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Hawke
 Mckeon
 Sniscak &
 Kennard LLP
ATTORNEYS AT LAW

William T. Hawke
Kevin J. McKeon
Thomas J. Sniscak
Norman James Kennard
Lillian Smith Harris
Scott T. Wyland
Todd S. Stewart
Craig R. Burgraff
Steven D. Snyder
Janet L. Miller
Steven K. Haas
William E. Lehman
Rikardo J. Hull
Katherine E. Lovette
Amy A. Whitney

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmsk-law.com

June 6, 2006

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James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street - Second Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

- RE: Rulemaking Re: Proposed Revisions to Commission Regulations Governing Extended Area Service (EAS) at 52 Pa. Code §§63.71 - 63.77; Docket No. L-00050173
- RE: Report and Recommendation of the Extended Area Service Task Force; Docket No. M-00031703

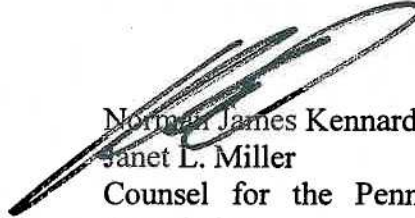
Dear Mr. McNulty:

Enclosed are the original and fifteen (15) copies of the Comments of the Pennsylvania Telephone Association in connection with the above-captioned matters. An electronic copy of this filing has been provided to Cynthia Page of the Commission's Communications Office.

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
June 6, 2006
Page Two

Thank you for your attention to this matter. If you have any questions concerning this filing, please feel free to call.

Very truly yours,

A handwritten signature in black ink, appearing to read "Norman James Kennard". The signature is written in a cursive style with a large, sweeping flourish at the end.

Norman James Kennard
Janet L. Miller
Counsel for the Pennsylvania Telephone
Association

NJK:JLM/kmg
Enclosures

cc: Joseph K. Witmer, Esquire, Law Bureau
Anthony J. Rametta, Esquire, Bureau of Fixed Utility Services
Cynthia L. Page (Electronic Format Only)

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

REC-111
JUN - 6 2011
PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

Rulemaking Re: Proposed Revisions to : Docket No. L-00050173
Commission Regulations Governing :
Extended Area Service (EAS) at 52 Pa. :
Code §§63.71 – 63.77 :

Report and Recommendation of the : Docket No. M-00031703
Extended Area Service Task Force :

COMMENTS OF THE
PENNSYLVANIA TELEPHONE ASSOCIATION

I. INTRODUCTION

The Pennsylvania Telephone Association (“PTA”)¹ submits the following Comments in response to the Proposed Rulemaking of the Pennsylvania Public Utility Commission (“Commission”) to consider revisions to the Commission’s current Regulations on Extended Area Service (“EAS”) (52 Pa. Code §§63.71 – 63.77, the “EAS Regulations”).

At the outset, the PTA applauds the Extended Area Service Task Force and the Commission Staff for the significant time and effort spent on revising the existing EAS Regulations and for the opportunity given to the PTA and all other parties to have substantial input into this process. While the PTA believes the result of these collaborative efforts is shown in the Proposed EAS Regulations and represents a fairly even compromise of the positions of all the parties involved in this process, it remains the PTA’s position that there is no longer a need for EAS Regulations. The PTA recognizes that portions of the Commonwealth may still be in

¹ The Pennsylvania Telephone Association is the state’s oldest trade organization for the local exchange carrier industry. PTA represents more than 30 telecommunications companies that provide a full array of services over wireline networks. PTA members support the concept of universal service and are leaders in the deployment of advanced telecommunications capabilities. In this docket, the PTA represents all of its member companies.

some level of “transition” to having a fully competitive telecommunications market statewide; however, it should be noted that Pennsylvania customers now have an ever increasing number of options available to them should they believe their existing basic local calling area is not large enough to meet their individual calling needs.

Telephone competition in Pennsylvania is energetic and expanding exponentially. The regulated local exchange carrier (“LEC”) community faces in-territory competition today from wireless carriers, competitive local exchange carriers (“CLEC”), satellite companies and cable companies. For example:

- **Wireless providers** offer a direct substitute for the PTA companies’ local voice service throughout much of the areas served by the PTA members. There are currently over seven million wireless consumers in Pennsylvania, a **penetration rate of over 56%**. These figures will only increase as more and more consumers “go mobile” and rely solely on Cellular Mobile Radio Service providers for their telecommunication needs, an assumption that is supported by the incumbent local exchange carriers’ (“ILEC”) continued loss of access lines after decades of gain. Competing cellular service providers include: Cingular, Sprint, ACC of Pennsylvania, Sprint/Nextel, Immix, Sygnet Communications, Verizon Wireless, Voicestream Wireless, Horizon and Northeast PA Cellular. These carriers’ “local service” areas are defined on a broad, metropolitan statistical area (“MSA”) basis.
- **Cable companies pass approximately 90% of the homes** in Pennsylvania. The competing local cable companies include: Comcast, Armstrong Cable, Blue Ridge, Pikes Peak, Adelphia, RCN, Bentleyville Cable, Service Electric and Atlantic Broadband.

- **Satellite competition, covering 100% of Pennsylvania**, is offered by DirecTV and the Dish Network.
- **Numerous CLECs** have already obtained authority to provide local competition on a regional or state-wide basis. As the Commission recently noted, “local telephone competition continues to increase in Pennsylvania, outpacing the national average and other states. Thanks to local telephone competition, Pennsylvanians are making calls with more than 1.4 million lines provided by competitive providers.”² The Commission reported: “At the end of 2003, 196 CLECs were authorized to do business in Pennsylvania. This is a significant increase over the 140 reported at the end of 2002.”³ More recently, the Federal Communications Commission (“FCC”) reported that CLECs served 23% of all wireline access lines in Pennsylvania as of June 30, 2005, exhibiting significant growth year-over-year.⁴
- Customers have access to **Voice over Internet Protocol (“VoIP”)** service providers available through broadband connections provided by the PTA companies, competing cable companies and other broadband providers.

This competition is vibrant. Although the PTA companies have no way of measuring actual market loss to these competitors, most companies have been experiencing **line loss** over the last three years, after decades of line gain. Six percent (6%) of phone users do not subscribe to any wireline phone connection at all, using instead cellular services (a wireline telephone number can now be ported to a wireless phone).

