 per access line per month, will not permit it to achieve a desirable level of revenue neutrality during the contemplated time period of the access charge reform implementation.

10. That, in accordance with this Opinion and Order, for purposes of revenue neutrality, the RLECs are permitted to increase their weighted average residential and business local service rates above the residential and business benchmark/cap rates currently in effect as a result of the Order of the Pennsylvania Public Utility Commission entered on July 15, 2003, at Docket No. M-00021596.

11. That within thirty (30) days of the date of entry of this Opinion and Order, the Commission will issue a Secretarial Letter setting forth a proposed template depicting the manner and format of the revenue neutral rate rebalancing calculations to be performed and submitted by the RLECs. The parties shall have twenty (20) days from the date of the Secretarial Letter to file Comments on the proposed template and ten (10) days from the date Comments are due to file Reply Comments.

12. That within forty-five (45) days after the filing date for Reply Comments, the Commission shall issue an Order disposing of the comments/replies and shall produce a final version of the template to be used and submitted by the RLECs in their rate rebalancing calculations.

13. That within thirty (30) days of the date of entry of the Order referred to in Ordering Paragraph 12, above, the RLECs shall file their rate rebalancing calculations and illustrative tariff supplements with the Commission using the most recent, available data as of December 31, 2010, demonstrating the impact of the rate rebalancing on local rates and intrastate switched access rates and projecting the proposed tariff revisions to implement Phase I in Annex C attached hereto. Copies shall concurrently be served on the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff and the Bureau of Fixed Utility Services – Telecommunications Division, or its successor bureau.

14. That upon filing their calculations, projections and illustrative tariff supplements, the RLECs shall commence the notice process to their retail customers, in accordance with their respective Chapter 30 Plans, as well as their access charge customers and any competing competitive local exchange carriers in their respective territories concerning the upcoming rate changes, and shall provide further notice prior to each of the rate changes required in Annex C as may be appropriate. This notice may be presented as a bill insert or bill message over the course of a full billing cycle.

15. That within ninety (90 days) after the RLECs submit their filings described in Ordering Paragraph 13 above, the Bureau of Fixed Utility Services, or its successor bureau, shall review and finalize the RLECs’ rate balancing calculations and illustrative tariff supplements, and if found to be consistent with this Opinion and Order, shall grant approval by way of Secretarial Letters.

16. That within thirty (30) days from the date of the Secretarial Letter referenced in Ordering Paragraph 15, above, the RLECs shall file compliance tariff supplements, effective on one (1) day’s notice, and in accordance with Annex C, implementing the rate revisions for Phase I of the access rate revision/rebalancing process. Thereafter, tariff supplement filings made in accordance with Annex C are to occur in 18-month intervals. RLECs shall file their rate rebalancing calculations for subsequent rate rebalancing phases at least ninety (90) days in advance of the deadlines for commencement of rate rebalancing set forth in Annex C to allow for Commission staff approval followed by customer notification. Once approved, tariff supplements for Phases II and III filed under this procedure pursuant to Annex C may become effective on one (1) day’s notice.

17. That copies of the rate rebalancing calculations and subsequent tariff supplements shall also be served upon the Office of Consumer Advocate, the Office of Small Business Advocate and the Office of Trial Staff. All proprietary documents filed shall continue to be accorded confidentiality protection under any existing Protective Orders.

18. That the Formal Complaint dockets in attached Annex A be marked closed upon the completion of all rebalancing phases and all tariff revisions set forth in Annex C.

19. That the Commission Investigation at Docket No. I-00040105 be marked closed upon the completion of all rebalancing phases and tariff revisions set forth in Annex C.

20. That the Commission’s Law Bureau shall prepare an Order instituting an Advanced Notice of Proposed Rulemaking regarding the Pennsylvania Universal Service Fund Regulations at 52 Pa. Code §§ 63.161-63.171.

21. That a copy of this Opinion and Order be served on the Office of Consumer Advocate, the Office of Small Business Advocate, all of those jurisdictional ILECs listed in Annex B, and all other active Parties of Record.

22. That the Secretarial Letter, which is attached to Annex D of this Opinion and Order, and which references the link to the Pennsylvania Public Utility Commission’s official website where the full text of this Opinion and Order can be obtained, be published in the *Pennsylvania Bulletin*, in lieu of publication of the entire Opinion and Order.

23. That a copy of the Secretarial Letter, which is attached to Annex D of this Opinion and Order, and which references the link to the Pennsylvania Public Utility Commission’s official website where the full text of this Opinion and Order can be obtained, be served upon all jurisdictional CLECs and IXCs.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: June 30, 2011

ORDER ENTERED: July 18, 2011

**ANNEX A**

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

*AT&T Communications of Pennsylvania, LLC v. Armstrong Telephone Company* - *North,* C-2009-2098386

*AT&T Communications of Pennsylvania, LLC v. Buffalo Valley Telephone Company,* C‑2009-2098425

*AT&T Communications of Pennsylvania, LLC v. Commonwealth Telephone Company, LLC,* C- 2009-2098428

*AT&T Communications of Pennsylvania, LLC v. Frontier Communications of Breezewood, LLC,* C-2009-2098474

*AT&T Communications of Pennsylvania, LLC v. Bentleyville Telephone Company,* C‑2009-2098519

*AT&T Communications of Pennsylvania, LLC v. Frontier Communications of Canton, LLC,* C- 2009-2098528

*AT&T Communications of Pennsylvania, LLC v. Frontier Communications of Lakewood, LLC,* C-2009-2098679

*AT&T Communications of Pennsylvania, LLC v. Frontier Communications of Oswayo River, LLC,* C-2009-2098769

*AT&T Communications of Pennsylvania, LLC v. Citizens Telephone Co. of Kecksburg,* C-2009-2098891

*AT&T Communications of Pennsylvania, LLC v. Frontier Communications of Pennsylvania, LLC,* C-2009-2099211

*AT&T Communications of Pennsylvania, LLC v. Conestoga Telephone and Telegraph Company,* C-2009-2099280

*AT&T Communications of Pennsylvania, LLC v. Denver* & *Ephrata Telephone* & *Telegraph Company,* C-2009-2099297

*AT&T Communications of Pennsylvania, LLC v. Hickory Telephone Company,* C‑2009‑2099318

*AT&T Communications of Pennsylvania, LLC v. Ironton Telephone Company,* C‑009‑2099700

*AT&T Communications of Pennsylvania, LLC v. The North-Eastern Pennsylvania Telephone Company,* C-2009-2099701

*AT&T Communications of Pennsylvania, LLC v. Lackawaxen Telecommunications Services,* C- 2009-2099703

*AT&T Communications of Pennsylvania, LLC v. Laurel Highland Telephone Company,* C-2009-2099704

*AT&T Communications of Pennsylvania, LLC v. TDS Telecom/Mahanoy* & *Mahantango Telephone Company,* C-2009-2099706

*AT&T Communications of Pennsylvania, LLC v. Marianna and Scenery Hill Telephone Company,* C-2009-2099708

*AT&T Communications of Pennsylvania, LLC v. North Penn Telephone Company,* C‑2009-2099732

*AT&T Communications of Pennsylvania, LLC v. Consolidated Communications of Pennsylvania Co.,* C-2009-2099741

*AT&T Communications of Pennsylvania, LLC v. Palmerton Telephone Company,* C‑2009-2099762

*AT&T Communications of Pennsylvania, LLC v. Pennsylvania Telephone Company,* C‑2009-2099763

*AT&T Communications of Pennsylvania, LLC v. Pymatuning Independent Telephone Co.,* C- 2009-2099764

*AT&T Communications of Pennsylvania, LLC v. South Canaan Telephone Company,* C‑2009-2099766

*AT&T Communications of Pennsylvania, LLC v. TDS Telecom/Sugar Valley Telephone Company,* C-2009-2099767

*AT&T Communications of Pennsylvania, LLC v. Venus Telephone Corporation,* C‑2009‑2099768

*AT&T Communications of Pennsylvania, LLC v. Windstream Pennsylvania LLC,* C‑2009‑2099780

*AT&T Communications of Pennsylvania, LLC v. Yukon-Waltz Telephone Company,* C‑2009‑2099783

*AT&T Communications of Pennsylvania, LLC v. Embarq Pennsylvania,* C-2009-2099797

*TCG New Jersey, Inc. v. Armstrong Telephone Company* - *Pennsylvania,* C‑2009‑2099805:

