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April 19, 2012

*Via Hand Delivery*

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

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

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

Dear Secretary Chiavetta:

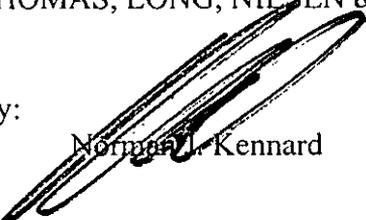
Enclosed for filing please find the Joint Answer of the Pennsylvania Telephone Association and CenturyLink to the Petition for Reconsideration and Comments of AT&T (Public and Confidential). Copies have been served in accordance with the attached Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By:

  
Norman J. Kennard

Enclosures  
cc: Certificate of Service

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**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

Investigation Regarding Intrastate Access	:	
Charges and IntraLATA Toll Rates of	:	
Rural Carriers, and the Pennsylvania	:	Docket No. I-00040105
Universal Service Fund	:	
	:	
AT&T Communications of Pennsylvania,	:	
LLC	:	
	:	
v.	:	Docket No. C-2009-2098380 <i>et seq.</i>
	:	
Armstrong Telephone Company –	:	
Pennsylvania, <i>et al.</i>	:	

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

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Pursuant to the Pennsylvania Public Utility Commission's ("Commission" or "PAPUC") regulations at 52 Pa. Code § 5.572(e) and the Commission's March 20, 2012 Opinion and Order in the above-referenced dockets, the Pennsylvania Telephone Association ("PTA")<sup>1</sup> and The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink ("CenturyLink")

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<sup>1</sup> The Pennsylvania Telephone Association member companies include the following: Armstrong Telephone Company – Pennsylvania; Armstrong Telephone Company – North; Bentleyville Telephone Company; Windstream Buffalo Valley, Inc.; Citizens Telephone Company of Kecksburg; Windstream Conestoga, Inc.; Windstream D&E, Inc.; Hickory Telephone Company; Ironton Telephone Company; Lackawaxen Telecommunications Services; Laurel Highland Telephone Company; TDS Telecom/Mahanoy & Mahantango Telephone Company; Marianna & Scenery Hill Telephone Company; The North-Eastern Pennsylvania Telephone Company; North Penn Telephone Company; Consolidated Communications of Pennsylvania Company; Palmerton Telephone Company; Pennsylvania Telephone Company; Pymatuning Independent Telephone Company; South Canaan Telephone Company; TDS Telecom/Sugar Valley Telephone Company; Venus Telephone Corporation; Windstream Pennsylvania, LLC; and Yukon-Waltz Telephone Company. Frontier Communications Commonwealth Telephone Company, LLC (d/b/a Frontier Commonwealth); Frontier Communications of Breezewood, LLC; Frontier Communications of Canton, LLC; Frontier Communications – Lakewood, LLC; Frontier Communications – Oswayo River, LLC; Frontier Communications of PA, LLC are also participating with the PTA.

(collectively the “Rural Local Exchange Companies” or “RLECs”) hereby file this Joint Answer to the Petition for Reconsideration of AT&T Communications of Pennsylvania LLC.

The Federal Communications Commission (“FCC”), as part of the overall intercarrier compensation reform articulated in the *Connect America Fund Order*,<sup>2</sup> accomplished intrastate/interstate access rate parity, albeit in a different way and at a different pace, than undertaken by this Commission in its *Rural Access Charge Investigation Order*. The FCC immediately reformed terminating access compensation in two steps with preemptive effect and has begun an active review of originating access.

AT&T agrees to accept the FCC’s faster, lower terminating access reductions, but now seeks, once again, to force a Pennsylvania proceeding ahead of the federal process to placate AT&T’s desire to implement even greater reductions in access rates than envisioned by the FCC, thereby creating additional, and probably unnecessary, rate increases for rural Pennsylvanians and/or revenue reductions for the RLECs serving them.

Not only is AT&T’s position diametrically opposed to the recommendation contained in the ABC Plan to which AT&T was a signatory, it is also in complete conflict with AT&T’s own individual advocacy to the FCC that originating reductions need to be further studied to determine end user rate impact and potential sources of alternative funding, as addressed below. AT&T in its Petition fails to explain why this Commission should not follow AT&T’s advice to

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<sup>2</sup> Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High Cost Universal Service Support; Developing A Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, 2011 FCC LEXIS 4859 (Rel., November 18, 2011)(“*Connect America Fund Order*”). A copy of the *Order* is available at the following hyperlink: <http://www.fcc.gov/document/fcc-releases-connect-america-fund-order-reforms-usfcc-broadband>. The FCC’s February 3, 2012 reconsideration clarifying certain components of the *Connect America Fund Order* is available through the following hyperlink: <http://www.fcc.gov/document/order-clarifying-aspects-usfcc-transformation-order-released>

the FCC or why it is appropriate to, once again, have a state result different from a federal outcome.

Neither reason nor the record supports AT&T's attempt to garner greater access expense savings. Under AT&T's advocacy it will, in combination with the FCC Order and the steps it urges this Commission to now undertake, realize greater savings than under either of them standing alone. The Commission should reject the repeated imploring of AT&T that the Commission, once again, get ahead of the federal process.

## I. PREEMPTION BY FCC

1. The PTA and CenturyLink have consistently maintained that the PAPUC should not act in advance of the FCC particularly given the latter's preemptive powers. The Commission had consistently agreed with this approach, until AT&T forced the Commission's hand by filing ninety-six formal complaints against the RLECs in the spring of 2009, which the Commission reluctantly accepted, opening a proceeding in which parties have spent countless hours and resources arguing about intrastate switched access reform.

2. For the most part, however, this Commission's mega-investigation/complaint proceeding and the resulting *Rural Access Charge Investigation Order*, have come to naught, because the FCC's *Connect America Fund Order* ruled in a way that all parties agree has complete preemptive effect upon terminating switched access rates. Terminating access rates, as AT&T also concedes, represents the majority of the RLECs' access revenues.<sup>3</sup> This preemptive action by the FCC voids, in substantial magnitude, the local rate increases that this Commission was set to enact.

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<sup>3</sup> AT&T Petition at 8 and 9 (with no record support) assumes that terminating minutes represent 70% of the total access billings.

