



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

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May 13, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
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 Secretary Chiavetta:

Enclosed for filing, please find an original and nine (9) copies of the **Main Brief**
of the Office of Trial Staff (OTS) in the above-captioned proceeding.

As evidenced by the enclosed Certificate of Service, copies are being served on all
active parties of record.

Sincerely,

Allison C. Kaster
Prosecutor
Office of Trial Staff
PA Attorney I.D. #93176

Enclosure
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cc: Parties of Record

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation Regarding Intrastate :
Access Charges and IntraLATA Toll :
Rates of Rural Carriers and the : Docket No. I-00040105
Pennsylvania Universal Service Fund :

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

**MAIN BRIEF
OF THE
OFFICE OF TRIAL STAFF**

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Dated: May 13, 2010

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I. STATEMENT OF QUESTIONS AND SUMMARY OF POSITIONS

Q. Should AT&T's request to reduce RLECs' intrastate switched access rates be denied as AT&T has failed to satisfy its burden of proof?

A. Suggested Answer: Yes.

In this proceeding, AT&T and the other IXCs advocate for a reduction of access charges in order to create a neutral playing field for Pennsylvania consumers and telecommunications providers. The IXCs contend that this will be achieved by reducing RLEC intrastate access charges so that they are in parity with the RLECs interstate access charges, including the elimination of the carrier common line charge. While the IXCs goal is not objectionable in theory, the record is devoid of evidence demonstrating that intrastate access rates are excessive or that increasing basic local exchange service (BLES) is appropriate. Due to the failure to provide these cost studies, AT&T has not met its burden of proof as there is no cost justification to reduce or eliminate these charges.

Because AT&T has not demonstrated that access rate reductions are warranted, OTS maintains that access rates should not be changed. Maintaining the status quo will ensure that IXCs continue to pay for use of the RLECs local loop, which is appropriate because IXCs originate and terminate traffic to customers without having to invest the time and expense to build a network to connect these customers. As such, the access charge reductions requested in the AT&T Complaint must be rejected.

II. FACTUAL AND LEGAL BACKGROUND

On December 20, 2004, the Commission entered an Order instituting an investigation (RLEC Access Charge Investigation or Investigation) as to whether there should be further intrastate access charge and intraLATA toll rate reductions in the rural incumbent local exchange carriers' territories and the rate issues/changes that should or would result if Pennsylvania Universal Service Fund (PA USF or Fund) disbursements were reduced. This investigation was instituted as a result of the Commission's prior Order of July 15, 2003, at Docket No. M-00021596, and the Global Order,¹ which discussed implementing continuing access charge reform in Pennsylvania.

The December 2004 Order directed the Office of Administrative Law Judge (OALJ) to conduct the appropriate proceedings including, but not limited to, a fully developed analysis and recommendation on the following questions:

- a) Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs' territories.
- b) What rates are influenced by contributors to and/or disbursements from the PA USF?
- c) Should disbursements from the PA USF be reduced and/or eliminated as a matter of policy and/or law?
- d) Assuming the PA USF expires on or about December 31, 2006, what action should the Commission take to advance the policies of this Commonwealth?

¹ *Re Nextlink Pennsylvania, Inc.*, Docket Nos. P-00991648; P-00991649, 93 Pa. P.U.C. 172 (September 30, 1999)(*Global Order*); 196 P.U.R. 4th 172, *aff'd sub nom. Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa. Cmwlth. 2000), *alloc. granted*, 844 A.2d 1239 (Pa. 2004).

- e) 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?
- 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?

The RLEC Access Charge Investigation was assigned to ALJ Colwell; however, by Order entered August 30, 2005, the proceeding was stayed due to a pending Federal Communications Commission (FCC) examination of access charges, reciprocal compensation and universal service in the Unified Intercarrier Compensation² proceeding. Prior to the stay, ALJ Colwell issued a ruling on issue (e), above, in response to a motion by the Wireless Carriers requesting a determination that the Commission lacked jurisdiction to require commercial mobile radio service providers to contribute to the PA USF. ALJ Colwell granted the Wireless Carriers' Motion to the extent it depended on a determination that wireless carriers are not public utilities. ALJ Colwell also indicated a future intent to name the wireless carriers as "indispensable parties," but never specifically ordered wireless carriers to be joined as indispensable parties, and no motion requesting joinder has been filed to date.

2 *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 05-33, Further Notice of Proposed Rulemaking (released March 3, 2005).

