might find a long-distance carrier whose rates are lower than those charged by AT&T for calls to Coudersport and Ulysses.

The record does not contain evidence which allows me to compare the financial impact of the aforementioned plans and equal access with the Stipulation's proposed EAS rates. However, the continued pursuit of EAS by the Customer-complainants and OCA, AT&T's support of Frontier's offer of EAS (AT&T Statement 1.1 at 4-5), and the Stipulation by which Frontier is offering EAS polling not only in Genesee and Millport but also in Shinglehouse strongly suggest that the available plans and equal access are not viable alternatives to EAS for the affected Frontier customers.

VI. EAS Implementation Costs §63.77(2)

As local exchange carriers, neither Frontier nor Bell owns or operates any facilities which connect the interLATA central office trunks of the pertinent exchanges (Frontier Statement 1 at 4 and 6).[28] To date, all the interLATA traffic has been carried by AT&T which owns the necessary facilities or acquires them by lease (Frontier Statement 1 at 6). Frontier witness Goodnight cogently explained the three separate legs of the routing for calls from Frontier's Genesee, Shinglehouse and Millport exchanges in the Buffalo, New York LATA to Bell's

[28] The traffic is interLATA because the Frontier exchanges of Genesee, Shinglehouse and Millport are in the Buffalo, New York LATA while the Bell exchanges of Coudersport and Ulysses are in the Altoona, Pennsylvania LATA (Frontier Statement 1 at 3-4).

Coudersport and Ulysses exchanges in the Altoona, Pennsylvania LATA:

> [T]he traffic is hauled across the Buffalo LATA using NYNEX facilities to AT&T's point of presence ("POP") in Buffalo and, then utilizing AT&T's facilities hauled down to Bell Atlantic - PA's Altoona switching office, where Bell Atlantic - PA transports it to their Bradford host office, and then transports it to the remote offices in either Coudersport or Ulysses (AT&T's response to OCA [Interrogatory] III - 1.).

(Frontier Statement 1 at 8.)

Consequently, for Frontier to provide EAS from Genesee/Shinglehouse/Millport to Coudersport/Ulysses, Frontier must either lease facilities from another telecommunications carrier or build facilities.

A. Leasing Costs

A monthly recurring charge would be incurred by Frontier to have traffic carried from Frontier's territory over Bell NYNEX facilities to AT&T's point of presence in Buffalo (Frontier Statement 1 at 12; see also AT&T Statement 1.2 at 1-2). For a recurring monthly charge of $3,811.10, AT&T is willing to lease the use of its facilities to Frontier to carry traffic from Buffalo to AT&T's point of presence in Altoona (Frontier Statement 1 at 12; see also AT&T Statement 1.2 at 1-2). Another monthly recurring charge would also be incurred by Frontier to have traffic carried over Bell facilities from Altoona to Ulysses or Coudersport (Frontier Statement 1 at 12; see also AT&T Statement 1.2 at 1-2). As observed by Frontier, none of the parties to the present cases have identified the cost of leasing the NYNEX facilities to carry traffic to Buffalo or the Bell facilities to carry traffic from Altoona "because the cost of [establishing] direct routing between [Frontier] and Bell . . . is less expensive in comparison to the AT&T lease charges alone" (Frontier Main Brief at 6; see also Frontier Statement 1 at 12).[29]

B. Building Costs

In its main brief, Frontier succinctly outlines the facilities which can be built to connect Frontier's existing facilities with Bell's existing facilities and the costs of the construction:

> The "best and least" cost direct route is the smallest sized trunk (T-1) between [Frontier's] Shinglehouse host switch and Bell Atlantic's host switch in Bradford. [Frontier Statement] 1 at 12. The proposed point of interconnection between [Frontier] facilities and those of Bell Atlantic, upon which both companies agree, is near the LATA boundary on Bell Atlantic's side of the Altoona - Buffalo LATA boundary, approximately at Eldred, Pennsylvania (i.e. the "Eldred Route"). [Frontier's] cost to meet Bell Atlantic is approximately $83,774.08. Id. Bell Atlantic originally estimated that its side of the facilities would cost $97,000, although the figure has increased several times subsequently.[4] In any event, the direct facilities route is less than the payments which would have to be made to AT&T and Bell Atlantic (in both New York [as NYNEX] and PA) in order to replicate AT&T's current circuitous path through Buffalo.
>
> [4] In direct testimony, Bell Atlantic increased the estimate of facilities cost from $97,000 to

[29] Frontier also received leasing cost estimates from MCI Telecommunications and Frontier Communications Services, Inc., but these leasing options were more expensive (Frontier Statement 2 at 8-9; OCA Main Brief at 35).