3. Had the PAPUC actually implemented the *Rural Access Investigation Order* in advance of the FCC, the result would have been the worst of both worlds. After PAPUC reform, residential rates would have stood at a monthly average of \$24.00, that is, \$8.03 per month higher than when the process started,<sup>4</sup> and the carrier common line charge (“CCL”) would have equaled \$2.50/month. With the ensuing FCC *Connect America Fund Order*, that remaining CCL would have been swept into the formulae of the CAF and ARC. The end user impacts would have been an *additional* ARC of \$1.00 over the two year transition. As it stands now, *without* implementation of the *Rural Access Investigation Order*, the achievement of parity has that same end user impact of \$1.00 per month.

4. In other words, letting the FCC undertake access reform cost Pennsylvania consumers \$1.00 per month. Had the PAPUC acted in advance of the FCC, the effect would have been that same \$1.00 *plus* \$8.03 in additional end user increases for a total end user impact of \$9.03 per month.

5. The PTA and CenturyLink have consistently advised the Commission that this would be the likely result of pressing ahead with access reform in advance of the FCC. As the PTA stated in its Main Brief, and as also argued by CenturyLink, FCC action was likely:

Recent events demonstrate that it is realistic to expect further action from the FCC. As Mr. Zingaretti noted in his direct testimony filed in January 2010: ‘The FCC is under intense pressure to move its intercarrier compensation proceeding along, notably from Verizon and AT&T.’<sup>5</sup>

6. The PTA further reported that, in order to offset the revenue reductions, the FCC likely would allow only gradual increases in end user rates and provide support from the new “Connect America Fund” and that it “would be a mistake for Pennsylvania to get out in front of the FCC’s ... efforts”:

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<sup>4</sup> Attachment GMZ-1 (CONFIDENTIAL).

<sup>5</sup> PTA Main Brief at 43; *See also*, CenturyLink Main Brief at 30.

It is likely that comprehensive access revisions by the FCC will result in higher end user bills through increases to the SLC [ARC] and higher federal USF surcharges. In addition, the flow of federal USF dollars into Pennsylvania could increase to cover the reductions in state access rates not compensated for by the increase in the SLC [ARC]. But Pennsylvania will miss out on potential federal funding if it rushes to act beyond the reductions this Commission has already mandated.<sup>6</sup>

7. As the PTA and CenturyLink summarized: “In this likely scenario, Pennsylvania ratepayers’ bills will be higher and the level of federal USF flowing into Pennsylvania will be less. Acting before federal changes are in place could exacerbate Pennsylvania’s current status as a net contributor into federal universal service support.”<sup>7</sup>

8. Ignoring those potential downsides to premature state action, AT&T nevertheless urged immediate access reductions, resorting to jingoistic rhetoric: “Yet again, no party can possibly anticipate when the FCC will issue any kind of decision on that rulemaking. One thing is clear, though. This Commission can most certainly take control over its own affairs and can increase the likelihood that, as more and more states implement intrastate access reform, the FCC must take into account that state action when adopting national intercarrier compensation policies.”<sup>8</sup>

9. AT&T (and the other similarly situated IXCs and carriers) led the Commission down the wrong path. Pennsylvania end user rates would have been higher if the PAPUC had acted. The FCC did not take early adopter state action into account as AT&T recklessly advised.

10. The RLECs’ forecast was more accurate. The FCC in the *Connect America Fund Order* did raise local rates, but much more moderately (\$.50 per month per year), and are covering a substantial portion of the access reductions through the CAF. The local rate increases

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<sup>6</sup> PTA Direct at 48.

<sup>7</sup> PTA Main Brief at 44-45 (citing PTA Direct at 49).

<sup>8</sup> AT&T Reply Brief at 30.

associated with access parity are much less under the FCC plan -- by 900% -- than would have occurred under the Commission's *Rural Access Charge Investigation Order*.

11. Nevertheless, AT&T now, again, asks the Commission to reduce intrastate access rate charges, this time focusing on originating rates, in advance of the FCC, at a time when the FCC has committed to review the issue in an open, active docket and has stated that it will act, likely again with preemptive impact, in a way that also moderates end user impacts.

12. The Commission should not repeat this almost costly mistake and, once again, heed AT&T's unwise, even foolhardy, plan to forge in ahead of the preemptive power of the FCC, prematurely reducing originating access. It did not work previously and will not work this time either. As addressed in the PTA/CenturyLink Petition for Reconsideration and Stay, originating access rates should await the further FCC reform begun in the FCC's pending NPRM.

## **II. THE ABC PLAN AND FCC ORDER ORIGINATING ACCESS**

13. AT&T, CenturyLink, FairPoint, Frontier, Verizon, and Windstream, on July 29, 2011, submitted to the FCC a proposal for comprehensive access reform entitled the "American Broadband Connectivity Plan" ("ABC Plan").<sup>9</sup> While the FCC did not adopt the ABC Plan in its entirety, it did largely adopt its framework and many of its important features.

14. The ABC Plan, which AT&T signed, proposed reductions only to terminating access rates and explicitly deferred any reductions in originating access charges. AT&T, along with the other signatories of the ABC Plan, addressed their proposal in Joint Comments

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<sup>9</sup> On July 29, 2011, a letter proposal also was jointly filed by the ABC group and the "Rural Associations" regarding rate-of-return carriers. The group, participating before the FCC as the "Rural Associations," included NECA, NTCA, OPASTCO, WTA and numerous other national organizations representing rural rate-of-return local exchange companies.

submitted to the FCC,<sup>10</sup> expressly noting the burden on end user rate increases and additional recovery from the FCC's transitional access replacement mechanism, as reasons not to also simultaneously reduce intrastate originating access.<sup>11</sup>

15. In AT&T's subsequent individual comments, when faced with suggestion of a potential "off-set" to account for savings inuring to long distance companies with affiliated ILECs (like AT&T), AT&T was quick to raise the inequities of regulatory treatment resulting from such a potential FCC policy determination<sup>12</sup> and specifically noted how such diverting of revenues "also would deprive ILECs of the revenues and capital they need to meet their service obligations and invest in broadband during the transition to all-IP networks."<sup>13</sup> This same ill-advised result of diverting revenues away from reform objectives is inherent in AT&T's request that this Commission fund originating access reductions sought by AT&T by end user increases to rural Pennsylvanians..

