

Suzan DeBusk Paiva
Assistant General Counsel
Pennsylvania



1717 Arch Street, 17W
Philadelphia, PA 19103

Tel: (215) 466-4755
Fax: (215) 563-2658
Suzan.D.Paiva@Verizon.com

October 5, 2009

VIA ELECTRONIC FILING

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

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

Dear Mr. McNulty:

Enclosed please find Verizon's Brief in Support of the Joint Petition for Interlocutory Review and Answer to a Material Question, being filed by Verizon Pennsylvania Inc., Verizon North Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, MCI metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc. (collectively "Verizon") in the above-captioned consolidated matter.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Suzan D. Paiva".

Suzan D. Paiva

SDP/slb

VIA E-MAIL and FIRST CLASS MAIL
cc: The Honorable Kandace F. Melillo
Attached Certificate of Service

VIA E-MAIL and UPS DELIVERY
cc: Cheryl Walker Davis, Esquire, OSA

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Verizon's Brief in Support of the Joint Petition for Interlocutory Review and Answer to a Material Question, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 5th day of October, 2009.

VIA E-MAIL and FIRST CLASS U.S.MAIL

Norman J. Kennard, Esquire
Regina L. Matz, Esquire
Jennifer M. Sultzaberger
Thomas, Long, Niesen & Kennard
212 Locust Street, Suite 500
Harrisburg, PA 17108
Rural Telephone Company Coalition

Bradford M. Stern, Esquire
Rothfelder Stern, L.L.C.
625 Central Avenue
Westfield, NJ 07090
Omnipoint Communications Inc. d/b/a T-Mobile; Omnipoint Communications Inc. d/b/a T-Mobile and Voicestream Pittsburgh LP d/b/a T-Mobile Nextel Communications, Inc.

Christopher M. Arfaa, Esquire
Christopher M. Arfaa, P.C.
150 N. Radnor Chester Road, Suite F-200
Radnor, PA 19087-5245
Cingular Wireless LLC
Cellco Partnership d/b/a Verizon Wireless

Renardo L. Hicks, Esquire
Stevens & Lee, P.C.
17 North Second Street
16th Floor
Harrisburg, PA 17101

Joel Cheskis, Esquire
Barrett Sheridan, Esquire
Christy Appleby, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923

Steven C. Gray, Esquire
Office of Small Business Advocate
300 North 2nd St, Suite 1102
Harrisburg, PA 17101

Zsuzanna Benedek, Esquire
Embarq Corporation
240 North Third Street, Suite 201
Harrisburg, PA 17101

Michelle Painter
Painter Law Firm, PLLC
13017 Dunhill Drive
Fairfax, VA 22030
AT&T Communications of PA, LLC,
TCG Pittsburgh and TCG New Jersey

Barry A. Naum, Esquire
McNees Wallace & Nurick LLC
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108-1166
Broadband Cable Association of PA

John Povilaitis, Esquire
Matthew Totino, Esquire
Ryan, Russell, Ogden & Seltzer P.C.
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025
Counsel for Qwest

Alan Kohler, Esquire
Deanne M. O'Dell, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
P.O. Box 1248
Harrisburg, PA 17108-1248
Counsel for Comcast Phone of
Pennsylvania, LLC and Comcast
Business Communications LLC

Benjamin J. Aron
Sprint Nextel Corporation
Mailstop: VARESP0201-208
2001 Edmund Halley Drive
Reston, VA 20191

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



Suzan D. Paiva
Pennsylvania Bar ID No. 53853
1717 Arch Street, 17 NW
Philadelphia, PA 19103
(215) 466-4755

Attorney for Verizon

**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	:	

**VERIZON'S¹ BRIEF IN SUPPORT OF THE JOINT
PETITION FOR INTERLOCUTORY REVIEW
AND ANSWER TO A MATERIAL QUESTION**

I. INTRODUCTION

To “expedite the conduct of the proceeding,” the Commission should step in now and clarify the scope of the record that it wishes to have developed and presented to it in this phase of the investigation. 55 Pa. Code § 5.302(a). Absent Commission intervention, the presiding officer’s September 15, 2009 order permits the Rural Incumbent Local Exchange Carriers (“RLEC”) and Office of Consumer Advocate (“OCA”) to raise broad and sweeping arguments aimed at changing the fundamental structure of and expanding the size of current Universal Service Fund (“USF”), issues that the presiding officer herself admitted are “purely academic” and cannot actually be resolved in this case because they require a rulemaking and/or legislative changes. (9/15/09 ALJ Order at 15-16).

