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, *et al.*, Complainant	:	
v.	:	Docket Nos. C-2009-2098380, *et al.*
Armstrong Telephone Company - Pennsylvania, *et al.*, Respondents	:	

PETITION FOR RECONSIDERATION AND CLARIFICATION SUBMITTED BY AT&T

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PUBLIC VERSION

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> The RLECs have failed to establish a *prima facie* case. The RLECs also have not made an adequate showing how their existing intrastate carrier access charges continue to balance the interests of the competitors for reasonably priced intrastate access to the RLECs' networks while maintaining affordable universal service in accordance with applicable Pennsylvania and federal statutory directives.[1]

AT&T[2] applauds the Commission for recognizing that RLEC access charges need to be reduced, and that the robustly competitive Pennsylvania local exchange market warrants the elimination of the rate cap and the establishment of a residential rate benchmark of $23/month. But there is one bedrock principle the Commission's decision ignores – consumers control the market, not the Commission. In fashioning an RLEC-wide $2.50 Carrier Charge – something that was never discussed anywhere in the record – the Commission has effectively put its thumb on the scale, distorted competition, and decidedly tilted the market against IXCs (and their customers) and in favor of the various

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1 July 18, 2011 Opinion and Order at p. 104.

2 This Petition is filed on behalf of AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh and TCG New Jersey, Inc. (collectively "AT&T").

technologies that will not have to recoup the $2.50 Carrier Charge in their customer pricing, even though those other technologies use the loop every bit as much, if not more, than the IXCs.

It's a very big thumb. If the Commission's Carrier Charge stands, between now and the day of the final reduction of the Commission's Order (Phase 3), Pennsylvania consumers purchasing services subject to the Carrier Charge would be subsidizing the RLECs by ***at least $210 million*** in excess of the above-cost, fully compensatory interstate access rates of the RLECs.[3] In other words, consumers and businesses in Philadelphia, Pittsburgh, and the rest of the Commonwealth will be asked to pay over ***$210 million*** too much, merely to subsidize RLECs and insulate them from more efficient competition. In addition, each and every year after the full reductions from the Commission's Order are implemented, customers will continue to overpay a subsidy of approximately $30 million.

In establishing this new subsidy scheme – apparently forever, because there is no mechanism in the Commission's Order to ever phase down and eliminate the new Carrier Charge – the Commission may think it is protecting the RLECs, or engaging in some acceptable form of regulatory gradualism. But "protection" and "gradualism" are monopoly notions that, in this instance, are well past their prime. The RLECs have been on notice for more than a decade that access charges will be reduced. And the notion of gradualism is laughable in this context given that more than fifteen years will have passed between the *Global Order* and full implementation of this Order in 2015. Rather than "protecting" RLECs, all the Commission is doing with this Order is picking market winners and losers and sending Pennsylvania consumers the wrong pricing signals.

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[3] See Attachment 1 hereto, which provides the calculations to support this amount.

To be clear, there is no consumer benefit to a $2.50 Carrier Charge. It is elementary economics that all costs flow through to end-user consumers. Thus, while the Commission seems to think it is passing costs onto the IXCs instead of end user customers, the Commission is merely maintaining discrimination – and, in the case of those RLECs that previously did not even have a Carrier Charge, creating it – without a corresponding benefit to customers. The evidence conclusively proved that the maintenance of a Carrier Charge is harmful to consumers in many different ways – by paying higher prices, by reducing innovation, by reducing customer choice, and by distorting competition rather than allowing the competitive market to work as it should. After pondering these issues for more than a decade, the Commission can and must do better.

The Carrier Charge is not the only issue the Commission must revisit. The Order finds that the RLEC access charges are unjust and unreasonable and therefore must be reduced, but then allows those illegal rates to remain in place for an additional nine months (i.e. 256 days) before the first reductions. There is no good reason for such a long delay, and the Commission should revise its Order and direct that the first reductions occur no later than 60 days from the date of the Order.

Likewise, there is no good reason to exclude AT&T and other interested parties from reviewing RLEC tariff filings and supporting documentation at each step of the access reductions. AT&T and other parties to this case bring a command of the factual record and extensive industry experience. The Commission should revise its Order and require the RLECs to provide their compliance tariffs and calculations to AT&T and other interested parties at the same time the information is provided to the Bureau of

Fixed Utility Services and the public parties, and to clarify that AT&T and other interested parties have a right to ask questions and provide comments to help ensure the RLECs implement the reductions as the Commission has ordered.

Finally, the Commission should clarify that once an RLEC's access rate reaches interstate parity, the RLEC has an obligation to continue the parity relationship; when an RLEC changes its interstate rate, it should change its corresponding intrastate rate element at the same time so that it continues to match the interstate rate.

STANDARD OF REVIEW

A Petition for Reconsideration pursuant to 66 Pa. C.S. § 703(g), "may properly raise matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part." *Duick v. Pa. Gas and Water Co.*, 56 Pa. PUC 553, 559 (Dec. 17, 1985). In a Petition for Reconsideration, a party should raise issues that they may not have had an opportunity to address prior to the issuance of the Commission's Order. *Duick*, 56 Pa. PUC at 559.

AT&T's Petition more than satisfies the standards for reconsideration. With respect to the $2.50 Carrier Charge ("CC"), there was not one single mention in the record of $2.50 as the proper rate for any RLEC's CC. No party made a proposal to bring all RLECs' CCs – or for that matter, any RLEC's CC – to $2.50. Instead, the $2.50 rate appears to have been pulled out of thin air. AT&T had no opportunity to rebut or explain to the Commission that $2.50 is not a valid or legal charge for the CC. Thus, AT&T has had no opportunity to address this rate prior to the issuance of the Commission's Order, and therefore the *Duick* standard is most certainly met. AT&T must have the ability to address it for the first time in this Petition. This Petition shows that a $2.50 rate (which is

not even reached for four years) leaves a massive and perpetual subsidy embedded in the RLECs' intrastate access rates, and goes well beyond what could be deemed a "reasonable" or "fair" contribution to the local loop.