*TCG New Jersey, Inc. v. Armstrong Telephone Company* - *North,* C-2009-2099833

*TCG New Jersey, Inc. v. Bentleyville Telephone Co.,* C-2009-2099838

*TCG New Jersey, Inc. v. Buffalo Valley Telephone Company,* C-2009-2099935

*TCG New Jersey, Inc. v. Citizens Telephone Company of Kecksburg,* C-2009-209996l

*TCG New Jersey, Inc. v. Frontier Communications of Breezewood, Inc.,* C-2009-2099977

*TCG New Jersey, Inc. v. Commonwealth Telephone Company,* C-2009-2100002

*TCG New Jersey, Inc. v. Frontier Communications of Oswayo River, LLC,* C‑2009‑2100200

*TCG New Jersey, Inc. v. Frontier Communications of Canton, Inc.,* C-2009-2100207

*TCG New Jersey, Inc. v. Frontier Communications of Lakewood, Inc.,* C-2009-2100208

*TCG New Jersey, Inc. v.* *Frontier Communications of Pennsylvania, Inc.,* C‑2009‑2100209

*TCG New Jersey, Inc. v. Conestoga Telephone* & *Telegraph Co.,* C-2009-2l00210

*TCG New Jersey, Inc. v. Denver* & *Ephrata Telephone* & *Telegraph Co.,* C‑2009·2100211

*TCG New Jersey, Inc. v. Hickory Telephone Company,* C-2009-2100213

*TCG New Jersey, Inc. v. Ironton Telephone Company,* C-2009-2100238

*TCG New Jersey, Inc. v. Marianna and Scenery Hill Telephone Company,* C‑2009‑2100253

*TCG New Jersey, Inc. v. Lackawaxen Telecommunications Services,* C-2009-2100634

*TCG New Jersey, Inc. v. Embarq,* C-2009-2100657

*TCG New Jersey, Inc. v. Laurel Highland Telephone Company,* C-2009-2100658

*TCG New Jersey, Inc. v. TDS Telecom/Mahanoy* & *Mahantango Telephone Company,* C‑2009‑2100661

*TCG New Jersey, Inc. v. North Penn Telephone Company,* C-2009-2100679

*TCG New Jersey, Inc. v. The North-Eastern Telephone Company,* C-2009-2100680

*TCG New Jersey, Inc. v. Palmerton Telephone Company,* C-2009-2100725

*TCG New Jersey, Inc. v. Consolidated Communications of Pennsylvania Company,* C‑2009‑2100738

*TCG New Jersey, Inc. v. Pennsylvania Telephone Company,* C-2009-2100860

*TCG New Jersey, Inc. v. Pymatuning Independent Telephone Company,* C-2009-2100866

*TCG New Jersey, Inc. v. Windstream Pennsylvania, LLC,* C-2009-2100905

*TCG New Jersey, Inc. v. Yukon- Waltz Telephone Company,* C-2009-2100908

*TCG New Jersey, Inc. v. Venus Telephone Corporation,* C-2009-2100915

*TCG New Jersey, Inc. v. South Canaan Telephone Company,* C-2009-2100917

*TCG New Jersey, Inc. v. TDS Telecom/Sugar Valley Telephone Company,* C‑2009‑2100943

*TCG Pittsburgh, Inc.* v. *Armstrong Telephone Company* - *Pennsylvania,* C‑2009‑2098735:

*TCG Pittsburgh, Inc.* v. *Armstrong Telephone Company* - *North,* C-2009-2098760

*TCG Pittsburgh, Inc. v. Bentleyville Telephone Company,* C-2009-2098936

*TCG Pittsburgh, Inc. v. Buffalo Valley Telephone Company,* C-2009-2098990

*TCG Pittsburgh, Inc. v. Citizens Telephone of Kecksburg,* C-2009-2099060

*TCG Pittsburgh, Inc. v. Frontier Communications of Breezewood, LLC,* C-2009-2099596

*TCG Pittsburgh, Inc. v. Frontier Communications of Canton, LLC,* C-2009-2099631

*TCG Pittsburgh, Inc. v. Frontier Communications of Lakewood, LLC,* C-2009-2099834

*TCG Pittsburgh, Inc. v. Frontier Communications of Pennsylvania, LLC,* C‑2009‑2099935

*TCG Pittsburgh, Inc. v. Frontier Communications of Oswayo River, LLC,* C-2009-2099983

*TCG Pittsburgh, Inc. v. North Penn Telephone Company,* C-2009-2100011

*TCG Pittsburgh, Inc. v. Palmerton Telephone Company,* C-2009-2100024

*TCG Pittsburgh, Inc. v. Consolidated Communications of Pennsylvania Company,* C‑2009‑2100036

*TCG Pittsburgh, Inc. v. Pennsylvania Telephone Company,* C-2009-2100049

*TCG Pittsburgh, Inc. v. Pymatuning Independent Telephone Company,* C-2009-2100051

*TCG Pittsburgh, Inc. v. South Canaan Telephone Company,* C-2009-2100109

*TCG Pittsburgh, Inc. v. TDS Telecom/Sugar Valley Telephone Company,* C‑2009‑2100110

*TCG Pittsburgh, Inc. v. Venus Telephone Corporation,* C-2009-2100112

*TCG Pittsburgh, Inc. v. Windstream Pennsylvania, LLC,* C-2009-2100114

*TCG Pittsburgh, Inc. v. Yukon-Waltz Telephone Co.,* C-2009-2100116

*TCG Pittsburgh, Inc. v. United Telephone Company of Pa. d/b/a Embarq Pa.,* C‑2009‑2100117

*TCG Pittsburgh, Inc. v. Conestoga Telephone and Telegraph Company,* C-2009-2100133

*TCG Pittsburgh, Inc. v. Commonwealth Telephone Company*, C-2009-2100135

*TCG Pittsburgh, Inc. v. Denver* & *Ephrata Telephone* & *Telegraph Co.,* C‑2009‑2100151

*TCG Pittsburgh, Inc. v. Hickory Telephone Co.,* C-2009-2100152

*TCG Pittsburgh, Inc. v. Ironton Telephone Co.,* C-2009-2100154

*TCG Pittsburgh, Inc. v. Lackawaxen Telecommunications SVCS, Inc.,* C-2009-2100155

*TCG Pittsburgh, Inc. v. Laurel Highland Telephone Co.,* C-2009-2100157

*TCG Pittsburgh, Inc. v. TDS Telecom/Mahanoy* & *Mahantango Telephone Co.,* C-2009‑2100159

*TCG Pittsburgh, Inc. v. Marianna and Scenery Hill Telephone Co.,* C-2009-2100215

*TCG Pittsburgh, Inc. v. The North-Eastern Pennsylvania Telephone Company,* C‑2009‑2100236

**ANNEX B**

INVESTIGATION REGARDING INTRASTATE ACCESS CHARGES

OF RURAL CARRIERS AND THE PENNSYLVANIA UNIVERSAL SERVICE FUND

Docket No. I-00040105

Docket Nos. C-2009-2098389, *et al.*

Rate Rebalancing Program

Affected RLECs:

|  |  |  |
| --- | --- | --- |
|  | Carrier Name | Utility Code |
| 1 | Armstrong Telephone Company PA | 312350 |
| 2 | Armstrong Telephone Company - North | 312650 |
| 3 | Bentleyville Communications Corp | 310250 |
| 4 | Citizens Tel. of Kecksburg | 310650 |
| 5 | Consolidated Communications of Pennsylvania Company | 312550 |
| 6 | Frontier Communications of Breezewood, LLC | 310400 |
| 7 | Frontier Communications of Canton, LLC | 310550 |
| 8 | Frontier Communications Commonwealth Telephone Company, LLC | 310800 |
| 9 | Frontier Communications of Pennsylvania, LLC | 311250 |
| 10 | Frontier Communications of Lakewood, LLC | 311750 |
| 11 | Frontier Communications of Oswayo River, LLC | 312600 |
| 12 | Hickory Telephone Company | 311550 |
| 13 | Ironton Telephone Company | 311650 |
| 14 | Lackawaxen Telecommunications Services, Inc. | 311700 |
| 15 | Laurel Highland Telephone Company | 311800 |
| 16 | Marianna & Scenery Hill Tel. Company | 312000 |
| 17 | North Penn Telephone Company | 312500 |
| 18 | North-Eastern PA Telephone Company, The | 312450 |
| 19 | Palmerton Telephone Company | 312700 |
| 20 | Pennsylvania Telephone Company | 312750 |
| 21 | Pymatuning Independent Telephone Company | 312800 |
| 22 | South Canaan Telephone Company, The | 313000 |
| 23 | TDS - Mahanoy & Mahantango Telephone Company | 311950 |
| 24 | TDS - Sugar Valley Telephone Company | 313100 |
| 25 | United Telephone Company of PA, The dba CenturyLink | 313200 |
| 26 | Venus Telephone Corporation | 313400 |
| 27 | Windstream Pennsylvania, LLC | 312050 |
| 28 | Windstream Buffalo Valley Telephone Company | 310369 |
| 29 | Windstream Conestoga Telephone Company | 310850 |
| 30 | Windstream D&E Telephone Company | 311050 |
| 31 | Yukon Waltz Telephone Company | 313650 |

