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September 2, 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 Memorandum of Law of Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively "Sprint") addressing the scope of the current phase of this proceeding. This Memorandum 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. Grun

Enclosure

cc: Certificate of Service
ALJ Melillo

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MEMORANDUM OF LAW REGARDING
THE SCOPE OF THE CURRENT PHASE OF THE PROCEEDING**

I) Introduction.

By Prehearing Conference Order issued August 11, 2009, Administrative Law Judge Melillo (“ALJ Melillo”) ordered the parties to prepare and file prehearing conference memoranda by August 17th, and to attend a prehearing conference on August 19th, 2009. Such memoranda were filed by the various parties and those same parties attended the prehearing conference at the scheduled time. During the conference the parties were given ample time to orally advocate their various positions regarding the scope of this phase of the instant investigation. At the prehearing conference ALJ Melillo indicated the parties would each have an opportunity to submit a further memorandum regarding the scope of the proceeding. In a Procedural Order issued on

August 20, 2009, ALJ Melillo established a deadline of September 2, 2009 for submission of such additional memoranda. The Procedural Order specified that the parties should focus their discussion on the issues identified by the PTA as the PTA's list of issues was "the most expansive scope of the proceeding being advocated."

In this Memorandum, Sprint will first address the illogic of defining the scope of the instant phase of the investigation by using the list of issues identified by PTA. Next, Sprint will thoroughly analyze the prior Commission Orders which define the scope of this phase of the proceeding, and will extrapolate 5 undisputable guiding principles that should control the scope of this phase of the proceeding. Finally, Sprint will apply these principles to the PTA's proposed list of issues to be addressed, and explain which of the PTA's proposed issues are not properly includable in this phase of the proceeding.

II) Discussion.

A fundamental difficulty inherent in the approach advocated by the PTA is that it fails to acknowledge that the Commission has instructed the parties not to re-litigate matters that have already been adjudicated before Administrative Law Judge Colwell ("ALJ Colwell"). Similarly, the PTA's approach fails to even discuss the narrowing of scope that is inherent in the identification of four issues in the August 5th Order, *see* Order, *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, at 19 (entered August 5, 2009)("August 5th Order"), versus the six issues that were originally identified in the Investigation Opening Order. *See* Order, *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 (entered December

December 20, 2004)(“Investigation Opening Order”). The PTA’s approach is to forge ahead and consider all possible issues, on all possible subjects related to access charges, but without consideration of the Commission’s mostly recently identified scope or its proscription against re-litigation. This is folly, and it is motivated by the RLECs’ insatiable appetite for a subsidized revenue stream that is paid to them by their competitors. Rather than embrace the Commission’s statutory goal of ensuring a level playing field amongst competing carriers, *see* 66 Pa. C.S. § 3011(8), the RLECs desire nothing more than to continue to receive subsidy payments from their competitors in the form of super-normal profits from non-competitive switched access services provided over monopoly controlled, bottle-neck facilities.

To this end, in a docket that is intended to accomplish access charge reductions, the PTA goes so far as to suggest that *INCREASES* in access charges should be considered. Prehearing Conference Memorandum of Pennsylvania Telephone Association, *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, at 5, item (h) (filed August 17, 2009) (“PTA Prehearing Memo”). This suggestion is a shamelessly transparent attempt to obfuscate the primary focus and goal of the instant docket: switched access charge reform. The approach advocated by the PTA will not only delay the implementation of switched access charge reform, but will result in an unwieldy investigation that will fail to produce concrete and long overdue reform.

It is quite telling that the PTA Prehearing Memo fails to even once address the issues that were previously adjudicated by ALJ Colwell or the admonition against re-

litigation contained in the August 5th Order. In defining the scope of this phase of the proceeding, the PTA essentially acted as if there were no limitations, and the scope could be defined at its own whim, without restriction. The PTA's suggested approach in essence ignores all else in favor of defining a scope that offers the broadest possible number of funding pools from which to draw a subsidy stream. Not only does this approach impermissibly broaden the instant docket beyond its intended bounds, but it fails to respect the Commission's specific instructions.

a) The Scope Announced in the August 5th Order is Intentionally Narrower than the Scope Announced in the Investigation Opening Order.