Similarly, the compliance process adopted by the Commission and its timing were first discussed in the Commission's July 18 Order, and were not a result of any party's proposal. Therefore, AT&T has had no opportunity to address those aspects of the Commission's decision. No party ever proposed to exclude certain parties from the compliance phase, and the Commission provided no explanation as to why parties should be kept out of this critical step in reform. In addition, no party proposed to impose a 256 day implementation process before the first access reductions take place (and this was not part of ALJ Melillo's recommendation). Thus, AT&T saw this unnecessarily elongated and convoluted process for the very first time in the Commission's Order and has had no chance to address it prior to this Petition. Again, this meets the *Duick* standard for reconsideration.

Finally, no party proposed that the Commission implement parity between intrastate and interstate access rates on a one-time basis only. The only proposals to implement parity were to maintain parity due to the anti-competitive and harmful arbitrage implications of having different intrastate and interstate access rates.

ARGUMENT

I. THE COMMISSION'S DECISION TO CREATE A $2.50 CARRIER CHARGE APPLICABLE TO ALL RLECS IS ARBITRARY AND CAPRICIOUS, AND IS NOT SUPPORTED BY THE RECORD.

The Commission's decision in this case to have all RLECs impose a $2.50 Carrier Charge is directly contrary to prior Commission precedent.[4] Although the Commission may have previously supported the theory that loops are joint and common costs, it has never found that the Carrier Charge is anything but a subsidy, or that it is required to provide a "fair share" contribution to the loop. To the contrary, the Commission recognized in the 1999 *Global Order* that the Carrier Charge is a subsidy element, and that it "is the largest contributor to local service rates not directly related to costs."[5] At that time, the Commission specifically noted its intent to further reduce, and then eliminate the CC, indicating that it would initiate an investigation by January 2001 in order to examine the elimination of the CC and stating that the sooner that charge was reduced and even eliminated, "the better it would be for the competitive environment in Pennsylvania."[6] Over a decade later, that has yet to happen.

In 2004, the Commission again recognized the need to reduce and ultimately eliminate the Carrier Charge. Specifically, in an access case investigating Verizon's intrastate access rates, the Commission reduced Verizon-North's (formerly GTE) CC to $0.58. At that time, the Commission did not find that a CC of $0.58 was insufficient to "contribute" to the costs of Verizon's loops. To the contrary, the Commission was

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[4] It is also inconsistent with state commission precedent across the country. As shown in Exhibit 1 to AT&T's Statement 1.0, states that are implementing intrastate access reform are not maintaining a Carrier Charge, but are in fact implementing true parity between interstate and intrastate rates. This Order places Pennsylvania as an outlier – one for which the Commission should not take pride.

[5] *Re Nextlink Pennsylvania, Inc.*, Docket No. P-00991648; P-00991649, 93 PaPUC 172 (September 30, 1999)("*Global Order*") at p. 13.

[6] *Id.* at p. 56.

concerned that $0.58 was too high, stating that by maintaining a CC at that level, "a major aspect of the *Global Order* involving the possible elimination of the Carrier Charge and removal of all implicit subsidies from access charges were not resolved in this proceeding by the ALJ."[7] The Commission then remanded the case back to the ALJ, declaring that "based on our previous goal in the *Global Order* that we may eventually dissolve the Carrier Charge, we believe it is in the best interest of the public for the ALJ to address and recommend a plan that addresses further reductions or even a complete elimination or phase-out of the Carrier Charge in the next phase of the investigation."[8] This historical record cannot be construed as a long-standing policy of supporting a Carrier Charge – in fact, the opposite is true.

As the Commission recognized in its July 2011 Order in this case, the evidence showed that there are some RLECs whose service areas are more densely populated than Verizon. For instance, Ironton Telephone Company has a density of 235.6 households/square mile – 43% more densely populated than Verizon-PA's service area. D&E has a density of 197 households/square mile – 20% more densely populated than Verizon. North Pittsburgh Telephone Company has a density that is essentially equal to Verizon's.[9] It is undisputed that density (and thus loop length) is the primary driver of the cost of the loop. Thus, if the Commission concluded that a CC of $0.58 was too high

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[7] Opinion and Order, Docket No. C-20027195, July 28, 2004. There is no evidence in the record in this case showing that each and every RLEC has loop costs that are essentially four times higher than Verizon's so as to establish or justify a Carrier Charge that is four times higher. As the Commission itself noted, there was no cost information placed into the record at all regarding the RLECs' joint and common costs. Of course, the record in the Verizon access case at Docket No. C-20027195 demonstrates that even a CC of $0.58 is too high and must be eliminated.

[8] *Id.* at p. 20. As a result of the remand, in 2005 ALJ Fordham recommended the complete elimination of Verizon's CC. The Commission did not act on that recommendation, but stayed the case to wait on the FCC. After years of inaction, the Commission re-opened the case, and the most recent record in that case conclusively demonstrates that the ALJ was right in 2005, and Verizon's CC must be eliminated.

[9] July 18, 2011 Opinion and Order at p. 65.

for Verizon in 2005, it is clearly erroneous for the Commission to order a CC (that will not even be in place until 2015) of $2.50 for RLECs that – based on the record evidence – have loop densities that are higher than, and accordingly must have loop costs that are even lower than, Verizon's.[10]

Worse, the Commission's Order would actually permit some carriers to substantially *increase* access charges, despite this Commission's very clear policy over the past decade to move in the opposite direction. In 2004, the Commission said, "It is now the Commission's policy to promote competitive local markets by bringing the ILEC's access charges closer to costs."[11] In 2008, the Commission said:

> It has been, and continues to be the intention of this Commission, since the *Global Order* of 1999, to gradually lower intrastate access charges so as to allow for greater competition in the intrastate and interexchange toll markets.[12]

But notwithstanding this precedent, the July 2011 Order gives RLECs that currently do not even have a CC – and did not ask for one in this case – the right to establish that charge, and at the full $2.50 level. And the Order makes it clear that the Commission expects those carriers to fully avail themselves of that opportunity. This action simply cannot be reconciled with the Commission's prior decisions.

