

March 25, 2005

Via Federal Express

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

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MAR 25 2005

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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NEW YORK  
WASHINGTON  
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BERWYN  
WILMINGTON

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

Dear Secretary McNulty:

I enclose for filing at the referenced docket the original and four copies of the Motion of Wireless Carriers for Determination that the Commission Lacks Jurisdiction to Require CMRS Providers to Contribute to the Funding of a Pennsylvania Universal Service Fund, and for Bifurcation or Certification for Immediate Commission Review.

Thank you for your assistance. If you have any questions or require further information, please do not hesitate to contact me.

Very truly yours,

  
Christopher M. Arfaa

CMA  
Enclosures

cc: Hon. Susan D. Colwell (w/encl.)  
Certificate of Service (w/encl.)

BTL

56

**ORIGINAL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**RECORDED**

MAR 25 2005

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Investigation Regarding Intrastate Access	:	
Charges and IntraLATA Toll Rates of Rural	:	
Carriers and the Pennsylvania Universal	:	I-00040105
Service Fund	:	

**DOCKETED**  
JUN 24 2005

**MOTION OF WIRELESS CARRIERS  
FOR DETERMINATION THAT THE COMMISSION LACKS JURISDICTION TO  
REQUIRE CMRS PROVIDERS TO CONTRIBUTE TO THE FUNDING OF A  
PENNSYLVANIA UNIVERSAL SERVICE FUND, AND FOR BIFURCATION OR  
CERTIFICATION FOR IMMEDIATE COMMISSION REVIEW**

Pursuant to 52 Pa. Code § 5.103 and 66 Pa. C.S. §§ 331(d), 331(f), intervenors Omnipoint Communications Inc. d/b/a T-Mobile, Omnipoint Communications Enterprises LLC d/b/a T-Mobile, Voicestream Pittsburgh LP d/b/a T-Mobile, Nextel Communications Inc., and Cellco Partnership d/b/a Verizon Wireless (collectively, the "Wireless Carriers"), file this motion for a determination that the Commission lacks jurisdiction to require commercial mobile radio service ("CMRS") providers to contribute to the funding of a Pennsylvania Universal Service Fund ("PA USF" or "Fund"). The Wireless Carriers respectfully request expedited consideration of this motion and bifurcation or certification of the issues raised herein in order to ensure timely review by the Commission. In support of the motion, the Wireless Carriers state as follows:

**DOCUMENT  
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## I. INTRODUCTION

1. The Wireless Carriers provide CMRS in the Commonwealth of Pennsylvania and elsewhere pursuant to licenses issued by the Federal Communications Commission (“FCC”).

CMRS providers are also commonly referred to as “wireless carriers” or “wireless providers.”<sup>1</sup>

2. When the Commission created a fund it termed the “Pennsylvania Universal Service Fund,” it excluded CMRS providers such as the Wireless Carriers from the group of telecommunications service providers required to contribute to that Fund. *In re Joint Petition of Nextlink Pennsylvania, Inc.*, Docket Nos. P-00991648, P-001649, slip op. at 140-41 (Sept. 30, 1999), *aff’d sub nom. Bell Atlantic – Pennsylvania, Inc. v. Pennsylvania Pub. Util. Comm’n*, 763 A.2d 440 (Pa. Commw. 2000), *vacated in part on other grounds sub nom. MCI WorldCom, Inc. v. Pennsylvania Pub. Util. Comm’n*, 577 Pa. 294, 844 A.2d 1239 (2004). The Commonwealth Court affirmed the exclusion, noting that the Public Utility Code excludes wireless carriers from the Commission’s jurisdiction. *Bell Atlantic – Pennsylvania v. PUC*, 763 A.2d at 499 (citing 66 Pa. C.S. § 102 (“Public utility”)(2)(iv)).

3. In its Order initiating this investigation, however, the Commission has directed the Office of Administrative Law Judge to render a “fully developed analysis and recommendation” on, among other things, the following question: “If the Fund continues beyond December 31, 2006, should wireless carriers be included in the definition of contributors to the Fund?” Order entered Dec. 20, 2004, *see* 35 Pa.B. 88 (Dec. 30, 2004). The Wireless Carriers respectfully submit that, in view of the statutory exclusion of CMRS providers from the Commission’s jurisdiction, the only lawful answer to this question is “no.”

