COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

June 3, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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 v. Armstrong Telephone Company-Pennsylvania, et al.
Docket No. C-2009-2098380, et al.

Dear Secretary Chiavetta:

Enclosed for filing, please find an original and nine (9) copies of the **Reply Brief** of the Office of Trial Staff (OTS) in the above-captioned proceeding.

As evidenced by the enclosed Certificate of Service, copies are being served on all active parties of record.

Sincerely,

Allison C. Kaster

Allison C. Kaster
Prosecutor
Office of Trial Staff
PA Attorney I.D. #93176

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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	:	
v.	:	Docket No. C-2009-2098380, et al.
Armstrong Telephone Company-Pennsylvania, et al.	:	

REPLY BRIEF OF THE OFFICE OF TRIAL STAFF

Allison C. Kaster
Prosecutor
PA Attorney ID #93176

Adeolu A. Bakare
Prosecutor
PA Attorney ID #208541

Office of Trial Staff
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: June 3, 2010

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I. STATUS OF THE PROCEEDING

The procedural history of this proceeding is detailed in the Office of Trial Staff's Main Brief filed on May 13, 2010.[1] In its Main Brief, OTS presented the evidentiary and legal basis for rejecting AT&T's request to reduce intrastate switched access rates. This timely Reply Brief is supplemental to the Main Brief filed on behalf of OTS and is limited to those matters raised by other parties in Main Brief and will address issues previously identified by OTS that require additional discussion as a result of arguments presented.

II. BURDEN OF PROOF

AT&T filed its Complaint against thirty-one RLECs alleging that the RLEC's intrastate access charges violate Sections 1301 and 3011 of the Public Utility Code. As discussed in the OTS Main Brief, AT&T as the proponent of a rule or order retains the burden of proving the reasonableness of each and every element of its Complaint throughout this proceeding.[2] This standard is well-established and recognized by the Commission and courts.[3] A review of the evidence and arguments presented by the parties demonstrates that AT&T has failed in its burden to prove that the proposed access charge reductions produce just and reasonable rates for ratepayers.

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1 OTS M.B., pp. 2-9.
2 OTS M.B., pp. 9-10.
3 OTS M.B., p. 9.

In addition to the AT&T Complaint, this consolidated proceeding involves an investigation concerning whether access charge reductions are proper.[4] Unlike an adjudicative proceeding, such as the Complaint filed by AT&T where the party initiating the claim must carry the burden of proof, the purpose of an investigation is to gather information. Given the fact finding nature of an investigation, no party bears the burden of proof. The Commission's Order initiating this Investigation stated that, "The USF rate issues (access charge rates, toll rates, local service rates) should be addressed in a full, formal investigation *before* any formal changes to the regulations are proposed and moved through the regulatory process."[5] As such, the Investigation is prospective in nature and designed to discover and produce information before any regulatory changes occurred. However, due to the fact that the Investigation was consolidated with the AT&T Complaint docket, the adjudication of the RLEC access rate reductions is now potentially at hand. Given that the AT&T Complaint triggered this adjudication, AT&T bears the burden of proof.

It is the OTS position, as detailed further below, that AT&T has not met its burden of proving by a preponderance of the evidence that the proposed reduction in access rates is just, reasonable, and in the public interest; therefore, the requested reductions must be denied.

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4 *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund* ("Investigation"), Docket No. I-00040105 (Order entered December 20, 2004).

5 *Id.* at p. 5 (Emphasis added).

