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August 9, 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 Answer of the Pennsylvania Telephone Association and The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink to the AT&T Petition for Reconsideration and Clarification. Service has been made in accordance with the attached Certificate of Service.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By:



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	:	Docket No. I-00040105
Service Fund	:	
	:	
	:	
AT&T Communications of	:	
Pennsylvania, LLC	:	
Complainant	:	Docket Nos. C-2009-2098380, et al.
	:	
v.	:	
Armstrong Telephone Company -	:	
Pennsylvania, et al.	:	
Respondents	:	

**JOINT ANSWER OF THE
PENNSYLVANIA TELEPHONE ASSOCIATION
AND CENTURYLINK
TO AT&T PETITION FOR RECONSIDERATION
AND CLARIFICATION**

Pursuant to 52 Pa. Code § 5.572, the Pennsylvania Telephone Association (“PTA”) and The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (“CenturyLink”) (collectively “RLECs”) file this Joint Answer to the Petition for Reconsideration and Clarification filed by AT&T on August 2, 2011, to the Pennsylvania Public Utility Commission’s (“Commission”) Opinion and Order entered July 18, 2011, in the above-captioned matter (“*PA RLEC Access Order*”). The RLECs contend that AT&T has not raised any new or novel argument not previously heard and therefore its petition fails to meet the standard for reconsideration. The RLECs do agree that reconsideration is appropriate, but not for the reasons stated by AT&T. In support of their Joint Answer, the RLECs respond as follows:

I. STANDARD OF REVIEW

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.¹ The RLECs submit AT&T has failed to meet that standard.

AT&T asserts that its petition meets the standard for review because otherwise it will not have had the opportunity “to rebut or explain to the Commission that \$2.50 is not a valid or legal charge for the CC[,]”² the compliance process and its timing “were not a result of any party’s proposal[,]”³ and “no party proposed that the Commission implement parity between intrastate and interstate access rates on a one-time basis only.”⁴ While AT&T essentially demands greater reductions sooner rather than later, AT&T cannot claim that the size of the reductions, the nature of any support, and the timeframe for implementation were *not all* issues below for which AT&T had a forum and ample opportunity to address. That AT&T did not get everything that it asked for and, therefore, disagrees with the result is not valid grounds for reconsideration.

II. ARGUMENT

A. Maintenance of a Carrier Charge to Contribute to RLEC Recovery of Loop Costs Is Reasonable, Nondiscriminatory, and Supported by the Record

i. Maintaining contributions to recovery of joint and common loop costs was an issue in the proceeding below

AT&T cannot credibly contend that: the size of intrastate access rate reductions, if any; the timing of their implementation; and the need for additional support, were not the gravamen of the underlying proceedings, both in AT&T’s consolidated complaints and the Commission’s reinstated investigation. The record comprises thousands of pages of evidentiary support that

¹ See, *Duick vs. Pennsylvania Gas and Water Co.*, 56 Pa. PUC 553 (1992) (“*Duick*”).

² AT&T Petition at 4.

³ *Id.* at 5.

⁴ *Id.*

contained proposals that ran the gamut of possibilities: from not changing intrastate switched access rates at all because the evidence did not support it,⁵ to reducing intrastate access rates “without making interstate the end goal of its future pricing decisions,”⁶ to coordinating intrastate access reductions on the state level to the manner in which reductions were accomplished on the federal level (with corresponding support elements),⁷ to reducing intrastate access rates to parity in measured steps with corresponding local rate rebalancing and USF support,⁸ to wholly reducing intrastate rates to parity and fully funding the decreases through an external USF support mechanism.⁹

AT&T is suggesting, however, that because the precise level of support the Commission retained, and because it retained it through the specific redesign of the Commission’s existing carrier access rate element rather than an explicit support mechanism such as a fund, and that because it came in the form of a figure not specifically presented on the record, that the Commission is thereby wholly precluded from redesigning intrastate access rates. Such a conclusion would effectively deny the Commission the ability to design rates based upon an evidentiary record presented before it,¹⁰ and, therefore, AT&T’s basic premise is unsustainable. There is no allegation by AT&T that the rates violate statute, only that no party recommended the specific option chosen by the Commission.

AT&T acknowledged that the Commission determined that the CCLC would remain in play, and “may” be dissolved.¹¹ “May” was never a regulatory certainty that the CCLC would be eliminated. Moreover, changes to the CCLC were always considered within the context of how

⁵ PTA; OSBA; OTS

⁶ CenturyLink, as described by the Commission, *see PA RLEC Access Order* at 176.

