

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE

Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

William R. Lloyd, Jr.
Small Business Advocate

August 12, 2011

(717) 783-2525
(717) 783-2831 (FAX)

HAND DELIVERED

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
Commonwealth Keystone Building
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, et al. V. Armstrong Telephone
Company - Pennsylvania, et al.
Docket No. C-2009-2098380 et al.**

Dear Secretary Chiavetta:

Enclosed for filing are the original and three (3) copies of the Answer to the Petition of AT&T for Reconsideration, on behalf of the Office of Small Business Advocate, in the above-docketed proceedings. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Steven C. Gray".

Steven C. Gray
Assistant Small Business Advocate
Attorney ID #77538

Enclosures

cc: Parties of Record
Chairman Robert F. Powelson
Vice-Chairman John F. Coleman, Jr.
Commissioner James H. Cawley
Commissioner Wayne E. Gardner
Commissioner Pamela A. Witmer
Cheryl Walker-Davis, Office of Special Assistants

2011 AUG 12 PM 3:19

RECEIVED

PA PUC
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**OFFICE OF SMALL BUSINESS ADVOCATE'S
ANSWER TO THE PETITION OF AT&T FOR RECONSIDERATION**

I. Introduction

On August 2, 2011, AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh and TCG New Jersey, Inc. (collectively "AT&T") filed a Petition for Reconsideration ("*Petition*") of the July 18, 2011, Order of the Pennsylvania Public Utility Commission ("Commission") at Docket Nos. I-00040105 and C-2009-2098380, *et al.* ("*July 18th Order*").

The Office of Small Business Advocate ("OSBA") files this Answer to the *Petition* pursuant to 52 Pa. Code § 5.572(e).

II. Standard of Review

In *Philip Duick et al. v. Pennsylvania Gas and Water Company*, Docket No. C-R0597001 (Order entered December 17, 1982), 1982 Pa. PUC LEXIS 4, 56 Pa. PUC 553 (1982), the Commission explained the basis for granting a petition to rescind or amend a prior order:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any 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. . . . What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

Duick, 1982 Pa. PUC LEXIS 4, at *11-*13.

In *Pennsylvania Public Utility Commission v. Jackson Sewer Corporation*, 2001 Pa. PUC LEXIS 44, the Commission also stated:

Additionally, a Petition for Reconsideration is properly before the Commission where it pleads newly discovered evidence, alleges errors of law, or a change in circumstances.

Jackson Sewer, 2001 Pa. PUC LEXIS 44, at *6.

III Argument

A. The Commission properly decided to implement a \$2.50 Carrier Charge.

1. The July 14th Order

AT&T argued that the carrier charge (“CC”) on interexchange carriers (“IXCs”) should be eliminated. See AT&T Statement No. 1.2, at 2. In contrast, the OSBA advocated that IXCs such as AT&T should be required to contribute towards the cost of the local loop. As part of its argument, the OSBA pointed out that such a conclusion was dictated by Commission precedent. See OSBA Main Brief, at 14-15, citing *In re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth*, Docket No. I-00940035 (Order entered January 28, 1997).

In regards to the setting of just and reasonable intrastate access rates, the Commission concluded, as follows:

[W]e are guided by the long-established principle and regulatory policy of this Commission, which has been upheld upon appellate

review, that the RLECs' [rural local exchange carriers'] intrastate carrier switched access service NTS [non-traffic sensitive] joint and common costs primarily associated with the RLECs' local loop plant must be recovered from all users of the RLECs' network. In this respect, our conclusion differs materially from those that have been adopted by the FCC in the past. The FCC has shifted the burden of NTS joint and common network costs in the interstate intercarrier compensation mechanism for switched access services totally and exclusively upon the end-user through the initial imposition and subsequent increases to the federal SLC [subscriber line charge].

July 14th Order, at 118.