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<sup>1</sup> Each of the Wireless Carriers is a provider of “commercial mobile service”, as defined at 47 U.S.C. § 332(d)(1), and is a provider of “commercial mobile radio service” as defined at 47 C.F.R. § 20.3.

4. The Wireless Carriers' interests in this proceeding and therefore the extent of their participation in discovery, at hearing, in post-hearing filings, or otherwise in developing the record depend in significant part on resolution of the question whether CMRS providers should be required to contribute to the funding of a PA USF. An acknowledgement by the Commission at this early stage of this investigation that it has no statutory authority to require such contributions from CMRS providers therefore would conserve the Presiding Officer's, the Commission's, and the parties' resources.<sup>2</sup> The Wireless Carriers therefore respectfully request that the Presiding Officer act expeditiously on this motion and, based on the argument presented herein, render a final determination in the form of a recommended decision finding that the Commission does not have jurisdiction to require CMRS providers to contribute to the funding of a PA USF. *See* 52 Pa. Code § 5.103(d).

5. The Wireless Carriers further request that the issue of Commission jurisdiction to compel CMRS providers to contribute to a PA USF be bifurcated from the rest of the issues presented by this proceeding in order to permit immediate Commission review of the Presiding Officer's recommended decision as a final order, or, alternatively, that the issue and recommended decision be certified for immediate interlocutory review and answer by the Commission pursuant to 52 Pa. Code § 5.305.

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<sup>2</sup> For example, if CMRS Providers were to have PA USF funding obligations, they would, at a minimum, want the record developed on whether there is a need in fact for funding from a PA USF to advance and preserve universal service. The record also may need to establish facts to support the determination of the relative levels of contributions by the CMRS providers. Absent a legal obligation to contribute to funding a PA USF, the Wireless Carriers' interests in pursuing these issues and developing a record would be largely if not entirely obviated.

## II. ARGUMENT

6. “[S]ince the PUC is a legislative creation, any powers it exercises must be found in the expressed words of the enabling statute or by strong and necessary implication when required for its expressed powers.” *Fairview Water Co. v. Pennsylvania Pub. Util. Comm’n*, 509 Pa. 384, 391, 502 A.2d 162, 165-66 (1985). As the Pennsylvania Supreme Court observed when invalidating the Commission’s attempt to create and administer an energy conservation program in the absence of statutory authorization, “the grant of power by the legislature to an administrative commission must be precise. ‘The power and authority must be conferred by legislative language clear and unmistakable. A doubtful power does not exist. Such tribunals are extrajudicial. They should act within the strict and exact limits defined.’” *Process Gas Consumers Group v. Pennsylvania Pub. Util. Comm’n*, 511 Pa. 88, 96, 511 A.2d 1315, 1319 (1986) (citation omitted).

7. The Public Utility Code authorizes the Commission to supervise and regulate “public utilities,” 66 Pa. C.S. § 501(b), a term that does *not* include CMRS providers. Specifically, the code defines public utilities expressly to *exclude* CMRS providers, stating that the term does not include “[a]ny person or corporation, not otherwise a public utility, who or which furnishes mobile domestic cellular radio telecommunications service.” *Id.* § 102(“Public utility”)(2)(iv). The Pennsylvania Supreme Court has held that since CMRS providers are “[c]learly . . . excluded from the definition of public utility,” they are “*not regulated* by the Public Utility Commission.” *Crown Communications v. Zoning Hearing Bd.*, 550 Pa. 266, 273, 705 A.2d 427, 431 (1997) (emphasis added). The Commonwealth and Superior Courts are in accord. *See, e.g., Bell Atlantic – Pennsylvania, Inc. v. Pennsylvania Pub. Util. Comm’n*, 763 A.2d 440, 499 (Pa. Commw. 2000) (“an entity engaged in wireless communications exclusively,