¹ This brief is filed on behalf of Verizon Pennsylvania Inc., Verizon North Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, MCI metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc. (collectively “Verizon”)

This expansive statement of the scope of the investigation is directly contrary to this Commission's admonition in its August 5, 2009 Order that "the issues already adjudicated before Administrative Law Judge Susan Colwell during the limited reopening of the investigation shall not be relitigated absent extraordinary circumstances." (8/5/09 Order at 19). Whether and how the USF should be changed in the future has already been litigated before ALJ Colwell, who found that the USF is not "free money" but rather ultimately is funded by "the ratepayers of other telecommunications providers," and that the current USF should be "reconstructed" through a rulemaking to change the existing regulations to limit subsidies only to those companies that meet a "stringent test" of demonstrating that they "need extra help" – exactly the opposite of what the RLECs and OCA seek to argue here. (7/23/09 RD at 87). These parties filed exceptions vehemently disagreeing with ALJ Colwell, which are pending before the Commission. They should not be allowed a second bite at the apple by arguing before a different ALJ for a huge expansion of the currently constructed USF. Rather, they have the opportunity to address these issues in the phase of the case flowing from ALJ Colwell's decision.

Verizon has joined with other industry members² to ask this Commission to make clear that the RLECs' access customers should not be forced to litigate cumbersome and tangential issues relating to the fundamental structure of the current USF, issues that cannot even be implemented in this proceeding, as a condition of being permitted to present a record to the Commission on the need to reduce and rebalance the RLECs' excessive access rates. The scope of the proceeding set out by the presiding officer will only serve to waste Commission and party resources and allow the RLECs and OCA deliberately to divert

² The petitioners are AT&T, Sprint, Verizon, Qwest and T-Mobile, as described more fully in footnote 1 to the Joint Petition for Interlocutory Review and Answer to a Material Question.

attention from the central issue the Commission intended to address, which is “reexamining the area of intrastate carrier access charges for the RLECs.” (8/5/09 Order at 18).

II. ARGUMENT

Verizon and other telecommunications carrier parties to this case ask this Commission to clarify the proper scope of the proceeding to be litigated before the Office of Administrative Law Judge pursuant to this Commission’s August 5, 2009 Order. The Commission should clarify that the RLECs and OCA are *not* permitted to force the other parties to litigate the following tangential issues identified in the ALJ’s September 15, 2009 Order: (1) whether wireless carriers should be added as contributors to the USF (9/15/09 ALJ Order at 15); (2) what regulatory changes should be made to the Commission’s current USF regulations (9/15/09 ALLJ Order at 17); (3) whether access rates should be increased if the current USF credits to the RLECs are reduced (9/15/09 ALJ Order at 18); and (4) whether the pool of USF contributors should be expanded to include Voice over Internet Protocol (“VoIP”) providers or others (9/15/09 ALJ Order at 19). Instead, the litigation should focus only on issues relating to “the access charge investigation” that the Commission directed “should be resumed at this time.” (8/5/09 Order at 19). In particular, the litigation should focus only on issues directly related to the question of “[w]hether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs’ territories,” described at page 13 of the ALJ’s order.³

The ALJ’s September 15, 2009 order took a very broad view of what could be raised in this case by framing its decision around the RLECs’ advocated list of issues – which the order concedes was “the most expansive scope of the proceeding being advocated.” (9/15/09

³ Certainly if there are any relevant developments relating to intercarrier compensation in the federal arena during the pendency of this case, those issues could be addressed as well. *See* 9/15/09 ALJ Order at 21-22.

ALJ Order at 10). Predictably, the RLECs sought to deflect attention from the real issue at hand – decreasing the anti-competitive revenue flow from other carriers to the RLECs by reducing their excessive access rates – trying instead to turn this case into an inquiry aimed at increasing industry subsidies to the RLECs by increasing the size of the industry-funded USF. The RLECs argued that any issue that the Commission had not specifically forbidden to be litigated here is fair game. The presiding officer initially agreed with the joint petitioners that a more narrow scope of proceeding would be appropriate, but then “reconsidered” and adopted the RLEC and OCA more expansive view. (9/15/09 Order at 15).

