**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held July 19, 2012

Commissioners Present:

Robert F. Powelson, Chairman

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

Wayne E. Gardner, Partial Dissent - Statement

James H. Cawley, Concurring in Part and Dissenting in Part - Statement

Pamela A. Witmer, Statement

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.*

Implementation of the Federal Communications M-2012-2291824

Commission’s Order of November 18, 2011, as

Amended or Revised and Coordination with

Certain Intrastate Matters

**OPINION AND ORDER**

**Table of Contents**

[I. Summary of Conclusions 4](#_Toc332210985)

[II. Procedural History 5](#_Toc332210986)

[III. Issues Addressed by the July 2011 Order 8](#_Toc332210987)

[IV. Summary of July 2011 Order 10](#_Toc332210988)

[A. ALJ Colwell’s Limited Investigation 11](#_Toc332210989)

[Just and Reasonable Analysis 11](#_Toc332210990)

[Rate Caps 11](#_Toc332210991)

[PaUSF Funding 12](#_Toc332210992)

[PaUSF Reform 12](#_Toc332210993)

[B. ALJ Melillo’s Investigation on Remaining Issues 12](#_Toc332210994)

[Just and Reasonable Level of Intrastate Access Rates 15](#_Toc332210995)

[Revenue Neutral Recovery of Access Charge Reductions 17](#_Toc332210996)

[Consideration of Non-Jurisdictional Revenue Sources 17](#_Toc332210997)

[Revenue Neutrality 17](#_Toc332210998)

[Comparability and Affordability of RLEC Rates 18](#_Toc332210999)

[Business Rate Increases in Providing Revenue Neutrality 18](#_Toc332211000)

[PaUSF Support for Further Access Rebalancing 19](#_Toc332211001)

[Details of Revenue Neutral Rebalancing 19](#_Toc332211002)

[V. Updated Petitions for Reconsideration 20](#_Toc332211003)

[A. PTA/CTL Updated Joint Petition for Reconsideration and Stay 20](#_Toc332211004)

[B. AT&T Updated Petition for Reconsideration 23](#_Toc332211005)

[C. Answers to the Updated Petition and Updated Joint Petition and Joint Statement 26](#_Toc332211006)

[1. AT&T’s Answer 26](#_Toc332211007)

[2. PTA/CTL’s Answer 30](#_Toc332211008)

[3. Verizon’s Answer 35](#_Toc332211009)

[4. Sprint’s Answer 37](#_Toc332211010)

[5. Comcast’s Answer 38](#_Toc332211011)

[6. OCA’s Answer 39](#_Toc332211012)

[D. Responses to Questions Posed by the Commission’s *March 2012 Order* 41](#_Toc332211013)

[VI. Discussion 56](#_Toc332211014)

[VII. Conclusion 67](#_Toc332211015)

[VIII. Ordering Paragraphs 68](#_Toc332211016)

**BY THE COMMISSION:**

Before the Commission for consideration are: (1) the Joint Petition for Limited Reconsideration and Stay filed on August 2, 2011, by the Pennsylvania Telephone Association (PTA)[[1]](#footnote-1) and The United Telephone Company of Pennsylvania, LLC, d/b/a CenturyLink (CTL) (Joint Petition); (2) the Petition for Reconsideration and Clarification filed on August 2, 2011, by AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh and TCG New Jersey, Inc. (collectively AT&T) (Petition); (3) the Joint Petition for Reconsideration and Stay filed on April 9, 2012, by PTA/CTL (Updated Joint Petition); (4) a Verified Joint Statement filed on April 9, 2012, by PTA/CTL (Joint Statement); and (5) the Updated Petition for Reconsideration and Comments of AT&T filed on April 9, 2012 (Updated Petition).

Answers to PTA/CTL’s Joint Petition of August 2, 2011, were filed by the following Parties on the dates noted: (1) Verizon Pennsylvania Inc. (Verizon PA), Verizon North, Inc. (Verizon North) and MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services (collectively Verizon) on August 10, 2011; (2) Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel Communications of the Mid-Atlantic, Inc. and NPCR, Inc. (collectively Sprint) on August 12, 2011; and (3) AT&T on August 12, 2011.

Answers to AT&T’s Petition of August 2, 2011, were filed by the following Parties on the dates noted: (1) PTA/CTL on August 9, 2011; and (2) the Office of Small Business Advocate (OSBA) on August 12, 2011.

The Office of Consumer Advocate (OCA) filed an Answer to both the PTA/CTL Joint Petition and the AT&T Petition on August 9, 2011. Comcast Phone of Pennsylvania, LLC d/b/a Comcast Digital Phone and Comcast Business Communications, LLC (collectively Comcast) filed an Answer to both the PTA/CTL Joint Petition and the AT&T Petition on August 10, 2011.

Answers to both the PTA/CTL Updated Joint Petition and the AT&T Updated Petition were filed on April 19, 2012, by Verizon, Sprint, Comcast and the OCA. On the same date, AT&T filed an Answer to the PTA/CTL Updated Joint Petition, and PTA/CTL filed an Answer to the AT&T Updated Petition.

# Summary of Conclusions

This Opinion and Order addresses only the PTA/CTL Updated Joint Petition and Joint Statement and the AT&T Updated Petition that were filed on April 9, 2012. AT&T has withdrawn its Petition of August 2, 2011,[[2]](#footnote-2) and the Joint Petition filed by PTA/CTL on August 2, 2011, while not expressly withdrawn, has been rendered moot by subsequent events and has been replaced by PTA/CTL’s Updated Joint Petition filed on April 9, 2012. For the reasons explained below, we shall: (1) stay the provisions of our Opinion and Order entered July 18, 2011 (*July 2011 Order*) at this docket that pertain to terminating access charges, including any reforms and implementation time frames, pending further Order of the Commission; (2) affirm the method adopted in our Consolidated Short Form and Protective Order entered May 10, 2012, in this proceeding and at Docket Number M-2012-2291824 (*Short Form Order*) for allocating fixed carrier charges into originating and terminating components; (3) stay the provisions of our *July 2011 Order* that pertain to reform of originating access charges until further Order of the Commission; (4) revise the benchmark rate of $23 in our *July 2011 Order* by adopting in its place the Federal Communications Commission’s (FCC) Residential Rate Ceiling of $30;[[3]](#footnote-3) (5) determine that the *FCC Order*, *infra*., constitutes an exogenous event under a typical Chapter 30 Plan, such that decreased revenues that are not otherwise recovered through the FCC’s support mechanisms, may qualify for consideration for a special revenue adjustment; (6) decline to address the issue of whether or not Voice Over Internet Protocol (VoIP)-public switched telephone network (PSTN) traffic is exempt from intrastate carrier charges as a matter of federal law; (7) affirm our intention to issue a notice of proposed rulemaking to examine potential reforms of the Pennsylvania Universal Service Fund (PaUSF); and (7) require that all incumbent local exchange carriers maintain records necessary for re-rating and re-billing in the event that the *FCC Order*, *infra.*, is reversed, in whole or in part, on appeal.

# Procedural History

The history of this proceeding is lengthy, and has been set forth in our *July 2011 Order*, which is the subject of the petitions for reconsideration that are before us today. We therefore will adopt the procedural history from the *July 2011 Order*, and simply update it to reflect events that have occurred since the issuance of the *July 2011 Order*.

Our *July 2011 Order*, which is the subject of the petitions for reconsideration that are before us today, concluded the instant proceeding (*RLEC Access Charge Investigation)* and the related AT&T Complaint proceedings, and addressed all of the issues exhaustively litigated before Administrative Law Judges (ALJs) Susan D. Colwell and Kandace F. Melillo. As stated above, on August 2, 2011, PTA/CTL filed a Joint Petition for Limited Reconsideration and Stay, and AT&T filed a Petition for Reconsideration and Clarification. On August 11, 2011, we issued an Opinion and Order granting reconsideration of the *July 2011 Order* pending further review of the merits pursuant to Rule 1701 of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. Rule 1701.

On August 19, 2011, the Commission issued a Secretarial Letter and proposed template depicting the manner and format of the revenue neutral rebalancing calculations to be performed and submitted by the rural incumbent local exchange carriers (RLECs), as provided by the *July 2011 Order*. Comments and Reply Comments regarding the proposed template have been filed by the PTA, CTL and AT&T.

On November 18, 2011, the FCC issued a comprehensive Order addressing, among other related proceedings, the *Unified Intercarrier Compensation Proceeding* that it had initiated in 2005.[[4]](#footnote-4) *In the Matter of 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*, W Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing a 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; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, FCC 11-161 (Order adopted October 27, 2011 and released November 18, 2011), 26 FCC Rcd 17663 (2011). The FCC has issued additional reconsideration and clarification Orders in the same proceeding, and the issuance of further FCC rulings is anticipated (collectively *FCC Order*).

By Opinion and Order entered March 20, 2012 (*March 2012 Order*), we reopened the record in this proceeding for the limited purpose of examining the effects of the *FCC Order* on our *July 2011 Order*. We invited PTA/CTL and AT&T to file updated petitions for reconsideration by April 9, 2012, and provided that answers thereto were to be filed by April 19, 2012. As stated above, on April 9, 2012, PTA/CTL filed an Updated Joint Petition, and AT&T filed an Updated Petition. Answers thereto have been filed as noted.

In our *Short Form Order* entered May 10, 2012, *supra.*, we provided direction necessitated by the industry’s immediate need for guidance for the filing of intrastate switched carrier access tariffs to be effective July 1, 2012, as required by the FCC. In our *Short Form Order*, we affirmed, in summary fashion, the rationale underlying our *July 2011 Order* that the intrastate carrier charge (CC)/carrier common line charge CCLC should be maintained at some level at this time, irrespective of the intercarrier compensation regime that the FCC gradually is placing into effect. We adopted a methodology for allocating intrastate CC/CCLC revenues between terminating and originating access charges, and stayed the intrastate switched carrier access rate reforms that were directed by our *July 2011 Order*, including the reforms of the CC/CCLC rates. In so doing, we concluded that, given the drastic impact of the *FCC Order* on the measured intrastate access reforms adopted in our *July 2011 Order,* and in view of the further FCC actions contemplated in the area of originating access reform, we will not at this time take any actions affecting intrastate switched carrier access rates for originating traffic. Finally, we stated that a fuller discussion would be provided in an upcoming Order addressing in detail the pending updated petitions for reconsideration of our *July 2011 Order*. Our Opinion and Order of today’s date serves this function.

# **Issues Addressed by the July 2011 Order**

The *July 2011 Order* included a comprehensive summary of the issues raised by this proceeding, which will not be repeated here. However, we will highlight those pertinent portions of the summary, as set forth below:

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 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*, 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.

\* \* \*

RLEC intrastate access rates have been reduced in Pennsylvania on an RLEC-industry wide basis 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. 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.

\* \* \*

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.

\* \* \*

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.

*July 2011 Order* at 13-26 (footnotes omitted).

# Summary of July 2011 Order

In very general terms, our *July 2011 Order* attempted to balance competing policy objectives, including promoting competition through fair intercarrier compensation policies, and ensuring the universal availability of telecommunications service through appropriate benchmarks for basic local exchange service. In balancing these competing objectives, we determined that the responsibility to support the public switched telephone network should be shared among all users of the network, including but not limited to basic local exchange customers. We established a benchmark of $23.00 for residential basic local service and a total monthly affordable bill of $32.00, to include basic local service plus all necessary taxes, fees and surcharges. We required RLECs to reduce their intrastate access charges to their interstate levels in three steps, beginning in March 2012, while maintaining a carrier charge of $2.50. Finally, we determined to open a rulemaking to address potential changes to the PaUSF.

Without repeating all of the discussion in our *July 2011 Order*, to follow is a summary of the key findings and conclusions that relate to PTA/CTL’s Joint Petition and AT&T’s Petition that are before us today.

## ALJ Colwell’s Limited Investigation

Just and Reasonable Analysis**:** With regard to the question of whether the Commission has the authority under Chapter 30[[5]](#footnote-5) to perform a just and reasonable analysis of the RLECs’ basic exchange services rates when they exceed the appropriate residential rate cap, we concluded that Sections 1301 and 3015(g) of the Public Utility Code (Code), 66 Pa. C.S. §§ 13011 and 3015(g), preserve the Commission’s authority to conduct a just and reasonable analysis of incumbent local exchange carrier (ILEC) rates, and that Act 183 of 2004, P.L. 1398, 66 Pa. C.S. §§ 3010 *et seq.* (Act 183), did not constrain the Commission’s authority to perform this analysis.

Rate Caps**:** We concluded that a rate cap on local service rates is no longer needed. As noted by the ALJ, such rate change limitations were not codified in the law, and it would be contrary to 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. We determined that Act 183 does not impose a cap on the ILECs’ Chapter 30 allowed annual rate increases and does not require other carriers to subsidize such rate increases. We noted that the provisions of Act 183 limit the pace and magnitude of annual rate increases based on inflation; and that rate caps were intended to be transitional rather than permanent.

PaUSF Funding**:** We adopted the ALJ’s recommendation that, until such time as a rulemaking proceeding is conducted, the RLECs should not be held to the current $18.00/month rate cap, and 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.

PaUSF Reform**:** We determined that the purpose, existence and operation of the PaUSF are inextricably linked with the provision of affordable *universal service* to end-user consumers under Pennsylvania and federal statutory mandates. Therefore, the Commission must retain the necessary degree of flexibility to utilize the PaUSF mechanism in an appropriate fashion. Even though the PaUSF mechanism implements multiple public policy goals statutorily prescribed by Pennsylvania and federal law, we rejected, at this juncture, the argument 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 deferred consideration of these issues to an upcoming rulemaking that will address PaUSF reforms, which must include multiple goals and objectives that are prescribed by existing Pennsylvania and federal law. We required that the examination of the PaUSF mechanism include discussion of targeted support for low-income customers and high cost areas as well as other factors.