III. SHOULD RLECS' INTRASTATE SWITCHED ACCESS RATES BE REDUCED?

A. The Record is Devoid of Evidence Demonstrating that RLECS' Intrastate Switched Access Rates Should be Reduced.

The IXCs have used a variety of adjectives to describe RLEC's access rates, such as excessive[6], extraordinarily high[7], unjust[8], bloated[9] and subsidy laden[10]. However, the IXCs have failed to provide any cost of service analysis demonstrating that the price it pays to originate and terminate calls on the RLEC's network is above cost.[11] As such, the contention that access rates are artificially high is wholly unsubstantiated. AT&T criticizes OTS for not requesting the RLECs to provide cost studies; however, AT&T filed the Complaint and must demonstrate that its access charge allegations are is true.[12] AT&T has failed to provide a cost study showing how and why it should have virtually free and unlimited access to the local loop and why the revenues currently recovered through access charges should be recovered only from basic local exchange service and a transitional Pennsylvania universal service fund (PA USF). In an attempt to achieve revenue neutrality, the IXCs recommend that RLECs can recover the lost revenue by increasing basic local exchange service rates.[13] However, the record is devoid of evidence demonstrating that BLES rates are

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6 AT&T M.B., pp. 2, 25. Verizon M.B., pp. 1, 6.
7 AT&T M.B., p. 6. Sprint M.B., p. 3. Verizon M.B., pp. 11-13.
8 AT&T M.B., p. 17. Sprint M.B., p. 58.
9 Sprint M.B., p. 58.
10 AT&T M.B., p. 21. Sprint M.B., p. 2.
11 OTS M.B., pp. 1,10-11, 14-16.
12 AT&T M.B., p. 36.
13 AT&T M.B., pp. 4, 13. Sprint M.B., p. 36.

below cost, that BLES is being subsidized and that BLES rates should be increased.[14]

Rather than provide an actual analysis, AT&T's position is based on the claim that since the RLEC interstate access rates are generally lower, the intrastate access charge rates should immediately mirror interstate access rates.[15] Likewise, Sprint asserts that the FCC policies and access charges should apply in Pennsylvania.[16] However, the FCC has jurisdiction over interstate service and has its own policies and cost recovery methods that it believes operate in the best interest of interstate communications. Similarly, the Commission has its own policies and cost recovery methods that it believes operate in the best interest of intrastate communications. There is no Commission or FCC requirement that intrastate access rates equal interstate access rates. As such, the fact that there are differences between the two in no way demonstrates that intrastate access rate reductions are warranted.

The most notable difference between intrastate and interstate rates is the intrastate carrier common line ("CCL") charge. The IXCs assert that there is no cost basis for the CCL.[17] OTS disagrees with this contention as it is a per line charge that is designed to recover part of the instate portion of the cost of the local loop. The Commission has consistently identified that the local loop is a joint and common cost, has determined that the cost of the local loop should be recovered

14 OTS M.B. pp. 11-12.
15 AT&T M.B., p. 3.
16 Sprint M.B., pp. 32-36.
17 AT&T MB, p. 23. Verizon M.B., p. 12.

from those services that use it and has refused to eliminate the CCL.[18] This position is appropriate as access service allows AT&T and the other IXCs to use part of the RLEC's network, which it did not build and does not own, without having to build their own network. While IXCs contend that they have no choice but to pay these access charges and complete calls that its customers make, OTS counters that IXCs are free to build their own network and bypass the RLECs completely.[19] Until that occurs, the IXCs should contribute to the cost of the local loop. The Commission has correctly determined that it is a joint cost and has refused to eliminate the CCL as doing so will enable IXCs free and unlimited access to the local loop.

AT&T is critical of OTS for requiring a cost study because the intrastate rate for several RLECs are approximately 4 cents per minute, which is well above the interstate rate.[20] These intrastate rates contain the CCL, which is appropriate given that the IXCs use the local loop. If the carrier common line charge is excluded from the comparison, then Commonwealth, Windstream, North Pittsburgh (Consolidated), and Denver and Ephrata intrastate rates are closer to the interstate rates and CenturyLink's intrastate and interstate rates are the same.[21] Additionally, AT&T cites to Citizens of Kecksburg and Ironton rates in support of its claim that the disparity in the CCL is reason enough to eliminate the charge.[22]

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18 OTS M.B., p. 14.
19 Sprint M.B., p. 24. Verizon M.B., p. 12.
20 AT&T M.B., p. 36.
21 AT&T Rebuttal Ex. 1.
22 AT&T M.B., pp. 23, 39.

