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September 2, 2010

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PA PUBLIC UTILITY COMMISSION
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Via Hand Delivery
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed are the Exceptions **(Public Version)** on behalf of Qwest Communications Company ("QCC") in the above-captioned proceeding. Copies have been served in accordance with the attached Certificate of Service.

Very truly yours,

John F. Povilaitis

Enclosures
JFP:ck

c: Certificate of Service
The Honorable Kandace F. Melillo

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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EXCEPTIONS OF QWEST COMMUNICATIONS COMPANY

I. Introduction

Administrative Law Judge Kandace F. Melillo ("ALJ") issued a Recommended Decision ("RD") in this proceeding on August 3, 2010. Qwest Communications Company, LLC ("QCC") respectfully takes exception[1] to two aspects of the ALJ's RD:

Exception No. 1: QCC excepts to the ALJ's conclusion that its proposed benchmark of 125% of the average Pennsylvania rural local exchange companies' ("RLEC") residential service rate was inadequately supported and is therefore unavailable to the Commission as a moderate and reasonable resolution of the issue of how much local RLEC rates should be allowed to increase.

[1] These exceptions are filed pursuant to 52 Pa. Code § 5.533.

Exception No. 2: QCC excepts to the ALJ's determination that AT&T's symmetrical access rate structure is the best way to avoid arbitrage schemes where carriers attempt to disguise the intrastate nature of traffic to avoid higher rates.

II. Exceptions

In this proceeding, QCC has taken a moderate position on the issue of to what extent RLEC local rates should be allowed to increase as part of a revenue neutral rebalancing of access charges and non-competitive rates. In QCC's view, the benchmark for residential and business basic local exchange rates should be 125 percent of the average Pennsylvania RLEC residential and business basic local exchange rates. As explained by QCC's witness, Mr. Easton, ending the current rate cap regime and adopting a 125 percent benchmark approach will allow the Commission to strike an appropriate balance between local rate affordability and the need for PAUSF assistance by limiting the need for any significant PAUSF increases.[2] Contrary to the RD, the numerical benchmark produced by QCC's proposal is discernable from the record of this case, as will be explained below in Exception 1.

In Exception 2, QCC explains why sufficient weight was not given in the RD to the importance of reforming access rates in a manner that provides the greatest impediment to carriers using various arbitrage schemes to engage in traffic pumping. QCC's proposal to have RLECs mirror Verizon Pennsylvania's intrastate access charges provides a much superior level of protection than the AT&T proposal adopted by the ALJ. QCC's position is a focused position that concentrates on the most troubling form of rate arbitrage, which is traffic pumping. QCC's anti-arbitrage proposal--which is to mirror Verizon Pennsylvania's intrastate access charges--is the position that best

[2] QCC Statement No. 1, p. 9.

remedies this important issue and should guide the Commission in selecting the correct access charge alternative.

Exception No. 1: QCC excepts to the ALJ's conclusion that its proposed benchmark of 125% of the average Pennsylvania rural local exchange companies' ("RLEC") residential service rate was inadequately supported and is therefore unavailable to the Commission as a moderate and reasonable resolution of the issue of how much local RLEC rates should be allowed to increase. ALJ RD at 116; ALJ RD Conclusion of Law No. 37 at 152; QCC Main Brief p.8; QCC Statement No. 1, pp.8-9; QCC Statement No. 1-R, pp. 5, 8.

The ALJ concluded that QCC's proposed benchmark rate for RLECs of 125% of the average residential service rate was unspecified and thus inadequately supported. QCC's witness, Mr. Easton, explained the merits of the 125% benchmark concept:

> Qwest recommends that the residential benchmark rates be set at 125 percent of the average Pennsylvania RLEC residence rate and the business benchmark be set at 125 percent of the average Pennsylvania RLEC business basic exchange rates. Using a 125 percent figure will help limit the need for significant increases in the PAUSF, thereby striking an appropriate balance between local rate affordability and the need for PAUSF assistance. The benchmark approach would be in lieu of the current rate cap regime in Pennsylvania.[3]

QCC's benchmark approach would provide a less significant increase in the PAUSF than, for example, OCA's proposal. To the extent the benchmark would result in an RLEC rate exceeding the $18.00 cap on residential basic local exchange service rates, the Commonwealth Court of Pennsylvania has affirmed that the rate cap can be exceeded for such a purpose.[4]

[3] QCC Statement No. 1, p. 9, lines 1-8.