> $113,700. Then, at the time of the additional February 12, 1998 hearing, Bell Atlantic . . . provided a re-estimated number of $141,000.[30] [Tr.] 698[and 707-08; see also Bell Statement 2 at 4-5]. Due to the nature of the construction involved Bell Atlantic states that it "cannot pinpoint the cost exactly." [Tr.] 724.

(Frontier Main Brief at 6-7.)

While none of the parties disputes the reasonableness of building the Eldred Route facilities,[31] the allocation and recovery of the facilities' building costs and other costs related to the Eldred Route have been vigorously contested by the parties.

1. Frontier

Before entering into the Stipulation, Frontier proposed an EAS polling of its Genesee, Shinglehouse and Millport customers at EAS rates which included (1) the entire cost of building, maintaining and operating all the Eldred Route facilities plus taxes thereon,[32] (2) the interconnection (access-

30 Bell witness Edward R. Zakreski stated that the $141,000 was not an exact figure but merely Bell's latest estimate which includes the cost of a multiplexer, 4-strand fiber optic cable and two DS-1 switches (Tr. 698-99, 708, 710-711 and 727; Bell Statement 2 at 5-6).

31 Bell witness Zakreski admitted that Frontier's "selection and identification of an appropriate route was a collaborative process in which Bell participated. . . . It is Bell's understanding . . . that . . . the Eldred route remains the least expensive route when one takes into consideration both Bell's and Frontier's facilities costs" (Bell Statement 2 at 6).

32 Frontier's proposal was based on Frontier's initial perception that Frontier would pay for the building of Bell's side of the Eldred Route and would then own and operate all the Eldred Route facilities (Frontier Statement 1 at 13).

type) charges payable to Bell for terminating the newly routed calls in Bell's Coudersport and Ulysses service territory,[33] (3) lost revenues from billing and collection services eliminated by the Eldred Route facilities, and (4) lost revenues from originating access charges now payable by interexchange carriers for toll traffic generated in Frontier's service territory but eliminated by the Eldred Route facilities (Frontier Statement 1 at 12-14; Frontier Main Brief at 6-7).

Frontier asserted that, because its Chapter 30 Plan does not specifically define network modernization to encompass the construction of facilities across a LATA boundary for EAS, such construction would qualify as an exogenous event for which its Chapter 30 Plan allows dollar-for-dollar flow-through of expenses (Frontier Statement 1 at 6-7). Frontier also argued that its Chapter 30 Plan explicitly allows recovery of expenses and lost revenues related to EAS under Part 1.A.8 which permits recovery of "any toll revenue shortfall" associated with EAS (Frontier Statement 1 at 6).

Before entering into the Stipulation, OCA vigorously opposed Frontier's proposed EAS rates on the grounds (1) that the provision of EAS does not qualify under Frontier's Chapter 30 Plan as an exogenous event or subsequent regulatory change because it is part of Frontier's duty to provide adequate service to customers, (2) that Frontier cannot recover expenses and lost

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[33] At the current time, Frontier will not receive additional interconnection (access-type) charges from Bell over the Eldred Route facilities because the Bell traffic does not qualify for EAS (Frontier Main Brief at 7).

revenues related to the Eldred Route as a "toll revenue shortfall" inasmuch as Frontier has never previously offered toll service on this route and thus cannot experience a toll revenue shortfall on the route, (3) that, if the provision of EAS were a subsequent regulatory change, the express language of Part 1.A.8 of Frontier's Chapter 30 Plan would allow recovery of lost revenues but not expenses related to the EAS, (4) that billing and collection service revenues lost as a result of building the Eldred Route are not recoverable under Frontier's Chapter 30 Plan because they are lost revenues from deregulated, competitive service ineligible for recovery from noncompetitive services, and (5) that Frontier should not be permitted to recover the costs of building the Eldred Route facilities by increasing local service rates (OCA Statement 1 at 4-9).

