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August 10, 2011

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 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,
TCG New Jersey, Inc. and TCG Pittsburgh, Inc.
v. Armstrong Telephone Company-Pennsylvania, et al.
Docket No. C-2009-2098380, et al

Dear Secretary Chiavetta:

Enclosed please find the Verizon's Answer to Petition for Reconsideration and Stay.

Please do not hesitate to contact me if you have any questions.

Very truly yours,


Suzan D. Paiva

SDP/meb
Enc.

Via E-Mail and First Class Mail
cc: Cheryl Walker Davis, Director, OSA
The Honorable Kandace F. Melillo
The Honorable Susan D. Colwell
Chairman Robert F. Powelson
Vice Chairman John F. Coleman, Jr.
Commissioner Wayne E. Gardner
Commissioner James H. Cawley
Commissioner Pamela A. Witmer
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the Verizon's Answer to Petition for Reconsideration and Stay, 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 10th day of August, 2011.

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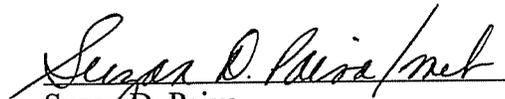
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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	:	

**VERIZON’S ANSWER TO PETITION FOR
RECONSIDERATION AND STAY**

The Commission should deny the Joint Petition for Limited Reconsideration and Stay (“Joint Petition”) filed by CenturyLink and the Pennsylvania Telephone Association (collectively, “Joint Petitioners”). Given the circumstances here, none of the arguments advanced by the Joint Petitioners supports staying the order this Commission entered on July 18, 2011 (“Order” or “RLEC Access Order”). The Order was the result of a lengthy process, now completed, in which the Commission devoted substantial resources to reaching finality with respect to a group of carriers that have been allowed to charge substantially inflated access rates to the detriment of Pennsylvania consumers for far too long. All of this effort will have been wasted if the Order is stayed now. Such a result makes no sense given the unique facts of this case, including the absence of any evidence that any RLEC will suffer financial distress as a result of the Order. Moreover, the Order is a step in the correct direction of beginning to move other carriers’ rates closer to Verizon’s – a direction that benefits consumers and is consistent

with the evidence on the record here. Nothing in the intercarrier compensation reforms that the Federal Communication Commission (“FCC”) is contemplating suggests that the Order should be stayed. The access charge reductions in the Order really are just a collective baby-step, with RLEC intrastate access rates still remaining well above those of Verizon Pennsylvania Inc. and Verizon North LLC and well above the carriers’ own interstate rates even at the end of the three-year implementation period that does not even start until March 2012.

There is no legitimate basis to assume that the interplay of federal reform and the provisions of the RLEC Access Order will cause any of the theoretical harms about which the Joint Petitioners hypothesize. The likelihood of “mismatched regulatory results” is remote given the particular circumstances of this case. There is nothing about the contemplated reforms that conflicts with the Order. And in the unlikely event the concerns expressed by the Joint Petitioners materialize, this Commission would have ample time in a subsequent proceeding to modify the Order to avoid any harm to Pennsylvania consumers or carriers. Indeed, this Commission has explicitly reserved the right to issue a subsequent decision coordinating state-level reform with federal reform if FCC action makes such coordination advisable. Given the existence of a complete record before this Commission and the fact that all of the work on this stage of the RLECs’ intrastate access reform is done, the Commission should not deny Pennsylvania consumers the benefits of reducing the RLECs’ excessive access rates by delaying implementation of the Order.

STANDARD OF REVIEW

The Joint Petitioners rely on the “Process Gas”¹ standard for granting a stay of a final order, but they fail to establish that *any* of the relevant criteria for granting a stay are met – and they simply ignore criteria that militate toward denial. As the Joint Petition notes (at ¶ 2), there are four criteria this Commission must evaluate under the Process Gas standard:

1. “[A] strong showing that [they are] likely to prevail on the merits.” The Joint Petitioners explicitly state that they “are *not* asking for a stay pending appeal on the grounds that Joint Petitioners assert that they will likely prevail on appeal.” *Id.* (emphasis added). In other words, the Joint Petitioners do not even attempt to fault the factual or legal findings in the Order, including the finding that current intrastate switched access rates are excessive and that Pennsylvania consumers ultimately will be benefit from the Commission’s order.
2. “The issuance of a stay will not adversely affect the public interest.” The only “public interest” argument advanced by the Joint Petitioners is the theoretical possibility that the public might experience harm if the local rate increases contemplated by the RLEC Access Order are accelerated by the federal reform framework. But as discussed below, there is no reason to expect that outcome. By contrast, there is extensive record evidence establishing that reducing the RLECs’ excessive switched access rates will create concrete consumer benefits, whether in the form of lower prices, continued investment and innovation, or a combination of both – and those tangible public benefits will be denied if the Order is stayed.
3. “The issuance of a stay will not substantially harm other interested parties in the proceedings.” This prong also favors denial of the stay. The Commission has deemed existing rates to be unjust and unreasonable, so there can be no dispute that companies that must pay switched access charges, and their customers who would be forced to continue to subsidize carriers who provide them with no services, will be harmed if required to continue to pay unlawful rates.
4. “The petitioner has shown that without the requested relief, [it] will suffer irreparable injury.” As discussed below, the potential harm about which Joint Petitioners complain is highly theoretical, is something the FCC is committed to avoiding, and could be remedied (to the extent it materializes) by this Commission in a subsequent order.

Accordingly, and as discussed in greater detail below, a stay is not warranted under the relevant criteria.

¹ *Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 502 Pa. 545, 467 A.2d 805, 808-809, (1983) which itself applies the standards set forth in *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921 (D.C. Cir. 1958).

DISCUSSION

I. STAYING THE ORDER WOULD DENY CONSUMERS THE BENEFITS OF ACCESS REDUCTIONS AND ADVERSELY AFFECT THE PUBLIC INTEREST.

Failure to implement the Order would harm the public interest under the unique circumstances and comprehensive record in this case. The record clearly establishes that consumers will benefit from the RLEC access reductions ordered in this case, including in the form of lower prices and more robust competition. *See* Recommended Decision, Findings of Fact Nos. 10, 16, & 21; Verizon Statement No. 1.1 (Price Rebuttal Testimony) (Mar. 2, 2010) at 12-22. *See also* Professor Hausman Consumer Benefits Paper² (describing and quantifying the substantial consumer benefits of access reductions). The public will be denied those consumer benefits if the RLEC Access Order is stayed. And that harm to the public interest – unlike the theoretical harm of which the Joint Petitioners complain (which, as discussed below, can be easily avoided by this Commission to the extent it actually materializes) – would be concrete, substantial, and irreversible.

The Joint Petitioners imply they have “due process” rights requiring that the Order be stayed. *See, e.g.*, Joint Petition ¶ 13. But they identify no rights that would be abridged when the Order goes into effect. That is because it is companies that must pay unreasonably high RLEC switched access charges, and their customers who would be forced to continue to subsidize other carriers who provide them no services, whose rights would be denied if the Commission issues a stay. This Commission has already completed an exhaustive review in which the Joint Petitioners participated fully, and that ensured the Joint Petitioners received due process. After weighing the extensive record and considering the views of the Joint Petitioners

² *Ex Parte* Letter of Robert W. Quinn *et al.* on Behalf of Companies Filing the ABC Proposal to Marlene H. Dortch, Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51 *et seq.*; (filed July 29, 2011), Attachment 4.

as well as the interests of Pennsylvania consumers, the Commission determined that the RLECs' access rates are too high and are above the "just and reasonable level of intrastate switched access rates" in Pennsylvania (*see* RLEC Access Order, III-B-5). The Joint Petition does not challenge that or any other finding in the Order – so it is undisputed that staying the Order would permit the RLECs to continue charging unjust and unreasonable rates and that Pennsylvania consumers will benefit from implementing the Order now that the Commission's review is completed. Given that the Commission is required to balance the interests of the RLECs against the interests of the public and all other parties, it should not place the RLECs' hypothetical concerns above the concrete harms that would occur if the Order is stayed. Waiting for the outcome of federal reform efforts might make sense if the Commission had not yet made that finding and this case were in the early stages of fact development or briefing, in order to avoid waste of time and resources by the Commission. But an extensive record has been developed and fully briefed, a well-reasoned Proposed Decision was issued more than a year ago, and this Commission expended significant resources to fully digest the arguments made on all sides and issue its Order based on the unique facts of this case. Against that backdrop, implementation of the Order is appropriate and necessary to ensure that Pennsylvania consumers benefit from the price reductions and increased economic efficiency that will result from reducing the RLEC's excessive access rates.

