MAYER • BROWN

Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637

Main Tel +1 312 782 0600
Main Fax +1 312 701 7711
www.mayerbrown.com

**Demetrios G. Metropoulos**
Direct Tel +1 312 701 8479
Direct Fax +1 312 706 8658
demetro@mayerbrown.com

April 19, 2012

**VIA UPS OVERNIGHT**

Ms. Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
2nd Floor West
Commonwealth Keystone Building
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 Nos. C-2009-2098380, C-2009-2099805, C-2009-2098735



Dear Ms. Chiavetta:

Enclosed on behalf of AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh, and TCG New Jersey, Inc., please find the original and nine copies of AT&T's Answer to Joint Petition for Reconsideration and Stay of the Pennsylvania Telephone Association and CenturyLink. Copies have been served in accordance with the attached Certificate of Service.

*Please contact me if you have any questions or concerns with this matter.*

Very truly yours,

Demetrios G. Metropoulos

cc: Hon. Kandace F. Melillo
Cheryl Walker Davis
Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner, Commissioner
James H. Cawley, Commissioner
Pamela A. Witmer, Commissioner
Certificate of Service

Enclosures

**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 | : | |

# AT&T'S ANSWER TO JOINT PETITION FOR RECONSIDERATION AND STAY OF THE PENNSYLVANIA TELEPHONE ASSOCIATION AND CENTURYLINK


Robert C Barber
General Attorney
AT&T Services, Inc.
3033 Chain Bridge Road
Oakton, VA 22185
Phone – (571) 354-4267
E-mail – rcbarber@att.com





Michelle Painter
Painter Law Firm, PLLC
13017 Dunhill Drive
Fairfax, VA 22030
Phone – (703) 201-8378
E-mail – painterlawfirm@verizon.net

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


APRIL 19, 2012

## TABLE OF CONTENTS

**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'S ANSWER TO JOINT PETITION FOR RECONSIDERATION AND STAY OF THE PENNSYLVANIA TELEPHONE ASSOCIATION AND CENTURYLINK**

---

Now that the FCC has issued its *CAF Order*,[1] AT&T, CenturyLink and the PTA agree on many things. But after getting a lot of things right, the Joint Petition by CenturyLink and the PTA (collectively, the "RLECs") makes a wrong turn and tries to steer the Commission and Pennsylvania consumers down a dead end street.

Let's begin by talking about what the Joint Petition gets right. CenturyLink and the PTA both recognize, correctly, that the FCC's "schedule and objective for achieving parity" between interstate and intrastate switched access rates "are more aggressive" than the reforms adopted by the Commission on the terminating access side (p. 4 ¶ 9). In particular, they acknowledge, again correctly, that the FCC's *CAF Order* does not allow carriers to assess any Carrier Charge on terminating access. The RLECs also correctly recognize (p. 8 ¶ 18) that the FCC's *CAF Order* "effectively preempts the terminating intrastate switched access rate reductions envisioned for RLECs" under this Commission's *July 2011 Order*. Their Joint Petition also acknowledges that the FCC plans to adopt a bill and keep regime for originating access charges, and in the interim the FCC's *CAF Order* permits this Commission to reduce those originating access charges.

[1] *In re Connect America Fund: A National Broadband Plan For Our Future*, 54 Communications Reg. (P&F) 637, 2011 WL 5844975 (FCC rel. Nov. 18, 2011) ("*CAF Order*").

Right again. Finally, CenturyLink and the PTA have abandoned their previous, baseless suggestion that any rebalancing would be impossible, and now agree that their local service rates can be increased to "rebalance" access reductions. That, too, is correct, and it is a welcome development.

So AT&T and the RLECs agree about what the FCC has done, what this Commission cannot do (diverge from the FCC's reforms on terminating access, for example by trying to maintain a $2.50 Carrier Charge) and what this Commission can do (reform originating access). The parties' disagreements thus have narrowed to the critical question of what this Commission *should* do, now that the FCC has spoken. Their respective filings present the Commission with a stark – but simple – choice.

AT&T's proposed answer is simple. Now that the FCC has at last taken action, the Commission has a historic opportunity to take its turn at bat and hit a grand slam for Pennsylvania consumers. The Commission can implement the reforms it already adopted for originating access, *and* give consumers the added benefit of reducing the RLECs' originating access rates to full parity with the corresponding interstate rates, all for *much less* of an impact on retail rates for local service than the Commission had anticipated and in fact directed in its original *July 2011 Order*, and without making any demand on the Pennsylvania Universal Service Fund ("PaUSF"). That is because the FCC has already taken responsibility for the recovery of terminating access reductions through the federal Access Recovery Charge ("ARC") and the federal Connect America Fund ("CAF"). As the FCC stated, having the recovery for terminating access reductions come from the federal jurisdiction "takes a potentially large financial burden away from states."[2]

[2] *CAF Order*, ¶ 790.

