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August 12, 2011

***Via Electronic Filing***

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120

Re: Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund,
Docket No. I-00040105; Docket Nos. C-2009-2098380 *et. al.*

Dear Secretary Chiavetta:

Please find enclosed the Answer of AT&T to Joint Petition for Limited Reconsideration and Stay, which was filed electronically today in the above-referenced matter.

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

Very truly yours,

Michelle Painter

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

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Answer of AT&T to Joint Petition for Limited Reconsideration and Stay upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Chicago, Illinois, this 12th day of August, 2011.

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**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|---|---|---|
| Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund | ) ) ) ) | Docket No. I-00040105 |

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**ANSWER OF AT&T**
**TO JOINT PETITION FOR LIMITED RECONSIDERATION AND STAY**

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It's déjà vu all over again. The PTA and CenturyLink's (collectively the "RLECs") Joint Petition for Limited Reconsideration and Stay, and its arguments for an unspecified and likely interminable delay of the already prolonged timetable for reform established in the Commission's July 18, 2011 Opinion and Order ("the RLEC Access Order"), are a rehash of arguments they advanced in pleadings in 2005, 2006, 2007, 2009 and in their testimony and briefs throughout this case. Practically every year for the past six years, the RLECs have repeatedly told this Commission that FCC action is imminent; that the Commission will harm Pennsylvania consumers if it acts before the FCC; and that the Commission therefore must wait on the FCC before implementing any reductions to the RLECs' intrastate access rates. Over six years ago, in 2005, ALJ Susan Colwell summarized the RLECs' delay arguments, and it is obvious from a review of the following passage from her decision, the RLECs are repeating the exact same arguments now:

> The RLECs recommend maintaining the status quo in Pennsylvania until the FCC finishes its own Intercarrier Compensation proceeding at CC Docket No. 01-92, which has been published and has a schedule in place.

> The RLECs point out that the FCC proceeding has the potential to preempt whatever occurs as a result of the Commission proceeding. In addition, the RLECs express concern that if changes are made before the FCC order is entered, Pennsylvania consumers would get no credit for the substantial intrastate access reform which has already occurred and may face additional subscriber line charges or other rate increases independent of whatever action Pennsylvania has taken. The RLECs warn that Pennsylvania consumers would be at risk and may be unable to draw their share from any new federal fund. The RLECs recommend staying the proceeding until later in the year in order to better assess the status and potential impact of the federal proceeding.[1]

Although in 2005 the Commission bought into the RLECs' arguments and stayed the access investigation it had just re-opened to await "imminent" FCC action, time has proven that listening to the RLECs was a serious mistake. Needless to say, no such FCC action occurred then, and there is no guarantee the FCC will act now. Nor is there any certainty about what the FCC might do, if it acts at all. In the meantime, and as the record underlying the RLEC Access Order shows, it is the ongoing delay in reforming intrastate access charges that has brought the real harm to Pennsylvania's consumers.

Now that the RLEC case has been re-opened, fully litigated, and pro-consumer reforms adopted as part of a comprehensive decision, the RLECs are trying yet again to delay any reductions to their intrastate access rates. There are, however, numerous reasons to reject the RLECs' duplicate arguments. First, the RLECs' Joint Petition is simply a repackaging of arguments for delay that the Commission thoroughly considered and rejected in the case below. The RLECs' arguments present nothing that the Commission did not already contemplate in the RLEC Access Order, and the RLECs' Petition thus should be rejected under *Duick v. Pa. Gas and Water Co.*, 56 Pa. PUC 553, 559 (Dec. 17, 1985) (hereinafter "*Duick*").

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[1] ALJ Colwell Scheduling Order of April 22, 2005 at p. 2. ALJ Colwell rejected the RLECs' delay request, but the Commission later overturned her decision.

Second, even if the RLECs' Joint Petition somehow should survive the *Duick* standard, it fails utterly to meet the very stringent standard for a stay. The RLECs must recognize this because, on the one hand, while their specific request as stated on page 2 of the Joint Petition is to "stay implementation of the RLEC Access Order and any state USF rulemaking order – for no less than six months," they paradoxically state just two pages later that "Joint Petitioners are not asking for a stay pending appeal...." However, the remaining substance of the Joint Petition requests that the Commission halt the implementation of any pro-consumer intrastate access reform for an unlimited time period – in other words, they ask for a stay. The RLECs' Joint Petition, however, does not come close to meeting any of the four criteria required for a stay, and for this reason alone their request for relief must be denied.

As to the merits of their arguments, the RLECs again fall miserably short. This Commission itself correctly has determined that there is nothing in the pendency of the FCC's long-standing inquiry into intercarrier compensation reform that warrants further delay in bringing much needed reform to Pennsylvania's consumers. The history of the FCC's intercarrier compensation proceeding certainly shows that the filing of yet another plan or proposal does not suggest that FCC action is in any way "imminent."

Additionally, even if the FCC ultimately does act, there is nothing to suggest that the reductions in intrastate access rates that this Commission adopted in the RLEC Access Order would be fundamentally inconsistent with any federal reforms. To the contrary, it is far more likely that the manner in which the Commission has sought to implement reductions in Pennsylvania will be directionally consistent with any eventual FCC reforms. Moreover, those reductions are being implemented on a timetable that – while not completely to AT&T's liking –

nevertheless give the Commission more than ample time and ability to accommodate any federal action, should it prove necessary to do so.