² *PA PUC Keystone Competition*, Winter 2004 at 7.

³ *Id.* at 6.

⁴ *Local Telephone Competition: Status as of June 30, 2005*, Wireline Competition Bureau Report released April 2006, Tables 7 and 9.

There can be no doubt that what was “the telecommunications industry” is evolving into simply “the communications industry,” an evolution driven by customers and technology. The communications industry is in the midst of a radical transformation that is providing customers of every type, whether business or residential consumers, with an ever increasing array of communications options, while forcing traditional wireline service providers to meet new competitive challenges.

New technologies enable various providers – many of which are not traditional wireline telecommunications providers – to offer services using their existing platforms. These competitors to traditional land line service are relying on technologies and applications that make possible such services as messaging on the go, high speed data connections, cable telephone, VoIP, e-mail and instant messaging.

High speed connections are growing quickly in Pennsylvania, as the FCC also recently reported.⁵ The FCC Staff reports that there are numerous entities providing broadband services in Pennsylvania including: 35 ADSL, 17 SDSL, 19 Traditional Wireline, 19 Cable Modem, 12 Fiber and 8 Fixed Mobile, for a total of 70 broadband service providers operating within the Commonwealth.⁶ ILECs and cable companies are making broadband widely available in Pennsylvania with 74% xDSL availability where the ILECs offer local telephone service and 89% cable modem availability where cable systems offer cable TV service.⁷ Penetration of broadband services is growing quickly in Pennsylvania from 71,926 access lines at year end 1999 to 1,602,716 access lines as of June 2005.⁸

⁵ *High-Speed Services for Internet Access: Status as of June 30, 2005*, FCC Industry Analysis and Technology Division, Wireline Competition Bureau Report released April 2006.

⁶ *Id.* at Table 8.

⁷ *Id.* at Table 14.

⁸ *Id.* at Table 10.

A multitude of interexchange telecommunications carriers ("IXC") are available to customers in every exchange in Pennsylvania. Customers have access to a variety of other service options that include, but certainly are not limited to: bundled packages that include unlimited local and long distance (toll) calling for one monthly rate, competitive service providers, widespread use of calling cards (including prepaid cards), DSL availability, e-mail communication, and the use of VoIP.

In addition, the widespread offering of bundled service packages that incorporate toll calling as part of the services included, provide alternative means of low cost (or unlimited) toll calling to meet the needs of customers. Thus, the need for Optional Calling Plans, as previously defined in the EAS Regulations, is eliminated and the Commission's removal of these requirements from the Proposed Regulations is appropriate.

Each of these competitive carriers and technologies are devising their own local calling areas. For VoIP, calling scope can be huge and numbering assignment allows a customer to set up a home exchange anywhere in the United States. Wireless calling scope is generally an entire MSA or an entire region. The industry realizes that price and scope are related concepts and service providers are actively developing products that respond to that dynamic. The Commission should no longer define and control telecommunications services offered by a single segment of the communications market, i.e., the wireline LECs. To do so is both anti-competition and anti-innovation. There is no longer any need for EAS Regulations.

Notwithstanding its steadfast belief that the EAS Regulations are no longer needed, the PTA, in the alternative, offers the following Comments to the proposed changes to be made to the existing EAS Regulations. The PTA also provides Comments on specific issues, as solicited in the Commission's November 4, 2005 Order entered in this matter.

II. COMMENTS TO PROPOSED REGULATIONS

If EAS Regulations are going to remain in effect in Pennsylvania in any form, the PTA strongly urges the revised Regulations contain a clear and definite statement that the Regulations apply to, and will be enforced against, every wireline carrier: ILEC, CLEC and IXC. If the Commission determines it still is appropriate to regulate the expansion of local calling areas through the use of EAS (which, for the reasons set forth in these Comments, the PTA submits it is not), then ALL regulated carriers must be required to comply with the requirements of the EAS Regulations. Doing anything less will yield the same result as the continued use of the existing traffic usage study format: an incomplete and inaccurate picture of the customers' calling needs.

A. Section 63.71. Definitions.

Lost Revenue. A definition for this term should be included in Section 63.71.

The PTA proposes the following language:

Lost revenue - The amount of toll revenue and/or access revenue a service provider no longer receives as a result of the implementation of EAS on a particular route, net of any increase in local service revenue to be received as a result of the EAS.

B. Section 63.72. Traffic Usage Studies.

The Proposed Regulations fail to acknowledge (whether intentionally or inadvertently) that the manner in which traffic usage studies have been performed to date is no longer effective, nor do the Proposed Regulations recognize that the results of these traffic usage studies are not inclusive or reflective of the total level of "communication" options being utilized by customers of the originating exchange. Many alternatives to traditional wireline calling now exist and continue to develop. An ILEC cannot control, and may not even be aware of, the other forms of technology or equipment being used by competitive service providers for transmission of voice

messages within the ILEC's service territory. Due to the radical and rapid changes that have occurred, and continue to occur, in the telecommunications marketplace, the implementation of EAS solely based on traditional traffic usage studies is no longer valid or acceptable. For example, some of the competitive service providers offering alternative telecommunications services (such as wireless, cable telephony and VoIP services) are not within the Commission's jurisdiction. The Commission's lack of authority to require these competitive service providers to participate in traffic usage studies exacerbates the ineffectiveness of any traffic usage study for determining whether EAS is warranted for a particular exchange.

The competitive marketplace, rather than the results of an incomplete and inaccurate traffic usage study, should dictate when and how the basic local calling area of an exchange should be enlarged. The Commission's past use of the traffic usage study to measure the volume of calls between the originating exchange and the target exchange was an effective tool when the Commission's EAS Regulations were originally established almost two decades ago. Customers at that time had no choice of LEC or IXC and the competitive service options now available to customers did not yet exist. Thus, it was possible for an ILEC to capture and measure all classes and methods of regional toll calling used by customers in the originating exchange. That is no longer the case. The introduction of carrier presubscription, bundled service packages, prepaid calling cards, dial-around access numbers, wireless service, the internet, DSL and VoIP services, among others, now provides customers with ample alternatives to EAS. Furthermore, bundled service packages that include unlimited intrastate and interstate toll calling for a flat monthly fee eliminate a customer's need to monitor their calling patterns and, therefore, there is less of a need to introduce EAS.