AT&T showed in its Updated Petition for Reconsideration that the Commission can reduce intrastate originating access rates for the four largest RLECs (CenturyLink, Frontier/Commonwealth, Consolidated, and the Windstream companies) to full parity by July 2013. The record shows that even if those RLECs choose to rebalance the entire originating access reduction through their local rates, those local rates will still be well below this Commission's $23 benchmark (and the FCC's $30 residential rate ceiling)[3] plus, each of the two annual "steps" in the transition will be much smaller than the three rate increases the Commission had anticipated, and smaller still than the maximum $3.50 per-step increases the Commission had authorized. In short, with terminating access reform off the Commission's to-do list, the Commission can turn to originating access and give consumers *more* relief, *faster*, and with *less* impact on local rates.

In sharp contrast, the RLECs see the FCC's *CAF Order* as an opportunity to help themselves. They have no problem making Pennsylvania consumers pay for local rate increases; in fact, that is the *only* part of the Commission's *July 2011 Order* that they want the Commission to keep. But the Joint Petitioners do not want consumers to get any of the benefits of originating access reform, which consumers were supposed to receive in exchange for local rate rebalancing. Thus, their Joint Petition tells the Commission to proceed with the part of the *July 2011 Order* that they like (elimination of local rate caps) while coming to an abrupt standstill on the part of the Order they don't like (originating access reductions). That way, local rate increases would go straight to the RLECs' coffers, *plus* they would get to keep collecting high originating access

[3] In its *July 2011 Order*, the Commission abolished the existing rate cap and established a benchmark rate of $23.00 per month, exclusive of taxes and fees. *July 2011 Order* at 157-58. In contrast, the Residential Rate Cap of $30.00 per month on residential primary lines is intended as a limit on whether and where a carrier can assess the new federal ARC. *See CAF Order*, ¶ 913. It is a sum of a variety of charges, including the ARC, the federal Subscriber Line Charge (SLC), the flat rate for residential local exchange customers, state E911, TRS and subscriber line charges, mandatory Extended Area Service Charges, and per-line state high cost and/or access replacement universal service contributions. *Id.* ¶ 914.

charges – even though this Commission found that the RLECs' originating access rates are unjust and unreasonable, and even though the FCC has reached the same conclusion. At the same time, Pennsylvania consumers would pay the price for originating access reform (in the form of higher retail rates) without getting any of the benefits.

The Commission should side with Pennsylvania consumers and reject out of hand the RLECs' approach. As demonstrated below, there are multiple, independent reasons to do so.

## I. Pennsylvania Consumers Should Not Be Deprived Of The Benefits Of Originating Access Reform.

### A. The FCC's Order Expressly Authorizes States To Implement Reforms For Originating Access, And Makes It Easier To Implement Such Reforms In Pennsylvania.

The Commission's 1999 *Global Order* was a landmark in the industry, and put this Commonwealth at the forefront of access reform. Unfortunately, after that time, there was only one more round of limited reform in 2003, and then reform was consistently put on hold for nearly a decade due to the RLECs' admonition that the Commission should wait for the FCC. That delay in further reform cost Pennsylvania consumers years of higher prices and fruitless delay and gave the RLECs years of unwarranted windfalls. Ultimately, the Commission correctly stopped waiting, reopened the proceeding, and after a full investigation with an extensive record the Commission found that the RLECs' switched access rates, including their originating access rates, are unjust and unreasonable. The RLECs predictably petitioned to stay the reforms that the Commission ordered, recycling their "wait for the FCC" refrain.

Now that the FCC has spoken, it is clear that its *CAF Order* does not disturb this Commission's conclusion that originating access reductions are both necessary and beneficial to consumers. Indeed, the FCC held that originating access rates should be not only reduced but eliminated. The FCC found that the entire intercarrier compensation system, including

originating access charges, is "unfair for consumers," "outdated," "riddled with inefficiencies and opportunities for wasteful arbitrage, and "eroding rapidly."[4] With respect to originating access in particular, the FCC found "that originating charges should ultimately be subject to the bill-and-keep framework" and that the legal framework of the FCC's order "is inconsistent with permanent retention of originating access charges."[5]