⁷ PTA

⁸ AT&T

⁹ OCA

¹⁰ *West Penn Power Co. v. Pa. PUC*, 607 A.2d 1132 (1992 Pa. Cmwlth. Ct.) (it is well settled that the establishment of a rate structure is an administrative function peculiarly within the expertise of the PUC).

¹¹ AT&T Petition at 7.

to continue explicit support of universal service by transitioning the PA USF established in the *Global Order* to a more permanent explicit support mechanism, for example considering a customer-based charge¹² rather than a carrier pool. As stated in the *Global Order*:

The small/rural company fund is a *transitional* fund to be used until the Commission establishes a *permanent* universal service fund, *consistent with federal rules*. The Commission will initiate an investigation on or about January 2, 2003 to *develop a long-term solution to universal service*. This proceeding should be coordinated with the long-term review of the Carrier Charge.¹³

Thus, the only difference between what the Commission promised in the *Global Order* and what it implemented in the *PA RLEC Access Order* is in the *form* of the charge. Because the charge remains a (substantially) lower CCLC, as opposed to a TLC which the Commission had previously considered, AT&T's complaint merely elevates the form of the rate over its substance.

Unlike the RLECs' own Joint Petition for Limited Reconsideration and Stay, which raised new evidence of immediate and comprehensive developments at the FCC,¹⁴ there are no new arguments raised or considerations overlooked about which AT&T has not been on notice since the *Global Order*. Thus, AT&T's petition must be rejected.

ii. Retention of a CCLC for recovery of joint and common costs complies with prior judicial and commission precedent

As stated above, the Commission had always considered revisiting the CCLC, potentially lowering or dissolving it, but all premised on transitioning the current form of USF into a more

¹² For example, the Commission had previously considered a toll line charge, or TLC, which as the \$2.50 CCL does today, would have remained as an IXC-based charge.

¹³ *Global Order* at 46, quoting Sprint's Main Brief (*emphasis added*).

¹⁴ Indeed, on August 3, 2011, the day after the RLEC Joint Petitioners filed for limited reconsideration and a stay, the FCC issued a Public Notice of a *Further Inquiry Into Certain Issues In The Universal Service Intercarrier Compensation Transformation Proceeding* at WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket No. 01-92, 96-45; GN Docket No. 09-51 seeking parties' comments on several issues, including some of the very same issues pending before the Pennsylvania Commission such as continued explicit USF funding and a residential benchmark. Placed on an extraordinarily expedited track, Comments are due within three weeks, by August 24, 2011, with Replies due one week thereafter.

permanent feature, such as another line charge. Moreover, as the Commission has amply noted in a series of preceding orders addressing recovery of local loop costs and confirmed in the *PA RLEC Access Order*, it is appropriate that competitive carriers that use the loop, including IXC's, continue to contribute to the recovery of loop costs.

The Commission specifically rejected in the current order the notion "that the PaUSF is somehow no longer needed, that it has outlived its usefulness, and/or that it has anticompetitive effects in the operation of the wireline and wireless telecommunications services marketplace within the Commonwealth."¹⁵ However, it deferred further implication of the PaUSF in this proceeding to the recommended rulemaking to follow. In order to recognize principles of cost causation and recovery, however, issues well within the Commission's discretion, the Commission opted to reduce *but not eliminate* the CCLC as a means of continuing its long-held policy that the loop is a joint and common cost. This, too, is well within the Commission's stated intentions going all the way back to the *Global Order*, the same order AT&T so heavily relies upon for its claimed promise of additional access reductions.

In reviewing AT&T's complaint about access charges in the appeal of the *Global Order*, Commonwealth Court concluded that Verizon's access charges need not be reduced to its (incremental) cost, stating:

The Office of Consumer Advocate responds to AT&T by submitting that there is no legal authority requiring the PUC to reduce access rates to the incremental cost of access service. OCA witnesses testified that such a reduction could require customers other than the long distance carriers to pay all of the joint and common costs of the network and therefore should be rejected. The logic of that analysis commends it.... One of the lessons of this proceeding is that the cost of excessively priced elements must be reduced..., **but not so greatly as to eliminate the support such revenue provides to other areas of the system that need that support.**¹⁶

¹⁵ *PA RLEC Access Order* at 76-77.