**ANNEX C**

**A. Rate Rebalancing Template and Initial Rebalancing Filings**

Within thirty (30) days of the date of entry of this Opinion and Order, the Commission will issue a Secretarial Letter setting forth a proposed template depicting the manner and format of the revenue neutral rate rebalancing calculations to be performed and submitted by the RLECs. The parties shall have twenty (20) days from the date of the Secretarial Letter to file Comments on the proposed template and ten (10) days from the date Comments are due to file Reply Comments.[[172]](#footnote-172)

Within forty-five (45) days after the filing date for Reply Comments, the Commission shall issue an Order disposing of the comments/replies and shall produce a final version of the template to be used and submitted by the RLECs in their rate rebalancing calculations.

Within thirty (30) days of the date of entry of the above Order disposing Comments, the RLECs shall file their rate rebalancing calculations and illustrative tariff supplements with the Commission using the most recent, available data as of December 31, 2010, demonstrating the impact of the rate rebalancing on local rates and intrastate switched access rates and projecting the proposed tariff revisions to implement Phase I, discussed below. Copies shall concurrently be served on the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff and the Bureau of Fixed Utility Services – Telecommunications Division, or its successor bureau, pursuant to the executed proprietary Protective Orders in the generic investigation case at Docket No. I‑00040105.

Upon the filing their calculations, projections and illustrative tariff supplements, the RLECs shall commence the notice process to their retail customers, in accordance with their respective Chapter 30 Plans, as well as their access charge customers and any competing competitive local exchange carriers in their respective territories concerning the upcoming rate changes, and shall provide further notice prior to each of the subsequent rate changes. This notice may be presented as a bill insert or bill message over the course of a full billing cycle.

Within ninety (90) days after the RLECs submit their rate rebalancing calculations and illustrative tariff supplements described above, the Bureau of Fixed Utility Services, or its successor bureau, will review and finalize the RLECs’ rate rebalancing calculations and illustrative tariff supplements, and if found to be consistent with this Opinion and Order, shall grant approval by way of Secretarial Letters.

Within thirty (30) days from the date of the Secretarial Letter approving the finalized calculations and projections and illustrative tariff supplements, referenced above, the RLECs shall file compliance tariff supplements, effective on one (1) day’s notice, and implement the rate revisions for Phase I of the access rate revision/rebalancing process described below. Thereafter, tariff supplement filings are to occur in 18‑month intervals as addressed in Phases II and III below. RLECs shall file their rate rebalancing calculations for subsequent rate rebalancing phases at least ninety (90) days in advance of the deadlines for commencement of rate rebalancing to allow for Commission staff approval followed by customer notification. Once approved, tariff supplements for Phases II and III filed under this procedure may become effective on one (1) day’s notice.

**B. Carrier Charge**

The RLECs’ joint and common Non-Traffic Sensitive (NTS) costs of the local loop plant will be recovered from all services and users that utilize such facilities as follows:

(1) All RLECs that currently have a CC greater than $2.50 per line/month are directed to gradually reduce it to a level of $2.50 per line/month in conjunction with the gradual change of their respective Traffic-Sensitive (TS) intrastate access rate elements to mirror their interstate counterparts;

(2) Those RLECs that currently have a CC of less than $2.50 per line/month, (or a CC of $0.00), shall be permitted to gradually increase such rate to a level of no higher than $2.50 per line/month, in conjunction with the gradual change of their respective TS intrastate access rate element to mirror their interstate counterparts as needed. These RLECs will offset any intrastate access rate increases associated with this CC rate element movement first through corresponding decreases to their TS intrastate switched access rates and secondly through decreases to their rebalanced local exchange dial tone rates.

(3) If an RLEC has a CC rate at less than $2.50 per line/month and its TS intrastate carrier access rates are lower than their interstate counterparts, then such RLEC, if it so chooses, may gradually implement both an intrastate CC at a level of $2.50 per access line/month, as well as increase its TS intrastate access rates to their equivalent interstate level. The same RLEC shall implement corresponding decreases to its local exchange dial tone rates.

(4) Any increase in the existing CC rate to the $2.50 per access line per month level will be offset by a corresponding rate decrease first in the RLEC’s TS intrastate carrier rate elements and, as needed, with a decrease in the associated rebalanced rates for local exchange services. If an RLEC has a CC rate element at less than $2.50 per access line per month and if any TS intrastate carrier access rates are lower than their interstate counterparts, then this RLEC if it so chooses can gradually implement both, a rate increase to its intrastate CC to a level of $2.50 per access line per month, as well as rate increases to its relevant TS intrastate access rate elements to their equivalent interstate level. The same RLEC will implement corresponding decreases first to any TS intrastate access rates that are higher than their interstate counterparts and then to its local exchange dial tone line service rates.

**C. Traffic Sensitive Access Charges**

All RLECs are directed to rebalance their TS switched access charges to the same level as their corresponding interstate switched access charges.

Those RLECs with any of its TS intrastate carrier rates that are lower than their interstate counterparts shall have the option of either retaining those rates at current intrastate levels or increasing them to their interstate rates. Any increase in revenue resulting from rate increases to any intrastate TS rate element to the corresponding interstate level shall be offset first, by decreases to the CC rate and other TS intrastate carrier rates that are higher than their interstate counterparts, and secondly, by decreases to local exchange dial tone line service rates so that the net effect of all of the rate changes will be revenue neutral.

**D. Implementation of Access Charge/Local Rate Rebalancing**

The revenue neutral rate rebalancing resulting from this proceeding will be implemented in three phases spread over a four-year time frame, at which point RLECs intrastate TS switched access rates will mirror their interstate TS switched access rates,[[173]](#footnote-173) along with an intrastate NTS CC rate not to exceed $2.50 per line/month to cover the joint and common costs of the local loop. The mirroring of interstate rates will be accomplished through rate rebalancing filings involving reductions and possibly adjustments to TS switched access rates, reductions or possible increases to the intrastate CC and increases to local service rates. RLECs will accomplish the mirroring of interstate TS switched access rates by reducing the difference between their interstate TS switched access rates and their intrastate TS counterparts by 40% in the first year, 35% within the subsequent 18 months after the first year’s effective date, and 25%, or any remaining difference, within the 18 months after the second phase effective date. In some cases, in order to mirror interstate TS rates, the intrastate TS rates will need to be increased. Likewise, depending upon the current CC, some RLECs will be required to reduce the CC if this rate is above $2.50 per line per month while those with a CC less than $2.50 per line per month will be permitted to increase this charge. Each of the RLECs shall calculate their required access charge reductions based on the most current data for access line counts and minutes of use available in each phase Each RLEC shall use the most current data available as of December 31, 2010 for the first phase and the most recent calendar year-end data available for each subsequent phase.

Any revenue reductions resulting from the intrastate switched access rate decreases will first be offset with equivalent local rate increases in the RLECs’ dial tone line rates and the associated equivalent B-1 rates. The R-1 rate increases resulting directly from this investigation shall not exceed more than $3.50 per line/per month in any of the three phases. Any access charge revenue decreases that cannot be offset after using a maximum increase of $3.50 per month/per line may be recovered through rate increases from the RLECs’ other non-competitive services. A more in-depth individual analysis maybe conducted if an RLEC’s rate rebalancing proposal increases residential R-1 rates above the Commission’s new benchmark rate of $23.00/month, exclusive of taxes, fees, and the federal SLC.

