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June 3, 2010

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

**VIA HAND DELIVERY**

**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 Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the original and nine (9) copies of the Reply Brief of the Broadband Cable Association of Pennsylvania ("BCAP") in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and Reply Brief and kindly return them for our filing purposes. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By   
Shelby A. Linton-Keddie

Counsel to the Broadband Cable Association of Pennsylvania

SLK/lmc  
Enclosures

c: Administrative Law Judge Kandace F. Melillo (via Hand Delivery)  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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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, <i>et al.</i>
Armstrong Telephone Company -	:	
Pennsylvania, <i>et al.</i>	:	
Respondents	:	

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**REPLY BRIEF OF THE  
BROADBAND CABLE ASSOCIATION OF PENNSYLVANIA**

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Dated: June 3, 2010

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## I. INTRODUCTION

The Pennsylvania Public Utility Commission's ("PUC" or "Commission") *Global Order* of September 30, 1999, at Docket Nos. P-00991648 and P-00991649, reduced access charges of all incumbent local exchange carriers ("ILECs") operating in Pennsylvania. In addition, the *Global Order* directed that a Pennsylvania Universal Service Fund ("USF") be established to enable rural ILECs and Sprint/United to further reduce access charges and intraLATA toll rates while at the same time ensuring that residential basic local service rates did not exceed the designated price cap of \$16.00 per month.

On July 15, 2003, the Commission entered an Order ("July 15 Order") granting a Joint Procedural Stipulation, which further reduced intrastate access charges for rural telephone companies operating in Pennsylvania and increased the cap on basic residential local service rates from \$16.00 to \$18.00 per month.<sup>1</sup> Other than increasing the size of the cap, the July 15 Order did not change the size of the USF, modify the regulations promulgated to address the original USF, or terminate the fund; however, in the July 15 Order, the Commission committed to open a rulemaking proceeding that would commence before December 31, 2004.

Subsequently, on December 20, 2004, at Docket No. I-00040105, the PUC entered an Order instituting a proceeding to investigate whether to implement further access charge reductions and intraLATA toll rate reductions in the service territories of rural ILECs. This investigation has been stayed multiple times pending the outcome of a parallel federal investigation before the Federal Communications Commission ("FCC") that was expected to impact the Commission's own investigation or until further consideration. To date, the FCC's investigation has not concluded.

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<sup>1</sup> See *Access Charge Investigation per Global Order of September 30, 1999*, Docket Nos. M-00021596, *et al.*, Order (entered July 15, 2003).

By Order entered April 24, 2008, the Commission reopened the investigation on a limited basis to address two general issues: (1) the existence and potential alteration of any "caps" on residential monthly service rates and business monthly rates and (2) potential increases or decreases in funding provided to rural incumbent local exchange carriers ("RLECs") from the USF.<sup>2</sup> On July 23, 2009, Administrative Law Judge ("ALJ") Susan D. Colwell issued a Recommended Decision that, among other things, suggests that "the PA USF should be reformed to provide monetary assistance to only those RLECs for service in high-cost service areas and for assistance to low-income customers"<sup>3</sup> and that the Commission "open a rulemaking which proposes changes to its universal service regulations to reflect the Commission's policy regarding universal service in Pennsylvania."<sup>4</sup> The Broadband Cable Association of Pennsylvania ("BCAP") supports ALJ Colwell's recommendation. This Recommended Decision is still pending before the Commission.

On March 19, 2009, AT&T Communications of Pennsylvania, LLC ("AT&T") and its affiliates filed Complaints against 96 Pennsylvania RLECs, asking the Commission to reduce the access rates of each RLEC. These Complaints were consolidated by ALJ Kandace F. Melillo into one proceeding at Docket No. C-2009-2098380, *et al.* By Commission Order entered July 29, 2009, the Commission consolidated those 96 AT&T Complaints with the stayed portion of the rural access charge investigation and, in a separate Order entered August 5, 2009, restarted the investigation by denying a pending request for a further stay.<sup>5</sup> The Commission explicitly

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<sup>2</sup> See *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, Order (entered April 24, 2008).

<sup>3</sup> *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, Recommended Decision Issued July 23, 2009, at 66.

<sup>4</sup> *Id.* at 90.

<sup>5</sup> See *AT&T Communications of Pennsylvania, LLC v. Armstrong Telephone Co., etc.*, Docket No. C-2009-2098380 Order (entered July 29, 2009); see also *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 Order (entered August 5, 2009).

directed that parties should not relitigate issues that were addressed in ALJ Colwell's Recommended Decision.<sup>6</sup>

A Prehearing Conference was held in the consolidated proceeding on August 19, 2009. At that hearing, parties disagreed as to the specific issues to be litigated in this phase of the reopened investigation. As a result, ALJ Melillo requested and reviewed memoranda containing parties' positions on the proper scope of the proceeding. Shortly thereafter, on September 25, 2009, ALJ Melillo issued an Order addressing the scope of the consolidated proceeding. In response, several parties submitted a Petition Requesting Interlocutory Review and Answer to Material Question with the Commission on September 25, 2009.