*None of these determinations supports any delay in proceeding with the reforms to* originating access that this Commission already has determined are necessary. Nevertheless, and even though the FCC has spoken – and clearly supported originating access reform – the RLECs once again encourage the Commission to do nothing and "wait for the FCC." They first make the vague threat (p. 11, ¶ 29) that "Commission implementation of reductions to RLEC intrastate originating switched access rates at this time would frustrate federal reform efforts." There is absolutely no basis for this claim. Far from discouraging state reforms on the originating access side, the FCC's *CAF Order* expressly authorizes states to carry out such reforms. The FCC stated that "[t]o the extent that states have established rate reduction transitions for rate elements not reduced in this Order, nothing in this Order impacts such transitions."[6] Further, the FCC made clear that its order does not "prevent states from reducing rates on a faster transition provided that states provide any additional recovery support that may be needed."[7] Obviously, originating access services are among the "rate elements not reduced in this [*CAF*] Order."

Thus, the FCC's *CAF Order* does not preclude, and in fact invites, the Commission to implement reforms to intrastate originating access charges. Even better, by establishing federal recovery mechanisms for terminating access reform and thus relieving the Commission of that

---

[4] *See CAF Order* ¶ 9.
[5] *Id.* ¶ 817.
[6] *Id.* ¶ 816 n.1542.
[7] *Id.*

burden, the FCC has handed this Commission a golden opportunity to implement better, more meaningful reform on the originating side with less impact on consumers. There is no better time for this Commission to act swiftly and decisively and restore its rightful position of leadership.

The RLECs' claim (p. 11, ¶ 29) that "[t]here is no clarity in the [*CAF*] *Order* as to how the FCC may proceed to reduce intrastate originating switched access rates to zero" is just as baseless. On the issues that matter, the *CAF Order* is crystal clear. All originating access rates, interstate and intrastate alike, ultimately will be moving to a bill-and-keep regime. Obviously, the FCC will develop a glide path to get originating rates down from the current interstate levels – it has to, because the interstate rates will stay at current levels no matter what states do or fail to do with intrastate rates. All that AT&T requests here is that the Commission bring intrastate originating rates to parity with the corresponding interstate rates. By granting AT&T's Updated Petition and implementing parity, this Commission will synchronize intrastate and interstate rates, putting Pennsylvania intrastate rates at the same starting gate the FCC will use for interstate rates (just like many states have already done), rather than leaving Pennsylvania rates behind in the stable (as the RLECs suggest). The way to avoid the RLECs' professed concern – that federal and state reforms would proceed "with different restructuring on a different schedule" (p. 12 ¶ 34) – is to implement parity in intrastate and interstate originating rates as AT&T proposes, not to prolong the existing disparity as the RLECs suggest.

Equally baseless is the RLECs' contention (p. 11 ¶ 30) that it would be "inefficient for this Commission to proceed" while the FCC considers originating access reforms. The RLECs cannot possibly have forgotten the fact that this Commission has already *completed* a full, three-year access proceeding, assembled a robust evidentiary record supporting reform, and issued a

214-page Order finding (among other things) that the RLECs' originating switched access rates are unreasonable. Moreover, the Commission has already ordered reductions to those originating access rates in its *July 2011 Order*. What the RLECs are really asking the Commission to do is take a massive step *backward*, ignore its own investigation and findings, and leave originating access rates at the present unreasonable, unsustainable levels.[8] Clearly, nothing in the FCC's *CAF Order* even remotely supports such regression. To the contrary, the FCC has invited and overwhelmingly endorsed originating access reforms, and it has even given the Commission a big helping hand by taking responsibility for terminating access. It is particularly disingenuous for the RLECs – who maintained during this proceeding that they wanted this Commission to "harmonize" its access policy with the FCC,[9] and who continue to give lip service to "coordinat[ing]" federal and state reforms[10] – to now ask this Commission to move in the exact opposite direction of federal reform. The better course is to take a simple but meaningful step *forward* to full parity, as AT&T proposes, and thus give Pennsylvania consumers the full advantage of that federal boost.

### B. The Commission Should Ignore The Joint Petitioners' Unfounded Scare Tactics.

Not content to repeat their "Wait for the FCC" refrain, the RLECs also reach into their anti-reform songbook to repeat another old chestnut: the unfounded scare tactic. However, their efforts at fear-mongering are as unfounded as ever.

---

[8] Because the parties here have already fully litigated the issue of access reform, and because this Commission has already completed its investigation, assembled a robust record, and ordered access reductions, the situation here stands in sharp contrast to North Carolina, where the access investigation is still at a preliminary stage. It is therefore irrelevant for the RLECs to point out (p. 9, ¶ 22) that one party (Sprint) asked the North Carolina commission to stay proceedings before going ahead with discovery, pre-filed testimony, and evidentiary hearings.