The Commission continued:

Because existing precedent and policies mandate the sharing of the NTS joint and common costs by all the users of the RLECs' intrastate access services, the complete elimination of the per access line intrastate CC [carrier charge] rate element for the RLECs cannot be condoned. Such an approach would lead to the inequitable, discriminatory, and unlawful result of potentially 'loading' 100% of the recovery of the RLECs' joint and common NTS costs associated with intrastate access upon end-user consumers alone. However, ***the totality of the evidentiary record*** strongly suggests that the existing high levels of the intrastate CC rate element for certain RLECs are clearly unsustainable. Therefore, we find that it is appropriate to gradually reduce these intrastate CC rate levels to \$2.50 per access line per month (for those RLECs that currently have a CC intrastate carrier access rate element above the level of \$2.50 per access line per month) while also gradually moving the RLECs' intrastate TS [traffic sensitive] switched access rate elements to their interstate equivalent levels to the extent necessary and in an integrated fashion.

July 14th Order, at 119-120 (emphasis added).

In response to the Commission's *July 14th Order* which reduced the intrastate CC to \$2.50 per access line per month, AT&T argued in its *Petition* that the \$2.50 Carrier Charge is not supported by the record. *Petition*, at 9.

2. The *Petition* fails to satisfy *Duick*.

A threshold question is whether the *Petition* satisfies the requirements of *Duick*. AT&T argued in support of its *Petition*, as follows:

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.

Petition, at 4.

AT&T cannot meet the *Duick* standard requiring a new and novel argument in regards to the level of the CC. AT&T itself conceded that intrastate access charge rates and, specifically, the level of the CC itself, was a highly contested issue in this proceeding. In fact, AT&T summarized the various positions of the parties, as follows:

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).

Petition, at 9.

Thus, AT&T has had ample opportunity to advocate its proposal to reduce the RLECs' CC to zero. AT&T is simply dissatisfied with the Commission's decision to set the CC at \$2.50, but that is an insufficient basis to meet the *Duick* standard for the granting of reconsideration.

Furthermore, the *Petition* must meet the *Duick* standard which requires AT&T to assert "considerations which appear to have been overlooked or not addressed by the Commission." Apparently, AT&T believes that claiming that the Commission simply pulled the \$2.50 "out of

thin air” is sufficient to satisfy *Duick*. However, as AT&T was forced to admit, the parties in this proceeding advocated a wide range of levels for the CC. AT&T itself advocated for a CC set at zero. Verizon advocated for a CC of 58 cents. The OSBA advocated for leaving the CC unchanged. For some RLECs, as AT&T pointed out in its main brief, leaving the CC unchanged would mean a CC of \$11.18 to \$17.99. AT&T Main Brief, at 23. Thus, AT&T can hardly claim surprise or any disadvantage when the Commission finds that a \$2.50 CC is appropriate in a case where the parties were hotly contesting a CC charge in the range of \$0.00 to \$17.99.

In addition, AT&T was well aware of the scope of this proceeding:

That the participating parties shall address and provide record evidence on the legal, ratemaking and regulatory accounting linkages between: a) any Federal Communications Commission’s ruling in its *Unified Intercarrier Compensation* proceeding; b) the intrastate access charge reform for rural ILECs in view of the new Chapter 30 law and its relevant provisions at 66 Pa. C.S. §§ 3015 and 3017; c) the Pennsylvania Universal Service Fund; and d) the potential effects on rates for the basic local exchange services of the rural ILECs to the extent this is consistent with the Commission’s determinations in the limited investigation.

Investigation Order, Docket No. I-00040105 (Order entered August 5, 2009), Ordering Paragraph 5, at 21-22.

Because of the *Investigation Order*, AT&T was on notice that the Commission was interested in creating a record that would allow it to update its access reform policy. Thus, it is not credible for AT&T to claim that the Commission “overlooked” or “did not consider” the various arguments advocated by the parties in regards to a proper level for the CC. In fact, the Commission stated that it based its decision on the “totality of the evidentiary record,” unquestionably indicating that the Commission was fully cognizant of the wide disparity of viewpoints regarding the proper CC.

Thus, the OSBA respectfully submits that AT&T has failed to satisfy *Duick* in regards to its *Petition* addressing the \$2.50 CC.

3. The \$2.50 CC is supported by the record evidence.

In its *Petition*, AT&T boldly asserted, as follows:

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...’

Petition, at 9 (footnote omitted; emphasis omitted).

The full text of footnote 140, partially quoted by AT&T, is set forth below:

While the record is minimal in terms of RLEC support for local loop costs and appropriate cost allocation to users, we rely upon the evidence presented by the OCA demonstrating that the loop cost is a shared cost.