## ALJ Melillo’s Investigation on Remaining Issues

ALJ Melillo’s primary recommendation was that access charge reductions, and associated revenue neutral rebalancing, be phased in without additional PaUSF funding at this time. ALJ Melillo’s primary recommendation required a series of steps to revise the RLECs’ intrastate switched access rates to mirror their interstate switched access rates and rate structures. ALJ Melillo recommended 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 entered on July 15, 2003, at Docket No. M-00021596 (*July 2003 Order)*.

We found that ALJ Melillo correctly stated that the main issues in this consolidated proceeding include: (1) the justness and reasonableness of existing switched access rates for RLECs; (2) if existing rates are not just and reasonable, the levels that are just and reasonable; (3) the timing for implementing these levels; and (4) the appropriate methodology for rebalancing access charge reductions to achieve just and reasonable access rate levels. Melillo R.D. at 49. We determined that the burden of proof in this *RLEC Access Charge Investigation* rested with the RLECs.

We agreed with ALJ Melillo that the RLECs failed to establish a *prima facie* case that their current intrastate switched access rates are just and reasonable. The RLECs did not make an adequate showing regarding how their existing intrastate carrier access charges continue to balance the interests of competitors in reasonably priced intrastate access to the RLECs’ networks with maintaining affordable universal service. Although RLEC intrastate carrier access charge revenues obviate the need for increased basic local exchange rates, thus assisting in the maintenance of affordable universal service for the RLECs’ end-users, payment for the RLECs’ joint and common non-traffic sensitive (NTS) network costs should preserve a sound balance among various policy objectives. We concluded that this balance is not adequately preserved under the existing level of the RLECs’ intrastate carrier access charges.

At the same time we were not convinced that reductions in the RLECs’ intrastate carrier access charges 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 1999 *Global Order*,[[6]](#footnote-6) where intrastate carrier access charge reductions were required to flow to the end-user consumers of interexchange carriers (IXCs), the Commission no longer regulates IXC rates under Act 183. IXCs are free to use the local exchange carrier (LEC) intrastate carrier access rate reductions to benefit their national customer bases, notwithstanding self-professed commitments to do otherwise. Although the Commission does not exercise jurisdiction over the level of IXC rates, we stated that we expect 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 did not contain overwhelming evidence of the costs that relate to the RLECs’ immediate carrier of last resort (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 an RLEC’s service territory, and include service quality requirements and public safety obligations in terms of handling 911/E911 call traffic and telecommunica­tions carrier connectivity requirements. Competitive local exchange carriers (CLECs) depend on the RLECs’ switched access and “last mile” transport and distribution facilities for originating and 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 Universal Service Fund (USF). Thus, the RLECs’ COLR obligations under state regulation are combined with federal ETC obligations.

In conclusion, we found that the totality of the evidence did not preclude us from reaching the conclusion that the RLECs’ intrastate carrier access rates are in need of reform.

Just and Reasonable Level of Intrastate Access Rates**:** In reaching the disposition of the Exceptions in this area, we were 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 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. The FCC has shifted the burden of interstate NTS joint and common network costs totally and exclusively upon the end-user through the imposition of, and subsequent increases to, the federal subscriber line charge (SLC).

We also noted that the FCC interstate switched access rate reforms were accompanied by corresponding and major changes to the federal USF support mechanism. The CTL Exceptions observed that low interstate access rates were achieved by increasing the federal SLC, and creating a $650 million interstate access support (IAS) fund and an interstate common line support (ICLS) fund within the federal USF system.

For reasons explained elsewhere in the *July 2011 Order*, although the PaUSF lawfully can be utilized in the present RLEC access reform, we declined 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, we concluded that the complete elimination of the RLECs’ per access line intrastate CC rate could not be condoned. Such an approach would lead to the inequitable, discriminatory, and unlawful result of potentially “loading” 100 percent of the recovery of the RLECs’ joint and common NTS costs associated with intrastate access upon end-user consumers alone. However, because the totality of the evidentiary record suggested that the existing levels of the intrastate CC rate element for certain RLECs were unsustainable, we found that it was appropriate to gradually reduce these intrastate CC rate levels to $2.50 per access line per month, while also gradually moving the RLECs’ intrastate traffic sensitive (TS) switched access rate elements to their interstate equivalent levels in an integrated fashion. We determined that 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. Finally, the PaUSF mechanism will not be implicated in the present RLEC intrastate access reform, and will be kept at a stable level pending its future reform through a rulemaking proceeding.

We expressly noted and disagreed 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. We determined that our action in this regard can proceed independently from the eventual outcome of the FCC’s Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking that recently had been issued. *In re Connect America Fund; A National Broadband Plan for Our Future*, WC Docket No. 10-90 *et al.* (FCC, February 9, 2011) (*2011 NOPR*).[[7]](#footnote-7) The approach that we adopted with respect to the intrastate access rate reform maintains this Commission’s flexibility to adequately respond to potential changes in applicable federal law. We reserved the right to initiate subsequent proceedings and issue appropriate Orders to coordinate the potential outcomes of the FCC’s initiatives with our *July 2011 Order* to the extent necessary, while also safeguarding the due process rights of all interested and participating parties.

Revenue Neutral Recovery of Access Charge Reductions**:** In accordance with Section 3017(a) of the Code, 66 Pa. C.S. § 3017(a), we determined that the RLECs cannot be required to reduce intrastate access charges except on a revenue neutral basis. Although all of the parties agreed that the recovery of access charge reductions must be revenue neutral, the term “revenue neutral basis” has not been statutorily defined. In addressing the revenue neutral recovery of access charge reductions, several issues were raised, which are summarized below.

Consideration of Non-Jurisdictional Revenue Sources**:** We adopted the ALJ’s recommendation that revenue neutrality be achieved only with jurisdictional revenues. 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.

Revenue Neutrality**:** We concluded that the PaUSF should not be utilized as the funding source for RLECs to offset access charge reductions, and that the RLECs failed to demonstrate that it is impossible for them to recover a reasonable level of revenue from retail rate increases. The record showed that many of the RLECs have not 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 rates to the $18.00/month level permitted in 2003.

In order to adhere to the principles of gradualism and avoidance of rate shock to residential consumers as we move through the process of access charge reform in Pennsylvania, we retained the CC as a fair means by which the RLECs may recover local loop costs from entities using those facilities.[[8]](#footnote-8) Having concluded that the CC should not be eliminated, we found that the gradual reduction of the CC to a $2.50/line/month level is appropriate. In addition, we reasoned that the opportunity to increase local rates to and beyond[[9]](#footnote-9) the levels discussed in the *July 2011 Order* will be one tool for RLECs to achieve revenue neutral rate rebalancing. The CC is a second 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.

Comparability and Affordability of RLEC Rates**:** We adopted a monthly affordability rate of $23.00 (net of taxes and other fees), and $32.00 on a total bill basis, for the affordability of local service rates for revenue rebalancing purposes. We declined to use a comparability analysis in considering a benchmark level for rate rebalancing purposes, and concluded that the Code does not mandate that RLECs’ rates must be comparable to Verizon’s or to any other carrier’s rates. We emphasized that we were not establishing a rate cap, but rather a benchmark rate, and noted that we were retaining 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.

Business Rate Increases in Providing Revenue Neutrality**:** We adopted the ALJ’s recommendation 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, RLECs will have the flexibility to design rate rebalancing within “just and reasonable” parameters. Residential rate affordability and avoidance of rate shock cannot be accomplished through unreasonable increases to business rates. Consistent with our prior access charge reform rulings, rate rebalancing should result in proportionate rate changes for residential and business customers.

PaUSF Support for Further Access Rebalancing**:** We adopted the ALJ’s recommendation that access charge reductions and associated revenue neutral rebalancing be phased-in without additional PaUSF funding at this time. We determined that recovery of the revenues lost through access charge reductions is more appropriately addressed through local service rate increases, adjustments to other jurisdictional service rates, and maintenance of a certain level of the restructured CC rate. Accordingly, we rejected intrastate access charge reform plans that would have required additional funding from the PaUSF. While we declined to expand the PaUSF or permit its use for intrastate access charge rate rebalancing, we determined to further examine the PaUSF in a separate rulemaking proceeding.

In order to accommodate rate rebalancing, we modified the existing $18.00/month residential rate cap, and corresponding business rate cap, by replacing the caps 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. We also adopted the ALJ’s recommendation that the mirroring of interstate access rates and structure, with offsetting revenue neutral rebalancing of noncompetitive rates, be phased-in over a reasonable two to four year period.[[10]](#footnote-10)

Details of Revenue Neutral Rebalancing**:** We adopted, with some adjustments, the detailed process set forth by ALJ Melillo for the commencement and phased implementation of access charge reductions and rate rebalancing. We examined all sides and found no valid basis to slow the process. We adjusted ALJ Melillo’s suggested timeline 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. Specifically, we determined that the revenue neutral rate rebalancing resulting from this proceeding would 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,[[11]](#footnote-11) 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 determined that a four-year completion date for rate rebalancing is a reasonable period for a glide path for access charge reform. We also declined to require the technical conferences recommended by the ALJ, and made other revisions to the details of her recommendation.

# Updated Petitions for Reconsideration

## PTA/CTL Updated Joint Petition for Reconsideration and Stay

In their Updated Joint Petition, PTA/CTL request that, with the exception of lifting the caps on the RLECs’ retail rates, the Commission should stay its *July 2011 Order* and close this proceeding. Updated Joint Petition at 1-2. PTA/CTL submit that, because our *July 2011 Order* and the *FCC Order* are completely dissimilar in terms of their efforts to reform intrastate switched access charges, the Commission should permanently stay its *July 2011 Order* (with the exception of removal of residential and small business rate caps) and close this docket. *Id*. at 3, 19.

More specifically, PTA/CTL argue that the FCC has preempted state rate setting of intrastate access charges in its decision to supersede the traditional access charge regime, and subject to a transition mechanism, regulate terminating access traffic under the Section 251(b)(5) framework. According to PTA/CTL, the FCC acknowledged that States may reduce access charges on a faster schedule than that mandated by the FCC, provided however that a State provides any additional recovery support that may be needed as a result of a faster transition. *Id*. at 7-8. PTA/CTL submit that both the schedule of reductions[[12]](#footnote-12) and the objective are more aggressive under the *FCC Order* than the *July 2011 Order*. The Commission’s mandated schedule achieves reductions more slowly than the FCC’s schedule, and does not achieve full parity. The FCC’s objective is to reduce intercarrier compensation to zero through a bill and keep mechanism. In contrast, the Commission’s *July 2011 Order* stops at interstate parity plus the $2.50 CC/CCLC charge. In addition, the FCC has provided universal service fund support, whereas the Commission denied PaUSF recovery. According to PTA/CTL, the Commission’s establishment of a $2.50 CC/CCLC charge without additional recovery through the PaUSF is inconsistent with the *FCC Order*, which includes additional federal support. PTA/CTL argue that the *FCC Order* preempts the Commission’s *July 2011 Order* as a result of these discrepancies. *Id*. at 8-10.

Second, PTA/CTL argue that the reductions to RLEC *originating* switched access rates required by the *July 2011 Order* should be stayed, given ongoing federal activity initiated by the *FCC Order.* *Id.* at 10-15. PTA/CTL explain that the *FCC Order* capped intrastate originating access rates for price cap companies, but did not order any reductions. Instead, the FCC stated that its intention is to eliminate originating access charges at the conclusion of the transition to the new intercarrier compensation regime.[[13]](#footnote-13) Toward that end, the FCC issued a further notice of proposed rulemaking on the subject of originating access.

Among the issues being considered by the FCC is the appropriate recovery sources for originating access revenue losses. PTA/CTL assert that premature state action likely will be detrimental to RLECs and their customers for several reasons. One, premature implementation of originating access charge reductions would burden RLECs and their customers at the same time that RLECs are dealing with the substantial terminating rate decreases already ordered by the FCC. Two, the Commission did not provide any increase in PaUSF support to offset local rate increases in its *July 2011 Order*. Continuing with restructuring under the *July 2011 Order* likely would affect Pennsylvania RLECs’ eligibility for recovery under the federal scheme. Under the *FCC Order*, proposed federal funding for rate-of-return and price cap carriers is tied to the levels of intrastate access reductions mandated under the *FCC Order.* Three, there are fewer public policy reasons for reducing intrastate originating switched access rates, which do not cause the arbitrage problems alleged to be associated with terminating access charges, such as “traffic pumping.” Four, there is no record evidence in this proceeding that addresses the scenario that the FCC has created. “The financial ramifications and customer impacts of lowering intrastate terminating access rates below even the current interstate level . . . along with reductions in originating access parity, is unexplored in the record of this case.” *Id*. at 14. In summary, PTA/CTL submit that the further action on reforming originating switched access rates would be premature, and that “flawed and rash decision-making based on artificial timelines sought by originating IXCs that will already be receiving substantial expense decreases on the terminating side” would be unwarranted. *Id*. at 14-15.

Third, PTA/CTL argue that the *July 2011 Order* should be stayed with the exception of the current retail rate caps. *Id*. at 15-18. PTA/CTL aver that the degree to which rate caps are in place is unclear. Although the *FCC Order* does not preempt the Commission’s jurisdiction over the rates for basic local exchange service, it does affect end-user customers’ bills if RLECs increase their monthly local rates. In addition, the FCC will not consider support from the Connect America Fund (CAF) for local service rates that are below the “urban rate floor,” and the *FCC Order* imposes other restrictions, reductions and modifications to existing and new support mechanisms. Meanwhile, the *July 2011 Order* establishes a benchmark rate of $23.00 exclusive of state taxes, fees and surcharges, or approximately $32.00 on a total bill basis, below which PaUSF support is precluded and above which PaUSF support is not provided but may be considered in the future. *July 2011 Order* at 157-158. PTA/CTL submit that, because the FCC’s reforms have many moving pieces, and certain local rate increases will impact many RLECs’ level of federal CAF/USF support, the Commission must give RLECs the flexibility to increase their local rates in a manner that maximizes federal support. “Otherwise, the RLECs either would be denied recovery of mandated lost access revenues (by imposing upon them a state rate cap) and/or would be compelled to forego access to federal universal service funding, further aggravating Pennsylvania’s status as a net-contributor state of federal USF funds.” Updated Joint Petition at 17. PTA/CTL argue that RLECs should be given the opportunity to increase local rates as necessary to derive maximum federal CAF/USF support, noting that the RLECs would still be required to obtain Commission approval for rate increases under the just and reasonable standard. *Id*. at 18.

