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August 2, 2011

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17105

In re: Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, Docket No. I-00040105

AT&T Communications of Pennsylvania, LLC v. Armstrong Telephone Company - Pennsylvania, *et al.*, Docket No. C-2009-2098380, *et al.*

Dear Secretary Chiavetta:

Enclosed for filing, please find the Joint Petition for Limited Reconsideration and Stay, filed on behalf of the Pennsylvania Telephone Association and The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink. Service has been made in accordance with the attached Certificate of Service.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By: Regina L. Matz
Regina L. Matz

Enclosures
cc: Kandace F. Melillo, Administrative Law Judge
Susan D. Colwell, Administrative Law Judge
Chairman Robert F. Powelson
Vice Chairman John F. Coleman, Jr.
Commissioner Wayne E. Gardner
Commissioner James H. Cawley
Commissioner Pamela A. Witmer
Cheryl Walker Davis, Esquire
Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

JOINT PETITION FOR LIMITED RECONSIDERATION AND STAY

Pursuant to 52 Pa. Code §§ 5.572 and 5.41, the Pennsylvania Telephone Association ("PTA")[1] and The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink ("CenturyLink") (collectively "Joint Petitioners") file this Joint Petition for Limited Reconsideration and Stay of the Pennsylvania Public Utility Commission's ("Commission") Opinion and Order entered July 18, 2011 in the above-captioned matter ("PA RLEC Access

[1] The Pennsylvania Telephone Association member companies include the following: Armstrong Telephone Company – Pennsylvania; Armstrong Telephone Company – North; Bentleyville Telephone Company; Windstream Buffalo Valley, Inc.; Citizens Telephone Company of Kecksburg; Citizens Telecommunications Company of New York; Frontier Communications Commonwealth Telephone Company, LLC (d/b/a Frontier Commonwealth); Frontier Communications of Breezewood, LLC; Frontier Communications of Canton, LLC; Frontier Communications – Lakewood, LLC; Frontier Communications – Oswayo River, LLC; Frontier Communications of PA, LLC; Windstream Conestoga, Inc.; Windstream D&E, Inc.; Hickory Telephone Company; Ironton Telephone Company; Lackawaxen Telecommunications Services; Laurel Highland Telephone Company; TDS Telecom/Mahanoy & Mahantango Telephone Company; Marianna & Scenery Hill Telephone Company; The North-Eastern Pennsylvania Telephone Company; North Penn Telephone Company; Consolidated Communications of Pennsylvania Company; Palmerton Telephone Company; Pennsylvania Telephone Company; Pymatuning Independent Telephone Company; South Canaan Telephone Company; TDS Telecom/Sugar Valley Telephone Company; Venus Telephone Corporation; Windstream Pennsylvania, LLC; and Yukon-Waltz Telephone Company.

Order").[2] Joint Petitioners seek to stay implementation of the PA RLEC Access Order in light of the proposal to reform intercarrier compensation ("ICC") and federal universal service ("USF") as submitted on July 29, 2011 to the Federal Communications Commission ("FCC") addressing price cap carrier changes and entitled the "American Broadband Connectivity Plan" ("ABC Plan"),[3] as well as the letter proposal of that same day filed jointly by the ABC group **and** the "Rural Associations" representing the rate-of-return carriers.[4] Specifically, Joint Petitioners request that the Commission grant limited reconsideration and stay implementation of the PA RLEC Access Order and any state USF rulemaking order – for no less than 6 months (until approximately January 18, 2012) – so as to retain jurisdiction and to take any action deemed necessary or appropriate to coordinate with FCC action.[5] In support thereof, Joint Petitioners aver as follows:

STANDARD OF REVIEW

1. A petition for reconsideration must raise new and novel arguments, not previously heard, or considerations that appear to have been overlooked or not addressed by the Commission.[6] As the Commission stated:

> In this regard, we agree with the Court in the Pennsylvania Railroad Company case, wherein it was stated that "[p]arties…, cannot be permitted by a second motion to review and reconsider, to raise the same question which were specifically considered and decided against them…" 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. Absent such matters being presented, we consider it unlikely that a party will succeed in

[2] 52 Pa. Code §§ 5.572, 5.41. *See also*, 66 Pa.C.S. § 703(g).
[3] The ABC Plan is a proposal submitted to the FCC by price cap signatories that include AT&T, Verizon, CenturyLink, FairPoint, Frontier, and Windstream.
[4] The group, participating before the FCC as the "Rural Associations," which includes NECA, NTCA, OPASTCO, WTA and numerous other organizations representing rural rate-of-return local exchange companies, has previously presented the "RLEC Plan" in their comments, which was modified in the letter proposal of July 29, 2011.
[5] Per Pa. R.A.P. 1701(a), after an appeal is taken, the governmental unit may no longer proceed further in the matter.
[6] *See, Duick vs. Pennsylvania Gas and Water Co.*, 56 Pa. PUC 553 (1992) ("*Duick*").

> persuading us that our initial decision on a matter or issue was either unwise or in error.[7]

2. The specific relief requested on reconsideration is a limited stay of the PA RLEC Access Order.[8] Generally, in respect to a supersedeas on appeal, the Pennsylvania Supreme Court, in *Process Gas*,[9] recited four criteria applicable to a stay pending an appeal: (1) The petitioner makes a strong showing that he is likely to prevail on the merits; (2) The petitioner has shown that without the requested relief, he will suffer irreparable injury; (3) The issuance of a stay will not substantially harm other interested parties in the proceedings; and (4) The issuance of a stay will not adversely affect the public interest. At this point, Joint Petitioners are not asking for a stay pending appeal on the grounds that Joint Petitioners assert that they will likely prevail on appeal, although they reserve the right to do so,[10] such that *Process Gas* would apply. Rather, Joint Petitioners are seeking a stay because there is now a strong likelihood that the FCC will rule on comprehensive ICC and USF directly affecting **intrastate** switched access rates and that the Commission may not have the jurisdiction to effectuate the best policy for rural Pennsylvania if the PA RLEC Access Order is not stayed and appeals are filed. Even if not fully preempted, at a minimum the Commission should consider the impact that action at the FCC level will have on RLECs' intrastate switched access rates as well as the availability of federal funding before proceeding further at the state level.

3. Both the PA RLEC Access Order and the FCC's ICC/USF reform initiatives involve the same intrastate and interstate RLEC switched access rates and impact the same RLEC consumers. Action before the FCC and the likelihood of FCC action raise new arguments

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[7] *Id.*, at 559.
[8] 52 Pa. Code § 5.572(a).
[9] *Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 502 Pa. 545, 467 A.2d 805 (1983) ("*Process Gas*"). *See also, Re: JCo Transport, Inc. 62 Pa. P.U.C.* 171, 0086 WL 1179841 (1986) , *quoting, Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 502 Pa. 545, 467 A.2d 805 (1983).
[10] Joint Petitioners are reviewing all options, including the filing of Petitions for Review with the Pennsylvania Commonwealth Court.

not previously heard. Limited reconsideration and stay are necessary to avoid irreparable harm to the RLECs and to consumers in rural Pennsylvania arising from implementation of the PA RLEC Access Order to the extent that state and federal results will conflict or will jointly create circumstances not anticipated – or anticipatable – by the Commission at the time it entered the PA RLEC Access Order. Coordination between federal and state reform activities through limited reconsideration and stay of the PA RLEC Access Order and any USF rulemaking order will enable the Commission to retain jurisdiction and to evaluate fully any final FCC action. The public interest requires that the Commission act and exercise discretion to preserve the status quo given imminent FCC action on comprehensive ICC/USF reform.

4. Of significant concern is that a petition for review of the PA RLEC Access Order is due to the Commonwealth Court on or before August 17, 2011. Under Pa. R.A.P. 1701(a), after an appeal is taken, the governmental unit "may no longer proceed further in the matter." Joint Petitioners are reviewing all options regarding the PA RLEC Access Order of July 18, 2011, including the filing of petitions for review with the Commonwealth Court to preserve their rights. It is likely that other parties may also take appeals or cross appeals. Once this occurs, all appealing and cross-appealing parties must concur in a withdrawal, if the Commission is to revise the PA RLEC Access Order further once the FCC acts. It is better to reconsider now, so that the Commission has full ability and discretion to react to the FCC and revise its order accordingly.

ARGUMENT

5. Most persons involved in the regulation of telecommunications agree that an overhaul of ICC and federal USF systems is necessary. The investigation that resulted in the PA RLEC Access Order was resumed by the Commission based upon the premise that "FCC action

does not appear to be imminent."[11] This is no longer the case. While differences still exist as to possible solutions, it is clear now that the FCC appears to be poised to act on comprehensive ICC/USF reform.