In July 2006, the Missoula Plan³ was submitted to the FCC. Generally, the Missoula Plan sought to unify intercarrier charges for all traffic over a 4-year time period, reduce intercarrier compensation rates, provide an ability to recover those reduced rates through explicit means, move rates for all traffic closer together, and establish uniform default interconnection rules. The Missoula Plan and other intercarrier compensation reform proposals are currently pending before the FCC for consideration. The Commission considers this FCC proceeding to have significant potential to directly impact the issues in the instant proceeding.⁴

On or about August 30, 2006, the Rural Telephone Company Coalition (RTCC), the Office of Trial Staff (OTS), the Office of Consumer Advocate (OCA), and Embarq PA filed a Joint Motion for further stay of the RLEC Access Charge Investigation. By Order entered November 15, 2006, the Commission granted the Joint Motion and stayed the proceeding pending the outcome of the Unified Intercarrier Compensation proceeding, or until November 15, 2007, whichever was earlier.

By Order entered April 24, 2008 the Commission reopened the Investigation to address specific issues and assigned the proceeding to ALJ Colwell for hearing and decision. The remainder of the Investigation was stayed for the third time pending the outcome of the FCC's Unified Intercarrier

3 The Missoula Plan, which was filed on July 24, 2006, is one in a series of intercarrier compensation proposals in the FCC's CC Docket No. 01-92.

4 *RLEC Access Charge Investigation*, Order entered August 9, p. 5.

Compensation proceeding or until April 24, 2009 (i.e., one year from the entry date of the April 2008 Order), whichever came first.

On March 19, 2009, during the pendency of the third RLEC Access Charge Investigation stay, AT&T Communications of Pennsylvania, LLC, TCG New Jersey, Inc. and TCG Pittsburgh, Inc. (collectively AT&T) filed individual complaints (AT&T Complaints) with the Commission against thirty two (32) Pennsylvania RLECs⁵ for a total of ninety-six (96)⁶ complaints (referred to collectively as AT&T Complaint proceeding). The AT&T Complaints, which were filed pursuant to 52 Pa Code § 5.21 and 66 Pa. C.S. §§ 701 and 1309, involved alleged intrastate access charge violations of 66 Pa. C.S. §§ 1301 and 3011(3), (4), (5), (8) and (9). As relief, AT&T requested that the RLECs be required to reduce intrastate access rates to levels which correspond, both in rate

5 The RLECs are as follows: Armstrong Telephone Company – Pennsylvania; Armstrong Telephone Company – North; Bentleyville Telephone Company; Buffalo Valley Telephone Company; Citizens Telephone Company of Kecksburg; Citizens Telecommunications Company of New York; Frontier Communications Commonwealth Telephone Company, LLC (d/b/a Frontier Commonwealth); Frontier Communications of Breezewood, LLC; Frontier Communications of Canton, LLC; Frontier Communications – Lakewood, LLC; Frontier Communications – Oswayo River, LLC; Frontier Communications of PA, LLC; Conestoga Telephone & Telegraph Company; D&E Telephone Company; Hickory Telephone Company; Ironton Telephone Company; Lackawaxen Telecommunications Services; Laurel Highland Telephone Company; Mahanoy & Mahantango Telephone Company; Marianna & Scenery Hill Telephone Company; The North-Eastern Pennsylvania Telephone Company; North Penn Telephone Company; Consolidated Communications of Pennsylvania Company (f/k/a North Pittsburgh Telephone Company); Palmerton Telephone Company; Pennsylvania Telephone Company; Pymatuning Independent Telephone Company; South Canaan Telephone Company; Sugar Valley Telephone Company; The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania (Embarq PA); Venus Telephone Corporation; Windstream Pennsylvania, LLC (f/k/a ALLTEL Pennsylvania, Inc.) ; and Yukon-Waltz Telephone Company.

6 On April 23, 2010, AT&T filed a Motion to Withdraw Complaints Against Citizens Telephone Company- New York because it does not have an intrastate access tariff. The Motion was unopposed and, by Order dated April 26, 2010, the Formal Complaints against Citizens Telephone Company – New York at Docket Nos. C-2009-2098526, C-2009-2100107, and C-2009-2101274 were withdrawn and marked closed.

levels and in rate structure, to the rates each company assesses for interstate switched access.

On April 30, 2009, the RLECs, represented by the Pennsylvania Telephone Association (PTA), filed Answers to the ninety-six (96) Complaints and also filed Preliminary Objections. In its Answer, PTA denied the material allegations and contended that AT&T was attempting to end run the Commission's pending Rural Access Charge Investigation that was stayed at that time. It further argued that the pending investigation was the appropriate forum for deciding access charge issues. In its Preliminary Objections, PTA alleged its pends, due to the pending RLEC Access Charge Investigation, and failure of AT&T to state a cause of action.