¹⁶ *Bell Atlantic - Pennsylvania, Inc. v. Pa. PUC*, 763 A.2d 440, 474, 480 ("*Global Order Appeal*") (Pa. Commw. 2000) (*emphasis added*).

Continuing, the Court also expressly affirmed the “soundness” of the Commission’s position that “users of all services, including access, should share in the payment of total network costs, with the cost of the loop included as an element of that total network.”¹⁷

In subsequent cases in which AT&T was a party, the issue of retention of the CCLC remained on the forefront. Verizon argued in its own access proceedings against the elimination of the intrastate common carrier charge.¹⁸ Finally, in subsequent decisions the Commission confirmed its position that the loop is a shared cost, the fixed portion of which should be allocated and recovered from services that use the local loop. In its most recent discussion of the issue prior to this decision, the Commission stated:

Traditionally, the Commission has treated local loop costs as joint costs. Although Verizon argues that CLECs should be prevented from recovering any portion of their local loop costs in intrastate access charges, Verizon PA currently recovers a portion of its own local loop costs through its intrastate access rates. It therefore follows that CLECs should be permitted to do the same. This holding maintains parity between the various types of regulated telecommunications service providers and is consistent with current Commission policy.

The Commission has consistently adopted the position that the fixed costs associated with the loop plant and facilities of ILECs should be allocated and recovered by services that utilize the local loop, including the ILECs’ intrastate carrier access services. This position was clearly enunciated in a number of our prior proceedings. Although the Commission undertook extensive access charge reforms in the context of both its landmark Global Order proceeding and subsequent case adjudications, it did not enunciate a position that the loop plant and facilities costs of ILECs are anything but joint. The Global Order held that the recovery of the jurisdictional non-traffic sensitive costs of such loop plant and facilities should continue from all intrastate services that utilize them including access. This led to substantial reform of the intrastate carrier charge component of the switched carrier access services of both major and rural ILECs, but it did not result in its outright elimination. This non-elimination of the carrier charge was sustained by the Commonwealth Court of Pennsylvania in its in-depth review of the Global Order. Most notably, the benefits of the ILEC intrastate access charge reforms adopted in the Global Order were required to be passed through by the

¹⁷ *Global Order Appeal*, 763 A.2d at 480.

¹⁸ *AT&T Communications of Pennsylvania, Inc. v. Verizon North Inc. and Verizon Pennsylvania Inc.*, Docket No. C-20027195 (Recommended Decision of ALJ Cynthia Williams Fordham dated December 7, 2005).

interested long-distance interexchange carriers (IXCs) to the IXCs' respective end-user customers.¹⁹

And as the Commission confirmed in the *PA RLEC Access Order*, in which it approved the \$2.50

CCLC:

[W]e are guided by the long-established principle and regulatory policy of this Commission, which has been upheld upon appellate review, that the RLECs' intrastate carrier switched access service NTS joint and common costs primarily associated with the RLECs' local loop plant must be recovered from all users of the RLECs' network. In this respect, our conclusion differs materially from those that have been adopted by the FCC in the past. The FCC has shifted the burden of NTS joint and common network costs in the interstate intercarrier compensation mechanism for switched access services totally and exclusively upon the end-user through the initial imposition and subsequent increases to the federal SLC.

* * *

We also note that the FCC interstate switched access rate reforms were accompanied by corresponding and major changes to the federal USF support mechanism.²⁰

Accordingly, the Commission was correct to accept the PTA's and CenturyLink's exceptions "to the extent they request maintenance of some level of CC in order to provide contribution to the joint and common costs of local loop plant."²¹ Thus, it was no more than its own advocacy in which AT&T's scenario of complete elimination of the CCLC was assured. That does not present grounds for reconsideration.²²

¹⁹ *Verizon Pennsylvania Inc., Verizon North Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Select Services, Inc., Verizon Global Networks, Inc., MCI Metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc. v. Penn Telecom, Inc.*, Docket No. C-20066987 (Order entered August 29, 2008) ("*PTI CLEC Access Rate Order*") at 13-14 (citations omitted and emphasis added).

²⁰ *PA RLEC Access Order* at 118-19.

²¹ *PA RLEC Access Order* at 180.

²² AT&T also attempts to shift attention away from its own failure to meet the criteria for reconsideration by claiming that the Commission "should not have ignored" prior testimony of CenturyLink in other jurisdictions from ten plus years ago regarding loop cost recovery. AT&T Petition at pp. 18-19. However, as CenturyLink stated in testimony, this Commission must deal with Pennsylvania law and Pennsylvania factual circumstances existing today and in the near future. CTL St. 1.1 at p. 20 (CTL Panel Surrebuttal Testimony). On reconsideration, AT&T simply desires that the Commission use such prior testimony to adopt AT&T's position on loop cost recovery and ignore prior Commission precedent and policy.