6. In early February 2011, the FCC released a Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking and invited comments on proposals for comprehensive reform of the universal service and intercarrier carrier compensation systems.[12] The NPRM arose from a comprehensive National Broadband Plan submitted by the FCC to Congress.[13] As a result of the FCC's NPRM, the FCC received numerous comments and reply comments. Public input hearings were also held on numerous issues. Indeed, at the May 18, 2011 Omaha Nebraska Field Workshop, AT&T espoused its position that the traditional division of roles during transition "are likely to fail" and that "rational transition must include a pre-defined series of steps…one in which the FCC takes the leading role."[14]

7. An industry-consensus proposal, the ABC Plan, was filed on July 29, 2011, after the Commission entered its PA RLEC Access Order. The ABC Plan signatories include some of same adversaries involved in the underlying litigation – namely, AT&T, CenturyLink, Verizon, Frontier and Windstream. *See*, Appendix B hereto, a true and correct copy of Attachment 1 ("Framework of Proposal") to the ABC Plan as well as the subsequent letter jointly submitted by Rural Associations and the ABC group.

[11] PA PUC Order, entered August 5, 2009, at p. 19.

[12] *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb 9, 2011) ("NPRM"). *See,* Public Notice, 76 Fed. Reg. 11,632 (Mar. 2, 2011).

[13] In the *American Recovery and Reinvestment Act of 2009*, Pub. L. No. 111-5, 123 Stat. 115 (2009), Congress directed the FCC to submit a report containing a national broadband plan. On March 16, 2010, the FCC submitted the plan to Congress. The plan is entitled "*Connecting America: The National Broadband Plan.*" It is available at http://www.broadband.gov/plan/.

[14] *See*, Appendix A, AT&T handout, May 18, 2011 Omaha Field Workshop.

8. The ABC Plan, including the Rural Associations' changes as addressed in the Joint Letter of July 29, 2011, proposes to revise the existing ICC and federal USF mechanisms. The ABC Plan, combined with changes in the RLEC Plan, present a reform solution to the current intercarrier compensation system – including intrastate switched access rates. Several significant components of the ABC Plan include:[15]

a. Under the ABC Plan, the terminating intercarrier compensation rates of all price cap carriers are phased down to a uniform rate of $0.0007 per minute by July 1, 2017. Rate-of-return incumbent LECs will phase down their terminating intercarrier compensation rates to $0.005 and, potentially, a uniform rate of $0.0007 per minute by July 1, 2019. **The phase down to that uniform rate begins July 1, 2012**. These changes are not consistent with the Commission's PA RLEC Access Order.

b. The ABC Plan does not expand existing federal USF funding mechanisms. Rather, the ABC Plan proposes two new universal service programs – a Connect America Fund ("CAF") and an Advanced Mobility/Satellite Fund ("AMF") – to support the provision of broadband service in high-cost areas. If approved by the FCC, **the CAF begins disbursing support on July 1, 2012**, to both support the deployment of broadband service to unserved homes and support the continued operation of existing broadband networks. The Commission's PA RLEC Access Order does not recognize, because it could not due to its timing, either the effect of federally mandated access reform or the effect that state mandated parity

[15] The ABC Plan was filed only three business days before the due date for this Joint Petition and only 11 calendar days after entry of the Commission's July 18, 2011 RLEC Access Order. Joint Petitioners have not had sufficient time to thoroughly review the Plan and reserve the right to further comment.

might have on the Joint Petitioners' federal USF revenues. There is a substantial likelihood that Pennsylvania RLECs will be prejudiced by reducing the money available from new federal restructuring if the Commission were to forge ahead and not stay the PA RLEC Access Order.

c. The ABC Plan begins to phase out the support that incumbent price cap LEC Eligible Telecommunications Carriers ("ETCs") and competitive ETCs ("CETCs") receive from the legacy universal service programs **on July 1, 2012**, once the CAF begins to disburse broadband funding. The ABC Plan eliminates those ETCs' support from the legacy universal service programs entirely on July 1, 2016, when the CAF is fully funded. The rate-of-return LECs will also see deterioration in their ETC revenues. ETC funding is important to the Joint Petitioners' ability to provide carrier of last resort functions which are acknowledged in the PA RLEC Access Order.

d. Providers that receive CAF support must make available broadband service that provides customers with a minimum actual bandwidth of 4 megabits per second downstream and 768 kilobits per second upstream, as well as provide service that is sufficient for households to use education and health care applications specified by the FCC. This component will affect the Joint Petitioners' Chapter 30 obligations and may preempt current state broadband standards.

e. As terminating intercarrier compensation revenue is reduced, the ABC Plan includes measured increases to the federal Subscriber Line Charge ("SLC"). The plan provides two separate paths for SLC changes for price cap carriers, but both paths initiate changes **effective July 1, 2012:**

- If a price cap LEC elects to receive support from the transitional access replacement fund, the cumulative increase in the SLC may not exceed $0.50 effective July 1, 2012; $1.00 effective July 1, 2013; $1.50 effective July 1, 2014; $2.00 effective July 1, 2015; and $2.50 effective July 1, 2016.

- If a price cap LEC does not elect to receive support from the transitional access replacement fund, the cumulative increase in the SLC may not exceed $0.75 effective July 1, 2012; $1.50 effective July 1, 2013; $2.25 effective July 1, 2014; $3.00 effective July 1, 2015; and $3.75 effective July 1, 2016.

For rate-of-return companies, the local rate benchmark would be set at $25.00, with SLC caps increasing by $0.75 per line, per year for six years with no further increases in later years.

Increases in the federal SLC were not anticipated in the PA RLEC Access Order. The Order sets a "Benchmark Rate" based upon an affordable rate of $32.00 less the SLC and other charges, the result of which is a $23.00 tariff rate. Thus, the newly proposed changes in the SLC would affect the tariff rate calculation, causing Pennsylvania rural consumers to pay rates well in excess of the rest of the country.

f. Under the ABC Plan, any SLC increase may not cause the sum of the local residential rate, federal SLC, state SLC, mandatory EAS, and per-line state

USF contribution to exceed a benchmark of $30 per month. The benchmark comparison uses the local rate, state SLC, and EAS rate in effect on January 1, 2012. As noted above the, benchmark rate employed in the PA RLEC Access Order is $2.00 higher than the ABC Plan (price cap carriers) and $7.00 higher than the federal RLEC Plan (rate-of-return carriers).

9. Clearly, the ABC Plan and RLEC Plan, as modified, raise new arguments, not previously considered by the Commission, impacting both the timing and the substance of the Commission's determinations in the PA RLEC Access Order. The Commission has previously stayed examination of RLEC intrastate carrier access charges based upon potential FCC activity.[16] Limited reconsideration and stay concerning implementation of the PA RLEC Access Order are now warranted and appropriate for several reasons.

10. First, practical realities and legal requirements dictate that a limited stay of the PA RLEC Access Order is necessary at this time. The PA RLEC Access Order sets forth a specific timeline for implementation of the Commission's decision to reduce RLEC intrastate switched access rates. Implementation begins almost immediately with entry of a Secretarial Letter releasing a "rate rebalancing template" expected by August 17, 2011 and with tariffs filed to implement Phase I estimated to occur at March-end 2012.[17] Between those dates, the PA RLEC Access Order contains a series of steps including:

- Submittal of comments and reply comments regarding a proposed template;[18]

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[16] *See generally, Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund,* Docket No. I-00040105, Order entered August 30, 2005, Order entered November 16, 2006.
[17] PA RLEC Access Order at p. 186. *See also*, Ordering ¶¶ 11 through 16.
[18] *Id.*, at Ordering ¶11.

- A Commission order addressing comments and release of the "Final Template" estimated to be entered at the end of October 2011;[19]
- The filing of rate rebalancing calculations and illustrative tariffs;[20]
- **Notices of upcoming rate changes sent to all RLEC retail customers, access customers and CLECs**, estimated to occur at the end of November 2011;[21]
- Secretarial Letters (FUS) approving the filings at the end of February 2012.[22]

11. While it is impossible to predict specific outcomes to be taken by the FCC, it is clear that the FCC is likely to regard the ABC Plan as a baseline for a decision to implement ICC/USF reform. The interests of Pennsylvania consumers would be best positioned by the Commission granting a limited stay of the PA RLEC Access Order and any USF rulemaking order **before** the process outlined above starts. In addition, a limited stay as requested herein conserves administrative agency resources, preserves the status quo for coordination of state/federal results consistent with notions of federalism, and avoids the potential for multiple rate increases foisted upon Pennsylvania's rural consumers due to compliance with the provisions of both the PA RLEC Access Order and the ABC Plan. Given the timing of the Commission's PA RLEC Access Order, it is clear that the Commission could not have envisioned the specific sweeping impacts resulting from the ABC Plan and modified RLEC Plan, and, thus, could not foresee of the harmful impacts to the public interest due to any premature implementation of the PA RLEC Access Order.

