

July 29, 1992

John G. Alford, Secretary
PA PUBLIC UTILITY COMMISSION
P.O. Box 3265
Harrisburg, PA 17105-3265



JUL 29 1992

Public Utility Commission
SECRETARY'S BUREAU
Information Control Division

RE: AT&T Communications of Pennsylvania, Inc. v.
Commonwealth Telephone Company,
Docket No. I-920020C0001

Dear Secretary Alford:

Enclosed please find the original and two (2) copies each of the Answer of Commonwealth Telephone Company and Motion of Commonwealth Telephone Company to Strike Or Dismiss, With Prejudice, the Complaint of AT&T Communications of Pennsylvania, Inc. for filing in the above-captioned proceeding. Pursuant to the attached Certificate of Service, all parties of record have been served a copy of this document.

Thank you for your attention to this matter.

Sincerely,

TUCKER ARENSBERG, P.C.

NORMAN JAMES KENNARD

RLS

NJK/saf
ENCLOSURE
ctco.at&t.ans

cc: All parties of record

ORIGINAL

IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
JUL 29 1992

SECRETARY'S OFFICE
Public Utility Commission

AT&T COMMUNICATIONS OF
PENNSYLVANIA, INC.

v.

COMMONWEALTH TELEPHONE COMPANY

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Docket No. I-920020C0001

ANSWER OF COMMONWEALTH TELEPHONE
COMPANY TO COMPLAINT OF
AT&T COMMUNICATIONS OF PENNSYLVANIA, INC.

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AND NOW COMES, Commonwealth Telephone Company ("CTCO"), by and through its attorneys, Tucker Arensberg, P.C., and hereby answers the Complaint of AT&T Communications of Pennsylvania, Inc. ("AT&T") as follows:

DOCKETED

AUG - 4 1992

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Denied. The averments of this paragraph constitute legal and policy argument which are contrary to long-standing policies of the Pennsylvania Public Utility Commission ("Commission") to which no answer is required. Strict proof thereof is demanded at trial.
6. Admitted, in part and denied, in part. It is admitted that CTCO, in compliance with an Order of this Commission, established intrastate access charges. It denied that subsequent Commission-approved changes to CTCO's intrastate access rates have

been minor. Further, at all times, CTCO's tariffs have been in full and complete compliance with Commission directives and policies. In other respects, the averments of this paragraph are denied and strict proof thereof is demanded at trial.

7. Denied. This paragraph constitutes a request for relief and contains legal and policy arguments to which no response is necessary. The averments of this paragraph are denied and strict proof thereof is demanded at trial.

8. Denied. This paragraph constitutes a prayer for relief to which no response is required. Moreover, as more fully explained in the contemporaneous Motion, there is no basis to expect that "interim reductions in Commonwealth's rates" may be ordered at Docket No. I-920020.

9. Denied. To the contrary, CTCO's CCL is just, reasonable and fully consistent, indeed compelled by, prior Commission decisions. This paragraph constitutes a prayer for relief to which no response is necessary. Strict proof thereof is demanded at trial. The issues raised in this paragraph are outside the scope of the instant proceeding.

10. Denied. This paragraph constitutes a prayer for relief to which no response is necessary. The averments of this paragraph constitute legal and policy arguments to which no response is required. Strict proof thereof is demanded at trial. The issues raised in this paragraph are outside the scope of the instant proceeding.

11. Denied. This paragraph constitutes a prayer for relief

to which no response is necessary. The averments contained therein constitute legal and policy arguments to which no response is required. Moreover, the averments in this paragraph are outside the scope of the Commission's investigation at I-920020.

12. Denied. This paragraph constitutes policy and legal argument to which no response is required. The averments are outside the investigation of the Commission docketed at I-920020.

WHEREFORE, Commonwealth Telephone Company respectfully requests the Commission to dismiss the Complaint of AT&T Communications of Pennsylvania, Inc. at Docket No. I-920020C0001.

Respectfully submitted,

Norman James Kennard, Esquire
TUCKER ARENSBERG, P.C.
115 Pine Street, Suite 403
Harrisburg, PA 17101
(717) 238-2900

Dated: July 29, 1992

Attorneys for COMMONWEALTH
TELEPHONE COMPANY

IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T COMMUNICATIONS OF
PENNSYLVANIA, INC.

v.