*i.e.* any person not otherwise a public utility, who or which furnishes mobile domestic cellular radio telecommunications service is ***not within the definition of public utility subject to PUC jurisdiction***”), *vacated in part on other grounds sub nom. MCI WorldCom, Inc. v. Pennsylvania Pub. Util. Comm’n*, 577 Pa. 294, 844 A.2d 1239 (2004) (emphasis added); *Aronson v. Sprint Spectrum, L.P.*, 767 A.2d 564, 572 (Pa. Super. 2001) (“[T]he Commonwealth ***does not regulate Sprint Spectrum.***”) (emphasis added). The Commission has abided by this jurisdictional limitation in a variety of contexts. *See, e.g., Passarell v. AT&T Wireless Servs., Inc.*, 98 Pa. PUC 389, 2003 WL 23484584 (Aug. 14, 2003) (dismissing complaint concerning rate and billing matters of CMRS provider for lack of jurisdiction); *Aronson v. Sprint Spectrum, L.P.*, 767 A.2d 564, 569 (Pa. Super. 2001) (“[U]nless a provider of cellular service is ‘otherwise a public utility,’ it does not become a regulated public utility under this Commission’s jurisdiction merely because it provides cellular service to the public for compensation. . . . thus, Sprint Spectrum, L.P. is not a ‘public utility’ within the meaning of the Code. . . . [T]he complaint *sub judice* must be dismissed for lack of jurisdiction.”) (quoting Commission order); *Electronic Transaction Auditing of Telephone Customer Proprietary Information*, Doc. No. L-00970123, 29 Pa.B. 5564 (1999) (“Cellular, PCS, and switched packet systems, including the internet, carry an increasing share of voice communications. While the FCC, with authority based on the federal Communications Act, may have jurisdiction to regulate all these modes of communication, ***we do not.***”) (emphasis added); Tentative Order, *In re Implementation of the Omnibus Budget Reconciliation Act of 1993*, Docket Nos. L-00950104, M-00950695, 1998 WL 842357 Pa. PUC Sept. 18 1998) (PUC does not regulate PCS services); Order, *In re Implementation of the Omnibus Budget Reconciliation Act of 1993*, Docket Nos. L-00950104, M-00950695, 1995 WL 944903 (Pa. PUC June 16, 1995) (recognizing deregulation of cellular services).

8. In sum, CMRS providers are “simply private business enterprises which are not regulated by the Public Utility Commission.” *Crown Communications*, 550 Pa. at 273, 705 A.2d at 431. Therefore, the Commission’s concerns regarding the inclusion of CMRS providers in the definition of contributors to a PA USF “are misplaced. It is for the legislature, not the PUC . . . to determine what business activity comes within the purview of the PUC.” *Bethlehem Steel Corp. v. Pennsylvania Pub. Util. Comm’n*, 552 Pa. 134, 144, 713 A.2d 1110, 1115 (1998).

9. Furthermore, nothing in the federal Communications Act confers the authority that the General Assembly chose expressly to withhold from the Commission when it excluded CMRS providers from the definition of “public utility.” Section 254(f) of the federal Communications Act, 47 U.S.C. § 254(f) only provides that the states are not preempted from adopting “regulations not inconsistent with the [FCC’s] rules to preserve and advance universal service.” The permission granted to a “State” to adopt universal service regulations by the statute does *not* empower state *commissions* to do so absent enabling authority under state law. The Communications Act defines “States” as the states themselves and “State commissions” as state governmental units that regulate intrastate telecommunications pursuant to state law. *Id.* §§ 153(40), 153(41). When Congress intended to authorize state commissions to take action with respect to universal service, it did so expressly. *See, .e.g.*, 47 U.S.C. § 214(e)(2) (authorizing and directing state *commissions* to designate telecommunications carriers eligible to receive universal service support). Section 254(f) therefore does not confer any authority on the Commission to require CMRS Providers to contribute to the funding of a PA USF.

10. The Wireless Carriers by this motion seek determination only of the issue of the Commission’s jurisdiction under the Public Utility Code to require CMRS Providers to contribute to the funding of a PA USF. Nothing herein shall be construed as a waiver of the

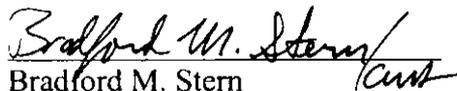
Wireless Carriers' rights to raise and argue any other issue of law, fact or policy relevant to this proceeding, which rights are hereby reserved.

**III. CONCLUSION**

11. For all of the foregoing reasons, the Wireless Carriers respectfully request that the Presiding Officer, on an expedited basis—

1. issue a recommended decision finally determining that the Commission lacks the statutory authority to require that CMRS Providers contribute to the funding of a Pennsylvania Universal Service Fund;
2. bifurcate the jurisdictional issue presented by this motion from the remaining issues presented by this proceeding in order to permit immediate Commission consideration of the recommended decision as a final order, or, alternatively, certify the issue and recommended decision for immediate interlocutory review and answer by the Commission pursuant to 52 Pa. Code § 5.305; and
3. grant such further relief consistent with the foregoing that the Presiding Officer deems reasonable and just.

