

STEVENS & LEE  
LAWYERS & CONSULTANTS

17 North Second Street  
16th Floor  
Harrisburg, PA 17101  
(717) 234-1090 Fax (717) 234-1099  
www.stevenslee.com

Direct Dial: (717) 255-7365  
Email: mag@stevenslee.com  
Direct Fax: (610) 988-0852

August 12, 2011

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
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 et al v. Armstrong Telephone Company – Pennsylvania, et al; Docket Nos. C-2009 – 2098380 et al*

Dear Secretary Chiavetta:

Enclosed please find Sprint's Answer to the Joint Petition for Limited Reconsideration and Stay of the Pennsylvania Telephone Association and The United Telephone Company of Pennsylvania in the above-captioned matter. Sprint's Answer was electronically filed today.

Copies of the Answer have been served in accordance with the Certificate of Service. Thank you and please contact me if you have any questions.

Best regards,

STEVENS & LEE

  
Michael A. Grum

Enclosures

cc: Honorable Robert F. Powelson, Chairman  
Honorable John F. Coleman, Jr., Vice-Chairman  
Honorable James H. Cawley, Commissioner  
Honorable Wayne E. Gardner, Commissioner  
Honorable Pamela A. Witmer, Commissioner  
Cheryl Walker-Davis, Director, Office of Special Assistants  
Certificate of Service

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 ANSWER TO JOINT PETITION FOR  
LIMITED RECONSIDERATION AND STAY**

Michael Gruin, Esquire  
PA ID No. 78625  
Stevens & Lee  
17 North Second Street, 16th Floor  
Harrisburg, PA 17101  
717-255-7365  
mag@stevenslee.com

Benjamin J. Aron (Admitted Pro Hac Vice)  
Sprint Nextel Corporation, Government Affairs  
2001 Edmund Halley Drive, Room 208  
Reston, Virginia 20191  
Tel: (703) 592-7618  
Fax: (703) 592-7404  
Email: benjamin.aron@sprint.com

August 12, 2011

Sprint Communications Company, L.P., Sprint Spectrum, L.P., and Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively “Sprint” or “Sprint Nextel”), hereby submit this Answer to the Joint Petition for Limited Reconsideration and Stay (“Joint Petition”) submitted by the Pennsylvania Telephone Association (“PTA”) and United Telephone Company of Pennsylvania d/b/a CenturyLink (“CenturyLink”)(collectively the “Joint Petitioners”). As they have done for many years hence, the Joint Petitioners continue to overtly and self-servingly oppose access reform in Pennsylvania. In the latest twist in the Joint Petitioners’ anti-reform campaign, the Joint Petitioners have unilaterally represented to the Federal Communications Commission (“FCC”) that they are willing to take far greater steps in access reform than they represented to the Commission. Despite this contradiction, the Joint Petitioners now unabashedly come before the Commission seeking a stay of the RLEC Access Charge Order.<sup>1</sup> Sprint supports in full the position taken by AT&T in its Petition for Reconsideration and Clarification (“Petition for Reconsideration”), and wholly opposes the Joint Petition.

Before the FCC, the Joint Petitioners have recently proposed to reduce their rates to a unified low inter-carrier compensation rate equal to the existing federal reciprocal compensation rate: \$0.0007.<sup>2</sup> When that very rate was used as a point of comparison in the instant docket, however, the RLECs scoffed at such a figure decrying it as “artificially low,”<sup>3</sup> and “a windfall.”<sup>4</sup>

---

<sup>1</sup> Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, I-00040105, *et al.*, Opinion and Order (entered July 18, 2011) (“RLEC Access Order”).

<sup>2</sup> The outline of the plan was attached to the Joint Petition. Some PTA member carriers – any that are rate of return carriers – would be on a separate access charge reduction plan.

<sup>3</sup> CenturyLink Statement 1.0 at 36.

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

Indeed, when addressing access reform proposals in Pennsylvania the Joint Petitioners accused parties in favor of access reform of seeking a “free ride.”<sup>5</sup>

When addressing access reform before the FCC – which decades ago properly concluded that allocation of loop cost to the end user is economically rational and fosters competition – the Joint Petitioners were not so bold as to espouse irrational theories regarding loop cost and advocated a plan in which the loop cost is allocated to the end user. By plying duplicitous federal and Pennsylvania advocacy, the RLECs succeeded swimmingly in convincing the Commission to continue to employ a protectionist approach to the Joint Petitioner’s bloated access rates while volunteering in the federal arena to institute far deeper access reductions.<sup>6</sup> In fact, the RLECs have gone so far as to advocate in the federal arena for relegation of the Commission’s jurisdiction over intrastate access rates to the regulatory scrap heap. The Joint Petitioners do appear to be biting the Commission’s hand even while the Commission, at this late hour, attempts to continue to guarantee the RLECs a steady diet from the unearned subsidy stream of bloated access revenue.<sup>7</sup>

Turning to the Joint Petition, there is nothing of substance contained therein to give the Commission pause, and certainly the Joint Petition fails entirely to satisfy the legal standard for a stay pending appeal. In fact, the Joint Petitioners go so far as to invent a new legal standard to support a stay pending appeal. While the Joint Petitioners acknowledge the traditional four-part test ((1) likelihood of prevailing on the merits, (2) irreparable injury, (3) lack of harm to other interested parties, and (4) lack of adverse impact to the public interest), they appear to be arguing

---

<sup>5</sup> CenturyLink Statement 1.2 at 2-3.

