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August 17, 2009

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

Re: *AT&T Communications of Pennsylvania, LLC et al v.*
Armstrong Telephone Company – Pennsylvania, et al
Docket Nos. C-2009 – 2098380 et al
and
Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of
Rural Carriers, and the Pennsylvania Universal Service Fund
Docket No. I-00040105

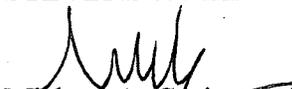
Dear Secretary McNulty:

Enclosed please find the Prehearing Conference Memorandum of Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively "Sprint") which was electronically filed today. Copies have been served in accordance with the attached certificate of service.

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

Sincerely,

STEVENS & LEE



Michael A. Grain

Enclosure

cc: Certificate of Service
ALJ Melillo

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

A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

AT&T Communications of	:	
Pennsylvania, LLC	:	
Complainant	:	
	:	Docket No. I-00040105
v.	:	Docket No. C-2009-2098380, <i>et al.</i>
	:	
Armstrong Telephone Company -	:	
Pennsylvania, et al. ¹	:	
Respondents	:	
	:	
and	:	
	:	
Investigation Regarding Intrastate Access	:	
Charges and IntraLATA Toll Rates of Rural	:	
Carriers, and the Pennsylvania Universal	:	
Service Fund	:	

**PREHEARING CONFERENCE MEMORANDUM OF
SPRINT**

Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively “Sprint”), by and through the undersigned counsel, hereby files its Prehearing Conference Memorandum pursuant to 52 Pa. Code § 5.222(d) and the Prehearing Conference Order issued on August 11, 2009 in the above captioned dockets.

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. **History of Proceeding.**

The history of Rural Local Exchange Carrier (“RLEC”) access reform in Pennsylvania is both long and complex. A recitation of the history of access reform is available in any number of Orders issued by the Pennsylvania Public Utility Commission (“Commission”) in Docket No. I-00040105. For instance, the Commission’s Order entered on August 5, 2009 in Docket No. I-00040105 (“August 5th Order”) contains a five-page summary under the heading “Procedural History.” Accordingly, Sprint directs Administrative Law Judge Melillo’s (“ALJ Melillo”) attention to the Commission’s August 5 Order, and other Orders in Docket No. I-00040105, which orders thoroughly address the background and history of access reform in Pennsylvania.

The August 5th Order also identifies the 96 complaints that AT&T Communications of Pennsylvania, LLC, TCG New Jersey, Inc. and TCG Pennsylvania, Inc. (collectively “AT&T”) filed in Docket No. C-2009-2098735, *et al* on March 19, 2009. In its Complaints, AT&T alleged that each RLEC’s intrastate access charges violate sections 1301 and 3011 of the Public Utility Code, 66 Pa.C.S. §§ 1301 and 3011. In its unopposed intervention, Sprint added the claim that the RLECs rates are discriminatory in violation of Section 1304. 66 Pa. C.S. § 1304. AT&T sought to have each RLEC’s intrastate access rates adjusted to levels which mirror its interstate access rates. By order entered July 29, 2009, the Commission consolidated AT&T’s complaints with the Commission’s RLEC Access Investigation docket, Docket No. I-00040105.

II. **Issues to be Presented.**

The issues in this investigation were identified in the August 5th Order as follows:

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 3107; 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 5th Order at 21-22. The Commission also indicated that “the issues already adjudicated before Administrative Law Judge Susan Colwell (“ALJ Colwell”) during the limited reopening of the *Intrastate Access Charge Investigation* at Docket No. I-00040105 shall not be relitigated absent extraordinary circumstances.” August 5th Order at 21 (emphasis added). In light of this preclusive instruction, it is important to recognize the issues that were litigated by ALJ Colwell. Those issues may be summarized as follows (page references to discussion within the Recommended Decision are provided below, and the Recommendation section, pages 66 – 90, touches on all these issues in a broader context):