Phase I: Within thirty (30) days from entry of the Commission Order finalizing the rate rebalancing template, RLECs shall commence with implementation of the initial phase (40% reduction) towards attaining a CC of $2.50/line/month and mirroring interstate Traffic Sensitive access charges. The revenue reduction resulting from access rate decreases shall be offset through rate rebalancing of local exchange rates, adjustment of the CC to the $2.50/line/month level, and/or increases to other non-competitive service rates.

Phase II: Within eighteen (18) months from the effective date of their previous Phase I rate rebalancing, RLECs shall commence with implementation of the second phase (35% reduction) towards attaining a CC of $2.50/line/month and mirroring interstate traffic sensitive access charges. The revenue reduction resulting from access rate decreases shall be offset through rate rebalancing of local exchange rates, adjustment of the CC to the $2.50/line/month level, and/or increases to other non-competitive service rates.

Phase III: Within eighteen (18) months from the effective date of their previous Phase II rate rebalancing, RLECs shall commence with implementation of the third and final phase (25% reduction) towards attaining a CC of $2.50/month and mirroring interstate traffic sensitive access charges. The revenue reduction resulting from access rate decreases shall be offset through rate rebalancing of local exchange rates, adjustment of the CC to the $2.50/line/month level, and/or increases to other non-competitive service rates.

**ANNEX D**

|  |  |  |
| --- | --- | --- |
| PUC logo | COMMONWEALTH OF PENNSYLVANIA  PENNSYLVANIA PUBLIC UTILITY COMMISSION  P.O. BOX 3265, HARRISBURG, PA 17105-3265 | **IN REPLY PLEASE REFER TO OUR FILE** |

|  |  |
| --- | --- |
| July \_\_, 2011 | **I-00040105** |

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.*

TO ALL INTERESTED PARTIES:

This letter is to inform all interested parties that the Pennsylvania Public Utility Commission, in a Public Meeting held on June 30, 2011, acted to adopt an Opinion and Order in the above-captioned proceedings concerning various matters related to the conclusion of the intrastate switched access charge reform investigation for rural local exchange telephone companies and potential modifications to the Pennsylvania Universal Service Fund.

The Opinion and Order was entered on \_\_\_\_\_\_\_\_, 2011, and is in excess of 200 pages. In lieu of publishing the entire Opinion and Order in the *Pennsylvania Bulletin*, we hereby inform interested parties that the entered Opinion and Order may be downloaded from and viewed on the Pennsylvania Public Utility Commission’s official website using the following link:

<http://www.puc.state.pa.us/general/search.aspx>

After accessing this link enter “I-00040105” (without the quotes) in the “Docket Number” field and the entry date of the Opinion and Order, “ Enter ENTRY DATE here” (without the quotes) in the “From” and “To” fields after the “Document Served Date.”

Please contact Robert A. Marinko by telephone at (717) 783-3930 or by e‑mail at [rmarinko@state.pa.us](mailto:rmarinko@state.pa.us), concerning any questions related to this matter.