This position is unfounded given that these and other RLEC carrier common line charges are the result of settlements, primarily the 2003 settlement which generally made all RLEC traffic sensitive access charges the same as the interstate traffic sensitive rates and recovered the lost revenue through higher CCL rates. Another reason for the higher Kecksburg and Ironton carrier common line charges is that the traffic sensitive switched access rates are below the interstate level.[23] Therefore, while Kecksburg and Ironton CCLs are higher than the other RLECs, the IXCs are currently enjoying lower per minute rates. Accordingly, the disparity between intrastate and interstate access rates is justified and cannot be used as a proxy for cost studies to demonstrate that access charge reductions are warranted.

Moreover, no party has demonstrated any public benefit arising out of access charge reductions. Sprint contends that if RLEC intrastate access rates are reduced, customers will surely benefit.[24] However, other than these vague assertions, Sprint has failed to assert how such benefits will accrue to customers. General allegations that access reform will promote competition and will then flow to customers is not a quantification of such benefits. AT&T attempts to demonstrate such benefits by offering to reduce the current $0.94 per line instate connection fee and prepaid calling card rates in exchange for the requested access charge reductions.[25] However, AT&T has failed to commit to the level or duration

23 AT&T Rebuttal Ex. 1.
24 Sprint M.B., p. 25.
25 AT&T St. No. 1.0, p. 59. AT&T M.B., p. 26.

of these proposed rate reductions.[26] These alleged benefits are illusory and should not sway this Commission as there is no guarantee that end users will experience any benefit. Accordingly, further access charge reductions are not warranted at this time.

B. The Access Charge Reductions Proposed by the IXCs Risk Threatening Universal Service in Violation of Chapter 30.

Section IV(C) of the OTS Main Brief highlighted the preservation of universal service as a primary policy objection of Chapter 30 and a likely casualty of the access charge reductions that do not allow for effective rate rebalancing in accordance with Section 3017(a). This Section of the OTS Reply Brief addresses arguments posed within other parties' Main Briefs which are contrary to Pennsylvania law and the public interest. As set forth below, parties have attempted to portray a regulatory landscape in which carrier of last resort (COLR) duties are fictional or easily satisfied by competitive carriers and the PA USF is replaced with revenues from RLEC competitive services. Both propositions contravene the public interest and the proscriptions of Chapter 30 of the Public Utility Code.

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26 OTS M.B., pp. 12-13.

1. COLR duties exist in rural Pennsylvania and can only be fully satisfied by RLECs.

The Commission should not allow regulatory loopholes to obfuscate the practical reality that only ILECs and RLECs are equipped to bear the burden of COLR duties and that such duties are essential to the continued provision of universal service. In Main Brief, Sprint opines that COLR duties are not exclusive to RLECs in Pennsylvania. AT&T acknowledges that COLR duties exist but argues that IXCs should not be forced to support unquantified COLR duties through access charges. Both arguments miss the point addressed in Section IV(C) of the OTS Main Brief. Because universal service remains a primary policy objective under Chapter 30, the Commission must continue imposing COLR duties upon incumbent carriers, recognize that competitive carriers are ill-equipped to fully satisfy COLR duties, and continue funding such duties through existing rates at least until a viable method for quantifying the cost of COLR duties in Pennsylvania has been established.

Sprint's suggestions that RLECs bear no COLR duties not equally applicable to other carriers is a classic disposition of substance in favor of form. Sprint cites to testimony from the evidentiary hearing to support its claims that that "there are no COLR obligations imposed on RLECs in Pennsylvania which are not equally applicable to other carriers" and that "unlike in other jurisdictions, Pennsylvania does not appear to actually have any specific rules or statutes

imposing COLR obligations at all."[27] Admittedly, many jurisdictions codify the COLR obligation and such codification is not readily identifiable in the Pennsylvania Public Utility Code. However, as discussed at length in the OTS Main Brief, Chapter 30 of the Public Utility Code prioritizes universal service as a primary policy goal.[28] As demonstrated below, only RLECs can effectuate universal service policy in rural Pennsylvania and therefore, only RLECs bear COLR duties in rural Pennsylvania.