Indeed, the access charge reductions in the Order are modest and would be implemented over a three-year phase-in period that does not begin until March 2012 – and at the end of that phrase-in, each RLEC would still continue to charge a \$2.50 per month Carrier Charge. Even when these phased-in reductions are completed, the RLECs will still be left with rates that are substantially higher than Verizon's current intrastate switched access rates and substantially

higher than their own interstate access rates. Such reductions in RLEC access charges are well short of what Verizon and other parties advocated, and are unlikely to conflict with federal reform efforts, which are focused on reducing rates well below those levels. Under one of several proposals on which the FCC has requested further comments, for example, carriers would be required to undertake rapid access reductions within two to three years to interstate levels and then continue reducing their terminating rates to \$0.0007 per minute, an approach that is consistent with the FCC's National Broadband Plan.³ The modest nature of the Order's requirements is especially true given the unique Carrier Charge that the Commission has determined is appropriate under Pennsylvania law, and the absence of any financial distress to any RLEC as a result of the Order. For example, Verizon advocated a uniform benchmark switched access rate based on Verizon's composite intrastate rate in Pennsylvania.⁴

A stay argument might have been more compelling if this case were in an earlier stage and no substantive decision had yet been made, or the Commission had before it a different record. But given that this proceeding is complete and a final order has been issued, with only implementation remaining, and the low risk of conflict with pending FCC reform, the Commission should allow the RLEC Access Order to take effect. And, again, despite the full opportunity to do so in two evidentiary proceedings, the RLECs have not presented any evidence that they are experiencing financial distress or that their rate structures would be uncompensatory under the framework established by the RLEC Access Order.

II. THE SPECULATIVE POSSIBILITY OF "MISMATCHED REGULATORY RESULTS" IS REMOTE AND COULD BE EASILY REMEDIED.

³ See Appendix A of Joint Petition at 9; Appendix B of Joint Petition at 3.

⁴ Sprint and AT&T advocated matching interstate rates, which would have resulted in even deeper reductions for many of the RLECs.

The Joint Petitioners speculate that two harmful scenarios could result from the interplay of the RLEC Access Order and the proposals currently before the FCC. One is that under the combination of both federal reform and the RLEC Access Order, consumers might face local rate increases that are steeper than what they would face under just the terms of the RLEC Access Order or of the FCC's reform. Joint Petition ¶¶ 16-19. Another is that carriers that reduce their switched access rates under the terms of the RLEC Access Order may be prejudiced in their ability to offset those decreases either by rebalancing the revenue or drawing from a federal transition fund. *Id.* ¶¶ 20-21. This kind of speculation about hypothetical future events cannot support issuing a stay; the showing required to support a stay is harm that is irreparable, certain and immediate. And both of those hypothetical scenarios are unlikely to occur and both scenarios – if they turn out to have any substance – can be easily addressed by this Commission in a subsequent proceeding that can take place well before any harm might occur.

A. The Joint Petitioners Manufacture Hypothetical Scenarios that Are Unlikely to Occur.

The Joint Petition focuses almost exclusively on one of several proposals on which the FCC has requested further comments. That proposed reform framework is generally referred to as the “ABC Plan” that the federal price cap carriers have presented to the FCC, with the support of a number of associations of rural carriers. The Joint Petitioners assume that “the FCC is likely to regard the ABC Plan as a baseline for a decision to implement ICC/USF reform” (Joint Petition ¶ 11), and they therefore use that proposal as a baseline for their analysis. But the ABC Plan, by its own terms, does not *require* any local rate increases. *See* ABC Plan (Appendix B to Joint Petition). Under the ABC Plan, in some cases price cap carriers may choose to modestly increase federal subscriber line charges (which have been capped at the same levels for years) in order to be eligible for time-limited access charge replacement funding from the federal

universal service fund. But the plan does not dictate what carriers must charge their local customers, and the expectation is that in most cases market conditions – including the presence of substantial competition from wireless, cable, and other VoIP providers – will ultimately drive pricing decisions. Moreover, the rate-of-return carriers have proposed, and are in the process of further modifying, their *own* proposal to the FCC for how to address some of the universal service aspects of reform with respect to rural carriers, and it remains to be seen how they will address the issues raised in their Petition.⁵

