



Suite 200
1919 Pennsylvania Avenue NW
Washington, DC 20006-3402

John Dodge
Telephone: 202.973.4205
Facsimile: 202.973.4499

johndodge@dwt.com

May 12, 2009

James J. McNulty, Secretary
Commonwealth of Pennsylvania
Public Utility Commission
400 North Street
Harrisburg, PA 17120

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

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

Dear Mr. McNulty:

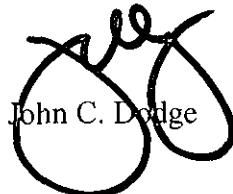
On behalf of Comcast Phone of Pennsylvania, LLC d/b/a Comcast Digital Phone and Comcast Business Communications, LLC (collectively "Comcast"), enclosed please find an original and nine(9) copies of Comcast's Initial Brief in the above-captioned matters. Comcast's Initial Brief contains no proprietary information.

Kindly date-stamp the additional copy of Comcast's Initial Brief as received and return it in the prepaid, self addressed envelope provided.

Should you have any questions, please contact the undersigned.

Respectfully submitted,

Davis Wright Tremaine LLP



John C. Dodge

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cc: Hon. Kandace Melillo
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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
AT&T Communications of Pennsylvania, LLC	:	
Complainant	:	
v.	:	Docket No. C-2009-2098380, <i>et al.</i>
Armstrong Telephone Company - Pennsylvania, et al.	:	
Respondents	:	

**COMCAST PHONE OF PENNSYLVANIA, LLC AND
COMCAST BUSINESS COMMUNICATIONS, LLC
INITIAL BRIEF**

Comcast Phone of Pennsylvania, LLC d/b/a Comcast Digital Phone and Comcast Business Communications, LLC (collectively "Comcast") hereby submit their Initial Brief in the above-captioned matter.

INTRODUCTION

Rural Local Exchange Carrier ("RLEC") intrastate access rates are many times greater than the actual cost of originating or terminating a switched access call, or the rates for comparable services. The relative level of the various RLECs' current intrastate access charges is entirely unrelated to low subscriber density in RLEC service territories. Based on these facts, Comcast's expert witness, Dr. Michael D. Pelcovits, concluded that the RLECs' intrastate switched access charges should be brought to parity with their interstate switched access charges.

Dr. Pelcovits testified that there is no public policy reason and no demonstrated need to offset RLEC access charge reductions with corresponding local rate increases. Changes in how the RLECs are regulated, and their diversification into unregulated services, render obsolete the "make whole"

paradigm formerly acceptable in a monopolistic telephone environment. Finally, Dr. Pelcovits noted that 66 Pa. C.S. § 3017 should be interpreted in light of marketplace and business case changes for the RLECs. Thus, the Commission should find that the revenue neutrality required by Section 3017 can include unregulated service revenue.

I. STATEMENT OF QUESTIONS AND SUMMARY OF POSITIONS

- **Burden of Proof** Comcast reserves argument regarding this question, except to note that Comcast has met its evidentiary burden, to the extent one exists for interexchange carrier parties.
- **Should RLECS' Intrastate Switched Access Charges Be Reduced?** Yes. The RLECs' intrastate switched access charges are excessive when compared to cost or benchmark rates, and any implicit subsidies therein are not targeted to less dense (and presumably more costly) service territories or subscribers in need.
- **If the RLECs' Intrastate Switched Access Rates Should Be Reduced, To What Level Should They Be Reduced, And When?**
 - A. **Rate Levels** The RLECs' intrastate switched access rates should be reduced to "parity," *i.e.*, to match their interstate switched access rates.
 - B. **Timing** The RLECs' intrastate switched access rates should be reduced immediately.
- **If the RLECS' Intrastate Switched Access Rates Should Be Reduced, How Should Any Revenue Reductions Be Recovered In Compliance with 66 Pa.C.S.A. 3017?**
 - A. **Meaning of the Revenue Neutrality Requirement under 3017** Section 3017(a) does not limit the type of revenues that the Commission can consider when contemplating an offset to access charge reductions. The Commission should consider the fact that most, if not all, RLECs enjoy substantial and increasing revenues from unregulated services.
 - B. **Rate Increases** The Commission should consider that local rate increases likely will not flow through to bundled service customers, and customers for whom local increases are too high may need targeted subsidies.
 - C. **Pennsylvania USF** The current Pa-USF should be reformed to target truly high cost areas and/or subscribers in need, and the Commission should rule that increased contributions to the Pa-USF are not appropriate.