[9] PTA's witness Mr. Zingaretti testified at the hearing in this case that PTA simply wanted the Commission to "harmonize" its actions with federal reforms. Hearing Tr. at 591.

[10] Joint Petition, at p. 2 ¶ 2.

The worst of the lot is the RLECs' bald claim (p. 12, ¶ 32) that the "[a]dditional local rate increases . . . to support reductions in originating access revenue would be excessive and detrimental to end-users." In the first place, it is utterly disingenuous for the RLECs to rail about "local rate increases," given that the elimination of local rate caps is the one part of the *July 2011 Order* that they want to *proceed*. Since the RLECs favor "local rate increases" anyway, it is simply absurd that consumers would pay for such increases but receive none of the benefits from originating access reform that the Commission promised them in exchange. The RLECs' self-serving course is the one that would be "detrimental to end-users."

More fundamentally, there is no basis for the RLECs' claim. Tellingly, the RLECs cannot offer any hard evidence to support it. There certainly is none in the ample evidentiary record developed in this proceeding concerning the impact of rate rebalancing. Because the FCC has already implemented a mechanism for the recovery of access reductions on the terminating side, the actual evidence shows that any rate rebalancing associated with originating access parity would not be "excessive" or "detrimental" at all. AT&T's Updated Petition demonstrates that with terminating access out of the way, the four largest RLECs (CenturyLink, Frontier/Commonwealth, Consolidated, and the Windstream companies) can easily rebalance the modest originating access reductions proposed by AT&T, and thus achieve complete parity. The associated increases in local rates would be much less than the increases the Commission found acceptable in the *July 2011 Order*:

- Under AT&T's updated proposal, there would be only two rebalancing steps, instead of the three steps approved by the Commission.

- Each of the two rebalancing "steps" would be much less than the $3.50 maximum increases the Commission approved.[11]
- Even considering the federal ARC – which is subject to limits the FCC adopted precisely to protect consumers in "early adopter" states that had already begun reforms on their own – end user rates for the large RLECs would be significantly less than the Commission's $23 local rate benchmark, or even the FCC's $30 primary line Residential Rate Ceiling.

Although the record shows that the same results should hold for most, if not all, of the smaller RLECs too, the Commission is free to defer action on those smaller RLECs at this time if it has any concern. By addressing the four largest RLECs now, the Commission can easily give Pennsylvania consumers the lion's share of the benefits from originating access parity.

The RLECs next complain (p. 15 ¶ 43) that they might lose some federal CAF support because of the FCC's "urban rate" floor. That complaint has no bearing on the RLECs' proposal to wipe out originating access reductions; if anything, it bolsters the already-overwhelming case in favor of reform. In the first place, the four largest RLECs are all comfortably above the FCC's floor: their current retail rates range from $14.41 (Frontier/Commonwealth) to $18 per month (CenturyLink), while the FCC's floor starts at $10 and increases to $14 per month in 2013. The record shows that *no* carriers are below the initial $10 floor, and only six carriers (the Armstrong companies, Bentleyville, Citizens Telephone of Kecksburg, Ironton and Laurel) will be slightly below the $14 floor when that takes effect in July 2013 *if* they do nothing about retail

[11] The RLECs' Verified Joint Statement takes the simplistic approach of adding the $3.50 maximum rate increase allowed by the *July 2011 Order* plus the $0.50 per line allowed for the ARC, and claiming that "residential consumers could see an initial annual increase of $4.00 per line." The RLECs' argument evaporates like dry ice as soon as it contacts the evidentiary record. As AT&T has shown, the large RLECs can rebalance the entire originating access reduction with two steps that are much less than the $3.50 maximum approved by the Commission. In any event, the RLECs are *not* asking the Commission to stop one penny of the anticipated residential rate increases; in fact, they want that aspect of the *July 2011 Order* to proceed as planned.

rates before then.[12] The federal rate floor has absolutely no impact on the four largest RLECs and provides absolutely no reason to excuse them from access reform.

Second, the RLECs are ignoring the purpose of the FCC's floor. The FCC was not concerned that local rates are too low in the abstract, nor was it telling states to simply increase local rates, especially the way the RLECs want. Rather, the FCC recognized that retail rates below the floor are symptomatic of a carrier that is too heavily subsidized by high access charges.[13] The real problem the FCC sought to address is high access charges, and the FCC's conclusion is that there should be some restrictions on CAF support for carriers whose wholesale access charges are so high that they can support unreasonably low retail rates. The FCC's floor is simply another reason why the Commission should go forward, not backward, on originating intrastate access reform. In so doing, the Commission will cure the underlying problem the FCC's rate floor was designed to address, and it will give consumers real benefits in return for rebalancing retail prices.