Respectfully submitted,



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Counsel for  
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d/b/a T-Mobile; Omnipoint  
Communications Enterprises LLC  
d/b/a T-Mobile; Voicestream  
Pittsburgh LP d/b/a T-Mobile; and  
Nextel Communications Inc.



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christopher.arfaa@dbr.com

Counsel for Cellco Partnership d/b/a  
Verizon Wireless

DATED: March 25, 2005

**CERTIFICATE OF SERVICE**

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

**Via Federal Express - Overnight Delivery and E-mail**

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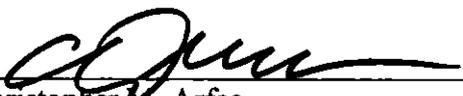
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Dated: March 25, 2005

  
\_\_\_\_\_  
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(215) 988-2700

Counsel for Cellco Partnership d/b/a  
Verizon Wireless and Cingular Wireless LLC

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

**DATE:** March 29, 2005

**SUBJECT:** Investigation Regarding Intrastate Access Charges and  
IntraLATA Toll Rates of Rural Carriers, and the  
Pennsylvania Universal Service Fund  
I-00040105

**TO:** Wanda Zeiders, Supervisor of Docket Management  
Docket Section, Secretary's Bureau

**FROM:** Susan D. Colwell   
Administrative Law Judge

DOCUMENT  
FOLDER

Attached please find two copies of an electronic mail  
exchange which should be part of the official record.

Please docket these and place them in the red document  
folder.

Please do not hesitate to contact me with any  
questions you may have, and thank you for your attention to this  
matter.

Attachments

**Colwell, Susan**

---

**To:** Christopher.Arfaa@dbr.com; parmstrong@ttanlaw.com; Colwell, Susan  
**Cc:** Gray, Steven; Eckenrod, Robert; sue.e.benedek@mail.sprint.com; bmstern@rothfelderstern.com; Michelle.Painter@mci.com; dclearfield@wolfblock.com; julia.a.conover@verizon.com; suzan.d.paiva@verizon.com; jcheskis@paoca.org; Jennifer.A.Duane@mail.sprint.com; akohler@wolfblock.com; jpovilaitis@ryanrussell.com  
**Subject:** RE: Pa. PUC USF Investigation - I-00040105

Parties:

This motion is filed under 52 Pa. Code section 5.103, which provides that a response is due ten days from the date of service. I agree to set the service date as March 28, 2005, for purposes of determining the due date, which is now Thursday, April 7, 2005.

**The moving party and parties which file a written and timely response will be given an opportunity to argue their positions at the prehearing conference scheduled for April 21, 2005.**

A copy of this e-mail will be placed in the document folder in the Secretary's Bureau.

Susan D. Colwell  
 Administrative Law Judge

**DOCKETED**  
 JUL 26 2005

-----Original Message-----

**From:** Christopher.Arfaa@dbr.com [mailto:Christopher.Arfaa@dbr.com]  
**Sent:** Monday, March 28, 2005 11:41 AM  
**To:** parmstrong@ttanlaw.com; scolwell@state.pa.us  
**Cc:** sgray@state.pa.us; ROECKENROD@state.pa.us; sue.e.benedek@mail.sprint.com; bmstern@rothfelderstern.com; Michelle.Painter@mci.com; dclearfield@wolfblock.com; julia.a.conover@verizon.com; suzan.d.paiva@verizon.com; jcheskis@paoca.org; Jennifer.A.Duane@mail.sprint.com; akohler@wolfblock.com; jpovilaitis@ryanrussell.com  
**Subject:** RE: Pa. PUC USF Investigation - I-00040105

**DOCUMENT  
 FOLDER**

Judge Colwell and Parties:

With respect to Ms. Armstrong's e-mail request (reproduced below), the Wireless Carriers have no objection to treating the Motion filed and served via overnight delivery last Friday as having been served in-hand today for purposes of calculating the due-date for responses. Pursuant to 52 Pa Code section 5.103, this would render a due date of April 7, 2005, rather than April 4.

However, we do not believe that further extension of section 5.103's deadline for responses is warranted. First, we disagree with Ms. Armstrong's characterization of the Motion. The Motion is clearly brought pursuant to 52 Pa. Code section 5.103, which governs all motions which are not preliminary motions, motions for summary judgment, or judgment on the pleadings. The relief requested -- a substantive determination relating to jurisdiction and bifurcation or, in the alternative, certification for immediate review -- clearly falls within section 5.103 and not section 5.102.