In conclusion, PTA/CTL argue that, with the exception of the removal of residential and small business rate caps, the Commission should permanently stay its *July 2011 Order* and close this proceeding. Id. at 19.

## AT&T Updated Petition for Reconsideration

In its Updated Petition, AT&T requests that the Commission reconsider its *July 2011 Order* and (i) eliminate the $2.50 carrier charge; (ii) require RLECs to reduce intrastate originating access charges to parity with interstate levels, in a revenue neutral manner, in two equal steps on July 1, 2012, and July 1, 2013; and (iii) thereafter require that RLECs maintain parity going forward after July 1, 2013. With respect to terminating access charges, AT&T withdraws its Petition for Reconsideration as moot, given that the FCC has granted the relief that AT&T sought. *Id.* at 22.

AT&T argues that the *FCC Order* has given the Commission the opportunity to improve upon the reforms adopted in the *July 2011 Order*, and a considerable helping hand toward completing those reforms for the benefit of Pennsylvania’s consumers. Updated Petition at 2. AT&T states that the *July 2011 Order* did not go far enough or fast enough, particularly given the long delays before the Commission reopened this proceeding in 2008. Under the *FCC Order*, all terminating access charges will be reduced to parity by July 1, 2013, with the first step soon to be taken on July 1, 2012. Further, the FCC has made it clear that parity is only the first step, and that in the future all access charges, originating and terminating, will be eliminated and replaced with a “bill and keep” regime. *Id*. at 3. AT&T submits that the FCC has taken the responsibility for reforming intrastate charges for terminating access, and has created a new recovery mechanism that includes a new federal charge called the Access Recovery Charge (ARC), and a new federal Connect America Fund. Accordingly, AT&T argues that the Commission should focus on reforming originating access charges, which already was included in the *July 2011 Order* reforms. AT&T states that the FCC has permitted the States to begin the process of reforming originating access charges now, while the FCC concentrates on the terminating side. AT&T asserts that the Commission can order *more* originating access charge reductions now, with *less* of an impact on retail rates, because of the FCC’s action. AT&T characterizes the situation created by the *FCC Order* as a second chance and a “golden opportunity to help Pennsylvania consumers” that the Commission should not waste. *Id*. at 4.

Specifically, AT&T argues that the Commission should grant its Petition for Reconsideration filed on August 2, 2011, and revise the *July 2011 Order* to: (i) eliminate the $2.50 CCL; (ii) implement the revenue neutral rate rebalancing directed in the *July 2011 Order* to require RLECs to reduce rates for intrastate originating access to parity with interstate rates in two steps, on July 1, 2012, and July 1, 2013; and (iii) thereafter, require RLECs to maintain parity between intrastate and interstate originating access rates, subject to any additional requirements that may be imposed by the FCC. AT&T also suggested that the Commission should maintain the decision in its *July 2011 Order* not to increase the size of the PaUSF. AT&T suggests that, if the Commission is concerned about the impact of reductions to originating access rates on the smallest carriers, the record in this proceeding would accommodate an order excusing small carriers from further reform at this time.[[14]](#footnote-14) *Id*. at 4, n. 10.

In conclusion, AT&T requests that the Commission reconsider its *July 2011 Order* and (i) eliminate the $2.50 carrier charge; (ii) require RLECs to reduce intrastate originating access charges to parity with interstate levels, in a revenue neutral manner, in two equal steps on July 1, 2012, and July 1, 2013; and (iii) require that RLECs maintain parity going forward after July 1, 2013. With respect to terminating access charges, AT&T withdraws its Petition for Reconsideration as moot, given that the FCC has granted the relief that AT&T sought. *Id.* at 22.

Attached to AT&T’s Updated Petition is Joint Affidavit of E. Christopher Nurse and Dr. Ola A. Oyefusi (Joint Affidavit) that provides a factual analysis supporting AT&T’s Updated Petition. The Joint Affidavit states, *inter alia*, that to comply with the *FCC Order,* an RLEC will have to separate its terminating access and originating access charges, and suggests that the Commission require carriers to provide data and calculations as part of the tariffing process described in the Commission’s Secretarial Letter of April 3, 2012, at Docket No. M-2012-2291824. The Joint Affidavit states that, in AT&T’s experience, about 70% of RLECs carrier charges relate to terminating access.

## Answers to the Updated Petition and Updated Joint Petition and Joint Statement

### 1. AT&T’s Answer

In its Answer to PTA/CTL’s Updated Joint Petition, AT&T first argues that Pennsylvania consumers should not be deprived of the benefits of originating access reform, and that the Commission should reduce intrastate originating access charges to full parity by July 1, 2013. In support thereof, AT&T submits that the *FCC Order* authorizes States to implement reforms for originating access charges, and makes it easier to implement such reforms in Pennsylvania. AT&T states that it is clear that the *FCC Order* does not disturb the Commission’s reform of originating access charges, and that reforming originating access charges is consistent with the FCC’s conclusion that ultimately originating access charges should be subject to a “bill and keep” framework. AT&T Answer at 4-5. AT&T argues that, despite the FCC’s support of originating access reform, once again the RLECs are encouraging the Commission to do nothing and wait for the FCC. AT&T states that there is no basis to PTA/CTL’s claim that reforming originating access rates at this time would frustrate federal reform efforts. The FCC stated that “[t]o the extent that states have established rate reduction transitions for rate elements not reduced in this Order, nothing in this Order impacts such transitions.” Further, the FCC stated that its Order does not prevent States from reducing rates on a faster transition “provided that states provide any additional recovery support that may be needed.”[[15]](#footnote-15) AT&T repeats its argument that, by relieving the Commission of the responsibility for recovery mechanisms for reforms to terminating access, the FCC has handed the Commission a golden opportunity to implement reform on the originating side with less impact to customers. *Id*. at 5-6.

AT&T disputes the PTA/CTL’s claim that it is not clear how the FCC will proceed to reduce intrastate originating access charges to zero. AT&T submits that, on the issues that matter, the FCC clearly has stated that all originating access charges, both intrastate and interstate, will be moving to a “bill and keep” regime. AT&T states that the FCC obviously will develop a “glide path” to reach this goal, and that implementing parity would synchronize intrastate originating rates with their corresponding federal rates. AT&T states that the way to avoid the RLECs professed concern (proceeding with different restructuring on a different schedule) is to implement parity. *Id*. at 6.

AT&T also disputes PTA/CTL’s claim that it would be inefficient for the Commission to move forward while the FCC considers originating access charge reform. AT&T states that the Commission already has completed a three-year access charge proceeding, has assembled a robust record supporting reform, and has issued the *July 2011 Order* finding, *inter alia*, that the RLECs’ originating access charges are unreasonable. AT&T characterizes PTA/CTL’s request as asking the Commission to move in the opposite direction from federal reform. *Id*. at 6-7.

AT&T argues that the Commission should ignore PTA/CTL’s “unfounded scare tactics.” In particular, AT&T takes exception to PTA/CTL’s concern that additional local rate increases to support reductions in originating access revenue would be excessive and detrimental to customers. AT&T asserts that, under its proposal submitted as part of its Updated Petition, originating access rates would be rebalanced in two steps, instead of the three steps approved by the Commission in the *July 2011 Order*, and the resulting rate increases would not be excessive or detrimental.[[16]](#footnote-16) According to AT&T, each of the two rebalancing steps would be “much less than the $3.50 maximum increases” that the Commission approved, and even with the federal ARC, end-user rates for the large RLECs would be “significantly less” than the Commission’s $23 benchmark. *Id*. at 9. AT&T asserts that the four largest RLECs (CenturyLink, Frontier/Commonwealth, Consolidated and the Windstream Companies) could “easily rebalance the modest originating access reductions proposed by AT&T, and thus achieve complete parity.” *Id*. at 8. According to AT&T, the resulting increases in local rates would be less than those that the Commission found acceptable in the *July 2011 Order*. AT&T also suggests that the Commission “is free to defer action” on smaller RLECs if it has any concerns about the impacts of rebalancing. *Id*. at 9. AT&T asserts, however, that “the record shows that the same results should hold for most, if not all, of the smaller RLECs too[.]” *Id*. AT&T did not provide citations to the record to support its assertions.

With regard to PTA/CTL’s concern that RLECs could lose some federal CAF support due to the FCC’s “urban floor” rate, AT&T asserts that this concern has no bearing on originating access reductions. According to AT&T, there are no carriers with rates below the FCC’s initial floor of $10, and only six carriers[[17]](#footnote-17) with rates currently below the FCC’s floor of $14 that takes effect in July 2013. “The federal rate floor has absolutely no impact on the four largest RLECs and provides absolutely no reason to excuse them for access reform.” *Id*. at 10.

With regard to PTA/CTL’s concern that originating access reform would place Pennsylvania in a deeper position of net payer with respect to universal service, AT&T responds that this concern is academic because the FCC is phasing out federal universal service programs in favor of the ARC and the CAF. AT&T asserts that “the record indicates” that Pennsylvania will benefit from CAF funding dollars because “the mathematics of the federal mechanism suggest that much of CenturyLink’s federal recovery will likely come from (i) ARCs assessed on residential customers in states other than Pennsylvania and (ii) if necessary, the national CAF.” *Id*. at 11 (footnote omitted). AT&T submits that, in any event, whether or not Pennsylvania turns out to be a net payer under the federal support mechanisms is irrelevant because the federal ARC and CAF are governed by federal rules that the Commission cannot change.

AT&T disputes PTA/CTL’s suggestion that originating access reform would not advance any sound public policy or purpose. AT&T points to the reduction in long-distance prices, the promotion of fair competition and consumer choice, and the elimination of opportunities for arbitrage as public benefits of access charge reform. AT&T acknowledges that the FCC found that originating access reform is less urgently needed than terminating access reform, but argues that this does not mean that originating access reform would not further any sound public policy purpose. AT&T asserts that reductions in originating access charges inevitably will result in lower retail prices for customers. *Id*. at 12-13.

Second, AT&T argues that the Commission cannot give the RLECs “double recovery” on terminating access. AT&T does not fully explain its argument on this point, which seems to be that RLECs should not be permitted to increase their retail rates to recover the loss of terminating access revenue. AT&T agrees with the RLECs that retail price caps should be removed as the Commission previously ordered. However, AT&T asserts that the anticipated increases to retail rates to recover the loss of terminating access revenue are irrelevant because the Commission is not free to second guess or alter the FCC’s plan. AT&T argues that there is no basis under the *FCC Order* or Pennsylvania law for linking increases to retail rates to “some perceived shortfall that might result from application of the FCC’s reforms.” *Id*. at 14. AT&T also argues that there is no need for the Commission to consider whether retail prices should be increased due to terminating access reform, because, with the removal of rate caps, the Commission will not have a role on approving rate increases that will be tested in the market. *Id*. at 14-15.

Third, AT&T argues that the Commission should disregard the assertion of PTA/CTL that the FCC’s Order constitutes an exogenous event under their Chapter 30 Plans. As AT&T argued in its Updated Petition, RLECs should not receive additional state support for reductions in their intrastate access rates that have been ordered by the FCC because such support would undermine the federal reform scheme. AT&T submits that the FCC rejected a 100% revenue-neutral approach to recovery in recognition of the historical downward trend in access revenues. AT&T argues that the RLECs “cannot evade this determination by fashioning a backdoor through their Chapter 30 plans that have this Commission give them the support that the FCC did not.” *Id*. at 17. AT&T states, however, that this issue will not be ripe for a decision until an RLEC actually petitions for such relief, and suggests that the removal of state price caps will allow RLECs to increase rates without Commission approval. AT&T suggests that, having set the local benchmark at a more appropriate level, the Commission should get out of the way and let consumers decide. AT&T also suggests that raising the benchmark allows RLECs to reduce originating access rates at the same time that they are reducing their terminating access rates. *Id*. at 18-19. In conclusion, AT&T requests that the Commission deny the Updated Joint Petition filed by PTA/CTL.

### 2. PTA/CTL’s Answer

PTA/CTL argue that, in pushing for originating access reform, AT&T once again seeks to force a Pennsylvania proceeding ahead of the federal process. PTA/CTL state that AT&T’s proposal would create additional and unnecessary rate increases for RLEC customers and/or revenue reductions for the RLECs serving them. PTA/CTL submits that AT&T has taken a conflicting position in its advocacy before the FCC, where it urged that originating reductions need to be studied to determine the impact on end users and the potential sources of alternative funding. PTA/CTL submit that the Commission should reject AT&T’s repeated imploring that the Commission once again get ahead of the federal process. PTA/CTL Answer at 2-3.

PTA/CTL state that the RLECs consistently have maintained that the Commission should not act in advance of the FCC, and that the Commission consistently had agreed with this approach until AT&T filed ninety-six formal complaints against the RLECs in the spring of 2009, which opened a proceeding in which Parties have spent countless hours and resources arguing about intrastate access reform. For the most part, this mega-investigation/complaint proceeding and the resulting July 2011 Order have “come to naught” because the *FCC Order* has pre-empted the Commission in the area of terminating switched access rates. Had the *July 2011 Order* been implemented, PTA/CTL claim that the result would have been the worst of both worlds: an increase of $8.03 in residential rates and a CC/CCLC of $2.50 per month, which would have been swept into the federal ARC and CAF, with an additional ARC of $1.00 per month over the FCC’s two-year transition, for a total end-user impact of $9.03 per month. *Id*. at 4. “As it stands now, without the implementation of the [*July 2011 Order*], the achievement of parity has that same end user impact of $1.00 per month.” *Id*. PTA/CTL state that Pennsylvania end-user rates would have been higher had the Commission acted. “The FCC did not take early adopter state action into account as AT&T recklessly advised. *Id*. at 5.