The RLECs fare no better with their claim (p. 12, ¶ 33) that originating access reform "simply places Pennsylvania in a deeper position of net payer" with respect to federal universal service. Again, the RLECs do not present any hard facts or analysis to support this claim. And, again, the RLECs are wrong. First, whether or not Pennsylvania is a net payer under the existing federal universal service programs is academic, because the *CAF Order* is phasing out those programs in favor of the new federal mechanisms, the ARC and the CAF.

Second, the record indicates that under the new federal mechanisms, Pennsylvania actually will benefit from federal CAF funding dollars. Generally, the *CAF Order* limits each carrier to a maximum ARC of $0.50 for residential customers in the first year of the transition,

[12] *See* Sept. 2, 2010 AT&T Exceptions, App. C.
[13] *See CAF Order* ¶ 197.

with annual increases limited to $0.50 amount thereafter for a maximum period of 5 years for price cap carriers and six years for rate-of-return carriers.[14] For the four largest RLECs, terminating access reductions will be much higher than 50 cents per month: for example, CenturyLink's terminating access reduction is estimated at $5 a month, or ten times the permitted ARC.[15] As a result, the mathematics of the federal mechanism suggest that much of CenturyLink's federal recovery will likely come from (i) ARCs assessed on residential customers in states other than Pennsylvania[16] and (ii) if necessary, the national CAF.

In any event, whether or not Pennsylvania turns out to be a net payer under the federal support mechanisms is irrelevant. The federal ARC and CAF are governed by federal rules that this Commission cannot change. Terminating access reductions, and the associated reform mechanisms, are simply "givens" that are outside this Commission's control. The issues within this Commission's control are simple:

(i) Should the Commission proceed with originating access reform now that the FCC has endorsed such reform and made it even easier for the Commission to implement that reform (as AT&T proposes), or should the Commission ignore its own three-year investigation and leave the existing, unreasonably high originating access rates intact (as the RLECs suggest)?

(ii) Should Pennsylvania consumers receive the benefits of originating access reform as local rates are increased (*i.e.*, should there be rate rebalancing as AT&T

[14] *CAF Order* ¶ 908.

[15] April 9, 2012 AT&T Updated Petition for Reconsideration, at 8-9.

[16] The FCC's order allows multi-state carriers "to determine at the holding company level how Eligible Recovery will be allocated among their incumbent LECs' ARCs." *Id.* ¶ 910. The FCC explained that "this flexibility" will allow carriers "to spread the recovery . . . among a broader set of customers" and "more fully recover" their Eligible Recovery in states with lower rates, thus "limiting the potential impact on the CAF." *Id.*

proposes), or should they simply pay higher local rates without receiving the benefits of originating access reform (as the RLECs want)?

The real issues before the Commission are simple, and the answers are self-evident. The Commission should not permit itself to be distracted from this very straightforward conclusion.

### C. Originating Access Parity Will Bring Enormous Benefits To Pennsylvania Consumers, And The FCC Has Made Parity Easy To Achieve In Pennsylvania.

It is stunning that the RLECs would suggest (p. 11, ¶ 29) that originating access reform "would not further any sound public policy or purpose." Both this Commission and the FCC have already found that originating access reform will further several public policies, by reducing the retail long-distance prices that consumers pay, promoting fair competition and consumer choice, and eliminating opportunities for harmful and wasteful arbitrage. As AT&T has shown, the *CAF Order* allows this Commission to give consumers more of those benefits through reform of originating intrastate access charges, with even less local rate rebalancing than it required in its *July 2011 Order*. The RLECs are ignoring the *July 2011 Order*, the *CAF Order*, and the overwhelming record in support of access reform that has been developed in this proceeding.

To be sure, the FCC found that at the *national* level, originating access reform is less urgently needed than terminating access reform. But that does not mean that the Commission should ignore its own investigation and let intrastate originating access problems fester in the Commonwealth, and it does not mean that originating access reforms "would not further any sound public policy or purpose" the way the RLECs say. At the same time the FCC deferred action on originating access at the national level, the FCC *invited* states to address originating access reform at the state level. The FCC has opened the door for this Commission to proceed

on originating access, and it has made the benefits of originating access reform (particularly the modest parity reform proposed by AT&T here) much easier to obtain. It is critical to understand that even though the RLECs will likely claim that further access reductions only benefit IXCs, the true beneficiaries are Pennsylvania's consumers. Given the highly competitive long distance market, access reductions inevitably will result in lower retail prices for customers. In addition, such reductions level the playing field among all types of competitors, ensuring that consumers reap the benefits of a fully competitive market that is free of regulatory distortions.