Competitive service options currently available to telephone customers undermine the usefulness of the traditional traffic usage studies by which the Commission previously determined if EAS was warranted. The Commission, like telecommunications carriers in general, must adjust its procedures that may have been useful in the past in order to keep up with current and evolving competitive forces and technological advances.

Notwithstanding its strong belief that traffic usage studies are no longer an effective tool for measuring the level of calling on a regional toll route for which EAS is requested, the PTA makes the following specific comments in connection with the Commission's proposed language of Section 63.72:

Section 63.72(a). While it assumes the Commission meant this Section to be interpreted to mean that all LECs and IXC's serving the originating exchange are required to conduct traffic usage studies in connection with a formal EAS complaint proceeding, the PTA believes this requirement should be specifically stated.

The PTA suggests the following changes be made to Section 63.72(a):

All local exchange carriers and interexchange telecommunications carriers serving the originating exchange shall conduct traffic usage studies at the direction of an Administrative Law Judge in connection with a formal EAS complaint proceeding.

Section 63.72(a)(1). Not every route over which a customer requests EAS will involve interLATA traffic. Therefore, the PTA believes that a clarification should be made to this Section to add the phrase "if applicable" in the first sentence. This additional language will eliminate any confusion as to what calling the traffic usage study must include. In addition, a clarifying change should be made to the second sentence of the Section to ensure it is clear the "direction" of the route over which traffic is to be measured.

The PTA suggests the following changes be made to Section 63.72(a)(1):

(1) The traffic usage study shall measure traffic over both IntraLATA and InterLATA routes (if applicable), and shall include the traffic originating from the calling exchange as specified in Section 63.72(a)(2). The study shall measure the average calling frequency from the originating exchange to the target exchange(s).

Section 63.72(a)(2). This Section requires that, in addition to direct-dialed toll calls, the traffic usage study include calls made using other services, such as optional toll calling plans, calling cards, operator assistance, directory assistance call completion and text telephone systems. Some of these services are provided by competitive service providers and it may not be practical for the ILEC to measure the volume of calls made using services other than direct-dialed toll calls. Even if it was practical for an ILEC to measure all the types of calling data described in Section 63.72(a)(2), the traffic usage study still would be incomplete because it would not include wireless calling or calls made using cable networks or broadband service providers. If the Commission intends to continue to rely on the traffic usage study as an indicator of the level of calling on a requested EAS route, the PTA suggests measuring direct-dialed wireline calling only. While not inclusive of all "calling" being made from the originating exchange, it still represents the most significant portion of the measurable, wireline traffic levels. In addition, given that any traffic usage study will not and cannot be all encompassing, the extra effort needed and expense incurred for LECs and IXC's to capture and count the calls placed using calling cards, operator assistance, directory assistance call completion and the other methods of calling set forth in the proposed Section 63.72(a)(2) far outweigh the value of including such calling in the traffic usage study.

The PTA suggests the following changes be made to Section 63.72(a)(2):

(2) In measuring calling frequency, the local exchange carrier(s) and interexchange telecommunications carrier(s) shall be required to measure only the wireline calls that are directly-dialed on its customers' service line(s).

Section 63.72(a)(3). For the reasons set forth in its Comments to Section 63.72(a), above, the PTA believes the language of this Section also should reflect that all LECs and IXCs providing toll service in an originating EAS exchange must comply with the traffic usage study requirements. Requiring calling data to be produced by only those carriers that are "ordered" to conduct a traffic usage study by an Administrative Law Judge may not encompass all carriers that provide service in the originating exchange.

The PTA suggests the following changes be made to Section 63.72(a)(3):⁹

An Order of an Administrative Law Judge issued in connection with a formal EAS complaint, shall be served upon and shall require each local exchange carrier and interexchange telecommunications carrier serving in the originating exchange to produce a study that has the following information. . . .

Section 63.72(a)(4). This Section requires the use of traffic data from the "March or October preceding the date on which an Administrative Law Judge directs that a traffic usage study be conducted." In some instances, calling data for the previous March or October may not be readily available to a LEC or an IXC or the labor necessary to retrieve and produce such data would be burdensome and/or cost prohibitive. In such a case, the PTA proposes that the LEC or IXC be permitted to use calling data from a more recent month.

The PTA suggests the following changes be made to Section 63.72(a)(4):

(4) The traffic usage study shall measure calling in the March or October preceding the date on which an Administrative Law Judge directs that a traffic usage study be conducted. In instances where the retrieval and production of calling data from the preceding March or October would be excessively

⁹ The PTA acknowledges and reminds the Commission that, even if the suggested language changes are made, there still will be calls that cannot be included in the traffic usage study because certain types of carriers are not within the Commission's jurisdiction (e.g., cellular, cable and VoIP).

burdensome or costly, the local exchange carrier or interexchange telecommunications carrier may provide calling data for a more recent, representative month, so long as the time period covered by the study is identified. The local exchange carriers and interexchange telecommunications carriers shall provide the results of the traffic usage studies to the Commission, or to an entity designated by the Commission, within 60 days of the Administrative Law Judge's order that a traffic usage study be conducted.

Section 63.72(b)(5). This Section allows a LEC or an IXC to conduct a single traffic usage study for its entire service territory in lieu of conducting a route-specific traffic usage study each time a formal EAS request is made. The requirement that these traffic usage studies must be filed with the Commission, however, is inappropriate. While a specific LEC or IXC may find it more cost effective to do a single traffic usage study on a regular basis rather than perform individual studies only when required, this should be a business decision, not the basis of a filing requirement. All LECs and IXCs should have the same filing obligations under the Proposed Regulations, i.e., LECs and IXCs should be required to provide traffic usage study information only upon request of a presiding Administrative Law Judge in connection with a formal EAS complaint proceeding.

The PTA suggests that Section 63.72(b)(5) be eliminated.

