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February 5, 2010

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 Motion of Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively "Sprint") to Compel Answers to Interrogatories directed to the Pennsylvania Telephone Association in the above-captioned matter. This Motion 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. Grain

Enclosure

cc: Certificate of Service
ALJ Melillo

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster • Scranton
Williamsport • Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**SPRINT’S MOTION TO COMPEL
RESPONSES TO SET II DISCOVERY
PROPOUNDED UPON PTA**

Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively “Sprint” or “Sprint Nextel”) hereby moves, pursuant to 52 Pa. Code § 5.342(g), to compel the Pennsylvania Telephone Association (“PTA”) and its member companies to provide complete responses to certain interrogatories and requests for the production of documents propounded by Sprint.

I. Introduction

On January 19, 2010 Sprint propounded its second set of interrogatories and requests for the production of documents (“Discovery Set II”) upon PTA. Discovery Set

II consisted of nine (9) questions. Counsel for PTA and Sprint met via teleconference and discussed PTA's various objections to Sprint's Discovery Set II. On January 29, 2010, PTA served its objections and responses to Sprint's Discovery Set II. Several of PTA's responses to Sprint's Discovery Set II are inadequate and/or incomplete, and PTA has objected to providing further responses. Accordingly, Sprint files this Motion seeking to require PTA to provide fully responsive answers to Sprint-PTA 2-8, and 2-9.

II. Discussion

Section 5.361 of the Commission's regulations sets forth the limits of the scope of discovery in Commission proceedings. 52 Pa. Code 5.361 states that

(a) Discovery or deposition is not permitted which:

- (1) Is sought in bad faith.
- (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.
- (3) Relates to matter which is privileged.
- (4) Would require the making of an unreasonable investigation by the deponent, a party or witness.

Furthermore, under Section 5.321 of the Commission's regulations, discovery requests must be relevant to the subject matter of the proceeding and reasonably calculated to lead to the discovery of admissible evidence. Administrative Law Judge Melillo ("ALJ Melillo") described the scope of discovery as follows: "... parties may obtain discovery of any unprivileged matter which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party." *See* Order Granting, in Part, PTA's Motions to Compel Responses to Set II Interrogatories Propounded Upon Sprint and AT&T, Docket I-00040105, at 4 (Jan. 22, 2010)("January 22 Discovery Order"). As described below,

the discovery requested in Sprint's Discovery Set II is well within the bounds of the discovery process and no objection raised by PTA provides any valid basis for its refusal to produce full responses.

a. Sprint-PTA 2-8

Sprint-PTA 2-8 Please provide the 2009 Biannual Network Modernization Plan Report as filed for each PTA company.

In response to Sprint-PTA 2-8, PTA provided the following objection and incomplete response:

Objections: See General Objections. Further, the information reported in the NMPs is wholly irrelevant to the issues presented in this case. The PTA Companies' objection is limited to the provision of only highly confidential portions of these reports as far afield from the Commission-identified issues in this investigation and, as such, is not relevant and is unlikely to lead to the discovery of admissible evidence. The PTA Companies also incorporate by reference the objection to Sprint-PTA-2-6.

Sprint is not entitled to disclosure of the confidential information contained in those documents, even were relevance demonstrated. The Protective Order in place in this case cannot be used to justify disclosure. As the Commission has noted: "We agree that release of such information would substantially harm the Petitioning Carriers by revealing marketing and business strategy. For example, information relating to DSL and broadband deployment categorized by exchange area and specific investment levels is not information publicly offered in other reports, and this information is more sensitive in nature because a competitor would want to know what areas are the best for "cherry-picking" customers." Sprint's joint ventures with the cable companies as well as those of many of the other participating parties are in direct competition with the PTA companies.

Answer: Subject to and without waiving these objections, the PTA Companies provide the following response:

Public versions of the documents requested are extensive and voluminous and are available at the Pennsylvania Public Utility Commission during normal business hours. Sprint is free to obtain copies of those public documents that are already available and on file at the Commission. The PTA will not agree to disclose the confidential provisions.