## II. The Commission Need Not, And In Any Event Cannot, Give The RLECs A Windfall Or Double Recovery On Terminating Access.

AT&T fully agrees with the RLECs that the Commission should remove retail price caps as it previously ordered. As demonstrated above, the RLECs' error is in attempting to reverse course on originating access reform – after the parties have fully litigated the issue, after the Commission has decided that reform is necessary, and after the FCC has not only permitted such reforms to proceed but also made them easier to implement.

That said, the Joint Petition is wrong in arguing that CenturyLink and the PTA *need* to increase retail rates in order to recover the reductions in terminating access rates ordered by the FCC – even reductions in *interstate* access rates. Their argument fails on multiple grounds, and is in fact irrelevant. In the first place, the FCC has already established federal recovery mechanisms for terminating access: the Access Recovery Charge ("ARC") and the Connect America Fund ("CAF").[17] It did so precisely to *avoid* placing the burden on state commissions.[18] True, the FCC's recovery mechanisms are not designed to guarantee that any carrier will recover 100 percent of today's access revenues, but that is because the FCC decided that carriers do not

[17] *CAF Order* ¶¶ 849-853.
[18] *Id.* ¶ 795.

deserve such a guarantee.[19] This Commission itself recognized that there is no guarantee of 100% revenue recovery.[20] Absent reform, high access rates (plus competition from technologies that do not carry the same access burden) would continue to drive usage away from wireline networks (just as they have been doing for years) so access revenues were not going to stay at today's levels anyway.[21]

Second, even if this Commission wanted to link retail price increases with the sort of "100 percent access revenue guarantee" the FCC rejected, it would have no power to overturn the FCC's decision. The FCC has established a uniform nationwide plan for access reductions and the associated recovery. It has decided how much of its access reductions should be recovered from end users, either through the ARC or through universal service contributions, and what conditions a carrier must satisfy to obtain that recovery. Because the Constitution makes federal law (including federal agency decisions) the supreme law of the land,[22] this Commission is not free to second-guess or alter the FCC's plan. The FCC instructed states to *prevent* carriers from reaping "a windfall and/or double recovery," not to help carriers like the Joint Petitioners here do so.[23] There may be legitimate reasons to permit the LECs to increase retail rates – not the least of which would be to give them the flexibility to respond to the competitive market and to help offset the originating access reductions this Commission already has endorsed – but there is no basis under the *CAF Order* or Pennsylvania law for linking additional retail pricing flexibility with some perceived shortfall that might result from application of the FCC's reforms.

---

[19] *Id.* ¶ 848.
[20] *July 2011 Order* at pp. 140-141.
[21] *CAF Order*, ¶ 848.
[22] *Fidelity Federal Savs. & Loan Ass'n v. De la Cuesta*, 458 U.S. 141, 153 (1982).
[23] *CAF Order*, ¶ 813. Through its April 3, 2012 Secretarial Letter, this Commission in fact has already scheduled a collaborative proceeding to consider proper implementation of the FCC's Order, and will be requiring Pennsylvania LECs to submit data demonstrating compliance with the FCC's requirements.

More fundamentally, though, the RLECs are missing the point. There is no need for the Commission to consider whether (and how much) retail prices should be increased because of the federal reforms on the terminating access side. With the removal of state retail price caps – which the Commission has already found to be proper, and with which AT&T and the RLECs fully agree – the RLECs will be making their case to the *market*, not to the Commission. Whatever business reasons the RLECs might have for increasing prices, the market and not the Commission will then decide whether such increases are reasonable. If consumers disagree with the RLECs' business decisions, today's vibrant competition allows them to express their disagreement in the language all businesses understand – by choosing a competitor. Competition is the best form of price regulation.

## III. The Commission Should Disregard The RLECs' Premature And Irrelevant Assertion That The FCC Order Constitutes an Exogenous Event Under Their Chapter 30 Plans.

