

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
800-684-6560 (in PA only)

FAX (717) 783-7152  
consumer@paoca.org

IRWINA. POPOWSKY  
Consumer Advocate

August 17, 2009

James J. McNulty, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
P.O. Box 3265  
Harrisburg, PA 17120

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

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

Dear Secretary McNulty:

Enclosed for filing please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Joel H. Cheskis".

Joel H. Cheskis  
Assistant Consumer Advocate  
PA Attorney I.D. #81617

Enclosure

cc: Parties of Record  
Hon. Kandace F. Melillo

\*111660

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

---

**PREHEARING MEMORANDUM  
OF THE  
OFFICE OF CONSUMER ADVOCATE**

---

Pursuant to Section 333 of the Public Utility Code, 66 Pa.C.S. §333, and the Prehearing Order of Administrative Law Judge Kandace F. Melillo dated August 11, 2009, the Pennsylvania Office of Consumer Advocate ("OCA") hereby submits this Prehearing Memorandum:

**I. INTRODUCTION**

This proceeding was originally instituted by an Order entered on December 20, 2004 by the Pennsylvania Public Utility Commission ("Commission") at Docket No. I-00040105. In that investigation the Commission was seeking to determine whether there should be further intrastate access charge reductions and intraLATA toll rate reductions in the service territories of rural incumbent local exchange carriers ("RLECs"). Access charges are the rates charged by local telephone companies to long-distance telephone companies seeking access to the local

telephone network in order to provide services to the end-user. The Commission sought an investigation into all rate issues and rate changes that should or would result in the event that disbursements from the Pennsylvania Universal Service Fund ("Pa USF") are changed. In that Order, the Commission recognized its responsibility for assuring the maintenance of universal telecommunications services at affordable rates in Pennsylvania as well as the evolving nature of this responsibility. The Commission noted that the Pa USF helps to maintain the affordability of local service provided by a majority of the telephone companies in the Commonwealth.

Since the December 20<sup>th</sup> Order, the investigation has been stayed by subsequent orders of the Commission. By Order entered April 24, 2008, however, the Commission reopened the matter for the express and limited purpose of addressing selected issues pertaining to, among other things, rural rate affordability and the Pa USF. That proceeding was recently adjudicated before Administrative Law Judge Susan Colwell and is currently in the Exceptions phase. The Commission otherwise granted a request to further stay the other portions of the investigation as part of its April 24<sup>th</sup> Order.

On March 19, 2009, AT&T Communications of Pennsylvania, LLC ("AT&T") and its affiliates each filed a complaint against each of the Pennsylvania RLECs for a total of ninety-six (96) complaints. Those 96 complaints requested further intrastate access charge reductions and were consolidated into one proceeding at Docket No. C-2009-2098380, *et al.* The OCA filed a Notice of Intervention in that proceeding on April 24, 2009. By Commission Order entered July 29, 2009, the Commission then consolidated those 96 AT&T complaints with the stayed portion of the rural access investigation and, in a separate order entered August 5, 2009, restarted the investigation by denying a pending request for a further stay.

As a result, the Commission established an Initial Prehearing Conference regarding the consolidated cases for August 19, 2009. ALJ Melillo issued her Prehearing Conference Order on August 11, 2009 requesting that Prehearing Memoranda be filed on August 17, 2009. The OCA files this Prehearing Memoranda in response to ALJ Melillo's Order.

## II. ISSUES

In its original December 20<sup>th</sup> Order, the Commission articulated the following issues be addressed in the investigation:

- (a) Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs' territories.
- (b) What rates are influenced by contributions to and/or disbursements from the Fund?
- (c) Should disbursements from the Fund be reduced and/or eliminated as a matter of policy and/or law?
- (d) Assuming the Fund expires on or about December 31, 2006, what action should the Commission take to advance the policies of this Commonwealth?
- (e) If the Fund continues beyond December 31, 2006, should wireless carriers be included in the definition of contributors to the Fund? If included, how will the Commission know which wireless carriers to assess? Will the Commission need to require wireless carriers to register with the Commission? What would a wireless carrier's contribution be based on? Do wireless companies split their revenue bases by intrastate, and if not, will this be a problem?
- (f) What regulatory changes are necessary to 52 Pa. Code §§ 63.161-63.171 given the complex issues involved as well as recent legislative developments?