The Joint Petition also distorts how potential federal action might affect Pennsylvania carriers and consumers in the context of this case. Given that both federal and state reforms are moving in the same direction, and state reform of excessive RLEC rates here is long overdue (particularly when considered against Verizon’s intrastate access charges, which have already been reduced substantially below the levels contemplated by the RLEC Access Order), there is no basis for Joint Petitioners’ assertion that the phase-down under the federal reform is “not consistent with the Commission’s PA RLEC Access Order.” *Id.*

Nor have the Joint Petitioners established a likelihood – or even a substantial risk – that their ability to draw from a possible federal fund would be jeopardized if this Commission moves forward with reform. The opposite may be true. Although the some of the universal service aspects of the federal framework that will apply to the RLECs is far from established, it is anticipated the FCC will establish a benchmark local rate level that carriers must meet in order to maximize their draw from the federal transition fund. *See* ABC Plan at 12-13. To the extent carriers increase their local rates to levels closer to the benchmark pursuant to the RLEC Access

⁵ The going version of the separate rate-of-return proposal is summarized in *Ex Parte* Letter of Michael R. Romano to Marlene H. Dortch, Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing a Unified Intercarrier Compensation Regime, CC Docket 01-92 (filed May 6, 2011).

Order's rebalancing provisions, they will be *closer* to levels where they will have the opportunity to obtain the full amount of replacement funding available under the federal transition mechanism. Thus, if anything, any rebalancing that occurs under the RLEC Access Order prior to the implementation of the federal reforms may *increase* the RLECs' ability to obtain federal funding.⁶

Nor is there a substantial risk that "Pennsylvania consumers will be irreparably harmed due to the cumulative effects of multiple, end-user retail rate increases, if the PA RLEC Order and FCC ICC/USF action are not coordinated." Joint Petition ¶ 16. There is no reason to expect that the two sets of reforms will not be consistent, or that any issue could not be addressed if and when necessary. But more fundamentally, like the ABC Plan itself, the RLEC Access Order does not mandate that any RLEC increase its end user rates – it simply allows them the option to do so. The RLEC community will be free to rebalance under a *federal* framework (and seek any federal transition funding that is available under that framework) rather than increase rates to end users under the RLEC Access Order framework.

B. This Commission Can Revisit Its Order In the Unlikely Event It Becomes Necessary.

In issuing the RLEC Access Order, this Commission reasonably anticipated that any future federal reform could affect the subject matter of this proceeding. It therefore reserved the right "to initiate subsequent proceedings and issue appropriate Orders that will seek to coordinate the potential outcomes of the FCC's initiatives with our decision today to the extent necessary, while also safeguarding the due process rights of all interested and participating parties." RLEC

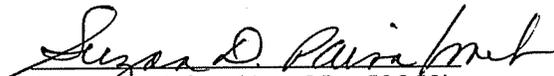
⁶ This Commission has determined as a factual matter that the RLECs can and should reduce and rebalance their switched access rates *without* any need for additional USF revenues. While this Commission will presumably want to make sure that its carriers are on a level playing field under the federal plan with carriers in other states, ensuring that Pennsylvania carriers maximize receipt of federal USF revenue for which they have no demonstrated need should not be a principal driver of this Commission's reform agenda.

Access Order at 123. Although the Joint Petitioners cite that same language as evidence a stay is appropriate (Joint Petition ¶ 13), that makes no sense. The rate reductions required by the RLEC Access Order do not even start to take place until March 2012, so there will be sufficient time to identify any potential “regulatory mismatch” if an FCC reform order issues this fall – and to revisit this Commission’s Order and act appropriately to ensure coordination with federal reform in the unlikely event it becomes necessary.

CONCLUSION

For the reasons stated below, the Commission should deny the Joint Petition for Limited Reconsideration and Stay.

Respectfully submitted,



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