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August 17, 2009

VIA ELECTRONIC FILING

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
400 North Street, Second Floor
Harrisburg, PA 17120

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

AT&T Communications of Pennsylvania, LLC., TCG New Jersey, Inc. and TCG
Pittsburgh, Inc. vs. Armstrong Telephone Company – Pennsylvania, et al..
Docket Nos. C-2009-2098380, C-2009-2099805 and C-2009-20098735

Dear Secretary McNulty:

On behalf of The United Telephone Company of Pennsylvania LLC d/b/a Embarq
Pennsylvania (hereinafter "Embarq PA") enclosed for filing please find Embarq PA's Prehearing
Memorandum.

A copy of this Prehearing Memorandum has been served upon all known parties as
depicted on the attached Certificate of Service. Should you have any questions, please do not
hesitate to contact the undersigned.

Sincerely,



Sue Benedek

Enclosures
ZEB/jrh

cc: The Honorable Kandance F. Melillo (*via overnight mail and electronic mail*)
Certificate of Service (*via electronic and first-class mail*)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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	:	
Complainant	:	
	:	
v.	:	Docket Nos. C-2009-2098380, <i>et al.</i>
	:	
Armstrong Telephone Company -	:	
Pennsylvania, et al.	:	
Respondents	:	

**PREHEARING MEMORANDUM
OF
THE UNITED TELEPHONE OF PENNSYLVANIA LLC d/b/a
EMBARQ PENNSYLVANIA**

In accordance with the Prehearing Conference Order dated August 11, 2009 and the Commission's regulations at 52 Pa. Code Section 5.222(d), The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania ("Embarq PA") submits this Prehearing Memorandum to presiding Judge Kandace F. Melillo. Copies of Embarq PA's Prehearing Memorandum have been served upon all known parties.

A. History of this Proceeding

The above-captioned investigation relative to Docket No. I-00040105 spans several years. Recently, by Order entered August 5, 2009, the Commission lifted its one-year stay of the intrastate access charge portion of the investigation.¹ The reopening of this portion of the investigation was docketed at No. I-00040105. The above-captioned matter also includes the 96 complaints filed by AT&T Communications of Pennsylvania, LLC, CG, Pittsburgh, Inc. and TCG New Jersey, Inc. (collectively “AT&T”). The AT&T complaints have been docketed at C-2009-2098380, *et al.* and C-2009-209830, *et al.* (“AT&T Complaint Proceeding”).² A more detailed description of the history of intrastate access reform in Pennsylvania has been set forth in the Commission’s *August 5-09 Order*.

This Prehearing Memorandum is submitted in advance of the Initial Prehearing Conference scheduled for August 19, 2009. In addition, in advance of the Prehearing on August 14, 2009, Embarq PA participated in a telephone conference call with all known parties and other interested persons/entities. The call was undertaken in an effort to determine consensus as to: (1) a procedural schedule; and (2) scope of the above-captioned consolidated proceeding.

The conference call was not successful relative to its purpose. The procedural schedule and the scope issues are addressed below, along with the issues requested in the Judge’s August 11, 2009 Prehearing Conference Order.

¹ *Investigation Regarding Intrastate Access Charges and InterLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund*, Docket No. I-00040105, Order entered August 5, 2009 (“*August 5-09 Order*”).

² *AT&T Communications of Pennsylvania, LLC, et al., v. Armstrong Telephone Company – Pennsylvania, et al.*, Docket Nos. C-2009-2098380, et al., Opinion and Order entered July 29, 2009.

B. Representation

The contact information for counsel representing Embarq PA in this matter is as follows:

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If a formal entry of appearance is deemed necessary, counsel for Embarq PA will promptly file one.

C. Names and Addresses of Witnesses

Embarq PA will be submitting pre-filed written testimony in this proceeding. Embarq PA expects to submit written testimony of at least two persons, possibly three persons. Embarq PA is requesting that the Presiding Judge make clear whether joint or panel testimony is permitted and, if so, parameters for panel testimony. Embarq PA does not object to panel/joint testimony if submitted pursuant to parameters.