<sup>6</sup> Sprint takes no position at this time as to the suitability of the ABC Plan other than to observe that the plan diverges in the extreme from the Joint Petitioner’s advocacy before the Commission insofar as it suggests not only full interstate mirroring, but a reduction below interstate rate levels.

<sup>7</sup> AT&T’s Petition for Reconsideration provides a thorough discussion of the numerous flaws contained in the Commission’s RLEC Access Order.

that because the Commission waited over-long to address access reform in Pennsylvania (a circumstance caused in no small part by the Joint Petitioners' continual advocacy in favor of the Commission waiting for the FCC to act first), action by the FCC may come at a time when appellate review of the Commission's RLEC Access Order precludes the Commission from reacting to any such federal action.<sup>8</sup> On its face, this is an absurd position. Joint Petitioners know full well that the appellate court can be informed at any time that an order from the FCC has either rendered the Commission's RLEC Access Order moot, or necessitates a remand from the appellate court in order for the Commission to revise RLEC Access Order consistent with an FCC order. The illogical step of staying the matter pending appeal in order to avoid such a consequence is hardly justified when the FCC has taken no action to date. The Joint Petitioners succeeded in staying the matter for years based on just such arguments,<sup>9</sup> but further delay cannot and should not be tolerated.

Turning to the test itself, it can hardly be claimed that the Joint Petitioners have satisfied any of the four required elements. Regarding the likelihood of success on the merits, the Joint Petitioners have not even advanced an argument. Rather than tendering a position purporting to explain how they satisfy this element of the test for a stay pending appeal, the Joint Petitioners – without citation to precedent – invent a new legal standard whereby they merely reserve the right to make such an argument at a later date.<sup>10</sup> Convenient, but legally deficient.

Similarly, the Joint Petitioners abuse logic in addressing whether there will be any injury to other interested parties. In this regard, Joint Petitioners shockingly state that a stay will benefit other interested parties.<sup>11</sup> Such a fantastical claim could only be espoused by a group of

---

<sup>8</sup> Joint Petition at 3.

<sup>9</sup> Joint Petition at 9 and fn. 16.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 16.

companies that has fed so long and so deeply from the trough of access subsidy that they have become intoxicated by its fumes. The Joint Petitioners must surely recognize that companies forced to pay unjust and unreasonable access rates will continue to be injured until and unless those rates are reduced to reasonable levels. While Sprint does not agree that the Commission's RLEC Access Order goes far enough to abate the Joint Petitioner's inflated access rates and resulting unearned subsidy stream, it cannot be claimed that an elongation of the period during which Sprint is forced to pay rates the Commission found to be unjust and unreasonable rates does not constitute an injury. To the contrary, since the Commission has found the Joint Petitioners' intrastate switched access rates to be unjust and unreasonable,<sup>12</sup> the Commission is statutorily obligated to reduce such rates.<sup>13</sup> It is an injury *per se* for carriers to be charged unjust and unreasonable rates such as the Joint Petitioner's intrastate switched access rates.

Regarding the requirement to make a showing of irreparable harm, the Joint Petitioners negligently fail to illustrate how the injury they allege (presumably being weaned from their favorite subsidy stream *in a revenue neutral* manner) qualifies as an essential economic injury rather than a mere economic consequence.<sup>14</sup> In fact, since the Joint Petitioners are entitled to revenue neutral access reductions, it cannot credibly be argued that they will suffer any economic injury at all, let alone one sufficient to satisfy the irreparable injury test. The redirection of the source of the Joint Petitioners' revenues from their competitors to their own customers is simply not an injury at all, and grossly insufficient to satisfy the standard for a stay.

---

<sup>12</sup> RLEC Access Order at 104-106.

<sup>13</sup> See 66 Pa.C.S. § 1309(a) ("Whenever the commission, after reasonable notice and hearing, upon its own motion or upon complaint, finds that the existing rates of any public utility for any service are unjust, unreasonable, or in anywise in violation of any provision of law, the commission shall determine the just and reasonable rates, including maximum or minimum rates, to be thereafter observed and in force, and shall fix the same by order to be served upon the public utility, and such rates shall constitute the legal rates of the public utility until changed as provided in this part."). See also 66 Pa.C.S. § 1309(b) (nine-month deadlines for decisions in rate cases).

<sup>14</sup> See *Washington Metropolitan Area Transit Commission v. Holiday Tours*, 599 F.2d 841, 843 (D.C. Cir. 1977).