1. Whether existing rate caps should be raised (page 22);
2. Whether Pennsylvania Universal Service Fund (“PA USF”) funding should be increased (page 38);
3. Whether a needs-based-test for PA USF funding is appropriate (page 48);
4. Whether the Commission has jurisdiction to perform a just and reasonable rate analysis for RLEC rates exceeding appropriate benchmark (page 35);
5. Determination of appropriate benchmark for RLEC basic local rates (page 30);
6. Whether PA USF support available to off-set RLEC rates that pierce the rate cap via regular annual Chapter 30 revenue increases & whether PA USF regulations should be revised to accommodate this (pages 38 & 54);
7. Whether PA USF support for RLEC piercing rate cap has anti-competitive or other adverse affects (page 47); and
8. There is also a list of six factors specific to the needs-based-test that are enumerated for consideration. They are (page 47):
 - a. Chapter 30 price stability mechanism revenue increases;
 - b. Annual federal USF and PA USF an RLEC receives;
 - c. Average schedule companies do not jurisdictionalize certain revenues, expenses and asset parameters;
 - d. Relevance that RLECs assets and facilities may be used both for regulated intrastate telecommunications services and non-jurisdictional (including unregulated) services;
 - e. Whether PA USF support should be conditional on overall financial health of RLECs that continue to receive both PA and federal USF funds; and
 - f. Whether rate increases should offset PA USF distributions.

Recommended Decision, *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, at 2-3 (released July 22, 2009). This “laundry list” of issues is daunting, and while illuminating, it does not provide an obvious answer to the question of what issues are to be addressed in the instant investigation, and which are excluded by the Commission’s admonition not to re-litigate issues considered by ALJ Colwell.

Sprint suggests it is unavoidably clear that ALJ Colwell considered the level of the cap for basic local service rates, the form of the PA USF, the funding level for the PA USF, and for whom PA USF funding should be available. ALJ Colwell also unmistakably concluded that the Commission must address PA USF reforms via a rulemaking, not in the context of an investigation.

The PA USF is a fund which exists because the ratepayers of other telecommunications providers have paid the money, unwittingly, as a hidden tax. It is not “free money” to be plundered at will and without concern for its origins or for whether it is the best use of the money. All parties agree that the concept of universal service is a worthy one. This fund should be reconstructed to provide assistance to those customers who need it, and for those companies who can meet a stringent test for determining that they serve an area whose costs are so high that the company itself deserves extra help for that area alone.

...

The form of the PA USF is a matter of public policy and properly left to the Commission ... Therefore, the Commission is free to design its PA USF in a form which suits the needs of the Commonwealth.

... Reconfiguration of the Fund to provide assistance to low-income customers, as well as assistance to those rural ILECs who can show that their specific circumstances in a particular area merit it, would be an approach which targets the problems.

...

To this end, the Commission should open a rulemaking which proposes changes to its universal service regulations to reflect the Commission’s policy regarding

universal service in Pennsylvania. Pending the outcome of the rulemaking, the RLECs should neither be held to an \$18.00 rate cap nor should they be permitted to take funding from the PA USF in order to obtain the revenues which would represent the difference between the \$18.00 and their Chapter 30 plan entitlements. Rather, they should be permitted to raise rates consistent with their Chapter 30 plans, with the Commission performing a just and reasonable analysis where the raise is not consistent.

Recommended Decision at 87 – 90.

Taking the foregoing into account, Sprint believes the issues to be addressed in the instant docket are as follows:

- a) The FCC's *Unified Intercarrier Compensation* Docket. The Commission desires that the parties address developments in the FCC's *Unified Intercarrier Compensation* Docket. This is no more than an extension of the Commission's continuing desire, expressed in ordering paragraph 6, to be kept abreast of all developments in the FCC's *Unified Intercarrier Compensation* Docket. To the extent that developments in the federal docket may impact relief granted in the instant docket, the Commission's motivation in this regard is prudent. Additionally, the Commission likely desires to be informed to what extent the relief suggested in the instant docket is consistent with relief suggested in the FCC's latest orders in the *Unified Intercarrier Compensation* Docket.
- b) 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. The Commission intends to continue on the course of intrastate access reform and desires for the recommendation from ALJ Melillo to conform her decision to the statutory requirement that access reductions be revenue neutral. To the extent the RLEC parties to this matter are all subject to regulation under Section 3015, the Commission also

clearly desires for this docket to result in access reductions that are not only revenue neutral, but that are consistent with the statutory requirements found in Section 3015. Accordingly, ALJ Melillo must decide the appropriate rate of intrastate switched access, announce a revenue neutral manner in which to achieve the appropriate level of intrastate switched access, and address changes to RLECs alternative form of regulation plans necessary to effectuate ALJ Melillo's proposed remedy.