Second, PTA/CTL note that AT&T, CTL, FairPoint, Frontier, Verizon and Windstream were signatories to the ABC Plan that was submitted to the FCC on July 29, 2011. While the FCC did not adopt the ABC Plan in its entirety, it adopted its framework and many of its important features. The ABC Plan proposed reductions to terminating access rates and explicitly deferred any reductions in originating access charges. PTA/CTL suggest that AT&T is taking a position in the instant proceeding that is contrary to the position it has taken before the FCC because, unlike other states, AT&T does not have any affiliated ILECs in Pennsylvania and, therefore, does not concern itself here with the impacts on ILECs and their customers. PTA/CTL suggest that AT&T’s federal policy view is more balanced than the one-dimensional opportunistic positions that AT&T has taken before the Commission. *Id*. at 6-9.

Third, although PTA/CTL recognize the usefulness of the intrastate CC/CCLC for terminating access traffic, they nevertheless acknowledge that it has been impacted by the *FCC Order* directives and the FCC’s exercise of federal preemption. *Id.* at 11-12. PTA/CTL aver that the FCC has abandoned the “calling party network pays” model that has dominated intercarrier compensation regimes for the last century in favor of “bill and keep” for all traffic exchanged with the wireline industry. The Commission’s *July 2011 Order* is based on the “calling party network pays” regime that the FCC has abandoned. PTA/CTL further aver that the *FCC Order* results in a much lower increase to local rates than that which would have resulted under the Commission’s *July 2011 Order*, primarily due to the FCC’s use of the CAF to fund its parity objective. The Commission, on the other hand, rejected the use of the PaUSF to fund access rate decreases. “The $2.50 CCL served, at least in part, to mitigate the local rate increases. Whatever the merits of retaining a CCL on terminating switched access rates, it has now been swept aside by federal preemption.” *Id*. at 11 (footnote omitted).

Fourth, PTA/CTL strongly oppose AT&T’s proposal that the Commission undertake immediate steps to reduce originating access rates, and AT&T’s proposals that the *July 2011 Order* be further revised to its advantage by (1) accelerating the timeframes selected by the Commission, and (2) eliminating the CCL altogether. PTA/CTL characterize AT&T’s proposal as reckless and unwise, and reiterate their position that originating access reductions contemplated by the *July 2011 Order* should be stayed pending action by the FCC. PTA/CTL submit that there are overlapping issues and impacts at play that have not been explored on the record in this proceeding, and that addressing originating access charges in isolation would be overly simplistic. *Id*. at 11‑13.

Fifth, PTA/CTL argue that the FCC’s decision is very complex, and until “the CAF process is more fully developed, it is unclear exactly who will recover what” in terms of access revenue reductions. *Id.* at 15. PTA/CTL submit that the FCC’s follow-up policies, particularly cost studies, likely will impose even greater stress on RLECs and their customers, and that now “is not the time to hammer RLECs with further local rate increases and unrecoverable access decreases.” *Id*. at 16. Accordingly, PTA/CTL submit that the best course of action is to wait for the FCC to act on originating access reform. *Id*. at 15-16.

Sixth, PTA/CTL dispute AT&T’s assertion that end-user customers will experience benefits from reductions in access charges. PTA/CTL note that AT&T has raised rates for its long distance service bundles and recurring charges in Pennsylvania. In this regard, PTA/CTL state that AT&T’s promises that it will reduce long distance rates as access charges are further reduced are illusory and deceptive. PTA/CTL note that, with the deregulation of IXC services under Act 183 (Chapter 30), IXCs no longer are required to demonstrate the flow-back of access charge reductions to their long-distance customers. *Id*. at 17-18.

Seventh, PTA/CTL take issue with AT&T’s latest proposal to reduce originating access rates only for the largest RLECs. PTA/CTL characterize this “cut-off” proposal as raising an issue of first impression, never before presented since the Commission began access reform with the *Global Order* in 1999. PTA/CTL state that access charges always have been reduced in tandem, and that record support and rationale would be required to demonstrate that AT&T’s proposed differentiation is not arbitrary or capricious. “There is no rationale presented by AT&T for originating access reductions for part of the RLEC industry, much less evidentiary record support.” *Id*. at 19. PTA/CTL submit that the characteristics of the RLEC service area (customer density, loop length, topography, etc.), not the RLEC’s size, that support reasoned rate setting and policy making. *Id*. at 19-20. PTA/CTL characterize AT&T’s proposal as serving its objective to maximize its expense savings regardless of the effect on rural Pennsylvanians served by mid-sized carriers. The FCC and the Commission have recognized that rural carriers are significantly different than non-rural carriers, with an average serving area density of 30.5 access lines per square mile. The larger RLECs are only marginally more dense with 49.4 access lines per square mile. In contrast, the state average is 130.3 access lines per square mile, and Verizon’s average is 193.2 access lines per square mile. PTA/CTL note that AT&T’s proposal would leave Verizon in a supreme position relative to all other ILECs in Pennsylvania because Verizon’s intrastate carrier access charge proceeding has been ongoing for many years with no Commission action. Verizon serves all of the urban areas of Pennsylvania without exceptions, including Pittsburgh, Philadelphia and Harrisburg. In contrast, the largest “city” served by a Commission-designated RLEC is Chambersburg, a town of 18,000 residents, that is served by CTL. According to PTA/CTL, “[t]here is no reasonable policy that reduces the originating access charges of the mid-sized ILECs, but ignores the rates of the largest ILEC in Pennsylvania, representing approximately 85% of all ILEC access lines.” *Id*. at 22.

Eighth, PTA/CTL argue that AT&T’s proposal to reduce originating switched access rates while the FCC addresses the issue is not supported by record evidence. PTA/CTL state that AT&T conceded as much when it stated that each RLEC must be required to provide data and back up calculations demonstrating how the RLEC historically has billed the charge between originating and terminating access. PTA/CTL state that there are numerous unanswered questions, including how the RLECs would recover their costs, continue to price competitively, meet statutory broadband obligations under Chapter 30, etc., and that there is no record evidence to support AT&T’s new, post-record proposal. Finally, PTA/CTL point out that, if the Commission were to implement originating access reductions at this time as urged by AT&T, those reductions would be subject to Chapter 30’s revenue neutrality requirement. “Nowhere in the record or in AT&T’s proposal is there any demonstrated assurance of any ‘opportunity’ of revenue neutrality when considering the rate and recovery changes also being implemented in the *Connect America Fund Order*.” *Id*. at 24.

In conclusion, PTA/CTL submit that the Commission’s focus should be on implementing the *FCC Order*, not further implementing its *July 2011 Order*.

### 3. Verizon’s Answer

Verizon agrees with PTA/CTL and AT&T that, with the issuance of the *FCC Order*, the Commission’s *July 2011 Order* is moot with regard to terminating access charges. Verizon suggests that the Commission now should focus on implementing the FCC’s Order particularly the timely and accurate implementation of the FCC-directed rate reductions by all carriers. Verizon Answer at 2-3.

With respect to originating access charges, Verizon agrees with AT&T in principle that the Commission should reduce the RLECs’ originating access charges. However, Verizon does not support AT&T’s proposed mechanism under which RLECs would reduce originating access charges in two steps to interstate levels by July 1, 2013. Instead, Verizon suggests that the Commission should require RLECs to reduce their originating access charges to 1.7 cents per minute, which is the rate that Verizon charges for intrastate switched access service. In the case of a carrier with interstate rates that are higher than the 1.7 cent Verizon benchmark, Verizon suggests that originating charges could be reduced to the carrier’s interstate level. Verizon suggests that reductions in originating access revenues could be rebalanced by reasonable retail rate increases.

*Id*. at 4. Verizon states that fifteen RLECs have interstate rates lower than 1.7 cents, while their intrastate rates range up to 11 cents per minute. For these carriers, a 1.7 cent benchmark would remove the variability in their rates for the benefit of interexchange carriers. For some of the smaller RLECs with interstate access rates higher than Verizon’s 1.7 cent intrastate rate, the Commission could move their intrastate originating access rates to their own interstate levels. This would be an improvement in the direction of uniformity. Verizon submits that, under its plan, the amount of the revenue to be rebalanced is now much lower given that the FCC has established recovery mechanisms for reductions in terminating access charges. Verizon states that its keeping basic residential rates within the Commission’s $23 benchmark should be possible under its proposed plan. *Id*. at 4-6.

With respect to basic rate “caps,” Verizon agrees with PTA/CTL that, to the extent that there is still any limit of the RLECs’ ability to increase rates, the Commission should remove such limits. In general, Verizon does not support unnecessary limitations on any carrier’s ability to increase retail rates and believes that carriers that are expected to recover costs from their own end users should have the maximum ability to do so. Verizon agrees with the statement of PTA/CTL that, even in the absence of any cap or ceiling, carriers will still be required to seek Commission approval of any local rate changes under the just and reasonable standard of state law. “Therefore, to the extent that any carrier actually approaches the $23 level for residential rates the Commission will still be able to consider the carrier-specific evidence before approving such rates.” *Id*. at 7. Verizon points out that the FCC’s benchmark rate level translates to a rate of $22 when calculated on the same basis as the Commission’s $23 benchmark. However, if an RLEC increases its rates above the federal benchmark, it simply means that the carrier would not be eligible for an ARC, and instead would rely upon the CAF support mechanism for funding displaced revenue. Accordingly, Verizon submits that the Commission should grant the request of PTA/CTL to remove any caps on their regulated rates. *Id*.

With respect to the PaUSF, Verizon argues that the Commission should reject the suggestion of PTA/CTL that the Commission should authorize additional state funding to offset the federal reductions to access charges. Verizon agrees with AT&T that the Commission cannot give carriers a mechanism to recover federally-mandated reductions outside of the mechanisms specified by the FCC. Verizon submits that the Commission should continue to act in accordance with its decision in the *July 2011 Order* that it would not expand the PaUSF nor permit its use for intrastate access charge rebalancing at this time. *Id*. at 8.

Verizon’s responses to the questions posed by the Commission’s *March 2012 Order* are summarized *infra*.

### 4. Sprint’s Answer

Sprint’s Answer consists of responses to the five questions posed by the Commission’s *March 2012 Order*. Accordingly, Sprint’s Answer is summarized below. Sprint also attached the Verified Statement of James A. Appleby to its Answer (Sprint Statement). Portions of the Sprint Statement have been labeled Confidential and will not be discussed in this Opinion and Order. In general terms, Sprint proposes that originating access rates be reduced to the maximum extent possible so long as the resulting local service rate does not exceed the FCC’s Residential Rate Ceiling of $30. Sprint states that its proposal would avoid limiting ARC recovery, and that this is the only aspect where its proposal diverges from AT&T’s. Under AT&T’s proposal, RLEC originating access rates would reach parity with interstate rates regardless of the impact on the resulting local service rate. Sprint Statement at 8.

Sprint disagrees with the suggestion of PTA/CTL that the *July 2011 Order* be stayed in its entirety with the exception of lifting the caps on retail rates. Sprint submits that the FCC has provided alternative recovery for all of the changes mandated in the *FCC Order*, and accordingly it is inappropriate to suggest that local rates need to be increased beyond the recovery provided by the FCC. Sprint states that rate caps should be increased only to facilitate reform of the RLECs’ *originating* access charges, and suggests that the increase to the local rate cap in the *July 2011 Order* should be rescinded absent originating access reform. *Id*. at 9-10.

### 5. Comcast’s Answer

Comcast argues that the Pennsylvania CC cannot apply to Voice Over Internet Protocol (VoIP) traffic, and points to language in the *FCC Order* wherein the FCC stated that it was bringing all VoIP-PSTN traffic within the Section 251(b)(5) framework. According to Comcast, the FCC has assumed exclusive jurisdiction over VoIP-PSTN intercarrier compensation, and has brought all such traffic within the ambit of Section 251(b)(5), 47 U.S.C. § 251(b)(5). According to Comcast, under the FCC’s transitional framework, default intercarrier compensation rates for toll VoIP-PSTN traffic are equal to interstate access rates, and the default rates for other VoIP-PSTN traffic are the otherwise applicable reciprocal compensation rates. Because the FCC’s transitional plan does not adopt a carrier charge on VoIP-PSTN traffic, Comcast argues that “the Commission should state that the CCLC – if retained – does not apply to VoIP-PSTN traffic as a matter of federal law.” Comcast Answer at 2-3.

Comcast also argues that the PaUSF should not be expanded to fund originating access rate reductions at the state level that precede FCC-mandated originating access reductions. “The FCC clearly expressed its intention to delegate to states only the responsibility of transitioning originating access to bill-and-keep, not to permit regulatory arbitrage.” *Id*. at 4. Finally, Comcast argues that the Commission should expand the contributor base of the PaUSF to include wireless carriers. Although wireless service has eclipsed wireline service, wireless carriers contribute nothing to the PaUSF, leaving that responsibility to a dwindling number of wireline customers. Comcast argues that this distortion of the competitive market should not be allowed to continue. *Id*. at 4-5.

### 6. OCA’s Answer

The OCA states that, while not in complete agreement with either AT&T or PTA/CTL, there are some areas of common agreement. The OCA agrees with PTA/CTL that the Commission should refrain from implementing the *July 2011 Order* access reforms, including the reform of originating access charges. The FCC has indicated that it will embark on originating access reform in the near future; in the OCA’s view, there is no compelling reason for the Commission to “rush into the originating access reform breach.” OCA Answer at 4. The OCA states that originating access charges are not subject to the same abuses as terminating access charges and do not present urgent public policy issues.

Accordingly, while the OCA agrees with AT&T’s methodology[[18]](#footnote-18) to allocate the Carrier Charge between terminating and originating access, the OCA disagrees with AT&T’s position that the *originating* portion of the Carrier Charge should be eliminated. *Id*. at 7. The OCA recommends that this proceeding be continued to provide for the allocation of the Carrier Charge among IXCs. The OCA believes that a complete stay of the *July 2011 Order* as requested by PTA/CTL would not be appropriate because of the need to allocate the Carrier Charge between terminating and originating access.