C. Section 63.73. Customer Polls.

Sections 63.73(f) and 63.73(g). These Sections maintain the existing polling criteria that only 50% of the customer ballots must be completed and returned to the Commission and only 50% of the ballots returned must be in favor of the requested EAS in order for a customer poll to be considered valid. The PTA strongly encourages the Commission to increase the percentage of completed and returned ballots, as well as the percentage of those returned ballots voting in favor of EAS, in order to more accurately reflect the calling needs of the majority of customers in the originating exchange and more appropriately fulfill the purpose of conducting a customer poll.

Using the existing balloting thresholds as the requirements for a valid polling allows only one-quarter (25%)¹⁰ of all customers polled in the originating exchange to determine whether EAS for that particular toll route will or will not be implemented. This results in a minority, rather than a majority, of the originating exchange's customers accepting an increase in local service rates for all customers of the originating exchange. For example, under the existing thresholds, if the originating exchange has 1,000 customers, only 500 customers (50%) need to return completed ballots and only 250 of those returned ballots (50%) must vote in favor of implementing EAS. Clearly, this minority (25%) of all customers in the originating exchange does not fairly represent the needs or desires of the majority of customers in the entire exchange. If the premise of EAS is to make changes to the existing basic local calling area of the originating exchange so that it more precisely matches the needs of the majority of the customers in the exchange, then the needs or desires of the majority of the customers in the originating exchange should be used to determine if EAS is warranted. This does not occur if only 50% of the ballots must be completed and returned and only 50% of those returned ballots must vote in favor of EAS.

The PTA suggests that Sections 63.73(f) and 63.73(g) be revised to state that at least 75% of the customer ballots must be completed and returned and 70% of those returned ballots must vote in favor of EAS in order for EAS to be implemented. To quantify using the example provided above, if the originating exchange has 1,000 customers, 75% of the returned ballots would be equal to 750 customers. Of the 750 returned ballots, a 70% favorable vote would equal 525 customers (52.5%) voting to approve the EAS route. Using these revised balloting requirements would ensure that a true majority of the originating exchange's customers desire

¹⁰ This equates to the current balloting requirement of 50% favorable ballots out of the 50% completed and returned ballots.

the implementation of the requested EAS and are willing to pay an increased local service rate for that added service.

The PTA suggests the following changes be made to Sections 63.73(f) and 63.73(g):

- (f) The poll is valid when at least 75% of the ballots mailed to customers in a polled exchange are completed and returned.
- (g) The local exchange carrier shall implement EAS when greater than 70% of the returned ballots in a valid poll are in favor of EAS.

Section 63.73(i). The example used in this Section for when a LEC or an IXC may petition the Commission for a waiver of the customer polling requirements is inappropriate. If a LEC already is offering EAS from the originating exchange to the targeted exchange, no polling would be necessary and, therefore, no waiver petition would be filed. A more apt example of a situation in which a LEC or an IXC might petition the Commission for a waiver of a polling requirement would be where the LEC or IXC already offers an optional service (whether individually or as part of a bundled service) to the originating exchange customers that satisfies the needs of the majority of customers in that exchange to make calls to the target exchange(s). This type of offering addresses the “all or nothing” concerns of customers in the originating exchange who have no need to or do not want to pay an extra monthly charge to make calls to the target exchange(s) and a waiver of the customer polling requirements would be warranted in such a situation.

The PTA suggests the following changes be made to Section 63.73(i):

- (i) A local exchange carrier or interexchange telecommunications carrier may petition the Commission for waiver of a provision of this section to address unique circumstances.

D. Section 63.74. Cost Recovery.

1. Legal Authority Of Approved Plans

All Pennsylvania ILECs that operate under an Alternative Form of Regulation plan permitted by Chapter 30 of the Public Utility Code, 66 Pa. C.S. §§3011, *et seq.*, (“Plans”) have amended their Plans to incorporate the provisions of Act 183.¹¹ These amended Plans have been adopted by the Commission and are deemed under law to be in compliance with Act 183:

Upon approval of a local exchange telecommunications company of network modernization plan amendments pursuant to section 3014(e), the local exchange telecommunications company’s alternative form of regulation plan shall be deemed amended consistent with this section.¹²

Thereafter, changes must be made cooperatively by the mutual assent of both the Commission and the ILEC:

Except for changes to existing alternative form of regulation and network modernization plans as authorized by this chapter, no change to any alternative form of regulation or network modernization plan may be made without the express agreement of both the commission and the local exchange telecommunications company.¹³

Furthermore, **the terms of a Plan supersede any contradictory legal authority, including any revisions to the EAS Regulations:**

The terms of a local exchange telecommunications company’s alternative form of regulation and network modernization plans shall govern the regulation of the local exchange telecommunications company and, consistent with the provisions of this chapter, shall supersede any conflicting provisions of this title or other laws of this Commonwealth¹⁴

Accordingly, the cost recovery in Section 63.74 of the Proposed Regulations already is provided for in the ILECs’ Chapter 30 Plans.

¹¹ 2004, Nov. 30, P.L. 1398, No. 183.

¹² 66 Pa. C.S. §3015(h).

¹³ 66 Pa. C.S. §3013(b).

¹⁴ 66 Pa. C.S. §3019(h).

2. Types of EAS Costs

There are several categories of costs that are incurred by the LEC in order to provide EAS. Frequently, new facilities must be installed or existing facilities must be upgraded to handle the expected increase in calling volumes. The LEC loses toll revenue when a toll route is converted to EAS and it loses access revenue associated with the interconnection to the IXC serving the end use customer. While the customers in the originating exchange receiving EAS may graduate to a higher rate band, the revenue generated from the accompanying rate increase is almost always insufficient to make up the loss of revenue resulting from the implementation of EAS. The LEC relies on these current revenue streams to maintain safe and adequate service and a viable financial position, while still meeting its Chapter 30 network commitments. In addition, LECs also incur additional expenses as a result of providing EAS. For example, terminating carriers will charge access or some alternative interconnection rate on the traffic once it is converted to local status and one-time expenses, such as polling and implementation costs, are incurred.

3. Types Of Chapter 30 Ratemaking And EAS Cost Recovery Provisions

a. Price Cap

Under Chapter 30, many ILECs have elected a price cap form of rate regulation for non-competitive services in lieu of traditional rate base/rate of return regulation. Price Cap Plans, as originally adopted by the Commission, contain certain exceptions to the price cap for exogenous events. Exogenous events include regulatory changes that (i) affect revenues and/or expenses and (ii) are neither within the control of the company nor reflected in the Gross Domestic Product Price Index (“GDP-PI”).