The AT&T Complaints were consolidated into three lead dockets, and ALJ Melillo was assigned to hold hearings and render a decision. The three lead dockets were consolidated into one docket at C-2009-2098380. Further, ALJ Melillo denied PTA's Preliminary Objections by Order dated June 22, 2009.

The following parties intervened or filed notice of appearances in the AT&T Complaint proceeding: Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively Sprint); OTS; OCA; The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania (Embarq PA); 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 Transmission Services, and MCI Communications Services, Inc.

(collectively Verizon); Comcast Phone of Pennsylvania, LLC and Comcast Business Communications, LLC (collectively Comcast); Quest Communications Company, LLC (Quest); and the Broadband Cable Association of Pennsylvania (BCAP).

Sprint raised an issue concerning the applicability of the nine-month period and retroactivity provision in Section 1309(b) of the Public Utility Code, 66 Pa. C.S. § 1309(b), to the AT&T Complaints. During a June 23, 2009, telephonic conference it was decided that PTA would seek a Commission ruling on the Section 1309 question through the filing of a petition for review and answer to a material question. In the interim, an expedited procedural schedule was established due to the uncertainty about how the Section 1309(b) question would be decided by the Commission.

On June 26, 2009, PTA and Embarq PA submitted a Petition Requesting Interlocutory Review and Answer to Material Questions (Material Questions Petition) regarding issues arising from the AT&T Complaints. The material questions for review included whether the ALJ erred in denying the Preliminary Objections filed by the PTA, whether the Commission should stay or consolidate the AT&T's Complaints with the pending RLEC Access Charge Investigation, and whether the retroactivity provision in Section 1309(b) applied to the AT&T Complaints.

A fourth stay request was filed concerning the remainder of the RLEC Access Charge Investigation which had not been assigned to ALJ Colwell. This stay request and the Material Questions Petition were considered by the Commission at Public Meeting on July 23, 2009.

Regarding the Material Questions Petition, the Commission determined that lis pendens did not apply and the AT&T Complaints would not be dismissed, but that they would be consolidated with the RLEC Access Charge Investigation to avoid duplicative litigation. The Commission also indicated that, considering that the AT&T Complaints were being consolidated with a proceeding that was instituted several years ago, the nine-month deadline and retroactivity provision in Section 1309(b) of the Public Utility Code would not apply. Regarding the RLEC Access Charge Investigation, the Commission lifted the stay and assigned the matter to OALJ for development of an appropriate evidentiary record and the issuance of a Recommended Decision within twelve (12) months. The Commission further ordered that, absent extraordinary circumstances, the issues already adjudicated by ALJ Colwell were not to be relitigated.

The consolidated AT&T Complaints and RLEC Access Charge Investigation were assigned to ALJ Melillo for such hearings as necessary and a recommended decision. A Prehearing Conference was held on Wednesday, August 19, 2009, at 10:00 a.m. for the purpose of setting a litigation schedule and addressing other procedural issues. In accordance with the procedural schedule, OTS submitted Direct Testimony on January 20, 2010 and Surrebuttal Testimony

on April 1, 2010. Evidentiary hearings were held in this matter before ALJ Melillo on April 14-16, 2010. At that time, the OTS testimony and exhibits were entered into the record. OTS files this timely Main Brief in support of the recommendations made in testimony.

III. BURDEN OF PROOF

As the proponent of an order seeking modification of an existing policy, the burden of proof in this case falls on AT&T.⁷ As such, AT&T has the burden of proving that its requested access charge reductions are just and reasonable. This duty is satisfied by establishing by a preponderance of the evidence that which is substantial and legally credible.⁸ The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the smallest degree, than the evidence presented by the other party.⁹

In determining whether the burden of proof has been satisfied, care must be exercised to ensure that the Commission’s decision is supported by substantial evidence in the record. The term “substantial evidence” has been defined by Pennsylvania Courts as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of

7 66 Pa. C.S. § 332(a); *Burleson v. Pennsylvania Public Utility Commission*, 66 Pa. Cmwlth. 282, 443 A.2d 1373 (1982) *affirmed* 501 Pa. 433, 461 A.2d 1234 (1983).

8 *Samuel J. Lansberry, Inc. v., Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

9 *Se-Ling Hosiery, Inc. v. Marguiles*, 364 Pa. 45, 70 A.2d 854 (1950)

evidence or a suspicion of the existence of a fact sought to be established.¹⁰

It is the OTS position, as detailed further below, that AT&T has not met its burden of proving, by a preponderance of the evidence, that the proposed reduction in access rates is just, reasonable, and in the public interest. As such, the requested intrastate access rate reductions should be denied.