16. While the FCC has indicated that it intends to reduce originating access to bill and keep (zero), the FCC also expressly declined to do so in its *Connect America Fund Order*, agreeing with the ABC Plan proponents to open a separate notice of proposed rulemaking

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<sup>10</sup> See, <http://americasbroadbandconnectivity.org/wp-content/uploads/2011/09/FINAL-Joint-ICC-USF-Comments-on-Public-Notice-8-24-11.pdf>, at pages 26-27.

<sup>11</sup> *Id.* ("The ABC Plan does not call for reductions in originating access charges, and the Commission should not undermine support for the Plan by altering this aspect of the carefully negotiated compromise. In any event, if the Commission *does* mandate such reductions, it will need to address rate rebalancing through potential end user rate increases and additional recovery from the transitional access replacement mechanism — and adding funding requirements to the access replacement mechanism would threaten the USF budget at this time. Even where 'the originating incumbent LEC's affiliate is offering the long distance service,' there are many circumstances in which a reduction in originating access charges would cause a net loss of revenues for the LEC and its long-distance affiliate. The need to address such recovery is an important reason why the Commission should not reform originating access charges at this time.")

<sup>12</sup> AT&T Comments, April 18, 2011 at 36 ("Thus, barring an ILEC from raising its SLCs to competitive levels or from recovering lost access revenues through the ARM because of the supposed 'savings' of its affiliates would leave the ILEC *much worse off* in the aggregate than before the transition, and also much worse off than stand-alone companies competing in the same markets.") (emphasis in original).  
<http://apps.fcc.gov/ecfs/document/view?id=7021239553>

<sup>13</sup> *Id.*

“NPRM”) and seek comments before acting.<sup>14</sup> The lack of an immediate need to reform originating switched access rates and the potential adverse consequence of *additional* recovery mechanisms (as originally noted by AT&T and the other ABC Plan signatories) were accepted by the FCC as valid rationale for holding off on originating access reform. The *Connect America Fund Order* noted:

In brief, our transition plan first focuses on the transition for terminating traffic, which is where the most acute intercarrier compensation problems, such as arbitrage, currently arise. We believe that limiting reductions at this time to terminating access rates will help address the majority of arbitrage and manage the size of the access replacement mechanism.<sup>15</sup>

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We recognize, however, that we need to further evaluate the timing, transition, and possible need for a recovery mechanism for those rate elements—including originating access, common transport elements not reduced, and dedicated transport—that are not immediately transitioned; we address those elements in the FNPRM.<sup>16</sup>

17. Nothing has changed policy-wise since AT&T first supported the terminating-access-only ABC Plan and nothing has altered the validity of AT&T’s arguments to the FCC advising it not to address originating switched access rates absent further study and careful consideration.

18. What is different in Pennsylvania is the advantage that AT&T seeks to gain in a state where it has no ILEC operations that might be harmed. Elsewhere, AT&T is the dominant ILEC and must balance its ILEC interests. Here, in Pennsylvania, AT&T is an interexchange carrier (“IXC”) and, therefore, does not concern itself with ILEC and local service customer impacts, most notably the customers who live in rural high-cost areas who will be left more vulnerable if AT&T’s advocacy is adopted as policy in Pennsylvania. The PTA and

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<sup>14</sup> See, e.g., *Connect America Fund Order*, ¶¶ 35, 651, 653, 777-778. The FCC capped interstate originating access rates at current levels pending resolution of the issues raised in the FCC’s FNPRM.

<sup>15</sup> *Id.*, at ¶ 800.

<sup>16</sup> *Id.*, at ¶ 739.

CenturyLink suggest that AT&T's federal policy view is more balanced and the appropriate one to follow as it recognizes the universal service needs of consumers living in high-cost areas; not the one dimensional, one-sided, opportunistic advocacy AT&T now brings before this Commission.

19. Again, the PTA and CenturyLink urge restraint. The FCC is currently studying, in an active docket, the effect of the new bill and keep compensation regime change on the calling party's IXC. It has indicated that local rate impacts will be moderated through CAF funding. As addressed in the PTA/CenturyLink Joint Petition for Reconsideration and Stay filed on April 9, 2012, the Pennsylvania Commission should not get ahead of the FCC and unnecessarily force additional local rate increases upon rural Pennsylvania in advance of potential FCC action on originating access.

### **III. PA PUC ORDER CROSS-EFFECTS**

20. The PTA and CenturyLink agree with AT&T that the FCC has undertaken nothing less than a wholesale compensation "regime change."<sup>17</sup> The FCC has now adopted "bill and keep" as the uniform, national methodology for all traffic exchanged with the wireline LEC industry. In doing so, the FCC abandoned the "calling party network pays" model that has dominated intercarrier compensation regimes of the last century.<sup>18</sup>

21. The *Rural Access Charge Investigation Order*, on the other hand, is based upon the FCC abandoned regime of calling party pays, including the charge for carrier common line ("CCL"). The FCC eliminated the CCL from interstate rates long ago on the theory that IXCs

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<sup>17</sup> AT&T Petition at 3.

<sup>18</sup> *Connect America Fund Order*, ¶ 34.

should not pay loop costs as they are not “cost causers.” The *Rural Access Charge Investigation Order* directly contradicts this conclusion as not applicable or acceptable for intrastate rates.<sup>19</sup>

22. As to the achievement of parity, the *Rural Access Investigation Order* would have reduced both terminating and originating over a four year period in three steps with a \$2.50 CCL remaining at the end of that period. The *Rural Access Investigation Order* stops there. The first two steps of rate reductions under the *Connect America Fund Order* bring terminating intrastate access rates into *complete* parity with equivalent interstate rates. Step One, occurring on July 1, 2012, requires carriers to implement decreases necessary to reduce the difference between intrastate and interstate rates by 50%. With Step Two, scheduled for July 1, 2013, the transition to parity, with no CCL, will be completed.<sup>20</sup> Of course, thereafter, the FCC-mandated intercarrier compensation reductions continue until zero (i.e., no compensation) is achieved.<sup>21</sup>

23. The PAPUC’s *Rural Access Charge Investigation Order*’s access revenue reductions, if assigned entirely to the RLECs’ end user customers, would have resulted in an average residential local rate increase of \$8.03 per line from the current \$15.97 (including CenturyLink) a 50% increase, as noted above. For several of the PTA Companies, their local service rates would have more than doubled. The effect would have been an average residential *tariff rate* of \$24.00 for the PTA Companies (including CenturyLink) in total. This does not include the additional surcharges and fees of \$9.12 added to customer bills.<sup>22</sup>

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<sup>19</sup> *Rural Access Investigation Order* at 118 (“In this respect, our conclusion differs materially from those that have been adopted by the FCC in the past. The FCC has shifted the burden of NTS joint and common network costs in the interstate intercarrier compensation mechanism for switched access services totally and exclusively upon the end user through the initial imposition and subsequent increases to the federal SLC.”).

