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August 17, 2009

VIA ELECTRONIC FILING

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building, 2nd Floor
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

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

Dear Mr. McNulty:

Enclosed please find the Verizon's Prehearing Conference Memorandum, being filed by Verizon Pennsylvania Inc., Verizon North Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, MCI metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc. (collectively "Verizon") in the above-captioned consolidated matter.

If you have any questions, please feel free to contact me.

Very truly yours,


Suzan D. Paiva

SDP/slb

VIA E-MAIL and UPS DELIVERY
cc: The Honorable Kandace F. Melillo

VIA E-MAIL and FIRST CLASS MAIL
cc: Attached Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Verizon's Prehearing Conference Memorandum, 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 Philadelphia, Pennsylvania, this 17th day of August, 2009.

VIA E-MAIL and FIRST CLASS U.S.MAIL

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**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

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

VERIZON'S PREHEARING MEMORANDUM

Verizon Pennsylvania Inc., Verizon North Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc. (collectively "Verizon") submit this Prehearing Memorandum for purposes of the prehearing conference scheduled for August 19, 2009.

I. HISTORY OF PROCEEDING

By order entered August 5, 2009, the Commission consolidated a long-standing investigation of rural incumbent local exchange carrier ("RLEC") access rates at Docket I-00040105 with a series of 2009 complaints brought by AT&T against those rates at Dockets C-2009-2098380, etc. The purpose of the prehearing conference is to address the scope of this consolidated proceeding and set a litigation schedule.

The Commission had opened the investigation at Docket I-00040105 on December 20, 2004 "to consider whether intrastate access charges and intraLATA toll rates in rural

ILEC territories should be decreased and to consider any and all rate issues and rate changes that should or would result in the event that disbursements from the Pennsylvania Universal Service Fund are reduced and/or eliminated.” (12/20/04 Order, Ordering ¶ 1). Before any substantive progress was made in the RLEC investigation, the Commission by order entered August 30, 2005 granted a request to stay the matter for up to twelve months to await developments in the Federal Communications Commission’s (“FCC”) intercarrier compensation investigation. The Commission extended that stay several times.

By Order entered April 24, 2008, the Commission reopened the stayed investigation for the limited purpose of addressing certain retail rate cap and universal service fund (“USF”) issues relating to the RLECs’ operations under alternative regulation. The issues adjudicated in this phase of the investigation included questions of whether the existing state USF should be increased to fund the RLECs’ annual noncompetitive revenue increases or whether the USF should be reduced and/or ultimately eliminated.¹ ALJ Susan Colwell issued a recommended decision in this portion of the investigation on July 23, 2009. Among other things, she recommended that, rather than addressing specific fund changes in the investigation, the Commission should convene a rulemaking “for the purpose of defining the specific form of the Pennsylvania Universal Service Fund and its uses.” (7/23/09 RD at 93). After considering the evidence regarding how the USF is currently funded and distributed, ALJ Colwell concluded that:

¹ See October 9, 2008 Order on Reconsideration (“we did not intend for there to be a preclusion of evidence that funding for the PAUSF should decrease.”)

The PA USF is a fund which exists because the ratepayers of other telecommunications providers have paid the money, unwittingly, as a hidden tax. It is not “free money” to be plundered at will and without concern for its origins or for whether it is the best use of the money. All parties agree that the concept of universal service is a worthy one. This fund should be reconstructed to provide assistance to those customers who need it, and for those companies who can meet a stringent test for determining that they serve an area whose costs are so high that the company itself deserves extra help for that area alone. (7/23/09 RD at 88).

She concluded that the specific details of this reconstitution of the fund should be addressed in a rulemaking to be convened within six months of the effective date of an order approving her RD.

Meanwhile, on March 19, 2009, AT&T Communications of Pennsylvania, LLC (AT&T PA), TCG New Jersey, Inc. (TCG NJ) and TCG Pittsburgh, Inc. (TCG) (collectively “AT&T”) filed complaints against thirty-two Pennsylvania RLECs, contending that the RLECs’ intrastate access rates are unjust and unreasonable in violation of 66 Pa. C.S. §1301, that these high rates charged to other carriers for access to the RLECs’ networks impede competition and violate other aspects of legislative policy set forth in 66 Pa. C.S. § 3011, and requesting that the Commission require the RLECs to reduce those rates.

Both cases came before the Commission through a material question petition filed by the RLECs, which sought to have the complaint case consolidated with the investigation and the entire matter stayed to await FCC action. The Commission’s August 5, 2009 Order consolidated the investigation and complaints, but denied the RLECs’ request for a further stay of the investigation and directed that the Office of Administrative Law Judge should develop a record and issue a recommended decision within twelve months of order entry. The Commission held that “the stay of the intrastate access charges portion of this investigation is hereby lifted,” but also made clear that “in the interest of judicial efficiency,

the issues already adjudicated before Administrative Law Judge Susan Colwell during the limited reopening of the *Intrastate Access Charge Investigation* at Docket No.I-00040105 shall not be relitigated absent extraordinary circumstances.” (8/5/09 Order, Ordering ¶ 4).