- **General Legal Issues**

A. **Retroactivity of any Access Rate Reductions** Comcast reserves argument on this issue.

B. **Compliance** Comcast reserves argument on this issue.

II. FACTUAL AND LEGAL BACKGROUND

Comcast incorporates by reference the “History of the Proceeding” contained at pages 2-4 of its Initial Brief in Docket No. I-00040105, which contains a brief procedural background through the so-called “USF” phase of these consolidated proceedings. With respect to this phase of the case, which concerns potential reforms to the RLECs’ intrastate switched access charges, Comcast adds the following:

On August 19, 2009 the Commission published the Notice of Appearance and Substitution of attorneys with the law firm of Eckert, Seamans Cherin & Mellott, LLC on behalf of Comcast. On November 10, 2009 undersigned counsel filed with the Commission an Entry of Appearance and Substitution of Counsel to replace the law firm of Eckert, Seamans Cherin & Mellott, LLC. On November 20, 2009, Theresa Z. Cavanaugh, outside counsel for Comcast, filed a Motion For Admission Pro Hac Vice (“Motion”), requesting that John C. Dodge, be permitted to appear on behalf of Comcast in the above-captioned consolidated cases, pursuant to 52 Pa. Code §§1.22(b) and Pa. B.A.R. 301. Comcast’s Motion was granted on November 23, 2009.

On November 30, 2009 Comcast filed the Direct Testimony of Michael D. Pelcovits in Docket Nos. C-2009-2098380, *et al.* On March 10, 2010 Comcast filed the Rebuttal Testimony of Pelcovits in Docket Nos. C-2009-2098380, *et al.* Evidentiary hearings were held in the above-

referenced dockets on April 14-16, 2010. Dr. Pelcovits' prefiled written testimonies were admitted into the evidentiary record on April 14, 2010 as Comcast Statement 1.0 and 1.0R, respectively.¹

As further background to the Commission, Comcast offers the following: Comcast, as a certified intrastate, interexchange carrier, pays hundreds of thousands of dollars annually to CenturyLink and the RLECs in the form of switched access service charges. In addition, Comcast pays millions of dollars annually into the Pennsylvania Universal Service Fund ("Pa-USF"), which assessments are distributed amongst the RLECs to offset purported revenue deficits occasioned by long-ago mandated decreases in their toll and access charges.

III. BURDEN OF PROOF

To the extent it, as an interexchange carrier, bears a burden of proof in this matter to justify a reduction in RLEC access charges, Comcast has met that burden, for the reasons articulated herein. Comcast reserves the right to address arguments raised by other parties on this issue.

IV. SHOULD RLECS' INTRASTATE SWITCHED ACCESS RATES BE REDUCED?

There can be little doubt left that RLEC access charges, which are unrelated to cost or benchmark rates, should be reduced. Comcast, through the testimony of Dr. Pelcovits, provided multiple perspectives on why this is so. First, in his Direct Testimony Dr. Pelcovits demonstrated that RLEC access charges are many, many times greater than the national weighted average prices for local switching, tandem switching and local transport functions.² Second, Dr. Pelcovits observed that the RLECs' intrastate access charges are many, many times greater than their interstate access

¹ Tr. at 284.

² Comcast Statement 1 at 5, citing *High Cost Universal Service Reform, et al.*, CC Docket Nos. 96-45, 99-200, 96-98, 01-92, 99-68, WC Docket Nos. 05-337, 03-109, 06-122, 04-36, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking ¶ 254 (FCC 08-262 rel. Nov. 5, 2008).

charges, despite the fact that the two services are functionally identical.³ Third, Dr. Pelcovits testified that the RLECs' intrastate access charges are many, many times greater than the companies' reciprocal compensation rates which apply to the termination of local traffic.⁴ Reciprocal compensation rates are based on a TELRIC standard, as are the rates for switching and transport functions. Thus, according to Dr. Pelcovits, reciprocal compensation rates are a much better measure of the costs of the network functions provided by intrastate access service, than are current intrastate access rates, which are based on historical average cost estimates.⁵

In addition, Dr. Pelcovits, in his Rebuttal Testimony, conducted a regression analysis. That regression analysis demonstrated that the RLECs' claim that high access charges must be maintained to maintain affordable local service in "high cost" rural areas is unfounded.