<sup>20</sup> *Connect America Fund Order*, ¶ 801

<sup>21</sup> As described more fully in the *Joint Petition for Reconsideration and Stay* filed by the PTA and CenturyLink on April 9, 2012.

<sup>22</sup> The *billing rate* is what the end user customer actually pays after adding the mandatory Federal Subscriber Line Charge, 911 Surcharge, Relay Service Surcharge and Federal Universal Service Surcharge, and equals \$9.12. Tr. 508-509.

24. As addressed above, focusing on the means used to achieve inter/intrastate parity, the *Connect America Fund Order* employs local rate increases of \$1.00, much lower levels than would have resulted under the *Rural Access Charge Investigation Order*.

25. The principal difference is in the FCC's use of the CAF to fund the parity objective, recognizing the important universal service aspect of this revenue source. This Commission rejected the use of Pennsylvania Universal Service Fund to offset the rate decreases, thereby producing a policy outcome borne disproportionately by consumers living in high-cost areas and the RLECs serving them. The \$2.50 CCL served, at least in part, to mitigate the local rate increases.<sup>23</sup> Whatever the merits of retaining a CCL on terminating switched access rates, it has now been swept aside by federal preemption.

#### IV. AT&T'S PROPOSAL

26. AT&T's Petition insists that, despite the FCC's decision to study the matter first (and AT&T's encouragement that it do so), *this* Commission should undertake immediate originating access reductions on its own anyway. Not only does AT&T, once again, advise the PAPUC to get well ahead of the FCC, ignoring the complete waste of effort that resulted the last time AT&T so urged, AT&T wants to further revise the *Rural Access Investigation Order* to its advantage by:<sup>24</sup>

- Accelerating the timeframes selected by the Commission; and
- Eliminating the CCL altogether, despite the Commission's ruling that one should apply.

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<sup>23</sup> This was set forth expressly as a reason in support of the \$2.50 CCL. *Rural Access Charge Investigation Order* at 120 ("...the PaUSF mechanism will not be implicated in the present RLEC intrastate access reform and it will be kept at a stable level...").

<sup>24</sup> AT&T Petition at 2 ("... the Commission did not go far enough or fast enough...").

27. The Joint Petition for Reconsideration and Stay filed with the Commission by the PTA and CenturyLink on April 9, 2012 offers exactly the opposite recommendation, one that is consistent with *their own* federal advocacy. The originating access reductions contemplated in the *Rural Access Charge Investigation Order* should be stayed pending the FCC's originating access NPRM. This Commission, instead, should process the terminating rate and other reductions ordered by the FCC and take no further steps until the FCC completes its review of originating access. Such action will permit rural Pennsylvania customers the opportunity to react and to absorb the comprehensive changes already ordered by the FCC. To move ahead of the FCC with the highly likely result of piling on additional and unnecessary local rate increases to select groups of consumers, remains reckless and unwise.

28. As the PTA and CenturyLink noted in their Joint Petition, the financial ramifications and customer impacts of lowering intrastate terminating access rates below even the current interstate level as directed by the FCC in tandem with reductions to originating access parity, remains utterly unexplored on the record of this case.<sup>25</sup> Among the issues being considered in the FCC's NPRM are the appropriate recovery sources for originating access revenue losses and how such alternative recovery should be implemented.<sup>26</sup>

29. None of these considerations are present in AT&T's proposal, which, thus, cannot amount to a warranted, necessary, and appropriate exercise of Commission discretion. In other words, AT&T starts from an over-simplistic stance of the issue being one of "just" originating rates and ignores all the overlapping issues and impacts at play. AT&T seeks to force march Pennsylvania down a path of doing less for the Commonwealth and for Pennsylvania consumers

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<sup>25</sup> PTA/CenturyLink Joint Petition for Reconsideration and Stay at ¶ 39.

<sup>26</sup> *Connect America Fund Order*, ¶ 1301 ("We seek comment on how to minimize any additional consumer burden associated with the transition of originated access traffic, and how best to promote IP-to-IP interconnection in this transition.").

than what the FCC is considering. There is absolutely nothing sound or beneficial about the exercise of regulatory discretion when marked by incomplete considerations, premature action and unsupported contentions as advocated by AT&T.

## V. AT&T'S PROPOSAL SHOULD BE REJECTED FOR NUMEROUS REASONS

### A. The PTA/CenturyLink Petition Set Forth Numerous Reasons Why the Commission Should Stay Originating Access Reductions.

30. The PTA/CenturyLink Joint Petition for Reconsideration and Stay of April 9, 2012 contains a recitation of reasons why originating access reduction should be stayed now, in view of the FCC's *Connect America Fund Order*. These are:

- Implementation of reductions to RLEC intrastate originating switched access rates at this time would frustrate federal reform efforts, could potentially harm Pennsylvania, and would not further any sound public policy or purpose.
- There is no clarity in the *Connect America Fund Order* as to how the FCC may proceed and premature state action will likely be detrimental to the RLECs and their customers on several fronts.
- It is inefficient for this Commission to proceed with originating switched access reductions while the FCC is actively considering the same issue.
- As part of the NPRM, the FCC will be considering how to minimize any additional consumer burden associated with the transition of originated access traffic.<sup>27</sup> This Commission should not decide to do less for consumers at the same time that the RLECs and this Commission are dealing with the substantial terminating rate decreases already ordered by the FCC, reductions well past those found prudent by this Commission. Additional local rate increases at this time needed to support reductions in originating access revenue would be excessive and detrimental to end users.<sup>28</sup>
- To the extent that the FCC determines that the RLEC will receive some amount of recovery from the CAF, this would mitigate the impact upon local rates. There is no increase in state USF funding to offset local rate increases under the Commission's *Rural Access Investigation Order*. Acting prematurely simply places Pennsylvania in a deeper position of net payer.