Second, we see no reason why additional time might be required to respond to our Motion, which is only seven pages long (including caption and signature blocks) and raises a single substantive legal issue. We note that all parties have been on notice that the wireless carriers desired early determination of the narrow issue raised by the motion -- the question of the Commission's authority to regulate wireless carriers -- since the first prehearing conference held in this matter. Counsel for the wireless carriers also provided oral notice to Ms. Armstrong and counsel for other

3/29/2005

parties on Thursday, March 24, that the motion would be filed that day or the next.

In sum, we respectfully suggest that today be treated as the Motion's service date and that, accordingly, any responses must be filed and served on or before April 7, 2005, as provided by 52 Pa. Code section 5.103.

I am authorized to state that Mr. Stern concurs in the substance of this message.

Respectfully,

Chris Arfaa

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(215) 988-2715  
fax (215) 988-2757  
christopher.arfaa@dbr.com

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JUL 26 2005

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FOLDER

-----Original Message-----

**From:** Patricia Armstrong [mailto:parmstrong@ttanlaw.com]

**Sent:** Monday, March 28, 2005 10:51 AM

**To:** Arfaa, Christopher M.; scolwell@state.pa.us

**Cc:** sgray@state.pa.us; ROECKENROD@state.pa.us; sue.e.benedek@mail.sprint.com;  
bmstern@rothfelderstern.com; Michelle.Painter@mci.com; dclearfield@wolfblock.com;  
julia.a.conover@verizon.com; suzan.d.paiva@verizon.com; jcheskis@paoca.org;

Jennifer.A.Duane@mail.sprint.com; akohler@wolfblock.com; jpovilaitis@ryanrussell.com

**Subject:** RE: Pa. PUC USF Investigation - I-00040105

Judge Colwell and Parties

Given that the Motion served Friday in the above proceeding contains some elements of a Preliminary Motion, a Motion for Judgment on the Pleadings, a Motion for Interlocutory review and a request for reconsideration it is not clear what time period applies for filing a response. Also - given that it was emailed at 4:45 on Good Friday we believe that the time frame for responding should begin today. We would respectfully ask Judge Colwell to set a date for responding to said Motion and would suggest that the 20 days contained in section 5.102 apply. Your assistance is greatly appreciated.

Patricia Armstrong  
Thomas, Thomas, Armstrong & Niesen  
212 Locust Street  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
(717) 255-7627

NOTICE: This e-mail message contains information that is confidential, may be protected by the attorney/client or other privilege and may constitute

non-public information. It is intended to be conveyed only to the recipient(s) named above. If you or your office has received this e-mail in error, please delete it and immediately notify the sender by calling 717-255-7620. Thank you.

-----Original Message-----

**From:** Christopher.Arfaa@dbr.com [mailto:Christopher.Arfaa@dbr.com]

**Sent:** Friday, March 25, 2005 4:44 PM

**To:** scolwell@state.pa.us

**Cc:** sgray@state.pa.us; ROECKENROD@state.pa.us; sue.e.benedek@mail.sprint.com; parmstrong@tlanlaw.com; bmstern@rothfelderstern.com; Michelle.Painter@mci.com; dclearfield@wolfblock.com; julia.a.conover@verizon.com; suzan.d.paiva@verizon.com; jcheskis@paoca.org; Jennifer.A.Duane@mail.sprint.com; akohler@wolfblock.com; jpovilaitis@ryanrussell.com

**Subject:** Pa. PUC USF Investigation - I-00040105

Judge Colwell and Counsel:

Attached is an electronic copy of the Motion of Wireless Carriers for Determination that the Commission Lacks Jurisdiction to Require CMRS Providers to Contribute to the Funding of a Pennsylvania Universal Service Fund, and for Bifurcation or Certification for Immediate Commission Review, which was filed with the Secretary today by overnight delivery.

Respectfully,

Chris Arfaa

Christopher M. Arfaa  
Drinker Biddle & Reath LLP  
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**DOCKETED**  
JUL 26 2005  
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**ROCKEFELLER**  
**INVESTIGATION**

\*\*\*\*\*

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Thank you very much.

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Thank you very much.