In addition, the OCA submits that the Commission must address the issue of expanding the contribution base that funds the PaUSF. The OCA recommends that any entity that contributes to the federal USF should be obligated to contribute to the PaUSF. *Id*. at 7-8.

With regard to the issue of whether the access reductions required by the FCC qualify as exogenous events that trigger the right of RLECs to raise basic local service rates to compensate for lost revenues, the OCA suggests that this issue “may be beyond the scope” of the instant proceeding. *Id.* at 8. The OCA notes that the exogenous event language in various Chapter 30 plans is not uniform. Individual Chapter 30 ILECs may petition the Commission to determine whether its particular exogenous event provision is triggered by access reform mandated by the FCC. *Id*. at 8.

The OCA notes that, if the Commission determines that FCC access reforms have triggered exogenous event revenue recovery, its proposed benchmark discussed below would serve as an important backstop for local telephone service customers. Should an RLEC confront the $30 limit, and exhaust the federal rate recovery mechanism, the RLEC may have nowhere else to turn but the PaUSF. For these reasons, the OCA strongly recommends that the Commission expand the PaUSF contribution base.

The OCA disagrees with PTA/CTL’s position that the Commission should retain that portion of the *July 2011 Order* that lifts the rate caps currently imposed on Pennsylvania RLECs. The OCA does not agree that abandoning all rate cap limitations would be in the public interest. Instead, the OCA suggests that the Commission harmonize its affordability benchmark approach with the FCC’s $30 Residential Rate Ceiling, and utilize that approach to establish a firm level of rate protection for Pennsylvania’s residential customers. In short, the OCA suggests that the Commission revise its residential benchmark so that it is based on total bill consistent with the FCC’s methodology, which currently produces a $30 cap. The OCA believes that this is consistent with the goals of the *July 2011 Order*, which established a residential benchmark of $32 on a total bill basis. The OCA avers that both PTA/CTL and AT&T indicated that the Commission’s residential benchmark and the FCC’s residential rate ceiling are similar. *Id*. at 5-6.

The OCA attached the affidavit of Dr. Robert Loube to its Answer (OCA Affidavit). In addition to addressing the five questions posed by the Commission’s *March 2012 Order*, the OCA states that the *FCC Order* substantially affects the financial status of Pennsylvania RLECs by reducing their current federal universal service support, and by providing limited opportunities to obtain additional financial support. In addition, the FCC granted terminating access users, such as IXCs and wireless carriers, a free-ride on the facilities of access service providers. These users will experience a significant cost reduction, but it is unlikely that consumers will obtain a benefit in the form of lower long distance rates. OCA Affidavit at 4, n. 4. The OCA agrees with the Commission’s conclusion in the *July 2011 Order* that all users of the RLECs network should contribute to the support of the NTS joint and common costs. *Id*. at 5.

## Responses to Questions Posed by the Commission’s *March 2012 Order*

The Commission’s *March 2012 Order* requested comments on five specific questions and related issues regarding the effect of the *FCC Order* on the Commission’s *July 2011 Order*. The responses filed by the Parties are summarized below.

1. **Whether the substance and the time frame of the FCC’s intercarrier compensation reforms should totally or partially replace the Commission’s intrastate carrier access charge reform directives contained in our July 2011 Order.**

PTA/CTL state that, with the exception of the removal of the previously effective residential and small business rate caps, the Commission’s *July 2011 Order* conflicts with the *FCC Order*, and therefore should be stayed permanently and this docket closed. Joint Statement at 1.

AT&T states that the substance and the time frames established by the *FCC Order* totally replace the Commission’s directives in the *July 2011 Order* with respect to terminating access, and provide the basis for modifying the Commission’s directives concerning originating access charges so as to reform those charges on a concurrent timeline.

AT&T argues that, with respect to terminating access charges, the FCC’s reforms totally replace the directives in the Commission’s *July 2011 Order*, with no exceptions. With regard to originating access charges, AT&T states that the *FCC Order* expressly preserves the Commission’s authority to reduce access rates. AT&T argues that the need to reduce originating access charges is clearer in the wake of the *FCC Order*, because the FCC found that originating charges ultimately should be subject to the bill-and-keep framework even though the FCC did not order any reductions at this time. Updated Petition at 6. “The Commission can thus direct the planned ‘state-level’ rebalancing in its July 2011 Order to take care of originating access reductions.” *Id*. at 7.

AT&T cites CTL as an example, stating that its intrastate access rates are much higher than the corresponding interstate rates, with the difference driven entirely by its $7.19 monthly carrier charge. The *July 2011 Order* required that the charge be reduced over a four-year period to $2.50, and permitted CTL to rebalance that reduction with a $4.69 increase in local rates, which currently are $18.00 per month. However, a large portion of CTL’s CC relates to terminating access, which now must be reduced according to the FCC’s directives, with lost revenue addressed through the federal recovery mechanisms rather than through local rate increases. Assuming that $5.00 of CTL’s CC relates to the terminating side, the Commission could reduce CTL’s originating access charge of $2.19 to interstate parity with only a $2.19 increase in local rates, less than half of the rebalancing that it had planned.[[19]](#footnote-19)

AT&T avers that, even considering new customer charges under the federal ARC, CTL’s end-users would pay less in rebalancing than planned under the *July 2011 Order*. AT&T states that the FCC imposed limitations on the ARC charges that can be imposed on an ILEC’s end-users. Generally, the ARC charge is limited to $0.50 in the first year, with annual increases of the same amount thereafter during the transition period for a maximum period of either five years (price cap carriers) or six years (rate-of-return carriers). *FCC Order*, ¶ 908. According to AT&T, this means that, if CTL is required to reduce its intrastate CC by $5.00 over two years, it will be allowed to impose only $1.00 in ARC charges on its residential and single-business line customers. This suggests that a large portion of CTL’s recovery will not come from direct charges on Pennsylvania consumers, but from an allocation from CTL’s Eligible Recovery to other jurisdictions and potentially the CAF. *Id*. at 8, n.26. AT&T proposes that the Commission require the larger RLECs to reduce their originating access charges in two equal steps beginning July 1, 2012.

Verizon states that the *FCC Order* renders the Commission’s *July 2011 Order* moot with respect to terminating access charges. The FCC did not set a schedule for reducing originating access charges, and hence did not replace the Commission’s *July 2011* *Order* with respect to originating access charges.

Sprint agrees that the Commission’s directives regarding the reform of terminating access charges have been completely superseded by the *FCC Order*. Sprint encourages the Commission to take action on originating switched access charges, and notes that the *July 2011 Order* required each RLEC’s intrastate originating access rates, with the exception of the CC, to mirror its interstate rates. Sprint proposed that the CC be reduced further than the $2.50 level set forth in the *July 2011 Order*, and states that most RLECs can eliminate the CC by implementing corresponding local rate increases without exceeding the FCC’s Residential Rate Ceiling. Sprint proposed that caps on local service rates be increased to accommodate the reductions to the CC such that originating access rates are reduced to the greatest degree possible without breaching the FCC’s Residential Rate Ceiling. This proposal would avoid impacting the level of the RLECs’ ARC. Sprint Answer at 2-4.

The OCA concurs with PTA/CTL and AT&T that the *July 2011 Order* should not be implemented with respect to terminating access rates. However, the OCA states that the Commission retains its authority over originating access rates and should allocate the CC between originating and terminating access using AT&T’s proposed methodology, and allow RLECs to continue to recover the originating portion of the CC. This would meet the Commission’s mandate that all users of the network should contribute to the support of the network. In addition, retention of the originating CC prevents an additional increase in residential bills by mitigating the impact of the ARC. OCA Affidavit at 6-7.

1. **Will there be cross-effects on various regulated telecommunications carriers with intrastate operations in Pennsylvania and their end-user consumers if the Commission proceeds with the implementation of its July 2011 Order while the FCC’s directives in the CAF Order also are coming into effect? The interested Parties should address at a minimum the following relevant areas, with appropriate technical evidentiary quantification to the extent possible:**

**a. Can or will the implementation of the July 2011 Order have cross-effects with the FCC’s mechanisms of Eligible Recovery and potentially available federal CAF support and over what time frame?**

1. **Can or will the implementation of the July 18, 2011 Order in conjunction with the FCC Order directives have potential cross-effects for end-user consumers of intrastate regulated retail telecommunications services and over what time frame?**

PTA/CTL state that, if the *July 2011 Order* were implemented in conjunction with the FCC’s Order, RLEC customers would pay more toward the recovery of reduced access charges. Combining the largest monthly increase of $3.50 allowed by the Commission with a potential $0.50 increase for the federal ARC would produce an initial increase of $4.00 per line and subsequent annual increases of similar magnitude. PTA/CTL also state that implementation of the *July 2011 Order* would reduce the revenues provided to Pennsylvania RLECs through the new CAF mechanism, shifting more of the burden onto local ratepayers and expanding the “net payer” status that the old universal service support system established. Joint Statement at 2.

PTA/CTL state that the *July 2011 Order* reduced all intrastate switched access rates, not just terminating access rates. The FCC has announced its intention to address originating access charges, and given the FCC’s balanced approach to reforming terminating access charges, it is likely that some or all of the revenue reductions from originating access reform will be recoverable through the CAF or similar mechanism. PTA/CTL also state that the Commission’s $2.50 CC, which assigns a portion of local loop costs to intrastate access service, likely would be preempted by the *FCC Order*. *Id*.

AT&T responds that the Commission’s *July 2011 Order* easily can be modified so as to be compatible with the *FCC Order*, and argues that the only “cross-effect” is a positive one, as the FCC has made it easier to complete reform in Pennsylvania. AT&T repeats its argument that, by taking responsibility for intrastate terminating access charge reductions and the associated recovery mechanisms, the FCC has made it easier for the Commission to implement reductions on originating access charges. As requested in its August 2, 2011, the Commission should reduce RLECs’ intrastate originating access rates to parity with corresponding interstate rates. AT&T submits that the interaction between the FCC’s “Residential Rate Ceiling” and the Commission’s $23.00 benchmark is immaterial, as it discusses below. As to terminating access, AT&T states that the Commission has been preempted and cannot proceed with the implementation of its *July 2011 Order*.

AT&T argues that, as it previously discussed, the only aspect of the Commission’s *July 2011 Order* that can be implemented in conjunction with the FCC’s directives is the planned reductions in originating access charges. The potential “cross-effects” for end-user customers are the additional benefits that they would receive from reductions in originating access charges. AT&T Updated Petition at 11.

Verizon submits that the Commission should not attempt to implement its own order with respect to terminating access, and hence there should be no “cross-effects.” Verizon submits that the Commission should continue to implement reductions for originating access charges, and it may do so consistently with the *FCC Order* by providing for offsetting increases to the RLECs’ regulated retail rates under state law.

Sprint again urges the Commission to move forward on originating access reform, and cautions that delaying reform is a formula for ensuring that the terms of such reform will be dictated by the FCC. Sprint Answer at 4.

The OCA states that implementing the *July 2011 Order* would have substantial cross-effects with the FCC’s Eligible Recovery Mechanism and available CAF support. The FCC’s revenue offset is not revenue neutral; ARC revenue and Eligible Recovery support is limited. For example, after five years, federal rate-of-return carriers will recover only 77% of the FCC-mandated intrastate reduction through the federal ARC and the Eligible Recovery Mechanism. For federal price-cap carriers in CALLS study areas, after five years only 59% of the FCC-mandated intrastate reduction will be recovered through the federal mechanisms.[[20]](#footnote-20) For federal price-cap carriers in Non-CALLS study areas, access charge reductions will be revenue-neutral for five years, after which the base factor will decrease to 90%. OCA Affidavit at 8-9. In addition, the FCC requires all carriers to charge at least the national average local residential rate starting on July 1, 2014. The national average local residential rate was $15.62 in October 2007, and the OCA anticipates that it may increase by July 2014. OCA states that this provision could impact the fourteen rate-of-return carriers operating in Pennsylvania with residential monthly rates that are below $17.00.[[21]](#footnote-21)

1. **Will the FCC’s adoption of a Residential Rate Ceiling for purposes of the federal Eligible Recovery mechanism and associated CAF support distributions have any cross-effects on the Commission’s findings regarding the adopted $23 per month benchmark rate in the July 2011 Order?**

PTA/CTL explain that the FCC’s Residential Rate Ceiling is used to determine the point in time when no additional ARC increases are allowed. If a carrier’s rate were to match the Commission’s $23 benchmark, the “pre-ARC” rate for evaluation under the FCC’s Residential Rate Ceiling would be $30.83. An RLEC with this rate would not be eligible for the ARC, and instead would rely on the CAF support mechanism to recover the remaining displaced intercarrier compensation revenue. PTA/CTL explain that the Commission’s benchmark was based on evidence presented by the OCA, and was set to reflect a total bill of $32 inclusive of taxes and fees. Including the new maximum ARC charges of $3 (rate-of-return ILECs) and $2.50 (price cap ILECs) would produce a benchmark of $20.00 or $20.50.

PTA/CTL submit that the Commission’s benchmark and the FCC’s rate ceiling are different but complimentary. The Commission’s benchmark does not prohibit a LEC from increasing rates beyond that level. The FCC’s rate ceiling incorporates the rate for local service, but only to determine the appropriate allocation between the ARC and the CAF in the revenue recovery process.

In summary, PTA/CTL state that the *July 2011 Order* increases the burden of retail rate recovery on rural Pennsylvanians and reduces the amount of federal CAF support that otherwise would be available to the recovery of displaced revenue. *Id*. at 3.

