

STEVENS & LEE
LAWYERS & CONSULTANTS

17 North Second Street
16th Floor
Harrisburg, PA 17101
(717) 234-1090 Fax (717) 234-1099
www.stevenslee.com

Direct Dial: (717) 255-7365
Email: mag@stevenslee.com
Direct Fax: (610) 988-0852

July 6, 2009

Secretary James J. McNulty
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: AT&T Communications of Pennsylvania, LLC v. Armstrong Telephone Company,
Pennsylvania, et al.
Docket Numbers C-2009-2098380, C-2009-2099805, C-2009-2098735

Dear Secretary McNulty:

On behalf of Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively "Sprint"), enclosed please find Sprint's Brief In Response to Petition for Interlocutory Review and Answer to Material Questions, which was filed electronically today in the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Very truly yours,

STEVENS & LEE



Michael A. Gruin

Enclosure

cc: Hon. James H. Cawley, Chairman (via hand delivery)
Hon. Tyrone J. Christy, Vice-Chairman (via hand delivery)
Hon. Kim Pizzigrilli, Commissioner (via hand delivery)
Hon. Wayne E. Gardner, Commissioner (via hand delivery)

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster • Scranton
Williamsport • Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION

STEVENS & LEE
LAWYERS & CONSULTANTS

Secretary James J. McNulty
July 6, 2009
Page 2

Hon. Robert H. Powelson, Commissioner (via hand delivery)
Hon. Kandace F. Melillo (via hand delivery)
Cheryl Walker Davis, Director, Office of Special Assistants (via hand delivery)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

AT&T Communications of Pennsylvania, LLC Complainant	:	
	:	
v.	:	Docket No. C-2009-2098380, et al.
	:	
Armstrong Telephone Company - Pennsylvania, et al. ¹ Respondents	:	
	:	
	:	
TCG New Jersey, Inc. Complainant	:	
	:	
v.	:	Docket No. C-2009-2099805, et al.
	:	
	:	
Armstrong Telephone Company - Pennsylvania, et al. Respondents	:	
	:	
	:	
TCG Pittsburgh, Inc. Complainant	:	
	:	
v.	:	Docket No. C-2009-2098735, et al.
	:	
	:	
Armstrong Telephone Company - Pennsylvania, et al. Respondents	:	

**BRIEF OF SPRINT RESPONDING TO PETITION REQUESTING
INTERLOCUTORY REVIEW AND ANSWER TO MATERIAL QUESTIONS**

¹ Respondents in each of the Complaints filed by AT&T, TCG New Jersey and TCG Pittsburgh include thirty two Pennsylvania rural incumbent local exchange carriers.

I. Background and Introduction

On March 19, 2009 AT&T Communications of Pennsylvania, TCG New Jersey, Inc. and TCG Pittsburg, Inc. (collectively "AT&T") filed complaints with the Pennsylvania Public Utility Commission ("Commission") against thirty-two (32) rural local exchange carriers ("RLECs"). AT&T's complaints alleged violations 66 Pa. C.S. §§ 1301 and 3011(3), (4), (5), (8), and (9). These complaints were filed pursuant to 52 Pa. Code § 5.21 and 66 Pa. C.S. §§ 701 and 1309. In its complaints, AT&T requested that the RLECs be ordered to reduce their intrastate access rates to rate levels and structures matching the interstate rates and rate structure for each RLEC. The complaints were consolidated into three complaint dockets initially, and then into a single complaint docket.

On April 30, 2009, the Pennsylvania Telephone Association ("PTA") representing all 32 RLECs named in AT&T's complaints, filed Answers to AT&T's complaints. On the same day, the PTA filed Preliminary Objections and a Motion for Stay or Consolidation ("Preliminary Objections"). On May 13, 2009, AT&T filed its Answer to PTA's April 30th pleadings ("AT&T Answer"). On May 20, 2009 Sprint filed an Opposition to the PTA Preliminary Objections and Motion for Stay or Consolidation. Therein, Sprint addressed an issue relative to the operation of 66 Pa. C.S. §§ 1309(a) and (b) (which sections require the Commission to issue a final decision on the issues raised in the complaint within nine-months of a complaint being filed, and that any relief granted after the expiration of this nine-month period will be retroactive to that date if certain conditions are met).