Finally, this Commission has sustained AT&T's complaint, has found that the RLECs' did not meet their *prima facie* case, and has held that the RLECs' current intrastate access rates are unjust and unreasonable. Those findings obligate the Commission to act. It is settled law that this Commission has the duty and responsibility under Pennsylvania law to ensure that utilities charge rates that are just and reasonable. *66 Pa.C.S.A. §1301.* It is also the current state of the law that this Commission – not the FCC – has jurisdiction over RLEC intrastate access rates, a point this Commission has made repeatedly in its comments to the FCC. At the risk of stating the obvious, any Commission failure to implement its own findings giving Pennsylvania consumers the benefits of just and reasonable intrastate access rates risks becoming a *de facto* argument for federal preemption.

In short, the Commission must not fall for the RLECs' repetitive arguments for delay, but must instead let access reform finally move forward by implementing the reductions directed in the RLEC Access Order, with the modifications requested in AT&T's August 2, 2011 Petition for Reconsideration.

## I. ARGUMENT

### A. The RLECs' Joint Petition Does Not Meet the Standard for Reconsideration.

As the RLECs themselves acknowledge, a petition for reconsideration must raise new and novel arguments that have not been previously considered by the Commission. *Joint Petition for Limited Reconsideration and Stay, August 2, 2011, p. 2, citing Duick v. Pa. Gas and Water Co.*, 56 Pa. PUC 553, 559 (Dec. 17, 1985). The RLECs claim that because a new proposal was submitted to the FCC recently in the FCC's decade-long intercarrier compensation proceeding, the RLECs' old arguments have suddenly become "new again" and now meet the standard for reconsideration. The RLECs are wrong.

The RLECs' specious claims that the Commission risks "irreparable harm" to RLECs and their consumers by moving forward with Pennsylvania intrastate access reform before the FCC acts already have been argued extensively in this case. This Commission has acknowledged these arguments, has carefully considered them, has rejected them, and has decided that it is time to move forward. Given this record, the RLECs' latest effort at delay utterly fails the *Duick* standard.

The argument to maintain the status quo in order to wait for the FCC arose even before this case was re-started. After four years of delay waiting for the FCC to act, the RLECs asked this Commission in 2009 to extend the stay of the intrastate access investigation for yet another year, making the exact same arguments the RLECs are making in the instant Petition. The RLECs described numerous plans and actions that the FCC was considering at that time, and argued that premature Commission action would place Pennsylvania carriers and consumers at risk. Accordingly, the RLECs argued it was not sound public policy to move forward with Pennsylvania reform. *Joint Motion of the PTA, OCA and Embarq For the Commission to Further Stay This Investigation Pending Resolution of the FCC Intercarrier Compensation*

*Proceeding at CC Docket No. 01-92, March 25, 2009, pp. 4-10.* In addition, the RLECs noted that the possibility of the FCC preempting state action "remains a viable issue" at the federal level. *Id. at p. 9.*

The Commission fully considered these arguments –and rejected them, thereby ending the four year "wait and see" approach. The Commission found that "[t]he pending proposals that are before the FCC to impose a $0.0007 rate to interstate and intrastate access charges alike nationwide and of pending federal legislation do not alone warrant a fourth one-year stay of the investigation as FCC action does not appear to be imminent." *August 5, 2009 Order, p. 19.*

Undeterred, the RLECs argued repeatedly throughout this case itself that the Commission should not act ahead of the FCC. For instance, in PTA's Direct Testimony filed in early 2010, PTA's witness argued that the Commission should not act in this case, claiming that "Pennsylvania ratepayers would be best served if this Commission defers action on the RLECs' intrastate access rates until the FCC acts." *PTA Statement No. 1, January 20, 2010, p. 49.* In fact, in its summary of the parties' positions in this case, the Commission noted that "[t]he PTA's primary position is that, until the FCC gives a clearer indication of the direction that it intends to pursue, the Commission should retain the status quo." *July 18, 2011 Order, p. 83.* Similarly, the Commission described CenturyLink's position as arguing "that it would be unwise to act now in light of the FCC's upcoming rulemakings." *Id.* at p. 84.

The RLECs advanced this advocacy extensively in their briefs as well. In its Main Brief, for example, PTA cited to its testimony whereby its witness claimed (in January 2010) that the FCC was under intense pressure to act on intercarrier compensation. *PTA Main Brief, p. 43.* The PTA then went on to lay out the identical arguments they make in their most recent Joint Petition – in a nutshell, that Pennsylvania will suffer if it acts before the FCC. CenturyLink also

argued in its Main Brief that it would be "reckless" for the Commission to act before the FCC. *CenturyLink Main Brief, p. 31.* Just as it does in its Joint Petition for Stay, CenturyLink argued that the issues of additional subscriber line charges, as well as possible preemption issues, and the potential harm to Pennsylvania by moving forward were all reasons to halt any intrastate access reform. *Id.* at p. 30.