12. The Commission, in resuming this case in 2009, anticipated that parties would have the opportunity to address the impact of any potential FCC action before the entry of an

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[19] *Id.*, at Ordering ¶12.
[20] *Id.*, at Ordering ¶13.
[21] *Id.*, at Ordering ¶14.
[22] *Id.*, at Ordering ¶15.

order.[23] The expectation of Joint Petitioners has been that the Commission will continue to honor this stated sentiment after the entry of an order. The Pennsylvania General Assembly explicitly authorizes the Commission to rescind and amend an order as necessary and consistent with due process requirements.[24]

13. The unfortunate confluence in timing associated with FCC ICC/USF reform and the entry of the PA RLEC Access Order cannot abridge due process and the Commission's ability to do the right thing to stay the PA RLEC Access Order and coordinate state/federal actions. The Commission itself, in the PA RLEC Access Order, recognized the potential for FCC action and the need to coordinate with potential outcomes of FCC reform efforts.

> We are of the opinion that we can proceed independently from the eventual outcome of the FCC's NPRM that is dealing with interstate intercarrier compensation and federal USF reforms. <u>However, we reserve the right to initiate subsequent [sic] proceedings and issue appropriate Orders that will seek to coordinate the potential outcomes of the FCC's initiatives with our decision today to the extent necessary, while also safeguarding the due process rights of all interested and participating parties.</u>[25]

14. To proceed with the PA RLEC Access Order's timeline for implementation of local rate increases <u>and</u> increases potentially to all RLEC non-competitive services with knowledge of the comprehensive FCC ICC/USF reform further draws into consideration the Commission's obligation to ensure that any rate changes in the PA RLEC Access Order are just and reasonable and that its determinations comply with Act 183's revenue neutrality requirements. The Commission must recognize the overarching federal changes and the need to coordinate state and federal outcomes.

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[23] As the Commission stated:

> "In the event that the FCC makes a final determination regarding intercarrier compensation regimes during our full investigations, the impact of said determination should be addressed by all interested parties as part of the proceeding."

PA PUC Order, entered August 5, 2009, at p. 19.

[24] 66 Pa.C.S. § 703(g) (The Commission "may, at any time, after notice and after opportunity to be heard...rescind or amend any order made by it.").

[25] PA RLEC Access Order at p. 123 (emphasis added).

15. A limited stay also affords the Commission with a reasonable amount of time to align its policies relative to all Pennsylvania ILECs. The Commission has an open proceeding relative to the switched access rates of Verizon Pennsylvania Inc. and Verizon North LLC ("Verizon"). The Commission in the Verizon access proceeding has the opportunity to address the ABC Plan and any subsequent action. Given final entry of the PA RLEC Access Order, the Commission has not had the opportunity to consider the ABC Plan. This is an unnecessary and unfair result. The RLECs would be irreparably harmed due to potential mismatched regulatory results arising from premature implementation of the PA RLEC Access Order if not coordinated with FCC action.

16. Second, Pennsylvania consumers will be irreparably harmed due to the cumulative effects of multiple, end-user retail rate increases, if the PA RLEC Access Order **and** FCC ICC/USF action are not coordinated. Annex C of the PA RLEC Access Order generally describes the consumer rate increases ordered by the Commission as follows:

> Any revenue reductions resulting from the intrastate switched access rate decreases <u>will first be offset</u> with equivalent local rate increases in the RLECs' dial tone line rates and the associated equivalent B-1 rates. The R-1 rate increases resulting directly from this investigation shall not exceed more than $3.50 per line/per month in any of the three phases. Any access charge revenue decreases that cannot be offset after using a maximum increase of $3.50 per month/per line may be recovered through rate increases from the RLECs' other non-competitive services.[26]

17. If not stayed to coordinate state and federal activity, in March 2012 consumers in rural Pennsylvania likely will face a $3.50/month increase in their rates for basic telephone service <u>plus</u> rate increases to any number of other noncompetitive rate increases as envisioned in the PA RLEC Access Order. Then, in July 2012, these same rural customers will receive either a $0.75/month increase or a $.50/month increase to the federal SLC under the ABC and RLEC

[26] PA RLEC Access Order, Annex C, at p. 4.

Plans if approved. Thereafter, each succeeding year both state and federal cumulative rate increases will occur if state and federal actions are not coordinated -- i.e., additional local residential rate increases culminating in a total bill increase of a minimum of $5.00/month under the PA RLEC Access Order, additional cumulative increases to the federal SLC of $3.75/month or $2.50/month, unspecified additional increases to local business rates under the PA RLEC Access Order, and potential additional rate increases to every RLEC noncompetitive service. Just as the Commission previously found when granting stay in the Verizon switched access rate investigation, "the cumulative effect of the Commission's and the FCC's potential access reform actions" – if not coordinated – constituted sufficient demonstration for staying the Commission's investigation.[27]

18. Moreover, the residential "benchmark" determined in the PA RLEC Access Order and the $30.00/month rate used in the ABC Plan and the $25.00/month rate in the RLEC Plan further demonstrate how critical it is to grant stay of the PA RLEC Access Order. Specifically, the PA RLEC Access Order purports to set a new just and reasonable Commission "benchmark" residential local rate of $23.00/month. However, this new Commission residential benchmark rate explicitly excludes taxes, fees, and the federal SLCs.[28] Under the ABC and RLEC Plans, those federal SLCs levels assumed in the PA RLEC Access Order would increase ultimately by

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[27] *AT&T Communications of Pennsylvania, LLC v. Verizon North Inc. and Verizon Pennsylvania Inc.,Docket No. C-20027195* Opinion and Order, entered January 8, 2007, at pp. 36-37:

> We agree with the OCA and other parties that the potential impact of the FCC *Intercarrier Compensation Proceeding* and the associated Missoula Plan proposal may affect *both* interstate *and intrastate* access charge reform, and that the end-user consumers of Verizon PA's and Verizon North's basic local exchange services may have to absorb these effects into their local rates, *e.g.*, through increases in their federal subscriber line charges (SLCs). In addition, it is likely that the absorption of these effects may be "on top" of the "revenue neutral" adjustment of the Verizon ILEC local rates following the elimination of the Carrier Charge as recommended by the ALJ. In this regard, we are persuaded by the OCA's demonstration of the cumulative effect of this Commission's and the FCC's potential access reform actions if such actions are *not coordinated.*

[28] The Commission's benchmark with taxes, fees and federal SLCs included is $32.00/month. PA RLEC Access Order at pp. 47, 146, and fn. 145. *See also*, ALJ Melillo R.D. at p. 116.

either $3.75/month or $2.50/month as addressed above. It is also important to note that the $23 benchmark established by the Commission is not a "rate cap" and that in order to achieve revenue neutral rate rebalancing as a result of the Commission's Order, some RLECs may be required to raise rates above $23.00. Thus, when viewed in conjunction with the outcomes of the pending federal plans, any claim of just and reasonableness associated with the PA RLEC Access Order's $23.00/month benchmark is seriously called into question and will exceed any semblance of an "affordable" rate. Rural Pennsylvania consumers deserve a stay of the PA RLEC Access Order so as to coordinate state and federal activity.

19. Moreover, the ABC Plan, in contrast, provides that any SLC increase <u>may not cause the sum</u> of the local residential rate, federal SLC, state SLC, mandatory EAS, and per-line state USF contribution <u>to exceed a benchmark of $30.00 per month for price cap companies and $25.00 per month for rate-of-return companies</u>. However, the PA RLEC Access Order's benchmark and assumed revenue neutrality require RLECs to increase local residential rates by a minimum of $3.50/month in each of three steps – and potentially more – which clearly frustrates the $30.00/month and $25.00/month ABC and RLEC Plans' rates. Clearly, if not stayed and not coordinated, the cumulative effect on rates and the potentially conflicting assumptions regarding benchmarks as employed between state and federal reform efforts will adversely affect the public interest.

20. Third, irreparable harm inures to the RLECs if stay is not granted. Today's hyper-competitive telecommunications marketplace requires carriers – including RLECs – to constantly evaluate their pricing for products and services. The PA RLEC Access Order funds switched access rate reductions (to interstate parity) <u>exclusively</u> by rebalancing against (or increasing) consumer rates. These rate increases, coupled with the increases to the federal SLC

as provided for in the ABC Plan will place Pennsylvania's RLECs in a position to implement retail end-user rate increases that are completely untenable in today's competitive telecommunications marketplace.

21. The ABC Plan will provide revenue support through new federal USF funding mechanisms as part of national broadband plan and a comprehensive ICC/USF reform effort. Were Pennsylvania to implement further rural access rate reforms ahead of FCC action, this could seriously jeopardize the RLECs efforts to receive adequate federal support. Without a stay, the revenue benefits associated with new federal USF funding mechanisms could be denied to RLECs as they must divert new revenue resources to fund intrastate switched access rates per the PA RLEC Access Order. RLECs already have statutory broadband commitments under Act 183 and are would be further harmed by their potential inability to access new funding mechanisms for the deployment and operation of such broadband networks. A stay is necessary to protect full realization by Pennsylvania's RLECs of the revenue benefits from comprehensive FCC ICC/USF action and ensure that rural Pennsylvanians are not harmed. Pennsylvania is a net contributor state to the federal USF. The Commission should not do anything to increase the imbalance of payments that already exists as a net payer state.