Reviewing the Commission's relevant Orders and ALJ Colwell's Recommended Decision makes abundantly clear the reasons that the PTA's approach is unworkable. Specifically, the PTA made no effort to exclude issues that were adjudicated by ALJ Colwell, it failed to focus on the issues identified as assigned for adjudication by ALJ Colwell, it did not attempt to draw a conclusion on the scope of the instant proceeding from those sources, and it failed to acknowledge that the August 5th Order identifies a narrower scope than that identified in the Investigation Opening Order. The result is that the PTA suggests inclusion of an unworkably large and divergent group of issues based solely on its opinion of what it would *like* to have included in the instant proceeding, instead of what the Commission *instructed* be included in the instant proceeding.

An obvious reason the PTA's suggested approach is so deeply flawed is that it fails to recognize that the August 5th Order considerably narrows the scope of the instant proceeding compared to the scope originally announced in the Investigation Opening Order. Had the Commission intended to do no more than reopen the instant proceeding with the same scope that was originally announced in 2004, it would have done so.

Rather than direct the parties to address all of the issues identified in the Investigation Opening Order, however, the Commission identified only four issues for investigation and announced a proscription as well.

One cannot assume, as the PTA does, that the scope announced in the Commission's August 5th Order is without purpose. That the Commission went so far as to specifically define a scope for the instant phase of the proceeding indicates an intention to define a particular scope that is distinct from the scope announced in the Investigation Opening Order. Recognizing that various issues have been separately addressed within its access investigation docket since it was opened in 2004, and that the passage of time has rendered certain other issues moot (or no longer accurate as stated), the Commission acknowledged these factors by narrowing the scope of this phase of the investigation to exclude such matters. To accomplish this task, the Commission took two steps.

First, the Commission offered the following unmistakably clear instructions to the parties:

... the issues already adjudicated before Administrative Law Judge Susan Colwell during the limited reopening of the investigation shall not be relitigated absent extraordinary circumstances.

August 5th Order at 19. From this passage it is clear that the parties are to avoid clouding the current phase of the proceeding with matters addressed by ALJ Colwell in the earlier, limited investigation conducted pursuant to the limited reopening of the Commission's RLEC access investigation. *See Order, Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 (entered April 24, 2009)("April 2008 Order").

Next, the Commission announced a narrowed scope for the instant phase of the proceeding compared to the scope originally announced in the Investigation Opening Docket. For the instant phase of the proceeding, the Commission announced the following scope:

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 5th Order at 21-22. This scope is considerably narrower than the scope announced in the Investigation Opening Order, which was as follows:

(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?

Investigation Opening Order at 5-6.

As is discussed below in greater detail below, the intention behind, and the net result of, the Commission proscription against re-litigation and announcement of a narrower scope is to conduct a focused investigation that produces tangible recommendations without revisiting the many issues already addressed in this docket since it opened in 2004, or those that are no longer relevant due to the passage of time.

b) Defining the Scope of the Instant Phase of the Proceeding.

The process of carefully defining the scope of the instant phase of the proceeding involves three steps. First, one must consider the items that were specifically identified for inclusion by the August 5th Order at pages 21-22. Second, those items must be balanced against the issues that are precluded from consideration by page 19 of the August 5th Order. Finally, it is necessary to cull from the numerous prior Orders and Decisions in this docket those issues that have already been addressed, and which the Commission therefore has excluded by intentionally narrowing the scope of the instant phase of the proceeding compared to the scope of the original investigation.

The August 5th Order also offers a certain degree of insight into the Commission's posture regarding how it shall proceed, if at all, to revise its PA USF rules.