Competitive telecommunications services cannot fully satisfy universal service goals because they must remain able to respond to market conditions and abandon service when economically prudent. Competitive markets require such efficiency while the provision of universal service is predicated on the tolerance of some level of inefficiency in order to provide an equitable distribution of service, i.e. service to high cost customers.[29] The fact that the Public Utility Code does not impose a statutory duty to serve specifically and exclusively applicable to RLECs does not change the fact that the Commission cannot effectively force inefficient practices, such as maintaining universal service by building and maintaining high cost rural networks, upon competitive carriers. Such duties have traditionally been

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27 Sprint M.B., p. 57.

28 "This language [from Chapter 30 of the Public Utility Code] prioritizes the longstanding policy of providing universal service throughout the Commonwealth over the goals of competition and advanced telecommunications services. Paragraph 2 of Section 3011 mandates that universal service be maintained as a preliminary matter to the encouragement of advanced services deployment while paragraphs 8 and 12 explicitly set the continued provision of universal service as a limitation upon the goals of competition and advanced service deployment." OTS M.B, p. 17.

29 CenturyLink Main Brief, p. 73. "Universal service policy requires prices for the highest-cost customers to be below cost in support of affordability and comparability objectives. Such policy mandates that some other prices for other customers will be increased to offset the cost of the policy. Thus, the primary purpose of universal service policy is equity, not efficiency." *Id.*

reserved to the ILECs and RLECs providing noncompetitive voice services while competitive carriers remain free to serve and disconnect customers at their discretion. Therefore, regardless of whether the statutory support is explicit or implicit, COLR duties exist only for RLECs in rural Pennsylvania.

Until the Commission accepts a method for determining the cost of providing COLR duties, current access rates should be maintained to ensure that universal service is not threatened. AT&T argues that access rates are unjust and unreasonable because there is no evidence that the RLECs cannot recover the cost of satisfying COLR duties from other existing revenue sources such the current PA USF draws.[30] OTS acknowledges the dearth of cost studies evidencing the cost of COLR service and encourages the Commission to take measures toward establishing a methodology for quantifying such costs. However, as stated in the OTS Main Brief, Chapter 30 of the Public Utility Code strongly emphasizes the necessity of preserving universal service and permitted only revenue neutral reductions in access charges.[31] In passing Chapter 30, the General Assembly did not perceive the unquantified cost of COLR service as a bar to establishing a fixed contribution from access charge revenues through the revenue neutral provision in Section 3017(a). Therefore, the absence of cost studies for COLR duties should not predicate the unraveling of the regulatory compact codified Chapter 30 of the Public Utility Code.

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30 AT&T M.B., p. 33.

31 See *supra* note 17.

2. The concept of a PA USF was not meant to expire and remains essential to any rebalancing of access charge reductions.

In Main Brief, parties have raised two issues relevant to the OTS recommendation that the Commission retain current access rates until a determination has been made regarding the question of expanding the contribution base for the PA USF. As stated in the OTS Main Brief, the PA USF is an important source of revenue for funding universal service and access rates should not be reduced at this time because the resolution of the PA USF issue has been resolved for another proceeding. However, other parties have contended that the PA USF is strictly a temporary or transitional program and that the necessity of an expanding the PA USF is marginalized or eliminated by the availability of other revenue sources, specifically, the RLECs competitive service revenues. Both contentions are misplaced and should not deter the Commission from maintaining current access rates at least until the future structure of the PA USF has been established.