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<sup>27</sup> *Connect America Fund Order*, ¶ 1301.

<sup>28</sup> 66 Pa.C.S. § 3017(a).

- While the FCC has not expressly preempted further state access reform, it has cautioned that further state rebalancing will “not increase the ARC or ICC-replacement CAF support available to carriers in such states [that further rebalance].”<sup>29</sup>
- There is less pressing public policy rationale to reduce intrastate originating switched access rates.<sup>30</sup> Charges on the originating interexchange carrier do not cause the arbitrage problems alleged to be associated with termination.<sup>31</sup> Terminating access – not originating access – has generated traffic pumping and other issues of “arbitrage.”<sup>32</sup>
- There has been much less issue with originating access in significant part, because the end user customer making the calls chooses the toll carrier and the toll carrier chooses to be in that market. Unlike terminating access, where the carrier sending the traffic is obligated to send the traffic to the local carrier serving the called customer and pay those terminating charges, the carrier serving the calling party has made an affirmative, voluntary decision to serve that customer and to pay the originating charges.
- The FCC will also be reconsidering the current ILEC obligation to provide IXCs with an equal opportunity to serve the ILEC customers’ toll service needs. No other industry sector, wireless or cable, is required to offer AT&T or Verizon their customers’ toll traffic. In an increasingly competitive environment for local service, the RLECs also should have the option to provide all toll services.
- Finally, there is no record evidence developed to address the scenario that has now been created by the FCC. The financial ramifications and customer impacts of lowering intrastate terminating access rates *below even the current interstate level* (instead of current interstate level plus a \$2.50 CCL as directed by this Commission) along with reductions in originating access parity, is unexplored on the record of this case.

31. As the PTA/CenturyLink Joint Petition for Reconsideration and for Stay concluded: “In summary, the Commission should exercise sound discretion regarding the timing of any continued reform of originating switched access rates and determine that further action

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<sup>29</sup> *Connect America Fund Order*, ¶ 915, note 1808.

<sup>30</sup> *Connect America Fund Order*, ¶ 777 (“The concerns we have with respect to network inefficiencies, arbitrage, and costly litigation are less pressing with respect to originating access, primarily because many carriers now have wholesale partners or have integrated local and long distance operations.”)

<sup>31</sup> *Connect America Fund Order*, ¶ 800 (“In brief, our transition plan first focuses on the transition for terminating traffic, which is where the most acute intercarrier compensation problems, such as arbitrage, currently arise. We believe that limiting reductions at this time to terminating access rates will help address the majority of arbitrage and manage the size of the access replacement mechanism.”).

<sup>32</sup> *Connect America Fund Order*, ¶¶ 35 and 651.

would be premature and is not warranted. Just and reasonable ratemaking requires the exercise of Commission discretion; not flawed and rash decision-making based upon artificial timelines sought by originating IXCs that will already be receiving substantial expense decreases on the terminating side.”<sup>33</sup>

**B. AT&T Is Simply Forum Shopping; Seeking The Best Of Both Worlds.**

32. AT&T accepts most aspects of the FCC’s *Connect America Fund Order*, including: bill and keep as end result; terminating access reductions to parity faster (by July 2013 instead of over four years or 2016); and at a lower level (i.e., with no CCL).

33. AT&T is, however, unwilling to follow the FCC Order, the ABC Plan proposal or its own (federal) advocacy that originating access reductions must be further studied. In contradiction of all of its federal advocacy positions, AT&T nevertheless asks the state commission to do it. This is forum shopping at its most opportunistic and cynical. The Pennsylvania Commission should not accept AT&T’s bait.

**C. AT&T’s Proposal is Reckless.**

34. AT&T mischaracterizes the FCC Order as simple and providing full recovery to the RLECs.<sup>34</sup> Indeed, this fiction is the primary justification for its proposal.<sup>35</sup>

35. To the contrary, as set out in the PTA/CenturyLink Joint Petition for Reconsideration and Stay, the FCC’s decision is very complex. Until the CAF process is more fully developed, it is unclear exactly who will recover what. Moreover, the follow-up policies, cost studies particularly, will likely impose even greater stress on the RLECs and their

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<sup>33</sup> PTA/CenturyLink Petition at 14. (¶ 40).

<sup>34</sup> AT&T Petition at 12 (“... affected carriers may recover access reductions...”).

<sup>35</sup> AT&T Petition at 4 (“... the Commission can order *more* originating access reductions now...”).

customers. There are still many unknowns. This is not the time to hammer RLECs with further local rate increases and unrecoverable access decreases. The best path is for the Commission to wait until the already established FCC NPRM runs its course.

36. It is patently absurd to state that the FCC has “made it easier” for the PAPUC to proceed.<sup>36</sup> This rationale seems to be based upon AT&T’s perception that the FCC, by using CAF recovery, did not raise end user rates as high as this Commission would have and, therefore, there is still ample “headroom” to raise end user rates (or force unrecoverable rate increases as income losses on the RLECs’ financial statements).<sup>37</sup> Contrary to AT&T’s claim, there is no “early adopter” protection. The FCC only provided very soft opportunities for further review of local rates exceeding the benchmark.<sup>38</sup>

**D. There Is No Benefit to Pennsylvania End users.**

37. AT&T has no real presence in Pennsylvania other than the vestiges of its once dominant long distance (toll) operations. AT&T, Verizon and the other IXCs have long been in the process of abandoning the toll market due to factors much more powerful than access charges, primarily changing technology and customer preferences.<sup>39</sup> AT&T decided ten years ago to grow its revenues in its other business lines, putting little to no investment into the wireline segment, because of a shift in technology, not because of the level of rural intrastate access charges.<sup>40</sup> As AT&T stated: “Due to technological advances, changes in consumer

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<sup>36</sup> AT&T Petition at 1, 3, 10.