Although the Joint Motion does not expressly state whether the Joint Movants advocate a continuation of the current PaUSF under the existing regulations codified at 52 Pa.Code §§ 63.161-63.171, it can be inferred that it is the position of the Joint Movants that the *status quo* be maintained until there is a resolution after an investigation and until a future rulemaking determines otherwise consistent with the eventual rulings of this Commission at the limited reopened stage of this Investigation. We are of the opinion that maintaining the *status quo* will also ensure that the current levels of intrastate access charges will not be increased during the stay. It has been, and continues to be the intention of this Commission, since the *Global Order* of 1999, to gradually lower intrastate access charges so as to allow for greater competition in the intrastate and interexchange toll markets ...

August 5th Order at 20. From this passage, clarification of several points can be gleaned. First, the Commission will not entertain increases of access rates. Second, if the Commission chooses to change the current PA USF rules (i.e. stray from the *status quo*), it will do so in the context of a future rulemaking. Thus, the August 5th Order presents three guiding principles to use in defining the scope of the instant proceeding:

- Principle 1: Do not re-litigate issues adjudicated by ALJ Colwell;
- Principle 2: Any changes to the structure, form and funding level of the PA USF will be determined during some future rulemaking; and
- Principle 3: Access charge increases will not be considered as they are contrary to the Commission policy to reduce access charges.

Sprint contends that it is also necessary to look to the Commission's Order which defined the scope of ALJ Colwell's investigation. Therein the Commission stated as follows:

... we shall reopen the investigation for the limited purpose of addressing the \$18.00 cap on R-1 benchmark/caps and any equivalent B-1 benchmark/cap. We shall determine whether there is a need to increase the rate caps and/or funding for the Pennsylvania Universal Service Fund ("PaUSF") in order to accommodate the revenue increases authorized for rural ILECs that are now resulting in increased local service rates beyond benchmark rate caps. If it is determined that the \$18.00 cap should be increased, the investigation should also determine whether the size of the fund should be increased, decreased or remain the same. Further, we direct that the investigation examine whether a needs based test should be used to determine whether rural ILECs qualify for PaUSF funding.

Order, Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund, Docket No. I-00040105, at 2 (entered April 24, 2008). The foregoing passage indicates that ALJ Colwell was to address, and the parties shall not address in the instant docket, the following issues:

- Principle 4: The parties shall not address whether to increase the Commission's current rate caps;
- Principle 2.1 (a corollary to above Principle 2, above): the parties shall not address whether rate increases that exceed the current rate caps should be offset with funding from the PA USF;
- Principle 2.2 (a corollary to Principle 2, above): the parties shall not address whether the size of the fund should be altered even if it is determined that the level of the cap should be increased (and it was so determined); and
- Principle 2.3 (a corollary to Principle 2, above): the parties shall not address whether PA USF funding eligibility should be based on a needs-based test.

Taking the Commission's statements as a whole, it is clear that it directed ALJ Colwell to provide comprehensive advice on whether rates should be constrained by an \$18 cap, which RLECs should be eligible to receive PA USF funds in the future, whether carriers charging rates that exceed a rate cap should draw the overage from the PA USF, what the size of the PA USF should be in the future, and what the structure of the PA USF should be in the future. Equally clear is that the Commission will address issues pertaining to the Pennsylvania Universal Service Fund in a rulemaking proceeding, not in this or another investigation docket. *See* August 5th Order at 20.

c) Issues Adjudicated by ALJ Colwell.

Aside from identifying what issues the Commission identified for inclusion in the scope of the instant docket, or specifically identified for exclusion, one must understand what issues were adjudicated by ALJ Colwell. To that end, Sprint below reproduces several sections of ALJ Colwell's Recommended Decision (these same sections were reproduced in Sprint's Prehearing Conference Memorandum).