PTA objected that the requested discovery is not relevant to the issues presented in the instant matter, unlikely to lead to the discovery of admissible evidence, is outside the scope of the proceeding, competitively sensitive, attorney-client privileged, and a

legal conclusion. Turning first to the contention that the requested information is either attorney client privileged or a legal conclusion, Sprint notes that these objections were incorporated by reference to PTA's objections to Sprint-PTA 2-6 and it seems unlikely that these objections were intended to be proffered for the instant question. Certainly the discovery question does not seek a legal conclusion, so that objection need not be discussed. Similarly, this report filed with the Commission does not have any of the characteristics of material that is subject to the attorney-client privilege as it was not prepared in preparation for trial or otherwise prepared to advise a client. To the contrary, the reports in question were prepared for submission to the Commission to illustrate compliance with certain benchmarks. Therefore incorporation by reference of this objection, while likely unintentional, is ineffective.

As to the objection that the information is competitively sensitive, Sprint notes that it has been compelled to produce responses to a number of discovery questions over its objections that the information sought is competitively sensitive. Despite Sprint's objection, the requested information was ordered to be produced. This is particularly relevant as Sprint's rates are not at issue in the instant docket. PTA's rates, on the other hand, are under examination, and parties must have access to any and all information that they deem necessary to support their arguments. *See* January 22 Discovery Order at 4. Furthermore, Sprint is bound by the Protective Order issued in the instant docket, so any information produced will be given all due protection. Finally, nothing in the Commission's rules indicates that discovery requests can be disqualified due to the sensitivity of the information requested.

Regarding the first two objections, Sprint notes that the issue of cross

subsidization has been identified for investigation in the instant docket. The issues included in this case include those specified by AT&T in its complaint. Among those was whether the RLECs are in violation of 66 Pa. C.S. § 3011(4), which indicates that it is the policy of Pennsylvania to “[e]nsure that rates for protected services do not subsidize the competitive ventures of telecommunications carriers.” As the question of cross-subsidization is squarely within the scope of the instant docket, data regarding network modernization spending is particularly relevant to the case. Accordingly, the non-redacted information contained in Attachment 5 describing the amount of money each company has spent on network modernization related to broadband deployment is highly relevant.

Even without reference to the issue of cross-subsidization, the question would still be within the scope of this case as other issues identified for investigation include: whether intrastate switched access rates and rate structures should be modified, the potential effects of access reform on rates for basic local exchange services, whether PA USF should be reduced or eliminated as a matter of policy and/or law, etc. Under each of the identified issues (and under others not identified for the sake of brevity) Sprint is free to argue that revenues from other sources need to be considered in order to determine whether access rates are currently set too high, whether revenues from competitive services are sufficiently high so as to dissuade RLEC’s from raising local rates in reaction to an access rate reduction, whether revenues from competitive services are such that subsidy from the PA USF is unnecessary and that any increase to offset access reductions is uncalled for, etc. In short, PTA may not decide for Sprint those arguments that Sprint desires to make so long as those arguments are related to the issues involved in this case.

To the extent that Sprint seeks information to make arguments germane to the issues involved in the case, the information must be produced.

To be sensitive to PTA's concerns regarding production of its unredacted Network Modernization Plan Reports, Sprint is willing to limit the scope of its Motion in this regard to production of the non-redacted version of the Network Modernization Investment Status (Attachment 5), and totals by category, not by speed (i.e. only the bottom row for each table), on the DSL status sheets.

b. Sprint-PTA 2-9

Sprint-PTA 2-9 Please provide the 2008 revenue PTA collected from Pennsylvania customers derived from any and all services, other than local exchange service, which services use or rely on the facilities owned or controlled by PTA and used to provision regulated telephone services. (For the purposes of reference, the data requested is the same category of data that ALJ Colwell ordered to be produced in her September 30, 2008 Order).

In response to Sprint-PTA 2-9, PTA provided the following objection and refused to provide any response.

Objections: See General Objections. The PTA Companies object to this interrogatory to the extent that it seeks information that is not relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is highly burdensome to produce. The information is not maintained by the companies in the manner requested by Sprint and would require a special study on a customer-by-customer basis to produce.

The PTA Companies also incorporate by reference their objection to Sprint-PTA-2-6, namely that the information Sprint seeks was subject to production in the PA USF investigation before ALJ Colwell in direct response to an issue that was a part of that investigation, but that is not included within the scope of this proceeding. The Commission and the ALJ have been clear that issues previously adjudicated before ALJ Colwell may not be re-litigated here.