22. Limited reconsideration and stay will preserve the status quo and will ensure that rural Pennsylvania is not irreparably harmed relative to other states.[29] As the Commission has

[29] For example, when debating the merits of granting stay pending the Missoula Plan, the Commission granted stay and stated as follows:

> The Missoula Plan also brings into question whether this Commission should act quickly to order further intrastate access charge reductions, which possibly then would hurt our chances in the future of receiving federal subsidy monies for these reductions. Given all of these potential changes at the federal level that can affect universal service, we agree that the Joint Motion should be granted in part.

April 24, 2008 Order, at p. 28.

noted, Pennsylvania is an "early adopter" of intrastate switched access reform, is a net contributor to the federal USF, and has statutory broadband commitments.[30] The Commission recently commented:

> The Pa PUC asserts, as it has in earlier filings in the Universal Service (96-45) and Intercarrier Compensation Dockets (01-92), that early adopter states or carriers must not lose support merely because those jurisdictions or carriers have completed broadband build-out programs. Retention of support for those jurisdictions and carriers is required to allow for the continued provision of broadband services and to allow for the return on and return of those broadband investments.[31]

A stay facilitates coordination of regulatory decisions, avoids irreparable harm to the RLECs, and allows benefits of any final comprehensive federal ICC/USF action the opportunity to flow to Pennsylvania and the RLECs serving Pennsylvania.

23. Fourth, stay of the PA RLEC Access Order will not substantially harm other interested parties. Actually, a stay benefits the beneficiaries of switched access rate reductions because reductions to mirroring of interstate access rates are achieved at a much quicker pace under the ABC Plan and the reductions of the per minute of use terminating rates go further ($.0007) than what the PA RLEC Access Order entails. Under the PA RLEC Access Order, traffic sensitive rates and the carrier charge are reduced by 40% (estimated March end 2012). However, under both the ABC and RLEC Plans all intrastate switched access rates are moved to 50% to interstate parity by July 12, 2012, with the remainder following the next year.

24. Moreover, stay will not substantially harm other interested parties supporting, or not opposing, either the ABC Plan or RLEC as modified, since they would get the "bargained-

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[30] *See, e.g., In the Matter of Developing a Unified Intercarrier Compensation Regime,* Docket No. CC-0192, The Reply Comments of the Pennsylvania Public Utility Commission, February 1, 2007, at p. 29.

[31] *In the Matter of Connect America Fund A National Broadband Plan For Our Future High-Cost Universal Service* WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, FCC 1051, Initial Comments of the Pennsylvania Public Utility Commission, July 12, 2010, at p. 3.

for" package of reform they supported or accepted at the FCC. By definition, irreparable harm does not arise. Stay preserves the status quo and equalizes the industry interests at stake while the FCC moves forward with comprehensive ICC/USF reform. And, harm does not arise to any party as all have an opportunity to participate in the FCC proceeding.

25. Finally, some opponents of stay may argue that prior federal proposals (*e.g.*, the Missoula Plan or the Martin Proposal) have failed and a stay based upon the filing of the ABC Plan is a delay tactic. Similarly, some opponents of stay may contend that it is uncertain whether preemptive action by the FCC would be upheld by the courts.[32]

26. Unlike the Missoula Plan and the Martin Proposal, the ABC Plan and revised RLEC Plan have broad industry support, including that of AT&T and Verizon, the principal protagonists in the RLEC intrastate access investigation. Moreover, there can be no reasonable expectation of implementing the PA RLEC Access Order given that the Commission explicitly reserved the right to "issue appropriate Orders that will seek to coordinate the potential outcomes of the FCC's initiatives with our decision today..."[33] A limited stay as requested preserves the status quo and does so in order to achieve the best possible result for Pennsylvania overall, rather than for any particular party or interest.

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[32] *See, e.g., Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, et. al.*, Docket No. I-00040105, Order entered November 15, 2006, at pp. 15-16.

[33] PA RLEC Access Order at p. 123 (emphasis added).

CONCLUSION

Accordingly, Joint Petitioners respectfully request that the Commission grant this Joint Petition for Limited Reconsideration and Stay. Joint Petitioners specifically request that the Commission enter an Order granting limited reconsideration and stay implementation of the PA RLEC Access Order and any state USF rulemaking order – for no less than 6 months (until approximately January 18, 2012) – so as to retain jurisdiction and to take any action deemed necessary or appropriate to coordinate with FCC action.

Respectfully submitted,

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State and Federal Roles in ICC Reform
May 18, 2011 Omaha Field Workshop

AT&T

Access charges were part of a system designed to achieve universal availability of voice services. That system included:

- Monopoly franchise areas;
- Separation of costs between intra- and interstate jurisdictions;
- Trifurcation of voice services into "local," "intrastate long distance," and "interstate long distance";
- "Value of service" pricing;
- Nationwide averaged long-distance pricing;
- A mechanism, access charges, to recover an arbitrary portion of fixed network costs from long distance minutes.

Access charges were designed based on premises that have proven invalid over time:

- Separate markets for "local" and "long distance" voice services;
- Calling party "causes" and is sole beneficiary of every call;
- Increasing or stable minutes-of-use.

Access charges are not sustainable as a mechanism to achieve universal service objectives, which are in transition:

- Unabated decline in access minutes;
- Alternatives in the market that do not incur access charges;
- Technology changes that have facilitated arbitrage;
- Market-leading position of all-distance services;
- Inapplicability of access charges to broadband business models.

Neither broadband nor voice services can rationally be divided between intra- and interstate jurisdictions:

- All-in-one services have won in the market;
- Division of unified services in order to confer regulatory jurisdiction is irrational.

Attempts to maintain the traditional division of roles during the transition are likely to fail:

- State and federal regulators both have a responsibility to eliminate vestiges of legacy mechanism in a manner that avoids needless disruption to consumers and discourages arbitrage;
- A rational transition must include a pre-defined series of steps;
- The most realistic scenario for defining those steps is one in which the FCC takes the leading role.

America's Broadband Connectivity (ABC) Plan Framework

The ABC Plan consists of three inextricably-linked components that work together to ensure that all Americans have access to broadband service. First, the plan creates new universal service programs that explicitly support the provision of broadband service in high-cost areas, replacing the patchwork of legacy universal service programs that were designed to support plain old telephone service (POTS). Second, the plan reforms the intercarrier compensation system to reduce carriers' reliance on implicit support mechanisms that are no longer sustainable and were not designed to support the deployment of broadband. Third, the plan eliminates obsolete regulations that are no longer necessary as carriers transition from POTS to IP-based broadband networks.

1. Modernizing the Universal Service Fund to Support Broadband

The ABC Plan proposes two new universal service programs – a Connect America Fund (CAF) and an Advanced Mobility/Satellite Fund (AMF) – to support the provision of broadband service in high-cost areas. The CAF, which will begin disbursing support on July 1, 2012, will both support the deployment of broadband service to millions of unserved homes and also support the continued operation of existing broadband networks that have relied on legacy support mechanisms. The plan limits its specific recommendations for the CAF to areas currently served by price cap incumbent LECs.

The AMF is designed to support the provision of mobile broadband service in high-cost areas that would otherwise lack such service, and may also support the provision of broadband satellite service in the highest-cost areas.

The plan begins to phase out the support that incumbent price cap LEC Eligible Telecommunications Carriers (ETCs) and competitive ETCs (CETCs) receive from the legacy universal service programs on July 1, 2012, once the CAF begins to disburse broadband funding. The plan eliminates those ETCs' support from the legacy universal service programs entirely by July 1, 2016, when the CAF is fully funded. This framework – phasing out the legacy universal service programs and creating a broadband-focused CAF and AMF – reflects the National Broadband Plan's key universal service recommendations and advances the public interest in promoting broadband availability.

Constraint on Fund Size: Consistent with the *Joint Statement*, the combination of (i) the universal service mechanisms covered by this plan[1] and (ii) the universal service mechanisms proposed by the rate-of-return carrier associations is designed to operate within the current size of the high-cost program, which is estimated to be $4.5 billion per year.

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[1] The universal service mechanisms covered by this plan are the CAF for price cap LEC areas, the AMF, the transitional access replacement mechanism for price cap incumbent LECs, and the legacy high-cost mechanisms insofar as they disburse support to CETCs and price cap incumbent LEC ETCs. This plan does not address legacy high-cost support mechanisms as applied to rate-of-return carrier ETCs.