On June 22, 2009, Administrative Law Judge Melillo (“ALJ Melillo”) issued an Order Denying the PTA’s Preliminary Objections and Motion for Consolidation or Stay. A telephonic prehearing conference was held on June 23, 2009. During that conference the PTA and United Telephone Company of Pennsylvania, LLC d/b/a Embarq (“Embarq”) announced their intention to request interlocutory review of certain issues raised in their Preliminary Objections, but denied in ALJ Melillo’s June 22 Order, and issues regarding the application of 66 Pa. C.S. §§ 1309(a) and (b). On June 26, 2009, the PTA and Embarq filed their Petition Requesting Interlocutory Review and Answer to Material Questions which is now before the Commission (“PTA Petition”).

As explained below, ALJ Melillo appropriately concluded that there are no valid grounds – stated in the Preliminary Objections or otherwise – for dismissal of AT&T’s complaint. Accordingly, ALJ Melillo’s denial of the PTA request to dismiss AT&T’s Complaint was appropriately reasoned and decided. Similarly, no other question presented by the PTA to the Commission supports any delay of the prompt adjudication of AT&T’s complaints.

II. Material Questions Presented for Review

The PTA presented three Material Questions for Review. Sprint addresses each in detail below. It is Sprint’s position that (1) dismissal is inappropriate, (2) a stay of AT&T’s Complaint is inappropriate, but a consolidation may be appropriate if the Commission issues a decision within a reasonable timeframe; and (3) the provisions of 66 Pa. C.S. §§ 1309(a) and (b) apply to the matter at bar. In support of its positions, Sprint states as follows.

- a. Material Question One: Did the ALJ err in denying the Preliminary Objections (“POs”) filed by Petitioners seeking to dismiss the**

complaint on the following bases: (1) The subject of AT&T's complaint is already the subject of a pending PUC investigation into the Petitioners' intrastate access rates at Docket No. I-00040105; and (2) the complaint failed to state a cause of action by failing to allege facts applicable to or aver violations of law by Petitioners, which at all times have adhered to their PUC-approved Chapter 30 Plans and the rates set by the PUC thereafter?

i. The issues in AT&T's complaint are not the subject of any pending PUC investigation or other proceeding.

The PTA Petition alleges that the "issues in [Docket No. I-00040105], for which a request for a further one-year stay is pending, are identical to the issues raised by AT&T in its Complaint." *Id.* at 1. This is simply wrong. Docket No. I-00040105 was opened to consider

whether there should be further intrastate access charge reductions and intraLATA toll rate reductions in the service territories of rural incumbent local exchange carriers (rural ILECs) and all rate issues and rate changes that should or would result in the event that disbursements from the Pennsylvania Universal Service Fund (Fund) are reduced ... [and to] assist the Commission in determining what regulatory changes are necessary to 52 Pa. Code §§ 63.161-63.171 given the complex issues involved as well as the recent legislative developments.

Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund, Docket No. I-00040105, Order at 2 (December 20, 2004)(footnotes omitted). As is clear from the quoted text, the issues involved in Docket No. I-00040105 are considerably broader than those to be addressed in the instant docket.

Even if the parties cannot agree on whether the two dockets involve like issues, no party can dispute that Docket No. I-00040105 is not active at this point in time. This is so because the PTA members have pursued a delay strategy by filing Motions

requesting the Commission to stay Docket No. I-00040105 each time the previous stay imposed by the Commission is due to expire. The result is that the Commission's investigation in Docket No. I-00040105 has been stayed nearly continuously since its inception. Despite the recent expiration, on April 24, 2008, of the last one-year stay ordered by the Commission, the Commission has yet to determine whether to restart the much needed investigation of inflated intrastate switched access rates or grant the PTA's latest Motion requesting yet another one-year stay. Until and unless the Commission reinitiates its investigation in Docket No. I-00040105, the PTA's allegation that AT&T's exercise of its statutory rights to contest unjust, unreasonable and discriminatory rates via formal complaint is a "collateral attack" on the Commission's investigation docket is baseless.