<sup>37</sup> The RLECs have consistently maintained that the local rates resulting from the IXC access rate reform are not sustainable in a competitive environment. See, for example, PTA Main Brief at 74. AT&T as much as concedes that intercarrier compensation decreases are not recoverable from end users. AT&T Petition at 13.

<sup>38</sup> AT&T Petition at 3. AT&T later acknowledges that “[t]his ceiling is not a hard cap...” AT&T Petition at 12.

<sup>39</sup> PTA Ex. GMZ-15.

<sup>40</sup> *Id.* at 40.

preference, and market forces, the question is *when*, not *if*, POTS service and the PSTN over which it is provided will become obsolete.”<sup>41</sup>

38. Nor does AT&T have any interest in dropping toll rates to its wireline long distance customers. AT&T, in fact, has raised rates for its all-distance bundles in Pennsylvania by anywhere from \$2 to \$5, and increased the monthly recurring charge on many plans typically by either \$1 or \$2, as well as increased a number of international service rates at the same time as access rates have been reduced.<sup>42</sup> AT&T’s claims of historic benefits and promises of future Pennsylvania customer benefits<sup>43</sup> are both “illusory and deceptive.”<sup>44</sup>

39. In terms of passing on the financial benefits of lowered access rates through to the end use customer, the IXC’s have consistently done no more than offer up simplistic economic platitudes.

- AT&T. AT&T is most blunt, saying “it would be premature for AT&T to commit to any price reductions.”<sup>45</sup> Espousing “basic economics principle,” AT&T admits that “all firms, even a pure monopolist, completely unconstrained by government regulation, *will maximize profit*”<sup>46</sup> but suggests that toll prices “would be expected to fall[.]”<sup>47</sup>
- Sprint. Offering nothing concrete, Sprint describes “potential consumer benefits” suggesting that carriers “could . . . expand service coverage, improve service quality, improve customer care or develop new products and services the customers will want”<sup>48</sup> while simultaneously suggesting that “[a]ll consumers benefit by competitive choice.”<sup>49</sup> However, Sprint “no longer actively market[s]” voice services to residential customers,<sup>50</sup> is “de-

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<sup>41</sup> *Id.* at 40.

<sup>42</sup> *Id.* at ¶¶ 2, 33-34.

<sup>43</sup> See, for example, AT&T Petition at 1 (“..substantial benefits that reform will bring home to Pennsylvania consumers...”), 11 (“The potential ‘cross-effects for end user consumers’ are the additional benefits they would receive from originating access reductions....”)

<sup>44</sup> PTA Direct at 39.

<sup>45</sup> AT&T Rebuttal at 50.

<sup>46</sup> AT&T Rebuttal at 48.

<sup>47</sup> *Id.* at 51.

<sup>48</sup> Sprint Rebuttal at 24.

<sup>49</sup> *Id.* at 27.

<sup>50</sup> PTA Surrebuttal at 53-54 citing Sprint Nextel Corp. 2008 10-K at 5.

emphasizing stand-alone voice service,”<sup>51</sup> and only “target[s] business subscribers.”<sup>52</sup>

- Verizon. Similarly offering zero concrete benefits, and now also warning the Commission it has no authority at all to even consider imposing the type of pass-through commitment required in prior RLEC reform proceedings,<sup>53</sup> Verizon urges the Commission to rely solely on competition to “ensure that such benefits [e.g. advanced technology, improved service quality or customer service, new features/services] are passed along to consumers in one way or another[.]”<sup>54</sup>

40. These speculative benefits are, in fact, disproved by past performance. Prior to the deregulation of IXC services under Act 183 (Chapter 30), this Commission held IXCs accountable to demonstrate the flow-back of the access charge reductions those corporations enjoyed to their long distance customers. In the Verizon access proceeding, the IXCs were challenged to prove such Pennsylvania benefits were actually implemented. They could not.<sup>55</sup>

41. As Mr. Zingaretti observed: “In terms of real benefits, the carriers offer little the Commission, or any consumer, can wrap their hands around. Customers, particularly those that stand to see their local rates increase substantially, deserve to know that they will see some relief on the other side.”<sup>56</sup>

**E. AT&T’s latest proposal, this one aimed at four Pennsylvania RLECs’ originating access rates, sets a course for aberration from Pennsylvania decisional law and policy to date, further demonstrates AT&T’s opportunism, and results in discriminatory rate making.**

42. In what appears to be an alternative proposal, AT&T suggests<sup>57</sup> that Commission reduce originating switched access rates, but only for the largest of RLECs, namely,

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<sup>51</sup> *Id.* at 53-54 citing Sprint 2009 10-K at 5.

<sup>52</sup> *Id.* citing Sprint 2009 10-K at 4.

<sup>53</sup> Verizon Rebuttal at 18.

<sup>54</sup> *Id.*

<sup>55</sup> PTA Main Brief at 40-41.

<sup>56</sup> *Id.* at 54.

<sup>57</sup> AT&T Petition at p. 22.

CenturyLink, Frontier/Commonwealth, Consolidated, and Windstream, including Windstream affiliates Denver & Ephrata, Conestoga, and Buffalo Valley.<sup>58</sup> Much like the Verizon-centric and legally flawed proposal submitted by Verizon in the record below,<sup>59</sup> AT&T's proposals should also be rejected by the Commission.

43. AT&T's "RLEC cut-off" proposal would represent a true decisional and policy aberration in Pennsylvania -- an issue of first impression, never before presented, since the Commission first began generically reforming access rates in the *Global Order* proceeding.<sup>60</sup> Beginning with the Commission's *Global Order* and thereafter, *all* of the RLECs' intrastate switched access rates have been reduced in tandem. In 1999 and 2003, along with receipts from the PA USF, the Commission increased *all* of the RLECs' local rates as part of the rebalancing to reduce their intrastate switched access rates. The Commission undertook pricing decisions concerning *all* of the RLECs' local rates and access rates. AT&T's instant proposal, however, would depart completely from the Commission's prior practice.

44. Obviously, record support and rationale would be required to demonstrate that AT&T's proposed differentiation between the rural carriers is not arbitrary, capricious, or discriminatory. There is no rationale presented by AT&T for originating access reductions for part of the RLEC industry, much less evidentiary record support.