The Stipulation reasonably permits Frontier to charge EAS rates which cover some, but not all, expenses and lost revenues claimed by Frontier in conjunction with the Eldred Route (Tr. 671-72; Frontier Main Brief at 9-10; OCA Main Brief at 13; Frontier Exhibit 2). In particular, the Stipulation does not permit Frontier to recover its facilities' costs for the Eldred Route (Tr. 671-74). By not permitting complete recovery of all claimed expenses and lost revenues, the Stipulation establishes EAS rates which are lower than those proposed by Frontier[34] and are therefore more likely to garner a favorable response to EAS

[34] Frontier does not have rate bands for local service (Frontier Statement 2 at 2). Consequently, determining how EAS could or should affect local service rates is complicated.

polling (OCA Main Brief at 12-13; Frontier Main Brief at 7-9; see also Stipulation, Exhibits A at 2 and B at 2). The Stipulation avoids further depletion of parties' resources and delay in EAS polling which might occur if OCA and Frontier continued to litigate the EAS expense and lost revenue recovery issues (OCA Main Brief at 13).

Given the OCA-Frontier disagreement over the impact of Frontier's Chapter 30 Plan on EAS implementation, the Stipulation proffers a clarifying modification of Part 1.A.8 of Frontier's Chapter 30 Plan to be applied prospectively to all EAS and optional calling plan changes for the 5 Frontier companies[35] covered by the Chapter 30 Plan. As modified,[36] Part 1.A.8 would state:

> 8. 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. The Commission shall resolve any such petition proceeding prior to the conduct of EAS polling. This same treatment also shall apply to Optional Calling Plans.

[35] The 5 companies are Frontier Communications of Oswayo River, Inc.; Frontier Communications of Breezewood, Inc.; Frontier Communications of Canton, Inc.; Frontier Communications of Pennsylvania, Inc., and Frontier Communications of Lakewood, Inc. (Stipulation at 5-6 n.3). Except for Frontier Communications of Lakewood, Inc., all the companies have service territories which border or cross LATA boundaries (Tr. 603-05).

[36] The modification consists of added language identified by underlining.

(Stipulation at 6.) As correctly observed in a May 7, 1998 AT&T letter filed with the Commission in lieu of a reply brief, Frontier witness Goodnight explained at the February 12, 1998 hearing that, under the Stipulation, Frontier contemplates recovering any EAS-generated toll or access revenue shortfall by increasing local service rates instead of access charges (Tr. 673).

The Stipulation recognizes that Frontier's Chapter 30 Plan should not be modified without affording other parties who participated in the Chapter 30 Plan litigation at Docket No. P-00951005 an opportunity to review and comment on the proposed modification. Consequently, the parties to the Stipulation request, and I recommend, Commission approval of the Stipulation through issuance of a Tentative Opinion and Order which is served on all parties to Frontier's Chapter 30 Plan cases at Docket Nos. P-00951005, C-00957322 and C-00957324 (Stipulation at 6) and which states a date for parties to file with the Commission their comments about the proposed Chapter 30 Plan modification.

2. Bell

Bell challenges the Eldred Route cost allocation detailed in the Stipulation at paragraph 12.g which states:

> As an absolute condition precedent to [EAS] polling, Bell must either agree or be ordered by the Commission not to charge Frontier for any of Bell's facilities or operation and maintenance expense associated with the facilities to be installed on the so-called "Eldred Route."[2] In the event that Bell does not so agree or the Commission does not so

order, then this Stipulation shall be null and void . . . .

[2] Bell has stated on the record of this proceeding that it will charge to Frontier the rate for local interconnection and not toll access rates for terminating the traffic at issue in this proceeding [(Tr. 553-57)], which statement the parties [to the Stipulation] have fully relied upon in entering this [Stipulation] as a material condition thereto.

(Stipulation at 5.)