*Thomas, Thomas, Armstrong & Niesen*  
*Attorneys and Counsellors at Law*

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CHARLES E. THOMAS  
(1913 - 1998)

March 31, 2005

Honorable Susan D. Colwell  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
2<sup>nd</sup> Floor West  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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RECEIVED  
APR 01 2005  
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

Dear Judge Colwell:

Enclosed for filing on behalf of the Rural Telephone Company Coalition is a Petition for Protective Order in the above referenced proceeding. The Protective Order has been circulated to all parties and there is no objection. The Wireless Carriers emphasize that their "no objection" in no way prejudices any jurisdiction or other arguments they may wish to raise in this proceeding. Copies of the Petition for Protective Order have been served in accordance with the attached Certificate of Service.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By



Patricia Armstrong

Enclosure

cc: Certificate of Service

05 MAR 31 PM 3:46  
PA PUC  
RJP

Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Administrative Law Judge  
Susan D. Colwell, Presiding

**DOCKETED**  
JUN 16 2005

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

PETITION FOR PROTECTIVE ORDER

Pursuant to 52 Pa. Code § 5.423, the Rural Company Coalition ("RCC"),<sup>1</sup>  
(individually "Petitioner" or "Company" and collectively "Petitioners" or "Companies"),  
by counsel, hereby respectfully requests that issuance of a protective order  
restricting the disclosure of proprietary, or other confidential information which may  
be filed by one or more of the Companies or other parties in the above-captioned  
matter or otherwise presented or disclosed in this matter.

**DOCUMENT  
FOLDER**

<sup>1</sup> Rural companies requesting this relief include ALLTEL Pennsylvania, Inc., Armstrong Telephone Company - PA, Armstrong Telephone Company-North, Bentleyville Communications Corporation, d/b/a The Bentleyville Telephone Company, Buffalo Valley Telephone Company ("Buffalo Valley"), Citizens Telephone Company of Kecksburg, Commonwealth Telephone Company ("Commonwealth"), Conestoga Telephone and Telegraph Company ("Conestoga"), Denver and Ephrata Telephone and Telegraph Company ("D&E"), Deposit Telephone Company, Frontier Communications of Breezewood, LLC, Frontier Communications of Canton, LLC, Frontier Communications of Lakewood, LLC, Frontier Communications of Oswayo River, LLC, Frontier Communications of Pennsylvania, LLC ("Frontier PA"), The Hancock Telephone Company, Hickory Telephone Company, Ironton Telephone Company, Lackawaxen Telecommunications Services, Inc., Laurel Highland Telephone Company, Mahanoy & Mahantango Telephone Co., Marianna & Scenery Hill Telephone Company, The North-Eastern PA Telephone Company, North Penn Telephone Company, North Pittsburgh Telephone Company ("NPTC"), Palmerton Telephone Company, Pennsylvania Telephone Company, Pymatuning Independent Telephone Company, South Canaan Telephone Company, Sugar Valley Telephone Company, Venus Telephone Corporation, West Side Telephone Company and Yukon-Waltz Telephone Company.

1. The Pennsylvania Public Utility Commission ("Commission") instituted the above referenced investigation by Order entered December 20, 2004 and assigned the matter to Administrative Law Judge Susan D. Colwell.

2. The Companies anticipate that certain confidential or proprietary information may be requested or produced in settlement discussions, in testimony or other appropriate manner.

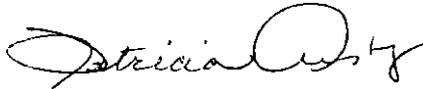
3. The Companies therefore respectfully request that the ALJ issue the attached protective order to maintain the confidentiality of all such information. The proposed order is designed to avoid harm to the parties from the disclosure of such information, while at the same time applying the least restrictive limitation on the parties to this proceeding.

4. The form of the attached protective order is similar to that issued in other recent proceedings before the Commission.

5. The Companies have previewed this application and the attached form of order with the other parties, and is authorized to represent that such parties have no objection to the entry of the attached order.

WHEREFORE, the Companies respectfully request that the ALJ adopt and issue the protective order that is attached to this application; and, to grant any further relief that is just and reasonable under the circumstances.

Respectfully submitted,



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Patricia Armstrong  
Thomas T. Niesen  
Regina L. Matz  
Michael L. Swindler

Attorneys for  
The Rural Telephone Company Coalition

THOMAS, THOMAS, ARMSTRONG & NIESEN  
212 Locust Street  
P. O. Box 9500  
Harrisburg, PA 17108-9500

DATE: March 31, 2005

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Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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PROTECTIVE ORDER

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IT IS ORDERED THAT:

1. This Protective Order is hereby granted with respect to all materials and information identified at Ordering Paragraphs 2 and 3 which are filed with the Commission, produced in discovery, or otherwise presented during these proceedings. All persons now and hereafter granted access to the materials and information identified in Ordering Paragraphs 2 and 3 shall use and disclose such information only in accordance with this Order.