For an estoppel argument, (whether *res judicata*, issue preclusion, collateral estoppel or otherwise) to be supported as alleged by PTA, there must have been final decision from the Commission. *See In re Estate of R.L.L.*, 487 Pa. 233, 228 n7, 409 A.2d 321, 323 n.7 (1979)(explaining that *res judicata*, or claim preclusion, applies only to matters actually decided). Describing the application of the doctrine of collateral estoppel in Pennsylvania, the Superior Court described the following test:

In Pennsylvania, issue preclusion is appropriately invoked when four conditions are met: First, the issue determined in the prior action is identical to that presented in the subsequent action; second, the previous judgment is final on the merits; third, the party against whom the defense is invoked was a party or in privity with a party in the first action; and fourth, the party against whom estoppel is asserted had a full and fair opportunity to litigate the issue on its merits in the prior action.

Rue v. K-Mart, 456 Pa. Super. 641, 646; 691 A.2d 498, 500 (Pa. Super. 1997).

It cannot be disputed that the second and fourth conditions in the above stated test have not been met. The second condition is not satisfied as there has not been any decision at all in Docket No. I-00040105, other than to stay the matter year after year. This is not, of course, a decision on the merits. Neither is the fourth condition satisfied as no party has had an opportunity to litigate any issue on the merits in Docket No. I-00040105 since no activity has occurred in that docket. Additionally, and as pointed out by ALJ Melillo in her Order Denying Preliminary Objections and Motion for Consolidation or Stay, the Commission has previously ruled that a pending generic investigation does not provide grounds to deny a formal complaint. AT&T Communications of PA, Inc. v. Verizon North Inc., Docket No. 20027195, Opinion and Order (entered December 24, 2002).

Accordingly, PTA's claim that AT&T's complaint is an impermissible collateral attack is grossly inaccurate. Until and unless there has been a final decision by the PUC on the issues identified in AT&T's formal complaints, AT&T is free to bring a formal complaint to exercise its statutory rights.

ii. AT&T stated a cause of action and pled sufficient facts to support its allegations.

PTA's inaccurate claim that AT&T's Complaint failed to state a cause of action is mere sophistry. AT&T's Complaint at a minimum stated the following facts³: (1) RLECs intrastate rates exceed their interstate rates by as much as 800%; (2) there is no justification for different charges for these identical services; (3) these price differentials lead to arbitrage, waste and abuse; (4) wireline long distance service is disproportionately saddled with the burden of paying switched access since such fees do not apply equally,

³ A more full recitation of facts is contained both in AT&T's complaints and on pages 10-12 of AT&T's Answer

or at all, to many competing services; (5) wireless carriers pay less than a penny/minute for calls for which wireline long distance carriers are charged \$0.08/minute or more; (6) the market is distorted by the disproportionate share of subsidy payments that wireline long distance carriers pay; (7) AT&T's wireline long distance service has lost customers and millions of minutes of traffic as its costs are inflated by the requirement it pay access charges; (8) wireline long distance carriers have been and are being injured through customer defections; and 9) implicit subsidies are discriminatory and anticompetitive.

To summarize, AT&T pled facts that show that RLEC access rates are inflated without justification, anticompetitive, discriminatory, and that disproportionate extraction of these rates from wireline long distance carriers, like AT&T, has resulted in customer losses, revenue losses, and a decline in usage unrelated to any qualitative drop or difference in the service offered. Not only are these facts sufficient to state a claim, but they paint an appropriately bleak picture of the telecommunications market in Pennsylvania and the need for regulatory reform of Pennsylvania's outdated access regime.