IV. SHOULD RLECS' INTRASTATE SWITCHED ACCESS RATES BE REDUCED?

A. Traffic Sensitive Access Charges Should Not Be Reduced.

The proponents of access charge reductions argue that such charges are artificially high and provide a subsidy for basic local exchange service rates. Because of this alleged subsidy, IXCs maintain that they cannot compete on equal footing. However, the record in this proceeding is devoid of evidence demonstrating these claims to be true. Absent such evidence, OTS maintains that the status quo should be continued.

AT&T maintains that the current intrastate access rates are excessive and subsidy laden. This contention is unsubstantiated given that AT&T and the other IXCs failed to provide current cost studies demonstrating that access rates are artificially high and BLES rates are artificially low.¹¹ In support of its request, AT&T asserts that interstate access rates are recovering their costs as a justification to reduce intrastate access rates to that level; however, no cost

10 *Norfolk & Western Ry. Co. v. Pennsylvania Public Utility Commission* 489 Pa. 109, 413 A.2d 1037 (1980). *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa. Super. Ct. 278, 166 A.2d 96 (1961); and *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

11 OTS St. No. 1, p. 9.

analysis was provided to support this claim.¹² While the FCC has jurisdiction over interstate service, the Commission has its own policies and cost recovery methods governing intrastate communications.¹³ As such, the Commission is within its statutory mandate to examine the effect of access charge reductions on Pennsylvania consumers and make a determination regarding whether access rate reductions are proper. There is no policy requiring parity between interstate and intrastate access rates; therefore, the Commission should not reduce intrastate rates because AT&T has failed to demonstrate that such subsidies exist.

Increasing basic local exchange rates in order to decrease access rates is not appropriate. OTS witness Kubas stated that doing so, “is a self-serving solution to a problem that AT&T has not proven exists.”¹⁴ Again, no study was provided showing that the price of BLES is below the cost of providing BLES; therefore, any claim that BLES is above or below the cost of service is wholly speculative. Any increase in BLES rates would be unfair to those customers and should be rejected at this time.¹⁵ Moreover, Sprint and Comcast argue that the Commission should include revenue opportunities the RLECs have received or will generate for all other services provided on the local switched network as part of any rate rebalancing.¹⁶ This argument that RLECs can simply recover lost revenue from other services is premised on the claim that BLES should be subsidized. There is

¹² OTS St. No. 1, p. 10.

¹³ *Id.*

¹⁴ OTS St. No. 1, p. 11.

¹⁵ *Id.*

¹⁶ Sprint Supplemental, pp. 10-11. Comcast 1.0, pp. 14-20.

no support for this position and no reason to conclude that revenue from other services should be used to subsidize BLES.¹⁷ Moreover, such a position defies logic as it argues on one hand that the RLECs' other services should contribute to the cost of the local switched network, but contends on the other hand that an IXC using the network to originate or terminate calls should have free and unlimited use of the local loop.¹⁸

Like AT&T, Sprint claims that intrastate access charges are inflated and goes on to state that such rates provide "excess profit" to the RLECs.¹⁹ Sprint makes this assertion without providing a cost study; therefore, Sprint failed to articulate what the excess profit is or what a reasonable profit would be for RLECs to recover.²⁰ Moreover, this argument fails to recognize that RLEC profits have not been regulated by the Commission for a decade.²¹ As long as the RLEC follows its Chapter 30 Plan, it is free to make as much profit or absorb as much loss as it can because no fair rate of return is currently established by the Commission.²²

In exchange for the requested access charge reductions, AT&T offers to reduce the current \$0.94 per line instate connection fee and reduce prepaid calling card rates.²³ These promises should not sway this Commission to grant AT&T's requested relief as there is no guarantee that end users will experience any benefit.

¹⁷ OTS St. No. 1, p. 22.

¹⁸ OTS St. No. 1, pp. 22, 25.

¹⁹ Sprint pp. 4, 8, 15.

²⁰ OTS St. No. 1, p. 21.

²¹ OTS St. No. 1, p. 20.

²² OTS St. No. 1, p. 20.

²³ AT&T St. No. 1.0, p. 59.