The ALJ’s order parsed every issue on the RLECs’ expansive list to determine whether it had already been “adjudicated” before ALJ Colwell, and applied a very narrow view of what ALJ Colwell adjudicated. In doing so, it came to the illogical and unfair conclusion that the parties were prohibited from litigating the question of whether “disbursements from the PA USF [should] be reduced and/or eliminated” because ALJ Colwell had already concluded the fund should be reduced or eliminated, (9-15-09 ALJ Order at 14), but that the RLECs and OCA were free to raise a broad array of tangential issues aimed at increasing and expanding the USF because ALJ Colwell had not specifically addressed them.⁴ The ALJ order conceded that its result is “not preferred” because it will lead to a “piecemeal approach” to litigating issues regarding the USF. It even conceded that it is forcing Verizon and the other industry parties to litigate “purely academic” issues, and that, for example, litigation of the wireless contribution question would only serve as an

⁴ Even though ALJ Colwell recommended that the Commission convene a rulemaking to change the present USF regulations, the presiding officer expressly “disagree[d]” with the premise that the Commission precluded litigation of “any issues... which would require PA USF regulatory changes” through a rulemaking. (9/15/09 ALJ Order at 16). But the Commission’s prohibition against relitigating issues already “adjudicated” before ALJ Colwell supports the interpretation advanced by Verizon and others that any issue requiring a rulemaking is precluded.

“information” gathering exercise to determine whether the Commission should “seek a legislative change” to provide it with the authority, now lacking, to require such contributions. (9/15/09 ALJ Order at 15-16). But the ALJ order concluded that without more specific Commission guidance, it had no alternative but to allow the litigation to proceed in the broad and unfocused manner demanded by the RLECs and OCA, and encouraged the parties to file a petition for review and answer to a material question if they disagreed. (9/15/09 ALJ Order at 24).

This Commission can and should step in and clarify the issues that are appropriately to be addressed, to ensure that a helpful record is produced on the actual issues that the Commission sought to investigate, without causing the participating industry parties to incur the unnecessary litigation expense by forcing them to defend against purposeless, diversionary arguments. The RLECs and OCA should not be permitted to delay and complicate this proceeding by arguing over fundamental changes to the USF that would require a rulemaking to implement. There is no question that a rulemaking would be required before the Commission could expand the contributors to the USF,⁵ or make any other fundamental changes to the form or structure of the fund, because those issues are codified in existing regulations that, among other things, define the contributing base. The Commission will decide whether or not to convene such a rulemaking when it addresses ALJ Colwell’s recommendation. Meanwhile, the Commission has already directed in its August 5, 2009 Order that, “[u]ntil there is a resolution to access charge reform, the *status quo* stays in place, and the PaUSF shall continue *under the existing regulations* . . . until such time as new

⁵ For example, the “existing regulations” exempt wireless carriers as contributors to the USF by stating that “wireless carriers are exempt from this subchapter under 66 Pa.C.S. § 102(2)(IV) (relating to definitions).” 52 Pa. Code. § 63.162.

regulations are promulgated [through a proper rulemaking] eliminating or modifying the Fund.” (8/5/09 Order at 20-21) (emphasis added).

There is no benefit to be gained by complicating this case with issues that are not directly related to reducing the RLECs’ access rates and cannot be resolved in this non-rulemaking proceeding. Indeed, it is telling that neither the RLECs nor the OCA explained in their briefing before the ALJ *why* it is necessary to address those issues here, when they would certainly have to be litigated again in a proper rulemaking before the implementing regulations could be changed. The ALJ’s order also articulates no benefit from including these issues, and simply asserts that they should be included because “investigations are more expansive than complaint proceedings.” (8/15/09 ALJ Order at 16). Allowing the RLECs and OCA to raise, and requiring the other parties to respond to, pointless arguments will only obscure the primary focus of this case, delay its resolution and result in an unwieldy investigation. The Commission should therefore clarify that the general issues about the structure of the Pennsylvania USF that are listed above are not part of this case and cannot be litigated in this phase of the proceeding.

Respectfully submitted,



Suzan D. Paiva (Atty No. 53853)
Verizon
1717 Arch Street, 17th Floor
Philadelphia, PA 19103
(215) 466-4755
Suzan.d.paiva@verizon.com

Counsel for Verizon

Dated: October 5, 2009