Very truly yours,

Rosemary Chiavetta

Secretary

1. The PTA represents thirty rural incumbent local exchange carriers (RLECs) in this proceeding. The RLECs have previously participated in the Commission’s generic access charge investigation proceedings under the umbrella title of Rural Telephone Company Coalition (RTCC). The list of the thirty rural carriers represented by the PTA include: Armstrong Telephone Company – PA; Armstrong Telephone Company – North; Bentleyville Telephone Company; Buffalo Valley Telephone Company; Citizens Telephone Company of Kecksburg; Commonwealth Telephone Company LLC d/b/a Frontier Communications Commonwealth Telephone Company; Frontier Communications of Breezewood, LLC; Frontier Communications of Canton, LLC; Frontier Communications of Lakewood, LLC; Frontier Communications of Oswayo River, LLC; Frontier Communications of Pennsylvania, LLC; Conestoga Telephone & Telegraph Company; Denver and Ephrata Telephone and Telegraph Company; Hickory Telephone Company; Ironton Telephone Company; Lackawaxen Telecommunications Services; Laurel Highland Telephone Company; TDS Telecom/Mahanoy & Mahantango Telephone Company; Marianna and Scenery Hill Telephone Company; The North-Eastern PA Telephone Company; North Penn Telephone Company; Consolidated Communications of PA Company; Palmerton Telephone Company; Pennsylvania Telephone Company; Pymatuning Independent Telephone Company; South Canaan Telephone Company; TDS Telecom/Sugar Valley Telephone Company; Venus Telephone Corporation; Windstream PA, LLC.; and Yukon-Waltz Telephone Company. [↑](#footnote-ref-1)
2. CTL was formerly known as The United Telephone Company of Pennsylvania LLC d/b/a Embarq, but is now known as The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink as a result of its recent merger approval in Pennsylvania last year. *See Joint Application of The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania and Embarq Communications, Inc. For approval of the Indirect Transfer of Control To CenturyTel, Inc.,* Docket No. A-2008-2076038, (Opinion and Order entered March 1, 2010) and the subsequent name change filed April 28, 2010. [↑](#footnote-ref-2)
3. This limited proceeding was conducted pursuant to Commission Order entered on April 24, 2008 at this docket. [↑](#footnote-ref-3)
4. *Re Nextlink Pennsylvania, Inc*., Docket No. P-00991648; P‑00991649, 93 Pa PUC 172 (September 30, 1999) (*Global Order*); 196 P.U.R. 4th 172, *aff’d sub nom.* *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa. Cmmwlth. 2000), vacated in part *MCI WorldCom Inc. v. PA PUC*, 577 Pa. 294, 844 A.2d 1239 (2004). [↑](#footnote-ref-4)
5. Sprint/United later divested its landline operations. See footnote 2, *supra* for an explanation of the corporate history of The United Telephone Company of Pennsylvania. [↑](#footnote-ref-5)
6. *See Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger*, Docket No. A-310200F0002, *et al.*, (Opinion and Order entered November 4, 1999) (*Merger Order*). [↑](#footnote-ref-6)
7. Similar to the RLEC access charge investigation, the Verizon Companies’ access charge investigation at C-20027195 had also been stayed pending the outcome of the FCC’s *Unified Intercarrier Compensation* proceeding. *See* Order entered January 8, 2007 at Docket No. C-20027195. However, the Commission lifted the stay in the *Verizon* proceeding by Order entered on May 11, 2010. [↑](#footnote-ref-7)
8. Incumbent Local Exchange Carriers (ILECs) include RLECs and other non-rural local exchange carriers. [↑](#footnote-ref-8)
9. *See* *In the Matter of Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, FCC 05-33, Further Notice of Proposed Rulemaking (released March 3, 2005) (*Unified Intercarrier Compensation Proceeding*). [↑](#footnote-ref-9)
10. Sprint Nextel Corp. filed on behalf of Sprint Communications Company L.P., its interexchange and competitive local exchange carrier entity, and its wireless entities operating in the Commonwealth: Sprint Spectrum, L.P. d/b/a Sprint PCS and Nextel Communications, Inc., and NPCR, Inc. d/b/a Nextel Partners. [↑](#footnote-ref-10)
11. The RLECs are as follows: Armstrong Telephone Company – Pennsylvania; Armstrong Telephone Company – North; Bentleyville Telephone Company; Buffalo Valley Telephone Company; Citizens Telephone Company of Kecksburg; Citizens Telecommunications Company of New York; Frontier Communications Commonwealth Telephone Company, LLC (d/b/a Frontier Commonwealth); Frontier Communications of Breezewood, LLC; Frontier Communications of Canton, LLC; Frontier Communications – Lakewood, LLC; Frontier Communications – Oswayo River, LLC; Frontier Communications of PA, LLC; Conestoga Telephone & Telegraph Company; D&E Telephone Company; Hickory Telephone Company; Ironton Telephone Company; Lackawaxen Telecommunications Services; Laurel Highland Telephone Company; Mahanoy & Mahantango Telephone Company; Marianna & Scenery Hill Telephone Company; The North-Eastern Pennsylvania Telephone Company; North Penn Telephone Company; Consolidated Communications of Pennsylvania Company (f/k/a North Pittsburgh Telephone Company); Palmerton Telephone Company; Pennsylvania Telephone Company; Pymatuning Independent Telephone Company; South Canaan Telephone Company; Sugar Valley Telephone Company; The United Telephone Company of Pennsylvania LLC d/b/a CTL Pennsylvania (CTL PA); Venus Telephone Corporation; Windstream Pennsylvania, LLC (f/k/a ALLTEL Pennsylvania, Inc.); and Yukon-Waltz Telephone Company. [↑](#footnote-ref-11)
12. On April 23, 2010, AT&T withdrew its complaints against Citizens Telecommunications Company of New York as that company does not have an intrastate access tariff. [↑](#footnote-ref-12)
13. 66 Pa. C.S. §§ 701 and 1309. [↑](#footnote-ref-13)
14. OCA St. No. 1.0 at 2-3. [↑](#footnote-ref-14)
15. 93 PA PUC 172, 189. [↑](#footnote-ref-15)
16. The terms “CCLC” and “CC” are used interchangeably in this Opinion and Order even though they refer to the difference in rate structure with regard to how charges for the NTS costs are recovered (*i.e.,* either on a “per minute of use” basis or on a “per line per month” basis). The Commission, in its *Global Order,* essentially discontinued the term “CCLC” when it required all ILECs to convert from a CCLC, which is the switched access charge element used to recover the NTS costs associated with the local loop on a “per minute of use basis” to a CC, which is the switched access charge element used to recover the NTS costs associated with the local loop on a “per line per month” basis. [↑](#footnote-ref-16)
17. 66 Pa. C.S. §§ 3001-3009; repealed by Act 183, P.L. 1398, No. 183, § 1, Nov. 30, 2004. [↑](#footnote-ref-17)
18. The revised Chapter 30, referred to herein as Act 183 for clarity, became effective on November 30, 2004, and allowed the continuation of Commission-approved alternative regulation and network modernization plans and provided further incentives for ILECs who chose to accelerate their broadband commitment. 66 Pa. C.S. §§ 3011-3019. [↑](#footnote-ref-18)
19. The TIC rate element has since been eliminated. [↑](#footnote-ref-19)
20. *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges,* CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 12 FCC Rcd 15982, May 31, 2000, (*Interstate Access Support Order)* at 15998 ¶ 35. [↑](#footnote-ref-20)
21. *Interstate Access Support Order* at 13046 ¶ 201. [↑](#footnote-ref-21)
22. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9164-65 (1977) (*Universal Service First Report and Order)* at 8917 par. 253 (subsequent history omitted); *Rural Task Force Order.* [↑](#footnote-ref-22)
23. *Id.* at 11249 ¶ 8. [↑](#footnote-ref-23)
24. Reductions to Verizon’s access charges have been and will continue to be considered separately by the Commission at Docket No. C‑20027195. [↑](#footnote-ref-24)
25. While PTA Ex. GMZ-2 was identified as a Proprietary and Confidential exhibit in PTA St. No. 1, the total access revenue reduction of $21 million was not designated as a proprietary number in the PTA Main Brief at n.15. [↑](#footnote-ref-25)
26. *See,* *2006 Annual Price Stability Index / Service Price Index Filing of Buffalo Valley Telephone Company, et al.,* Docket Nos. P-00981428F1000 and R‑00061375, *et al.*, Opinion and Order entered July 11, 2007 (*July 2007 Order).* [↑](#footnote-ref-26)
27. *See Rulemaking Re Establishing Universal Service Fund Regulations at 52 Pa. Code §§ 63.161-63.171*, Docket No. L-00000148, Revised Final Rulemaking Order entered March 23, 2001. [↑](#footnote-ref-27)
28. Chapter 30 of the Code was substantially modified by repealing §§ 3001-3009 and re-enacted through Act 183, P.L. 1398, 66 Pa. C.S. §§ 3011-3019 (Act 183). [↑](#footnote-ref-28)