ALJ Melillo rejected the RLECs' position to wait for the FCC in her Recommended Decision. And, predictably, the PTA and CenturyLink filed Exceptions to that recommendation. Indeed, the very first line of PTA's Exceptions reiterated its argument for delaying Commission action in favor of waiting on the FCC. The PTA then went on to espouse the exact issues the PTA argues in its Joint Petition for Stay:

> Given the pending FCC investigation into a complete revamp of both inter- and intrastate access charges, and the impact on state and interstate intercarrier compensation, local rates and universal service funding issues, now is not the right time to reduce intrastate access rates further. Moving too soon could impose a substantial, additional penalty on Pennsylvania ratepayers..." *PTA Exceptions, p.1.*

In short, the record of this case is littered with the RLECs' regurgitated arguments for postponing any action by the Commission until the FCC acts. There can be no doubt or confusion that the Commission, in issuing the RLEC Access Order, carefully considered, and rejected, these RLECs' arguments. In fact, the Commission specifically recognized the pendency of the FCC's intercarrier compensation proceeding, and nonetheless decided that the Commission could no longer wait to adopt intrastate reform. Commissioner Gardner issued a Statement on June 30, 2011 acknowledging that "the FCC continues to review a series of federal initiatives that may impact certain matters under consideration here as part of its National Broadband Plan." *Statement of Commissioner Wayne E. Gardner, June 30, 2011, p. 2.* Similarly, Chairman Powelson recognized that the Commission has previously been hesitant to

act due to the pending action at the FCC; however, Chairman Powelson stated that "[w]e have arrived at the point...where we cannot forestall action any longer." *Statement of Chairman Robert F. Powelson, June 30, 2011, p. 2.* Chairman Powelson actually pointed out that there are parties who want the Commission to continue its "wait and see" approach, just as the RLECs are doing through its most recent Joint Petition, but the Chairman stated, "I do not believe this is a prudent option." *Id.*

At the June 30, 2011 Public Meeting, Commissioners Cawley, Gardner and Powelson all presented oral statements in which they discussed the existence of the FCC proceeding and the fact that it involves issues that may impact Pennsylvania. Yet all concluded that Pennsylvania should no longer wait on the FCC. Commissioner Gardner acknowledged that there have been no significant intrastate access reductions in Pennsylvania over the years because of waiting for the FCC. Commissioner Gardner further recognized that the FCC continues to review a series of federal initiatives that may impact the state issues, and that this Commission's task is made more difficult by pending developments at the federal level. Thus, the Commission explicitly recognized the moving target at the FCC and the fact that developments were continuing, but held that it could not wait any longer. Chairman Powelson, in his oral statement, said, "we cannot forestall any longer." He further said that the Commission has been waiting for "big brother FCC" for the past two administrations, and it is now time to move forward.[2]

It is difficult to conceive of a more blatant failure to satisfy the *Duick* standard. The argument for delay that the RLECs advance in their Joint Petition for Reconsideration and Stay has been extensively litigated at every single step of this case – through an initial request to stop the case from proceeding, through testimony, through briefs, through the ALJ's Recommended

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[2] The Commissioners' oral statements can be found on the Commission's website at http://www.puc.state.pa.us/general/PMAudio.aspx.

Decision, and through Exceptions. In fact, the issue of waiting for the FCC was PTA's primary position and argument in the case. The Commission and commissioners explicitly acknowledged and discussed the issue, and rendered a decision against the RLECs, knowing full well that the FCC proceeding was still pending and that it was still developing with new proposals being regularly submitted. The RLECs do not raise any new arguments, and the Commission should reject the RLECs' Joint Petition based solely on its failure to meet the standard required for considering a Petition for Reconsideration.

### B. The Submission of Yet Another New Proposal At the FCC Is Not A Basis For Staying Implementation of Access Reform In Pennsylvania.

The fact that a new proposal has been submitted to the FCC is not a basis for delaying implementation of this Commission's Order. New proposals are submitted constantly to the FCC. In fact, in May 2011, while the Commission still was considering the issues in this case, there were two significant and specific new proposals submitted in the FCC case. The first was submitted by the State Members of the Federal-State Universal Service Joint Board. The second was submitted by Joint Rural Associations. Thus, the plan referenced by the RLECs in their Petition for Stay, the America's Broadband Connectivity Plan ("ABC Plan"), is only one of several recent proposals.

As noted above, throughout the long history of this case the RLECs have argued that FCC action was just around the corner. Of course, the RLECs were wrong each time, and to state the obvious, the FCC has not acted. If this Commission were to halt all reform (again) every time a new proposal was submitted to the FCC (based on the possibilities about what might happen if each particular proposal were adopted), state action would never occur. But that, of course, is exactly what the RLECs want. And it is exactly such inaction that will

exacerbate the consumer harms that led the Commission to direct the reforms required in the RLEC Access Order.

The FCC issued its first NPRM on intercarrier compensation reform over a decade ago. In April 2001, the FCC issued an NPRM saying it was "essential to re-evaluate these existing intercarrier compensation regimes in light of increasing competition and new technologies." *In re Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd. 9610, ¶ 2 (2001). But the FCC did nothing, and four years passed.

In March 2005, the FCC issued another NPRM acknowledging "the urgent need to reform the current intercarrier compensation rules" and saying (four years after it had *opened* its previous notice) that it would "*begin* the process of replacing the myriad existing intercarrier compensation regimes with a unified regime designed for a market characterized by increasing competition and new technologies." *In re Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd. 4685, ¶¶ 1, 3 (2005). As a result of this 2005 NPRM, and based on a request by the RLECs that contained virtually identical arguments as those made in their most recent Joint Petition, this Commission stopped its self-initiated investigation of the RLECs' access rates. *August 30, 2005 Opinion and Order.* But the FCC did nothing, and three and a half more years passed.

