

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120**

Investigation Regarding Intrastate  
access Charges and IntraLATA Toll  
Rates of Rural Carriers and the  
Pennsylvania Universal Service  
Fund; AT&T Communications of  
Pennsylvania, *et al.* v. Armstrong  
Telephone Company - Pennsylvania,  
*et al.*; Implementation of the Federal  
Communications Commission's  
Order of November 18, 2011, as  
Amended or Revised and  
Coordination with Certain Intrastate  
Matters

Public Meeting July 19, 2012  
1189996-OSA  
Docket Nos. I-00040105  
C-2009-2098380  
M-2012-2291824

**JOINT MOTION OF  
CHAIRMAN ROBERT F. POWELSON  
AND COMMISSIONER PAMELA A. WITMER**

Before the Commission today for disposition are the Joint Petition for Reconsideration and Stay filed on April 9, 2012 by the Pennsylvania Telephone Association (PTA) and The United Telephone Company of Pennsylvania, LLC, d/b/a CenturyLink (CTL); a Verified Joint Statement filed on April 9, 2012, by PTA/CTL; and the Updated Petition for Reconsideration and Comments of AT&T filed on April 9, 2012. Several parties to the proceeding timely filed answers to the Petitions. These filings were in response to the Commission's March 20, 2012 Order and all supplemented or replaced earlier filings by the parties made in response to the Commission's July 18, 2011 Order at Docket Nos. I-00040105 and C-2009-2098380.

In its March 20, 2012 Order, the Commission requested that the parties address several key questions including the following:

How will the Pennsylvania ILECs that have alternative regulation and network modernization plans (NMPs) in place under Chapter 30 of the Public Utility Code, 66 Pa. C.S. §§ 3011 *et seq.*, be affected by the implementation of the Federal Communications Commission's (FCC) intercarrier compensation reforms? Will they be able to seek intrastate rate relief of any type beyond the levels provided under the FCC's Eligible Recovery mechanism and associated federal CAF support?

At the heart of these questions is whether the Pennsylvania rural local exchange carriers (RLECs) will be able to claim “exogenous event” treatment under the relevant provisions of their Chapter 30 plans in order to make up for any revenues not recovered through the FCC’s allowed revenue recovery mechanisms. While there are various differences among the Chapter 30 plans filed by the RLECs, the following language is generally representative of the exogenous event clauses found within these plans<sup>1</sup>:

Except as otherwise noted, any changes or events within the Company’s control are excluded as exogenous events. Notwithstanding any other limitation specified herein, the Company, OTS (Office of Trial Staff – currently the Bureau of Investigation and Enforcement), OCA (Office of Consumer Advocate), OSBA (Office of Small Business Advocate), or other parties in interest may request the Commission to make special revenue adjustments beyond the scope of the PSI [price stability index] to recognize exogenous events (“Z”), including but not limited to the following: . . . subsequent regulatory and legislative changes (state & federal) which affect revenues and/or costs, to the extent not captured in GDP-PI [gross domestic product price index];

Several parties in this proceeding have indicated that exogenous event treatment is warranted for the access charge and intercarrier compensation changes that have been implemented by the FCC. For example, in its April 19, 2012 response to the aforementioned Updated Petitions for Reconsideration, the OCA recommends that the Commission require carriers to calculate and file any exogenous event revenue and costs impacts if and when any such requests are made.<sup>2</sup> Also, PTA/CTL argued that the Connect America Fund Order targets “Eligible Recovery” based on a combination of certain revenues from interstate access, intrastate access, reciprocal compensation, and universal service support. As such, PTA/CTL states this is a jurisdictional shift in cost recovery where interstate revenues actually change constituting a qualified exogenous event.

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<sup>1</sup> *Amended Streamlined Form of Regulation and Network Modernization Plan of Armstrong Telephone Company – Pennsylvania*, Docket No. P-00981425F1000 (Dated: June 30, 2000, as modified January 22, 2001, as amended March 4, 2005), at 14-16. *See also Amended Streamlined Form of Regulation and Network Modernization Plan of the Bentleyville Telephone Company*, Docket No. P-00981427F1000 (Dated: June 30, 2000, as modified January 22, 2001, as amended March 4, 2005), at 14-16; *Amended Alternative Form of Regulation and Network Modernization Plan of Denver and Ephrata Telephone and Telegraph Company*, Docket No. P-00981430F1000 (Dated: June 30, 2000, as modified January 22, 2001, as amended February 25, 2005), at 13-16; *Amended Streamlined Form of Regulation and Network Modernization Plan of Lackawaxen Telephone Company*, Docket No. P-00981432F1000 (Dated: June 30, 2000, as modified January 22, 2001, as amended March 4, 2005), at 13-16; *Amended Streamlined Form of Regulation and Network Modernization Plan of Laurel Highland Telephone Company*, Docket No. P-00981433F1000 (Dated: June 30, 2000, as modified January 22, 2001, as amended March 4, 2005), at 14-16; *Amended Streamlined Form of Regulation and Network Modernization Plan of the North-Eastern Pennsylvania Telephone Company*, Docket No. P-00981435F1000 (Dated: June 30, 2000, as modified January 22, 2001, as amended March 4, 2005), at 14-16; *Amended Alternative Form of Regulation and Network Modernization Plan of North Pittsburgh Telephone Company*, Docket No. P-00981437F1000 (Dated: June 30, 2000, as modified January 22, 2001, as amended February 25, 2005), at 13-16; *Amended Streamlined Form of Regulation and Network Modernization Plan of Palmerton Telephone Company*, Docket No. P-00981438F1000 (Dated: June 30, 2000, as modified January 22, 2001, as amended March 4, 2005), at 14-16; *Amended Alternative Form of Regulation and Network Modernization Plan of ALLTEL Pennsylvania, Inc.*, Docket No. P-00981423F1000 (Dated: June 30, 2000, as modified January 22, 2001, as amended March 15, 2005), at 22-24.