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, *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, at 87 – 90 (July 22, 2009)(“Recommended Decision”). To summarize, ALJ Colwell adjudicated and concluded the following:

- Principle 2.3.1: The PA USF should be reconstructed to provide targeted assistance to customers who truly need it, and for those companies meeting a stringent needs-based test;

- Principle 2.4: The form of the PA USF is a matter of public policy and should be determined by the Commission itself;
- Principle 2 (identical to Principle 2 above): Any changes to the structure, form and funding level of the PA USF will be determined during some future rulemaking; and
- Principle 5: RLECs should not be prevented by any rate cap from increasing their rates to effectuate Chapter 30 plan derived rate increases, and if rate increases are inconsistent with those derived from a Chapter 30 plan the proposed increase should be subject to a just and reasonable analysis.

d) The Parties Cannot Consider the Inclusion of Wireless Carriers in the PA USF.

As is made clear by the above discussion (see discussion regarding Principle 2), the parties are precluded from discussing changes to the form, structure and funding level of the PA USF. It therefore follows that any discussion of whether wireless carriers should contribute to the PA USF is logically excluded from the instant investigation. Whether one reaches this conclusion based on prior decision of the Commission, ALJ Colwell, jurisdictional analysis, or otherwise, it is inescapable that any discussion of the PA USF would necessarily involve a discussion of the future structure of the fund, an issue that has been adjudicated by ALJ Colwell.

Additionally, in reviewing the Commission's narrowing of the scope between the broad Investigation Opening Order and the narrower scope delineated in the August 5th Order, one is forced to conclude that to the extent the Commission intends the parties to address the PA USF, it intends for the parties to address the *current* PA USF. Thus, the parties must take into account payments that are made under the *current* PA USF, and to the extent the Commission announces changes to the PA USF during the course of the instant investigation, the parties would necessarily be free to comment on the changes to

the PA USF. Any other interpretation leads inexorably to conflict with the proscription against re-litigating because ALJ Colwell addressed the future size and structure of the PA USF at length. It would be folly to conclude that the parties could meaningfully discuss obligating wireless carriers to contribute to the PA USF without addressing the size and structure of the fund.

It also bears noting that under 66 Pa. C.S. § 501(b), the Commission is endowed with “power and authority to supervise and regulate all public utilities doing business within this Commonwealth.” The definition of “public utility” contains the following reservation, however: “[t]he term does not include: [a]ny person or corporation, not otherwise a public utility, who or which furnishes mobile domestic cellular radio telecommunications service” 66 Pa. C.S. § 102. Accordingly, the Commission is without jurisdiction to impose PA USF contribution obligations on wireless carriers. The Commission recognized as much in promulgating its PA USF regulations. The Commission defined carriers obligated to contribute to the PA USF as follows:

Contributing telecommunications providers—Telecommunications carriers that provide intraState telecommunications services. Whether a provider or class of providers is a telecommunications carrier will be determined based upon whether the provider or class of providers is considered a telecommunications carrier under Federal law as interpreted by the Federal Communications Commission *except that wireless carriers are exempt from this subchapter* under 66 Pa.C.S. § 102(2)(IV) (relating to definitions)

52 Pa. Code § 63.152 (emphasis added). Considering the jurisdictional disconnect between the suggestion that parties to the instant docket address whether wireless carriers should contribute to the PA USF and the reality that the Commission lacks jurisdiction to make wireless carriers contribute, there is no reason to address such an issue. If such an

issue is to be addressed at all, it is an issue to be addressed by the legislature, not by the parties to the instant docket.

Additionally, the issue is not new to this docket. The issue was identified in the Investigation Opening Order in 2004. Subsequently, on March 25, 2005, wireless carriers Verizon Wireless, Omnipoint Communications, and Nextel Communications filed a Motion for a Declaratory Ruling acknowledging that the Commission lacks the statutory jurisdiction to require wireless providers to contribute to the PA USF. The Motion was decided on June 8, 2005 by ALJ Colwell. ALJ Colwell granted the wireless carriers' Motion "insofar as it depends on the determination that wireless carriers are not public utilities within the meaning of the Public Utility Code." No party sought reconsideration, rehearing, or review of ALJ Colwell's determination.