Verizon argued that the Commission does not have the authority to create a new USF, presumably referring to an expanded or revised USF, but failed to produce meaningful support for the claim. Verizon cites to language from the Global Order and ALJ Colwell's June 23, 2009 Recommended Decision for the proposition that the PA USF was a temporary measure.[32] However, as articulated in the OCA Main Brief, this argument confuses the structure of the PA USF with

32 Verizon M.B., pp. 43-44.

the existence of the PA USF. As evidenced by the very language relied upon by Verizon, only the structure of the PA USF was intended to be temporary. In the Global Order, the Commission explained that the "*interim* funding mechanism that we create through this order will function until December 31, 2003, or until the *subsequent... investigation develops a new process...* ."[33] Verizon relied upon similar language from ALJ Colwell's decision where she said "there was no expectation by the Commission that the PA USF would be institutionalized *in its present form*."[34] Clearly, both the Global Order and the RD referenced the form and the specifics of the currently effective PA USF rather than the concept or existence of any future PA USF. Further, in response to Verizon's argument that the size of the PA USF cannot be expanded without a separate rulemaking, OTS points to the preceding Burden of Proof discussion and notes that the adoption and implementation of any recommendation from this investigatory proceeding will likely require a subsequent rulemaking.[35] Taken together, Verizon's arguments do not disturb the Commission's authority to expand the contributions or the contribution base of the PA USF.

Revenue from competitive services is not applicable to rate rebalancing within the context of the revenue neutral requirement for access charge reductions under Section 3017 of the Public Utility Code. Comcast argues that the PA USF should not be increased or expanded because the Commission can maintain

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33 Verizon M.B., p. 43.
34 Verizon M.B., p. 44.
35 See *supra* p. 2.

revenue neutral access charge reductions by balancing the reduction against revenues from RLEC competitive services.[36] This reasoning is anticompetitive, plainly contrary to the provisions of Chapter 30 and must be rejected.

Comcast's argument fails to account for the full scope of policy codified in Chapter 30. In determining that the Commission can rebalance access charge reductions against the RLEC's competitive revenues, Comcast emphasizes the plain language of Section 3017. Specifically, Comcast notes that the Commission has defined the term "revenues" to mean "actual consideration received by the local exchange company for the service it sells" and argues that the Commission may not read anything further into the statute because Section 3017(a) provides no qualification as to any particular source of revenues.[37] While Comcast is correct that Section 3017(a) offers little guidance as to the applicable revenue sources for rebalancing access rate reductions, OTS submits that a contextual reading of Section 3017(a) with Section 3011 supports limiting the available revenues for rate rebalancing to noncompetitive sources.

Balancing the RLECs competitive revenues against access rate reductions unreasonably restricts the ability of RLECs to offer competitive services in

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36 Sprint makes a similar argument, stating that the Commission should consider rebalancing access reductions with RLEC competitive service revenues before entertaining any RLEC requests for relief from other noncompetitive sources. Sprint Main Brief, p. 69. For purposes of this Reply Brief, OTS will frame the discussion in response to Comcast's argument but the principles discussed herein remain applicable to Sprint's contentions.

37 Comcast M. B., p. 9; *but see* Qwest M.B., p. 7. "QCC maintains that revenue-neutrality should continue to mean offsetting intrastate access charge rate reductions through increases in local exchange rates and, if need be, from PaUSF assistance." *Id.*

violation of Chapter 30 and fails to conform to Pennsylvania case law. Chapter 30 establish, *inter alia,* that it is the policy of the Commission to:

> (8) Promote and encourage the provision of competitive services by a variety of service providers *on equal terms* throughout all geographic areas of this Commonwealth without jeopardizing the provision of universal telecommunications service at affordable rates. [Emphasis added]. 66 Pa. C.S. § 3011(8).

Forcing the RLECs to apply revenues earned from competitive services to fund noncompetitive obligations hardly places them on equal terms with other service providers. As stated in the Verizon Main Brief, "in a competitive market a company cannot be expected to maintain competitive service price levels designed to generate contribution for rate regulated services."[38] Rebalancing access charge reductions against RLEC competitive service revenues would hamstring the RLEC's competitive service offerings. To offer competitive services, an RLEC would need to charge rates at levels high enough to cover costs and recover a margin commensurate with the reduced access charges. In effect, the Commission would be regulating the RLEC's rates for competitive services in violation of Chapter 30.[39] Moreover, the Commonwealth Court has found that access charge reductions should be rebalanced by rate increases to other noncompetitive

38 Verizon M.B., p. 27.

39 OTS Stmt. No. 1. "The concept behind the RLEC price cap regulation is that RLECs are free to make as much profit (or absorb as much loss) as they can as long as the RLEC follows its Chap 30 (Now Act 183) Plan." *Id.*

sources.[40] Accordingly, competitive service revenues are not available to satisfy the statutory mandate for revenue neutral access reductions.