Attachment 1

The Connect America Fund for Areas Served by Price Cap Incumbent LECs

The CAF is targeted to distribute $2.2 billion per year to support the provision of broadband service to residential and business service locations in high-cost areas served by price cap incumbent LECs. Many of these high-cost areas currently receive little or no universal service support from the legacy universal service programs. Under the ABC Plan, the Commission will begin to narrow the "rural-rural divide" that has provided rural areas served by price cap carriers with less support than the rural areas served by rate-of-return carriers.[2]

The CAF will begin disbursing support on July 1, 2012. Some areas may begin to receive CAF support immediately, while other areas will begin to receive support after the Commission has conducted a competitive bidding process. Because the start dates for CAF disbursements will be staggered, and because the plan reduces legacy high-cost support each year, the overall level of universal service support will remain within the $4.5 billion per year constraint. The Commission may, however, take additional steps to phase in the CAF in order to ensure that the universal service program operates within the $4.5 billion per year constraint. For example, the Commission could phase in CAF recipients' support over three years.

The design of the CAF reflects a procurement model, under which providers incur service obligations only to the extent they agree to perform them in explicit agreements with the Commission.

Term of Support

Broadband providers that elect to receive support from the CAF will receive a fixed level of support for a term of ten years from the date on which support is awarded. To the extent that the Commission phases in a CAF recipient's support for an area by providing CAF support for some census blocks before it provides CAF support for other census blocks, each group of census blocks will have a separate ten-year term. A CAF recipient's support may not be reduced once awarded, provided that the recipient meets the obligations associated with CAF support. At the end of the ten-year term, the CAF recipient's support and obligations will both end. Before July 1, 2022, the Commission will complete a proceeding to evaluate whether to create a successor universal service fund.

Broadband Service Supported by the CAF

Providers that receive CAF support must make available broadband service that provides customers with a minimum actual downstream bandwidth of 4 Mb/s and a minimum actual upstream bandwidth of 768 kb/s, and also provides robust service that is sufficient for households to use education and health care applications specified by the Commission. The supported broadband service must

[2] *Connect America Fund NPRM* at ¶ 6.

provide access to voice service, but voice service is not supported by the CAF and CAF recipients are not required to offer voice service. The broadband service obligation is technology-neutral: providers can use any wireline or wireless technology that meets the specified bandwidth and service requirements.

Supported Areas

CAF support is available only in those high-cost areas in which there is no private sector business case to offer broadband. The assessment of whether an area is "high-cost" is made on a census block-by-census block basis.

No CAF support for census blocks served by an unsupported broadband competitor: CAF support is not available in any census block in which at least one unsupported broadband competitor is already offering broadband service as of January 1, 2012.[3] An "unsupported broadband competitor" is a facilities-based competitor that has invested to provide broadband in the census block without using federal or state high-cost universal service support and without any state or federal service obligations. The availability of broadband service from an unsupported broadband competitor demonstrates that there is a private sector business case to offer broadband and that high-cost universal service support is not required. In order to provide the stability that is necessary for CAF recipients to take on broadband service obligations for ten years, the entry of an unsupported broadband competitor after January 1, 2012 does not affect the level of CAF support.

State commissions may elect to be responsible for determining whether an area is already served by an unsupported broadband competitor as of January 1, 2012. A state commission may make that determination using broadband deployment mapping information, but states must give parties the opportunity to challenge the mapping data and provide additional information that indicates the presence or absence of an unsupported broadband competitor. The Commission will assume this responsibility if the state commission does not elect to provide verified deployment information for unsupported broadband competitors by January 1, 2012.

Cost model to identify high-cost areas: For each census block that does not have an unsupported broadband competitor as of January 1, 2012, the Commission will use a forward-looking cost model to determine the cost of providing broadband service in the census block. A census block is eligible for support from the CAF if the average per-service location cost of providing broadband service in the census block, as determined by the cost model, exceeds a high-cost "benchmark" that the Commission will specify. If the modeled cost of providing broadband

[3] A competitor's service qualifies as "broadband service" if it has the same capabilities as the broadband service supported by the CAF, i.e., it provides customers with a minimum actual downstream bandwidth of 4 Mb/s and a minimum actual upstream bandwidth of 768 kb/s, and also provides robust service that is sufficient for households to use education and health care applications specified by the Commission.

service is below the benchmark, then the census block is not considered "high-cost" and is not eligible for CAF support.

The plan supporters retained CostQuest Associates, Inc. (CostQuest) to develop the CostQuest Broadband Analysis Tool (CQBAT). CQBAT allows the calculation of the forward-looking cost of providing broadband, and the calculation of estimated support levels, on a census block basis. To ensure that the CAF can begin disbursing support by July 1, 2012, the Commission should adopt the CQBAT model prior to January 1, 2012.

Documentation for the CQBAT model is provided in Attachment 3. The model bases the support estimate on modeled network buildouts and capital and operating costs required for broadband deployments, as compared to a user-specified benchmark. CQBAT accounts for the impact of setting a target for the total support amount by relying on satellite broadband for extremely high-cost areas. It attempts to exclude from the support estimate any census blocks in which broadband service is already being provided by an unsupported broadband competitor. CQBAT includes unique detail for 8.2 million census blocks, and incorporates real-world engineering practices and a variety of real-world operating cost factors.

Aggregation of census blocks to Supported Area: By modeling the cost of broadband and applying the benchmark at the census-block level, the plan ensures that support is targeted precisely to high-cost areas in which support is necessary for providers to offer broadband. However, because it would be unwieldy to administer the disbursement of CAF support to millions of individual census blocks, the CAF disburses support to a "supported area" on a wire center-by-wire center basis. For each incumbent LEC wire center, the "supported area" consists of all census blocks that (1) are not served by an unsupported broadband competitor; and (2) whose cost exceeds the benchmark. Thus, each supported area is a collection of census blocks that is no larger than a wire center and typically smaller than a wire center. In a rural wire center, for example, the CAF might provide support for the sparsely populated outlying area while providing no support for the more densely populated "town" area. A CAF recipient's obligations apply <u>only</u> in the supported area.

Baseline Support Amount

After the Commission has identified the supported area in a wire center, it will use the forward-looking cost model to calculate a baseline support amount for the supported area.

Census blocks whose cost is above the alternative technology threshold: The National Broadband Plan found that a small number of the most expensive locations represent a disproportionate share of the broadband availability "gap."[4]

[4] National Broadband Plan at 138.

Attachment 1

In order to minimize the contribution burden on consumers, the National Broadband Plan recommended that the Commission consider satellite broadband for addressing the most costly areas of the country.[5] Consistent with that recommendation, the plan excludes the highest-cost census blocks from the calculation of the baseline support amount available from the CAF. To identify the highest-cost census blocks, the Commission will specify an "alternative technology threshold." If the average cost per-service location of a census block exceeds the alternative technology threshold, then the census block is excluded from the calculation of the baseline support available from the CAF. The census block remains part of the supported area. However, as is discussed below, the CAF recipient is permitted to exclude from its service obligation those service locations that could be served most efficiently using satellite broadband (up to the number of service locations in the highest-cost census blocks). The satellite broadband locations must fall within a supported area but do not need to be in the specific census blocks that are excluded from the baseline support calculation.

Calculation of baseline support amount: If the average per-service location cost of a census block is above the benchmark but below the alternative technology threshold, then the census block is included in the calculation of the baseline support amount. For each such census block, the Commission will determine the support amount by subtracting the benchmark cost[6] from the modeled cost of providing broadband. The Commission will then aggregate the support amounts for all of the census blocks to determine the baseline support amount for the supported area.

Model estimates: As is discussed in Attachment 2, the results from the CQBAT model show that a CAF targeted to distribute $2.2 billion per year in the areas served by price cap LECs would ensure that over four million homes and businesses in rural areas for which there is no private sector business case will have access to broadband, two million of which will enjoy the benefits of broadband for the first time.

The cost model analysis also demonstrates that $2.2 billion per year is not sufficient to support the provision of broadband to <u>all</u> high-cost service locations in the territories served by price cap LECs. With the high-cost benchmark set at $80 per line, the model estimates that $5.9 billion per year is needed to support the provision of broadband to all high-cost service locations in the territories served by price cap LECs. To meet the $2.2 billion target, the model excludes the highest-cost census blocks from the CAF support calculation by setting the alternative technology threshold at $256 per month. With the alternative technology threshold set at $256 per month, the model estimates that approximately 730,000 service locations in price cap territories would be excluded from CAF support. Those 730,000 locations, which the plan addresses

[5] National Broadband Plan at 150.

[6] The benchmark cost of a census block is determined by multiplying the number of service locations in the census block by the per-line high-cost benchmark specified by the Commission.

below in its discussion of the AMF, are well within the capacity of broadband satellites.