A preliminary objection seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988). It is well settled law that in reviewing preliminary objections, all facts and inferences will be construed in the light most favorable to the non-moving party. *See Weber v. PPL Elec. Util. Corp.*, Docket No. C-2008-2052894, Order at p. 4 (entered March 23, 2009). If the facts so construed establish a cause of action, then the preliminary objections must fail. *Id.* Thus, the Commission must accept as true that rates that are – without justification – as much as 800% higher than rates for

like services that differ only in jurisdiction; and this alone is sufficient grounds to support a claim for unjust, unreasonable and discriminatory rates. The Commission must accept as true that rates for like services that are applied disproportionately to one class of carriers are unjust, unreasonable and discriminatory in their application, and that they distort competition in the market. This, too, is sufficient grounds to support AT&T's claims. The Commission must accept as true that the loss of million of minutes of traffic and large numbers of customers is attributable to the inflated access rates disproportionately charged to wireline long distance carriers; and the Commission must conclude that this thwarts rate competition by those carriers, and that this is unjust, unreasonable, discriminatory, and contrary to the statutory policies designed to level the competitive playing field and foster the proliferation of competition. This is also sufficient grounds to support AT&T's claims. There are other reasonable inferences that must be drawn from the facts pled by AT&T, each of which supports the conclusion that the Preliminary Objections were properly and appropriately denied.

In addition to its above-refuted arguments, in its Preliminary Objections, the PTA attempted to argue that rates contained in PTA members' Chapter 30 Plans are beyond challenge, save for allegations of non-compliance. This argument, too, is unfounded. The express language of Chapter 30, 66 Pa. C.S. § 3011 *et seq.*, indicates that nothing within Chapter 30 limits or otherwise constrains the statutory requirement that rates be just and reasonable. 66 Pa. C.S. §§ 3015(g) and 3019(h). Both the cited sections of Chapter 30 make abundantly clear that the prohibition against unjust and unreasonable rates and the Commission's duty to prevent such rates from being charged, both contained in 66 Pa. C.S. § 1301, are unaffected by any provisions of Chapter 30.

It should also be noted that the language relied upon by the PTA to allege that its member's rates are beyond challenge, so long as they arise from an approved Chapter 30 Plan, is misinterpreted by the PTA. The language the PTA cites reads specifically as follows:

The *annual rate change limitations* set forth in a local exchange telecommunications company's effective commission-approved alternative form of regulation plan or any other commission-approved annual rate change limitation shall remain applicable and deemed just and reasonable under section 1301.

66 Pa. C.S. § 3015(g)(emphasis added). As should be clear from the quoted passage, the statute indicates only that a portion of a commission approved Chapter 30 plan shall be deemed reasonable: the *annual rate change limitation*.

There is no mention in the statute of whether the actual rate is deemed reasonable, nor should there be. Chapter 30 nowhere indicates any particular rate that shall be deemed reasonable. To the contrary, Chapter 30 enumerates a number of proscriptions regarding rates for protected services such as switched access services (*see e.g.* 66 Pa. C.S. §§ 3011(3), (4) and (5)), and restates the Commission's obligation to ensure rates are just and reasonable. Chapter 30, however, does extensively delineate the manner in which RLECs will be allowed to change their rates and the inflation offsets applicable thereto. 66 Pa. C.S. §§3015(a) and (b). Thus, while the intent of Chapter 30 is clearly for the Commission to retain its rate-making authority and its obligation to ensure just and reasonable rates, it is equally clear that there is an intent for a portion of a plan, the *annual rate change* limitation, that uses a formula derived directly from the statute not to be challenged. Be that as it may, AT&T nowhere challenges the *rate change limitations* in the PTA members' Chapter 30 plans. Rather, AT&T challenges the PTA members'

switched access rates. PTA ignores this distinction entirely, but this distinction is controlling and leads inevitably to the conclusion that the PTA argument was properly denied. Therefore, ALJ Melillo did not err in denying the PTA's Preliminary Objections.