In addition, the Commission's decision on the Carrier Charge is contrary to FCC precedent. The FCC has called on states to demonstrate their ability to manage the downward transition to cost-based intercarrier compensation, including intrastate access. It is thus incomprehensible for this Commission to actually order access increases. The Commission's finding that $2.50 is a proper Carrier Charge rate is patently erroneous, is

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10 Comcast Statement 1.0R (Pelcovits Rebuttal) at p. 3.
11 December 2004 Order, Docket No. I-00040105, p. 3.
12 April 2008 Order, Docket No. I-00040105, p. 26.

not supported by the record, is directly contrary to this Commission's own prior decisions, and it must be reversed.

A. The Commission's Decision To Create A $2.50 Carrier Charge Is Not Supported By The Record

In adopting a $2.50 Carrier Charge uniformly for all RLECs, the Commission acknowledged there was no record evidence to support it. Indeed, the Commission stated that "the record is *minimal* in terms of RLEC support for local loop costs and appropriate cost allocation to users...."[13] But even this description of the available record support is little more than wishful thinking. The Commission's *only* basis for maintaining a CC was the OCA's Direct Testimony discussing the general concept of loop allocation. However, there is absolutely nothing in that testimony to support $2.50 as a proper CC rate – ***to the contrary, the OCA proposed to eliminate that charge altogether.*** In fact, there is nothing in any party's testimony that even mentions $2.50 as a proper CC rate for any RLEC, much less all of the RLECs.

The only proposals introduced in the case with respect to the CC requested either that it be maintained at current levels (RLECs, OTS and OSBA), that it be eliminated entirely (OCA, AT&T, Comcast and Sprint), or that it be reduced to the level of Verizon's CC, which is $0.58 (Verizon and Qwest).[14] Rather than adopting any of these proposals, the Commission, on its own, and with no record evidence in support, simply pulled out of thin air its Commission-created Carrier Charge of $2.50. The Commission's rationale – that the CC at this level is necessary to ensure that ***all*** users of the local loop contribute their "fair share" of loop costs – likewise is illogical and unsupported by the record.

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[13] July 18, 2011 Opinion and Order at p. 144, fn. 140 (emphasis added).

[14] *Id.* at pp. 80-87.

B. The Commission's Decision Discriminates Against IXCs And Their Customers.

With respect to the initial reason for the Commission decision, the Commission claims that it has long been its policy "that the RLECs' intrastate carrier switched access service NTS joint and common costs primarily associated with the RLECs' local loop plant must be recovered from ***all users*** of the RLECs' network."[15] The Commission also refused to eliminate the CC (and created one for those carriers that did not ask for it) under the justification that "existing precedent and policies mandate the sharing of the NTS joint and common costs by ***all the users*** of the RLECs' intrastate access services..."[16] The Commission then found that maintaining a CC of $2.50 will ensure that the recovery of the RLECs' joint and common loop costs "is ***shared by all those who use the RLECs' network.***"[17]

The problem with the Commission's decision, however, is that it does not do what the Commission claims. Not even close. Instead of imposing the Carrier Charge on "all those who use the RLECs' network," the Commission has imposed a substantial cost on only one type of user – IXCs and their customers. Wireless carriers use the RLECs' loop.[18] VoIP carriers use the loop. RLECs themselves use the local loop through their broadband network.[19] Yet, the *only* carriers that the Commission burdened with its created-from-whole-cloth $2.50 Carrier Charge are the IXCs.

As the Commission acknowledged, it does not have jurisdiction to impose its Carrier Charge scheme on some of these technologies, even if it wanted to. It is this

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15 *Id.* at p. 118 (emphasis added).
16 *Id.* at p. 119 (emphasis added).
17 *Id.* at p. 120 (emphasis added).
18 *Id.* at p. 105.
19 *Id.* at p. 12.

exact discrimination that led the OCA to find that the Commission must eliminate the CC given the dramatic changes to the competitive landscape in Pennsylvania. Specifically, the OCA testified that because the Commission cannot force "all users" of the loop to contribute, the CC must be eliminated "in order to create greater fairness among the carriers that interconnect with the RLECs" and that elimination of "the carrier charge creates greatest fairness because not all long distance carriers pay it."[20] Simply put, the Carrier Charge is discriminatory, and because the Commission does not have jurisdiction to impose it on "all users," the only way to cure the unjust discrimination is to eliminate the charge.

Even without the Carrier Charge, the rates IXCs must pay to originate and terminate calls to ILEC customers will be higher than what other technologies/other competitors pay, but including the Carrier Charge results in extremely discriminatory and unjust rates[21]:

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[20] Direct Testimony of Dr. Robert Loube, OCA St. 1.0, Docket Nos. I-00040105, C-2009-2098380, *et al.*, filed January 20, 2010, at 11-12. Although OCA characterized this as part of a comprehensive proposal, the fact that the Commission did not adopt that proposal does not undermine the soundness of OCA's reasoning for eliminating the Carrier Charge.

[21] Interstate parity rates in the chart are based on 12/31/2010 tariffed interstate access rates; 2010 lines from AT&T Rebuttal Testimony, Revised Attachment 5; and 2008 Minutes of use from GMZ-9 to PTA Direct Testimony and CTL data from AT&T Rebuttal Testimony Attachment 4. Although MOU and line volumes will change by the time Phase 3 of the Commission's order is implemented, these rates are a good approximation based on the evidence on the record.

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AT&T and other IXCs cannot reasonably be expected to compete against e-mail, social networking web sites, wireless carriers, broadband and VoIP providers when IXCs alone must pay a $2.50 "contribution" that their competitors do not have to pay.[22]

Pennsylvania consumers are the ones who will suffer as a result of the Commission's decision. Huge access subsidies reduce RLEC incentives to become more efficient, to innovate, and to reduce prices. Likewise, when IXCs are forced to pay an unjustified and elevated Carrier Charge, long distance prices are higher than they otherwise would be, and consumers who want to use wireline long distance either pay more than they should or are driven to alternatives. That fact is not in dispute. AT&T presented uncontroverted evidence that its wireline traffic is significantly eroding,[23] and much of this can certainly be attributed to the fact that IXCs face artificially higher costs than their competitors. Ironically, by driving away customers from traditional wireline service, high access charges are actually eroding the very subsidies they are intended to generate. That is bad news for IXCs, bad news for the RLECs who are seeing their access minutes and revenues decline (and even seeing consumers "cut the cord" and leave the RLECs' wireline networks altogether), and, most importantly, bad news for those Pennsylvania consumers who may prefer wireline long distance but are being driven to other alternatives because the Commission will maintain unreasonable "contributions" from IXCs to the RLECs.