29. The PSM is a methodology included in an ILEC’s Chapter 30 plan detailing how annual rate increases are calculated. All ILECs operating with a PSM must file an annual Price Stability Index/Service Price Index (PSI/SPI) Report. The PSI calculates the allowable change in noncompetitive rates based, in part, on the annual change in the Gross Domestic Product Index (GDP-PI). The SPI tracks the prior rate changes for noncompetitive services related to the PSI. As such, the terms “PSM” and PSI/SPI are often used interchangeably. The PSMs of the Chapter 30 RLECs also recognize “exogenous events” such as: (1) jurisdictional shifts in cost recovery (changes in interstate revenues and rates); (2) regulatory and legislative changes (state and federal); and (3) unique changes in the telephone industry which are not reflected in the overall inflation factor as measured by the GDP-PI. *See generally Amended Final Streamlined Regulation Plan of Frontier Communications of Breezewood, LLC; Frontier Communications of Canton, LLC; Frontier Communications of Pennsylvania, LLC; Frontier Communications of Lakewood, LLC; Frontier Communications of Oswayo River, LLC (Revised September 7, 2005)*, Docket No. P-00951005F1000, filed October 12, 2005. As discussed *infra*, however, the revenue neutral rate rebalancing authorized by this Order is not a permissible exogenous event under the Chapter 30 plans and any claim by an ILEC to that effect in future PSI/SPI filings will not be considered by the Commission. [↑](#footnote-ref-29)
30. 66 Pa. C.S. § 1301. [↑](#footnote-ref-30)
31. BCAP cites *Triple Crown Corporation v. PPL Inc.*, 94 Pa. P.U.C. 300, 2000 WL 149662 at \*5 (May 18, 2000) (“The Commission’s duty is to determine the public interest, it has no jurisdiction to adjudicate purely private fights.”). [↑](#footnote-ref-31)
32. 66 Pa. C.S. § 501. [↑](#footnote-ref-32)
33. 66 Pa. C.S. §§ 3019(h) and 3015(g). [↑](#footnote-ref-33)
34. 66 Pa. C.S. §§ 3015(g) and 3019(e). [↑](#footnote-ref-34)
35. *D&E Companies PSI/SPI Filings for the Year 2006*, Docket Nos. I‑00040105, *et al.*, Opinion and Order entered July 11, 2007 at 32. [↑](#footnote-ref-35)
36. *Commonwealth Telephone Company PSI/SPI Filing for Year 2005*, at Docket No. R‑00050551, Opinion and Order entered August 31, 2005, at 7. [↑](#footnote-ref-36)
37. The PTA cites to 66 Pa. C.S. § 3013(b) to point out that the Commission may not modify or change a Chapter 30 plan without the express agreement of the ILEC. [↑](#footnote-ref-37)
38. As we note below, the Commonwealth Court has since rendered its opinion in the *D&E* case, affirming the Commission’s Order. [↑](#footnote-ref-38)
39. The D&E Companies relied upon an excerpt of Section 3015(g) of the Code to support their contention that the Commission has no authority under Act 183 to prohibit them from increasing their switched access charges and that the Commission’s authority is limited to determining whether the Company correctly calculated the additional revenue permitted by its price change formula and whether the proposed rate change violated an explicit term of the approved Amended Plans. The D&E Companies argued that their Amended Plans did not prohibit switched access rate increases, and that the Commission cannot create a “new” limitation by disallowing them. [↑](#footnote-ref-39)
40. 66 Pa. C.S. § 1301. [↑](#footnote-ref-40)
41. 66 Pa. C.S. § 1304. [↑](#footnote-ref-41)
42. The ALJ noted that this very issue was decided by the Commission and at that time was on appeal to the Commonwealth Court of Pennsylvania. *Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company, and Denver and Ephrata Telephone and Telegraph Company v. Pa. Publ. Util. Comm’n, No. 847 CD 2008, appealing the orders at PUC Docket Nos. I-00040105, P‑00991428F1000, R‑00061375. See also Buffalo Valley Tel. Co. v. Pa. PUC,* 990 A.2d 67 (Pa. Commw. Ct. 2009). [↑](#footnote-ref-42)
43. 47 U.S.C § 254(b). [↑](#footnote-ref-43)
44. *See* Docket Nos. R‑00061375, *et al.* Order entered December 7, 2007, at 30-32. [↑](#footnote-ref-44)
45. *PaUSF Revised Final Rulemaking Order, Docket Nos. P‑00991648 and P‑00991649,* Order entered March 23, 2001 at 8. [↑](#footnote-ref-45)
46. AT&T indicates that after deducting $6.50/month for federal subscriber line charge, the OCA’s affordability amount would be $25.50/month. [↑](#footnote-ref-46)
47. 66 Pa. C.S §§ 3011(2) and 3011(8). [↑](#footnote-ref-47)
48. 47 USC § 254(b)(3). [↑](#footnote-ref-48)
49. 66 Pa. C.S. § 3015(g). [↑](#footnote-ref-49)
50. 66 Pa. C.S. § 1301. [↑](#footnote-ref-50)
51. The PTA provided no data for the record from its own customers regarding affordability. [↑](#footnote-ref-51)
52. We note that the major part, if not all, of Verizon PA’s annual contribution assessment to the PaUSF is funded by its 2003 Chapter 30 price change opportunity (PCO) mechanism negative result that generated an annual revenue decrease for Verizon PA’s intrastate operations. The Commission approved Verizon PA’s request to continue funding its annual PaUSF contribution assessment from those negative PCO mechanism revenues. *See generally Verizon Pennsylvania Inc. 2009 Price Change Opportunity Filing*, Docket Nos. R-2008-2074972, P-00930715F1000, Order entered February 27, 2009, at 9 (accounting for the gap between 2009 Chapter PCO revenues, the negative 2003 PCO revenues, and the annual assessment contribution to the PaUSF with the difference being credited to Verizon PA’s retail ratepayers). [↑](#footnote-ref-52)
53. The ‘annual price changes’ referred to here is used in reference to the ILECs’ annual PSI filings. [↑](#footnote-ref-53)
54. In explaining the purpose of PaUSF, the ALJ quoted from the Commission’s PaUSF Regulations: “[t]he purpose of the Fund is to maintain the affordability of local service rates for end-user customers while allowing rural telephone companies to reduce access charges and intraLATA toll rates, on a revenue-neutral basis, thereby encouraging greater competition.” 52 Pa. Code § 53.161(3). [↑](#footnote-ref-54)
55. The PTA also attached a copy of the Settlement Agreement entitled PTA Exhibit JJL-4, which has been signed by Patricia Armstrong, counsel for RLECs and Bohdan Pankiw, Chief Counsel for the Pennsylvania Public Utility Commission, executed on May 16, 2000, and May 18, 2000, respectively. The Settlement Agreement, among other things, refers to participating ILECs recovering the difference from the interim PaUSF if rate increases and/or revenue neutral rate rebalancing results in rates above the $16.00/month cap and the Commission has deemed these rates to be just and reasonable. [↑](#footnote-ref-55)
56. *Joint Application of The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania and Embarq Communications, Inc. For approval of the Indirect Transfer of Control To CenturyTel, Inc.,* Docket No. A-2008-2076038,Order entered on May 28, 2009. [↑](#footnote-ref-56)
57. We again note the method through which Verizon PA funds its annual PaUSF contribution assessment. *See* n. 52, *supra*. [↑](#footnote-ref-57)
58. The *Global Order* called for the PaUSF to expire December 31, 2003; however, the Commission’s *July 2003 Order* allowed for a continuation of the PaUSF until a further Commission Rulemaking determined otherwise. [↑](#footnote-ref-58)
59. Colwell R.D. at 90. [↑](#footnote-ref-59)
60. We note that these arguments are moot in that we consider here both the limited and full access charge investigation proceedings. [↑](#footnote-ref-60)
61. 66 Pa. C.S. § 3017(a). [↑](#footnote-ref-61)
62. CTL St. 1.0 at 5. [↑](#footnote-ref-62)
63. We note that on February 8, 2011, the FCC adopted a Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking addressing numerous pending dockets, including the *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan For Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; 76 Fed. Reg. 11632 (March 2, 2011) (FCC NPRM). The FCC is reviewing comments regarding its proposed regulations. [↑](#footnote-ref-63)
64. Pennsylvania, through Act 183 and the earlier version of Chapter 30 of the Code, is one of the few states in the nation that successfully embarked on a statutorily-mandated and *universal* deployment of broadband facilities and services with Pennsylvania’s Chapter 30 ILECs undertaking the corresponding commitments. In addition, the FCC’s *National Broadband Plan* has announced a national goal of broadband deployment. (The *National Broadband Plan* is referenced in the later part of this Opinion and Order that disposes of the intercarrier compensation phase of this proceeding before ALJ Melillo.) This FCC action largely parallels what the Pennsylvania General Assembly through Act 183 in 2004 – and the earlier 1993 version of Chapter 30 – had already specified as policy and statutorily mandated in this Commonwealth. The FCC’s national goal is also reflected in the recently released massive FCC NPRM that deals with extensive proposed reforms of intercarrier compensation and the federal USF within the FCC’s jurisdiction. [↑](#footnote-ref-64)
65. *See generally Application of Sprint Communications Company L.P. For Approval of the Right to Offer, Render, Furnish or Supply Telecommunications Services as a Competitive Local Exchange Carrier to the Public in the Service Territories of Alltel Pennsylvania, Inc., Commonwealth Telephone Company and Palmerton Telephone Company*, Docket Nos. A-310183F0002AMA, A‑310183F0002AMB, A‑310183F0002AMC, Order entered December 1, 2006; *Application of Core Communications, Inc. for Authority to amend its existing Certificate of Public Convenience and necessity and to expand Core’s Pennsylvania operations to include the Provision of competitive residential and business Local exchange telecommunications services throughout the Commonwealth of Pennsylvania, et al.*, Docket Nos. A-310922F0002AmA, A‑3100922F0002AmB, Order entered December 4, 2006, at 26, *aff’d Rural Tel. Co. Coalition v. Pa. Pub. Util. Comm’n*, 941 A.2d 751 (Pa. Cmwlth. 2008). [↑](#footnote-ref-65)