Bell is not contesting the operation and maintenance portion of paragraph 12.g. Bell has agreed to bear the costs and responsibilities for operating and maintaining its side of the Eldred Route facilities (Tr. 566; Bell Statement 2 at 3 and 6; Bell Main Brief at 4 n.2). However, Bell is contesting the building costs portion of paragraph 12.g which would require Bell to pay the costs of building its respective 3-mile side of the Eldred Route facilities (Tr. 697; Bell Statement 2 at 3; Bell Main Brief at 7-8). Although Bell intends to retain ownership of its side of the Eldred Route facilities, Bell wants Frontier to pay the costs of constructing Bell's side of the facilities (Bell Statement 2 at 3-6).

a.

Preliminarily, Bell maintains that it should not have to bear any facilities' costs because the complaints at C-00957322 and C-00957324 were not filed against Bell (Bell Main Brief at 8 and 10-12). I reject this argument.

Although Bell was not an originally named respondent in the complaints, Bell was formally joined as an indispensable party to both complaint cases pursuant to 52 Pa. Code §63.76. Bell's joinder as a party to the complaint cases put Bell on notice from the outset that the outcome of the complaint cases could affect it. Despite "Bell's position throughout . . . of indifference as to whether the Tucker Complainants are awarded extended area service" (Bell Reply Brief at 11), Bell had the opportunity to, and did, participate in every proceeding held in the complaint cases[37] in addition to filing main and reply briefs advocating its own viewpoints and questioning other parties' viewpoints.

<u>b.</u>

Next, Bell opines that its Tariff Pa. P.U.C. No. 302 on Access Service requires Frontier to fully reimburse Bell for the cost of building Bell's side of the Eldred Route facilities as a special construction (Tr. 701-04; Bell Exhibit 1). OCA counters, and I agree, that Bell's Tariff No. 302 on Access Service does not apply to the present complaint cases (OCA Main Brief at 39).

As admitted by Bell, Tariff No. 302 on Access Service pertains to Bell's dealings with interexchange carriers — not local exchange carriers (Tr. 701 and 707). Inasmuch as Frontier is a local exchange carrier, Bell's Tariff No. 302 on Access Service does not govern the present cases (Tr. 553-57).

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[37] At hearings, Bell presented its own evidence and cross-examined other parties' witnesses.

C.

Bell also argues that Frontier must cover the cost of building Bell's side of the Eldred Route facilities because Bell cannot use the Eldred Route facilities to serve its own customers. Otherwise stated, Bell claims to derive no benefit from owning its side of the Eldred Route facilities yet insists on being the owner.[38]

The logical inference derived from Bell's insistence on ownership is that, contrary to Bell's claim, facilities' ownership is advantageous to Bell. One obvious advantage of ownership is the prevention or hindrance of Frontier's acquisition of facilities through which Frontier might offer services in competition with Bell.

Furthermore, Bell customers will likely benefit from the Eldred Route facilities by receiving more calls from Frontier customers in Genesee, Millport and Shinglehouse who either seek goods and services available from persons and businesses in Coudersport and Ulysses or seek contact with colleagues, family and friends in Coudersport and Ulysses. See the discussion under the heading I. Community of Interest §63.77(4).

[38] Bell witness Zakreski credibly testified that Bell does not intend either to sell or give its side of the Eldred Route facilities to Frontier (Tr. 566; Bell Statement 2 at 6). Based on Mr. Zakreski's testimony, I conclude that Bell's Reply Brief at 9 inaccurately states that Bell prefers for Frontier to build and own all the Eldred Route facilities. Mr. Zakreski's testimony unequivocally establishes that Bell prefers for Frontier to build all the Eldred Route facilities and absorb all the building costs, but Bell intends to own its side of the facilities (Tr. 546 and 566; Bell Statement 2 at 6).

It is reasonable for Bell to pay its facilities' costs when Bell intends to retain ownership of its side of the Eldred Route facilities.

d.

In the alternative, Bell contends that Frontier must cover the cost of building Bell's side of the Eldred Route facilities because Bell cannot otherwise be fully compensated for its facilities' costs.