[4] QCC Statement No. 1-R, p.5; *Buffalo Valley Telephone Company, et al. v. PaPUC*, 990 A.2d 67 (Pa. Cmwlth. 2009).

The numerical benchmark local exchange service rate proposed by QCC is discernable from the record of this case. The RLEC average rate is **Begin Confidential Proprietary Information *******End Confidential Proprietary Information**.[5] Therefore QCC's proposed 125 percent benchmark rate would be **Begin Confidential Proprietary Information*************** End Confidential Proprietary Information**.[6]

Benchmarks such as those proposed by OCA would be below the $18.00 cap that was set seven years ago. Adjusting the rate cap for inflation would result in a basic local exchange service rate of $22.00, which is above the QCC proposal.[7] Therefore the QCC proposal is a reasonable middle ground for a permitted rise in the level of RLEC basic local exchange service rates.

However, QCC also understands that affordability of local service is a concern for the Commission, and would point out that QCC's methodology could be adapted on this record to create a local rate that exceeds the current cap, but would also keep the rate from exceeding $20. This would entail a hybrid approach between the OCA suggestion of 120% of the rate and using the RLEC average as the base. This calculation would take the above mentioned RLEC average rate of **Begin Confidential Proprietary Information ****** End Confidential Proprietary Information**, and utilize 120 percent of this rate as the new benchmark. This creates a new benchmark rate of **Begin**

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[5] AT&T Direct Testimony, p. 7.

[6] The benchmark rate under QCC's alternative proposal of 120 percent of the Verizon rate would be **Begin Confidential Proprietary Information ** End Confidential Proprietary Information**

[7] AT&T Rebuttal Testimony, p. 6.

Confidential Proprietary Information ************* End Confidential Proprietary Information.**

QCC's proposal gives the Commission a great deal of flexibility in setting a benchmark rate.

The benchmark basic local exchange service rate proposed by QCC can be discerned from the evidentiary record of this case and is a reasonable middle ground among the rate proposals made by other parties in this proceeding. QCC's Exception No. 1 should be granted and its benchmark proposal of 125 percent of the average RLEC rates, or 120% of the RLEC average basic local exchange rate should be adopted.

Exception No. 2: QCC excepts to the ALJ's determination that AT&T's symmetrical access rate structure is the best way to avoid arbitrage schemes where carriers attempt to disguise the intrastate nature of traffic to avoid higher rates. ALJ RD at 90-93; ALJ RD Finding of Fact Nos. 23, 36; QCC Main Brief pp. 5-6; QCC Statement No. 1, pp. 1, 5-7; QCC Statement No. 1-R, pp. 2-4, 7-8, 13-14; QCC Statement No. 1-SR, pp. 2-6; QCC Statement No. 1-RJ, pp. 2-5.

The ALJ has adopted AT&T's proposal to have intrastate access charges mirror interstate access rate levels and structure.[8] QCC proposed that RLEC intrastate access charges should be set at Verizon's switched access rates, and thus all LECs in Pennsylvania would have the same rate levels for intrastate access.[9] QCC believes that lowering access rates on a revenue neutral and competitively neutral basis will reduce existing arbitrage opportunities and encourage competition by putting all market participants on a level playing field.[10] QCC's witness Mr. Easton pointed out that just as there is great variability in intrastate switched access rates, there is also great variability

[8] RD at 90.
[9] QCC Statement No. 1, p. 5. This proposal applies to both the per minute traffic-sensitive charges and the CCLC.
[10] *Id.*

in interstate switched access rates. And some Pennsylvania RLECs have quite high interstate switched access rates.[11]

With the exception of local loop costs, QCC does not believe there are significant cost differences between carriers. To the extent there are cost differences, such as loop costs, these differences should be addressed through basic exchange rates and then through the PAUSF. By addressing loop costs in this way, Verizon access rates are an appropriate benchmark for the RLEC's access rates[12]