The Commission granted the Petition and answered the Material Question in an Order entered on December 10, 2009. In doing so, the Commission determined that the issue of whether wireless carriers and Voice Over Internet Protocol ("VoIP") service providers should contribute to the USF should not be litigated as part of this proceeding.<sup>7</sup> Instead, "[e]xamination of whether wireless carriers and VoIP service providers should be contributors to the PaUSF should take place in the context of the investigation at Docket No. I-00040105 that has already been adjudicated before ALJ Colwell and any subsequent proceedings that may address the substantive nature and operation of the PaUSF."<sup>8</sup>

Pursuant to the procedural schedule, Main Briefs were submitted in this proceeding on May 13, 2010. BCAP received Main Briefs from the following parties: Office of Consumer Advocate ("OCA"), Office of Small Business Advocate ("OSBA"), Office of Trial Staff

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<sup>6</sup> See *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 Order at 21 (entered August 5, 2009).

<sup>7</sup> See generally *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund, Docket I-00040105, AT&T Communications of Pennsylvania, LLC, et al., v. Armstrong Telephone Company of Pennsylvania et al.* Docket No. C-2009-2098380, *et al.*, Order (entered December 10, 2009).

<sup>8</sup> *Id.* at 24.

("OTS"), Comcast Phone of Pennsylvania, LLC and Comcast Business Communications, LLC (collectively, "Comcast"), Qwest Communications Company ("Qwest"), AT&T Communications of Pennsylvania, LLC, TGC Pittsburgh, Inc. and TGC New Jersey, Inc. (collectively, "AT&T"), The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink ("CenturyLink"), 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"), Sprint Communications Company L.P., Sprint Spectrum, L.P. and Nextel Communications of the Mid-Atlantic, Inc. and NCPR, Inc. (collectively, "Sprint") and the Pennsylvania Telephone Association ("PTA").

BCAP submits this limited Reply Brief to address an issue of importance to BCAP members. Because of the limited scope of issues that will be addressed, BCAP respectfully requests to depart from the common outline.

## **II. SUMMARY OF ARGUMENT**

As set forth in BCAP's briefs submitted to ALJ Colwell, it is time for Pennsylvania to re-evaluate the design and purpose of the USF. While the original USF was initially appropriate as an interim transition mechanism to permit RLECs to reduce access charges and intraLATA toll rates, it is no longer appropriate today. Accordingly, BCAP renews its recommendation that the Commission undertake a process to establish a permanent and competitively-neutral USF to target high cost and underserved communities, rather than perpetuate the current USF that can be drawn upon only by RLECs. Some parties' proposals in this proceeding are based on the assumption that the current USF will continue to exist and be expanded. Because ALJ Colwell's Recommended Decision remains pending before the Commission and would revise the USF (if it

is adopted), BCAP urges the Commission to ensure that any decision made in this proceeding will not prejudice future arguments and decisions regarding the size, structure and purpose of the USF.

### III. ARGUMENT

#### A. **The Resolution of This Proceeding Should Not Prejudice Future Arguments in Other Proceedings Regarding the Size, Structure and Purpose of Pennsylvania's Universal Service Fund.**

The Commission currently has two open proceedings at Docket No. I-00040105. ALJ Colwell's Recommended Decision issued on July 23, 2009, at Docket No. I-00040105 suggests that "the PA USF should be reformed to provide monetary assistance to only those RLECs for service in high-cost service areas and for assistance to low-income customers"<sup>9</sup> and that the Commission "open a rulemaking which proposes changes to its universal service regulations to reflect the Commission's policy regarding universal service in Pennsylvania."<sup>10</sup> In the current parallel proceeding, the OCA has submitted a "comprehensive proposal" to reduce access charges, allow RLECs to draw more subsidies from the USF and expand the contributor base of the USF.<sup>11</sup> The OCA, in its Main Brief, recognizes that the issue of whether the USF contributor base should be expanded is outside the scope of this proceeding.<sup>12</sup> Despite this acknowledgement, BCAP is concerned that the Commission's determination in this portion of the proceeding may inadvertently prejudice any subsequent investigation of revisions to the USF.<sup>13</sup>

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<sup>9</sup> *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, Recommended Decision Issued July 23, 2009, at 66.

<sup>10</sup> *Id.* at 90.

<sup>11</sup> *See generally* OCA Main Brief.

<sup>12</sup> *See* OCA Main Brief at 21 ("The OCA realizes that a finding regarding the recommendation to enlarge the PA USF contribution base may not be within the purview of the assigned issues in this portion of the proceeding.").

<sup>13</sup> On May 20, 2010, various wireless carriers moved to strike the portions of the OCA's Main Brief setting forth the proposal to expand the contributor base of the USF. Because that Motion was denied and OCA's brief remains intact, parties opposing OCA's position are free to submit Reply Briefs setting forth their positions on the expansion

As recommended by ALJ Colwell, it is appropriate for the Commission to revisit the purpose and function of the current USF. The Commission should undertake a process to establish a permanent and competitively-neutral USF to target high cost and underserved communities, rather than perpetuate the current fund that can be drawn upon only by RLECs. BCAP intends to participate in that process to express its views on the design and purpose of the USF at the appropriate time. BCAP submits this limited Reply Brief to express its concerns about the potential "spill over" effects of this proceeding, and to preserve its rights and arguments for future proceedings addressing substantive issues related to the USF.

### III. CONCLUSION

**WHEREFORE**, the Broadband Cable Association of Pennsylvania respectfully requests that the Pennsylvania Public Utility Commission adopt the recommendations made herein.

Respectfully submitted,

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Dated: June 3, 2010

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of the USF contributor base, regardless of whether this issue is ultimately decided in this portion of the bifurcated proceeding.

## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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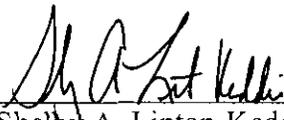
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