In the meantime, this Commission continued to extend the stay of this proceeding year after year. In November 2006, the Commission extended the stay specifically because a new plan, the Missoula Plan, had been submitted to the FCC.[3] Just as the RLECs have done in their Joint Petition for Stay, the Commission entered into a detailed discussion about how the Missoula Plan, if adopted, would potentially affect Pennsylvania. *November 15, 2006 Order, pp.*

[3] The Missoula Plan was submitted to the FCC in July 2006. Just as the FCC did in its most recent request for comments, the FCC requested comments and reply comments on the Missoula Plan by September and November 2006, respectively. Of course, the FCC never acted to adopt the Missoula Plan.

*10-12.* Of course, despite getting a lot of attention, the Missoula Plan went nowhere and all of the speculation about what might happen if the Missoula Plan was adopted was for naught.

In November 2008, all parties were certain the FCC was going to act because the FCC was required by a *mandamus* to issue an Order on a subsection of intercarrier compensation issues, and the FCC assured the parties that it was going to take broad-based action. No such action took place. Instead, the FCC merely issued a narrow order concerning ISP-bound reciprocal compensation, and released yet another NPRM seeking comments on proposals for reforms to address the "fundamental changes" in the marketplace and the "arbitrage opportunities created by a patchwork of above-cost intercarrier compensation rates." *In re High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link Up, Universal Service Contribution Methodology, Numbering Resource Optimization, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic, IP-Enabled Services*, 24 FCC Rcd. 6475, ¶ 39 (2008). Yet again, the FCC did nothing as a result of that new NPRM, and after three more years passed the FCC issued still another NPRM, this time as part of a National Broadband Plan. *In re Connect America Fund: A National Broadband Plan For Our Future*, 2011 WL 466775, ¶ 508 (Notice of Proposed Rulemaking, rel. Feb. 9, 2011) ("*2011 NPRM*").

As noted in the Executive Summary of the *2011 NPRM*, the number of proposals for intercarrier compensation reform that have been submitted to the FCC since 2009 alone is staggering. "Thirty-six public workshops held at the FCC and streamed online, which drew more than 10,000 in-person or online attendees, provided the framework for the ideas contained within the plan. These ideas were then refined based on replies to 31 public notices, which

generated some 23,000 comments totaling about 74,000 pages from more than 700 parties. The FCC also received about 1,100 ex parte filings totaling some 13,000 pages and nine public hearings were held throughout the country to further clarify the issues addressed in the plan." *2011 NPRM Executive Summary.*

And there is more coming. On August 3, 2011, the FCC issued a 19-page Notice of Inquiry ("NOI") requesting more comments on a variety of issues associated with intercarrier compensation. What that NOI shows is that there is absolutely no basis to the RLECs' assumption that the FCC intends to adopt the ABC Plan as submitted, without any modification. Indeed, the NOI is not limited to seeking comments on the ABC Plan, but also requests comments on the May 2011 proposal submitted by the State Members of the Federal-State Universal Service Joint Board and the May 2011 "RLEC Plan" put forward by the Joint Rural Associations.

The RLECs' claim that the FCC is going to adopt any specific proposal in the near future is nothing but pure conjecture. Other than making the same broad, unsupported statements they have made in the past that FCC action is now "imminent," the RLECs' latest Joint Petition does not include a shred of evidence to support a claim that the FCC is going to adopt the ABC Plan, or some other form of comprehensive reform, imminently. Although AT&T certainly hopes that the FCC will finally act to untangle the anti-consumer knot that its disparate rules and requirements for intercarrier compensation has created, there is no basis for this Commission to deprive Pennsylvania's consumers of the benefits that will result from the immediate implementation of the RLEC Access Order.

### C. The Commission Has Already Rejected the RLECs' Arguments That Intrastate Reform Should Be Delayed To Wait For The FCC.

After considering a tremendous amount of evidence and argument submitted in this case, the Commission found that the RLECs' intrastate access rates are unjust and unreasonable, and must be reduced.[4] It should come as absolutely no surprise that the RLECs would try yet again to delay those reductions in order to preserve their bloated monopoly subsidies at the expense of their competitors and customers throughout the Commonwealth. But as the Commission has determined, such delay is most definitely not prudent or in accordance with public policy.

The fact that the FCC is looking at intercarrier compensation issues on a broader basis is not a reason to delay reform in the states. To the contrary, the FCC has made clear that it expects states to move forward with intrastate access reform. As the FCC correctly recognized, *intra*state access charges are the biggest problem area in the troubled intercarrier compensation arena. Access "payments for calls within a state, known as intrastate access charges, are often higher than those that apply to calls across states, or interstate access charges." *2011 NPRM*, ¶ 494. This is because the FCC has at least "made incremental efforts to modify interstate access charges to reflect technological changes in the telecommunications network and the advent of competition." *Id.* ¶ 54. By contrast, while some states "have taken steps to reduce intrastate access rates and realign local residential rates with costs," others "continue to maintain intrastate access charges that far exceed interstate charges, with some intrastate access charges in excess of 13 cents per minute." *Id.* Thus, "[t]here is general industry sentiment that intrastate rates should be reduced first because they are the highest, and because eliminating the discrepancy between intrastate and interstate access charges could reduce arbitrage." *Id.* ¶ 554.