2. The materials subject to this Order are all correspondence, documents, data, information, studies, methodologies and other materials which a party or an affiliate of a party furnishes in this proceeding pursuant to Commission rules and regulations, discovery procedures or cross-examination or provides as a courtesy to the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate or any other party, which are claimed to be of a proprietary or confidential nature and which are designated "PROPRIETARY" (hereinafter collectively referred to as "Proprietary Information").

3. In addition, parties may designate extremely sensitive Proprietary Information as "HIGHLY CONFIDENTIAL" (hereinafter referred to as "Highly Confidential Information") and thus secure the additional protections set forth in this Order pertaining to such material. Highly Confidential Information shall be only such Proprietary Information that constitutes or describes the producing party's marketing plans including inter alia, costing and pricing aspects thereof,

competitive strategies, market share projections, marketing materials that have not yet been used, customer-identifying information, or customer prospects for services that are subject to competition.

4. Proprietary Information and Highly Confidential Information shall be made available to the Commission and its Staff for use in this proceeding. For purposes of filing, to the extent that Proprietary Information or Highly Confidential Information is placed in the Commission's report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information or Highly Confidential Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Order. Public inspection of Proprietary Information or Highly Confidential Information shall be permitted only in accordance with this Order.

5. Proprietary Information and Highly Confidential Information shall be made available to counsel of record in this proceeding pursuant to the following procedures:

a. Proprietary Information. To the extent required for participation in this proceeding, a party's counsel may afford access to Proprietary Information made available by another party (the "Producing Party") to the party's expert(s), subject to the following restrictions:

i. Such expert(s) may not hold any of the following positions with any competitor of the Producing Party: (a) an officer, board member, stockholder, partner, owner other than stock or employee who is primarily involved in the pricing, development, and/or marketing of products or services that are offered in competition with those of the Producing Party; or (b) an officer, board member, stockholder, partner, owner other than stock of any affiliate of a competitor of the Producing Party; provided, however, that any expert shall not be

disqualified on account of being a stockholder, partner or owner unless his/her interest in the business constitutes a significant potential for violations of the limitations of permissible use of the Proprietary Information. For purposes of this Order, stocks, partnership, or other ownership interest valued at less than \$100,000 and/or constituting less than a 2% interest in a business does not, in itself, establish a significant potential for violation.

ii. If a party's independent expert, another member of the independent expert's firm or the independent expert's firm generally also serves as an expert for, or as a consultant or advisor to a competitor or any affiliate of a competitor of the Producing Party, said independent expert must: (1) advise the Producing Party of the competitor's or affiliate's name(s); (2) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a competitor of the Producing Party; and (3) if segregation of such personnel is impractical, the independent expert shall give to the Producing Party written assurances that the lack of segregation will in no way jeopardize the interests of the Producing Party. The Producing Party retains the right to challenge the adequacy of the written assurances that its interests will not be jeopardized.

b. Highly Confidential Information. Information designated as Highly Confidential shall be provided only to counsel of record. If the counsel of record desires to disclose its contents to persons other than counsel of record, she or he shall submit a written request to the Producing Party's counsel. If the requesting and producing parties are unable to reach agreement with respect to such a request, they may submit the issue orally to the presiding Administrative Law Judge for resolution.

c. No other persons may have access to Proprietary Information or Highly Confidential Information except as authorized by order of the Commission or of the presiding Administrative Law Judge. No person who may be entitled to receive, or who is afforded access to any Proprietary Information or Highly Confidential Information shall use or disclose such information for the purposes of business or competition, or any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

6. Prior to making Proprietary Information or Highly Confidential Information available to any person as provided in ordering paragraph 5, counsel for a party of record shall deliver a copy of this Order to such person and shall receive a written acknowledgment from that person in the form attached to this Order and designated as "Appendix A". Counsel shall promptly deliver to the Producing Party a copy of this executed acknowledgment form.

7. A Producing Party shall designate data or documents as constituting or containing Proprietary Information or Highly Confidential Information by affixing an appropriate proprietary stamp or typewritten designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information or Highly Confidential Information, the Producing Party, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information or Highly Confidential Information.