Basically, the price cap provisions of a Chapter 30 Plan operate through a comparison of two indexes. First, the Price Stability Index (“PSI”) operates as an overall ceiling (or cap) on the aggregate rate level. It is adjusted annually based on the rate of inflation (as measured by GDP-PI) less an annual productivity offset ranging from zero to 1% under Act 183, depending on the specific terms of a given LEC’s Plan, plus or minus the dollar value of any exogenous events experienced as a percentage of annualized total revenue. Second, the Service Price Index (“SPI”) measures the actual aggregate rate levels for non-competitive services. The SPI is calculated based on historic unit sales and year-over-year changes in rates. Under the Plans, the SPI may not exceed the aggregate ceiling (i.e., the PSI). The terms of PSI and SPI may be different in a few Plans, but the concepts are the same irrespective of the labels used.

The Plans generally recognize exogenous events that include “unique changes in the telephone industry which are not reflected in the overall inflation factor” and “[s]ubsequent regulatory and legislative changes (state and federal) which affect revenues or expenses, to the extent not captured in GDP-PI.” EAS would fall into either of these descriptions. Under additional terms of the various Plans, the effects of exogenous events are flowed through on a dollar-for-dollar basis. The component of the price cap mechanism termed exogenous events is designed to flexibly recognize that there are events outside of a company’s control – a regulatory mandate being one such event. Otherwise, regulators and others could demand that price cap companies undertake costly changes and then deny recovery of these costs because the companies are no longer cost regulated.

Recovery of EAS costs is an exogenous event expressly contemplated by the various Plans. EAS changes, including compliance tariffs, are subject to regulatory review by the Commission and are directed by Commission Order.

Most price cap LECs have been allowed specific EAS cost recovery language. The relevant excerpts from currently effective Chapter 30 Plans are as follows:

Final Streamlined Regulation Plan Of Frontier Communications Of Breezewood LLC, Frontier Communications Of Canton LLC, Frontier Communications Of Pennsylvania LLC, Frontier Communications Of Lakewood LLC, And Frontier Communications Of Oswayo River LLC, Docket No. P-00951005

Original Part 1.A.8. "Any toll revenue shortfall associated with the extension of local service (less other related revenue increases, if any), may be recovered by the Companies at the time of implementing extended area service. This same treatment also shall apply to Optional Calling Plans."

Revised (and Current) Part 1.A.9. "Any toll and/or access revenue shortfall associated with the extension of local service (less other related revenue increases, if any), and additional access charge or other non-facilities expenses which are directly related to the extension of local service may be recovered by the Companies at the time of implementing extended area service. The Frontier Companies may also petition the Commission to recover any additional facilities' expense to the extent the Commission finds such recovery to be just and reasonable. In no event shall access rates applicable to interexchange toll service or local terminating access be increased as result of the extension of local exchange service hereunder. The Commission shall resolve any such petition proceeding prior to the conduct of EAS polling. This same treatment shall also apply to Optional Calling Plans."

Petition Of Commonwealth Telephone Company For An Alternative Form Of Regulation and Network Modernization Plan, Docket No. P-00961024F1000.

Part 3.A.11. "Any revenue shortfall or cost incurred, including administrative costs, less other related revenue increases/cost decreases, if any, associated with a Commission-mandated implementation of new calling scope services such as EAS or extension of basic local exchange services may be recovered by CTCO at the time of implementing any extended calling scope service or additional basic local exchange service. This same treatment also shall apply to Optional Calling Plans."¹⁵

¹⁵ *Petition For Alternative Regulation And Network Modernization Plan Of Commonwealth Telephone Company, Docket No. P-00961024F1000; Commission Order entered February 10, 2006.*

Petition Of The United Telephone Company Of Pennsylvania For Approval Under Chapter 30 Of The Public Utility Code Of An Alternative Regulation And Network Modernization Plan, Docket No. P-00981410

Part 4.A.3. "The Company will comply with the Commission's Extended Area Service ("EAS") regulations, as revised by the Universal Service task force, on an interim basis. The Company may petition for waivers from those regulations as needed and can petition for an automatic waiver if a waiver is granted to a similarly situated company. The Company will continue to provide EAS on required routes, will continue to regroup exchanges as appropriate and will be allowed to implement EAS-related rate increases, subject to restrictions in Section B., paragraph 2 above on Rate Rebalancing."

Petition Of Alltel Pennsylvania, Inc. For Approval Of An Alternative Form Of Regulation And Network Modernization Plan, Docket No. P-00981423

Part 3.A.4. "Any revenue shortfall or cost incurred, including administrative costs, less other related revenue increases/cost decreases, if any, associated with a Commission-mandated implementation of new calling scope services such as EAS or extension of basic local exchange services may be recovered by ALLTEL PA at the time of implementing any extended calling scope service or additional basic local exchange service. This same treatment shall also apply to new Optional Calling Plans."

Petition Of Buffalo Valley Telephone Company For Approval Of A Streamlined Form Of Regulation And Network Modernization Plan, Docket No. P-00981428

Part 3.A.12. "Any revenue shortfall or cost incurred, including administrative costs, less other related revenue increase/cost decreases, if any, associated with a Commission-mandated implementation of new calling scope services such as EAS or extension of basic local exchange services may be recovered by the Company at the time of implementing any extended calling scope service or additional basic local exchange service. This same treatment shall also apply to new Optional Calling Plans."

Petition Of Conestoga Telephone And Telegraph Company For Approval Of An Alternative Form Of Regulation And Network Modernization Plan, Docket No. P-00981429

Part 3.A.12. "Any revenue shortfall or cost incurred, including administrative costs, less other related revenue increase/cost decreases, if any, associated with a Commission-mandated implementation of new calling scope services such as EAS or extension of basic local exchange services may be recovered by the Company at the time of implementing any extended calling scope service or

additional basic local exchange service. This same treatment shall also apply to new Optional Calling Plans.”