45. AT&T's proposal is patently flawed, arbitrary and contrary to reasoned policy making. As this Commission is aware, it is the characteristics of the service area (e.g.,

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<sup>58</sup> AT&T Petition at p. 4 (fn. 10), p. 9 (chart) and p. 15 (chart). *See also*, AT&T Joint Affidavit, Ex. A.

<sup>59</sup> *See, e.g.*, CenturyLink Main Brief at 96 and Reply Brief at 3. *See also*, PTA Main Brief at 40 and Reply Brief at 12-13.

<sup>60</sup> *Re Nextlink Pennsylvania, Inc.*, Docket No. P-00991648; P-00991649, 93 PaPUC 172 (September 30, 1999) (*Global Order*); 196 P.U.R. 4<sup>th</sup> 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).

topography, loop length, customer density),<sup>61</sup> and not the “size” of the serving carrier, that support reasoned rate setting and policy making. The state average serving area density is 130.3 lines per square mile.<sup>62</sup> The RLECs, as a group, serve very rural areas of the Commonwealth -- an average of 30.5 lines served per square mile.<sup>63</sup> The “larger” RLECs, FairPoint, Frontier, Consolidated and Windstream are only marginally more dense with 49.4 lines per square mile.<sup>64</sup> CenturyLink itself serves 48 lines per square mile.<sup>65</sup> Verizon, by comparison, has a density factor of 193.2 customers per square mile, almost four times more dense than the average “mid-tier LEC.” Clearly, the record does not support AT&T’s flawed and arbitrary cut-off.

46. Moreover, AT&T’s alternative proposal targets mid-sized carriers due to AT&T’s self-serving objective to maximize its own expense savings, irrespective of the effect upon rural Pennsylvanians served by those carriers or the ramifications of AT&T being wrong (again) given on-going federal efforts regarding originating access. By targeting mid-sized carriers, AT&T would reap the majority of the expense relief it seeks, while neutralizing the objections of the smaller RLECs. At its core, AT&T’s proposal is injurious to mid-size RLECs and unreasonably discriminatory.<sup>66</sup>

47. The FCC’s Rural Task Force confirmed that rural carriers are significantly different from non-rural carriers.<sup>67</sup> The Rural Task Force found that isolation of rural carrier service areas creates numerous operational challenges, including high loop costs, high

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<sup>61</sup> Density of customers is a driving factor in the cost of providing basic local service. Density, which is defined as loops per square mile, is the biggest driver of costs because it determines over how many units infrastructure and associated fixed costs can be spread. Moreover, the record demonstrates that density varies within companies. *See*, CenturyLink St. 1.1 at 30-31 (confidential data included therein).

<sup>62</sup> PTA St. 1.0 at 27.

<sup>63</sup> PTA Direct at 28; PTA Ex. GMZ-14.

<sup>64</sup> PTA Ex. GMZ-14.

<sup>65</sup> CenturyLink St. 1.0 at 13.

<sup>66</sup> 66 Pa.C.S. § 1304. *See, e.g., Peoples Natural Gas Co. v. Pa Public Utility Commission*, 409 A.2d 446, 47 Pa.Cmwlth. 512 (1979).

<sup>67</sup> *See* The Rural Task Force White Paper No. 2, January 2000, “The Rural Difference,” for a complete assessment of issues faced by RLECs in serving their rural customers.

transportation costs for personnel, equipment, and supplies, and the need to invest more resources to protect network reliability. In addition, rural carriers generally have fewer customers per switch, higher total investment in plant per loop, and higher plant specific expenses per loop than non-rural carriers, all of which may vary dramatically depending on how many lines they serve. Rural carriers generally have a customer base that includes fewer high-volume users and a lower business customer density, depriving the RLECs of economy of scale.<sup>68</sup>

48. This Commission has also noted the “rural difference” in access reform when approving the RLECs’ Phase II access reform,<sup>69</sup> acknowledging that the FCC has always recognized that carriers must be treated differently to ensure that they can continue to serve customers in high-cost areas of the nation.

49. Corporate affiliation does not affect the network costs of a rural territory. The reliable indicator of an access line density as driving the higher cost of rural service is not influenced by the overall size of the company or its corporate affiliations.<sup>70</sup>

50. Federal USF support is not based upon corporate size indicators. To the extent carriers serve high-cost areas, federal support is available without the application of irrelevant factors such as parent size or consolidated operations. Indeed, AT&T, Verizon, Sprint, et al. have received billions of dollars in state and federal USF support over the years and relative size or company success has not disqualified these entities from Federal USF support.<sup>71</sup>

51. Furthermore, AT&T’s proposed cut-off would effectively leave Verizon in a supreme position relative to all other ILECs operating in Pennsylvania. Verizon’s proceeding

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<sup>68</sup> PTA St. 1.0 at pp. 13-14.

<sup>69</sup> July 15, 2003 Order at 6-9.

<sup>70</sup> PTA Main Brief at 60. PTA St. 1.0 at 28.

<sup>71</sup> *Id.*

has been ongoing for many years with no Commission action. Verizon serves *all* of the urban areas of Pennsylvania without exception: Pittsburgh, Philadelphia, Altoona, Wilkes-Barre, Scranton, Harrisburg, Hershey, Erie, Johnstown, Lancaster, Allentown, Uniontown, Bethlehem, York, etc.

52. By contrast, the largest “city” served by any of the Commission-designated RLECs is Chambersburg, served by CenturyLink, which is a town of 18,000 residents. Beyond that, the service territories of the RLECs are composed of “villages and hamlets.”<sup>72</sup>

53. There is no reasonable policy that reduces the originating access charges of the mid-sized ILECs, but ignores the rates of the largest ILEC in Pennsylvania, representing approximately 85% of all ILEC access lines.

**F. AT&T’s proposal to reduce originating switched access rates for some/all RLECs while the FCC addresses the issue is not supported by substantial evidence of record.**

54. Finally, there is no substantial record evidence to support moving forward with originating access reductions as envisioned by the Commission in its *Rural Access Investigation Order* when the Commission has not had the opportunity or the benefit of harmonizing its recommendations and the record with the *Connect America Fund Order*. AT&T so much as concedes these constitutional concerns when it claims that “each RLEC must be required to provide the data and back up calculations demonstrating how the RLEC has historically billed the charge between originating versus terminating access.”<sup>73</sup>

55. There are numerous unanswered questions presented. How will the RLECs recover their costs, continue to price competitively, meet statutory broadband obligations under

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<sup>72</sup> *Id.* at 26-27. *See also*, CenturyLink St. 3.0 at p. 7.