Paying the same or higher total bill once BLES rates increase and access charges are reduced is not a benefit to customers. Moreover, the details of these promises are unknown as AT&T failed to specify the level or length of these proposed rate reductions. As noted by OTS witness Kubas, “A one cent reduction would technically satisfy this promise, but would fall well short of the savings AT&T will experience if the formal complaint is granted.”²⁴ Additionally, there is no guarantee that these rates will not soon be increased in the future.²⁵ As the Commission does not regulate these charges, AT&T can simply increase these rates soon after the conclusion of this proceeding; therefore, any claimed benefit is speculative and likely short lived.

In summary, there is no cost justification to reduce or eliminate these access charges as no cost studies have been provided demonstrating that intrastate access rates are artificially high or that BLES rates are artificially low. As such, the relief requested in the AT&T Complaint must be denied.

B. Non-Traffic Sensitive Access Charges Should Not Be Reduced.

The carrier common line charge is an access rate that is designed to recover some cost of the local loop, which is the physical circuit that connects the customer to the telecommunication provider’s network. AT&T states that this charge subsidizes local service and should be eliminated.²⁶ OTS disagrees with this position and maintains that AT&T’s request is nothing more than an attempt

²⁴ OTS St. No. 1, p. 16.

²⁵ OTS St. No. 1, p. 16.

²⁶ AT&T St. No. 1, p. 50.

to have free and unlimited use of a telephone network that it did not build and does not own.²⁷

The Commission has consistently identified that the local loop is a joint and common cost and has determined that the cost of the local loop should be recovered from those services that use it.²⁸ In April 2003, the Commission determined that the carrier common line charge does have a cost basis by defining it as an access charge that is designed to recover a portion of the cost of the local loop.²⁹ Moreover, as recently as 2007, the Commission determined that Verizon's carrier common line charge should not be eliminated.³⁰ This access service allows AT&T and the other IXC's to use part of the RLEC's network without having to build their own network. Given that IXC's use the local loop, the Commission has correctly determined that it is a joint cost.

Unsurprisingly, IXC's have expressed support for AT&T's proposal to eliminate the carrier common line charge. Such reductions are an opportunity to save money and increase profits while allowing them to have unlimited use of local loop. The self-serving nature of this position is highlighted by Quest's request to reduce the carrier common line charge to \$0.58 per month per line in

27 OTS St. No. 1, p. 12.

28 OTS St. No. 1, p. 12. *Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth*, Docket No. I-00940035, p. 82 (Order entered January 28, 1997); *Pennsylvania Public Utility Commission v. Bell Atlantic Inc.*, Docket No. R-00963350, p. 23 (Order entered December 16, 1996); *Pennsylvania Public Utility Commission v. North Pittsburgh Telephone Company*, Docket No. R-00038087, p. 2 (Order entered April 10, 2003).

29 *Pennsylvania Public Utility Commission v. Bell Atlantic Inc.*, Docket No. R-00963350, p. 23 (Order entered December 16, 1996)

30 OTS St. No. 1, p. 13. *AT&T Communications of Pennsylvania, LLC v. Verizon North Inc. and Verizon Pennsylvania Inc.*, Docket No. C-20027195 (Order entered January 8, 2007).

this proceeding despite the fact that Quest charges more than \$0.58 in six states where it provides BLES.³¹ As such, it appears that Quest wants to keep the carrier common line charge high in states where it receives access charge revenue, but advocates for access charge reductions in states where it pays those charges. While AT&T and the other IXC's contend that the carrier common line charge is a subsidy element and has no cost basis, no evidence has been produced demonstrating this to be true. Moreover, this position is not supported by Commission precedent because, as noted above, the Commission has consistently found that the local loop is a joint cost that is used to provide intrastate toll service.

In short, IXC's have paid and should continue to pay for use of the local loop because it allows IXC's to originate and terminate traffic to customers without having to invest the time and expense to build a network to connect these customers.³² Therefore, AT&T's attempt to eliminate the carrier common line charge must be rejected.

C. In Order to Preserve Universal Service Intrastate Switched Access Rates Should Not Be Reduced in This Proceeding.

The "white space" created by the absence of cost studies should not result in a reduction of access rates as proposed by the IXC's because such action could jeopardize the provision of universal service. Various parties in this proceeding have claimed that the RLEC access charges must be reduced because the cost of

³¹ OTS St. No. 1, p. 29.

³² OTS St. No. 1-SR, p. 10.

the services for which access charges are assessed have not been quantified by cost studies and that RLEC access rates do not correspond to interstate or ILEC intrastate access rates. It is true that no party has submitted current cost studies of the RLECs BLES, which includes the duty to provide universal service as a COLR. However, the Commission should adopt the OTS recommendation against reducing access charges as proposed by the IXCs because the cost study inertia does not override the Commission's statutory duty under Sections 3011 and 3017 of the Public Utility Code to preserve universal service throughout the Commonwealth.