66. We are not adopting all of ALJ Melillo’s recommendations. As discussed, *infra*, we will modify ALJ Melillo’s R.D. consistent with this Opinion and Order. [↑](#footnote-ref-66)
67. The OCA’s Main Brief on page 20 indicated that the increased PaUSF pay-out would be $64.3 million, but ALJ Melillo used $63.4 million throughout her R.D. because that is the number found in OCA witness Dr. Loube’s testimony at OCA St. No. 1 at 16. [↑](#footnote-ref-67)
68. While the burden of persuasion may shift back and forth during a proceeding, the burden of proof always ultimately remains on the party with that burden, in this case, the RLECs, as to the justness and reasonableness of their rates. *Milkie v. Pennsylvania Public Utility Commission*, 768 A.2d 1217 (Pa. Cmwlth. 2001). [↑](#footnote-ref-68)
69. The term “IXC” is generally used throughout this section of the Recommended Decision to reflect the RLECs’ opponents herein. Qwest, an IXC with a more moderate position, is not included specifically in this term unless contextually indicated. [↑](#footnote-ref-69)
70. In support of her conclusion, the ALJ cites to Section 332(a) of the Code, 66 Pa. C.S. § 332(a)) and also to *Joint Default Service Plan for Citizens’ Electric Company of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2013*, Docket Nos. P-2009-2110798 and P-2009-2110780, Order entered February 26, 2010 (*Citizens and Wellsboro DSP Order*), 2010 WL 1259684 (Pa. PUC). [↑](#footnote-ref-70)
71. The ALJ also explained that the Commission previously decided the same issue with a ruling in the pending Verizon Access Charge Proceeding (*AT&T v. Verizon*), at Docket No. M-00021596. In that case, the complaints filed by AT&T against Verizon North Inc. seeking the reduction of access charges to Verizon PA levels, were consolidated with the ongoing access charge investigation and the burden of proof was assigned to Verizon. *Verizon Access Charge Proceeding*, Opinion and Order entered on January 8, 2007, *slip op.* at 20-21. The ALJ noted that the same conclusion applies here. Melillo R.D. at 47. [↑](#footnote-ref-71)
72. *See In the Matter of Access Charge Reform Price Cap Performance Review for Local Exchange Carriers Low-Volume Long-Distance Users Federal-State Joint Board On Universal Service*, CC Docket No. 96‑262, CC Docket No. 94-1, CC Docket No. 99-249 and CC Docket No. 96-45, Sixth Report and Order In CC Docket Nos. 96-262 and 94-1, CC Docket No. 99-249 Eleventh Report and Order In CC Docket No. 96-45 released May 31, 2000 (*CALLS Order)*. [↑](#footnote-ref-72)
73. *See In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return for Interstate Service of Local Exchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-77 and 98-166 (*MAGS Order*). [↑](#footnote-ref-73)
74. We note that on December 28, 2010, the PTA filed a Petition at Docket No. P‑2010-2217748 requesting that the Commission consider expanding the base of contributing carriers to the PaUSF to include wireless and VoIP providers. This matter is pending before the Commission. [↑](#footnote-ref-74)
75. 66 Pa. C.S. § 3017(a). [↑](#footnote-ref-75)
76. According to AT&T, call pumping is the practice whereby local providers, encouraged by the ability to benefit from high access prices, develop programs that promote the creation of chat rooms, pornography, adult services and other questionable services that can generate high volumes of access traffic. The carriers are able to “kick back” a share of their access revenues to these providers, since access rates are well in excess of costs. AT&T St. No. 1.0 at 42. [↑](#footnote-ref-76)
77. The ALJ also noted that, generally, in Commission-initiated proceedings wherein existing rates are being investigated, the party with the burden of proof presents cost data to establish that rates are not excessive in relation to cost. The ALJ also noted that no party presented any access cost information, but both the RLECs and IXCs agreed that this information was unnecessary to resolve the issues. [↑](#footnote-ref-77)
78. 66 Pa. C.S. § 3011. [↑](#footnote-ref-78)
79. 66 Pa. C.S. § 3015(g). [↑](#footnote-ref-79)
80. As previously noted, the FCC has already issued an extensive NPRM with proposed reforms for the federal USF and intercarrier compensation matters within its jurisdiction. [↑](#footnote-ref-80)
81. 66 Pa. C.S. § 315(a). [↑](#footnote-ref-81)
82. Commission’s Order in *2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company, et al*., Docket No. P-00981428F1000, *et al*., Order entered July 11, 2007, at 22-23. [↑](#footnote-ref-82)
83. PTA Exc. at 25. [↑](#footnote-ref-83)
84. Consistent with the AT&T position, Armstrong North would be permitted to increase its intrastate access charges to interstate levels. Tr. at 192. [↑](#footnote-ref-84)
85. The OCA noted that the Verizon TS rate is less than the RLEC interstate traffic-sensitive rate for 29 of the 30 PTA RLECs. OCA St. No. 1-S at 3-4. [↑](#footnote-ref-85)
86. The ALJ rejected the access rate proposals of Verizon, the OCA and the OSBA as well as the PTA’s and CTL’s proposals to maintain the status quo. Melillo R.D. at 22-32, 78-93. [↑](#footnote-ref-86)
87. 66 Pa. C.S. § 1309(a). [↑](#footnote-ref-87)
88. *See* Section 6.b. – Revenue Neutrality and Section 6.e. of this Opinion and Order – PaUSF Support For Further Access Rebalancing, *infra*. [↑](#footnote-ref-88)
89. The PTA cites our 2008 Order in *Verizon Pennsylvania Inc. v. Penn Telecom, Inc.,* Docket No. C-20066987 (Opinion and Order entered August 29, 2008) at 13-14. [↑](#footnote-ref-89)
90. *CALLS Order*; *see also Southwestern Bell Telephone v. Federal Communications Commission*, 153 F.3d 523, 559 (8th Cir. 1998). [↑](#footnote-ref-90)
91. *Global Order,* 93 PA PUC at 189. [↑](#footnote-ref-91)
92. Direct Testimony of Dr. Robert Loube, OCA St. 1.0, Docket Nos. I‑00040105, C-2009-2098380, *et al.*, filed January 20, 2010, at 11-12. The term “MTA” stands for “major trading area.” Intrastate intra-MTA wireless calls that terminate at RLEC switched access network facilities are essentially treated as local calls under FCC rules and are subject to generally lower reciprocal compensation rates rather than conventional intrastate carrier switched access rates that include the CC rate element. [↑](#footnote-ref-92)
93. *See generally* OCA St. 1, Direct Testimony of Dr. Robert Loube, Docket No. I‑00040105, filed December 10, 2008, Proprietary Exh. RL-7, OCA St. 1.0; Direct Testimony of Dr. Robert Loube, Docket Nos. I-00040105, C‑2009‑2098380, *et al.*, filed January 20, 2010, Exh. RL-10 & RL-11; and, AT&T St. 1.0, Panel Direct Testimony of E. Christopher Nurse and Dr. Ola A. Oyefusi, Docket Nos. C-2009-2098380, *et al.*, filed July 2, 2009, Exh. K. [↑](#footnote-ref-93)
94. We note that any increase in the existing CC rate to the $2.50 per access line per month level will be offset by a corresponding rate decrease first in the RLEC’s TS intrastate carrier rate elements and, as needed, with a decrease in the associated rebalanced rates for local exchange services. If an RLEC has a CC rate element at less than $2.50 per access line per month and its TS intrastate carrier access rates are lower than their interstate counterparts, then this RLEC if it so chooses can gradually implement both an intrastate CC at a level of $2.50 per access line per month, as well as increase its TS intrastate access rates to their equivalent interstate level. The same RLEC will implement corresponding decreases to its local exchange service rates. [↑](#footnote-ref-94)
95. *See* Section 6.f. of this Opinion and Order – Details of Recommendation on Revenue Neutral Rebalancing. [↑](#footnote-ref-95)
96. *Re Cable Television Pole Attachments,* Docket No. M-78080077, 52 PA PUC 372 (1978). [↑](#footnote-ref-96)
97. *Donnelly Directory v. The Bell Telephone Company of Pennsylvania*, 66 PA PUC 376 (1988). [↑](#footnote-ref-97)
98. *Re: Petition Requesting the Commission to Institute a Generic Investigation Concerning the Development of Intrastate Access Charges*, Docket No. P‑830452 et al., 69 P.U.R. 4th 69 (August 8, 1995). [↑](#footnote-ref-98)
99. 66 Pa. C.S. § 3017(a). [↑](#footnote-ref-99)
100. 66 Pa. C.S. § 3015(a)(1). [↑](#footnote-ref-100)
101. 66 Pa. C.S. § 3017(a). [↑](#footnote-ref-101)
102. *Id.* [↑](#footnote-ref-102)
103. *Id.* [↑](#footnote-ref-103)
104. *Id.* [↑](#footnote-ref-104)
105. *Id.* [↑](#footnote-ref-105)
106. *Pennsylvania Electric Co. v. Pa. P.U.C. ,* 509 Pa. 324, 502 A.2d 130 (1985); *appeal dismissed*, 476 U.S. 1137, 106 S.Ct. 2239, 90 L.Ed. 2d 687 (1986). [↑](#footnote-ref-106)
107. 66 Pa. C.S. § 3017(a). [↑](#footnote-ref-107)
108. *Id.* [↑](#footnote-ref-108)
109. *Id.* [↑](#footnote-ref-109)
110. *Id.* [↑](#footnote-ref-110)
111. PTA Surrebuttal at 45. [↑](#footnote-ref-111)
112. PTA Exc. at 51. [↑](#footnote-ref-112)