<sup>73</sup> AT&T Joint Affidavit at p. 3, fn. 4.

Act 183 and/or otherwise comply with service requirements imposed upon it as carriers of last resort, and, at the same time, comply with the FCC's *Connect America Fund Order* and its aftermath? Assuming the Commission takes AT&T up on its proposal, how will the Commission be confident and assured of revenue neutrality as required by Act 183 for the originating switched access reductions sought by AT&T when all that the Commission has before it are AT&T's assumptions regarding how the *Connect America Fund Order* will be implemented?<sup>74</sup> How can the consumers of the RLECs in Pennsylvania, and Pennsylvania overall, benefit from the FCC reforms when the results of selective and arbitrary compliance with the Commission's *Rural Access Investigation Order* hamstring and frustrate the FCC's design? Is the Commission ready to start carving up rural Pennsylvania, giving preference to Verizon, based upon AT&T's assumptions and claims? Legal and constitutional issues clearly abound with pursuing the "easier path" professed by AT&T.<sup>75</sup> AT&T has failed to demonstrate why the Commission should exercise its discretion and to promote AT&T's interests – and those of similarly situated carriers – over the interests of consumers in rural Pennsylvania.

56. There is no record evidence addressing the scenario that has now been created by the FCC's *Connect America Fund Order*, the FCC's pending originating access NPRM, and, now, AT&T's new, post-record proposal.

57. There is no support for AT&T's bald assertion that the Commission can order "more originating access reductions now, with less of an impact on retail rates (while

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<sup>74</sup> Act 183 cannot be interpreted to result in unfunded mandates and/or inadequately funded mandates for statutory obligations or Commission policies. Based upon a plain reading of the regulatory compact created by Act 183, the General Assembly's intent clearly was to ensure that consumers continue directly and tangibly to benefit from realizable and adequate funding of the statute's legislative mandates. The revenue neutrality requirement of Section 3017(a) must mean realizable revenue-neutral recovery for RLECs to met regulatory and legislative requirements if the Commission requires originating access rates reductions at this time. Nowhere in AT&T's pleading has there been any demonstration that compliance with the *Connect America Fund Order* and AT&T's proposal will result in realizable revenue recovery.

<sup>75</sup> AT&T Petition at 4, fn. 10.

maintaining the Commission's decision not to increase the Pennsylvania Universal Service Fund).”<sup>76</sup> Nor is there any support for AT&T’s contention – without citation support to law, order, or the record – that originating access rates can be implemented per the Commission’s *Rural Access Investigation Order* “because the FCC has already established a recovery mechanism.”<sup>77</sup> The FCC has specifically deferred reform of originating access and has a pending NPRM to address the impacts of undertaking originating access reform, including appropriate recovery mechanisms for originating access reform. Therefore, the FCC could not have “already established a recovery mechanism” as AT&T suggests for originating access.

58. Furthermore, *if* the PA Commission implements originating access reductions at this time as requested by AT&T, the Commission must comply with Act 183’s revenue neutrality requirement. Nowhere in the record or in AT&T’s proposal is there any demonstrated assurance of any “opportunity” of revenue neutrality when considering the rate and recovery changes also being implemented in the *Connect America Fund Order*.<sup>78</sup>

**G. The PUC’s Focus Should Be Upon Implementing the FCC Order, Not Further Compounding the Confusion.**

59. Instead, the Commission should close this docket. The Commission has opened Docket No. M-2012-2291824 and efforts should focus on the task of implementing the FCC’s *Connect America Fund Order*. There are two collaborative/consultative forums currently

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<sup>76</sup> AT&T Petition at 4 (emphasis in original).

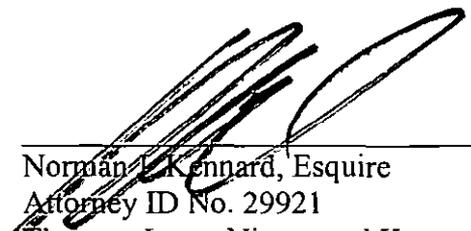
<sup>77</sup> AT&T Petition at 7 (“Most importantly, the FCC’s order makes it easier to implement reductions to intrastate originating access. This Commission need not worry about offsetting the FCC’s reductions to terminating access rates in a revenue neutral fashion, because the FCC has already established a recovery mechanism for the reductions required in the *CAF Order*. The Commission can thus direct the planned “state-level” rebalancing in its *July 2011 Order* to take care of originating access reductions.”).

<sup>78</sup> Similarly, AT&T’s proposal and the record fail to ensure what the FCC has cautioned – i.e., that further state rebalancing will “not increase the ARC or ICC-replacement CAF support available to carriers in such states [that further rebalance].” See, PTA/CenturyLink Petition at ¶ 35 and *Connect America Fund Order*, ¶ 915, note 1808.

meeting and the Commission's FCC Task Force and Bureaus have the daunting prospect of dealing with FCC-directed tariff filings by every LEC under its jurisdiction.

## VI. CONCLUSION

WHEREFORE, for the above-stated reasons, the Pennsylvania Telephone Association and The United Telephone Company of Pennsylvania, LLC d/b/a CenturyLink requests that the Commission deny AT&T's Petition.



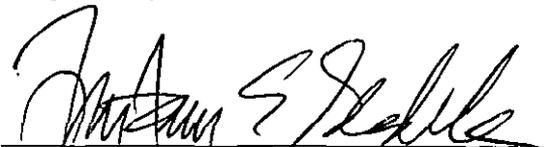
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 19<sup>th</sup> day of April, 2012, I did serve a true and correct copy of the foregoing upon the persons below via first class as follows:

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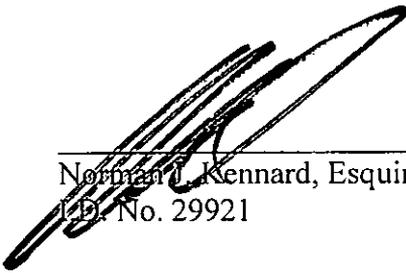
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