8. Any federal agency which has access to and/or receives copies of the Proprietary Information or Highly Confidential Information will consider and treat the Proprietary Information or Highly Confidential Information as within the exemption from disclosure provided in the Freedom of Information Act as set forth at 5 U.S.C.A. § 552(b)(4) until such time as the information is found to be non-proprietary.

9. Any state agency which has access to and/or receives copies of the Proprietary Information or Highly Confidential Information will consider and treat the Proprietary Information or Highly Confidential Information as within the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act as set forth at 65 P.S. § 66.1(2) until such time as the information is found to be non-proprietary.

10. Any public reference to Proprietary Information or Highly Confidential Information by the Commission or by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information or Highly Confidential Information to fully understand the reference and not more. The Proprietary Information or Highly Confidential Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

11. Part of any record of this proceeding containing Proprietary Information or Highly Confidential Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in ordering paragraph 10 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information or Highly Confidential Information is released from the restrictions of this Order, either through the agreement of the parties or pursuant to an Order of an Administrative Law Judge or the Commission. Unresolved challenges arising under Paragraph 12 shall be decided on motion or petition by the presiding officer and/or the Commission as provided in 52 Pa. Code § 5.423(a). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, precedent, etc., to the extent such guidance is available.

12. The parties affected by the terms of this Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information or Highly Confidential Information; to question or challenge the

admissibility of Proprietary Information or Highly Confidential Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Proprietary Information or Highly Confidential Information beyond that allowed in this Order; and to seek additional measures of protection of Proprietary Information or Highly Confidential Information beyond those provided in this Order. If a challenge is made to the designation of a document or information as Proprietary or Highly Confidential, the party claiming that the information is Proprietary or Highly Confidential retains the burden of demonstrating that the designation is necessary and appropriate.

13. Upon completion of this proceeding, including any administrative or judicial review, all copies of all documents and other materials, including notes, which contain any Proprietary Information or Highly Confidential Information shall be immediately returned upon request to the party furnishing such Proprietary Information or Highly Confidential Information. In the alternative, parties may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary Information or Highly Confidential Information have been destroyed. This provision shall not apply to the Commission, its Staff, the Office of Trial Staff, the Office of Consumer Advocate, or the Office of Small Business Advocate.

BY

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Administrative Law Judge  
Susan D. Colwell

APPENDIX A

Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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TO WHOM IT MAY CONCERN:

The undersigned is the expert officer, member, employee or counsel of \_\_\_\_\_  
\_\_\_\_\_ (the retaining party).

The undersigned has read and understands the Protective Order issued in the above captioned proceeding, which Order deals with the treatment of Proprietary and Highly Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order. The undersigned agrees that any Proprietary and Highly Confidential Information shall be used or disclosed only for purposes of preparation for, and conduct of the above captioned proceeding, and any administrative or judicial review thereof, and shall not be disclosed or used for any other purposes whatsoever.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Employer

Date: \_\_\_\_\_

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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CERTIFICATE OF SERVICE

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I hereby certify that I have this 31<sup>st</sup> day of March, 2005, served a true and correct copy of a Protective Order on behalf of the Rural Telephone Company Coalition upon the persons and in the manner listed below:

**VIA E-MAIL AND HAND DELIVERY**

Honorable Susan D. Colwell  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
2<sup>nd</sup> Floor West  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**VIA E-MAIL AND FIRST CLASS MAIL, POSTAGE PREPAID**

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Senior Assistant Consumer Advocate  
Joel H. Cheskis  
Assistant Consumer Advocate  
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300 North Second Street  
Harrisburg, PA 17101

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Lashburn, VA 20147

Robert V. Eckenrod, Esquire  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
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Susan M. Roach  
Drinker Biddle & Reath LLP  
One Logan Square  
18<sup>th</sup> & Cherry Streets  
Philadelphia, PA 19103

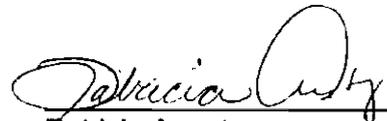
Kristin Smith  
Qwest Communications Corporation  
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Ryan, Russell, Ogden & Seltzer LLP  
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800 North Third Street  
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Daniel Clearfield, Esquire  
Alan C. Kohler, Esquire  
Wolf Block Schorr Solis-Cohen LLP  
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Harrisburg, PA 17101

Jennifer A. Duane, Esquire  
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Patricia Armstrong