AT&T states that there is no material issue in reconciling the FCC’s Residential Rate Ceiling and the Commission’s benchmark. Because the federal SLC and state E-911 and Telecommunications Relay Service (TRS) charges count toward the FCC’s Residential Rate Ceiling of $30 per month, the FCC’s Residential Rate Ceiling translates to a benchmark of about $22 per month for basic residential service – an amount very close to the $23 established in the Commission’s *July 2011 Order*. AT&T asserts that, as a result, any cross effects between the FCC’s Residential Rate Ceiling and the Commission’s benchmark are immaterial. Although a carrier that raised its rates to the $23 benchmark would exceed the Residential Rate Ceiling by a slight amount, nothing in the *July 2011 Order* requires carriers to increase their charges to the $23 benchmark level. In addition, AT&T submits that thirteen RLECs would have rates below the $22 ceiling after rebalancing both originating and terminating access rates. Since the FCC has provided a mechanism for recovering rate reductions for terminating access, the Commission will be addressing only rate rebalancing for originating access, considerably less than half of the “access pie.” AT&T asserts that CTL, for example, could eliminate the portion of its carrier charge that relates to originating access rates (estimated to be $2.19), and rebalance the entire reduction by increasing its local retail rate, and the local rate still would be only $20.19. After factoring in the SLC, TRS and E-911 charges, CTL’s adjusted retail rate would be only $28.19, well below the FCC’s Residential Rate Ceiling. AT&T asserts that the same holds true for the other three large RLECs. AT&T further asserts that the FCC’s Residential Rate Ceiling is not a hard cap. If a carrier exceeds the Ceiling, it may not assess some or all of the ARC on consumers. Instead, it must rely on ARCs assessed on multi-line business customers; ARCs assessed on end-users in other states; and CAF support. Updated Petition at 12-14.

Verizon states that the FCC’s Residential Rate Ceiling will not have any cross-effects on the Commission’s $23 benchmark, and refers to AT&T’s argument in its Updated Petition, *supra.*

Sprint states that, to the extent that access reductions ordered by the Commission must be revenue neutral, the Commission should preserve enough flexibility in local rates to accomplish originating access reform without impacting the federal recovery mechanisms. Sprint Answer at 5.

The OCA states that, while the FCC’s $30 Residential Rate Ceiling is generally consistent with the Commission’s $23 benchmark, they are used for different purposes. The FCC’s Residential Rate Ceiling is used to limit the size of the ARC that is recovered from residential customers. The ARC is reduced as needed so that the Residential Rate Ceiling is not exceeded. The OCA submits that, when calculated on the same basis as the Commission’s benchmark, the effective ceiling in Pennsylvania would be either $21.92 or $22.17 (it would be lower for the eleven RLECs with touchtone charges). The OCA concludes that if the Commission adopted an affordable basic local rate ceiling greater than $21.92 or $22.17, depending on the carrier (and adjusted for touchtone rates), the Commission would be needlessly increasing the rates paid by RLEC customers. Accordingly, the OCA recommends that the Commission match its affordable rate to the FCC’s Residential Rate Ceiling. OCA Affidavit at 10-12.

1. **How will the Pennsylvania ILECs that have alternative regulation and network modernization plans (NMPs) in place under Chapter 30 of the Public Utility Code, 66 Pa. C.S. §§ 3011 et seq., be affected by the implementation of the FCC’s intercarrier compensation reforms? Will they be able to seek intrastate rate relief of any type beyond the levels provided under the FCC’s Eligible Recovery mechanism and associated federal CAF support? Interested parties at a minimum should address the following areas:**
2. **The continuous applicability of the Commission’s directives that the mandated intrastate switched carrier access charge reform and the associated “revenue neutral rate rebalancing called for in this Opinion and Order does not implicate the RLECs’ various Chapter 30 exogenous event provisions.” *July 2011 Order*, at 141.**
3. **The legal and technical interaction between the FCC’s intercarrier compensation reforms, the “revenue neutrality” mandated for ILEC intrastate carrier access reforms under Section 3017(a) of Chapter 30, 66 Pa. C.S. § 3017(a), the rural ILEC Chapter 30 NMPs, and Section 3019(h) of Chapter 30, 66 Pa. C.S. § 3019(h).**
4. **Whether implementation of the contemplated federal ARC by any Pennsylvania Chapter 30 rural ILEC could lead to the permissible creation of revenues that would become part of the intrastate regulated services revenue pool that is utilized in the ILECs’ annual price stability mechanism and price cap formula submissions under Section 3015 of Chapter 30, 66 Pa. C.S. § 3015(a)(1)(iii).**

PTA/CTL argue that the Commission’s *July 2011 Order* did not invoke the exogenous events provisions in Chapter 30 plans; however, the *FCC Order* creates a jurisdictional shift in cost recovery that qualifies an exogenous event under Chapter 30 plans. This triggers the opportunity for Pennsylvania LECs operating under Chapter 30 plans to seek alternative recovery mechanisms for the Eligible Recovery revenue that is lost each year. PTA/CTL submit that these filings would not be administratively burdensome, and provide a hypothetical example of the calculation of annual increases for a carrier with a baseline revenue of $1 million. Joint Statement at 4-6.

PTA/CTL also state that the likely decrease in the authorized interstate rate of return also may result in exogenous event filings at the Commission. PTA/CTL note that Chapter 30 companies have made significant network investments, and have earned a return of 11.25% on the interstate portion of those investments for more than two decades. Having made network investments in accordance with Chapter 30, Pennsylvania RLECs are faced with the likelihood of a lower return on their investment. *Id*. at 6.

AT&T submits that the FCC’s reforms do not affect the Pennsylvania ILECs’ alternative regulation and network modernization plans, and that ILECs may not obtain “intrastate relief of any type” for the federally-ordered access reductions. Updated Petition at 16-17. AT&T argues that the *FCC Order* is not an exogenous event, and there is no interaction – legal, technical or otherwise – between the FCC-ordered reforms and the referenced state statutes and NMPs. *Id*. at 19. The “federal ARC” is a federal charge that is subject to the FCC’s jurisdiction.

AT&T submits that Pennsylvania ILECs with alternative regulation and network modernization plans should not be treated differently. AT&T argues that the Commission cannot give special treatment for recovering federally-mandated access charge reductions to any carrier outside of the mechanisms specified by the FCC, and that doing so would destroy the uniformity sought by the FCC. “Moreover, a state recovery mechanism designed to recover the FCC-directed reductions would nullify the FCC’s limits on the amount of recovery carriers may obtain, and nullify the conditions and requirements the FCC placed on recovery by arguably allowing carriers to bypass the federal recovery system and obtain recovery without having to meet the conditions associated with that recovery.” *Id*. at 16-17. AT&T concludes that the Commission cannot allow an ILEC subject to alternative regulation or a network modernization plan to seek intrastate rate relief of any type beyond the levels provided by the FCC’s Eligible Recovery mechanism and associated federal CAF support. *Id*. at 17.

AT&T states that the FCC rejected a 100% revenue-neutral approach to rate rebalancing, and concluded that the reforms it adopted would allow incumbent LECs to earn a reasonable return on their investment. *Id*. at 18. AT&T states that the recovery mechanism established by the FCC recognizes that both price cap and rate-of-return carriers would have faced unpredictable access revenue streams, even if the FCC had not acted, as the demand for traditional telephone service declines. Accordingly, RLECs cannot complain that the FCC’s recovery mechanisms do not guarantee maintaining 100% of today’s revenues. In any event, the Commission “cannot override the FCC’s mechanisms or give carriers a windfall or double recovery above that specified by the FCC.” *Id*. at 18. AT&T submits that RLECs are free to choose not to take advantage of the federal recovery mechanisms, but cannot be allowed to claim that a business decision to eschew the federal recovery mechanisms is an exogenous event under Chapter 30 plans. Simply put, AT&T argues that the Commission cannot change the FCC’s recovery mechanisms or allow any RLEC to bypass the FCC’s directives. *Id*.

AT&T argues that there is no interaction between the FCC’s reforms and the “revenue neutrality” described in Section 3017(a) of the Public Utility Code, 66 Pa. C.S. § 3017(a). Section 3017(a) prohibits the Commission from requiring a LEC to reduce access rates except on a revenue neutral basis. AT&T argues that Section 3017(a) does not apply to the FCC. AT&T also argues that, in any event, the FCC’s reforms are consistent with Section 3017(a), and that the fact that the FCC’s recovery mechanisms are not designed to be 100% revenue neutral simply recognizes that, absent reform, price cap and rate-of-return carriers alike would have faced an increasingly unpredictable revenue stream from access charges. *Id*. at 19. In addition, AT&T argues that even if Section 3017(a) applied to the FCC, the FCC has precluded the States from ordering additional recovery against federal access charge reductions. “The FCC has established a uniform nationwide plan for access reductions and the associated recovery. It has decided how much of its access reductions should be recovered from end users, either through the ARC or through universal service contributions, and what conditions a carrier must satisfy to obtain that recovery. Because the Constitution makes federal law (including federal agency decisions) the supreme law of the land, this Commission is not free to second-guess or alter the FCC’s plan.” *Id*. at 19-20. AT&T concludes that Section 3019(h) of the Code, 66 Pa. C.S. § 3019(h), also does not apply to the FCC, and even if there were a conflict, federal law would prevail. *Id*. at 20.

AT&T argues that the federal ARC cannot be made part of any intrastate regulated services revenue pool because, as a federally-created charge, it is not subject to State jurisdiction. The *FCC Order* does not give the States any role in evaluating, much less approving, a carrier’s decision whether to assess the ARC or the amount at which it chooses to do so. *Id*. at 21.

Verizon states that ILECs with NMPs will not be able to seek intrastate rate relief of any type beyond the FCC’s Eligible Recovery mechanism and associated federal CAF support. Verizon submits that the FCC has assumed jurisdiction over the revenue recovery for terminating access charges, and that revenue is no longer part of the Chapter 30 price stability mechanism process. Verizon Answer at 10. Verizon agrees with AT&T’s position that RLECs should not be allowed to claim that business decisions to eschew the available federal recovery mechanisms leads to an exogenous event under Chapter 30 plans. Given that the “jurisdictional shift” in cost recovery is accompanied by a mechanism for revenue recovery, Verizon submits that it is not the sort of unexpected and uncompensated cost that qualifies as an “exogenous event” under the Chapter 30 plans. *Id*. at 10-11. Verizon also argues that Section 3017(a) of the Code does not apply to rate reductions required by the FCC, and that Section 3019(h) does not affect federal law because it applies only to conflicting provisions of state law. *Id*. at 11. Verizon also agrees with AT&T’s conclusion that revenue recovered from the ARC cannot be part of any intrastate regulated services revenue pool because it is a jurisdictionally federal charge like the SLC.

Sprint argues that the *FCC Order* created a uniform national plan governing recovery of lost access revenue, and the Commission is not at liberty to provide for additional recovery. Sprint submits that the Commission’s ability to provide for rate recovery is limited to reforms that it implements above and beyond the level required by the FCC, such as the originating access reforms that Sprint advocates. Sprint states that Sections 3017(a) and 3019(h) of the Code do not apply to access reforms ordered by the FCC. Sprint Answer at 6-7.

The OCA submits that the Commission should decide whether an exogenous event provision in a Chapter 30 Plan has been triggered by the FCC’s actions on a case-by-case basis. The OCA recommends that the Commission require a carrier to file exogenous event revenues and costs when such a request is filed. The OCA further recommends that the Commission consider the impact of qualifying exogenous events on the size and function of the PaUSF. With regard to Chapter 30 NMPs, the OCA submits that meeting the FCC’s upstream broadband requirement of 1 Mbps will be difficult and expensive. ILECs that cannot meet the FCC’s requirement may lose federal USF support. To better understand this issue, the OCA recommends that the Commission require RLECs to provide detailed explanations regarding how they will upgrade their networks to comply with the FCC’s requirements, and the cost of those upgrades. Finally, the OCA submits that, under traditional Separations revenue rules, ARC revenue would be considered interstate revenue since the FCC established the ARC. However, the FCC has crossed jurisdictional boundaries and the ARC revenues are replacing revenues for intrastate access service. Therefore, the OCA recommends that “[t]o the extent that the state rate making procedures require revenue to offset either the change associated with the loss of LSS [Local Switching Support] or reduction in intrastate access revenue associated with FCC mandated intrastate rate reductions the Commission should utilize ARC revenue and RM [recovery mechanism] support.” OCA Affidavit at 13-15.

1. **The need, if any, of appropriate recordkeeping requirements for affected carriers in the event that the FCC’s *CAF Order* is overturned in whole or in part on appeal, and intrastate intercarrier compensation amounts that have been paid or received in the interim need to be adjusted in accordance with the relevant provisions of the Public Utility Code. *See generally* 66 Pa. C.S. § 1312.**

PTA/CTL state that the likelihood of the FCC’s Order being overturned and access charges are reinstated retroactively is impossible to predict. In this event, the PTA/CTL state that RLECs likely would re-rate and re-bill the traffic retroactively.

Verizon states that carriers can be expected to keep such records in the course of business and re-rate bills if necessary, and that no special record-keeping requirements are necessary. Id. at 12.

The OCA recommends that the Commission require carriers to retain records that would allow the Commission to determine whether to adjust any payments if the *FCC Order* is overturned on appeal. “Therefore, each carrier should be instructed to keep monthly records by access service of billing determinants and rates.” OCA Affidavit at 15. The OCA submits that monthly records are needed because the FCC’s reforms are based on a mix of calendar years, tariff years, and fiscal years.

# 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 argument that has not been specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

The Code establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), related to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. The standards for granting a petition for reconsideration were set forth in *Duick*:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that ‘[p]arties . . ., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . . .’ What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.

56 Pa. P.U.C. at 559. Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations that appear to have been overlooked or not addressed by the Commission.

It is clear that, given the issuance of the *FCC Order*, the standards of *Duick* have been met, and we will consider the merits of the Updated Petition filed by AT&T, the Updated Joint Petition filed by PTA/CTL, and the Answers thereto that have been filed by various Parties. In addition, in light of the recent change to the intercarrier compensation regime prescribed by the *FCC Order*, we will reconsider our *July 2011 Order* on our own motion under Section 703(g) to ensure that our Opinion and Order today is not confined to the issues that have been raised by PTA/CTA or AT&T. The approach that we adopted in our *July 2011 Order* maintained this Commission’s flexibility to adequately respond to potential changes in applicable federal law. We reserved the right to initiate subsequent proceedings and issue appropriate Orders to coordinate the potential outcomes of the FCC’s initiatives with our *July 2011 Order* to the extent necessary, while also safeguarding the due process rights of all interested and participating parties. *July 2011 Order* at 123. The issuance of the *FCC Order* requires that we revisit our *July 2011 Order* and reconsider our determinations in light of the FCC’s new directives.