b. Material Question Two: Should the Commission grant the Motion for Stay or Consolidation filed by Petitioners seeking to stay or consolidate AT&T's complaint with the pending PUC investigation on the following bases: (1) The subject of AT&T's complaints is already the subject of a pending PUC investigation into the Petitioners' intrastate access rates at Docket I-00040105; and (2) The PUC has previously consolidated an identical complaint by AT&T against Verizon at Docket No. C-20027195 (AT&T/VZ Access Complaint), which remains consolidated, pending and stayed?

i. The issues raised are not the subject of any other investigation or proceeding before the PUC.

Sprint is opposed to any stay of AT&T's Complaint. Intrastate access charges in Pennsylvania are unreasonably high. The Commission has acknowledged this in past decisions and it remains true today. Carriers, including Sprint, have repeatedly asked the Commission for redress in various dockets, but to date no relief has been granted. Sprint applauds AT&T for taking the additional step of seeking redress via complaint, and, as evidenced by its intervention in the matter at bar, Sprint intends to join AT&T in pursuing a reduction of RLEC switched access rates to just and reasonable levels in this docket. While the Commission has considerable discretion in setting rates, its role in adjudicating complaints requesting relief from unjust and unreasonable rates is far more finite. Sprint is suffering a present injury as a result of the unreasonably inflated access rates charged by RLECs in Pennsylvania, and Sprint joins AT&T in seeking to put an end to this injury as soon as possible. As Pennsylvania law dictates a nine-month window for

a decision, and makes retroactive any relief granted after the nine-month period, the matter before the Commission will be complicated by any stay rather than simplified.⁴

Like AT&T, Sprint does not necessarily oppose a consolidation of this Complaint with the Commission's existing investigation of RLEC intrastate switched access rates. Such a consolidation, however, should only be implemented if the Commission is intent on immediately resuming its investigation, resolving the issues raised by AT&T in its complaint, and doing so promptly. To date, the Commission's investigation has been stayed multiple times, has not resulted in the development of any record, and has not served as a vehicle to fulfill the reform objectives of the Commission and the legislature. Unless the Commission is ready to immediately resume its investigation into RLEC intrastate switched access rates and promptly reach a conclusion that will address those issues raised in AT&T's complaint, Sprint is opposed to consolidation as it would have the same affect as granting the PTA request for a stay – which Sprint opposes.

ii. The Commission's decision to consolidate an earlier, unrelated complaint is irrelevant to the disposition of AT&T's Formal Complaint.

The PTA points to the Commission's decision to consolidate an earlier formal complaint filed by AT&T on March 20, 2002 against Verizon North and Verizon Pennsylvania in an effort to support PTAs contention that consolidation and stay of AT&T's Formal Complaint is appropriate. The PTA characterizes the 2002 formal complaint as "an identical complaint." The PTAs reliance on and characterization of this earlier matter is unfounded and ill-advised.

The earlier complaint was filed shortly after the Commission released both its *Global Order* and its *Bell/GTE Merger Order*, both released in 1999. See *Joint Petition*

⁴ This point is discussed in greater detail in response to the Third Material Question.

of Nextlink Pennsylvania, Inc. et al, Docket Nos. P-00991648 and P-00991649, (September 30, 1999) (“*Global Order*”); and *Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger*, Docket No. A-310200F002 (November 4, 1999) (“*Bell/GTE Merger Order*”). In tandem, these two orders contained numerous access reduction provisions, not the least of which was the incorporation of provision of a Memorandum of Understanding reached between the merger applicants and the Attorney General. Among the incorporated provisions of the MOU adopted by the Commission in the *Bell/GTE Merger Order* was a requirement that the merger applicants (Verizon PA and Verizon North) would achieve access rate parity within a time certain following approval of the merger. AT&T, in its 2002 formal complaint, contested both the overall level of the two Verizon entities’ access rates and the fact the rates had not been brought into parity as required by the *Bell/GTE Merger Order*.