Furthermore, the issue of wireless carrier contribution to the PA USF was not identified for discussion in the narrower scope identified in the August 5th Order. The obvious conclusion is that the scope delineated by Commission in the August 5th Order does not include wireless contribution as an issue in this phase of the proceeding. Despite the fact it had the opportunity to identify wireless contribution as an issue, the Commission chose not to express an intention for the parties to address wireless inclusion in the PA USF, and instead identified 4 issues as the bounds of the scope and precluded the parties from re-litigating previously identified issues. Accordingly, the issue of wireless inclusion is clearly not part of the scope of the instant phase of the investigation. For the sake of consistency, the exclusion of wireless contribution to the PA USF from consideration in the instant phase of the investigation can be referred to as Principle 2.5.

e) Working in Piecemeal to be Avoided.

Aside from the specific matters addressed above, Sprint also reiterates to ALJ Melillo a point that it stressed orally during the prehearing conference: this investigation should only address matters which are neither fully nor partially precluded from consideration. The most evident and clear path to defining the scope of this phase of the proceeding is to deal with issues squarely and wholly within the scope of the instant phase of the investigation. The complication inherent in addressing narrow portions or issues of a much broader, interrelated subject matter is not to be underestimated. For instance, if a determination is made to include certain PA USF related issues, while acknowledging that many others are excluded, it stands to reason that parties will quarrel extensively during the discovery process regarding whether requested discovery falls within or outside the announced scope.

It should also be noted that it is not particularly helpful to the Commission to have multiple sub-dockets within the broader RLEC access investigation docket addressing like issues. Rather than assist in development of a full and complete record and recommendation, there is an equal or greater likelihood that the result will be a distorted record and incompatible recommendations. The Commission has already received a recommendation – and indicated its agreement thereto – to institute a rulemaking on the future form and structure of the PA USF, so that topic, in its entirety, should not be addressed in the instant investigation.

Finally, an observation by the Commission in the consolidated AT&T Complaint docket is apt and applicable here:

While the substance of the two matters is not identical, it is undeniable that there is considerable overlap in the issues being

considered in both cases. Permitting both matters to proceed simultaneously would certainly create a duplication of effort by the Parties and would waste resources of this Commission. This point is important because unlike court proceedings, where private parties typically bear the costs of litigation, the costs of Commission proceedings are ultimately recovered in assessments and rates paid by ratepayers ...

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

The point is no less applicable to the issue of defining the scope of the instant phase of the proceeding. To avoid duplication of effort that is “ultimately recovered in assessments and rates paid by ratepayers” the scope should be defined narrowly and in a manner designed to avoid overlap and duplication of effort. The most certain way to accomplish this is to focus on those issues identified by Sprint in its Prehearing Conference Memorandum rather than the convoluted and over-broad set of issues identified by the PTA.

f) Summarizing the Identified Principles Relevant to Identifying the Scope of This Phase of the Proceeding.

To summarize the above discussion, the scope of the instant phase of the proceeding must be defined by inclusion of the specific issues identified for inclusion in the instant phase of the investigation, exclusion of matters already adjudicated by ALJ Colwell, and exclusion of matters that are inextricably intertwined with issues already adjudicated by ALJ Colwell. Sprint has distilled the guidance provided by the Commission into principles to follow in analyzing and defining the scope of the instant phase of the investigation. For convenience, those principles are reproduced in sequence below.