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[4] As AT&T stated in its own Petition for Reconsideration, the Commission's adoption of a new $2.50 Carrier Charge is not based on any evidence in the record, and should be reversed so that true parity between intrastate and interstate rates is achieved.

The RLECs take the position that, even though everyone agrees that high intrastate switched access charges pose serious problems, the Commission should abdicate its authority over intrastate communications and do *nothing*, in the hope that the FCC might someday finally poke its head into the intrastate sphere and take care of things for the Commission. But such inaction – in the face of serious and undisputed problems with the RLECs' current intrastate rates, and after the Commission has already issued a decision based on a fully litigated case over the past two years – is utterly inexcusable for several reasons.

First, as the history of intercarrier compensation proceedings discussed above suggests, there is no assurance that comprehensive federal reform will be immediately forthcoming. The FCC has been talking about comprehensive reforms for a decade, and none of the long-promised reforms has ever materialized. Second, there is no assurance, even if the FCC does act, that such action will encompass intrastate rates. The Commission's 2011 NPRM is simply one of some 60 separate rulemakings under the *Connect America* umbrella, and many of those rulemakings began well before the one on intercarrier compensation. As the FCC itself has previously indicated, its "first option" will be to rely "on the existing roles played by the states and the Commission with respect to regulation of rates." *Id.* ¶ 537. In other words, the FCC would look only to reforms of rates for interstate and local traffic, while "[s]tates would otherwise continue to be responsible for reforming intrastate access charges." *Id.* ¶ 534. So if the LECs' do-nothing mentality prevails, it is quite likely this Commission will spend years waiting for the FCC, only to hear the FCC say "we're waiting for *you*."[5]

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[5] Even if the FCC does decide that it should tackle intrastate access rates, it has acknowledged the "risk of litigation and disputes" over its legal authority to regulate intrastate charges, which could lead to further delay and uncertainty. *2011 NPRM*, ¶ 537. This Commission itself has argued strenuously that the FCC does not have jurisdiction, and should not attempt to exercise jurisdiction, over intrastate rates. Thus, the FCC has acknowledged that allowing the states to handle rates within their long-established jurisdiction would minimize litigation risk and "provid[e] greater stability regarding the reform." *Id.*

Finally, the RLECs' Joint Petition rests on an absurd view that the existence of a proceeding at the FCC somehow excuses Pennsylvania from doing something about the "broken" regime of intrastate switched access charges. The FCC's actual words compel the opposite conclusion. The FCC is fully aware that some states "have undertaken intrastate access charge reform measures," including the interstate-intrastate parity approach that AT&T has proposed in this case. *2011 NPRM*, ¶ 543 & nn. 816, 819. Far from disapproving of such measures, the *2011 NPRM* "seek[s] comment on what steps the Commission should take to *encourage* states to reduce intrastate intercarrier compensation rates and how we could do so *without* penalizing states that have already begun" to reform intrastate rates. *Id.* ¶ 544 (emphasis added). The FCC has even proposed that states that have adopted meaningful access reforms would be first in line (or perhaps the only states in line) for the first phase of federal broadband funds, and has "request[ed] accurate information concerning the status of intrastate access state reform activity to determine which states" have implemented enough reform to qualify for federal funds. *Id.* ¶ 544 & n.819. Indeed, the FCC expressly singled out "mirroring interstate rates" – the reform AT&T has proposed in this case – as a possible criterion for federal support. *Id.* ¶ 544.

Just as the FCC is seeking to encourage state *action*, it offers no support for state *inaction*. The *2011 NPRM* (¶ 544) seeks comment on how to encourage reform "without . . . rewarding states that have not yet engaged in reform." Its principal concern is that "lack of action" by the states on intrastate rates "could frustrate our national goals associated with intercarrier compensation reform." *Id.* ¶ 548.

In its most recent Notice of Inquiry issued on August 3, 2011, the FCC again specifically recognized the need to coordinate with the states. The FCC said, "We seek comment on specific

illustrative areas where the states could work in partnership with the [FCC] in advancing universal service, subject to a uniform national framework, and invite comments on other suggestions." *FCC August 3, 2011 NOI, p. 5.* With respect to intercarrier compensation and the ABC Plan, the FCC invited comment on how the ABC Plan would "affect states in different stages of intrastate access reform – those that have undertaken significant reform and moved intrastate rates to parity with interstate rates, those in the process of reform, and states that have not yet initiated reform?" *Id. at pp. 10-11.* The FCC further sought comment on "the State Members propos[al] that the states reform intrastate rates and that the [FCC] facilitate this reform through state inducements rather than a federal framework..." *Id. at p. 12.*

Thus, the RLECs' claims that the FCC is not going to consider the actions already taken by states, or is somehow going to harm those states that have done the right thing and acted first, is wildly off-base and completely unsupported by the FCC's own words. The FCC has demonstrated that it is not only well aware that states have already acted, but that it intends to coordinate with those states and take into account individual state circumstances.

The August 3, 2011 NOI further demonstrates that the FCC is addressing many questions and concerns associated with the ABC Plan, as well as the State Members' Plan and the RLEC Plan. Thus, the RLECs' extensive discussion in their Joint Petition about the details of the ABC Plan and how it may impact Pennsylvania is completely irrelevant. The FCC has not adopted the ABC Plan; the FCC has shown that it has questions about the ABC Plan; and therefore there is no basis to engage in useless speculation about a plan that is, at this point, nothing but one of the tens of thousands of proposals submitted to the FCC.