We first shall address the reforms to terminating access charges that we adopted in our *July 2011 Order*. All Parties agree that the FCC has preempted the States in the area of terminating access charge reform. Although we do not necessarily agree that the FCC has the requisite statutory authority to establish intrastate access rates, as a practical matter, we see no point at this time in attempting to implement the provisions in our *July 2011 Order* that directly conflict with the FCC’s directives. Accordingly, we shall stay the provisions, including any reforms and implementation time frames, of our *July 2011 Order* that pertain to terminating access charges indefinitely. However, we will not stay these provisions permanently and close this proceeding as the PTA/CTL request. Given that the *FCC Order* is on appeal and is subject to being reversed in whole or in part, we will keep this docket open and place our reform of terminating access charges on hold pending further developments at the federal level. For now, we shall stay the specific provisions discussed herein indefinitely pending further Order of the Commission.

In order to implement the FCC’s directives regarding terminating access charge reform, it is necessary that the RLECs separate their fixed carrier charge into originating and terminating components.[[22]](#footnote-22) For the majority of the RLECs’ intrastate switched access charges, separating the originating and terminating components is straightforward. However, since the intrastate CC contains both originating and terminating intrastate switched access traffic components, and the *FCC Order* only requires the reduction of terminating access charges at this time, we will provide specific guidance in this regard to ensure uniformity among all RLECs in separating the CC into its originating and terminating components. AT&T has proposed a reasonable methodology for separating the CC based on minutes of use and the OCA has endorsed AT&T’s proposed methodology. As explained in our *Short Form Order*, we adopted the allocation method proposed by AT&T in Exhibit C to the Joint Affidavit that it filed with its Updated Petition on April 9, 2012. We remain of the opinion that this is the best methodology for separating the originating and terminating components of the CC. *See Short Form Order* at 5-7.

The next matter concerns whether or not we should move forward with reforms to originating access charges in advance of the FCC. We briefly discussed this issue on page 8 of our *Short Form Order* wherein we stated “[i]n view of the drastic impacts that the *FCC Order* has had on the measured intrastate access reforms adopted with our *July 18, 2011 Order*, and in view of the further FCC actions contemplated in the area of intercarrier compensation for originating traffic, we are reluctant at this time to engage in any actions affecting intrastate switched carrier access rates for originating traffic.” *Short Form Order* at 8. Upon our further review of all of the pleadings submitted in response to our *March 2012 Order*, we remain of the same opinion as discussed in our *Short Form Order.* We agree with PTA/CTL’s assessment that there are overlapping issues and impacts at play that have not been explored on the record in this proceeding, and that addressing originating access charges in isolation would be overly simplistic. PTA/CTL Answer at 11-13. We also agree with the OCA that, given that the FCC has indicated that it will embark on originating access reform in the near future, there is no compelling reason for the Commission to “rush into the originating access reform breach” at this time. OCA Answer at 4. As the OCA noted, originating access charges are not subject to the same abuses as terminating access charges, and do not present any urgent public policy issues that require attention. In doing so, we reject Verizon’s proposal to reform originating access charges for RLECs to 1.7 cents per minute, which is the rate that Verizon charges for intrastate switched access service.

In addition, notwithstanding the views of the FCC and the erosion of State authority under the *FCC Order*, we see no reason to alter our policy of ensuring that all users of landline access networks share in the payment of the joint and common costs of such networks. Our policy in this area has been consistent well before our 1999 *Global Order*.

In our *July 2011 Order*, we elected to permit RLECs to continue to charge a tariffed CC at a capped rate not to exceed $2.50 per access line per month based on our established policy of requiring all carriers who access the local loop to originate or terminate calls to share in the recovery of the fixed costs of the local loop plant and facilities. This decision was a balancing act that took into account the interests in maintaining competitive equity and collecting a fair share of the intrastate RLEC joint and common costs from the carriers that use the RLECs’ switched access networks. With the issuance of the *FCC Order*, and our decision to maintain the *status quo* with regard to originating access charges, capping the CC at $2.50 per line per month no longer has applicability. Our decision to refrain from reform of originating access charges, including the originating component embedded in the CC, pending further action by the FCC, will result in access charges that continue to vary significantly from carrier to carrier.

With regard to the issue of whether the benchmarks or rate caps for residential and small commercial customers should be retained, OCA argues that abandoning rate cap limitations would not be in the public interest. PTA/CTL advocate retaining that portion of the *July 2011 Order* that “lifted” the rate caps on Pennsylvania RLECs. Verizon agrees with PTA/CTL that, to the extent that there are any limits remaining on the ability of RLECs to increase their rates, the Commission should remove such limits, subject to the requirement that carriers seek Commission approval of a rate increase under the just and reasonable standard of state law. Other Parties note that the FCC’s $30 Residential Rate Ceiling, which affects the amount of allowable ARC recovery, is very close to the $23 residential benchmark that we established in our *July 2011 Order* when calculated on the same basis. Although the FCC’s Residential Rate Ceiling is used for a different purpose than our benchmark, the OCA suggests that we harmonize the two by slightly decreasing the $23 Pennsylvania residential benchmark to match the FCC’s Residential Rate Ceiling on an apples-to-apples basis.

In our *July 2011 Order*, we replaced the $18.00/month residential rate cap, which was established in 2003, with a benchmark rate of $23.00 per month for residential local service, and eliminated the rate cap on small business customers. This was done to accommodate rate increases triggered by rate rebalancing under the *July 2011 Order.* As noted above, we concluded that a hard cap on local service rates was no longer needed, and that the Legislature had not intended a permanent rate cap at the existing $18.00/month level.

Given the issuance of the *FCC Order* with its federal recovery mechanisms, and the indefinite stay of the access reform provisions in our *July 2011 Order* that we are ordering today, we see merit in PTA/CTL’s argument that RLECs should be given an opportunity to increase local rates, subject to Commission approval, so as to derive maximum support from the federal funding mechanisms. We note that, prior to the *July 2011 Order*, we had not increased the rate caps since 2003. We also see merit in the OCA’s suggestion to harmonize the residential benchmark in Pennsylvania with the FCC’s rate ceiling. Accordingly, rather than revert to the rate caps in effect prior to the issuance of the *July 2011 Order*, we simply will revise the portion of our *July 2011 Order* that replaced the residential rate cap with a benchmark rate of $23 (or $32 on a total bill basis that includes the federal SLC, any applicable touchtone charge,[[23]](#footnote-23) E-911 fees and the TRS surcharge). Specifically, for ease of administration we will revise the residential benchmark so that it (1) will be the same as the FCC’s Residential Rate Ceiling of $30, and (2) will be calculated on the same basis.[[24]](#footnote-24) Finally, although we are matching the current Residential Rate Ceiling established by the *FCC Order*, we clarify that we do not intend to establish an automatic adjustment mechanism to the benchmark

that would match any future increases to the FCC’s Residential Rate Ceiling without further review and approval by this Commission.

Although we recognize that the *FCC Order* has or will have effects on the retail local exchange rates of the affected RLECs – where such effects may go beyond the federally imposed monthly access recovery charge (ARC) and the associated federal eligible recovery mechanism of reduced intrastate and interstate switched carrier access revenues – the matter of our jurisdiction over such rates will continue to be primarily addressed by this Commission under applicable Pennsylvania law.

With regard to the issue of whether the FCC’s directives constitute an exogenous event under Chapter 30 Plans, we conclude that the *FCC Order* constitutes an exogenous event under a typical RLEC Chapter 30 Plan, such that resulting revenue reductions, which are not otherwise recovered through the FCC’s revenue recovery mechanisms, may be considered for a special revenue adjustment as discussed herein. While there are differences among the Chapter 30 Plans filed by the RLECs, the following language generally is representative of the exogenous event clauses found within these Plans[[25]](#footnote-25):

Except as otherwise noted, any changes or events within the Company’s control are excluded as exogenous events. Notwithstanding any other limitation specified herein, the Company, OTS [Office of Trial Staff – currently the Bureau of Investigation and Enforcement], OCA [Office of Consumer Advocate], OSBA [Office of Small Business Advocate], or other parties in interest may request the Commission to make special revenue adjustments beyond the scope of the PSI [price stability index] to recognize exogenous events (“Z”), including but not limited to the following: . . . subsequent regulatory and legislative changes (state & federal) which affect revenues and/or costs, to the extent not captured in GDP-PI [gross domestic product price index].

Several Parties to this proceeding have indicated that exogenous event treatment is warranted for the access charge and intercarrier compensation changes that have been implemented by the FCC. For example, in its April 19, 2012, response to the Updated Joint Petition and Updated Petition, the OCA recommends that the Commission require carriers to calculate and file any exogenous event revenue and costs impacts if and when any such exogenous event request is filed.[[26]](#footnote-26) Also, PTA/CTL argue that the *FCC Order* targets “Eligible Recovery” based on a combination of certain revenues from interstate access, intrastate access, reciprocal compensation, and universal service support. As such, PTA/CTL state that this is a jurisdictional shift in cost recovery where interstate revenues actually change, thus constituting a qualified exogenous event. In addition, these Parties state that this event, the *FCC Order*, triggers the opportunity for Pennsylvania’s RLECs operating under Chapter 30 Plans to seek alternative recovery mechanisms for the Eligible Recovery revenue which is lost each year.[[27]](#footnote-27)

Based upon the Updated Joint Petition, the Updated Petition, and the responses thereto that have been filed in this proceeding, we believe that the *FCC Order* comprehensively changed the intercarrier compensation structure for the nation’s telecommunications carriers, and that it clearly is a federal “regulatory . . . change[] . . . which affect[s] revenues[]” as contemplated by a typical RLEC Chapter 30 Plan.

In accordance with the provisions of Chapter 30, the terms of an RLEC’s NMP govern the regulation of the RLEC.[[28]](#footnote-28) Thus, these companies or others can make filings with the Commission seeking to recover any revenues not otherwise recovered through the mechanisms set forth in the *FCC Order*. As stated in PTA/CTL’s Updated Joint Petition, the mechanics of the recovery are different depending upon whether the RLEC pursuing such recovery is a Chapter 30 Price Cap or Streamlined Rate of Return company. In addition, the baseline revenue data collected at the federal level will determine the annual revenue lost calculation for each Pennsylvania RLEC.[[29]](#footnote-29) Once the baseline revenue calculation is determined, PTA/CTL further indicate that an RLEC would have the right, but not the obligation, to increase intrastate rates by a particular amount yet to be determined.[[30]](#footnote-30)

We believe that the RLECs’ Chapter 30 Plans speak for themselves and provide an opportunity for the carriers or other parties to seek this type of treatment. We do not, however, believe that carriers should be directed to file for exogenous event treatment for any future revenue losses, as argued by some. Also, based upon PTA/CTL’s Verified Joint Statement, the opportunity to file for any exogenous event treatment may arise in the future because the effects of the federal changes have not been calculated to date.

Further, we cannot agree with AT&T’s arguments that the *FCC Order* completely negates certain provisions of Chapter 30 as well as the RLECs’ Chapter 30 Plans.  AT&T states that the Commission is not free to change the FCC’s recovery mechanisms or allow any RLEC to bypass the FCC’s directives through a petition for exogenous event treatment.[[31]](#footnote-31)  In addition, AT&T states that the interpretation of the exogenous event language contained in the RLECs’ Chapter 30 Plans is not ripe for decision until a company actually files a petition.[[32]](#footnote-32)  We wish to be clear that our action today recognizes the provisions of Chapter 30 as amended by our General Assembly in 2004, and the current provisions of the RLECs’ Chapter 30 plans.  In addition, we reiterate that it is within the RLECs’ or other parties’ control as to whether the provisions of a particular Chapter 30 Plan are used to file an exogenous event petition.

However, we note that, because rate change filings made pursuant to Chapter 30 Plans must result in rates that are just and reasonable pursuant to Sections 1301 and 3019 (h) of the Code,[[33]](#footnote-33) it is premature to make a blanket ruling that all rate change filings invoking exogenous event treatment will be approved and permitted to go into effect automatically. Rather, as is the case with other Chapter 30 rate change filings, the Commission will make a final ruling once any proposed rates have been filed and subsequently reviewed to determine whether they are just and reasonable under Section 1301.

With regard to the issue raised by Comcast, we decline to state whether or not VoIP-PSTN traffic is exempt from intrastate carrier charges as a matter of federal law. Because Comcast raised this issue for the first time in its Answer to the Updated Petition and Updated Joint Petition, other Parties have not had an opportunity to respond to Comcast’s legal arguments. Accordingly, we believe that this issue is beyond the scope of this proceeding. It is best raised in the context of an interconnection agreement filing or arbitration proceeding, or an intercarrier compensation dispute adjudication that is properly before this Commission.

In addition, our *July 2011 Order* directed that the PaUSF regulations be reexamined through a proposed rulemaking.[[34]](#footnote-34) We reached that decision based on a thorough examination of numerous issues regarding the existing PaUSF, including whether carriers should receive Pennsylvania funds when they exceed the current residential rate cap, and whether a needs-based test should exist to assist RLECs for high-cost support and/or for assistance to low-income customers. We also note that the PTA filed a petition in December 2010 requesting that the Commission expand the contribution base of the current and future PaUSF to include wireless carriers and interconnected VoIP providers.[[35]](#footnote-35) Various interested parties filed answers to the PTA’s petition in January 2011. Moreover, the OCA and Comcast raised similar issues in their responses to the updated petitions for reconsideration in this proceeding.

As stated in our *July 2011 Order*, we continue to believe that the PaUSF implements multiple public policy goals statutorily prescribed by Pennsylvania and federal law. Due to pressing matters of business, we have not had an opportunity to issue an advanced notice of proposed rulemaking seeking comments on potential reforms of the PaUSF and its governing regulations at 52 Pa. Code §§ 63.161 *et seq*. However, in light of the FCC’s universal service reform, PTA’s pending petition and our continued commitment to reforming the PaUSF, we find that the examination of the PaUSF mechanism should include discussion of targeted support for low-income customers and high cost areas as well as other factors. The advanced notice of proposed rulemaking 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 ongoing federal USF reform, 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.