Distribution of CAF Support

Once the Commission has determined the supported area and the baseline support for each wire center, providers may apply to the Commission for CAF support. Providers apply for CAF support on a wire center-by-wire center basis. The application process varies depending on whether the incumbent LEC that serves the wire center has already made substantial broadband investments in the wire center.

Wire centers with substantial existing broadband investment (high-speed Internet service available to more than 35 percent of service locations): If the incumbent LEC that serves the wire center has already made high-speed Internet service available to more than 35 percent of the service locations in the wire center, the incumbent LEC is given an opportunity to accept or decline the baseline support and the associated broadband service obligations in the census blocks that make up the supported area within that wire center.[7] If it accepts the offer of the baseline support, then the incumbent LEC assumes all of the broadband service obligations for the ten-year term of CAF support. By first offering support to an incumbent LEC that has already made substantial investments in the wire center, the CAF will accelerate the deployment of broadband and avoid inefficient duplication of facilities constructed with the help of legacy high-cost universal service programs.

Incumbent LEC has not made substantial investments or declines offer: If the incumbent LEC either has not made substantial broadband investments in the wire center or declines the baseline support offer, then any qualified wireless or wireline provider that can meet the specified broadband service obligations may apply for the baseline support and the obligation to serve the associated census blocks. If multiple providers apply for support, the Commission will use competitive bidding to select the support recipient. Support is provided to the lowest bidder that will meet the specified buildout and service requirements. The baseline support amount functions as the reserve price, i.e., support cannot exceed that amount in the area.

Adjust obligations and/or support if no provider applies: If no provider applies for the CAF baseline support amount available in a wire center, then the Commission may adjust the broadband obligations and/or the available support, subject to the overall constraint on high-cost universal service support.

[7] We estimate that incumbent LECs would have the opportunity to accept or decline CAF support in 82.0 percent of the census blocks that are eligible for CAF support, representing 82.2 percent of the $2.2 billion in support targeted to areas served by price cap LECs.

Attachment 1

Unused funds: If the total support awarded is less than the $2.2 billion target for the territories served by price cap incumbent LECs, the Commission should use any remaining support to further expand broadband service in the areas served by price cap incumbent LECs or reduce the size of the high-cost fund. This provision recognizes that the $2.2 billion target does not fully eliminate the rural-rural divide.

Obligations of the CAF Recipient

Consistent with the procurement model of USF support, the Commission shall impose CAF obligations only on providers that elect to receive support from the CAF, and those obligations shall apply only in the supported areas and for the ten-year term for which support is provided. The Commission shall specify CAF recipients' obligations at the outset, and shall not modify the CAF obligations or other terms of the agreement between the Commission and the CAF recipient without the CAF recipient's consent. The Commission shall not impose broadband service obligations on existing Eligible Telecommunications Carriers (ETCs) that do not receive support from the CAF.

Five-Year Buildout Obligation: A CAF recipient has five years from the date on which it is awarded CAF support to build out its broadband network to any unserved areas and meet the broadband service obligation described below.

Broadband Service Obligation: No later than five years after it is awarded CAF support, the CAF recipient must make broadband service available to a minimum number of service locations in the supported areas for which it receives CAF support. The minimum number of service locations is determined by subtracting the number of service locations in census blocks whose cost exceeds the alternative technology threshold from the total number of service locations in the supported areas.

For example, if there are 100 service locations in the supported areas for which a provider receives CAF support, and 10 service locations are excluded from the baseline support calculation because they are in census blocks whose average per-line cost exceeds the alternative technology threshold, then the CAF recipient must make broadband service available to a minimum of 90 service locations in its supported areas. The ten locations that the CAF recipient does not serve can be anywhere in those supported areas, i.e., those ten locations need not be only in the census blocks that are excluded from the baseline support calculation, and some or all of those ten locations may be in a different wire center. By allowing the CAF recipient to select the service locations that will satisfy its broadband service obligation, the plan recognizes the limitations of census block-level modeling and allows CAF recipients to make efficient network design decisions.

Under the plan, consumers in locations that the CAF recipient is not required to serve would be able to purchase broadband service directly from a broadband satellite provider. The Commission may provide support from the AMF to offset a portion of the installation costs for satellite broadband for a limited number of such consumers (see AMF discussion, below).

Ten-year term: The CAF recipient must continue to meet its broadband service obligation in its supported areas until the end of the ten-year term of its CAF support. All CAF obligations terminate at the end of the ten-year term.

Advanced Mobility/Satellite Fund

The Advanced Mobility/Satellite Fund (AMF), which would begin disbursing support at the same time as the CAF or after the CAF has begun disbursing support, has two functions. First, the AMF supports the provision of mobile broadband service in those high-cost areas that will not receive service as a result of planned commercial mobile broadband deployments. A provider may not receive AMF support and CAF support for the same facility. Second, the Commission may use support from the AMF to offset a portion of the installation costs for a limited number of broadband satellite customers in the highest-cost areas in which CAF recipients do not deploy broadband because of the limit on support available for such areas.

The available AMF support in a given year is the difference between the overall constraint on the size of the high-cost fund and the sum of support from the CAF for price cap LEC areas, support from the transitional access replacement mechanism for price cap LECs, any remaining legacy support provided to price cap incumbent LEC ETCs and CETCs, and any support provided to rate-of-return incumbent LECs. Furthermore, support from the AMF may not exceed $300 million per year.

The ABC Plan does not include a detailed proposal for the operation of the AMF. The plan supporters look forward to working with providers of rural mobile broadband service, satellite broadband providers, and other interested parties to develop a complete proposal for the operation of the AMF.

Transition from Legacy Universal Service Programs

Phaseout of legacy high-cost programs: As the Commission begins to phase in support for the CAF and AMF (targeted for July 1, 2012), the Commission will at the same time begin phasing out all price cap ETC and competitive ETC support from legacy high-cost programs (IAS, ICLS, HCM, HCL, and LSS). The support that an ETC may receive from the legacy high-cost programs will be reduced by a factor of 20 percent effective July 1, 2012; 40 percent effective July 1, 2013; 60 percent effective July 1, 2014; and 80 percent on July 1, 2015. Price cap ETC and CETC support from the legacy high-cost programs will be eliminated entirely on

July 1, 2016, when the CAF is fully funded. As is discussed below, all legacy high-cost universal service obligations are eliminated when support from the legacy programs is eliminated and, in those geographic areas in which the current ETCs receive no legacy high-cost support, the legacy ETC service obligations are eliminated immediately.

Transition to CAF: If an existing ETC does not participate in the CAF, it may continue to receive legacy support, reduced by the factors specified above, until support from the legacy high-cost programs is fully eliminated on July 1, 2016. If an existing ETC elects to participate in the CAF, its support in a given year will be the higher of (1) the support available from the CAF; or (2) any remaining legacy support for which the ETC is eligible, calculated at the holding company level.

2. Reforming Intercarrier Compensation to Support Broadband

Consistent with the National Broadband Plan's intercarrier compensation (ICC) recommendations, the ABC Plan creates a glide path to phase down per-minute charges to a low uniform rate while providing carriers with a meaningful opportunity for revenue recovery, and includes interim solutions to address arbitrage.[8] Under the plan, the regulated terminating intercarrier compensation rates of all carriers except rate-of-return incumbent LECs are phased down to a uniform default rate of $0.0007 per minute by July 1, 2017. The specifics of the intercarrier compensation transition for rate-of-return incumbent LECs are outlined in the *Joint Statement*.

Reform of terminating intercarrier compensation rates will advance broadband deployment by reducing the disincentives to deploying IP networks and reducing carriers' reliance on unstable implicit support mechanisms. And, by eliminating the disparities between intrastate and interstate access rates, and between access rates and rates for other traffic, the plan will end arbitrage schemes and disputes that divert resources from broadband deployment. Without reform, the ongoing decline in intercarrier compensation revenue will be an impediment to broadband deployment and may jeopardize universal service.

The intercarrier compensation reform and universal service reform provisions of the ABC Plan are inextricably linked. Carriers are able to reduce their reliance on implicit support from intercarrier compensation because the plan provides support from new explicit mechanisms – the CAF and the access replacement mechanism. And, to ensure that carriers are able to sustain and expand broadband networks during the transition, the plan begins disbursements from the CAF on the same date – July 1, 2012 – that the plan begins reducing terminating intercarrier compensation rates.

[8] National Broadband Plan at 136.

Attachment 1

Interim Rules

Voice over Internet Protocol (VoIP): The intercarrier compensation treatment of VoIP traffic that is exchanged between LECs and other carriers has been the subject of long-running disputes. This plan does not take a position on the appropriate intercarrier compensation treatment of VoIP traffic prior to January 1, 2012. Under the plan, the Commission will adopt a new rule, effective January 1, 2012, to govern the intercarrier compensation rates applicable to VoIP traffic exchanged between LECs and other carriers. Such traffic will be rated at interstate access rates if the call detail indicates an "access" call, or at reciprocal compensation rates if the call detail indicates a "non-access" call.[9] All "toll" traffic that originates in IP or terminates in IP will be subject to current interstate access rates (regardless of whether it is interstate or intrastate); local termination rates would not be affected. All such traffic is incorporated into the overall transition as rates for terminating interstate access traffic are reduced and eventually unified at $0.0007 pursuant to the comprehensive reform plan described below. Under the plan, intrastate access rates will not be applied to VoIP traffic.