- Principle 1: Do not re-litigate issues adjudicated by ALJ Colwell (*source: August 5th Order*);
- Principle 2: Any changes to the structure, form and funding level of the PA USF will be determined during some future rulemaking (*source: August 5th Order and ALJ Colwell's July 22, 2009 R.D.*);
 - Principle 2.1: the parties shall not address whether rate increases that exceed the current rate caps should be offset with funding from the PA USF (*source: April 24, 2008 Order defining scope of ALJ Colwell's investigation*);
 - Principle 2.2: the parties shall not address whether the size of the PA USF should be altered even if it is determined that the level of the cap should be increased (and it was so determined) (*source: April 24, 2008 Order defining scope of ALJ Colwell's investigation*);
 - Principle 2.3: the parties shall not address whether PA USF funding eligibility should be based on a needs-based test. (*source: April 24, 2008 Order defining scope of ALJ Colwell's investigation*)
 - Principle 2.3.1: The Parties shall not address whether the PA USF should be reconstructed to provide targeted assistance to customers who truly need it, and for those companies meeting a stringent needs-based test (*source: ALJ Colwell's July 22, 2009 R.D.*);
 - Principle 2.4: The form of the PA USF is a matter of public policy and should be determined by the Commission itself (*source: ALJ Colwell's July 22, 2009 R.D.*);
 - Principle 2.5: The issue of whether wireless carriers should contribute to the PA USF shall not be addressed. (*source: August 5th Order, ALJ Colwell's June 5, 2005 Order disposing of Wireless Carriers' Motion, and ALJ Colwell's July 22, 2009 R.D.*)
- Principle 3: Access charge increases will not be considered as they are contrary to the Commission policy to reduce access charges (*source: August 5th Order*);
- Principle 4: The parties shall not address whether to increase the Commission's current rate caps(*source: April 24, 2008 Order defining scope of ALJ Colwell's investigation*);
- Principle 5: RLECs should not be prevented by any rate cap from increasing their rates to effectuate Chapter 30 plan derived rate increases,

and if rate increases are inconsistent with those derived from a Chapter 30 plan the proposed increase should be subject to a just and reasonable analysis. (source: ALJ Colwell's July 22, 2009 R.D.)

g) The PTA's Proposed Scope Ignores the Commission's Clear Guidance and Would Impermissibly Result in Re-litigation of Matters Adjudicated by ALJ Colwell.

Rather than address each individual of the numerous issues PTA identified – which Sprint has done at length above – Sprint herein reproduces a table that illustrates clearly the problems with each of the issues identified by the PTA. Sprint hopes that graphically illustrating each identified issue and the above defined Principle with which it conflicts offers a direct and easily followed guide to Sprint's areas of disagreement regarding each proposed issue.

| PTA IDENTIFIED ISSUE | SPRINT POSITION | PRINCIPLE IMPLICATED | COMMENT |
|--|------------------------|-----------------------------------|---|
| (a) Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs' territories. | Agree | None. | None. |
| (b) What rates are influenced by contributions to and/or disbursements from the Fund? | Agree in part | Principle 1 Principles 2 – 2.5 | Discussion limited to the <i>current</i> fund only. Discussion of future size, structure, or operation of the PA USF precluded. |
| (c) Should disbursements from the Fund be reduced and/or eliminated as a matter of policy and/or law? | Disagree | Principle 1 Principle 2 – 2.5 | |

| PTA IDENTIFIED ISSUE | SPRINT POSITION | PRINCIPLE IMPLICATED | COMMENT |
|---|------------------------|---|--|
| <p>(d) Assuming the Fund expires on or about December 31, 2006, what action should the Commission take to advance the policies of this Commonwealth?</p> | <p>Disagree</p> | <p>Principle 1 Principle 2 – 2.5</p> | <p>The question has clearly become moot over time. The fund is still in operation nearly three years after its expected expiration.</p> <p>Discussion of future size, structure, or operation of the PA USF precluded.</p> |
| <p>(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?</p> | <p>Disagree</p> | <p>Principle 1 Principle 2 – 2.5 (particularly 2.5)</p> | <p>See discussion in Section II.d above.</p> |