Chapter 30 of the Public Utility Code establishes several goals for telecommunications services in Pennsylvania; however, special emphasis is placed on the maintenance of universal service. Various IXC parties in this proceeding claim, and OTS agrees, that Section 3011 supports the development of competitive markets and the delivery of advanced telecommunications technology.³³ This support is not without qualification as both the development of competitive markets and the delivery of advanced telecommunications technology are made secondary to the provision of universal service. The statute provides as follows:

(2) *Maintain universal telecommunications service at affordable rates while encouraging the accelerated provision of advanced services and deployment of a universally available, state-of-the-art, interactive broadband telecommunications network in rural, suburban and urban areas...*

(8) *Promote and encourage the provision of competitive services by a variety of service providers on equal terms throughout all geographic areas of this Commonwealth without jeopardizing the provision of universal telecommunications service at affordable rates...*

³³ 66 Pa. C.S. § 3011.

(12) Promote and encourage the provision of advanced services and broadband deployment in the service territories of local exchange telecommunications companies without *jeopardizing the provision of universal telecommunications service* [Emphasis added]. 66 Pa. C.S. § 3011.

This language prioritizes the longstanding policy of providing universal service throughout the Commonwealth over the goals of competition and advanced telecommunications services. Paragraph 2 of Section 3011 mandates that universal service be maintained as a preliminary matter to the encouragement of advanced services deployment while paragraphs 8 and 12 explicitly set the continued provision of universal service as a limitation upon the goals of competition and advanced service deployment. As described below, these paramount objectives fall solely upon the shoulders of ILECs and RLECs.

Regardless of the degree of penetration achieved by any CLEC or other competitive telecommunications service, only the ILECs and RLECs fully satisfy the legislative requirement for universal service because their COLR duties require them to serve any customer upon request. Competitive telecommunications services are encouraged under Chapter 30 but only COLR service is required.³⁴ This is a critical policy distinction because carriers subject to COLR duties are not free to pick and choose what customers to serve and more importantly, when to serve them.³⁵

34 Tr. p. 446. In response to questioning regarding the necessity of excluding competitive carriers from access charge revenues, David F. Bosnick, witness for CenturyLink, appropriately described the limited assignment of COLR duties stating that “those competitors, wireless, cable don’t have the same regulatory compact that we have, i.e. they are not required to serve every customer in every part of their service territory, even the most high cost, less dense areas of the Commonwealth.” *Id.*

35 Tr. p. 344.

This issue was addressed at the evidentiary hearings where Jeffrey L. Lindsey, witness for CenturyLink, responded to questions from counsel for Sprint regarding the potential achievement of universal service by wireless providers not subject to COLR duties. Mr. Lindsey replied that “even if Sprint serves that customer today, they may opt not to serve that customer tomorrow, in which case I need to be ready on short notice, you know, within my regulatory constraints, to be able to serve that customer.”³⁶ As articulated by Mr. Lindsey, the elective nature of competitive service contrasts with the legislative mandate for universal service. ILECs and RLECs are mandated to bear the inefficiencies necessary to provide universal service and are therefore the only carriers that can uphold the legislative prohibition against jeopardizing universal service.

In addition to the provisions mandating the maintenance of universal service, Section 3011 also proscribes limitations upon rates charged for protected services, requiring that such rates be reasonable and not impede the development of competition.³⁷ However, as previously discussed, the IXCs failed to produce current cost studies demonstrating the cost of the RLEC’s BLES.³⁸ Correspondingly, the RLECs also did not submit current cost studies demonstrating the cost of their BLES.³⁹ In lieu of cost studies, the IXCs alleged that RLEC intrastate access rates are too high in comparison to other,

36 Tr. p. 345.
37 66 Pa. C.S. § 3011.
38 OTS St. No 1, pp. 10-11.
39 Tr p. 531, Tr. p. 583, 595.

comparatively lower, access charges.⁴⁰ AT&T, Comcast and Sprint claimed that the RLEC intrastate access rates should be set to the corresponding interstate levels.⁴¹ Verizon and Qwest claimed that the same RLEC intrastate access rates should be set to Verizon's intrastate access rate levels.⁴² Neither comparison establishes that the current intrastate access rates are unreasonable or impeding competition. The interstate comparison advanced by AT&T, Comcast and Sprint fails because interstate access rates exclude the costs recovered through the Federal Subscriber Line Charge.⁴³ The Verizon benchmark endorsed by Verizon and Qwest fails to incorporate the fact that an RLEC's cost of service may not correspond to that of Verizon, which is Pennsylvania's largest ILEC and operates in high population density areas.⁴⁴ OTS acknowledges the potential inefficiencies resulting from the absence of cost studies demonstrating the specific cost imposed by COLR duties and universal service, but believes that the statutory requirement for continued maintenance of universal service requires judicious preservation of existing access rates.