To the extent joint/panel written (or oral) testimony is permitted, Embarq PA requests the following parameters: (1) No more than two witnesses per panel/joint testimony; (2) Witnesses should expressly identify which portions of testimony are submitted by each witness to the panel; and (3) To the extent both witnesses sponsor the same portion of testimony, the witnesses should identify in the testimony their separate reasons/testimony for “doubling up” on the issue. These parameters will better assist the parties with cross examination and with other aspects of litigation (e.g., tailoring discovery requests).

D. The Proposed Area of Testimony of each Witness

Given that the scope of the issues is yet to be determined, Embarq PA is unable to identify the witnesses it will sponsor and is unable to set forth the issues to be addressed by each witness. Embarq PA intends to address the scope issues at the prehearing conference.

E. Scope of Issues

The Presiding Judge has requested that Prehearing Memorandums address the scope of the new proceeding. Prehearing Conference Order at p. 2, para. 3. By way of an initial point of departure, Embarq PA agrees with the Prehearing Memorandum of the Pennsylvania Telephone Association (“PTA”) in that this Investigation constitutes Phase III of access reform for intrastate switched access rates priced in Pennsylvania.

The better way to review the scope of the issues in this proceeding, therefore, is to recognize that the Commission lifted the stay at Docket No. I-00040105 and consolidated it with the AT&T Complaint Proceeding. From a substantive and scope-of-issues standpoint, the specific claims raised by AT&T (and shared by other similarly situated parties) are a subset of the larger, more holistic issues that this Commission has been addressing at Docket No. I-00040105.³ The Commission did not open a new docket and a new investigation. And, the Commission gave parties twelve (12) months to litigate the scope of the issues in this consolidated investigation/complaint proceeding.

Therefore, working backwards from a procedural standpoint, the issues and scope of those issues begins with the Commission’s *August 5-09 Order*. At paragraph 5 of the

³ Embarq PA’s position on the burden of proof in this I- and C- docketed consolidated proceeding is separately addressed below.

Commission's *August 5-09 Order*, the Commission identified the following issues to be addressed in this proceeding:⁴

1. Whether there are any linkages between the following:
 - 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 effect on rates for the basic local exchange service of the rural ILECs to the extent this is consistent with the Commission's determinations in the limited investigation.

The above-listed issues exist in a context. That context arises from the fact that the reopened portion of the investigation at Docket No. I-00040105 follows prior Commission orders. Notably, although not exclusively, the context and procedural posture of the instant proceeding follows the Commission's December 20, 2004 Order ("*December 2004 Order*"). The December 20, 2004 Order is quoted by the Commission as part of the procedural makeup for the instant proceeding.⁵

The issues and scope of the instant proceeding, therefore, include not only the above-listed issues from the *August 5-09 Order*, but also include issues raised by the Commission in its *December 2004 Order*. Accordingly, Embarq PA maintains that the following issues identified by the Commission in its *December 2004 Order* also shape the scope of issues in this consolidated proceeding:

2. Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs' territories;

⁴ *August 5-09 Order* at pp. 21-22.

⁵ *August 5-09 Order*, at pp. 3-4.

3. What rates are influenced by contributors to and/or disbursements from the PaUSF?
4. Should disbursements from the PaUSF be reduced and/or eliminated as a matter of policy and/or law?
5. Assuming the PaUSF expires on or about December 31, 2006, what action should the Commission take to advance the policies of this Commonwealth?
6. If the PaUSF 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 upon? Do wireless companies split their revenue bases by intrastate, and if not, will this be a problem?
7. What regulatory changes are necessary to 52 Pa. Code §§63.161-63.171 given the complex issues involved as well as recent legislative developments?

While the Commission has not explicitly stated in the *August 5-09 Order* whether the issues from its *December 2004 Order* should be addressed in this phase of the reopened investigation, the Commission clearly is aware of the context of the *August 5-09 Order* and did not explicitly remove the *December 2004 Order* issues from the scope of the development of an evidentiary record for this consolidated proceeding. To the best of Embarq PA's knowledge, the issues in the Commission's *December 2004 Order* were not litigated given stay of this portion of Docket No. I-00040105. Also, the issues identified in the *December 2004 Order* were not included in the reopened pending USF investigation.