| PTA IDENTIFIED ISSUE | SPRINT POSITION | PRINCIPLE IMPLICATED | COMMENT |
|--|------------------------|---|---|
| (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? | Disagree | Principle 1 Principle 2 – 2.5 | ALJ Colwell has made specific recommendations in this regard. |
| (g) 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 other universal service fund to recover any revenue deficiencies effectuated by an change in the current PaUSF or the current rural access rates | Disagree | Principle 1 Principle 2 – 2.5 Principle 3 | A toll line charge – if imposed on carriers – is no more than a different name for increasing access charges. The future of the PA USF – whether as currently constituted or in a new form – was addressed at length by ALJ Colwell. |
| (h) The appropriateness of eliminating current PaUSF credits on local customer bills and increasing access charges on access customer bills to the extent the current PaUSF is reduced without replacement funding implemented | Disagree | Principle 1 Principle 2 – 2.5 Principle 3 | Increasing access charges is against the Commission’s policy – see discussion relevant to principle 3. |
| (i) The pool of service providers that should be assessed to contribute to universal service support in Pennsylvania. | Disagree | Principle 1 Principle 2 – 2.5 (particularly 2.5) | This is little more than a restatement of the fifth issue identified by PTA. |

| PTA IDENTIFIED ISSUE | SPRINT POSITION | PRINCIPLE IMPLICATED | COMMENT |
|--|------------------------|-----------------------------|---|
| (j) The impact on rural intrastate access rates and/or rate structures from any further federal action on intercarrier compensation, access, and universal service issues | Agreed | | This is identified in the August 5 th Order as included in the scope. |
| (k) Whether further intrastate access reform is necessary in light of the elimination in Act 183 of the mandatory access reductions that were contained in the original Chapter 30 law in Act 183 | Disagree in part | | The Commission's clearly stated and long-standing policy is to accomplish access reform. PTA is certainly at liberty to argue that RLEC access charges should not be reduced, but challenging the very policy that underlies this investigation is at odds with the very purpose of this investigation. |
| (l) Any other issues that may arise and/or be determined to be relevant to the Phase III investigation of rural access rates | Disagree in part | Principles 1 – 5 | A catch-all such as this is not helpful to the current effort to define the scope of the instant investigation. |

h) Suggested Scope.

Sprint's Prehearing Conference Memorandum contained a detailed recitation of what Sprint believes are the only issues properly included in the instant investigation. A number of the issues identified by Sprint are notably absent from the PTA's issue list. To the extent that Sprint still advocates for their inclusion in the scope of the instant investigation, Sprint urges ALJ Melillo to review Sprint's statement of the issues to be

addressed in the instant investigation. The relevant discussion can be found in Sprint's Prehearing Conference Memorandum at pages 5 – 7.

Sprint also wishes to call to ALJ Melillo's attention that Sprint's Prehearing Conference Memorandum indicated Sprint was evaluating whether to appeal the Commission's treatment of the retroactive application of any damages awarded under Section 1309(b). 66 Pa. C.S. § 1309(b). Following the timely submission of its Prehearing Conference Memorandum, Sprint did in fact file its appeal. A copy of that appeal has been served on ALJ Melillo and all parties to this investigation.

III) Conclusion.

The scope PTA has suggested for the instant phase of the investigation is inappropriately broad. The PTA's suggested scope fails to account for the Commission's narrowing of the scope of the instant investigation compared to the scope announced in its 2004 Investigation Opening Order. Similarly, the PTA fails to address the proscription against re-litigating matters adjudicated by ALJ Colwell.

Respectfully Submitted,



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Dated: September 2, 2009

CERTIFICATION OF SERVICE

I hereby certify that I have served a copy of the foregoing 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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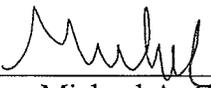
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