### D. Implementation of The RLEC Access Order is Likely to be Consistent with Any Action the FCC Ultimately May Take, If It Indeed Acts.

The RLECs' effort to delay implementation of the RLEC Access Order on the ground that it might be inconsistent with any reforms the FCC may undertake also is baseless. Given that the RLECs are opposed to any reductions in their access gravy train, their efforts to "protect" the Commission and Pennsylvania consumers from the "threat" of future FCC action, which almost certainly will involve substantial reductions in carrier access charges, should be dismissed. While it is premature to guess at the details of any final federal reforms, the fact remains that the manner in which the Commission has sought to implement reductions in Pennsylvania likely will be directionally consistent with any eventual FCC reforms, and is being implemented on a timetable that – while not completely to AT&T's liking – nevertheless will permit the Commission to accommodate any federal action.

First, the RLECs cannot seriously contend that any federal action is going to result in an ***increase*** in their intrastate access rates. To the contrary, the FCC has made it abundantly clear that the intercarrier compensation system that exists now is irretrievably broken, and that intrastate access rates are, if anything, the rottenest apple in a very bad barrel of fruit. If the FCC determined to extend reform of the intercarrier compensation system to intrastate rates, any such reform almost necessarily will entail rate reductions. Thus, the fact that this Commission's reforms, as embodied in the RLEC Access Order, call for reductions in the RLECs' traffic sensitive intrastate rates almost certainly will be directionally consistent with any future FCC reforms.

Second, the timetable the Commission established to implement those reductions provides more than sufficient opportunity to accommodate, and if necessary adjust, to any FCC action. Unless it is altered as AT&T has proposed, the first phase of reductions is not even

scheduled to occur for nearly nine months. If FCC action is indeed "imminent," as the RLECs contend, the Commission will have the ability to address it within this lengthy period. Moreover, the entire process of reductions is scheduled to last for nearly four years. Again, this provides for more than ample time to deal with, and adjust if necessary, to any federal reforms.

## II. SPECIFIC ANSWERS TO JOINT PETITION

AT&T incorporates the entire discussion above in Section I to each and every numbered response, and hereby responds to the specific numbered paragraphs in the RLECs' Joint Petition as follows:

1. This paragraph contains a legal conclusion or analysis to which no response is required. To the extent a response is required, AT&T agrees that the *Duick* standard cited is the correct standard, but submits that the RLECs have utterly failed to meet the standard for the reasons stated in this Answer.

2. Denied. This paragraph generally contains legal statements to which no response is required. To the extent a response is required, AT&T submits that the RLECs have failed to meet the very strict requirements for a stay. First, the RLECs have not made a strong showing that they will likely prevail on the merits. To the contrary, as discussed above, the Commission has already thoroughly considered and rejected the RLECs' arguments that intrastate reform should be delayed. Second, the RLECs have not shown they will suffer irreparable injury. They cannot do so because the alleged harm involves monetary claims. Generally, claims of monetary losses alone will not satisfy the "irreparable injury" standard because monetary damages can compensate monetary losses. *Sameric Corporation v. Gross*, 448 Pa. 497, 295 A.2d 277 (1972). Third, the issuance of a stay will absolutely harm other interested parties in the proceeding. The

record is extensive and compelling that AT&T, other IXCs, and in particular their customers – not only in the RLECs' territories, but throughout the Commonwealth -- have already been substantially harmed by the many years of delay in implementing intrastate access reform. Further delay will only exacerbate the harm. Finally, the issuance of a stay will harm the public interest. The Commission found that the RLECs' failed to establish a prima facie case demonstrating that their intrastate access rates are just and reasonable. *July 18, 2011 Order at p. 104.* Not only is it against the public interest to allow a carrier to charge unjust and unreasonable rates, it is also against the law. 66 Pa. C.S.A. §1301. This Commission is required to establish new rates once it finds that current rates are unjust and unreasonable. 66 Pa.C.S.A. §1309. Now that the Commission has found that the RLECs' current rates are unjust and unreasonable, permitting those rates to remain in place while waiting for the FCC violates the Commission's obligation to ensure that utilities charge only just and reasonable rates to customers throughout the Commonwealth. The RLECs' remaining arguments in this paragraph make the same arguments they have made since this case began, and that the Commission has repeatedly rejected.

3. Denied. Without any evidence whatsoever, the RLECs raise the same claims they made over 5 years ago – that FCC action is "imminent" and that Pennsylvania RLECs and consumers will suffer irreparable harm if the Commission does not coordinate its action with the FCC. As discussed above in Section I, the RLECs have been making this exact same argument for the past five years. The fact that new proposals have been submitted to the FCC does not make FCC action any more likely than it was five years ago. The Missoula Plan was submitted in 2006, and the FCC never acted upon it. The RLECs do not cite to any facts to show that the

FCC is about to act, and this Commission should not delay critical reform due to pure speculation.

4. Denied. The RLECs' arguments in this paragraph are particularly appalling. Essentially, the RLECs threaten the Commission with an appeal, and then state that the Commission should act to stay the case due to the possibility of that appeal. Regardless, the Commission has already made this argument moot through its action at the August 11, 2011 Public Meeting whereby the Commission granted reconsideration pending further review and consideration of the merits.