COMMONWEALTH TELEPHONE COMPANY

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Docket No. I-920020C0001

CERTIFICATE OF SERVICE

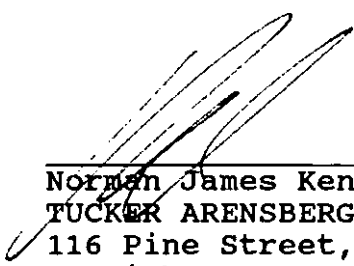
I hereby certify that, on this 29th day of July,
1992, I have served a true and correct copy of the foregoing
document upon the persons set forth below by First Class Mail,
postage prepaid or by hand-delivery (unless service is otherwise
indicated), in accordance with 52 Pa. Code § 1.54:

Honorable George M. Kashi
Administrative Law Judge
PA PUBLIC UTILITY COMMISSION
Room G-8 North Office Building
P.O. Box 3265
Harrisburg, PA 17120

Phillip F. McClelland
OFFICE OF CONSUMER ADVOCATE
1425 Strawberry Square
Harrisburg, PA 17120

OFFICE OF TRIAL STAFF
PA PUBLIC UTILITY COMMISSION
Room 210 North Office Building
P.O. Box 3265
Harrisburg, PA 17120

Mark A. Keffer, Esquire
AT&T COMMUNICATIONS OF PA, INC.
3201 Jermantown Road, 3A2
Fairfax, VA 22030-2885


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Attorneys for COMMONWEALTH
TELEPHONE COMPANY

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IN THE COMMONWEALTH OF PENNSYLVANIA
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JUL 29 1992

AT&T COMMUNICATIONS OF
PENNSYLVANIA, INC.

v.

Public Utility Commission
SECRETARY'S OFFICE
Docket No. **920020C0001**
Regulatory Control Division

COMMONWEALTH TELEPHONE COMPANY

**DOCUMENT
FOLDER**

DOCKETED
AUG - 4 1992

MOTION OF COMMONWEALTH TELEPHONE COMPANY
TO STRIKE OR DISMISS, WITH PREJUDICE,
THE COMPLAINT OF
AT&T COMMUNICATIONS OF PENNSYLVANIA, INC.

AND NOW COMES, Commonwealth Telephone Company ("CTCO"), by and through its attorneys, Tucker Arensberg, P.C., and, pursuant to the Pennsylvania Public Utility Commission's ("Commission") Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.101(a), hereby moves to strike or dismiss, with prejudice, the Complaint of AT&T Communications of Pennsylvania, Inc. ("AT&T"). In support thereof, CTCO avers as follows:

1. Under cover letter dated July 9, 1992, the Commission served upon CTCO the Complaint of AT&T. The Commission's Rules require an Answer to be filed, despite the existence of preliminary objections. 52 Pa. Code § 5.101(b). Therefore, contemporaneously with the filing of the instant Motion, CTCO has answered the Complaint of AT&T, denying the principle allegations contained therein.

2. The sole relief sought by AT&T is a reduction in the

tariffed rates it pays to CTCO for access services based upon a cost study. The first paragraph of its Complaint summarizes its subject matter, averring that CTCO's intrastate carrier access charges "are unjust, unreasonable, and contrary to applicable Pennsylvania law, as well as prior decisions of this Commission." The prayer for relief requests that CTCO produce "a fully distributed cost study, that CTCO establish "cost-based" access charges, and that CTCO cap its carrier common line charge."

3. AT&T has attempted to choose the docket at which its Complaint would be heard by including a caption reference to "Docket No. I-920020". The New Filing Section at the Commission then added the suffix "C0001" to AT&T's I-920020 designation.

4. However, the I-920020 docket is an investigation specifically directed at a particular type of affiliate fee, namely "the Parent Corporation Management Service Fees...consistent with Section 331(a) of the Public Utility Code, 66 Pa. C.S. § 331(a)." PA PUC v. Commonwealth Telephone Company, I-920020, Opinion and Order entered July 9, 1992 at 2. Any review of CTCO's earning is only to be undertaken after a review of affiliated transactions and, presumably, only if the review of these affiliated transactions reveal irregularities. Therefore, earning may not even be an issue in this proceeding. There is no mention whatsoever of restructuring CTCO's rates or any notice to the parties that the Commission is considering revising CTCO's rates. CTCO's basic local rates are among the lowest in the Commonwealth.

5. AT&T's Complaint should be stricken or dismissed for the

following reasons, inter alia:

- a. AT&T has not properly sought consolidation of its Complaint with the I-920020 investigation. The Commission's Rules of Administrative Practice and Procedure authorizes only the Commission or a presiding officer to order the consolidation of proceedings. 52 Pa. Code § 5.81(a). By disingenuously entering its own docket on the face of its Complaint, AT&T has consolidated the proceeding without seeking permission to do so.
- b. Only proceedings "involving a common question of law or fact" may be consolidated. 52 Pa. Code § 5.81(a). Here, AT&T's Complaint requesting a reduction in Commonwealth's tariffed access charges is totally and completely unrelated to the limited scope of the Commission's investigation into CTCO's "Parent Corporation Management Service Fee". There are no judicial economies to be realized or delays which may be avoided by the consolidation of two matters which so starkly differ in subject matter.
- c. The Commission's investigation at I-920020 is not a legally permissible vehicle by which to revise CTCO's rates. Therefore, the relief sought by AT&T (i.e., lowering of access charges) is not available at I-920020.