Mr. Zingaretti, testifying for PTA, opined that the cost incurred by the PTA companies of providing universal service is driven primarily by the very rural nature of the areas they serve.⁶ Said Mr. Zingaretti, "the major driver of cost is the overall rural nature of the area served by a local exchange carrier," as measured by population density."⁷

To test the validity of Mr. Zingaretti's claims, Dr. Pelcovits analyzed and combined two data sets. The first data set provides the impact on local rates for each of the PTA companies from a "flash cut" to parity with interstate rates.⁸ This data set, for the purpose of analysis only, assumed a rate increase per line needed to fully offset the loss in access revenue caused by bringing intrastate rates into parity with interstate rates. It also assumed the level of 1-R rates that would be necessary following the flash-cut to parity with interstate rates. The second data set included the line density

³ *Id.* at 6.

⁴ *Id.* at 6-7.

⁵ *Id.* at 7.

⁶ PTA Statement No. 1.0 (Prepared Direct Testimony of Gary M. Zingaretti on behalf of the Pennsylvania Telephone Association Companies) at 26, *et seq.*

⁷ *Id.* at 28.

⁸ PTA Statement No. 1.0 at Exhibit GMZ-13.

of each of the PTA companies, measured as the number of lines per square mile.⁹ Mr. Zingaretti used this information to calculate and compare the line density of the PTA companies to Verizon.

The first result of Dr. Pelcovits' analyses is a simple correlation coefficient between either measure of the cross-subsidy and line density. A correlation coefficient measures whether two variables tend to move together (either in the same direction or in the opposite direction).¹⁰ The correlation coefficient ranges from minus one to plus one, and the closer the coefficient lies to either 1.0 or to -1.0, the more the two variables are said to be correlated – *i.e.*, when one varies the other will too. A correlation coefficient of zero means that the two variables move independently.

Dr. Pelcovits' analysis showed that the correlation coefficient between density and either measure of cross-subsidy is nearly zero.¹¹ If the RLEC's contention regarding the relationship between low density and the need for a larger subsidy had any validity, the correlation coefficient would be highly negative (much closer to negative 1.0). The results of this simple statistical test imply that the cross-subsidy provided by access charges is not related to the density (and thus cost) of the serving area of the RLEC.¹² Other regression analyses performed by Dr. Pelcovits confirmed these results.¹³

Dr. Pelcovits concluded, rightly, that excessive intrastate access charges are *not* being used to provide a targeted subsidy to the RLECs serving the highest cost (*i.e.*, the least dense) areas in Pennsylvania.¹⁴ Rather, the amount of the subsidy going to each RLEC by way of above-cost

⁹ PTA Statement No. 1 (Prepared Direct Testimony of Gary M. Zingaretti) at Exhibit GMZ-14.

¹⁰ Comcast Statement 1-R at 6.

¹¹ *Id.*

¹² *Id. at 6-7.*

¹³ *Id. at 7-8.*

¹⁴ *Id. at 8.*

intrastate access rates (and thus, too, the Pa-USF¹⁵) is quite random in relationship to density, which wholly undercuts the PTA's key justification for continuation of the present access charge/Pa-USF scheme.¹⁶

CenturyLink's criticisms of Dr. Pelcovits' regression analyses obscure the larger issues Dr. Pelcovits raised. Mr. Lindsey (adopting Dr. Staihr's Rebuttal Testimony) stated that "the company level of analysis undertaken by Dr. Pelcovits is inapposite and inappropriate."¹⁷ CenturyLink claims that any meaningful regression analysis must account for the massive variances in exchange level density.¹⁸ Dr. Pelcovits affirmatively testified that line density is a very important driver of costs.¹⁹ The larger point of Dr. Pelcovits' analyses is that density variations between exchanges need to be specifically quantified so the Commission can know whether such variations make a difference in reforming access charges or the Pa-USF. Neither CenturyLink nor any other RLEC has provided the data or analysis necessary to make this determination. At this juncture, the record shows only that RLEC access rates – and overcharges – cannot be correlated with cost.²⁰ Thus, as Dr. Pelcovits concluded, the RLECs' position that the Commission should sustain access charges at present levels because the RLECs serve less dense areas is without merit.

For all these reasons, the Commission must order the RLECs to reduce intrastate access charges to parity with interstate rates, as Dr. Pelcovits recommends. The Commission should not simply substitute another form of transfer payment, *i.e.*, USF distributions, for uneconomic access

¹⁵ Dr. Pelcovits demonstrated the lack of correlation between Pa-USF receipts and line density in the prior phase of these consolidated proceedings. See Comcast Statement 1.0-S (Surrebuttal Testimony of Michael D. Pelcovits), Docket No. I-00040105, at 4-5.