40 See OTS Statement No. 1.

41 *Id.* at 6, 19, 23.

42 *Id.* at 17, 26.

43 OTS Witness Joseph Kubas describes the RLEC BLES service costs excluded from interstate access charge recovery as follows: "The FCC determined years ago that the portion of the local loop allocated to interstate traffic should be paid for by end-users through a Federal Subscriber Line Charge (FSLC) rather than from companies such as IXCs that use the loop to originate and terminate calls. Since a portion of interstate access costs are recovered from end-users through the FSLC, the RLEC interstate access rates to not recover their full costs from IXCs that use the local loop to provide interstate toll service." OTS Statement No. 1, p. 13. (further noting that "the RLEC FSLC is not a small charge, currently approximating \$6.00 - \$7.00 per month...").

44 With regards to Verizon's proposed benchmarking of RLEC intrastate access charges to Verizon's corresponding levels, Mr. Kubas notes that under this proposal "there is no consideration for the fact that the lower RLEC intrastate access charge may not be recovering its corresponding costs..."

The preservation of existing access rates is particularly important because the issue of expanding the universal service fund is pending in another proceeding. Section 3017 represents a policy decision, fixing access rates for RLECs and ILECs as part of a comprehensive regulatory scheme.⁴⁵ At the evidentiary hearings, David F. Bosnick, witness for CenturyLink, described the policy underlying current access rates as follows:

[A]s part of an earlier case in the [late] 1990s that ended up resulting in the Global Order, in the global settlement conference, there were cost studies submitted as part of that access case. However, one of the reasons it ultimately ended up going to settlement was the fact that none of the parties, including the Commission, could agree on the cost structure to utilize to determine that. So it was ultimately never based on cost. Tr. 2, p. 431.

Additionally, Gary M. Zingaretti, witness for the PTA Companies, provided the following testimony as to the cost of COLR duties:

The PTA companies have not prepared a study for that. CenturyLink has not prepared a study for that. In my 25 years in the industry, I have never seen a study for COLR obligations, nor have I seen a methodology ever presented by a commission, and I believe in Sprint witness Appleby's testimony – or in response to discovery, he had never seen a COLR study, and I think he's just shy of 25 years in the industry. Tr. 3, p. 595.

Taken as a whole, these statements establish a widespread inability to quantify the costs of COLR duties imposed upon the RLECs. Therefore, the rates to be maintained for RLECs and ILECs under Section 3017 of the Public Utility Code, were not predicated solely on cost studies. Again, OTS acknowledges that rates

45 66 Pa. C.S. § 3017. (providing that “The Commission may not require a local telecommunications company to reduce access charges except on a revenue-neutral basis.”). *See also* OTS Statement No. 1 (stating that “any rebalancing should consider the impact on BLES and the customers that pay for BLES.”).

should generally reflect costs.⁴⁶ However, because the General Assembly, without current cost studies, saw fit to preserve current access rates by permitting only revenue neutral reductions; it is inappropriate to, as the IXC's have in this proceeding, propound the absence of cost studies as a reason for the Commission to abandon current access rates and leave the RLECs to recover the revenue shortfall through increased BLES rates. Expansion of the Pennsylvania Universal Services Fund is an important vehicle for preserving revenue neutrality of any reduced access charges. As this issue has been reserved for resolution in another proceeding⁴⁷, current access charges should be maintained at least until the Commission has determined how revenue neutrality is to be accomplished.

V. IF THE RLECS' INTRASTATE SWITCHED ACCESS RATES SHOULD BE REDUCED, TO WHAT LEVEL SHOULD THEY BE REDUCED AND WHEN?

For the reasons stated above, OTS maintains that intrastate switched access rates should not be reduced. Therefore, OTS will not address the level or timing of access rate reductions.

VI. IF THE RLECS' INTRASTATE SWITCHED ACCESS RATES SHOULD BE REDUCED, HOW SHOULD ANY REVENUE REDUCTIONS BE RECOVERED IN COMPLIANCE WITH 66 Pa. C.S. § 3017?

46 See OTS Statement No. 1 (providing that "RLEC access rates and BLES rates should be based on costs.").

47 Tr. p. 515-16; *see also* Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, Opinion and Order, Docket No. I-00040105 p. 24 (December 10, 2010).