II. ISSUES

The prehearing conference order requests the parties “to include a discussion in their prehearing memoranda concerning the scope of the new proceeding.” (8/11/09 Prehearing Order at 2). As set forth in the Commission’s August 5, 2009 order, the scope of the proceeding is to “undertake the initiative of reexamining the area of intrastate carrier access charges for the RLECs.” (8/5/09 Order at 18). These are the same issues raised in the AT&T complaints, and include whether the intrastate access rates of each particular RLEC should be reduced, and, if so, how the revenue should be rebalanced to other RLEC rates under 66 Pa. C.S. § 3017(a).

Through discussions among the parties, Verizon is aware that the RLECs intend to argue that the scope of this phase of the investigation should also include the question of whether the contributors to the USF should be expanded to include other contributors, such as wireless carriers and others that do not contribute to the USF today. This issue is not properly included within the scope of this phase of the case. To the contrary, the Commission clearly did not intend to include changes to the fundamental structure of the USF in this phase. The Commission stated that “the *access charge investigation* should be resumed at this time,” but cautioned that “the issues already adjudicated before Administrative Law Judge Susan Colwell during the limited reopening of the investigation shall not be relitigated absent extraordinary circumstances.” (8/5/09 Order at 19) (emphasis added). ALJ Colwell has already recommended that the Commission convene a

rulemaking to address any fundamental changes to the USF, and her “adjudication” is already before the Commission through its review of ALJ Colwell’s RD, and should not be litigated here.

Rather than contemplating that changes to the USF would be considered in this phase of the proceeding, the Commission held the exact opposite by making clear that “[u]ntil there is a resolution to access charge reform, the *status quo* stays in place, and the PaUSF shall continue *under the existing regulations* . . . until such time as new regulations are promulgated [through a proper rulemaking] eliminating or modifying the Fund.” (8/5/09 Order at 20-21) (emphasis added). The “existing regulations” exempt wireless carriers as contributors to the USF by stating that “wireless carriers are exempt from this subchapter under 66 Pa.C.S. § 102(2)(IV) (relating to definitions).” 52 Pa. Code. § 63.162. That aspect of the regulations could not be changed without a rulemaking, and thus there is no point to addressing the prospect of such a change in this non-rulemaking proceeding. Injecting this issue would do nothing but complicate and delay the litigation, for no purpose. Thus, as the Commission directed, this phase of the case must presume that the USF operates unchanged “under the existing regulations” pending the outcome of any rulemaking that might be convened as a result of ALJ Colwell’s recommendation.

If the issue of expansion of the USF contribution base is to be addressed here – which it should not be for the reasons discussed above – then the legal question of whether the Commission has authority to include wireless carriers must be addressed up front. The Commission has no statutory jurisdiction over wireless carriers (CMRS providers) and no authority to compel contributions by such carriers or their customers to the USF. It would be inefficient and wasteful of resources to develop a factual record relating to whether

wireless carriers could be compelled to contribute to the USF when, as a matter of law, they so clearly cannot. The General Assembly has excepted CMRS providers from the definition of a “public utility” at 66 Pa. C.S. 102(2)(iv). The Commission’s general jurisdictional grant of power from the General Assembly is the “general administrative power and authority to supervise and regulate all *public utilities* doing business within this Commonwealth.” 66 Pa. C.S.A. § 501(b) (emphasis added). The General Assembly has granted the Commission no authority over CMRS Providers for any purpose, and if this issue is to be addressed at all then the threshold legal issue must be addressed first.

III. SCHEDULE

Verizon is in agreement with the schedule that it understands will be proposed by AT&T, and is willing to work with the parties to develop a reasonable schedule for the litigation of this matter.

IV. WITNESSES

Verizon intends to present the testimony of Don Price, who already submitted direct testimony in this matter on July 2, 2009. Mr. Price’s background and qualifications are described in that testimony.

Verizon reserves the right to present the testimony of other witnesses as necessary to rebut the testimony of other parties or if the scope of issues to be addressed is expanded beyond those Verizon understands to be included.

V. DISCOVERY MOTIONS

The prehearing order requests the parties to address “whether any prior discovery rulings of the presiding officer should be revisited.” However, Verizon is not a party to any of the discovery disputes pending or ruled upon and therefore takes no position on this issue.

A handwritten signature in cursive script that reads "Suzan D. Paiva" followed by a date "8/17/09".

Suzan D. Paiva (Atty No. 53853)

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Dated: August 17, 2009

Attorney for Verizon