¹⁶ *Id.*

¹⁷ CenturyLink Statement 1.1 (Panel Surrebuttal Testimony of Jeffrey L. Lindsey and Mark D. Harper) at 31.

¹⁸ *Id.*

¹⁹ Comcast Statement 1-R at 3.

²⁰ Tr. At 401-402.

charges. Rather, the Commission should reform the Pa-USF to target subsidies to verified high cost areas or subscribers in need.

V. IF THE RLECS' INTRASTATE SWITCHED ACCESS RATES SHOULD BE REDUCED, TO WHAT LEVEL SHOULD THEY BE REDUCED AND WHEN?

A. Rate Levels

Based on any reasonable measure of cost or in relationship to rate benchmarks, the RLECs' intrastate access charges are too high and must be reduced as soon as possible. This is especially true for terminating charges, which are noncompetitive and which impact other carriers' customers directly.²¹ Dr. Pelcovits testified that a flash cut to an economically efficient interconnection regime (*i.e.*, all intercarrier compensation at or near bill and keep) is unlikely to be feasible in the short run.²² He concluded that "the most beneficial step would be to reduce the terminating fees that are most out-of-line with costs and with other charges for the exact network function."²³ Thus, the Commission should reduce all RLEC intrastate access charges to parity, *i.e.*, to mirror the RLECs' interstate access charges.

B. Timing

Since a flashcut to bill and keep is not possible, an immediate reduction to parity best serves the public interest.

²¹ 52 Pa. Code § 63.170.

²² Comcast Statement 1 (Direct Testimony of Michael D. Pelcovits) at 11.

²³ *Id.*

VI. IF THE RLECS' INTRASTATE SWITCHED ACCESS RATES SHOULD BE REDUCED, HOW SHOULD ANY REVENUE REDUCTIONS BE RECOVERED IN COMPLIANCE WITH 66 Pa.C.S.A. 3017?

A. Meaning of the Revenue Neutrality Requirement under 3017

There should be no dispute in this matter that the RLECs have the opportunity under Pennsylvania statute to offset intrastate access charge rate reductions from other revenue sources:

The commission may not require a local exchange telecommunications company to reduce access rates except on a revenue-neutral basis.²⁴

The necessary analysis facing the Commission, of course, is what other revenue sources are available for offsets should the Commission order access charge reductions. The RLECs have posited that there are only two other revenue sources available—local exchange service rates or USF receipts.²⁵ Since their local rates are capped and/or constrained by competition, the RLECs further argue, their draws from the Pa-USF must increase if their access charges are decreased.²⁶ The RLECs' position is a false choice. The plain language of Section 3017 says nothing about the breadth of the “revenues” available for offsets, and the provision certainly does not limit such revenues to local service rates or USF receipts. Proof of this statutory construction is borne out by a common sense examination of Section 3017(a).

Section 3017(a) provides that the Commission cannot require a reduction in access *rates* except on a *revenue*-neutral basis. Rates are the price per unit of service sold by a local exchange company.²⁷ Revenues are the actual consideration received by the local exchange company for the services it sells.²⁸ Section 3017(a) does not say that revenue neutrality for LECs required to reduce their access rates must be achieved using other (presumably regulated) *rates*, particular revenues, or

²⁴ 66 Pa.C.S.A. §3017(a).

²⁵ See, e.g., PTA Statement No. 1 at 16-20.

²⁶ See, e.g., CenturyLink Statement 1.0 (Panel Direct Testimony of Jeffrey L. Lindsey and Mark D. Harper) at 6.

²⁷ See, e.g., 66 Pa.C.S.A. § 102.

²⁸ See, e.g., 52 Pa.Code § 63.162 (defining end-user or retail—versus wholesale—revenue).

even revenues from particular companies.²⁹ The provision merely says that the Commission may not require a LEC to reduce access rates except on a revenue-neutral basis, and the Commission may not read anything else into the statute.³⁰

Dr. Pelcovits testified that there is no *policy* reason why local rates must be increased to offset a reduction in access charges. First, none of the RLECs are rate of return regulated, so there is no process whereby non-access regulated rates can be adjusted simultaneously to yield a revenue requirement.³¹ Second, most—if not all—of the RLECs have diversified into many unregulated services that provide a substantial and growing percentage of their revenues and profits.³² These factors led Dr. Pelcovits to conclude that the evolution of the relationship between the RLECs and their customers, while complex, should be relevant to the Commission as it considers the 3017(c) issue.