113. PTA St. 1.0 at 42-43. [↑](#footnote-ref-113)
114. 66 Pa. C.S. § 3017(a). [↑](#footnote-ref-114)
115. Melillo R.D. at 107. [↑](#footnote-ref-115)
116. Tr. at 136; *See also* Colwell Investigation,PTA St. No. 1R at 23-25; PTA St. No. 1R at 23; Tr. at 474. [↑](#footnote-ref-116)
117. Colwell Investigation, PTA St. No. 1R at 24-25. [↑](#footnote-ref-117)
118. Tr. at 675. [↑](#footnote-ref-118)
119. Tr. at 392. [↑](#footnote-ref-119)
120. 66 Pa. C. S. § 1501. [↑](#footnote-ref-120)
121. CenturyLink St. 3.0 at 12-15 (Colwell Investigation). [↑](#footnote-ref-121)
122. PTA Exc. at 18. [↑](#footnote-ref-122)
123. Finding of Fact No. 48. [↑](#footnote-ref-123)
124. Finding of Fact No. 50. [↑](#footnote-ref-124)
125. AT&T Cross. Ex. Exh. 1. [↑](#footnote-ref-125)
126. Exhibit CTL Panel 8 to CenturyLink Statement 1.2 (Lindsey/Harper Rejoinder); May 1999 Kansas Testimony at 19. [↑](#footnote-ref-126)
127. *See* PTA Direct Exhibit GMZ 13 showing that 16 of the RLECs still have residential rates at or below $16.00/month and the majority of them still have rates below $18.00/month. [↑](#footnote-ref-127)
128. Melillo R.D. at 40-41. [↑](#footnote-ref-128)
129. Melillo R.D. at 40; Finding of Fact No. 58. [↑](#footnote-ref-129)
130. Melillo R.D. at 40; Finding of Fact No. 59. [↑](#footnote-ref-130)
131. 66 Pa. C.S. § 3017(a). [↑](#footnote-ref-131)
132. *Id.* [↑](#footnote-ref-132)
133. Tr. at 390. [↑](#footnote-ref-133)
134. Tr. at 392. [↑](#footnote-ref-134)
135. Under the federal Communications Act of 1934 as amended (*e.g.*, federal Telecommunications Act of 1996 or TA-96), the RLECs are classified as Title II telecommunications common carriers. This classification entails a certain set of obligations of how the RLEC networks operate and interconnect with other wireline and wireless providers of telecommunications and communications services. [↑](#footnote-ref-135)
136. *Pa. PUC, et al. v. Bell Atlantic-Pennsylvania, Inc.,* Docket No. R-00963550 (December 16, 1996), at 23-24 (100% of dial tone line costs cannot be solely allocated to local exchange service); and *Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth,* Docket No. I-00940035 (August 31, 1995), at 12 (“[A] portion of all joint shared and common costs, including overhead costs, should be reasonably assigned to basic universal service.”). Our January 28, 1997 Order at Docket No. I-00940035 reaffirmed our findings in our September 5, 1995 Order at Docket No. L-00950105 that the local loop is a joint cost and not only a direct cost for providing only those services included with the then adopted definition of “basic universal service.” [↑](#footnote-ref-136)
137. *Verizon Pennsylvania Inc. v. Penn Telecom, Inc.,* Docket No. C-20066987 (Opinion and Order entered August 29, 2008) at 13-14 (traditionally local loop costs treated as joint costs). [↑](#footnote-ref-137)
138. *Joint Petition of Nextlink Pennsylvania, Inc., et al.*, Docket Nos. P‑00991648 and P-00991649 (September 30, 1999), at 11-56, 196 PUR4th 172, 186-203 (*Global Order*), *aff’d, Bell Atlantic-Pennsylvania, Inc. v. Pa. Pub. Util. Comm’n*, 763 A.2d 440 (Pa. Cmwlth. 2000), *vacated in part sub nom. MCI Worldcom Inc. v. Pa. Pub. Util. Comm’n*, 844 A.2d 1239 (Pa. 2004). [↑](#footnote-ref-138)
139. 763 A.2d at 480. [↑](#footnote-ref-139)
140. While the record is minimal in terms of RLEC support for local loop costs and appropriate cost allocation to users, we rely upon the evidence presented by the OCA demonstrating that the loop cost is a shared cost. OCA St. No. 1 at 69-75. [↑](#footnote-ref-140)
141. We note that some ILECs have no CC or a CC below $2.50/line/month. We anticipate that all ILECs will gradually establish the CC at no more than $2.50/line/month. This translates into some ILECs increasing the CC and others reducing the CC, but no ILEC will be required to eliminate the CC. [↑](#footnote-ref-141)
142. 66 Pa. C.S. 3017(a). [↑](#footnote-ref-142)
143. We emphasize that the benchmark rate set in this Opinion and Order is not a cap. ILECs are free to increase local service rates beyond the levels discussed in this Opinion and Order to the extent permitted by law, consistent with Act 183 and subject to Commission review and approval. [↑](#footnote-ref-143)
144. The 0.75% affordability constraint was established by OCA witness Roger Colton in the portion of this investigation conducted before ALJ Colwell. *See* Direct Testimony of Roger D. Colton, dated December 10, 2008. [↑](#footnote-ref-144)
145. OCA witness Dr. Loube clarified that the $32.00/month total affordability rate, net of taxes and fees of about $8.86, would be $23.14/month. He also emphasized that the OCA benchmark would be the lower of the two standards of comparability and affordability or $17.09/month. Tr. at 508. [↑](#footnote-ref-145)
146. The OCA’s preferred benchmark was $17.09/month, the lower of the two standards of comparability and affordability. [↑](#footnote-ref-146)
147. ALJ Melillo clarified that she is not recommending a $23.00/month benchmark for purposes of triggering PaUSF distributions for revenue neutral rebalancing. Instead, she recommended that the PaUSF not to be expanded at this time and the question of additional funding should await the outcome of the rulemaking proceeding recommended by ALJ Colwell to restructure the PaUSF and specifically address universal service concerns. [↑](#footnote-ref-147)
148. Mr. Colton had testified in the proceeding before ALJ Colwell that “local rural telephone service should be deemed affordable so long as the bill for such service (including the Subscriber Line Charge and all other mandatory taxes and fees) does not exceed 0.75% (three-quarters of one percent) of household income.” OCA St. No. 2 (Colwell Investigation) at 41. [↑](#footnote-ref-148)
149. Melillo R.D. at 125. [↑](#footnote-ref-149)
150. Section 3015(g) of the Code, 66 Pa. C.S. § 3015(g) states: “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 annual rate change limitation shall remain applicable and shall be deemed just and reasonable under section 1301.” [↑](#footnote-ref-150)
151. *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*). [↑](#footnote-ref-151)
152. *See Buffalo Valley,* 990 A.2d at 46 (agreeing with Commission Law Bureau that the $18.00/month rate cap was not a “rate change limitation” under 66 Pa. C.S. § 3015(g)). [↑](#footnote-ref-152)
153. We note that the OSBA filed Reply Exceptions in response to the OCA’s Exceptions that merely repeat the same arguments contained in this discussion. OSBA R.Exc. at 13-14. [↑](#footnote-ref-153)
154. *See, e.g.*, 52 Pa. Code §§ 69.264, 54.73 and 62.3. [↑](#footnote-ref-154)
155. See Section III.B.5 of this Opinion and Order. [↑](#footnote-ref-155)
156. 66 Pa. C.S. § 3015(g). [↑](#footnote-ref-156)
157. OSBA Reply Brief at 22-23. [↑](#footnote-ref-157)
158. 66 Pa. C.S. § 1304. [↑](#footnote-ref-158)
159. *See* CTL Exc. at 28. [↑](#footnote-ref-159)
160. BCAP also expressed concern about the positions of certain parties regarding expansion of the PaUSF and whether ALJ Colwell’s recommendation of reform might be inappropriately disregarded unless careful consideration of the parties’ proposals was undertaken here. [↑](#footnote-ref-160)
161. *Global Order,* 93 PA PUC at 238. [↑](#footnote-ref-161)
162. *Bell Atlantic-Pennsylvania, Inc. v. PUC*, 763 A.2d 440, 496, 2000 Pa Commw LEXIS 592 (Commw. Ct. 2000), *rev’d on other grounds, MCI WorldCom Inc. v. PUC*, 572 Pa. 294, 844 A.2d 1239 (2004). [↑](#footnote-ref-162)
163. Comcast also agreed with Verizon’s position. Comcast Main Brief at 7-8. [↑](#footnote-ref-163)
164. 66 Pa. C.S. § 3017(a). [↑](#footnote-ref-164)
165. 66 Pa. C.S. § 3011. [↑](#footnote-ref-165)
166. *See* 66 Pa. C.S. § 3017(a). “The commission may not require a local exchange telecommunications company to reduce access rates except on a revenue-neutral basis.” [↑](#footnote-ref-166)
167. 66 Pa. C.S. § 1301. [↑](#footnote-ref-167)
168. 66 Pa. C.S. § 3017(a). [↑](#footnote-ref-168)
169. The “mirroring” of the intrastate traffic sensitive intrastate carrier access rates shall be implemented based on the federal traffic sensitive access rates in effect as of December 31, 2010. [↑](#footnote-ref-169)
170. *Id.* [↑](#footnote-ref-170)
171. 66 Pa. C.S. § 3016(f)(1). [↑](#footnote-ref-171)
172. Any RLEC, which may encounter difficulty in implementing the rate rebalancing and revenue neutral requirements set forth by the Commission, may file, at its discretion, a request for relief of such requirements. Any RLEC seeking such relief must clearly and materially demonstrate that the use of all available, lawful remedies under this Opinion and Order, *e.g.*, full use of the benchmark $23 per month basic local exchange residential service rate and the CC rate of $2.50 per access line per month, will not permit it to achieve a desirable level of revenue neutrality during the contemplated time period of the access charge reform implementation. [↑](#footnote-ref-172)
173. The “mirroring” of the intrastate traffic sensitive intrastate carrier access rates shall be implemented based on the federal traffic sensitive access rates in effect as of December 31, 2010. [↑](#footnote-ref-173)