<sup>2</sup> OCA April 19, 2012 Answer, Affidavit of Dr. Robert Loube on Behalf of the Office of Consumer Advocate, at 13.

In addition, these parties state that this event, the Connect America Fund Order, triggers the opportunity for Pennsylvania's RLECs operating under Chapter 30 Plans to seek alternative recovery mechanisms for the Eligible Recovery revenue which is lost each year.<sup>3</sup>

Based upon the Petitions filed and the responses thereto in this proceeding, we believe that the FCC's November 18, 2011 Order comprehensively changing the intercarrier compensation structure for the nation's telecommunications carriers is clearly a federal "regulatory . . . change[] . . . which affect[s] revenues[,]'" as contemplated by the RLECs' Chapter 30 plans.

In accordance with the provisions of Chapter 30, the terms of an RLEC's NMP govern the regulation of the RLEC.<sup>4</sup> Thus, these companies or others can make filings with the Commission seeking to recover any revenues not otherwise recovered through the mechanisms set forth in the FCC Order. As stated in PTA/CTL's April 9, 2012 Petition, the mechanics of the recovery are different depending upon whether the RLEC pursuing such recovery is a Chapter 30 Price Cap or Streamlined Rate of Return company. In addition, the baseline revenue data collected at the federal level will determine the annual revenue lost calculation for each Pennsylvania RLEC.<sup>5</sup> Once the baseline revenue calculation is determined, PTA/CTL further indicate that the rural RLEC would have the right, not the requirement, to increase intrastate rates by a particular amount yet to be determined.<sup>6</sup>

We believe that the RLECs' Chapter 30 Plans speak for themselves and provide an opportunity for the carriers or other parties to seek this type of treatment. We do not, however, believe that carriers should be directed to file for this type of treatment for any future revenue losses, as argued by some. Also, based upon the Verified Joint Statement, the opportunity to file for any exogenous event treatment remains in the future because the effects of the federal changes have not been calculated to date.

Further, we cannot agree with AT&T's arguments that the FCC's Order completely negates certain provisions of Chapter 30 as well as the RLECs' Chapter 30 Plans. AT&T states that the Commission is not free to change the FCC's recovery mechanisms or allow any RLEC to bypass the FCC's directives through a petition for exogenous event treatment.<sup>7</sup> In addition, AT&T states that the exogenous event language contained

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<sup>3</sup> Joint Petition for Reconsideration and Stay of the Pennsylvania Telephone Association and Century Link, Verified Joint Statement of Gary Zingaretti and Jeffrey Lindsey, at pp. 4-5.

<sup>4</sup> See 66 Pa. C.S. § 3019(h).

<sup>5</sup> Joint Petition for Reconsideration and Stay of the Pennsylvania Telephone Association and Century Link, Verified Joint Statement of Gary Zingaretti and Jeffrey Lindsey, at p. 5.

<sup>6</sup> *Id.*

<sup>7</sup> Updated Petition for Reconsideration and Comments by AT&T, et al on April 9, 2012.

in the rural Chapter 30 Plans is not ripe for decision until a company actually files a petition.<sup>8</sup> We wish to be clear that our action today recognizes the provisions of Chapter 30 as amended by our General Assembly in 2004 and the current provisions of the RLECs' Chapter 30 plans. In addition, we reiterate that it is within the RLECs' or other parties' control as to whether the provisions of a particular Chapter 30 Plan are used to file an exogenous event petition.

However, we note that because rate change filings made pursuant to Chapter 30 plans must result in rates that are just and reasonable pursuant to Sections 1301 and 3019 (h) of the Public Utility Code,<sup>9</sup> it is premature to make a blanket ruling that all rate change filings invoking exogenous event treatment will be approved and permitted to automatically go into effect. Rather, as is the case with other Chapter 30 rate change filings, the Commission will make a final ruling once any proposed rates have been filed and subsequently reviewed to determine whether they are just and reasonable under Section 1301.

**THEREFORE**, we move that,

This Order regarding the Joint Petition for Reconsideration and Stay filed on April 9, 2012 by the Pennsylvania Telephone Association (PTA) and The United Telephone Company of Pennsylvania, LLC, d/b/a CenturyLink (CTL); a Verified Joint Statement filed on April 9, 2012, by PTA/CTL; and the Updated Petition for Reconsideration and Comments of AT&T filed on April 9, 2012 at the above-mentioned docket be modified as consistent with this motion.

  
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ROBERT F. POWELSON  
CHAIRMAN

  
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PAMELA A. WITMER  
COMMISSIONER

**DATE: July 19, 2012**

<sup>8</sup> AT&T's Answer to the Joint Petition for Reconsideration and Stay of the Pennsylvania Telephone Association and CenturyLink at p. 17.

<sup>9</sup> 66 Pa. C.S. § 1301. See *Buffalo Valley Tel. Co. v. Pa. Pub. Util. Com'n*, 990 A.2d 67, 78-81 (Pa. Commw. 2009).