For the reasons stated above, OTS maintains that intrastate switched access rates should not be reduced. Therefore, OTS will not address the recovery of revenue reductions in compliance with 66 Pa. C.S. § 3017.

VII. GENERAL LEGAL ISSUES

OTS does not have any general legal issues.

VIII. CONCLUSION

For the reasons stated herein, the Office of Trial Staff respectfully submits that AT&T has not met its burden of proof. Therefore, AT&T's request that the RLECs be required to reduce intrastate access rates to levels which correspond, both in rate levels and in rate structure, to the rates each company assesses for interstate switched access must be rejected.

Respectfully submitted,

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Dated: May 13, 2010

APPENDIX A

I. PROPOSED FINDINGS OF FACT

1. AT&T, Sprint, Verizon, Qwest, Comcast have not provided current cost of service studies showing intrastate access rates are excessive or subsidy laden.

OTS Statement No. 1, p. 9.

2. CenturyLink and the PTA Companies have not provided current cost of service studies showing the cost of COLR obligations. Tr. 333, 595.

3. The Commission has never approved a cost structure to determine the cost of providing access service in Pennsylvania. Tr. 431.

4. In the *AT&T Communications of Pennsylvania LLC v. Verizon North Inc. and Verizon Pennsylvania Inc.* Opinion and Order entered on January 8, 2007 at Docket No. C-20027195, the Commission determined that Verizon's \$0.58 per line carrier common line charge should not be eliminated. OTS Statement No. 1, p. 13, Tr. 561.

5. In the *AT&T Communications of Pennsylvania LLC v. Verizon North Inc. and Verizon Pennsylvania Inc.* Opinion and Order entered on January 8, 2007 at Docket No. C-20027195, by retaining the carrier common line charge, the Commission did not order Verizon to "mirror" the collective rate resulting from traffic sensitive access rates and the CCLC. OTS Statement No. 1, p. 13, Tr. 561.

6. The Commission has no regulatory authority to enforce AT&T's promise to reduce its instate connection fee. OTS Statement No. 1, p. 16.

7. Reductions in access rates create direct benefits only for IXC's and other access users. Tr. 468.

8. Telecommunications carriers other than ILECs and RLECs can opt out of serving consumers in their service territories. Tr. 393.
9. Jurisdictional ILECs and RLECs have an obligation, through their COLR and universal service duties, to serve all customers in their service territories. Tr. 392, 415-16, 446.
10. Jurisdictional ILECs and RLECs are subject to various Commission reporting requirements which the competitive telecommunications carriers are not. Tr. 416.

II. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding.
2. Section 332(a) of the Public Utility Code provides that the proponent of a rule or order has the burden of proof. 66 Pa. C.S. § 332(a).
3. AT&T has not met its burden of proving that the reduction of intrastate access rates to levels that correspond to the rates each RLEC assesses for interstate switched access is just and reasonable. 66 Pa. C. S. § 1301.
4. AT&T has not met its burden of proving that intrastate access rates are artificially high and that any reductions are warranted. 66 Pa. C.S. § 332(a).
5. The local loop is a joint and common cost and the cost of the local loop should be recovered from those services that use it. *Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for*

Telecommunications Services in the Commonwealth, Docket No. I-00940035, p. 82 (Order entered January 28, 1997); *Pennsylvania Public Utility Commission v. Bell Atlantic Inc.*, Docket No. R-00963350, p. 23 (Order entered December 16, 1996); *Pennsylvania Public Utility Commission v. North Pittsburgh Telephone Company*, Docket No. R-00038087, p. 2 (Order entered April 10, 2003).

6. Section 3011 of the Public Utility Code supports the development of competitive markets and the delivery of advanced telecommunications technology. 66 Pa. C.S. § 3011.

7. The Public Utility Code emphasizes the maintenance of universal telecommunications service at affordable rates. 66 Pa. C.S. § 3011.

8. The Commission may not require a local telecommunications company to reduce access charges except on a revenue-neutral basis. 66 Pa. C.S. 3017.

III. PROPOSED ORDERING PARAGRAPHS

IT IS RECOMMENDED:

1. That AT&T's request to reduce intrastate access rates to levels that correspond to the rates each RLEC assesses for interstate switched access is hereby denied.

2. That AT&T's ninety three (93) complaints against thirty one (31) Pennsylvania RLEC's consolidated into Docket No. C-2009-2098380 is hereby marked closed.

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Main Brief** dated May 13, 2010, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

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