Even the RLECs themselves have acknowledged that intrastate access rates must be reduced closer to cost. Specifically, Buffalo Valley and Conestoga previously argued

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[22] A $2.50 Carrier Charge is $30 annually per line. If applied to approximately 1 million RLEC lines, this generates a nearly $30 million recurring subsidy to the RLECs paid by IXCs and their customers alone. Of course, as toll minutes decline over time, the per minute effect of the $2.50 CC will actually increase, exacerbating the inequity even further.

[23] AT&T Statement 1.0 at p. 50.

that "rate subsidization is not sustainable in a competitive environment."[24] They also stated that "***implicit subsidies in access charges must be removed*** and access services must be based primarily on the cost to provide the service."[25] CenturyLink filed a petition with the FCC in which CenturyLink acknowledged that "reduced intrastate switched access charges would benefit carriers, and ultimately their end-user customers, by promoting greater competition for intrastate toll calling."[26] Thus, the evidentiary record demonstrates that creating a discriminatory $2.50 CC is harmful to competition and consumers.

C. The Commission's Decision Is Not Supported By Any EvidenceThat $2.50 Is A "Fair" Or "Reasonable" Contribution To The Loop.

The Commission cited to 47 U.S.C. § 254(k), stating that "both this Commission and the FCC 'shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service *bear no more than a reasonable share of the joint and common costs* of facilities used to provide those services.'"[27] There is no evidence in the record to support the notion that IXCs and their subscribers must incur $2.50 per line per month in RLEC subsidy obligations to satisfy that standard. The Commission simply made up the $2.50 number on its own, out of the blue.

In contrast, the evidence that was introduced in the record of this case proved that intrastate access charges will continue to provide a large contribution towards the

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[24] Buffalo Valley Telephone Company Revenue-Neutral Rate Rebalancing Filing for Year 2003, Docket No. R-00038351, April 30, 2003 ("BVT 2003 Filing"), p. 11; Buffalo Valley Telephone Company Revenue-Neutral Rate Rebalancing Filing for Year 2002, Docket No. R-00027256, April 30, 2002 ("BVT 2002 Filing"), p. i; Conestoga Telephone and Telegraph Company Revenue-Neutral Rate Rebalancing Filing, April 30, 2002; Docket No. R-00027260 ("Conestoga 2002 Filing"), pp. ii, 12.

[25] *Id.* (emphasis added).

[26] FCC WC Docket No. 08-160, Petition of Waiver of Embarq, at p. 27.

[27] July 18, 2011 Order at p. 144 (emphasis added).

RLECs' joint and common costs – certainly larger than what wireless and other technologies provide – if *true* interstate parity is adopted, including the elimination of the CC. ALJ Melillo recognized this when she found that there is nothing in the record to show that IXCs will not be paying their "fair share" under AT&T's proposal to reduce all intrastate access rates to interstate levels.[28] Contrary to what the Commission implied, the IXCs will not be getting a "free ride" by fully reducing access charges to interstate parity, which includes the elimination of the CC. Instead, the IXCs will be getting a fair chance to compete.

The evidence, which the Order ignores, proves that bringing the RLECs' intrastate rates to interstate parity would maintain an average rate of **BEGIN PROPRIETARY END PROPRIETARY** cents per minute for the RLECs (including CenturyLink) and **BEGIN PROPRIETARY END PROPRIETARY** cents per minute for CenturyLink.[29] These interstate rates are ***substantially*** above cost – in fact, many times above cost. No party disputes that reciprocal compensation rates are an accurate proxy for cost, and the record also was undisputed that reciprocal compensation rates range between 0.07 cents and 0.28 cents.[30] Given that terminating a call is materially the same whether the call is a long distance or a local call, if a RLEC recovers its costs through its Commission-approved or voluntarily negotiated reciprocal compensation rates (and no RLEC asserted it is not recovering its costs), then setting rates above reciprocal compensation would also be above the RLECs' incremental costs. This means that there is still a contribution of anywhere from 100 to over 1300 percent

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28 R.D. at pp. 90-91.

29 See footnote 21 *supra*.

30 *Id.* at p. 39.

towards the local loop by setting the RLECs' intrastate rates at full parity with interstate rates. The Commission does not explain why this significant contribution is not reasonable, or why it is not a "fair share" (especially when it is still much larger than the zero "share" borne by competing technologies).

Further, the Commission failed to provide any evidence that a $2.50 CC is required for the RLECs to recover their loop costs. The evidence presented about the RLECs' loop costs show that they are fully recovered by a combination of the RLECs' receipt of state USF, federal USF, subsidies (or contributions) that remain with substantially above-cost interstate access rates, as well as retail rates to end users. As just one example, CenturyLink recovers a substantial portion of its loop costs through federal universal service funding. In fact, after deducting what CenturyLink receives from the federal USF, its remaining average loop cost is only $19.78/month.[31] CenturyLink receives approximately $6 million from the state USF each year, charges its basic local retail customers $18/month, and receives over $50/month from most of its customers. It is impossible from this record to discern how the Commission arrived at a conclusion that CenturyLink still needs a $2.50 CC to recover its joint and common costs, or that the IXCs' payments of interstate rate levels would not be a sufficient "contribution" to the local loop.