Measures to address arbitrage: The Commission should adopt rules to address phantom traffic and arbitrage schemes involving both originating and terminating traffic, including traffic pumping. The plan does not recommend specific rules, but the plan supporters agree that the Commission should adopt an order addressing phantom traffic, traffic pumping, and other arbitrage schemes that is effective no later than January 1, 2012.

Comprehensive Reform: Measured Transition to a Unified $0.0007 Rate for Transport and Termination

The plan transitions all price cap incumbent LEC, CLEC, and CMRS terminating intercarrier compensation rates to a uniform default rate of $0.0007 per minute by July 1, 2017.[10] The five-year transition is designed to give carriers adequate time to prepare and make adjustments to offset the lost revenues.[11] The scheduled July 1, 2012 start date for the transition, and the specific transition schedule, both presume that the CAF begins disbursing support on July 1, 2012 and is funded according to the timeline specified above. Any changes to the proposed timeline for funding the CAF would necessitate corresponding changes to the timeline for implementing intercarrier compensation reforms.

[9] The MTA rule would continue to apply to wireless VoIP traffic. For example, intraMTA VoIP traffic originated by a wireless carrier would be subject to reciprocal compensation rates.
[10] This framework applies only to TDM interconnection. IP-IP interconnection would continue to be governed by commercial agreements.
[11] National Broadband Plan at 149.

The rates specified in the transition schedule and the ultimate $0.0007 rate are default rates. Carriers are free to enter into negotiated arrangements that depart from the default rates.

- **July 1, 2012**: Each carrier reduces its reciprocal compensation rate and intrastate terminating access rate for transport and switching, if above the carrier's interstate access rate, by 50% of the differential between the rate and the carrier's interstate access rate;
- **July 1, 2013**: Each carrier reduces its reciprocal compensation rate and intrastate terminating access rate for transport and switching, if above the carrier's interstate access rate, to parity with the carrier's interstate access rate;
- **July 1, 2014**: Each carrier reduces its terminating end office rates by one-third of the differential between its end office rates and $0.0007. Transport rates remain unchanged from the previous step;
- **July 1, 2015**: Each carrier reduces its terminating end office rates by an additional one-third of the differential to $0.0007. Transport rates remain unchanged;
- **July 1, 2016**: Each carrier reduces its terminating end office access rate to $0.0007. Transport rates remain unchanged;
- **July 1, 2017**: Each carrier unifies all terminating traffic under 251(b)(5) at a rate of $0.0007 for transport and termination consistent with some existing interconnection agreements that have adopted the "ISP remand" rate. Beginning with this step, the rate for transport and termination shall only apply to termination at the end office where the terminating carrier does not own the serving tandem switch (in which case, additional charges may or may not apply depending on the arrangement used to deliver traffic), and it shall only apply to transport and termination within the tandem serving area where the terminating carrier does own the serving tandem switch.

No terminating or other intercarrier compensation rates may increase. A carrier may not, for example, increase interstate or intrastate originating access rates from the rates in effect as of January 1, 2012. All bill and keep arrangements remain in place.

During the first two steps of the transition, both originating and terminating intrastate dedicated transport rates are transitioned to interstate levels.

Price Cap Incumbent LEC Subscriber Line Charges

As terminating intercarrier compensation revenue is reduced, price cap incumbent LECs are given the opportunity to adjust their business plans and rely to a greater extent on retail customer revenue. To facilitate that shift, the plan lessens restrictions on incumbent LECs' federal subscriber line charge (SLC) rates and pricing flexibility. Although any increases in SLC rates will be significantly constrained by competition from wireless carriers, cable companies, "over the top" VoIP providers, and other competitors, the plan nonetheless retains a SLC cap and benchmark mechanism as consumer backstops.

The plan provides two separate paths for reducing constraints on price cap LEC SLC rates. If a price cap LEC elects to receive support from the transitional access replacement mechanism described below, the cumulative increase in the SLC may not exceed $0.50 effective July 1, 2012; $1.00 effective July 1, 2013; $1.50 effective July 1, 2014; $2.00 effective July 1, 2015; and $2.50 effective July 1, 2016. If a price cap LEC does not elect to receive support from the transitional access replacement mechanism, the cumulative increase in the SLC may not exceed $0.75 effective July 1, 2012; $1.50 effective July 1, 2013; $2.25 effective July 1, 2014; $3.00 effective July 1, 2015; and $3.75 effective July 1, 2016.

In addition, any SLC increase may not cause the sum of the local residential rate, federal SLC, state SLC, mandatory EAS, and per-line contribution to the state's high-cost fund, if the state has a high-cost fund, to exceed a benchmark of $30 per month. The benchmark comparison uses the local rate, state SLC, and EAS rate in effect on January 1, 2012.

Transitional Access Replacement Mechanism

The plan provides a transitional access replacement mechanism for price cap incumbent LECs that experience exceptionally large reductions in intercarrier compensation revenue. Such LECs, if they elect the appropriate SLC cap progression specified above, may recover a limited portion of their intercarrier revenue reductions from universal service support. The transitional access replacement mechanism is necessary to ensure that the intercarrier compensation reforms do not jeopardize the operations of broadband providers that rely on intercarrier compensation revenues for implicit support of networks in high-cost areas.

To the extent that the impact of the reductions in access rates under the plan and the net impact of the reduction in reciprocal compensation rates exceeds an imputed SLC increase of $0.50 effective July 1, 2012; $1.00 effective July 1, 2013; $1.50 effective July 1, 2014; $2.00 effective July 1, 2015; and $2.50 effective July 1, 2016, or exceeds the maximum SLC increase permitted by the $30 benchmark, the incumbent LEC may recover 90 percent of any revenue reduction greater than the imputed SLC increase. The impact of the reduction in access rates is calculated relative to the rates in effect on January 1, 2012, and is recalculated each year to reflect changes in traffic volumes. Support from the access replacement mechanism is calculated at the holding company level, i.e., by comparing the total holding company-level impact of the rate reductions to the imputed SLC increase applied to all holding company lines. The access replacement support available to price cap incumbent LECs is transitional: beginning on July 1, 2018, the incumbent LEC's access replacement support is reduced each year by one-third of the July 1, 2017 amount until the access replacement support is eliminated entirely on July 1, 2020.

We estimate that the transitional access replacement mechanism will disburse approximately \$60-\$80 million in the peak year and then decline over time as access demand declines. We estimate that the mechanism will disburse approximately \$40-\$60 million in support in the year beginning July 1, 2017. That amount will be reduced by one-third each year, beginning on July 1, 2018, until access replacement support is eliminated entirely on July 1, 2020. The transitional access replacement mechanism shall be fully funded during the transition.

3. Regulatory Framework

The transition from POTS to IP-based broadband networks that serve all Americans will require hundreds of billions of dollars of private sector investment. To encourage that investment, the Commission must follow a policy of nonregulation of broadband and other information services, which permits those services "to flourish in an environment of free give-and-take of the marketplace."[12] The Commission must conclude that VoIP services are interstate services, and reaffirm that broadband services are interstate services. The Commission must also preempt any state regulation of those services that is inconsistent with the federal policy of nonregulation.

In addition, the Commission should eliminate legacy regulations that act as a barrier to the transition to IP broadband networks. In particular, the Commission must eliminate legacy ETC regulations and requirements imposed on price cap incumbent LEC ETCs and CETCs when it eliminates those carriers' support from the legacy universal service programs, no later than July 1, 2016, and before then, make clear that any such requirements apply only in the particular areas that receive support and end whenever an ETC no longer receives any legacy high-cost or CAF support for a given area. At the same time, the Commission should eliminate all remaining federal rate and other service regulations imposed on price cap incumbent LECs.

If a state maintains obligations to serve, including carrier of last resort (COLR) obligations for price cap incumbent LECs, the Commission must preempt such obligations as inconsistent with federal broadband policy unless the state fully funds the obligations with explicit support and the ILEC agrees to accept the obligations in exchange for funding. Otherwise, COLR obligations are incompatible with the transition to broadband networks because in many cases they require incumbent LECs (and only incumbent LECs) to divert resources from the deployment of broadband networks.

[12] *Vonage Order* at ¶ 21 (internal quotations and citations omitted).