For example, Dr. Pelcovits noted that if access revenues fall, but revenues from unregulated services increase concurrently (the latter of which appears to be happening for most, if not all, of the RLECs in any event), there should be no need to raise local rates, and certainly no need to increase Pa-USF subsidies.³³ Thus, Dr. Pelcovits recommends that the Commission avoid mandating a strict dollar-for-dollar revenue offset for access charge reductions. As he concluded: “The paradigm of revenue neutrality no longer fits the regulatory regime or marketplace setting facing the RLECs.”³⁴

B. Rate Increases

Dr. Pelcovits noted that, if the Commission determined that RLEC local rates need to increase to offset access charge reductions to parity, AT&T’s direct testimony concluded that the

²⁹ 52 Pa.Code § 63.161(3) is in pari materia with Section 3017(c).

³⁰ See, e.g., *Commonwealth Dep’t of Labor v. Lombardo*, 52 A.2d 657, ***13 (1947).

³¹ Comcast Statement 1 at 13.

³² *Id.*

³³ *Id.* at 18.

³⁴ *Id.*

impact would be \$5.31 per month, on average for PTA companies.³⁵ However, Dr. Pelcovits also observed that for bundled service customers, any increase in local rates is unlikely to have an effect on their total monthly bill, as the stated prices (or revenue divisions) are not relevant (or even visible) to the customer.³⁶ Even if the price of one component (*e.g.*, local service) were to increase, this would not result in an increase in the price of the bundle, which is constrained by competition, not regulation.³⁷ Dr. Pelcovits concluded that as long as the level of competition (or competitors' costs) are unaffected by the increase of the local service rate, there would be no reason for the price of the bundle to change.³⁸ If there are RLEC customers for whom a local rate increase is too high, Dr. Pelcovits recommended that it might be necessary to subsidize those particular customers, or high cost communities, following a Commission inquiry into targeted subsidies.³⁹ It bears repeating that if an access charge reduction results in the need for a subsidy, "the Commission should not immediately increase the size of the Pa-USF. Rather, it should investigate whether the current Pa-USF is indeed targeting funds to communities and customers that actually need a subsidy."⁴⁰ This is consistent with the Commission's observation that the Pennsylvania-specific USF "is a means to reduce access and toll rates for the ultimate benefit of the end-user . . .".⁴¹

³⁵ *Id.* at 19.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 20.

⁴⁰ *Id.*

⁴¹ *Re Nextlink Pennsylvania, Inc.*, Docket No. P-00991648; P-00991649, 93 PaPUC 172, *142 (September 30, 1999); 196 P.U.R. 4th 172, *aff'd sub nom. Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa.Cmwlth. 2000), *alloc. granted*, 844 A.2d 1239 (Pa. 2004).

C. Pennsylvania USF

Comcast has taken the position that the current Pa-USF should be reformed to target truly high cost areas and/or subscribers in need. The Commission should reiterate its finding that additional contributions to the Pa-USF are not appropriate at this time.⁴²

VII. GENERAL LEGAL ISSUES

A. Retroactivity of any Access Rate Reductions

Comcast reserves argument on this issue.

B. Compliance

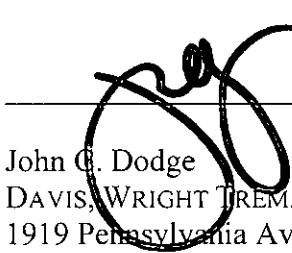
Comcast reserves argument on this issue.

⁴² The Commission should also be aware that discrimination among potential contributors has a direct and deleterious effect on facilities-based wireline competitors in Pennsylvania that, like Comcast, participate in the Pa-USF and derive no funding from it. So long as carriers that use RLEC facilities to terminate calls are not required to contribute to the Pa-USF as currently purposed, the pro rata percentage contributions by actual contributors will be inflated when compared to percentage of total voice market share. Simply, as consumers turn away from facilities based wireline services and toward services offered by non-payers, such as CMRS and over the top VoIP providers, companies that remain subject to PA USF payments bear a growing burden that is inversely proportional to market share losses and that creates a significant competitive disadvantage.

VIII. CONCLUSION

Comcast has demonstrated through the testimony of its expert witness Dr. Pelcovits that RLEC intrastate switched access charges must be reduced to parity with interstate rates. The RLECs' access charges are excessive when compared to cost or benchmark rates, and the level of subsidies in the RLECs' access charges are not targeted to high cost areas or local subscribers in need. The Commission should order a reduction in RLEC switched access charges and proceed to reform the Pa-USF by decoupling it from RLEC switched access charges.