- c) PA USF. It is clear from the above discussion that to the extent the Commission intends to proceed with revisions to the PA USF ALJ, Colwell has provided the Commission with a full and complete record from which to proceed. ALJ Colwell has already advised the Commission that the fund needs to be diminished, redesigned, and limited only to those companies that can make a strict showing of need. As re-litigation in the instant docket of issues addressed by ALJ Colwell has been precluded, there is nothing of substance that can be addressed relative to the PA USF in the instant docket. Sprint suggests that if the Commission proposes or releases new PA USF rules in a designated rule-making docket, it would then be appropriate to address the relief awarded in this docket relative to the new or proposed rules. Without any new or proposed PA USF rules to consider, however, is not feasible to address the PA USF without re-litigating issues that were addressed by ALJ Colwell. Accordingly, Sprint suggests that the PA USF, in its current form, be addressed to the limited extent that support payments from that fund will apparently continue to be distributed until and unless the Commission changes the PA USF rules. The amount of those payments must be considered and acknowledged in announcing revenue neutral rate reductions.

- d) Potential Effects on RLEC Rates. The Commission desires to know with specificity the level of basic local exchange service rate increases that will be required by any remedy ordered in this proceeding. From materials submitted in the complaint docket prior to consolidation, it appears that most (and likely all) non-RLEC carriers agree that intrastate rates should be made to mirror interstate rates. To the extent that is the remedy awarded, the Commission would need to know the resulting rate increase from such an access rate reduction. AT&T's Complaint and Direct Testimony provided data on the effect on rates from such an increase.
- e) Retroactivity of Relief. Whether RLEC intrastate switched access rates affects more than 5% of the customers and amounts to in excess of 3% of the total gross annual intrastate operating revenues of the RLEC? This inquiry may also entail a review, if necessary, of whether the "customer" as used in section 1309(b) means the direct-consumer of the switched access (carriers) or end-user customers.
- f) Unjust, Unreasonable and Discriminatory Rates. While the complaint dockets opened in response to AT&T's 96 complaints may have been consolidated with the Commission's investigation docket, the issues identified in the complaint dockets nevertheless survive post-consolidation. Accordingly, it is necessary for ALJ Melillo to determine whether the RLEC rates are unjust and unreasonable, and discriminatory in violation of Sections 1301, 1304 and 3011. 66 Pa. C.S. §§ 1301, 1304 and 3011.

III. **Witnesses and the Subject of their Testimony.**

Sprint's witness in this matter will be James A. Appleby. Mr. Appleby's testimony has already been served in accordance with the Procedural Order issued in the Complaint case prior

to consolidation. Sprint reserves the right to revise its testimony in the event any new schedule announced contemplates resubmission of an additional round of Direct Testimony by all parties.

IV. **The Scope of the New Proceeding.**

The scope of the new proceeding is to determine the appropriate level of RLEC intrastate access charges. To the extent that statutory revenue neutral rebalancing requirements dictate rate increases, such increases should be addressed in this proceeding as well. The proceeding will also encompass those issues that were raised in the complaint dockets that have been consolidated into the Commission's investigation.

V. **Prior Discovery Rulings.**

Sprint believes that there is no reason to maintain the truncated discovery deadlines that had previously been imposed in the complaint docket unless a similar procedural schedule is maintained.

VI. **Preliminary Legal Issues.**

- A. Retroactivity of Relief Granted. Sprint is still evaluating whether to appeal the Commission's treatment of the retroactive application of any damages award under Section 1309(b). 66 Pa. C.S. § 1309(b).
- B. Burden of Proof. In accord with 66 Pa. C.S. § 332(a), for the purposes of the Commission's investigation into reform of switched access rates, the burden of proof is bourn equally by all parties as the Commission instituted the investigation docket and each party is the proponent of a specific position.

VII. **Procedural Schedule.**

Sprint proposes the following procedural schedule:

Rebuttal of RLECs/OCA/OTS and Direct of new parties: September 18, 2009
Reply: October 19, 2009
Surrebuttal: November 9, 2009
Rejoinder: November 23, 2009
Hearings: December 7-11, 2009
Main Briefs: January 7, 2010
Reply Briefs: January 28, 2010

Respectfully Submitted,



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Dated: August 17, 2009

CERTIFICATION OF SERVICE

I hereby certify that I have served a copy of the foregoing Prehearing Conference Memorandum upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 and 1.55, via electronic mail.

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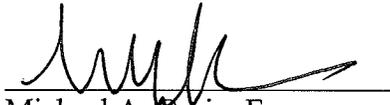
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August 17, 2009


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