July 14th Order, at 144, footnote 140.

The OSBA has searched the *July 14th Order*, and has been unable to locate any passage supporting AT&T’s claim that the Commission “acknowledged there was no record evidence to support” the \$2.50 CC. In fact, the Commission explicitly stated that it reached its decision regarding the \$2.50 CC based upon “the totality of the evidentiary record.” *July 14th Order*, at 119.

Furthermore, as set forth above, the Commission was presented with a record that included advocacy of a CC set at zero (AT&T); a CC set at 58 cents (Verizon); and a CC which kept the RLEC’s current CC, ranging from zero to \$17.99 (OSBA). The \$2.50 CC set by the Commission lies within the range supported by the evidence presented by AT&T, Verizon, and the OSBA.

In addition, the Commission explicitly acknowledged the OSBA's argument for the setting of RLEC intrastate access charges by including the federal subscriber line charge ("SLC") as a proxy for the CC. The Commission summarized the OSBA's position, as follows:

If the Commission decides that the RLECs' access charges should be reduced, the OSBA submitted that the reductions should be made on a case-by-case basis for each individual RLEC, and should be set at the level necessary to recover 25% of each individual RLEC's total loop costs. OSBA St. No. 1 at 14-15. The OSBA explained that this could be accomplished by developing intrastate access rates individually to recover the same amount of total revenue (including the SLC) which is being recovered for interstate access. OSBA Main Brief at 22-23.

July 14th Order, at 86.

The Commission also explicitly acknowledged the OSBA's evidence, as follows:

The OSBA proposed that, if the Commission decides to reduce RLEC access rates, the reductions should be made on a case-by-case basis dependent upon each company's own rates and access costs. *Its witness, Dr. Wilson, testified that these individual rates should be set at the level needed to recover 25% of each RLEC's total loop costs, based on the residual percentage of 75% after initial FCC assignment of 25% [of loop costs] to interstate toll use. OSBA St. No. 1 at 15.* The OSBA indicated that the simplest way to set an RLEC's intrastate access charges would be to total all revenue currently collected for interstate access charges (including the \$6.50 SLC and usage charges) and develop a new intrastate access rate to produce the same amount of total revenue. OSBA Main Brief at 23.

July 14th Order, at 110 (emphasis added).

Contrary to AT&T's argument, the record includes the OSBA's proposal to employ the federal SLC (which the FCC caps at \$6.50) as part of the calculation for setting intrastate rural access charges. Consequently, the "totality of the evidentiary record" considered by the Commission includes not only a wide range of proposals from various parties in regards to the level of the CC, but also includes the OSBA's proposal to use the SLC as a proxy for the CC. It

is well within the Commission's discretion to craft a \$2.50 CC based upon the diverse positions advocated in the record.

AT&T's *Petition*, therefore, should be denied with regard to the issue of the \$2.50 CC.

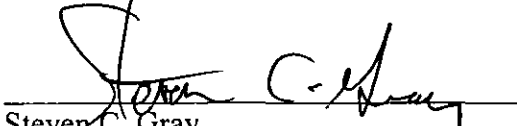
IV. Conclusion

Therefore, the Office of Small Business Advocate respectfully requests that the Commission:

(1) Deny AT&T's *Petition* with regard to the issue of the \$2.50 CC, as the *Petition* fails to meet the *Duick* standard; and

(2) Deny AT&T's *Petition* with regard to the issue of the \$2.50 CC, as the Commission's decision on this issue is supported by the record.

Respectfully submitted,



Steven C. Gray
Attorney I.D. No. 77538
Assistant Small Business Advocate

For:

William R. Lloyd, Jr.
Attorney I.D. No. 16452
Small Business Advocate

Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101
(717) 783-2525

Dated: August 12, 2011

RECEIVED
2011 AUG 12 PM 3:20
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Answer to the Petition of AT&T for Reconsideration, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise noted) upon the persons addressed below:

Hon. Kandace F. Melillo
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-5452
(717) 787-0481 (fax)
Kmelillo@state.pa.us
(E-mail and Hand Delivery)