December 20<sup>th</sup> Order at 5-6. Additionally, AT&T raised a number of issues in its Complaints, including whether the RLECs' intrastate access rates are unjust and unreasonable in violation of

66 Pa. C.S. § 1301. AT&T Complaint at 6. AT&T further averred in its Complaints that the RLEC's intrastate access rates violate:

- Section 3011(3) (“ensures that customers pay only reasonable charges for protected services which shall be available on a non-discriminatory basis”);
- Section 3011(5) (“provide diversity in the supply of existing and future telecommunications services and products in telecommunications markets throughout this Commonwealth by ensuring that rates, terms and conditions for protected services are reasonable and do not impede the development of competition”); and
- Section 3011(9) (“encourage the competitive supply of any service in any region where there is market demand”).

Id. at 7. Finally, in its August 5<sup>th</sup> Order restarting this investigation, the Commission determined:

That the participating parties shall address and provide record evidence on the legal, ratemaking and regulatory accounting linkages between: a) any Federal Communications Commission's ruling in its *Unified Intercarrier Compensation* proceeding; b) the intrastate access charge reform for rural ILECs in view of the new Chapter 30 law and its relevant provisions at 66 Pa. C.S. §§ 3015 and 3017; c) the Pennsylvania Universal Service Fund; and d) the potential effects on rates for the basic local exchange services of the rural ILECs to the extent this is consistent with the Commission's determinations in the limited investigation.

August 5<sup>th</sup> Order at 21-22.

The OCA intends to participate fully in this investigation and will address these specific issues articulated above. The OCA may raise additional issues depending on the results of its investigation, including answers to discovery, if necessary, and will respond to any additional issues raised by other parties. If additional issues are raised as a result of this investigation, the OCA will raise them in testimony.

### III. PROPOSED SCHEDULE

The OCA is working with the parties to develop a schedule that will satisfy the Commission's requirement that will allow for the completion of the evidentiary record and briefing no later than June 3, 2010, as required by ALJ Melillo. The OCA proposes the following schedule:

<b>Task</b>	<b>Due Date</b>
All Party Direct	November 30, 2010
All Party Rebuttal	January 26, 2010
All Party Surrebuttal	February 26, 2010
Hearings	March 16-20, 2010
Main Brief	May 3, 2010
Reply Brief	June 3, 2010

### IV. WITNESSES

The OCA intends to present the direct, rebuttal, and surrebuttal testimony, as may be necessary, of the following witness in this proceeding:

Dr. Robert Loube  
Rolka Loube Saltzer Associates  
10601 Cavalier Drive  
Silver Spring, Maryland 20901  
Telephone Number: 301-681-0338  
E-mail Address: [bobloube@earthlink.net](mailto:bobloube@earthlink.net)

Dr. Loube may present testimony in written form and may also attach various exhibits, documents, and explanatory information that will assist in the presentation of the OCA's case on the issues listed above. Dr. Loube will address the issues articulated above as well as any other issues that may arise throughout this proceeding. In order to expedite the resolution of this proceeding, the OCA requests that copies of all interrogatories, testimony, and answers to interrogatories be served directly upon Dr. Loube, as well as serving a copy to counsel for the OCA. In order to expedite the resolution of this proceeding, the OCA also requests that

discovery questions and responses should also be sent by e-mail to the e-mail address listed above as well as the OCA counsel e-mail listed below.

The OCA specifically reserves the right to call additional witnesses, as necessary. As soon as the OCA has determined whether an additional witness or witnesses will be necessary for any portion of its case, Your Honor and all parties of record will be notified.