5. Denied. Based on nothing more than speculative statements, the RLECs claim, yet again, that "it is clear now that the FCC appears to be poised to act on comprehensive ICC/USF reform." The RLECs claimed that was true in 2006, 2007, 2008, and 2009. They were wrong then. Nobody knows when, or if, the FCC is going to act. The RLECs cite to no definitive facts whatsoever to prove that the FCC, *this time*, is finally going to act on intercarrier compensation reform.

6. Admitted in part, Denied in part. The factual statements in this paragraph are all true, but they do not in any way lead to the conclusion that the FCC is poised to act, or that the FCC is likely to adopt AT&T's positions espoused at a May 2011 workshop.

7. Admitted. AT&T admits that the ABC Plan was filed on July 29, 2011. This proposal, signed by some of the same parties that are now asking for delay in this case, is one of tens of thousands of proposals submitted over the past ten years. For the reasons stated above, it is not a basis for further delay to intrastate access reform.

8. Admitted in part, Denied in part. The ABC Plan speaks for itself, and this Commission is capable of reading it and its details. AT&T denies that the ABC Plan provides an

excuse for putting a halt to the past two years of effort, time and resources invested by the parties, the ALJs, the Commission staff and the Commissioners to finally implement much-needed intrastate access reform in Pennsylvania. AT&T denies that the ABC Plan will harm Pennsylvania if the Pennsylvania Commission implements the access reforms advocated by AT&T in this case, or that have been ordered by the Commission in the RLEC Access Order. As discussed herein, there really is no point to even discussing the details of the ABC Plan and speculating as to how it will impact Pennsylvania.[6] As indicated by the FCC's August 3, 2011 NOI, the ABC Plan is just one of several the FCC is reviewing, and the FCC has numerous questions on the components of the ABC Plan. Thus, there is no reason to hypothesize about how a Plan that has not been adopted, and that may never be adopted, will impact Pennsylvania. In fact, such an exercise is nothing but a waste of the Commission's and the parties' resources.

9. Denied. AT&T denies that the proposals submitted to the FCC raise new arguments that impact the Commission's determinations in the July 18, 2011 Order. For the reasons discussed extensively herein, AT&T further denies that a stay is warranted or appropriate due to a new plan that the parties have no idea if the FCC will ever even adopt.

10. Denied as stated. For the reasons discussed in this Answer, AT&T denies the RLECs' allegations in this Paragraph that "practical realities and legal requirements" dictate that a stay is necessary at this time. AT&T agrees that the Commission's Order sets forth a specific timeline for implementation – the Commission's Order, however, speaks for itself.

11. Denied. Without any factual support whatsoever, the RLECs claim that "it is clear that the FCC is likely to regard the ABC Plan as a baseline for decision to implement ICC/USF reform." The rest of this paragraph then claims that because of this unsupported

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[6] Given that the ABC Plan does not address originating access at all, there certainly can be no impact on this Commission's decision as it relates to originating intrastate access charges.

statement, the Commission must grant a limited stay to coordinate state and federal results. For the reasons stated in this Answer, AT&T denies that the ABC Plan provides any basis for delay in intrastate access reform. The RLECs make the same arguments in this paragraph that they have made repeatedly for the past 5 years – that the Commission must coordinate state/federal results, avoid the potential of multiple rate increases, and conserve administrative agency resources. The Commission has carefully considered these arguments, and rejected them. The RLECs claim that the Commission could not have envisioned the specific sweeping impacts resulting from the ABC Plan and the RLEC Plan. However, there is no sweeping impact. The FCC has not acted on those plans; it has not indicated that it intends to adopt those plans; and it is nothing but a guessing-game to argue that mere proposals will negatively impact Pennsylvania. As discussed above, the FCC is well aware that states are implementing intrastate reform; in fact, the FCC has encouraged it. The FCC has also expressed its intent to coordinate with states, so the RLECs' statements in this paragraph are not only factually unsupported, they are factually inaccurate.

12. Denied. The RLECs claim in this Paragraph that the Commission should honor its commitment to allow parties to address FCC action once it occurs. But no FCC action has occurred, so there is nothing new for the Commission to consider at this time, and nothing for the parties to address. It would be an utter waste of this Commission's resources and the parties' resources to discuss what *may* happen at the FCC and how it *may* impact Pennsylvania. Until the FCC actually acts (and no party knows if that will happen, when it may happen, and what form such action might ultimately take), there is no way to know how such action will affect Pennsylvania, and there is absolutely no point in speculating. If the FCC does issue a decision, the Commission can certainly "honor its prior commitment" and allow the parties to fully

address the implications of that decision for Pennsylvania. As discussed in this Answer, the Commission's implementation schedule gives it more than sufficient time and ability to consider a final FCC decision, and there is no basis to further delay the intrastate access reform the Commission has already found is well overdue.

13. Denied. The RLECs' claims that the Commission will "abridge due process" if it proceeds with reform and implementation of its Order is laughable. There have been two years of due process in this case, including multiple rounds of testimony, days of hearings, hundreds of pages of briefs and exceptions. In issuing its decision in this case, the Commission fully recognized that the FCC was considering similar issues and that the FCC's proceeding was continuing to develop. The Commission rejected the RLECs' rehashed arguments to continue waiting on the FCC.