B. AT&T's Attempt to Increase Its Intrastate Access Expense Reductions by Eliminating the CCLC Coupled with Its Complaint about the Length of the Commission's Process Is Simply an Effort to Manipulate As Much Relief from the State Proceeding before the FCC Fully Engages the "ABC Plan"

As the RLECs noted in their Petition for Limited Reconsideration and Stay, AT&T is a signatory to the "ABC Plan" for comprehensive intercarrier compensation reform that is currently pending the receipt of comments and replies at the FCC. Taking issue with the Commission's procedural timeframe for implementation of intrastate access rate decreases, which AT&T describes as "long and convoluted,"²³ AT&T states that the first reductions should be in place no later than 60 days from the July 18, 2011 order date. This would include substantially reducing the Staff's development of a template to address all 32 affected RLECs; 20 days to prepare tariffs from the templates; 30 days for Staff to review the tariffs; and one week for the RLECs to file compliance tariffs following Staff approval.

The reasons behind AT&T's rush to implementation are as simple as ABC. AT&T is a signatory to the industry-consensus proposal, now pending before the FCC, that ultimately will take terminating intercarrier compensation rates to \$0.0007 per minute for price cap carriers starting July 1, 2012 and ending July 1, 2017, and to another lower single rate for rate-of-return carriers, and that will reduce all intrastate access rates to parity with interstate access rates. However, the reductions to terminating intrastate switched access rates implemented through the ABC Plan will do so through a combination of external USF support and increased SLC charges.

By manipulating the time frame for pending state action in this docket, AT&T near term seeks to extract from Pennsylvania RLEC customers a substantial access expense reduction (40%) while implicating no corresponding USF support, state or federal, for Pennsylvania consumers while the Commission still has jurisdiction. Then, if the ABC Plan is adopted, AT&T

²³ AT&T Petition at 23.

and aligned parties potentially benefit by a further reduction of 50% on July 1, 2012. Remember, under AT&T's Pennsylvania proposal it is the RLECs' end-users who are fully responsible for intrastate access reform. Under the ABC Plan, the end-user effects are mitigated by new federal funds. This confirms precisely one of the RLECs' concerns supporting a stay as articulated in their petition: The effect of proceeding in advance of the FCC is to aggravate Pennsylvania's status as a net-USF contributor. Grant of AT&T's petition is a win/win for AT&T, but a lose/lose for Pennsylvania and its consumers.

C. Clarification of the Process to Reduce the CCL

The RLECs believe that the Commission's procedural schedule for development of a template for which comments and replies are solicited, and a second Commission order resolving the template and the comments and replies, will provide the opportunity for this issue to be clarified, as well as other details regarding the specific rates and the specific rate increase levels envisioned in the *PA RLEC Access Order*. The RLECs do not waive any rights and arguments regarding the Commission's contemplated second order and the process employed by the Commission.

D. Inclusion of All Parties in the Compliance Filings Process

The RLECs do not object to those parties that have agreed to the Protective Order in this proceeding participating in the compliance filing process.

E. Permanent Maintenance of Parity

AT&T requests that the Commission now order "that parity must be based on the most current interstate rates in place at the time of the RLECs' final filings." If interstate rates change in the future, then by virtue of the *PA RLEC Access Order*, the RLECs must be "required to

modify their intrastate rates in order to maintain parity.”²⁴ In other words, AT&T effectively requests automatic reductions to switched access rates by operation of the *PA RLEC Access Order*. The Commission should promptly reject AT&T’s requests.

The proposal – which could have been submitted by AT&T in the record below given AT&T’s “mirroring” proposal – would set into motion automatic and unilateral rate reductions to switched access rates without any regard for whether those perpetual rate reductions under AT&T’s “permanent maintenance of parity” are revenue neutral as required by Pennsylvania law. Automatic rate reductions to switched access rates to true up with any changes by the FCC in interstate rates also fail to make any attempt to sync up with the processes set forth in the *PA RLEC Access Order*, thus raising due process concerns. AT&T’s attempt to decouple intrastate switched access rate reductions from required revenue neutrality and the processes as set forth in the *PA RLEC Access Order* should be rejected.