Petition Of Denver And Ephrata Telephone And Telegraph Company For Approval Of An Alternative Form Of Regulation And Network Modernization Plan, Docket No. P-00981430

Part 3.A.12. “Any revenue shortfall or cost incurred, including administrative costs, less other related revenue increase/cost decreases, if any, associated with a Commission-mandated implementation of new calling scope services such as EAS or extension of basic local exchange services may be recovered by the Company at the time of implementing any extended calling scope service or additional basic local exchange service. This same treatment shall also apply to new Optional Calling Plans.”

Petition Of Hickory Telephone Company For Approval Of A Streamlined Form Of Regulation And Network Modernization Plan, Docket No. P-00981431

Part 3.A.12. “Any revenue shortfall or cost incurred, including administrative costs, less other related revenue increase/cost decreases, if any, associated with a Commission-mandated implementation of new calling scope services such as EAS or extension of basic local exchange services may be recovered by the Company at the time of implementing any extended calling scope service or additional basic local exchange service. This same treatment shall also apply to new Optional Calling Plans.”

Petition Of Lackawaxen Telephone Company For Approval Of A Streamlined Form Of Regulation And Network Modernization Plan, Docket No. P-00981432¹⁶

Part 3.A.12. “Any revenue shortfall or cost incurred, including administrative costs, less other related revenue increase/cost decreases, if any, associated with a Commission-mandated implementation of new calling scope services such as EAS or extension of basic local exchange services may be recovered by the Company at the time of implementing any extended calling scope service or additional basic local exchange service. This same treatment shall also apply to new Optional Calling Plans.”

¹⁶ Lackawaxen Telephone Company now does business under the name Lackawaxen Telecommunications Services, Inc.

Petition Of Bentleyville Telephone Company For Approval Of An Alternative Form Of Regulation And Network Modernization Plan, Docket No. P-00981434

Part 3.A.12. "Any revenue shortfall or cost incurred, including administrative costs, less other related revenue increase/cost decreases, if any, associated with a Commission-mandated implementation of new calling scope services such as EAS or extension of basic local exchange services may be recovered by the Company at the time of implementing any extended calling scope service or additional basic local exchange service. This same treatment shall also apply to new Optional Calling Plans."

Petition Of The North-Eastern Pennsylvania Telephone Company For Approval Of An Alternative Form Of Regulation And Network Modernization Plan, Docket No. P-00981435

Part 3.A.12. "Any revenue shortfall or cost incurred, including administrative costs, less other related revenue increase/cost decreases, if any, associated with a Commission-mandated implementation of new calling scope services such as EAS or extension of basic local exchange services may be recovered by the Company at the time of implementing any extended calling scope service or additional basic local exchange service. This same treatment shall also apply to new Optional Calling Plans."

Petition Of North Pittsburgh Telephone Company For Approval Of A Streamlined Form Of Regulation And Network Modernization Plan, Docket No. P-00981437

Part 3.A.12. "Any revenue shortfall or cost incurred, including administrative costs, less other related revenue increase/cost decreases, if any, associated with a Commission-mandated implementation of new calling scope services such as EAS or extension of basic local exchange services may be recovered by the Company at the time of implementing any extended calling scope service or additional basic local exchange service. This same treatment shall also apply to new Optional Calling Plans."

Petition Of GTE North, Inc. [Verizon North Inc.] For Alternative Regulation And Plan For Network Modernization, Docket No. P-00981449

Part 3.A.10. "Any revenue shortfall or expense incurred (e.g., expenses associated with capital outlays, operating & maintenance expense, etc.) associated with the extension of local service (less other related revenue increases/expense decreases, if any) may be recovered by the Company at the time of implementing any extended area services. This same treatment shall also apply to Optional Calling Plans."

b. Simplified Ratemaking Plans (Plan B)

By Order entered January 20, 2000, the Commission approved, for various smaller Pennsylvania local exchange companies, a form of regulation entitled "Simplified Ratemaking Plan," which differs from a price cap form of regulation (Plan A) and is a more streamlined approach to ratemaking than traditional rate base/rate of return regulation.¹⁷ These Plans also address, and allow for rate recovery of, the costs associated with the implementation of EAS.

Armstrong Telephone Company – North, Armstrong Telephone Company – Pennsylvania, Laurel Highland Telephone Company, Marianna & Scenery Hill Telephone Company, North Penn Telephone Company, Pennsylvania Telephone Company, Palmerton Telephone Company, Pymatuning Independent Telephone Company, The South Canaan Telephone Company, Venus Telephone Corporation and Yukon-Waltz Telephone Company

Part 3.B(A)5. "Any revenue shortfall or expense incurred, including administrative costs, less other related revenue increases/cost decreases, if any, associated with a Commission-mandated implementation of new calling scope services such as EAS or extension of basic local exchange services may be recovered by the Company at the time of implementing any extended calling scope service or additional basic local exchange service. This same treatment shall also apply to new Optional Calling Plans."

4. Response To Commission Discussion and Questions

a. Historic Cost Recovery Practices (Pages 10-11)

As noted above, the Chapter 30 Plans approved by the Commission directly address the recovery of EAS costs. Under Act 183, the terms of these Plans supersede all inconsistent statutes and laws and the terms of these Plans are the definitive document for permissible cost recovery, unless revised by the mutual agreement of the LEC and the Commission.

Therefore, pre-Chapter 30 Plan implementation cases do not establish precedent. For example, the *Warthman* Order¹⁸ was entered prior to the finalization of Verizon North's

¹⁷ *Petition of [Armstrong Telephone, et. al.] for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan*, Docket No. P-00981425, Order entered January 20, 2000.

¹⁸ *Warthman v. GTE North, Inc.*, Docket No. C-00924416, Order entered March 20, 1995.

Chapter 30 Plan on October 10, 2002. The *ALLTEL* Order¹⁹ was issued in 1994, several years prior to implementation of the ALLTEL Plan in 2001.

b. Effect Of Chapter 30 Plan (Page 12)

The proposed Regulation at Section 63.74, as the Commission notes, “outline[s] a new approach to EAS cost recovery,” and, the PTA would add, an approach that is more consistent with the Chapter 30 Plans of most ILECs in Pennsylvania.

The PTA agrees with the proposed Regulation, except to the extent it would require a submission (petition) to the Commission identifying the lost revenues, administrative costs, facilities costs and any associated revenue increases or cost decreases experienced as a result of implementation of EAS.²⁰ The PTA agrees these costs should be “prudent” and not unnecessary to the implementation of EAS. The PTA also agrees it is appropriate that the LEC advise the Commission regarding the proposed method for recovery of these costs.