14. Denied. As discussed herein, the Commission has explicitly recognized the "overarching federal changes and the need to coordinate state and federal outcomes" and held that it is no longer prudent to wait for the FCC. The Commission should not reverse its prior decision due to the emergence of new proposals.

15. Denied. Raising a new issue as a basis for delay, the RLECs now claim that the Commission should slow down RLEC reform in order to wait for the Verizon proceeding. Continuing its pattern of taking inconsistent positions, CenturyLink just opposed a Verizon petition to reopen that case to take testimony on the RLEC Access Order on the ground that the Verizon and RLEC proceedings "intentionally remain on separate tracks." *Answer of CenturyLink to Verizon Petition to Reopen the Record, July 21, 2011, Docket No. C-20027195, p. 2.* This Commission has stated that [r]eductions to Verizon's access charges have been and will continue to be considered separately by the Commission at Docket No. C-20027195." *July*

*18, 2011 Order at p. 17, fn. 24.* Thus, the existence of the Verizon access case is not a basis to delay much-needed reform in the RLECs' territory. The RLECs' additional arguments about alleged, unspecified and unsubstantiated harms caused by not coordinating with FCC action have already been fully considered and rejected by this Commission, and should be rejected for the reasons stated in this Answer.

16. Denied. The statements in this paragraph regarding alleged harms to Pennsylvania consumers are complete speculation. The FCC has not adopted the ABC Plan; the FCC has not indicated that it intends to adopt the ABC Plan. To the contrary, the FCC has indicated it has questions on the ABC Plan. Additionally, the FCC has made clear its intent to coordinate with the states. *August 3, 2011 Notice of Inquiry.* This Commission has already considered and rejected the RLECs' arguments that intrastate access reform should not proceed due to the need to coordinate state and federal activity.

17. Denied. Yet again, the RLECs' claims engage in a guessing game without any factual basis to support them. In its August 3, 2011 NOI, under a section entitled "Federal-State Roles," the FCC specifically requested comments on rate impacts to consumers, and on the need to coordinate with states in various stages of reform. *Id. at pp. 10-12, 16-17.* Thus, the FCC is already ensuring that there will be coordination between state and federal reforms. See also AT&T's response to Paragraph 16 above.

18. Denied. See AT&T's responses to Paragraphs 16 and 17 above.

19. Denied. See AT&T's responses to Paragraphs 16 and 17 above.

20. Denied. The issues raised in this Paragraph have been fully addressed and rejected by this Commission. The Commission specifically considered the issue of whether the RLECs could recover access reductions through retail rate increases. In the RLEC Access Order

at page 128, the Commission described the RLECs' arguments on this issue: "CTL claimed that many of its customers clearly will not accept local rate increases and that because of this, it would not actually be able to recover lost access revenue in this manner. The PTA also made similar claims about the uncertainty of revenue neutral recovery and, citing to *Smith* and *Brooks-Scanlon, supra.*, noted that the RLECs must be afforded a realistic opportunity of revenue recovery." The RLECs also filed Exceptions on this exact issue. *July 18, 2011 Order at pp. 132-139.* The Commission then concluded that "the RLECs failed to demonstrate in this proceeding that it is impossible for them to recover a reasonable level of revenue from retail rate increases." *Id. at p. 140.* The RLECs do not raise one new argument on this issue, and it therefore has been fully considered and rejected and does not meet the *Duick* standard.

21. Denied. Recycling an old argument from many prior pleadings, the RLECs claim that intrastate reform will seriously jeopardize the RLECs' efforts to receive adequate federal support. Yet again, this issue has already been fully considered and rejected by the Commission. In addition, these claims are speculative and not supported by any actual evidence. To the contrary, the FCC has made it abundantly clear that it intends to coordinate its efforts with states. *August 3, 2011 NOI.*

22. Denied. Again making the same arguments it has made in the past, the RLECs claim that a stay will ensure that Pennsylvania is not harmed relative to other states. The FCC has given no indication that it intends to harm those states that have already implemented reform – the exact opposite is true. This is a scare-tactic that has no factual basis to back it up. Further, it has already been argued before the Commission, and rejected by the Commission.

23. Denied. AT&T denies that it will benefit from a further stay of intrastate access reform to wait for uncertain FCC action. AT&T and its consumers, as well as consumers

throughout Pennsylvania, have already been harmed to the tune of over $80 million each year by the Commission's continuing delays in implementing access reform. *See Attachment 5 to AT&T Statement 1.2.* Forcing consumers to pay the RLECs' extremely inflated access charges while waiting on a plan that no party knows if the FCC will even act upon, or adopt, does not benefit anybody but the RLECs.

24. Denied. AT&T incorporates its response to Paragraph 23.

25. Admitted. There have been numerous prior federal proposals that have never been adopted. This Commission previously stayed this case for several years primarily as a result of one of those proposals – the Missoula Plan. As the RLECs' acknowledge, the Missoula Plan (and the Martin Plan and every other plan submitted thus far), has not been adopted at all.

26. Denied. As a last ditch effort, the RLECs argue that *this time* will be different. The RLECs sound much like the boy who cried wolf. The Commission should not fall for the same false warning cries again. For all of the reasons stated in this Answer, the Commission must reject the RLECs' attempts to delay implementation of this Commission's July 18, 2011 Order.

WHEREFORE, for the reasons stated herein, the RLECs' Joint Petition for Limited Reconsideration and Stay should be denied.

Respectfully submitted,

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