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September 9, 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 Reply 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. Gruin

Enclosure

cc: Certificate of Service
ALJ Melillo

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A PROFESSIONAL CORPORATION

**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 | : | |

**SPRINT’S REPLY MEMORANDUM OF LAW
REGARDING
THE SCOPE OF THE CURRENT PHASE OF THE PROCEEDING**

Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively “Sprint”) hereby file this Memorandum of Law in Reply to the Memoranda of other parties regarding the scope of the current phase of this proceeding.

The Scope Proposed By The PTA Is Unreasonably And Unjustifiably Broad

As set forth in Sprint’s initial Memorandum Regarding Scope filed on September 2, 2009, the overly broad scope proposed by the Pennsylvania Telephone Association (“PTA”) cannot be justified by a fair reading of the Commission’s August 5, 2009 Order, which is the Order that initiated this phase of the proceeding. The PTA completely ignores the limitations set by the August 5, 2009 Order, and insists that the scope of the

upcoming phase of this proceeding must include every issue originally identified by the Commission when it opened this docket in December 2004, plus all issues that conceivably could “flow” from the original issues list, plus all issues that the PTA unilaterally deems are appropriate to include. The PTA argues that the Commission’s August 5, 2009 Order did not just re-open the access charge portion of this investigation. Rather, the PTA argues that the Order also re-opened, and in fact *expanded*, the Commission’s examination of all aspects of the PaUSF, including possibly expanding the pool of contributors and developing alternative universal service mechanisms. In the PTA’s view, this upcoming phase of the proceeding will be more about exploring wide-ranging PaUSF issues than about access charge reform. The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania (“Embarq”), and the Office of Consumer Advocate (“OCA”) essentially endorse the position of the PTA in its entirety.

The interpretation espoused by the PTA, Embarq, and OCA is severely flawed, contradicted by the clear language of the Commission’s August 5, 2009 Order, and simply not credible. The PTA, Embarq and OCA clearly want to preserve the status quo for as long as possible, and their obvious strategy is to make the scope of this proceeding as expansive, muddled, and unwieldy as possible in order to paralyze Commission action on the issue of access reform for as long as possible. Their overly broad interpretation depends entirely on the premise that all of the issues identified in the Commission’s December 20, 2004 Order commencing the investigation at Docket No. I-00040105 are to be addressed in this phase of the investigation, along with several newly identified issues that “derive” or “flow” from the original six issues. Their interpretation completely ignores the August 5, 2009 Order’s clear delineation of the scope of this phase of the

proceeding, as stated in the ordering paragraphs of that Order. Rather than giving meaning to the actual language of the August 5, 2009 Order's ordering paragraphs, PTA, Embarq and OCA crudely interpret the August 5, 2009 Order as simply re-opening the overall investigation in its entirety, and implicitly incorporating the broader issues identified in the December 4, 2004 Order. An honest reading of the August 5, 2009 Order cannot support this simplistic interpretation.

1. The August 5, 2009 Order clearly *did not* lift the stay with respect to the entire I-00040105 investigation.

In the concluding paragraphs of the "Resolution" section of the August 5, 2009 Order, the Commission stated only that "the *access charge investigation* should be resumed at this time".¹ Then, in Ordering paragraph 2, the Commission reiterated that "the stay of the *intrastate access portion* of this investigation is hereby lifted".² PTA, OCA, and Embarq conveniently ignore this crucial limitation on the lifting of the stay, and argue as if the Commission lifted the stay on the entire investigation. But, the Commission's use of the phrase "intrastate access portion" in the Ordering paragraphs is telling and cannot be ignored. It clearly evidences an intent to open only a portion of the overall investigation; as opposed to the entire broad investigation.

2. The August 5, 2009 Order clearly *did not* state that all of the issues from the December , 2004 Order would be included in this portion of the investigation, as PTA, Embarq and OCA argue.

The truth is that the December 4, 2004 Order **is not mentioned once** in the "Resolution" section of the August 5, 2009 Order, or in the ordering paragraphs of that Order. If the Commission wanted this upcoming portion of the investigation to address some or all of the six issues from the 2004 Order, the Commission would have stated as

¹ August 5, 2009 Order, at p. 19

² August 5, 2009 Order, at p. 21 (emphasis added).

such. The Commission did not do so. Without any explicit incorporation of the 2004 Order to point to, PTA, Embarq and OCA resort to relying on the “context”, “background” and “procedural posture” of the August 5, 2009 Order to support their argument that all of the issues listed in the December 20, 2004 Order are to be included in this phase of the investigation.³ Yet, in the same breath, Embarq acknowledges that “the Commission has not explicitly stated in the August 5, 2009 Order whether the issues in its December 2004 Order should be addressed in this phase of the re-opened proceeding.”⁴ As such, Embarq’s “contextual” argument holds no weight – it is merely wishful speculation that is trumped by the clear language of the August 5, 2009 Order, which lists the actual four discrete issues to be resolved in this phase of the proceeding.