Finally, we shall require that ILECs maintain records necessary for re-rating and re-billing in the event the FCC Order is reversed, in whole or in part, on appeal. We note that PTA/CTL and Verizon both are of the opinion that carriers can be expected to keep such records in the normal course of business, so this record-keeping requirement should not be burdensome. We agree with the OCA’s suggestion that carriers should be required to keep monthly records by access service of billing determinants and rates. We also clarify that this record-keeping requirement shall apply to all ILECs.

# Conclusion

Upon review and consideration of PTA/CTL’s Updated Joint Petition, AT&T’s Updated Petition, and the various Answers filed in response thereto, we conclude that PTA/CTL’s Updated Joint Petition should be granted in part and denied in part; and that AT&T’s Updated Petition should be granted in part and denied in part, consistent with this Opinion and Order; **THEREFORE,**

# Ordering Paragraphs

**IT IS ORDERED:**

1. That the Updated Joint Petition for Reconsideration and Stay filed by the Pennsylvania Telephone Association and The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink on April 9, 2012, is granted in part and denied in part, consistent with this Opinion and Order.

2. That the Updated Petition for Reconsideration filed by AT&T Communications of Pennsylvania LLC, TCG New Jersey, Inc., and TCG Pittsburgh, Inc. on April 9, 2012, is granted in part and denied in part, consistent with this Opinion and Order.

3. That the provisions of the July 18, 2011 Opinion and Order pertaining to the reform of terminating access charges are stayed indefinitely pending further Order of the Commission.

4. That the provisions of the July 18, 2011 Opinion and Order pertaining to the reform of originating access charges are stayed indefinitely pending further Order of the Commission.

5. That the $23 residential benchmark established by the July 18, 2011 Opinion and Order is revised so that it shall be based on a customer’s total bill, consistent with the FCC’s methodology, which currently produces a $30 cap, as described more fully in this Opinion and Order. Any future increases to the FCC’s Residential Rate Ceiling shall not be automatically approved for intrastate purposes but shall require further review and approval by this Commission.

6. That the FCC’s Order at *In the Matter of Connect America Fund*, WC Docket No. 10-90 *et al*. (Order adopted October 27, 2011 and released November 18, 2011), 26 FCC Rcd 17663 (2011), is deemed to constitute an exogenous event under a typical Rural Incumbent Local Exchange Carrier’s Chapter 30 Plan, such that revenue reductions resulting therefrom qualify for consideration for a special revenue adjustment.

7. That, until further Order of the Commission, all Incumbent Local Exchange Carriers (ILECs) shall maintain monthly records by access service of billing determinants and rates that would be required for re-rating and re-billing.

8. 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.

9. That the docket numbers I-00040105 and M-2012-2291824 shall remain open until further order of the Commission. The docket numbers at C-2009-2098380, *et al.* shall be closed.

10. 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 to the July 18, 2011 Opinion and Order, and all other active Parties of Record.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: July 19, 2012

ORDER ENTERED: August 9, 2012

1. The PTA represents thirty rural incumbent local exchange carriers in this proceeding, including: Armstrong Telephone Co. – PA; Armstrong Telephone Co. – North; Bentleyville Telephone Co.; Buffalo Valley Telephone Co.; Citizens Telephone Co. of Kecksburg; Commonwealth Telephone Co. LLC d/b/a Frontier Communications Commonwealth Telephone Co.; 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 Co.; Denver and Ephrata Telephone and Telegraph Co.; Hickory Telephone Co.; Ironton Telephone Co.; Lackawaxen Telecommunications Services; Laurel Highland Telephone Co.; TDS Telecom/Mahanoy & Mahantango Telephone Co.; Marianna and Scenery Hill Telephone Co.; The North-Eastern PA Telephone Co.; North Penn Telephone Co.; Consolidated Communications of PA Co.; Palmerton Telephone Co.; Pennsylvania Telephone Co.; Pymatuning Independent Telephone Co.; South Canaan Telephone Co.; TDS Telecom/Sugar Valley Telephone Co.; Venus Telephone Corp.; Windstream PA, LLC.; and Yukon-Waltz Telephone Co. [↑](#footnote-ref-1)
2. AT&T Updated Petition at 22. [↑](#footnote-ref-2)
3. The adoption of the Residential Rate Ceiling of $30 per month contained in the *FCC Order* does not constitute an admission that the FCC can lawfully exercise jurisdiction over intrastate rates in Pennsylvania. [↑](#footnote-ref-3)
4. *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC-33. [↑](#footnote-ref-4)
5. Chapter 30 was added to the Code by the General Assembly in 1993 and was codified at 66 Pa. C.S. §§ 3001 through 3009. Act 183 of 2004, P.L. 1398, repealed Chapter 30 and replaced it with new statutory provisions codified at 66 Pa. C.S. §§ 3010 through 3019. [↑](#footnote-ref-5)
6. *Re Nextlink Pennsylvania, Inc.*, Docket Nos. P-00991648; P-00991649, 93 Pa. P.U.C. 172, 196 P.U.R. 4th 172 (Order entered September 30, 1999), *aff’d sub nom. Bell Atlantic-Pennsylvania, Inc. v. Pa. PUC*, 763 A.2d 440 (Pa. Cmwlth. 2000), *vacated in part, MCI WorldCom, Inc. v. Pa. PUC*, 577 Pa. 294, 844 A.2d 1239 (2004). [↑](#footnote-ref-6)
7. A synopsis of the FCC *2011 NPRM* was published at 76 *Fed. Reg.* 11,632 (March 2, 2011). [↑](#footnote-ref-7)
8. While the record is minimal in terms of RLEC support for local loop costs and appropriate cost allocation to users, we relied 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-8)
9. We emphasized that the benchmark rate set in the *July 2011 Order* is not a cap. ILECs are free to increase local service rates beyond the benchmark rate to the extent permitted by law, consistent with Act 183 and subject to Commission review and approval. [↑](#footnote-ref-9)
10. In crafting the *July 2011 Order*, we made every attempt to meet the “revenue neutral” requirement found in Chapter 30. Recognizing that a very small number of RLECs may not be able to achieve revenue neutrality with a $23.00 per month basic local exchange residential service rate and a CC rate of $2.50 per access line per month, we included a provision that will allow any such affected RLEC to petition the Commission for permission to extend its implementation period until the proposed PaUSF rulemaking is completed. [↑](#footnote-ref-10)
11. Based on the federal traffic sensitive access rates in effect as of December 31, 2010. [↑](#footnote-ref-11)
12. The *FCC Order* directs parity between intrastate and interstate terminating switched access rates by July 2013 in a two-step process. In contrast, the *July 2011 Order* directs a reduction to intrastate terminating switched access rates to partial parity in three steps, and retains a CC/CCLC charge of $2.50 per access line per month. [↑](#footnote-ref-12)
13. Updated Joint Petition at 10, citing to *FCC Order* at ¶ 1298, *slip. op.* at 446-447, 26 FCC Rcd 18109-18110. [↑](#footnote-ref-13)
14. AT&T did not provide any record citations in support of this statement. [↑](#footnote-ref-14)
15. *FCC Order at ¶* 816, n. 1542. [↑](#footnote-ref-15)
16. AT&T does not provide a citation to evidence in the record to support its assertions. AT&T states that there is no evidence in the record concerning the impact of rate rebalancing. AT&T Answer at 8. [↑](#footnote-ref-16)
17. Armstrong Telephone Company – North, Armstrong Telephone Company - Pennsylvania, Bentleyville, Citizens Telephone of Kecksburg, Ironton Telephone Company and Laurel Highland Telephone Company. [↑](#footnote-ref-17)
18. The OCA recommends that, in accordance with the AT&T proposal, the Carrier Charge be allocated between originating and terminating access service components based on originating and terminating minutes of use, and that the resulting Carrier Charge originating revenue be allocated among IXCs based on the IXCs’ originating minutes. OCA Affidavit of Dr. Robert Loube, at 6. [↑](#footnote-ref-18)
19. AT&T did not provide a record citation to the breakdown of CTL’s CC into terminating and originating elements. AT&T states that, based on its experience, the majority of the RLECs’ CCs apply to terminating access, citing the Nurse/Oyefusi Affidavit at ¶ 9. *Id*. at 8. [↑](#footnote-ref-19)
20. CALLS stands for the Coalition for Affordable Local and Long Distance Service, and is associated with the FCC CALLS Order, *In re Access Charge Reform, et al.* (FCC Rel. May 31, 2000), CC Docket No. 96-262, *Sixth Report and Order*, FCC

    00-193. *See also*, OCA Affidavit at 8, n. 10. [↑](#footnote-ref-20)
21. OCA states that the local rates of the following rate-of-return carriers are below $17.00: Citizens Telephone of Kecksburg, Laurel Highland, North Penn, Ironton, Armstrong North, Armstrong PA, Lackawaxen, North-Eastern Pennsylvania, Pymatuning, Venus, Yukon-Waltz, Mahanoy and Mahantango, Sugar Valley, South Canaan, and Palmerton. [↑](#footnote-ref-21)
22. In its August 2, 2011 Petition, AT&T asked for clarification that carrier charges were to be reduced under the *July 2011 Order* in the same percentages as traffic sensitive rates, and that carrier charge reductions were to occur whether or not an RLEC was required to reduce its traffic sensitive rates. No Party objected to this aspect of AT&T’s requested relief. Although this issue now is moot, we clarify that this was our intent. [↑](#footnote-ref-22)
23. We note that none of the RLECs currently assess their separate monthly Touchtone Service rates because Touchtone Service has been rolled into basic local service rates throughout all of the RLECs’ service territories. [↑](#footnote-ref-23)
24. Continuing to utilize a non-total bill residential benchmark while attempting to match a total bill FCC Residential Rate Ceiling would be problematical at this time because the benchmark would vary from carrier to carrier depending, *inter alia*, on the level of their federal ARC charges. ARC charges will vary depending on whether a carrier is a federally classified rate-of-return ILEC or a price cap ILEC. Therefore, for the sake of simplicity we choose to mirror the FCC’s total bill Residential Rate Ceiling of $30. [↑](#footnote-ref-24)
25. *Amended Streamlined Form of Regulation and Network Modernization Plan of Armstrong Telephone Company – Pennsylvania*, Docket No. P-00981425F1000 (Dated: June 30, 2000, as modified January 22, 2001, as amended March 4, 2005), at 14‑16. *See also Amended Streamlined Form of Regulation and Network Modernization Plan of the Bentleyville Telephone Company*, Docket No. P-00981427F1000 (Dated: June 30, 2000, as modified January 22, 2001, as amended March 4, 2005), at 14-16; *Amended Alternative Form of Regulation and Network Modernization Plan of Denver and Ephrata Telephone and Telegraph Company*, Docket No. P-00981430F1000 (Dated: June 30, 2000, as modified January 22, 2001, as amended February 25, 2005), at 13-16; *Amended Streamlined Form of Regulation and Network Modernization Plan of Lackawaxen Telephone Company*, Docket No. P-00981432F1000 (Dated: June 30, 2000, as modified January 22, 2001, as amended March 4, 2005), at 13-16; *Amended Streamlined Form of Regulation and Network Modernization Plan of Laurel Highland Telephone Company*, Docket No. P-00981433F1000 (Dated: June 30, 2000, as modified January 22, 2001, as amended March 4, 2005), at 14-16; *Amended Streamlined Form of Regulation and Network Modernization Plan of the North-Eastern Pennsylvania Telephone Company*, Docket No. P-00981435F1000 (Dated: June 30, 2000, as modified January 22, 2001, as amended March 4, 2005), at 14-16; *Amended Alternative Form of Regulation and Network Modernization Plan of North Pittsburgh Telephone Company*, Docket No. P-00981437F1000 (Dated: June 30, 2000, as modified January 22, 2001, as amended February 25, 2005), at 13-16; *Amended Streamlined Form of Regulation and Network Modernization Plan of Palmerton Telephone Company*, Docket No. P-00981438F1000 (Dated: June 30, 2000, as modified January 22, 2001, as amended March 4, 2005), at 14-16; *Amended Alternative Form of Regulation and Network Modernization Plan of ALLTEL Pennsylvania, Inc.*, Docket No. P-00981423F1000 (Dated: June 30, 2000, as modified January 22, 2001, as amended March 15, 2005), at 22-24. [↑](#footnote-ref-25)
26. OCA April 19, 2012 Answer, Affidavit of Dr. Robert Loube on Behalf of the Office of Consumer Advocate, at 13. [↑](#footnote-ref-26)
27. PTA/CTL Updated Joint Petition, Verified Joint Statement of Gary Zingaretti and Jeffrey Lindsey, at 4-5. [↑](#footnote-ref-27)
28. *See* 66 Pa. C.S. § 3019(h). [↑](#footnote-ref-28)
29. PTA/CTL Updated Joint Petition, Verified Joint Statement of Gary Zingaretti and Jeffrey Lindsey, at 5. [↑](#footnote-ref-29)
30. *Id.* [↑](#footnote-ref-30)
31. AT&T Updated Petition at 18. [↑](#footnote-ref-31)
32. AT&T Answer to the PTA/CTL Updated Joint Petition at 17.  [↑](#footnote-ref-32)
33. 66 Pa. C.S. § 1301. *See* *Buffalo Valley Tel. Co. v. Pa. PUC*, 990 A.2d 67, 78-81 (Pa. Cmwlth. 2009). [↑](#footnote-ref-33)
34. *July 2011 Order* at 77, and Ordering Paragraph No. 20 at 194. [↑](#footnote-ref-34)
35. Petition of the Pennsylvania Telephone Association for Order to Expand the Base of Contributing Carriers to the Pennsylvania Universal Service Fund to Include Wireless Carriers and VoIP Providers, Docket No. P-2010-2217748 (filed December 28, 2010). [↑](#footnote-ref-35)