As is clear when put in context, AT&T’s earlier complaint was directly related to then-recent Commission Orders implementing access charge reforms and ordering Bell/GTE to achieve access rate parity. The Commission’s decision to consolidate all Verizon access reform issues into the AT&T formal complaint docket may have made sense years ago, but a similar decision in the matter at bar would be senseless unless the Commission intends to actively and promptly pursue access reform in a consolidated docket. The Commission must note that the string of decisions that followed AT&T’s formal complaint initiating Docket No. C-20027195 includes the Commission’s July 28, 2004 Opinion and Order in that Docket in which the Commission granted substantial access relief as requested by AT&T.

The PTA members clearly intend that all inquiry into their access rates be indefinitely stayed, as has been the course of conduct in Docket No. I-00040105, but that was not the approach the Commission took when it consolidated AT&T's earlier complaint against Verizon and Verizon North. The Commission did consolidate the earlier matter, but it did so while still actively pursuing access reform – as evidenced by the access relief granted in July 28, 2004. Sprint contends that the Commission's earlier decision in favor of consolidation, if it applies at all, dictates that a consolidated proceeding would be actively pursued to finality by the Commission. The PTA's contention to the contrary must be rejected.

- c. Material Questions Three: Does the provision of Section 1309(b), 66 Pa.C.S. § 1309(b), mandating a decision within nine months of filing of the complaint or retroactive relief under certain circumstances, apply to AT&T's complaints against Petitioners' intrastate access rates?**

The PTA members illogically argue that because AT&T did not specifically enumerate certain obligations statutorily imposed on the Commission those obligations do not apply. This is inaccurate. Pursuant to Pennsylvania law, when the Commission, upon complaint finds that the rates of a public utility, such as the PTA members, are unjust, unreasonable or otherwise contrary to law, the Commission must issue an order setting just and reasonable rates. 66 Pa. C.S. § 1309(a). The Commission's order setting such rates shall be issued within nine (9) months of the filing of the complaint. 66 Pa. C.S. § 1309(b). If the Commission's order granting relief is issued more than nine (9) months after the date the complaint is filed, then the relief granted by the Commission shall be retroactive to the date of the expiration of the aforementioned nine (9) month period. 66 Pa. C.S. § 1309(b).

In the matter at bar, AT&T has filed a complaint that alleges that the PTA members' intrastate switched access rates are unjust and unreasonable, and requests that the Commission order the PTA members' intrastate switched access rates to be lowered to match the level of their interstate rates. Thus, the Commission is compelled to either issue a decision on AT&T's complaint within nine (9) months of the day the complaint was filed, or to make such relief as may be granted retroactive to that date nine (9) months after the complaint was filed in the event certain statutorily prescribed thresholds are established.

The PTA is apparently confused regarding the operation of the statute. First, the issue of whether the retroactivity provision applies is dependant upon certain questions of fact that must be determined through the development of an evidentiary record. This is so because Section 1309(b) identifies certain threshold levels of revenue and customer impact that must be realized before the retroactivity provisions can be deemed applicable. Without the development of an evidentiary record, it is not presently possible to determine whether any relief granted will be retroactive. Thus, PTA is essentially asking the Commission to answer a factual question in advance of the development of a factual record in the proceeding. This is, of course, absurd.

Second, the nine-month timeline delineated in Section 1309(b) is binding on the Commission in any instance in which it receives a complaint alleging that the rates of a public utility are unjust, unreasonable or otherwise contrary to law. AT&T's Complaint alleges that the PTA members' rates are unjust, unreasonable and contrary to law. Accordingly, the Commission is now compelled to either issue a decision within nine-month from the date AT&T's Complaint was filed, or to make any relief granted

retroactive to that date. It must also be noted that several months expired between the time AT&T filed its complaints and the date the matter was assigned to ALJ Melillo. To the extent that the PTA complains of a compressed litigation schedule, AT&T was not at all responsible for any time lost.