Although the Commission may not rebalance access rate reductions with competitive service revenues, action regarding potentially improper subsidization of competitive services with noncompetitive revenues may be required. Sprint raises issues regarding the RLEC's provision of competitive services over ratepayer funded utility plant. To the extent that an RLEC experiences competitive service cost savings from utilizing ratepayer funded plant to provide such service, OTS avers that the RLEC may run afoul of the Chapter 30 policy to "ensure that rates for protected services do not subsidize the competitive ventures of telecommunications carriers."[41] This issue can be addressed within the context of a rulemaking initiated subsequent to the instant investigation.

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40 Verizon M.B., p. 27 *citing Buffalo Valley Telephone Company v. Pennsylvania Public Utility Commission*, 990 A.2d 67 (Pa. Cmwlth. Ct. 2009).

41 66 Pa. C.S. § 3011(4).

IV. CONCLUSION

For the reasons stated herein, the Office of Trial Staff respectfully submits that AT&T has not met its burden of proof. Further, the IXCs' request that the RLECs be required to reduce intrastate access rates to levels which correspond, both in rate levels and in rate structure, to the rates each company assesses for interstate switched access must be rejected.

Respectfully submitted,

Allison C. Kaster
Prosecutor
PA Attorney ID #93176

Adeolu A. Bakare
Prosecutor
PA Attorney ID #208541

Office of Trial Staff
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-7998

Dated: June 3, 2010

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CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Brief** dated June 3, 2010, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

Joel Cheskis, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, Pa 17101-1923

Renaldo L. Hicks, Esquire
Michael Gruin, Esquire
Stevens & Lee
17 North Second Street, 16th Floor
Harrisburg, PA 17101

Norman J. Kennard, Esquire
Regina Matz, Esquire
Thomas Long Niesen & Kennard
212 Locust Street Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500

Susan D. Paiva, Esquire
Verizon
1717 Arch Street
Philadelphia, PA 19103

Benjamin J. Aron, Esquire
Sprint Communications Co.
2nd Floor
2001 Edmund Halley Drive
Reston, VA 20191

Zsuzanna E. Benedek, Esquire
Embarq Corporation
240 North Third Street, Suite 201
Harrisburg, PA 17101

Pamela C. Polacek, Esquire
Barry A. Naum, Esquire
McNees, Wallace & Nurick
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108-1166

Michelle Painter, Esquire
Painter Law Firm, OLLC
13017 Dunhill Drive
Fairfax, VA 22030

Steven C. Gray, Esquire
Office of Small Business Advocate
300 North Second Street
Suite 1102 Commerce Building
Harrisburg, PA 17101

Bradford M. Stern, Esquire
Rothfelder Stern LLC
625 Central Avenue
Westfield, NJ 07090

Christopher M. Arfaa, Esquire
150 North Radnor Chester Road
Suite F-200
Radnor, PA 19087-5245

Demetrios G. Metropoulos, Esquire
Mayer Brown LLP
71 S. Wacker Drive
Chicago, IL 60606

Garnet Hanley, Esquire
T-Mobile
401 9th Street, NW
Suite 550
Washington, DC 20004

John F. Povilaitis, Esquire
Matthew A. Totino, Esquire
Ryan Russell Ogden & Seltzer, PC
800 North Third Street
Harrisburg, PA 17102-2025

Honorable Kandace F. Melillo
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Alan Kohler, Esquire
Deanne M. O'Dell, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
P.O. Box 1248
Harrisburg, PA 17108-1248

Theresa Cavanaugh, Esquire
John Dodge, Esquire
Davis, Wright, Tremaine, LLP
1919 Pennsylvania Avenue
Suite 200
Washington, DC 20006

Allison C. Kaster
Prosecutor
Office of Trial Staff
PA Attorney I.D. #93176