3. The August 5, 2009 Order explicitly *did not* re-open the PaUSF portion of the proceeding, except to address “linkages” between access charge reform and the PaUSF.

The Commission clearly stated that that status quo remains in place for the PaUSF until *after* the issue of access charge reform is resolved. Specifically, in the concluding sentence of the “Resolution” section of the Order, the Commission stated “*Until there is resolution to access charge reform, the status quo stays in places, and the PaUSF shall continue under the existing regulations at 52 Pa. Code §§63.161-63.171 until such time as new regulations are promulgated eliminating or modifying the Fund.*”⁵ The Commission reiterated this statement in ordering paragraph 7. The plain meaning of this sentence cannot be ignored: the PaUSF shall continue unchanged *until* the access charge reform issue is resolved and *until* new regulations are promulgated. None of the ordering paragraphs directed the parties to create a record with respect to any of the PaUSF issues

³ See, *inter alia*, Embarq Memorandum, at pp. 2,3,4.

⁴ Id, at pp 3-4

⁵ August 5, 2009 Order, at pp.20-21

identified by the PTA, and the Commission made it quite clear that modifications to the PaUSF regulations would be addressed in a future rulemaking, not in this phase of the investigation.

PTA, Embarq and OCA completely ignore the Commission's clear determination that PaUSF regulatory changes would be made in the context of a future rulemaking, and this point illustrates the lack of credibility inherent in the PTA, Embarq and OCA Memoranda. All three of these parties argue that PTA issue (f), from the December 2004 Order, definitely should be addressed by ALJ Melillo in this phase of the proceeding.⁶

This issue is described as follows:

- (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?

Incredibly, all three parties claim that this issue – potential regulatory changes to 52 Pa. Code §§ 63.161-63.171 – must be included in the upcoming portion of the proceeding, even though pages 20-21 and Ordering Paragraph 7 of the August 5, 2009 Order unequivocally state that the regulations at 52 Pa. Code §§63.161-63.171 would be modified in a future rulemaking. In light of this clear directive from the Commission, how can the PTA, Embarq, and OCA honestly claim that the issue of regulatory changes to 52 Pa. Code §§ 63.161-63.171 is to be included in the scope of this upcoming phase of the proceeding? Their position is directly contradicted by the plain language of the August 5, 2009 Order. The treatment of this issue illustrates how the PTA, Embarq and OCA are giving no weight to the Commission's August 5, 2009 Order whatsoever, and instead are attempting to modify the scope of the upcoming proceeding as they see fit, rather than how the Commission has defined it.

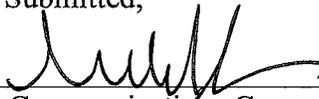
⁶ See PTA Memorandum at p. 6, Embarq Memorandum at pp. 3-4, and OCA Memorandum at pp. 14-15.

Conclusion

The Commission made it clear in its August 5, 2009 Order that this portion of the proceeding would be limited to addressing access charge reform, and the “linkages” between such reform and the four issues identified in Ordering Paragraph 5. The PTA, Embarq and OCA strenuously argue that the original six issues identified in the 2004 Order must also be resolved by the Commission, along with several new PaUSF issues (such as VOIP and CMRS contributions) that have developed over the years. They do a good job of explaining the importance of these issues to the rural ILECs and their customers, and they provide an interesting survey of the history of PaUSF and access charge proceedings in Pennsylvania. Sprint does not deny that these are important issues that must ultimately be resolved by the Commission. However, the point is not whether or not these issues *should* be resolved. The point is whether the Commission ordered these issues to be resolved now, in this phase of this proceeding. And clearly, the Commission has determined that these issues will not be resolved in this portion of the proceeding, but rather in a future rulemaking. The Commission certainly did not explicitly order the “original six” issues to be resolved in this portion of the proceeding, and the Commission made it clear that it was only lifting the stay with respect to the access charge portion of this investigation. The six issues from the 2004 Order are not mentioned even once in the Resolution section or the Ordering Paragraphs of the August 5, 2009 Order. Simply put, there is no legitimate basis to conclude that the upcoming “access charge portion” of the proceeding was also meant to address the six issues from the 2004 Order, plus all issues that “flow” from those six, as the PTA, Embarq and OCA advocate.

Sprint respectfully submits that an honest and logical reading of the August 5, 2009 Order must result in a finding that the scope of this phase of the proceeding is limited to access charge reform, and the linkages between such reform and the four issues identified in Ordering Paragraph 5, as explained in Sprint's September 2, 2009 Memorandum.

Respectfully Submitted,



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Dated: September 9, 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 and first class U.S. mail.

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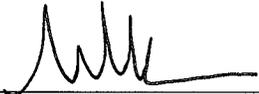
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September 9, 2009



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