CenturyLink is just one example. Given that the RLECs did not bother to put their joint and common costs into the record, the Commission does not know what their joint and common loop costs even are, and it is nothing short of a mystery how the Commission could conclusively determine that $2.50 is a "fair" contribution. In contrast, AT&T presented evidence showing the wide variance in the RLECs' loop costs as

[31] See Attachment K to AT&T Statement 1.0.

reported to the FCC. Specifically, AT&T's Exhibit K to its Direct Testimony shows that after receipt of federal universal funds, the RLECs' loop costs range from $11.67/month to a high of $28.72/loop. Yet the Commission never explains why a uniform $2.50/month should apply to all RLECs that clearly have widely varying loop costs and that charge a broad range of different local rates to their customers, including some at only about half of the Commission's new $23 local benchmark. Obviously, the "contribution" percentage will not be the same for each RLEC and the Commission never provides any justification for having IXCs contribute different percentages towards different RLECs.

One of the more troubling aspects of the Commission's policy decision to adopt a $2.50 CC is that the Commission actually permits carriers that voluntarily chose not to have a CC to now substantially increase their intrastate access rates. This decision is a problem, first, because it goes in exactly the wrong direction. The Commission never explains why raising intrastate access rates at a time when they should be decreasing can possibly be consistent with this Commission's decade-long policy to reduce access rates. This decision is also a problem because, yet again, it is not based on any evidence. The RLECs that do not have a CC did not once ask to establish a CC as part of this case; therefore AT&T had no opportunity to address increasing a carrier's intrastate rates so significantly. Those carriers without a CC provided no evidence that their loop costs are not being recovered or that IXCs are not paying a "fair share" of the RLECs' loop costs through the current access rates.

For example, Frontier-PA has a loop cost of $11.67 after FUSF receipts. To recover that cost, Frontier-PA receives monthly retail charges from its residential end

users of $16.49/month. In addition, Frontier-PA also receives state universal service funds of over half a million dollars a year. Frontier-PA does not have a carrier charge, presumably because it does not need one given the other "contributions" it receives towards its loop costs. It defies all logic that the Commission would allow Frontier to increase its intrastate access rates by a whopping $2.50 per month per line, especially when Frontier never even asked for any increase and the evidence does not support the Commission's claim that such a "contribution" is justified.

D. The Commission Ignored Conflicting Testimony Regarding Loop Allocation.

The Commission correctly rejected CenturyLink's highly flawed customer survey based in part on the fact that CenturyLink's witness had previously taken a contrary position, and testified that elasticity studies cannot be relied upon.[32] The Commission found that CenturyLink's "contradictory testimony erodes Dr. Staihr's credibility in proffering a different conclusion with regard to CTL's survey in this case."[33] Similarly, the Commission found that CenturyLink failed to provide empirical data to support the conclusions in its survey. However, when it came to the CC, the Commission ignored CenturyLink testimony that is directly contradictory to the Commission's justification for that charge.

Specifically, the record included CenturyLink's prior testimony that the Commission's loop allocation theory is highly flawed and improper. In the case before ALJ Colwell, CenturyLink stated that "the cost causation to [CenturyLink] for the loop is

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32 July 18, 2011 Opinion and Order at p. 133.

33 *Id.*

basic local exchange service."[34] Even more compelling, the record also included the prior testimony of CenturyLink's Dr. Staihr that:

- An "allocation method where a customer pays for part of a loop every time he or she makes a toll call through access charges...is inefficient, uneconomical, and unfair..."[35]

- Requiring customers to pay for part of the loop every time they make a toll call through access charges "requires certain individuals to cover more than their fair share, and allows other individuals something of a free ride."[36]

- CenturyLink's witness testified that a loop allocation method such as that adopted by the Commission here "is inefficient, that it is not consistent with the goals of the 1996 Telecom Act, and that it is not unsustainable in a competitive market. Every time a customer makes a toll call he or she pays a part of the loop cost through access charges. It is simply uneconomical and unfair to recover loop costs this way."[37]

- "With regard to the claim that the loop is a common cost, it is [CenturyLink's] position, ***a position supported by the majority of today's leading regulatory economists,*** that the cost of the loop is not a common or shared cost, but a direct cost of access to the public switched network."[38]

The Commission should not have ignored CenturyLink's prior testimony on this issue, which clearly shows that access charges should not be used to subsidize loop costs, especially now that IXCs must compete against e-mail, internet access, cable telephone, VoIP providers, wireless carriers and other technologies and service providers that are not being saddled with a subsidy burden. The Commission's task is to ensure that competition is full and fair, not to tilt the playing field in favor of one set of competitors. Reducing access rates to interstate parity will accomplish that critically important policy objective, and still ensure that IXCs provide a substantial "contribution" towards the

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[34] Embarq Statement 3.0 (Londerholm Rebuttal), Docket No. I-00040105 before ALJ Colwell, January 15, 2009, p. 7.

[35] Exhibit CTL Panel-8 to CenturyLink Statement 1.2 (Lindsey/Harper Rejoinder), Rebuttal Testimony of Brian K. Staihr on behalf of Sprint, May 24, 1999, Kansas, p. 6.

[36] *Id.*

[37] CTL Panel-8, Rebuttal Testimony of Brian K. Staihr, July 13, 2001, Kansas, p. 9.

[38] *Id.* p. 8 (emphasis added).

RLECs' joint and common costs. However, creating a $2.50 CC keeps the playing field unlevel, ensuring that IXCs remain at an unfair competitive disadvantage, to the ultimate harm of consumers.

Struggling for a justification for the $2.50 Carrier Charge, the July 2011 Order suggests it is necessary to avoid placing too heavy a burden for supporting the loop on end users.[39] However, this concern, and the Commission's purported "fix" to address it, make no sense. Who does the Commission thinks pays the IXCs' costs? *The end users.* The IXCs do not have a secret "fund" that can be used to help pay for the RLECs' loops – as with any business, those costs inevitably are passed onto the customers. CenturyLink actually discussed this exact issue in prior testimony and noted that a regulatory mandate that forces end users to pay for the loop through access costs unfairly burdens some customers more than others without any justification.[40]

The Commission's decision to keep a disparity between interstate and intrastate rates also ignores the fact that all parties except for Verizon and Qwest agreed that parity was a good ultimate goal. First, as the ALJ found, unified rates can reduce RLEC billing costs.[41] Moreover, adopting symmetrical rates and rate structures will help to avoid or mitigate problems associated with "call pumping," "phantom traffic" and other arbitrage schemes that have arisen as a result of the wide disparity in interstate and intrastate

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[39] July 18, 2011 Order at p. 120.