Based on the above-discussion, however, the PTA submits that, to the extent the Commission language describes revenue/cost recovery items, the phrase “may be recoverable” is too tentative. The Regulation should reflect adherence to the terms of approved and effective Chapter 30 Plans and should leave no doubt that such terms will be followed by the Commission and certain costs will be recoverable. Making a clear statement now, will avoid unnecessary controversy and litigation later.

¹⁹ *Pa. P.U.C. v. ALLTEL Pennsylvania, Inc.*, Docket Nos. P-00940801 and P-00940807, Order entered October 19, 1994.

²⁰ Proposed Regulations at §63.74 (a) and (b).

The PTA suggests the following changes be made to Section 63.74(a):

A local exchange carrier may recover revenues lost and costs incurred in connection with the implementation of EAS, under the provisions of this section, beginning on the date on which EAS is implemented. To qualify for recovery, the costs must be prudently incurred and reasonable in amount. The items that shall be recoverable include:

- (1) Administrative costs.
- (2) Facility costs.
- (3) Lost revenues.
- (4) Any other costs.

c. Toll Declared Competitive (Pages 11-12)

By their terms, Price Cap and Simplified Ratemaking Plans regulate non-competitive services. The Commission controls and regulates the rates for services in the non-competitive services "revenue bucket." The open market is left to regulate the prices for competitive services. If demand decreases (or increases) for a competitive service, this is the function of the marketplace and is not relevant to regulated ratemaking.

It is not the functioning of an open market, however, when the Commission intentionally takes away toll minutes and forces the LEC to implement EAS in replacement of competitive toll service. Essentially, the Commission is reverting the service on that particular EAS route from the competitive service category (where toll has been declared or deemed competitive) back to a non-competitive service. Indeed, by requiring that service on a particular toll route be included within the local calling area of an exchange, the Commission has converted toll service on that route into a "protected" service. Thus, the prohibition in Section 3016(f)(1) against the subsidization of competitive services by non-competitive services is not germane.

It should be noted that the LECs' approved Chapter 30 Plans already allow for the recovery of lost toll revenues when EAS is implemented, irrespective of whether or not toll is a competitive or non-competitive service. Indeed, in approving the Chapter 30 Plan for

Verizon North, the Commission simultaneously granted toll service a competitive status and adopted the above-quoted EAS language, which allows recovery of lost toll revenues when EAS is implemented.²¹

d. Recovery Of One-Time Costs (Page 12)

The PTA agrees that, to the extent a cost is a “one-time” EAS related expense (i.e., is not ongoing), recovery of the cost should be limited so that an over-collection does not occur. For example, implementation of EAS often necessitates the construction of additional facilities or an upgrade of existing facilities. Implementation of EAS also may require customer polling for which the LEC will incur costs. These costs are a fixed and finite amount, the recovery of which should be allowed, as is discussed in the next section of these Comments.

e. Rate Design – Recovery, Surcharges And Bundles (Pages 13-14)

Given that the costs associated with the implementation of EAS are recoverable, the PTA believes that the means of recovery of those costs should be somewhat flexible. As noted in the Commission’s Proposed Rulemaking Order, specific surcharges directed to the particular customers who benefit from the implementation of EAS previously have been approved by the Commission. There are times when a specific surcharge may be appropriate. For example, in the instance of one-time costs, a surcharge can be set that is of a definitive duration that explicitly precludes over-recovery.

Another device in the flexible ratemaking toolbox is to “bank” the net shortfall. Using the PSI formula and the explicit recognition of exogenous factors, the LEC may chose to delay passing the increase on to its customers. While the LEC will lose the time value of money associated with the period of the deferral, banking may be an attractive alternative.

²¹ *Petition of Verizon North, Inc. for Alternative Regulated Plan and Plan for Network Modernization*, Docket No. P-00001854, Opinion and Order entered July 26, 2001.

In addition, the current Commission ordered \$18.00 cap on residential local exchange service may become a factor for cost recovery and may result in the recovery of EAS costs from the Pennsylvania Universal Service Fund ("Pa USF").

With respect to recovery of EAS costs from "service bundles," the PTA believes that customers receiving bundles should not be treated differently from those that are purchasing services "a la carte." The previously discussed solutions for cost recovery through surcharges and Price Stability Mechanism ("PSM") banking would apply equally to the local service component of a bundle.

The PTA believes that the Commission's proposed manner of addressing cost recovery methods is appropriate. The point that the PTA wishes to emphasize is that the LECs should be given the flexibility to determine the appropriate means of cost recovery: surcharge, deferral through banking, recovery from all customers or recovery from the PA USF. It would not be appropriate to establish a "one size fits all" rate design solution for the recovery of EAS related costs.

III. RESPONSE TO COMMISSION'S REQUEST FOR COMMENTS ON SPECIFIC ISSUES.

A. Staff Aggregation Of Traffic Usage Information

Under the proposed Section 63.72(e), the Commission Staff assumes the responsibility to receive and aggregate traffic usage study data provided by each LEC and IXC that serves customers in the originating exchange. Given the competitive nature of the current telecommunications market, it is both necessary and appropriate that the Commission Staff handle the aggregation of the traffic usage study data received from individual LECs and IXCs. This information is now extremely competitive and could result in an advantage and/or disadvantage to a specific carrier if the results of the traffic usage study were made available to

and/or used by a competitive provider. To protect the proprietary nature of this information, and to avoid the appearance of any partiality on the part of the person or entity producing the traffic usage study results, it is prudent for the Commission (or its designee) to be the only party in control of all the information.

B. Traffic Usage Studies

As noted in its above Comments and suggested revisions to Section 63.72 of the Proposed Regulations, the PTA believes it is time for the Commission to change its thinking about the need for a formal EAS process and consider eliminating the EAS Regulations in their entirety.