In response to the question posed by the Commission in its March 20 Order, AT&T demonstrated in the Updated Petition that the RLECs could not circumvent the comprehensive recovery mechanism adopted in the *CAF Order* by seeking additional state support for the federally-ordered reductions in their intrastate access rates. But the Joint Statement submitted by the RLECs indicates that that they propose to do just that. Specifically, the RLECs contend that the *CAF Order* is "a qualifying exogenous event" that "triggers the opportunity for Pennsylvania LECs operating under Chapter 30 Plans to seek alternative recovery mechanisms for the Eligible Recovery revenue which is lost each year."[24]

There are several reasons for the Commission to be skeptical of that claim. At the outset, the premise of the RLECs' assertion – that because the *CAF Order* established a new recovery mechanism that provides federal support for intrastate access reductions, it constitutes (at least

[24] Joint Statement of Gary Zingaretti and Jeffrey L. Lindsay at 4-5.

under the terms of one Chapter 30 plan) "Jurisdictional shift(s) in cost recovery where *interstate revenues actually change*"[25] – does not reflect the reality of the reforms implemented by the FCC, especially through the first two years of the *CAF Order*'s implementation. Indeed, the *CAF Order*'s mandatory access reductions in both 2012 and 2013 apply solely to *intrastate* terminating rates. Other than capping interstate rates at current levels, the *CAF Order* does not begin to affect interstate rates until 2014.[26]

What really appears to be fueling the RLECs' efforts, however, are the provisions in the *CAF Order* that implement annual stepped decreases in the Eligible Recovery that carrier's will be able to obtain to recover access revenues reduced under this order.[27] But this effort to bootstrap ordered reductions in the new federal recovery mechanism into an "exogenous event" not only appears to stretch the meaning of that provision in the Chapter 30 Plans itself, it undermines that very federal reform scheme. That recovery mechanism recognizes the historical downward trend in access revenues. As the FCC found, even if it had not acted "price cap and rate-of-return carriers alike" would "face an increasingly unpredictable [access] revenue stream," and the downward trend of the recent years "will only get worse as demand for traditional telephone service continues to decline."[28] That is the reason that the FCC rejected a 100% revenue-neutral approach to recovery, concluding that the reforms it adopted allowed incumbent LECs to earn a reasonable return on their investment.[29] This Commission itself rejected the notion that RLECs are entitled to guaranteed 100% revenue recovery.[30] The RLECs cannot

---

[25] *Id.* at 4 (ostensibly quoting the Amended Final Streamlined Regulation Plan of Citizens Telephone Company of Kecksburg).
[26] *CAF Order*, ¶ 801.
[27] *See* Joint Statement of Gary Zingaretti and Jeffrey L. Lindsay at 5.
[28] *CAF Order*, ¶ 848.
[29] *Id.* ¶ 924. Carriers who do not believe that the recovery mechanisms are sufficient may petition the FCC to rebut this presumption through a "Total Cost and Earnings Review." *Id.* ¶¶ 924-927. Obviously, the Pennsylvania ILECs should be required to exhaust that process before seeking some windfall relief from this Commission.
[30] *July2011 Order* at pp. 140-141.

evade this determination by fashioning a backdoor through their Chapter 30 plans that would have this Commission give them the support that the FCC did not. In fact, the *CAF Order* specifically states that in order to receive the federal Eligible Recovery, incumbent LECs must certify to the FCC and the state commissions that it "is not seeking duplicative recovery in the state jurisdiction for any Eligible Recovery subject to the recovery mechanism."[31]

But at the present time, such possible issues are academic. Unless and until an RLEC actually petitions for such relief, the matter is not ripe for decision.[32] More importantly, and as discussed above, there is simply no need to ever reach the legal and factual questions that would be presented by a petition for relief under Chapter 30. If the RLECs want to increase retail rates – and AT&T appreciates their late-blooming recognition that such increases are one possible mechanism for dealing with the loss of access subsidies – the Commission-approved removal of state price caps would allow them to do so without them having to file a Chapter 30 petition, and without making the parties and the Commission decide whether the legal and factual requirements for relief have been met.

AT&T does not oppose the RLECs' efforts to bring their local rates to market-based levels. But the better way for those efforts to proceed is through the competitive market, not through litigation and argument over arcane questions of price regulations that have outlived their usefulness. Having set the local benchmark at more appropriate levels, the Commission can get out of the way and let consumers decide. And, as the evidence makes clear, raising the benchmark will make it possible for the Commission to reduce originating access rates at the

---

[31] *CAF Order*, ¶ 862 n. 1664.