With respect to Bell, the Eldred Route is analogous to intraLATA EAS inasmuch as the Route was jointly formulated by Bell and Frontier to let Bell transport solely intraLATA traffic (Bell Statement 2 at 6; Frontier Statement 2 at 8). In particular, the Eldred Route was drawn so that Frontier would build its side of the Eldred Route facilities to a point within the Altoona LATA where traffic would be delivered to Bell which would then transport traffic wholly within the Altoona LATA and thereby avoid needing a waiver for the transportation of interLATA traffic (Tr. 538-39). See Pennsylvania Public Utility Commission v. Denver and Ephrata Telephone and Telegraph Co., 75 Pa. P.U.C. 371, 379 (1991).[39] Given that Bell has historically paid for its own intraLATA EAS facilities (Tr. 536-38), Bell should pay for its own Eldred Route facilities which, viewed in regard to Bell, are in the nature of intraLATA EAS facilities.

For terminating calls from Frontier's Genesee, Shinglehouse and Millport exchanges to Bell's Coudersport and

[39] Unlike Bell, Frontier is not barred from carrying interLATA traffic. Denver and Ephrata Telephone and Telegraph Co., 75 Pa. P.U.C. at 378.

Ulysses exchanges, Bell will receive local interconnection revenues from Frontier in the form of a minute of use charge and a dedicated transport charge comprised of a fixed monthly flat rate and a distance sensitive component (Tr. 569-70, 691-92 and 696-98). As Bell acknowledges, Bell's "transport charge is designed to cover the cost of delivering of traffic from [Bell's] end office to the facilities of the other carrier on outgoing calls and carrying the traffic from the point of interconnection to Bell's end office on incoming calls" (Tr. 570). OCA maintains, and I agree, that the local interconnection revenues are the only compensation to which Bell is entitled under its current tariffs[40] and Chapter 30 Plan (OCA Main Brief at 40; see also Warthman v. GTE North, Inc., C-00924416 (order entered March 20, 1995)).

Both Frontier and OCA have perceptively remarked that it is difficult to evaluate whether Bell will experience any significant revenue loss if the traffic in question is converted from toll to local through the proposed Eldred Route EAS because Bell has presented percentages rather than dollar amounts to quantify its purported diminution in revenues (Tr. 694-95; OCA Main Brief at 40-41; OCA Reply Brief at 13). However, even if Bell might lose revenue, a revenue loss should not, by itself, suffice to preclude the implementation of the Eldred Route EAS.

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[40] Subsection 2904(b) of the Public Utility Code, 66 Pa. C.S. §2904(b), authorizes the Commission to "require any one or more public utilities to connect their facilities, through the medium of suitable trunk lines" and further provides that the "[r]ates for such trunk line connections and service shall be in accordance with tariffs filed with and approved by the commission."

The Commission has "approved interLATA EAS on two Commonwealth Telephone Company routes even though the effect on Commonwealth was a $163,165 net annual loss on one route and a net annual loss of $107,979 on another route. Pa. P.U.C. v. Commonwealth Tel. Co., Docket No. P-00940874, slip op. (Dec. 2, 1994); Pa. P.U.C. v. Commonwealth Tel. Co., Docket No. P-00940875, slip op. (Dec. 2, 1994)" (OCA Main Brief at 50). Moreover, "Bell's rates are set on an average basis statewide" (Tr. 719-20) so that "[w]hile on a route specific basis the rate paid may not cover in full the costs of that route, it is also possible that Bell will receive revenues for terminating traffic on another route which exceed the costs of that route. Tr. 719-20" (OCA Main Brief at 47).

RECOMMENDED ORDER

THEREFORE, IT IS RECOMMENDED: That the Commission issue a Tentative Opinion and Order which

1. Approves the entire Stipulation including the proposed modification of Part 1.A.8 of Frontier's Chapter 30 Plan

AND

2. Orders Bell to pay the cost of building its side of the Eldred Route EAS facilities

AND

3. Is served on all parties to Frontier's Chapter 30 Plan cases at Docket Nos. P-00951005, C-00957322 and C-00957324 for comments about the Stipulation's proposed modification of Part 1.A.8 of Frontier's Chapter 30 Plan

AND

4. States a date by which parties' comments about the proposed modification of Frontier's Chapter 30 Plan must be filed with the Commission.

Dated: 9/11/98

Debra Paist

DEBRA PAIST
Administrative Law Judge