C. Optional Calling Plans

Because of the proliferation of bundled service packages that include toll calling as part of the services provided, the PTA strongly believes Regulations requiring the implementation of a specific type of optional toll calling plan are no longer necessary. As noted earlier in these Comments, customers in all exchanges now have a variety of service alternatives available that provide unlimited or discounted toll calling. These service alternatives are sufficient, if not better, than the Commission mandated Optional Calling Plans previously contained in the EAS Regulations. The PTA agrees there should be no requirement that a LEC offer an Optional Calling Plan, as previously defined in 52 Pa. Code §63.73, and that all references to Optional Calling Plans are properly eliminated from the Proposed Regulations.

D. Provisions Of Act 183 That Affect The Commission's Ability To Propose The New Regulations

Chapter 30 makes clear that any revisions to the EAS Regulations must not contradict the terms and conditions of the Chapter 30 Plans adopted by the Commission.²² In addition, the

²² 66 Pa. C.S. 3019(h).

General Assembly has specifically declared that the policy of the Commonwealth is, *inter alia*,

to:

* * * * *

Provide diversity in the supply of existing and future telecommunications services and products in telecommunications markets throughout this Commonwealth by ensuring that rates, terms and conditions for protected services are reasonable and do not impede the development of competition.²³

* * * * *

Recognize that the regulatory obligations imposed upon the incumbent local exchange telecommunications companies should be reduced to levels more consistent with those imposed upon competing alternative service providers.²⁴

These provisions of Chapter 30 make clear that the Commission must re-evaluate the continued viability and reasonableness of its EAS Regulations. As noted above in these Comments, it is no longer necessary to artificially decide, through the use of incomplete and inaccurate traffic usage studies, what wireline services best meet the customers' communications needs. The communications industry in Pennsylvania is evolving and changing rapidly. The ever increasing selection of types of services, as well as the availability of service providers that did not exist when the EAS Regulations originally were adopted, make the continued use of regulatory criteria as a barometer for customer need for expanded local calling areas unnecessary and outdated. Rather, the Commission should let the competitive market address the future communications needs of consumers in Pennsylvania through the development of new and better services.

²³ 66 Pa. C.S. §3011(5).

²⁴ 66 Pa. C.S. §3011(13)

III. CONCLUSION

The PTA thanks the Commission for the opportunity to present these Comments and requests that the Commission abandon the EAS Regulations in their entirety. In the alternative, the PTA requests the Commission adopt the changes proposed herein.

Respectfully submitted,



Norman James Kennard

Janet L. Miller

Hawke McKeon Sniscak & Kennard LLP

P. O. Box 1778

Harrisburg, PA 17105-1778

(717) 236-1300

(717) 236-4841 (Facsimile)

njkennard@hmsk-law.com

jlmiller@hmsk-law.com

Counsel to the Pennsylvania Telephone Association

DATED: June 6, 2006

**SUGGESTED CHANGES OF THE
PENNSYLVANIA TELEPHONE ASSOCIATION
TO THE COMMISSION'S PROPOSED EAS REGULATIONS**

Section 63.71. Definitions. [Discussion at Page 6 of Comments.]

The PTA suggests the following additional definition be included in Section 63.71:

Lost revenue - The amount of toll revenue and/or access revenue a service provider no longer receives as a result of the implementation of EAS on a particular route, net of any increase in local service revenue to be received as a result of the EAS.

Section 63.72. Traffic Usage Studies. [Discussion at Pages 6-11 of Comments.]

The PTA suggests the following changes be made to Section 63.72(a):

- (a) All local exchange carriers and interexchange telecommunications carriers serving the originating exchange shall conduct traffic usage studies at the direction of an Administrative Law Judge in connection with a formal EAS complaint proceeding.

The PTA suggests the following changes be made to Section 63.72(a)(1):

- (a)(1) The traffic usage study shall measure traffic over both IntraLATA and InterLATA routes (if applicable), and shall include the traffic originating from the calling exchange as specified in Section 63.72(a)(2). The study shall measure the average calling frequency from the originating exchange to the target exchange(s).

The PTA suggests the following changes be made to Section 63.72(a)(2):

- (a)(2) In measuring calling frequency, the local exchange carrier(s) and interexchange telecommunications carrier(s) shall be required to measure only the wireline calls that are directly-dialed on its customers' service line(s).

The PTA suggests the following changes be made to Section 63.72(a)(3):

- (a)(3) An Order of an Administrative Law Judge issued in connection with a formal EAS complaint, shall be served upon and shall require each local exchange carrier and interexchange telecommunications carrier serving in

the originating exchange to produce a study that has the following information. . . .

The PTA suggests the following changes be made to Section 63.72(a)(4):

- (a)(4) The traffic usage study shall measure calling in the March or October preceding the date on which an Administrative Law Judge directs that a traffic usage study be conducted. In instances where the retrieval and production of calling data from the preceding March or October would be excessively burdensome or costly, the local exchange carrier or interexchange telecommunications carrier may provide calling data for a more recent, representative month, so long as the time period covered by the study is identified. The local exchange carriers and interexchange telecommunications carriers shall provide the results of the traffic usage studies to the Commission, or to an entity designated by the Commission, within 60 days of the Administrative Law Judge's order that a traffic usage study be conducted.

The PTA suggests that Section 63.72(b)(5) be eliminated.

Section 63.73. Customer Polls. [Discussion at Pages 11-13 of Comments.]

The PTA suggests the following changes be made to Section 63.73(f):

- (f) The poll is valid when at least 75% of the ballots mailed to customers in a polled exchange are completed and returned.

The PTA suggests the following changes be made to Section 63.73(g):

- (g) The local exchange carrier shall implement EAS when greater than 70% of the returned ballots in a valid poll are in favor of EAS.

The PTA suggests the following changes be made to Section 63.73(i)

- (i) A local exchange carrier or interexchange telecommunications carrier may petition the Commission for waiver of a provision of this section to address unique circumstances.

Section 63.74. Cost Recovery. [Discussion at Pages 22-23 of Comments.]

The PTA suggests the following change be made to Section 63.74(a):

- (a) A local exchange carrier may recover revenues lost and costs incurred in connection with the implementation of EAS, under the provisions of this section, beginning on the date on which EAS is implemented. To qualify for recovery, the costs must be prudently incurred and reasonable in amount. The items that shall be recoverable include:
 - (1) Administrative costs.
 - (2) Facility costs.
 - (3) Lost revenues.
 - (4) Any other costs.