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October 5, 2009

## VIA E-FILING & FIRST CLASS MAIL

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Commonwealth, Keystone Building  
Harrisburg, PA 17105-3265

**Re: 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 v. Armstrong Telephone Company – Pennsylvania, et al.  
Docket No. C-2009-2098380, et al.**

Dear Mr. McNulty:

This office represents Omnipoint Communications Inc. d/b/a T-Mobile, Omnipoint Communications Enterprises LLC d/b/a T-Mobile and VoiceStream Pittsburgh LP d/b/a T-Mobile (“T-Mobile”). Please accept this letter filing as the brief of T-Mobile pursuant to 52 Pa. Code § 5.302(b) in support of the Joint Petition for Answer to Material Question filed September 25, 2009 in these proceedings.

T-Mobile respectfully disagrees with ALJ Mellilo’s Ordering Paragraph No. 1 in the *Order Addressing Scope of Consolidated Proceedings* issued September 15, 2009, to the extent that it includes in these proceedings going forward investigation of the issues identified under Issue (e) in the Commission’s *December 2004 Order* in these proceedings.<sup>1</sup> Nothing stated in

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<sup>1</sup> *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, Order entered December 20, 2004. Issue (e) therein states:

If the PA USF 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?

the Commission's *August 2009 Order* in these proceedings supports such conclusion. Had the Commission intended the above-described Issue (e) to be addressed going forward by ALJ Mellilo, it would have been a simple matter to state that clearly in its Order. The Commission did not do so; the ordering paragraphs contained in the *August 2009 Order* make no reference whatsoever to Issue (e).

Rather, the ordering paragraphs of the *August 2009 Order* clearly are limited in scope. The Commission expressly ordered that the "stay of the intrastate access charges portion of this investigation is hereby lifted."<sup>2</sup> Further, the Commission ordered those issues already adjudicated before ALJ Colwell during the limited reopening of the *Intrastate Charge Investigation* in Docket No. I-00040105 shall not be relitigated absent extraordinary circumstances.<sup>3</sup> The Commission then identified expressly the issues to be addressed in the consolidated proceeding:

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.<sup>4</sup>

The Commission also ordered that the Pennsylvania Universal Service Fund ("PaUSF") shall continue under the existing regulations codified at 52 Pa. Code §§ 63.161- 63.171 until such time as new regulations are promulgated eliminating or modifying the Fund."<sup>5</sup> It is indisputable that the Commission's existing regulations exempt wireless carriers from PaUSF contribution obligations based on statutory limitations to the Commission's jurisdiction.<sup>6</sup>

For the foregoing reasons, the Commission should rule on interlocutory review that it did not intend by its *August 2009 Order* to include investigation of the issues set forth in above-described Issue (e) in these proceedings going forward at this time.

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2 *Id.*, at Ordering Paragraph 2, p. 21.

3 *Id.*, at Ordering Paragraph 4, p. 21.

4 *Id.* at Ordering Paragraph 5, pp. 21-22.

5 *Id.* at Ordering Paragraph 7, p. 22.

6 52 Pa. Code § 63.162. See, definition of "Contributing telecommunications providers."

*James J. McNulty*  
*October 5, 2009*  
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The original and three (3) hard copies of this letter are being sent via first class mail. Copy has been served in accordance with the attached Certificate of Service.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Brad M. Stern", with a long horizontal flourish extending to the right.

Bradford M. Stern  
Attorney ID 57298

BMS/rma

cc: Service List (via E-Mail & First Class Mail)  
Honorable Kandace F. Melillo, ALJ (via E-mail & First Class Mail)

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of a letter brief pursuant to 52 Pa. Code § 5.302(b) for Omnipoint Communications Inc. d/b/a T-Mobile, Omnipoint Communications Enterprises LLC d/b/a T-Mobile and VoiceStream Pittsburgh LP d/b/a T-Mobile ("T-Mobile") upon the participants, listed below, in accordance with the requirements of §1.54.

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