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*Via Electronic Filing*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

In re: Pennsylvania Universal Service Fund 1/09-12/09 Period Report  
Docket No. M-00001337

Dear Secretary Chiavetta:

On behalf of the Pennsylvania Telephone Association (PTA), please accept this reply to the letter dated November 15, 2010, filed by AT&T Communications et al. (AT&T), which was purportedly filed with regard to the above-captioned matter addressing the Pennsylvania Universal Service Fund's (PA USF) 2010 Administrator's Report for the period January through December 2009 ("Administrator's Report" or "Report").

AT&T was provided the opportunity, as it has been traditionally, to file objections to the Administrator's Report. AT&T chose not to object, specifically stating "AT&T does not object to the Report." Without objecting, AT&T nevertheless presented argument against the existing PA USF and this Commission's universal service policy in the telecommunications industry as that policy generally has been structured by this Commission to date. As even AT&T admits, the issues AT&T raises are currently pending before this Commission in two separate Recommended Decisions at Docket No. I-00040105. Those Recommended Decisions, and the issues raised therein, are separate from and unrelated to the Report at Docket No. M-00001337, which is simply an annual administrative report of the financial activities of the PA USF and recommendations for next year's assessment. AT&T's letter should be ignored.

The annual presentation of a report of financial administration is not the proper forum for AT&T to continue its advocacy against this Commission's universal service policy, which AT&T has fully presented and is currently pending before the Commission in separate proceedings at Docket No. I-00040105. The litigation of those proceedings is complete and the time for filing exceptions and replies, or making any further argument with respect to the cited Recommended Decisions, is past.

Moreover, in its zealous opposition to funding universal service in Pennsylvania,<sup>1</sup> AT&T presents a misleading view of the Administrator's Report by selectively showcasing the Administrator's recommendation to increase the existing PA USF assessment by 7.5%. AT&T portrays this increase as "the largest single annual increase in the annual assessment in the past nine years, [reflecting] the competitively imbalanced and unfair methodology under which the PaUSF operates" and a "result [that] may make sense as a matter of mathematics, but not as a matter of sound telecommunications policy or of competitive equality." AT&T's factual representations and legal and policy conclusions are erroneous and readily dispelled.

Increases over the years have varied greatly, ranging from 10.96% in the 2001-02 year (ignored by AT&T) to 0.67% just two years later. The 2010-11 increase proposed by the Administrator is by no measure out of line with past increases, which have averaged around 4.50%. Moreover, the increase proposed is modest, with the current 0.011651414 assessment factor being raised by only 0.000878220, or going from 1.16% to 1.25%. That level remains substantially below the federal assessment rate of 15.3%<sup>2</sup> for support of federal USF programs, the highest of which is the High Cost Fund, of which AT&T is the largest recipient.<sup>3</sup>

AT&T's arguments, that the existing PA USF does not represent "sound telecommunications policy" and is applied in a "competitively imbalanced and unfair methodology," are the result of the Commission's self-imposed restraint regarding USF contributions that, as addressed in the proceeding before ALJ Melillo to which AT&T refers, are easily rectified. Because USF assessments support the ubiquitous availability and affordability of the public switched telephone network (PSTN), they should be applied to all users of the PSTN. Current Commission policy, however, exempts wireless and VoIP carriers from contributing to the PA USF, in contradiction to existing federal policy. Rather than *eliminate* or substantially eviscerate the availability of universal service funding as AT&T would do, expansion of the contribution base to include both VoIP and wireless providers, as the FCC already has, would greatly ameliorate AT&T's concerns over increases in the assessment. As the Office of Consumer Advocate demonstrated, expanding the contribution base merely to include wireless carriers would allow Pennsylvania's Rural Local Exchange Carriers (RLECs) to reduce all intrastate access rate elements to parity, with concomitant USF support as the FCC did when eliminating the federal carrier common line charge, while experiencing an increase in the contribution factor of only .00000166, or 0.00166%.

Inclusion of VoIP carriers would decrease that factor even further. The FCC in 2006 required interconnected VoIP providers to contribute to the federal USF because all providers, including VoIP, benefit from the universal ability of their callers to place to and receive calls from the PSTN. As the FCC stated then:

As the interconnected VoIP service industry continues to grow, and to attract subscribers who previously relied on traditional telephone service, it becomes

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<sup>1</sup> AT&T is both a recipient and supporter of universal service at the federal level.

<sup>2</sup> FCC Public Notice 2Q 2010 at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-10-427A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-10-427A1.pdf).

<sup>3</sup> FCC report at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-284932A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284932A1.pdf).

increasingly inappropriate to exclude interconnected VoIP service providers from universal service contribution obligations. Moreover, we do not want contribution obligations to shape decisions regarding the technology that interconnected VoIP providers use to offer voice services to customers or to create opportunities for regulatory arbitrage. The approach we adopt today reduces the possibility that carriers with universal service obligations will compete directly with providers without such obligations. We therefore find that the principle of competitive neutrality is served by extending universal service obligations to interconnected VoIP service providers. \* \* \* [W]e find that interconnected VoIP providers, like telecommunications carriers, have built their businesses, or a part of their businesses, on access to the PSTN. For these reasons, we find that the public interest requires interconnected VoIP providers, as providers of interstate telecommunications, to contribute to the preservation and advancement of universal service in the same manner as carriers that provide interstate telecommunications services. Finally, we note that the inclusion of such providers as contributors to the support mechanisms will broaden the funding base, lessening contribution requirements on telecommunications carriers or any particular class of telecommunications providers.<sup>4</sup>

The FCC recently reaffirmed its policy of competitive neutrality for USF support by affirming states' rights to require interconnected *nomadic* VoIP carriers to contribute to state universal service funding mechanisms. In a declaratory order just issued on November 5, 2010, the FCC declared that "we advance the goals of universal service by ruling on a prospective basis that states may extend their universal service contribution requirements to future intrastate revenues of nomadic interconnected Voice over Internet Protocol (VoIP) service providers, so long as a state's particular requirements do not conflict with federal law or policies."<sup>5</sup>

In sum, AT&T's complaints against the size of the assessment, the competitive imbalance, and the "soundness" of the Commission's existing universal service policy are all pending in other proceedings before the Commission and should not be considered by the

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<sup>4</sup> In the Matter of Universal Service Contribution Methodology, WC Docket No. 06-122; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of the Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, CC Docket No. 92-237, NSD File No. L-00-72; Number Resource Optimization, CC Docket No. 99-200; Telephone Number Portability, CC Docket No. 95-116; Truth-in-Billing and Billing Format, CC Docket No. 98-170, IP-Enabled Services, WC Docket No. 04-36, FCC 06-94; Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7541, paras. 44-45 (2006) (*Interim Contribution Methodology Order*), *aff'd in part and rev'd in part, Vonage Holdings Corp. v. FCC*, 489 F.3d 1323 (D.C. Cir. 2007).

<sup>5</sup> *In the Matter of Universal Service Contribution Methodology, Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service funds May Assess Nomadic VoIP Intrastate Revenues*, WC Docket No. 06-122 (Released November 5, 2010), *slip opinion* at para 1.

Commission in reviewing the Administrator's Report. These matters are by their very nature particularly suited to the legal and policy arguments supported by two separate factual records that are unrelated to the Administrator's Report of solely the financial operations of the existing Pennsylvania Universal Service Fund. If considered, however, the PTA respectfully requests the Commission to consider all arguments regarding universal service in Pennsylvania, both for and against the policy.

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