Finally, Embarq PA supports PTA's identification of additional issues logically extending from those noted above. Specifically, PTA has identified the following three additional issues as flowing from the Commission's prior orders:

8. The appropriateness of continuation of the PaUSF to continue to support the access reforms already implemented, and/or the development and implementation of a Toll Line Charge or another universal service fund to recover any revenue deficiencies effectuated by any change in the current PaUSF or the current rural access rates;
9. The appropriateness of eliminating current PaUSF credits on local service customer bills and increasing access charges on access customer bills to the extent the current PaUSF is reduced without replacement funding implemented;
10. The pool of service providers that should be assessed to contribute to universal service support in Pennsylvania.

Embarq PA agrees with PTA that these issues naturally flow from the issues identified by the Commission in prior orders. The issues raised by AT&T in its pleadings (and in any testimony) can be readily addressed in the context of the larger issues identified at and flowing from paragraph 5 of the Commission's *August 5-09* and the *December 2004* Orders.

F. Burden of Proof

In accordance with Section 315(a) of the Public Utility Code, Embarq PA bears the burden of persuasion that its current rates are just and reasonable. 66 Pa.C.S. §315(a). AT&T, and those parties aligned with AT&T, retain the burden of persuasion with respect to any claims they raise, including but not limited to the position (and the bases in support thereof) that Embarq PA's intrastate switched access rates are unjust and unreasonable. 66 Pa.C.S. §332(a). Embarq PA reserves the right to more fully address burden of proof matters in its briefs given that the issues, the parties' respective claims, and the evidence will be known by briefing.

G. Proposed Schedule:

Embarq PA agrees with the procedural schedule set forth in PTA's Prehearing Memorandum. Specifically:

Direct Testimony	January 20, 2010
Rebuttal Testimony	March 10, 2010
Surrebuttal Testimony	March 31, 2010
Evidentiary hearings	April 14 -16, 2010
Main briefs	May 13, 2010
Reply briefs	June 3, 2010
Recommended Decision	August 5, 2010

The above-noted proposed schedule, in Embarq PA's view, best effectuates the statement at ordering paragraph 4 of the *August 5-09 Order* that "participating parties shall be afforded due process opportunities to supplement the evidentiary record."⁶

The line between what has been "already adjudicated" and the issues/scope in this consolidated proceeding can be raised by motion or other appropriate pleading and addressed on an as-needed basis.

H. Discovery

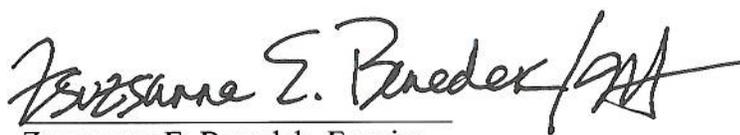
Embarq PA is willing to discuss parties' concerns regarding discovery at the August 19, 2009 prehearing conference. The 12-month litigation time-frame in the *August-5 09 Order* provides a reasonable opportunity to undertake discovery, to respond to discovery, and to resolve discovery disputes. Embarq PA does not believe that any previously issued discovery order need to be revised.

⁶ The Commission at ordering paragraph 4 of the *August 5-09 Order* also stated: "However, the issues already adjudicated in limited reopening of the Commission's *Intrastate Access Charge Investigation* (also at Docket No. I-00040105 shall not be relitigated absent extraordinary circumstances."

I. Other

Embarq PA also suggests that the following issues should be addressed at the August 19, 2009 Prehearing: (1) electronic service and deadlines; (2) clarification of applicability of the protective order from the AT&T Complaint Proceeding; and (3) refinement of the service list.

Respectfully submitted,



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Embarq Pennsylvania

Dated: August 17, 2009

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	:	
v.	:	Docket Nos. C-2009-2098380, <i>et al.</i>
	:	
Armstrong Telephone Company -	:	
Pennsylvania, et al.	:	
Respondents	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of August, 2009, served a true copy of the foregoing Prehearing Memorandum upon the persons below, via electronic and first-class mail, in accordance with the requirements of 52 Pa. Code §1.54:

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