Moreover, if granted, AT&T’s “permanent maintenance of parity” could pull in any changes in interstate switched access rates arising from the FCC’s intention to rule upon comprehensive ICC/USF reform in October 2011. The RLECs believe that in order for the Commission to determine what parity means, the Commission must be fully informed of the FCC’s ultimate actions. While the RLECs are well aware that this Commission had already lifted the stay of both Verizon’s and the RLECs’ access proceedings on the fading promise of federal action, it is clear by the flurry of FCC activity following the filing of the ABC Plan that palpable momentum for immediate action is swiftly building at the federal level. Indeed, the FCC has outlined a comment/reply comment schedule of August 24 and August 31, 2011, respectively, for parties to offer their perspectives on the ABC Plan and other proposals offered by telecommunications carriers.

²⁴ AT&T Petition at p. 28.

This Commission's determination that intrastate access rates should be at parity with interstate access rates is based upon those federal rates as they currently exist. However, the ABC Plan clearly contemplates further reducing terminating intrastate switched access rates to a \$0.0007 per minute rate. Thus, the RLECs submit that unless and until the Commission is apprised of the FCC's final destination, the issue of what parity means should not be subject to AT&T's proposed automatic, one-side rate adjustment scheme.

III. AT&T's Petition Provides Even Greater Support for the PTA and CenturyLink Joint Petition

Two things should be clear at this juncture: (1) AT&T continues to take a militant stand and will, or at the very least, is highly likely to take an appeal of the Commission's Order to the Commonwealth Court, in what it has obviously calculated as a "no lose" situation; and (2) AT&T will take advantage of the current uncertainty of how its ABC Plan will affect this state proceeding, manipulating to obtain its greatest financial benefit in as compressed a time frame as possible.

As noted in the PTA/CenturyLink Joint Petition, if RLECs' Reconsideration is not granted and appeals are taken, the Commission can get jurisdiction back "to proceed further" *only if* all parties agree. That is not likely to happen. AT&T is perfectly capable and likely to remove any further consideration of the policies of access reform from this Commission's jurisdiction at both the state and federal levels as long as it can first obtain substantial state reductions as quickly as possible, such as requested by AT&T on "reconsideration."

Second, it is critical that the Commission and the parties, at a minimum, observe what the FCC may do, before rushing to implement an Order that was issued before the ABC Plan was presented to the FCC. As the Commission noted in the *PA RLEC Access Order*:

[W]e reserve the right to initiate subsequent 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.²⁵

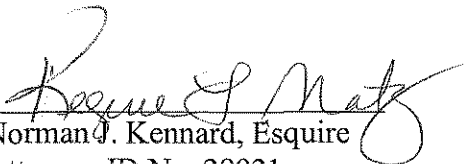
Coordination of outcomes and flexibility to make necessary modifications to the *PA RLEC Access Order* are clearly warranted as requested in the RLECs' Joint Petition for Reconsideration. AT&T's attempts to game the current state-federal separation of jurisdiction and then capitalize on the federal preemption is exactly why coordination is needed. Absent the Commission's grant of a stay of the current order, it may forever lose the right to initiate subsequent proceedings and issue appropriate orders that will effectively coordinate state and federal action.

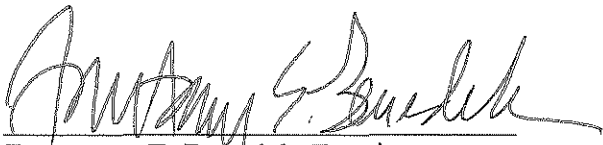
²⁵ *Pa RLEC Access Order* at 123.

IV. CONCLUSION

Accordingly, the PTA and CenturyLink respectfully request that the Commission reject AT&T's Petition for Reconsideration but stay this proceeding in order to coordinate with ongoing federal action. It is clear from the vitriolic advocacy in its petition that AT&T will appeal this Commission's decision to Commonwealth Court, thereby removing from the Commission any continued jurisdiction this Commission will have, particularly if the ABC Plan proceeds as is likely, over the design of intrastate access rates. Without a stay, the Commission has most likely had its final opportunity to protect Pennsylvania ratepayers relative to further intrastate switched access rate design and policy.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that on this 9nd 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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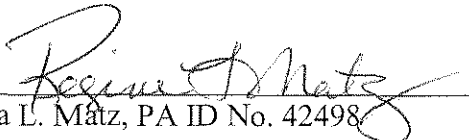
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