[32] It is AT&T's understanding that any exogenous events would be recovered through a RLECs' price stability mechanism ("PSM"), and the Commission has previously recognized that price increases from such PSMs cannot be accomplished through access rate increases. Clearly, given the most recent FCC Order and the Commission's July 18, 2011 Order that access rates must be decreased, this conclusion must continue to stand regardless of the reason for the price increase.

same time the LECs are reducing their terminating rates. Those key ingredients – additional retail pricing flexibility, FCC-mandated reductions to terminating access, and corresponding PUC-mandated reductions to originating access rates – go into the recipe for putting Pennsylvania consumers in control.

## CONCLUSION

WHEREFORE, in light of the foregoing, AT&T respectfully requests that the Commission deny the Joint Petition and grant AT&T's Updated Petition for Reconsideration with respect to originating access.

Respectfully submitted,

By: Demetrios Metropoulos

Michelle Painter
PA Bar ID No. 91760
Painter Law Firm, PLLC
13017 Dunhill Drive
Fairfax, VA 22030
Phone - (703) 201-8378
E-mail - painterlawfirm@verizon.net

Robert C. Barber
AT&T
3033 Chain Bridge Road
Oakton, VA 22185
Phone – (571) 354-4267
E-mail – rb2865@att.com



Demetrios G. Metropoulos
Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 60606-4637
Phone - (312) 701-8479
E-mail – demetro@mayerbrown.com

Counsel for AT&T

DATED: April 19, 2012

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing AT&T's Answer to Joint Petition for Reconsideration and Stay of the Pennsylvania Telephone Association and CenturyLink, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).



Dated at Chicago, Illinois, this 19th day of April, 2012.

**VIA E-MAIL AND FIRST CLASS MAIL**

Norman J. Kennard, Esquire
Thomas, Long, Niesen & Kennard
212 Locust Street, Suite 500
Harrisburg, PA 17108
(717) 255-7600
nkennard@thomaslonglaw.com

Suzan D. Paiva
Verizon
1717 Arch Street
Philadelphia PA 19103
(215) 466-4755
Suzan.D.Paiva@Verizon.com

Bradford M. Stern, Esquire
Martin C. Rothfelder, Esquire
Rothfelder Stern, L.L.C.
625 Central Avenue
Westfield, NJ 07090
(908) 301-1211
bmstern@rothfelderstern.com

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

Barrett Sheridan, Esquire
Shaun Sparks, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048
BSheridan@paoca.org

Zsuzanna Benedek, Esquire
CenturyLink
240 North Third Street, Suite 300
Harrisburg, PA 17101
(717) 245-6346
sue.e.benedek@embarq.com

Steven C. Gray, Esquire
Office of Small Business Advocate
300 North 2nd St, Suite 1102
Harrisburg, PA 17101
(717) 783-2525
sgray@state.pa.us

Michael Gruin
Stevens & Lee
17 North Second St, 16th Floor
Harrisburg, PA 17101
(717) 234-1090
rlh@stevenslee.com

Pamela C. Polacek, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg PA 17108-1166
(717) 232-8000
PPOLACEK@MWN.COM

Theresa Z. Cavanaugh
John Dodge
Davis, Wright, Tremaine, LLP
1919 Pennsylvania Ave, NW
Suite 200
Washington, DC 20006
(202) 973-4205
JohnDodge@dwt.com

Allison C. Kaster
PA Public Utility Commission
Office of Trial Staff
PO Box 3265
Harrisburg, PA 17105
akaster@state.pa.us



Demetrios G. Metropoulos

TO: CHIAVETTA, R. PUC (CHIAVE
Agency: PUC
Floor:
External Carrier: UPS

4/20/2012 9:33:13 AM

1Z8E431E0133361842

CMPC

r use with th

Do not use

MAILROOM
(312) 701-7717
MAYER BROWN LLP
71 S WACKER DR
CHICAGO IL 60606

3 LBS 1 OF 1

SHIP TO: MS. ROSEMARY CHIAVETTA/SECRETARY
(312) 701-7717
PENNSYLVANIA PUBLIC. UTILITY COMM.
COMMONWEALTH KEYSTONE BUILDING
2ND FLOOR WEST
HARRISBURG PA 17105

PA 171 9-20

UPS

Demetrios G. Metropoulos
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637

UPS NEXT DAY AIR 1

TRACKING #: 1Z 6E4 31E 01 3336 1842

MS. ROSEMARY CHIAVETTA
SECRETARY
PENNSYLVANIA PUBLIC. UTILITY COMM.
2ND FLOOR WEST
COMMONWEALTH KEYSTONE BUILDING
HARRISBURG, PA 17105-3265

BILLING: P/P

PKID:1489518 SHIP DT:04/19/12 Wgt 3-lbs

SSX 0140 DMX/J693 27.5V 04/2012