## **V. DISCOVERY**

The OCA proposes that the Commission's regular discovery rules found at 52 Pa Code Section 5.321, *et seq.*, be applied to this matter. Given the amount of time provided by the Commission to litigate this matter, the OCA does not believe any changes to the discovery rules are required. The OCA notes, however, that there is an outstanding Motion to Compel still pending as a result of objections raised by Sprint Nextel in the matter involving the AT&T complaints that is consolidated herein. Sprint Nextel has already filed its Answer to the OCA Motion. The OCA proposes that the ALJ allow the OCA and Sprint Nextel to further discuss this matter before resolving the dispute.

## **VI. SERVICE ON THE OCA**

The OCA will be represented in this case by Assistant Consumer Advocate Joel H. Cheskis. The OCA requests that two copies of all documents be served on the OCA as follows:

Joel H. Cheskis, Esquire  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, Forum Place, 5th Floor  
Harrisburg, PA 17101-1923  
Telephone: (717) 783-5048  
Telecopier: (717) 783-7152  
E-mail: [jcheskis@paoca.org](mailto:jcheskis@paoca.org)

**VII. SETTLEMENT**

The OCA is amenable to settlement discussions and will participate in whatever settlement discussions are scheduled.

Respectfully submitted,



---

Joel H. Cheskis, Esquire  
PA Attorney I.D. No. 81617  
Assistant Consumer Advocate

For: Irwin A. Popowsky  
Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048

Dated: August 17, 2009  
116575

CERTIFICATE OF SERVICE

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

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Prehearing Memorandum, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 17th day of August, 2009.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Allison Kaster  
Office of Trial Staff  
Pa. Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
Harrisburg, PA 17120

SERVICE BY E-MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

Norman J. Kennard  
Regina Matz, Esq.  
Thomas, Long, Niesen & Kennard  
212 Locust Street, Suite 500  
Harrisburg, PA 17101

Suzan D. Paiva  
Verizon  
1717 Arch Street, 17W  
Philadelphia, PA 19103

Benjamin J. Aron  
Sprint Communications Co.  
2001 Edmund Halley Dr., 2<sup>nd</sup> Fl.  
Reston, VA 20191

Zsuzanna Benedek, Esq.  
Embarq Corp.  
240 North Third St., Suite 201  
Harrisburg, PA 17101

Michelle Painter, Esq.  
Painter Law Firm, OLLC  
13017 Dunhill Drive  
Fairfax, VA 22030

Renardo L. Hicks, Esq.  
Michael Gruin, Esq.  
Stevens & Lee  
17 North Second St., 16<sup>th</sup> Floor  
Harrisburg, PA 17101

Pamela C. Polacek, Esq.  
Shelby A. Linton-Keddie, Esq.  
McNees Wallace & Nurick  
P.O. Box 1166  
100 Pine Street  
Harrisburg, PA 17108-1166

  
Joel H. Cheskis  
PA Attorney I.D. # 81617  
[jcheskis@paoca.org](mailto:jcheskis@paoca.org)  
Assistant Consumer Advocates

Counsel for  
Office of Consumer Advocate  
555 Walnut Street 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152  
\*111661

Steven C. Gray, Esq.  
Office of Small Business Advocate  
300 North Second Street  
Suite 1102 Commerce Bldg.  
Harrisburg, PA 17101

Bradford M. Stern, Esq.  
Rothfelder Stern LLC  
625 Central Avenue  
Westfield, NJ 07090

Christopher M. Arfaa, Esq.  
150 N Radnor Chester Rd., Suite F-200  
Radnor, PA 19087-5245

Thomas W. Snyder, Esq.  
1801 California Street, Suite 4900  
Denver, CO 80202

Deposit Telephone Co.  
57 Old Freight Yard  
Northfield, CT 05663

Hancock Telephone Co.  
34 Read Street  
P.O. Box 608  
Hancock, NY 13783

West Side Telephone Co.  
1449 Fairmont Rd.  
Morgantown, WV 26501