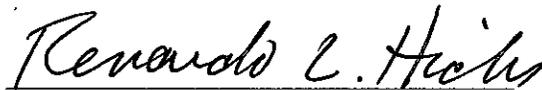
Finally, neither Sprint nor AT&T objected to a procedural schedule that exceeded the nine-month timeline. To the contrary, both Sprint and AT&T stressed that they would prefer a timeline that gave them ample time to develop the factual record and properly litigate this case. Sprint and AT&T are the parties with the burden of proof in this proceeding, and they are the parties who may be most prejudiced by the extremely compressed litigation schedule. The shortened schedule may provide inadequate time for them to build an evidentiary record and develop testimony based on that record. The compressed schedule's impact on AT&T and Sprint's ability to present their case also raises due process concerns. It must be noted that Sprint and AT&T were only provided nine (9) days from the prehearing conference to draft and submit their written Direct Testimony. Furthermore, due to the compressed schedule, both Sprint and AT&T were forced to submit their Direct Testimony before any discovery was conducted in the case, which severely hampered their ability to compile information for inclusion in the Testimony. If any parties are prejudiced by the compressed procedural schedule imposed on the parties, it is AT&T and the AT&T intervenors, including Sprint, but that is perhaps an issue for another time.

III. Conclusion

The PTA has presented no issues that require resolution by the Commission at this time. ALJ Melillo properly ruled on the issues addressed in her June 22, 2009 Order.

A stay of this matter is inappropriate as a matter of policy and would be needlessly complicated by the need to later apply any relief granted retroactively. Consolidation of this matter is not opposed by Sprint so long as the consolidated case is brought to resolution within the statutorily prescribed timeline. Section 1309(b) does require a ruling by the Commission within the timeline prescribed in the statute. The issue of retroactivity of relief is simply not ripe for resolution as there is no factual record upon which to conclude whether that section applies.

Respectfully Submitted,



FOR: Sprint Communications Company, L.P.,
Sprint Spectrum, L.P., Nextel Communications
of the Mid-Atlantic, Inc., and NPCR, Inc.

Renardo L. Hicks, Esquire
PA ID No. 40404
Michael Gruin, Esquire
PA ID No. 78625
Stevens & Lee
17 North Second Street, 16th Floor
Harrisburg, PA 17101

Benjamin J. Aron, Esq.
Sprint Nextel Corporation
2001 Edmund Halley Drive, A208
Reston, Virginia 20191
(703) 592-7618 Office
(703) 592-7407 Fax
benjamin.aron@sprint.com

Dated: July 6, 2009

CERTIFICATION OF SERVICE

I hereby certify that on the 6th day of July, 2009, I have served a copy of the foregoing Brief upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 and 1.55, via electronic mail and first class U.S. Mail.

Norman Kennard, Esquire
Thomas, Long, Niesen & Kennard
212 Locust Street, Suite 500
Harrisburg, PA 17108

Joel Cheskis, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923

Suzan D. Paiva, Esquire
Verizon Pennsylvania, Inc.
1717 Arch Street
Philadelphia PA 19103

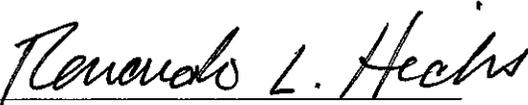
Zsuzanna Benedek, Esquire
Embarq Corporation
240 North Third Street, Suite 201
Harrisburg, PA 17101

Benjamin J. Aron, Esquire
Sprint Communications Co.
2001 Edmund Halley Dr., 2nd Floor
Reston, VA 20191

John F. Povilaitis, Esquire
Matthew A. Totino, Esquire
Ryan, Russell, Ogden & Seltzer
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025

Michelle Painter, Esquire
Painter Law Firm, PLLC
13017 Dunhill Drive
Fairfax, VA 22030
(703) 201-8378

Allison C. Kaster, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120


Renardo L. Hicks, Esq.