The ALJ has erroneously concluded that AT&T's (and OCA's) mirroring proposal adequately addresses the arbitrage concerns.[13] Eliminating the differential between inter and intra access rates will reduce arbitrage opportunities that have encouraged carriers to have their traffic identified as interstate, however the mirroring proposal does nothing to address the arbitrage opportunities that have led to traffic pumping.[14]

It is important to understand all the different arbitrage schemes that are occurring in the industry today, to fully understand the superiority of QCC's proposal to mirror Verizon intrastate access rates. One form of that arbitrage which is addressed by AT&T and OCA is taking advantage of differences between intrastate and interstate access rates by disguising the jurisdiction of the call to capitalize on typically lower interstate switched access rates.[15] Another form of arbitrage capitalizes on different rates for terminating local calls as opposed to long distance calls. By disguising a long distance call as a local call, carriers can pay reciprocal compensation rates instead of

[11] QCC Statement No. 1-R, p. 2.
[12] QCC Statement No. 1-R, p. 7.
[13] RD at 91.
[14] QCC Statement 1-R, p. 8.
[15] QCC Statement No. 1-SR, p. 3. Local carriers are harmed by this form of arbitrage.

higher switched access rates.[16] Traffic pumping is yet another form of arbitrage, and is the scheme addressed by QCC's proposal to mirror Verizon access rates but completely ignored by the AT&T/OCA proposal. Traffic pumping specifically targets IXCs. In this form of arbitrage, IXC traffic is deliberately routed by third parties known as Free Calling Service Companies ("FCSCs") to rural carriers with high intrastate access charges. FCSCs partner with RLECs pursuant to confidential contracts to take advantage of high access rates. The access charges paid by IXCs can then be profitably shared by the rural carrier and the FCSC under the terms of a secret agreement.[17]

QCC is concerned about all forms of arbitrage, but believes that current FCC rules adequately address interstate jurisdictional arbitrage.[18] However, to deal with traffic pumping, which is an inter and intra jurisdictional problem, some action is required by this Commission. Once traffic pumping is shifted to interstate jurisdiction, which Qwest's position does by eliminating the opportunity to arbitrage the rate variability on the intrastate access rate, then it becomes a matter which the FCC can fully address.[19]

Under the AT&T mirroring proposal, there would still be a great disparity in intrastate switched access rates, with some carriers charging as little as $.0052 and others allowed to charge as much as $.0467. This type of quantitative rate disparity enables arbitrage, including traffic pumping.[20]

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[16] *Id.*
[17] QCC Statement No. 1-SR, pp. 3-4.
[18] QCC Statement No. 1-SR, p. 4; See 47 CFR §64.1601 requires carriers as part of caller ID to pass on the calling party number which is information to appropriately identify the jurisdiction of the call.
[19] QCC Statement No. 1-SR, p. 5.
[20] QCC Statement No. 1-RJ, p. 2.

Mr. Easton also explained that contrary to AT&T's suggestion, administrative costs would not be higher under QCC's proposal where intrastate and interstate access rates would be different. Carriers already have systems in place that allow billing separate inter and intrastate rates.[21] QCC acknowledges that under its proposal to mirror Verizon access rates, some RLEC rates would increase and others would decrease. However, the primary issue is that the resulting rates would be reasonable and would best address existing arbitrage schemes and thus put all carriers on a level playing field.[22] To the extent cost differences between RLECs exist, that issue can be addressed through basic exchange rates and the PAUSF if necessary.[23]

Contrary to the RD, the record demonstrate by a preponderance of the evidence that QCC's proposed mirroring of Verizon's access is reasonable to RLECs, places all carriers on a level playing field, and best addresses the arbitrage opportunities the Commission can control such as traffic pumping. Exception No. 2 should be granted.

III. Conclusion

WHEREFORE, QCC respectfully requests that the Commission grant its Exceptions No. 1 and 2.

[21] QCC Statement No. 1-RJ, p. 3.
[22] QCC Statement No. 1-RJ, pp.3-4.
[23] QCC Statement No. 1-RJ, p. 4-5.

Dated: September 2, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document(s) in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

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