[40] CenturyLink provided a hypothetical to demonstrate why a loop allocation theory such as the Commission adopted here is so discriminatory to customers themselves. CenturyLink assumed two customers – Ms. White and Mr. Brown. Both pay $16.00 for basic residential service. However, Ms. White uses the loop 370 minutes – 350 for local and 20 for toll. Mr. Brown uses the loop for 250 minutes – 150 for local and 100 for toll. CenturyLink testified that because access is used as a "contribution" to the loop, "Mr. Brown is paying more in loop costs every month than Mrs. White despite the fact that the costs of their loops are the same." In addition, "Mr. Brown is using his local loop less than Ms. White but paying more." As CenturyLink testified, this situation is "inequitable because there is no justifiable reason whatsoever that Mr. Brown should pay more in loop costs every month than Ms. White." CenturyLink Statement 1.2, Exhibit CTL Panel 8, July 13, 2001 Kansas Testimony, pp. 10-11.

[41] R.D. Finding of Fact #33.

access rates and between access rates and cost.[42] OCA witness Dr. Loube testified that the differential between interstate and intrastate access rates invites regulatory arbitrage in which carriers disguise intrastate traffic as interstate traffic for the purpose of avoiding the higher intrastate rates.[43] CenturyLink identified this arbitrage as "among the most serious problems affecting rural price cap carriers."[44] Indeed, CenturyLink argued to the FCC that differences between intrastate and interstate switched access rates are causing "artificial arbitrage" that is "harming competition and investment" in several ways, including "harming network investment and innovation."[45] The RLECs themselves noted the problem of tariff arbitrage in their testimony to the Commission in the *Global Order* proceedings.[46] Creating a $2.50 CC on the intrastate level, which does not exist on the interstate side, does not fix the disparity and arbitrage problems identified in the record.

II. THE COMMISSION MUST CLARIFY THE MANNER IN WHICH THE CARRIER CHARGE IS TO BE REDUCED.

Throughout its Order, the Commission makes clear that the RLECs must reduce traffic sensitive rates in three steps – 40% in phase 1, 35% in phase 2 and 25% in phase 3. Although AT&T believes the same is true for the Carrier Charges that are above $2.50, the Commission's Order is not as clear on this point. Therefore, whether the Commission determines to eliminate the CC altogether (as it should) or retains it (as it should not), the Commission should clarify that the CC must be reduced (either to zero, or reduced to $2.50, respectively) in the same three percentage steps as traffic sensitive rates.

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42 R.D. Finding of Fact #36.
43 OCA Statement 1.0 at p. 60.
44 FCC WC Docket No. 08-160, Petition of Waiver of Embarq, at p. 20.
45 *Id.* at 15-16.
46 *Global Order* at pp. 51-52.

In Annex C, the Commission describes the manner in which access reductions must occur. In Subsection B of Annex C, the Commission describes the reduction in the Carrier Charge as follows: "All RLECs that currently have a CC greater than $2.50 per line/month are directed to gradually reduce it to a level of $2.50 per line/month *in conjunction with the gradual change of their respective Traffic-Sensitive (TS) intrastate access rate elements to mirror their interstate counterparts.*" (Emphasis added). Subsection D discusses, among other things, that the implementation plan shall be revenue neutral, occur over three phases/four years, at which point the CC rate shall not exceed $2.50 per line per month. In that subsection, the Commission states that "RLECs will accomplish the mirroring of interstate TS switched access rates by reducing the difference between their interstate TS switched access rates and their intrastate TS counterparts by 40% in the first year, 35% within the subsequent 18 months after the first year's effective date, and 25%, or any remaining difference, within the 18 months after the second phase effective date." This subsection also states, "Likewise, depending upon the current CC, some RLECs will be required to reduce the CC if this rate is above $2.50 per line per month..." But the same 40/35/25 percentages occurring at phases 1/2/3 are not explicitly mentioned in that particular paragraph with respect to the reduction of the CC.[47]

In order to avoid any confusion on this issue, there are <u>two</u> clarifications that need to be made with respect to the reduction in the Carrier Charge. First, the Commission

[47] However, on the next page of Annex C, the Commission describes each phase of the reduction, and in Phase I, the Commission states: "Within thirty (30) days from entry of the Commission Order finalizing the rate rebalancing template, RLECs shall commence with implementation of the initial phase (40% reduction) towards attaining a CC of $2.50/line/month and mirroring interstate Traffic Sensitive access charges." Thus, in this section of Annex C, it appears as though the Commission intended the CC and TS rates to be reduced in the same manner – 40% in phase 1, 35% in phase 2 and 25% in phase 3.

must clarify that the Carrier Charge rate reductions are to occur independently of reductions in the Traffic Sensitive rates. Thus, even if a RLEC does not need to reduce its Traffic Sensitive rates (either because – as in the case of CenturyLink – the intrastate TS rates are already at parity, or because the intrastate TS rates are below the interstate TS rates), that RLEC must still reduce its Carrier Charge at each of the three phases. Second, the Commission should make clear its intent that the CC rates are to be reduced in the same 40/35/25 percentages delineated for the TS rates. Thus, each RLEC with a CC must calculate its Carrier Charge reduction (either towards zero as discussed herein, or $2.50) and then reduce it by 40% in phase 1, by 35% in phase 2 and by 25% in phase 3. These clarifications will avoid any unnecessary delay in implementing the Carrier Charge access reductions required by the Order.

III. THE ACCESS REDUCTIONS REQUIRED BY THE ORDER AND SUPPORTED BY THE RECORD ARE UNNECESSARILY DELAYED.

Given the Commission's findings that the RLECs did not prove their case and that their current intrastate access rates are unjust and unreasonable, it is improper to allow those unjust and unreasonable rates to remain in effect for another four years. In addition, there is absolutely no valid basis for the Commission's extremely long and convoluted process for reaching the *first phase* of access reductions. No party proposed that a nine month delay is required or necessary before even the first access reductions are implemented. AT&T requests that the Commission order the first phase of reductions to occur within sixty (60) days of the Commission's Order, or by no later than September 18, 2011.