PTA objects to the question on the grounds that it seeks information that is not relevant to the proceeding, not reasonably calculated to lead to the discovery of admissible evidence, and would be burdensome to produce. PTA's argument that the

request is burdensome because it does not maintain information in the manner posed by the question is easily defeated. Sprint addressed the question so as to align with an earlier posed question in order to accomplish two goals. First, by repeating the question and seeking information updated for 2008, Sprint can be sure that the data produced reflects the same methodology undertaken to respond to the earlier question, and thus the data will be consistent for analytical purposes. Similarly, as ALJ Colwell provided specific instructions in an Order regarding the information to be produced, there is certainty regarding what information Sprint is requesting. Second, while PTA alleges that it is burdensome for it to produce a response, such objection was over-ruled by ALJ Colwell and PTA was able to timely produce its discovery response to the earlier posed question. There can be no doubt that if ordered to produce a response, PTA will not be unduly burdened, and will be able to produce a timely response as it did previously. The current interrogatory requires PTA to do no more than replicate the research that was conducted to produce its earlier data response, but for the year 2008.

PTA's averment that it would have to conduct a customer-by-customer special study is sophomoric. The discovery requests seeks data on a subset of services that are delivered to PTA's customers over common facilities. No more is required of PTA that to determine which of its services are delivered to its customers using the local network, then to determine revenue generated from those services. PTA has already conducted the requested research once before and it is beyond obvious that it can do so again. It also noteworthy that ALJ Melillo has indicated that "in rate proceedings, such as the instant case, the requirement of a special study is insufficient, in itself, to justify a limitation on discovery where the requesting party cannot reasonably conduct the

requested study.” 52 Pa. Code §5.361(b).” January 22 Discovery Order at 21. It goes without saying that Sprint cannot conduct a special study to determine what revenues are derived by PTA from any services. Accordingly, it is appropriate for PTA to be compelled to conduct the same study it was previously compelled to conduct in a related docket.

PTA attempts to claim that Sprint’s discovery request runs afoul of the prohibition against re-litigation of matters litigated by ALJ Colwell. This is a canard. The fact that the sub-docket presided over by ALJ Colwell and the instant sub-docket are both contained within the Commission’s RLEC access rate reform docket (I-00040105) is some indication that there may, and likely will, be commonality between the evidence used to support parties’ cases before ALJ Colwell and ALJ Melillo. Such commonality of evidence does not equate in any way to re-litigation. To the contrary, similar evidence can quite obviously be applied to any number of separate and distinct issues within related dockets.

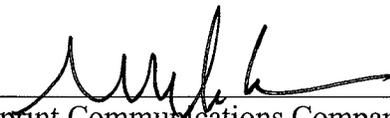
As for the objections on the grounds of admissibility and relevance, Sprint points out that the instant docket – as discussed above – involves the statutory prohibition against cross-subsidization, so evidence of revenues generated for competitive services is obviously relevant. Such revenues are perhaps even more relevant when they are generated over common facilities. Additionally, as the overarching goal for the instant docket is to determine the appropriate level of switched access, litigants cannot and should not be limited in arguing the factors that are relevant to the determination of the appropriate level of switched access. Indeed, as stated by ALJ Melillo, “parties may obtain discovery of any unprivileged matter which is relevant to the subject matter

involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party.” January 22 Discovery Order at 4. Should a carrier seek to argue that the determination of the appropriate level of switched access – the overarching purpose of the instant matter – must involve a look at total company revenues or any other subset of revenues, such argument is “related to the subject matter involved in the pending action,” and therefore discovery in support of such argument must be allowed.

III. Conclusion

Sprint trusts that the presiding officer will agree that the *very* wide range of issues indicated for inclusion in the instant docket provide ample basis for the discovery sought by Sprint. The discovery sought by Sprint is critical to developing arguments germane to the subject matter of the instant matter and addressed to issues that are specifically identified for inclusion in the instant docket. Sprint requests that, consistent with past Orders on Motions to Compel, Sprint’s Motion be granted and the PTA companies be compelled to produce responses to Sprint’s discovery requests.

Respectfully Submitted,



FOR: Sprint Communications Company, L.P.,
Sprint Spectrum, L.P., Nextel Communications
of the Mid-Atlantic, Inc., and NPCR, Inc.

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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 :

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion to Compel 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 US Mail.

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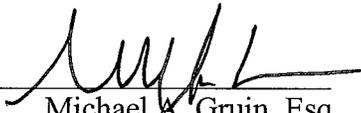
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February 5, 2010


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