Zsuzsanna E. Benedek, Esquire
Embarq Pennsylvania
240 North Third Street, Suite 201
Harrisburg, PA 17101
(717) 245-6346
(717) 236-1389 (fax)
sue.e.benedek@embarq.com

Regina L. Matz, Esquire
Norman J. Kennard, Esquire
Thomas Long Niesen & Kennard
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500
(717) 255-7600
(717) 236-8278 (fax)
rmatz@thomaslonglaw.com
Nkennard@thomaslonglaw.com

Joel H. Cheskis, Esquire
Darryl A. Lawrence, Esquire
Office of Consumer Advocate
555 Walnut Street - 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152 (fax)
jcheskis@paoca.org
dlawrence@paoca.org
(E-mail and Hand Delivery)

Allison Kaster, Esquire
Office of Trial Staff
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
(717) 787-1976
(717) 772-2677 (fax)
akaster@state.pa.us
(E-mail and Hand Delivery)

Michelle Painter, Esquire
Painter Law Firm, PLLC
13017 Dunhill Drive
Fairfax, VA 22030
(703) 201-8378
(703) 968-5936 (fax)
painterlawfirm@verizon.net

Bradford M. Stern, Esquire
Rothfelder Stern, L.L.C.
620 Central Avenue
Westfield, NJ 07090
(Omnipoint, T-Mobile, Nextel)
(908) 301-1211
(908) 301-1212 (fax)
bmstern@rothfelderstern.com

Christopher M. Arfaa, Esquire
Christopher M. Arfaa, PC
150 N. Radnor Chester Road - Suite F-200
Radnor, PA 19087-5245
(610) 977-2001
(610) 977-0043 (fax)
carfaa@arfaalaw.com

Renardo L. Hicks, Esquire
Stevens & Lee
17 North Second Street - 16th Floor
Harrisburg, PA 17101
(Sprint Nextel)
(717) 234-1090
(717) 234-1099 (fax)
rlh@stevenslee.com

John P. Povilaitis, Esquire
Buchanan Ingersoll Rooney, PC
17 North Second Street - 15th Floor
Harrisburg, PA 17101-1503
(Qwest)
(717) 237-4800
(717) 233-0852 (fax)
john.povilaitis@bipc.com

Theresa Z. Cavanaugh, Esquire
John Dodge, Esquire
Davis Wright Tremaine, LLP
1919 Pennsylvania Avenue, N.W. - #200
Washington, DC 20006
(202) 973-4205
(202) 973-4405 (fax)
[johndodge@dwt.com](mailto: johndodge@dwt.com)
terrycavanaugh@dwt.com

Garnet Hanly, Esquire
garnet.hanly@t-mobile.com
(E-Mail Only)

Suzan DeBusk Paiva, Esquire
Leigh A. Hyer, Esquire
Verizon
1717 Arch Street, 10th Floor
Philadelphia, PA 19103
(215) 466-4755
(215) 563-2658 (fax)
suzan.d.paiva@verizon.com
leigh.a.hyer@verizon.com

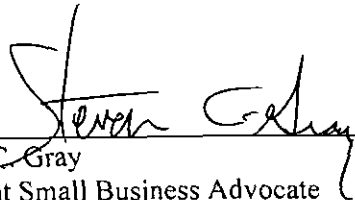
Benjamin J. Aron, Esquire
Sprint Nextel Corporation
2001 Edmund Halley Drive - Room 208
Reston, VA 20199
(703) 592-7618
(730) 592-7404 (fax)
benjamin.aron@sprint.com

Pamela C. Polacek, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
(717) 260-1763 (fax)
ppolacek@mwn.com

Allan 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
akohler@eckertseamans.com
dodell@eckertseamans.com

Demetrios G. Metropoulos, Esquire
Mayer Brown LLP
71 S. Wacker Drive
Chicago, IL 60606
(312) 782-0600
demetro@mayerbrown.com

Philip S. Shapiro, Esquire
Law Department
AT&T Inc.
3033 Chain Bridge Road - Second Floor
Oakton, VA 22185
(703) 272-1478
psshapiro@att.com



Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

Date: August 12, 2011

RECEIVED
2011 AUG 12 PM 3:19
PA PIC BUREAU
SECRETARY'S BUREAU