The Commission found that the RLECs' current intrastate access rates are unjust and unreasonable. Those rates have been in place since 2003. The Commission

recognized that the RLECs' rates needed to be further reduced in 2004. At that time, the Commission declared that "it is now the Commission's policy to promote competitive local markets by bringing the ILEC's access charges closer to costs."[48] Despite this, the Commission stalled the case for nearly five years to wait for FCC action that never happened. AT&T filed its complaints against the RLECs' intrastate access rates in March 2009 – approximately two and a half years ago. The Commission first re-opened this case two years ago. The ALJ issued her Recommended Decision a year ago. Now that the Commission has finally issued its decision, has sustained AT&T's complaints, and has agreed that the RLECs' rates are unjust and unreasonable, it makes absolutely no sense to permit the RLECs' unjust and unreasonable rates to remain in place for yet another 4 years. It also makes no sense to allow another 256 days – or nearly 9 months – to pass before even the first reductions occur. The Commission should look for ways to minimize the highly convoluted and prolonged implementation process and require the RLECs to reduce their intrastate access rates within sixty days. This will give the parties sufficient time to review the RLECs' tariffs, and will give the RLECs sufficient time to notify their customers of any associated rate increases.

Based on Commission estimates, the amount of access reductions that will result from the first phase of decreases is approximately $20 million.[49] Each day that goes by without actually seeing those reductions is another day of competition delayed to the detriment of consumers. It is another day of unjust and unreasonable rates that consumers throughout the Commonwealth must pay.

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48 December 20, 2004 Order at p. 3.

49 The Commission estimated that the total impact of the access reductions ordered is $50 million. *See* June 30, 2011 Statement of Chairman Robert F. Powelson, p. 3, footnote 4. Forty percent of that $50 million estimate is $20 million.

As this data shows, even if the Commission determines to retain aspects of the new process detailed in the Order, the current 256 day time frame cannot be justified and should be shortened. There are in fact many ways the Commission can, and should, reduce this process. To start, the first 105 days provided for in the Order are spent dealing with a draft template and comments regarding this template, and then a Commission Order on the template comments. AT&T submits that this process is unnecessary. The RLECs are all established companies that have done business for many years in the Commonwealth. They are represented by experienced legal counsel, and the RLECs are very familiar with this Commission's tariffing process. In addition, AT&T attached detailed tariff examples to its Rebuttal Testimony to demonstrate the exact rates that must be reduced for each and every RLEC.[50] Even though the reductions may be phased in rather than reduced in one step, there is no reason so much delay needs to be associated with calculating the correct reductions. In short, this process can be eliminated altogether. But to the extent the Commission chooses to maintain some form of it, the timeframes involved in this template filing can and should be reduced.

The Commission also can and should reduce the timeframes for reaching final tariffs after the template is approved. The current timetable gives the RLECs another 30 days after the template is approved before they even have to file a tariff. Given that the RLECs have already had time to make calculations, absorb the Commission's Order, and see a template, it is unnecessary to give the RLECs an additional 30 days before they turn a template into a tariff. This time frame should be reduced to no more than 10 days.

The Order also gives FUS three months to review and approve the RLEC tariff filings. Because there will have already been a template process, there is no reason to

[50] Attachment 1 to AT&T Statement 1.2 (Nurse/Oyefusi Rebuttal).

take so long for approval of the tariffs. The Commission must be mindful of the fact that each day that passes is another day with unjust and unreasonable rates in effect. AT&T submits that approval should be given within no more than 30 days. And once FUS approves the tariffs, the Order gives RLECs yet another month to file the compliance tariffs. Given that there already will have been a template process and FUS approval, there is no reason why the RLECs cannot file final tariffs within a week.

In sum, the Commission should order the RLECs to file final tariffs immediately, and should strive to have those tariffs be effective by no later than September 18, 2011 – 60 days after the Commission's Order. However, even if the Commission maintains its current process, it should shorten the timeframes consistent with the recommendations described above. Implementing some of these rational time frame reductions would allow the first phase of access reductions to be in place within a much shorter time frame than is currently provided in the Order. And a shortened time frame means that customers can begin reaping the benefits of lower access rates sooner rather than later.

IV. THE ORDER MUST BE CLARIFIED TO ENSURE THAT ALL PARTIES ARE INCLUDED IN ALL PHASES OF THE COMPLIANCE PROCESS.

The Commission established a detailed process for the RLECs' compliance with the Commission's Order. This process is outlined in the ordering paragraphs, as well as in Annex C. Although all parties are given the opportunity to comment on the proposed template at the start of the implementation process, some parties, such as AT&T, are then inexplicably excluded in later – and far more meaningful – phases devoted to compliance tariff review. For example, in Ordering Paragraph 13, the Commission states that "the RLECs shall file their rate rebalancing calculations and illustrative tariff supplements with the Commission using the most recent, available data as of December 31, 2010,

demonstrating the impact of the rate rebalancing on local rates and intrastate switched access rates and projecting the proposed tariff revisions to implement Phase I in Annex C attached hereto. Copies shall concurrently be served on the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff and the Bureau of Fixed Utility Services – Telecommunications Division, or its successor bureau." Again in Ordering Paragraph 17, the Commission directs the RLECs to provide all future rate rebalancing calculations and tariff supplements on the public parties and Commission staff only, thereby effectively excluding AT&T.

The ALJ did not recommend that any parties be excluded from the compliance phase; the RLECs did not recommend that any parties be excluded from the compliance phase; and therefore the Commission's decision on this point makes no sense and is not supported by the record. AT&T has every right to see the back-up calculations used by the RLECs to arrive at the rates that are supposed to be in compliance with the Commission's Order. It is in the Commission's and consumers' best interests to ensure that there are no errors in the compliance phase, and including AT&T and other parties to this case in the review of the RLECs' calculations will certainly assist in the process. There is a Protective Order that is in place and AT&T will of course adhere to the terms of that Protective Order in reviewing any confidential data provided by the RLECs. However, there is absolutely no basis to handicap AT&T in its review of the RLECs' compliance by shutting out AT&T from receiving the back-up documents and calculations. The Commission does not offer any explanation for this decision, and there can be no valid one.