The Commission Opinion and Order commencing

this investigation cites Section 331(a) of the Pennsylvania Public Utility Code as its legal authority. A Section 331 investigation is the procedure whereby the Commission institutes a "fact finding" proceeding. Investigation Into Equitable Gas Company's Revenue Allocation Among Transportation Customers, I-900009, Opinion and Order entered July 18, 1991 at 8.

On the other hand, Section 1309 of the Public Utility Code, 66 Pa. C.S. § 1309, is the statutory authority under which the Commission may revise the rates of the utility. However, this statutory section requires, inter alia, "reasonable notice" of an intention to investigate the justness and reasonableness of the company's rates.

The Commission and its lawyers clearly understand the distinction between a Section 331 investigation and a Section 1309 rate proceeding brought upon the motion of the Commission. For example, at the same time that the instant investigation was undertaken by the Commission, it entered a series of Show Cause Orders involving the existing rates of several jurisdictional utilities. The Commission's Orders to Show Cause contained, as their essential feature, an allegation of violation of the Public Utility Code. State Tax Adjustment

Surcharge (STAS), I-00920012 through I-00920019, Orders to Show Cause adopted April 2, 1992. There, the Commission averred that its review of the companies' financial statements "indicates that [the company] may be receiving an excessive rate of return and that their rates may be unjust and unreasonable...." Id. The companies were directed to file Answers admitting or denying these allegations and to provide accounting data in support. Id.

By complete contrast, the Commission's Order here contains no such allegations of overearning¹ and simply directs that the parties "investigate the Parent Corporation Management Service Fee expense and all related affiliated interest charges and, following that analysis, Commonwealth's earnings should be analyzed." Opinion and Order at Ordering Paragraph 4. The presiding Administrative Law Judge is directed to make specific findings of fact on these issues. Id. at Ordering Paragraph 5.

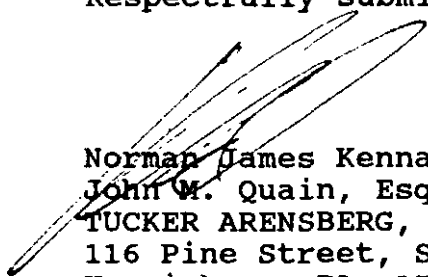
6. AT&T's Complaint cannot be amended under 52 Pa. Code § 5.101(f) so as to be within the scope of the I-920020 investigation as defined by the Commission. Therefore, AT&T's Complaint should

¹In fact, Commonwealth Telephone Company was initially included in Commissioner Rhodes' Motion to issue the Show Cause Orders, but was deleted at Public Meeting of April 2, 1992 (Agenda Items OSA-351 and 358-362) as recommended by the Office of Special Assistants (Agenda Item OSA-836).

be dismissed with prejudice.

WHEREFORE, for the above-stated reasons, the Complaint of AT&T Communications of Pennsylvania, Inc. should be stricken or dismissed, with prejudice, as improperly filed, as raising issues completely outside the scope of this investigation and as requesting relief which is not available in this proceeding.

Respectfully submitted,



Norman James Kennard, Esquire
John W. Quain, Esquire
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116 Pine Street, Suite 403
Harrisburg, PA 17101
(717) 238-2900

Dated: July 29, 1992

Attorneys for COMMONWEALTH
TELEPHONE COMPANY

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Docket No. I-920020C0001

CERTIFICATE OF SERVICE

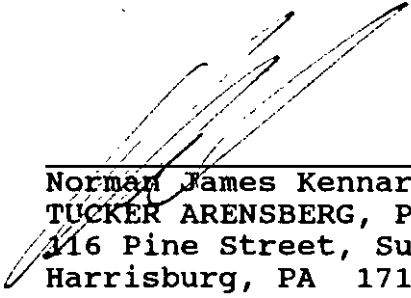
I hereby certify that, on this 29th day of July, 1992, I have served a true and correct copy of the foregoing document upon the persons set forth below by First Class Mail, postage prepaid or by hand-delivery (unless service is otherwise indicated), in accordance with 52 Pa. Code § 1.54:

Honorable George M. Kashi
Administrative Law Judge
PA PUBLIC UTILITY COMMISSION
Room G-8 North Office Building
P.O. Box 3265
Harrisburg, PA 17120

Phillip F. McClelland
OFFICE OF CONSUMER ADVOCATE
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OFFICE OF TRIAL STAFF
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