Respectfully submitted,



John G. Dodge
DAVIS, WRIGHT TREMAINE, LLC
1919 Pennsylvania Avenue NW, Suite 200
Washington, D.C. 20006
Office: (202) 973-4200
Facsimile: (202) 973-4499
johndodge@dwt.com

May 13, 2010

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CERTIFICATE OF SERVICE

I, John C. Dodge, hereby certify that I have this day caused to be served a copy of the foregoing document upon the persons listed below by the means indicated in accordance with the requirements of 52 Pa. Code § 1.54:

Via Email & First Class Mail

Michelle Painter, Esquire
13017 Dunhill Drive
Fairfax, VA 22030
painterlawfirm@verizon.net

Joel H. Cheskis, Esquire
Darryl Lawrence, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg PA 17101-1923
jcheskis@paoca.org
dlawrence@paoca.org

Steven C. Gray, Esquire
Office of Small Business Advocate
300 North 2nd Street, Suite 1102
Commerce Building
Harrisburg, PA 17101
sgray@state.pa.us

Allison Kaster, Esquire
Adeolu A. Bakare, Esquire
Office of Trial Staff
PA Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17105-3265
akaster@state.pa.us
abakare@state.pa.us

Pamela C. Polacek, Esquire
Barry A. Naum, Esquire
McNees Wallace & Nurick, LLC
Post Office Box 1166
Harrisburg, PA 17108-1166
ppolacek@mwn.com
bnaum@mwn.com

Renardo L. Hicks, Esquire
Michael A. Gruin, Esquire
Stevens & Lee
16th Floor, 17th North 2nd Street
Harrisburg, PA 17101
rlh@stevenslee.com
mag@stevenslee.com

Bradford M. Stern, Esquire
Rothfelder Stern LLC
625 Central Avenue
Westfield NJ 07090
bmstern@rothfelderstern.com

Suzan D. Paiva Esquire
Verizon
1717 Arch Street
Philadelphia, PA 19103
Suzan.D.Paiva@Verizon.com

Benjamin J. Aron, Esquire
Sprint Nextel Corporation/Govt. Affairs
2001 Edmund Halley Drive, Room 208
Reston, VA 20191
Benjamin.Aron@sprint.com

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Garnet Hanley, Esquire
T-Mobile
401 9th Street, NW, Suite 550
Washington, DC 20004
garnet.hanly@t-mobile.com

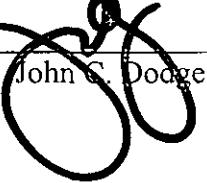
John F. Povilaitis, Esquire
Matthew A. Totino, Esquire
Ryan, Russell, Ogden & Seltzer P.C.
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025
JPovilaitis@RyanRussell.com
MTotino@RyanRussell.com

Zsuzsanna E. Benedek, Esquire
The United Telephone Co. of PA LLC
d/b/a CenturyLink
240 North Third Street, Suite 201
Harrisburg, PA 17101
Sue.Benedek@CenturyLink.com

Norman J. Kennard, Esquire
THOMAS, LONG, NIESEN & KENNARD
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500
nkennard@thomaslonglaw.com

Christopher M. Arfaa Esquire
150 N Radnor Chester Road
Suite F-200
Radnor, PA 19087-5254
carfaa@arfaalaw.com

Dated: May 13, 2010


John C. Dodge

From: Origin ID: BZSA (202) 973-4200
 connie simmons
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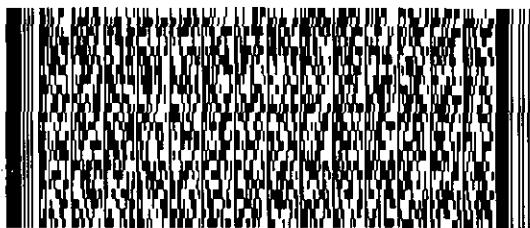
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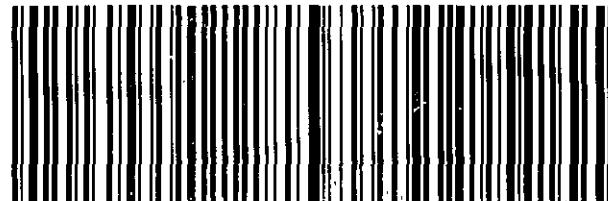


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