USTELECOM
THE BROADBAND ASSOCIATION

July 29, 2011

EX PARTE

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; High-Cost Universal Service Support, WC Docket No. 05-337; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109; Universal Service Contribution Methodology, WC Docket No. 06-122; Numbering Resource Optimization, CC Docket No. 99-200; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98; Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68; IP-Enabled Services, WC Docket No. 04-36

Dear Ms. Dortch:

Please file the attached letter in the above-referenced dockets.

Sincerely,

Jonathan Banks

Jonathan Banks

July 29, 2011

Chairman Julius Genachowski
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Robert M. McDowell
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Mignon Clyburn
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Genachowski, Commissioner Copps,
Commissioner McDowell, and Commissioner Clyburn:

The undersigned parties, which include individual companies as well as carrier associations, collectively serve the vast majority of rural America. Since the Commission began its most recent proceeding on universal service and intercarrier compensation reform, these parties have worked tirelessly to develop proposals to achieve the goals outlined by the Commission while adhering to the fundamental statutory objectives of universal service. In the spirit of compromise, these parties came together to try forge a consensus framework for such reform. Our efforts succeeded and this letter outlines the consensus that emerged from our discussions.

At the outset, it is important to note that all parties made difficult compromises in order to find consensus. Outside of this framework, these parties have divergent interests and would not necessarily agree to these compromises. For example, the rate-of-return associations would be unlikely to support in other contexts any reductions to their authorized interstate rate-of-return or the intercarrier compensation reforms included in this framework. Similarly, the price cap carriers would be unlikely to support certain constraints on the use of the forward-looking cost model described in their proposal outside of this consensus framework. Accordingly, to the extent that the Commission considers material changes to individual components of this framework, it should recognize that individual parties will likely withdraw their support for – and indeed may very well oppose actively – other components of these proposals and/or the then-negated consensus framework as a whole. The parties to this consensus made substantial concessions in the interest of obtaining an industry consensus that would enable regulatory certainty and the unimpeded business of building broadband. These concessions were made carefully and in concert with the movements of other parties. Accordingly, the parties to this proposal urge specific and particular sensitivity to the fact that what may appear to be an immaterial change to policy makers or another party may in fact disrupt a delicate balance of interests and collapse a breakthrough compromise.

It is also important to note that this framework makes reference to both the Joint Rural Association Filing and the America's Broadband Connectivity proposal. Since the Joint Rural Association Filing predates development of this consensus framework, the framework incorporates certain modifications to the proposal made in that filing. The ABC proposal has also been modified before filing to be consistent with this consensus framework.

The framework establishes a budget period for the high-cost universal service fund. That period would begin in 2012 and end in 2017. The parties have attempted to design their respective proposals to constrain the size of the total high cost fund within a $4.5 billion per year budget. The framework does not envision any automatic extension of that budget beyond the budget period. Instead upon expiration of the budget period, the Commission would simply need to ensure, as it is charged to do by statute, that sufficient, predictable, and specific funding – irrespective of any estimated or desired budget number – is in fact available to satisfy fully the statutory mandate of universal service thereafter. Moreover, to the extent that the Commission were to believe that any budget target limitations are necessary going forward thereafter and that such budget targets can in fact be adopted and implemented consistent with the requirements of Section 254 of the Communications Act, as amended, the Commission would as part of developing any such budget target be required prior to the end of the current budget period to make an affirmative determination of the level of high cost funding needed to satisfy in all respects the objectives and requirements of universal service after 2017.

The framework proposes that, for the budget period, the Commission establish an annual funding target for its mobility objectives of $300 million. This amount could be phased in to help stay within the budget.

The framework proposes that the Commission establish an annual funding target for areas served by rate-of-return carriers that begins at $2 billion and, to the extent necessary to help ensure sufficient funding, increases by $50 million per year (i.e., increasing to $300 million, or a total annual budget target of $2.3 billion, in the sixth year) to enable access restructuring, promote further broadband build-out (but only to the extent supported by increases in universal service/CAF funding above current levels), and provide a reasonable opportunity to recover the costs associated with existing investments in broadband-capable plant. This potential incremental funding for rate-of-return carriers would not be available to other providers. The CAF calculation for areas served by rate-of-return companies would be made using an interstate rate-of-return of 10%. Other details regarding the Joint Rural Association Proposal may be found in their filing.

The framework proposes that the Commission establish an annual funding target of $2.2 billion for areas served by price cap carriers.

Because the undersigned parties understand that it is important to make every effort to remain within the budget, the framework further proposes that the Commission manage the phase-in of model-based support to ensure that there is sufficient funding for all other purposes, including the access restructuring mechanisms. In addition, the Commission could defer funding of the CAF for the study areas of AT&T and Verizon for up to two years. The deferred amounts would be redirected to other funding needs within the budget. To the extent, however, that sufficient funding is not expected for any reason to be available to provide the necessary levels of high-cost support and/or intercarrier compensation restructuring for carriers in any given year, any and all reductions in intercarrier compensation rates shall be deferred until such sufficient funding is confirmed to be available.

The framework proposes to reduce certain terminating switched access and reciprocal compensation rates to $0.0007 per minute.[1] These reductions would be phased in over six years for areas served by price cap companies and over eight years (subject to the preceding paragraph) for areas served by rate-of-return companies; provided, however, that rate-of-return carriers would remain entitled to charge and be paid by all carriers and providers rates that are equal to current interstate levels (without any further automatic reductions) for terminating transport and tandem switching for all interstate and intrastate access traffic, in addition to the reformed per-minute rates that would apply to terminating local switching. During the fifth year the Commission would evaluate the transition for rate-of-return companies and determine then whether to modify in any way the transition for areas served by rate-of-return companies, including whether to reduce transport and tandem switching rates for individual rate-of-return companies that in fact own and operate their own tandem in the final year of the transition.

The parties further agree to and support Commission action on the appropriate compensation for VoIP traffic that originates or terminates on the PSTN, traffic pumping, and phantom traffic. Achievement of the budget targets described herein is premised on positive action by the Commission in these three areas as well as all other aspects of the consensus framework. In particular, with respect to VoIP, the parties support a determination by the Commission that, upon the effective date of an order in this proceeding, traffic exchanged over PSTN facilities that originates and/or terminates in IP format will be subject to access charges at interstate rates if interexchange, or reciprocal compensation if local. This determination will be based on the origination and termination points of a call as determined by true, unaltered call detail information.

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[1] The intercarrier compensation rate reductions for rate-of-return companies shall be as follows:

- Interstate originating and terminating switched access rates will be capped at the start of the first year, with any shortfall between revenue requirements and revenues collected through such capped rates recovered through an intercarrier compensation restructure mechanism.
- Terminating intrastate access reduced to interstate access rates and structured in two equal steps (each step = 1 year).
- Terminating end office rates to $0.005 per minute over three additional steps (Steps 3 to 5).
- Transport and tandem switching rates remain unchanged from previous step (i.e., they remain at interstate levels for access traffic).
- At Step 5, FCC proceeding determines if continued transition should be slower or faster.
- Unless otherwise determined by the FCC, terminating end office rates to $0.0007 in three additional steps (Steps 6 to 8). Unless otherwise determined by the FCC, transport and tandem switching rates remain unchanged from previous step (i.e., they remain at interstate levels for access traffic).

As part of the transition, the FCC will be expected to provide for an intercarrier compensation restructure mechanism for rate-of-return carriers. The residential rate benchmark level for the restructure mechanism for rate-of-return carriers should be $25. SLC caps would increase by $0.75 per line, per year for six years with no further increases in later years.

The framework allows for access recovery mechanisms as described in the individual reform proposals. The rate-of-return proposal further incorporates an earnings review for reductions in intrastate access.

This carefully constructed framework reflects the collective efforts and compromises of a wide variety of industry participants, and represents a reasonable path forward toward the long-standing objectives of universal service and intercarrier compensation reform. The undersigned parties urge the Commission to move expeditiously to adopt the proposed reforms.

Sincerely,

/s/
Walter B. McCormick, Jr.
President and CEO
United States Telecom Association

/s/
Robert W. Quinn, Jr.
Senior Vice President – Federal Regulatory & Chief rivacy Officer
AT&T

/s/
Melissa Newman
Vice President – Federal Regulatory Affairs
Public Policy and Government Relations
CenturyLink

/s/
Michael T. Skrivan
Vice President – Regulatory
FairPoint Communications

/s/
Kathleen Q. Abernathy
Chief Legal Officer and Executive Vice President – Regulatory and Government Affairs
Frontier

/s/
Kathleen Grillo
Senior Vice President
Federal Regulatory Affairs
Verizon

/s/
Michael D. Rhoda
Senior Vice President – Government Affairs
Windstream

/s/
Shirley Bloomfield
Chief Executive Officer
National Telecommunications Cooperative Association

/s/
John Rose
President
OPASTCO

/s/
Kelly Worthington
Executive Vice President
Western Telecommunications Alliance

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of August, 2011, I did serve a true and correct copy of the foregoing upon the persons below via electronic mail and first class mail as follows:

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