The Commission should look to New Jersey as an example of why all parties must be included in the compliance phase. In the most recent phase of reductions required by the Board of Public Utilities' Order reducing Verizon and CenturyLink's intrastate access rates to parity with interstate levels, CenturyLink was found to have failed to properly implement the Board's requirements.[51] Unfortunately, it took an additional litigated process before the Board to bring CenturyLink into compliance. At that point, its noncompliant rates already had been in effect for several months, and the BPU had to establish a new timetable for true-up and refunds. Involving AT&T and all other parties earlier – and throughout – the process will help avoid such a result here in Pennsylvania, thus helping conserve the Commission's scarce resources.

V. THE COMMISSION SHOULD REQUIRE THE RLECS TO MAINTAIN PARITY BETWEEN INTRASTATE AND INTERSTATE RATES.

Although the Commission found that the RLECs should mirror traffic sensitive intrastate and interstate access rates, the Commission did not make clear that the RLECs must maintain parity between those rates once it is achieved. AT&T certainly understands that there must be a starting point for the RLECs to use for purposes of calculating the difference between interstate and intrastate rates. According to Ordering Paragraph 13, the starting point is December 31, 2010 data, and AT&T does not take exception to that date. However, given that full implementation of parity for traffic sensitive rates will not take place until 2015, it is important for the Commission to clarify that parity must be based on the most current interstate rates in place at the time of the RLECs' final filings. In addition, if interstate rates change in the future, the RLECs must be required to modify their intrastate rates in order to maintain parity. Otherwise, the

[51] NJ BPU Docket No. TO11020064, Order, May 16, 2011.

problems associated with the disparity between intrastate and interstate rates will arise again, and the parties will be forced to re-litigate issues that have already been fully resolved.

WHEREFORE, for all of the foregoing reasons, AT&T respectfully requests that the Commission grant this Petition for Reconsideration and Clarification, and issue an Order that:

(1) Requires the RLECs to eliminate their Carrier Charge in order to achieve true interstate parity;

(2) Clarifies that the Carrier Charge is to be reduced in the same percentages and phases as apply to the RLECs' traffic sensitive rates; specifically, 40% in phase 1, 35% in phase 2 and 25% in phase 3, and clarifies that the Carrier Charge reductions occur whether or not the RLEC is also required to reduce its traffic sensitive rates;

(3) Reduces the time period for bringing about access reductions, and in particular, the first phase of reductions – the first phase of reductions should occur by no later than September 18, 2011;

(4) Clarifies that AT&T and other parties must be fully included in the compliance phase and provided copies with all tariff filings and back-up documentation; and

(5) Clarifies that RLECs must maintain parity between traffic sensitive interstate and intrastate rates on an ongoing basis.

Respectfully submitted,

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DATED: August 2, 2011

AT&T Petition For Reconsideration, Attachment 1

(1) Pennsylvania RLECs need $82M a year of access reform to achieve parity with interstate rates.

Total Annual RLEC Access Rate Shift to Achieve Interstate Rate Parity	Total 2009 Projected Access Lines	Average Access Rate Shift per line per month	Shortfall in Achieving Interstate Access Parity, per line/mo, Represented by the New $2.50 CC Rate	Average Access Rate Shift per line/mo, Unreformed by the $2.50 CC rate
(a)	(b)	(c) = (a) / (b)	(d)	(e) = (c) - (d)
$82,589,474	960,610	$7.16	$2.50	$4.66

Unreformed Access Shift Subsidy Per Day
(f) = (a) / 365
$226,273

Source: AT&T Statement 1.2 (Rebuttal Testimony), Revised Attachment 5.

(2) The RLEC Access order only achieves $50M of reform, only after it is fully implemented in 2015, *leaving nearly $30M annually of unreformed access subsidy* – unreformed, indefinitely.

Source: Commission Powelson Public Statement, June 30, 2011 Public Meeting.

Ongoing Annual Access Contribution after Full Implementation of PUC Order

Failure to Achieve Interstate Parity	$2.50 CC Per Line/Month		Total 2009 Projected Lines		Perpetual Annual Access Subsidy from $2.50 CC Rate
	$2.50	X	960,610	=	$28,818,300

(3) The RLEC Access order's slow phase-in and incomplete reform combine together to *produce over $210M in access subsidies*, between now and its full implementation.

Slow Phase-in & Incomplete Reform	Percentage Reduction of Delta Towards $2.50 Above Parity	Average Access Rate Shift per line/mo, Unreformed, above $2.50 CC	Incremental Per line Reduction at each Phase to get to $2.50 Above Parity	Cumulative Per Line Reduction at each Phase to get to $2.50 Above parity	Remaining Shift Per Line To get to Parity	Duration of Phase in Months	Access Reductions	Access Subsidy Produced
	(g)	(h) = (e)	(i) = (g) * (h)	(j) = sum of (i)	(k) = (d) - (j)	(l)	(m) = (b) * (j) * (l)	(n) = (b) *(k) * (l)
Pre-Implementation (Order/Day 0 thru 256 days)	0%	$4.66	-	-	$7.16	8.4	0	$57,925,779
Phase 1 (Month 8 thru month 26)	40%	$4.66	$1.87	$1.87	$5.30	18	32,282,713	$91,621,520
Phase 2 (Month 27 thru month 44)	35%	$4.66	$1.63	$3.50	$3.87	18	60,492,688	$63,391,646
Phase 3 (Full implementation, begins month 45)	25%	$4.66	$1.17	$4.66	$2.50		-	-
Total Subsidy Far Outweighs Reform, between now and full Implementation							$ 92,755,301	**$ 212,938,945**

Source: Applying the access reductions per the Commission's July 18, 2011 Order.

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