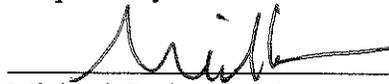
On the issue of whether an adverse impact to the public interest would occur, the Joint Petition is similarly lacking. The Joint Petitioners discuss the impact to Pennsylvania consumers that might occur from the RLEC Access Order being implemented presently followed closely by some subsequent action by the FCC. What the Joint Petitioners entirely fail to acknowledge is that regardless of whether the RLEC Access Order is implemented, the retail rate impact on consumers of a reduction to full interstate mirroring will be the same in all instances if fully rebalanced to retail rates. Joint Petitioners paint an illusory picture of years of sequential uncoordinated rate increases as a result of implementation of the RLEC Access Order and some as of yet unreleased FCC order requiring access reform. The suggestion appears to be that unless the Commission waits – and presumably waits for years on end as it did previously – to see whether the FCC actually issues an order that requires intrastate access reductions, Pennsylvania consumers will be injured. Despite the alarmist picture painted by the RLECs, the Commission can, and should, proceed with implementing the RLEC Access Order. Should the FCC in fact issue an order reforming intrastate switched access rates subsequent to implementation of the RLEC Access Order, the Commission can address how to harmonize those orders – if any harmonization is required.

Additionally, since the Commission has already concluded that the Joint Petitioners' rates are unjust and unreasonable, the Commission would violate its statutory duties by permitting those rates to continue in place based on the mere chance that some other agency may take some action to correct those unjust and unreasonable rates at some indeterminate date in the future. Sprint contends that the Commission has already blatantly ignored the need for a prompt resolution of this docket and has set in place a schedule under which rates the Commission has deemed unjust and unreasonable will continue to be charged for months after the Commission's

Order. Sprint contends that in this regard the Commission's RLEC Access Order stands in dereliction of the Commission's statutory duty regarding just and reasonable rates. The Commission is obligated to ensure that Pennsylvania utilities charge only just and reasonable rates, and the RLECs have presented no rational explanation of how that duty is superseded.

In short, the Joint Petitioners have presented the Commission with no credible, or even logical, legal basis to support their request for a stay. While Sprint finds itself in substantial disagreement with much of the policy and economic reasoning in the Commission's RLEC Access Order, it more strongly disagrees with the Joint Petitioners' request to stay that order pending appeal. Setting all else aside, however, it cannot credibly be claimed that the Joint Petitioners have established any of required elements to support a stay. Accordingly, the Commission should deny the relief sought by the Joint Petitioners, and grant the relief requested in AT&T's Petition for Reconsideration filed on August 2, 2011 in this matter.

Respectfully submitted



---

Michael Gruin, Esquire  
PA ID No. 78625  
Stevens & Lee  
17 North Second Street, 16th Floor  
Harrisburg, PA 17101  
717-255-7365  
mag@stevenslee.com

Benjamin J. Aron (Admitted Pro Hac Vice)  
Sprint Nextel Corporation, Government Affairs  
2001 Edmund Halley Drive, Room 208  
Reston, Virginia 20191  
Tel: (703) 592-7618  
Fax: (703) 592-7404  
Email: benjamin.aron@sprint.com

August 12, 2011

**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 Answer to Petition for Reconsideration 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.

Norman J. Kennard, Esquire  
Thomas, Long, Niesen & Kennard  
212 Locust Street, Suite 500  
Harrisburg, PA 17108  
[nkennard@thomaslonglaw.com](mailto:nkennard@thomaslonglaw.com)

Joel Cheskis, Esquire  
Darryl Lawrence, Esquire  
Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923  
[jcheskis@paoca.org](mailto:jcheskis@paoca.org)

Suzan D. Paiva, Esquire  
Verizon  
1717 Arch Street  
Philadelphia PA 19103  
[Suzan.D.Paiva@Verizon.com](mailto:Suzan.D.Paiva@Verizon.com)

Zsuzanna Benedek, Esquire  
The United Telephone Company of PA,  
LLC d/b/a CenturyLink  
240 North Third Street, Suite 201  
Harrisburg, PA 17101  
[Sue.Benedek@centurylink.com](mailto:Sue.Benedek@centurylink.com)

Bradford M. Stern, Esquire  
Martin C. Rothfelder, Esquire  
Rothfelder Stern, L.L.C.  
625 Central Avenue  
Westfield, NJ 07090  
[bmstern@rothfelderstern.com](mailto:bmstern@rothfelderstern.com)

Steven C. Gray, Esquire  
Office of Small Business Advocate  
300 North 2<sup>nd</sup> St, Suite 1102  
Harrisburg, PA 17101  
[sgray@state.pa.us](mailto:sgray@state.pa.us)

Christopher M. Arfaa, Esquire  
Christopher M. Arfaa, P.C.  
150 N. Radnor Chester Road, Suite F-200  
Radnor, PA 19087-5245  
[carfaa@arfaalaw.com](mailto:carfaa@arfaalaw.com)

Michelle Painter, Esquire  
Painter Law Firm, PLLC  
13017 Dunhill Drive  
Fairfax, VA 22030  
[painterlawfirm@verizon.net](mailto:painterlawfirm@verizon.net)

Pamela C. Polacek, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street  
Harrisburg PA 17108-1166  
[PPOLACEK@MWN.COM](mailto:PPOLACEK@MWN.COM)

Allison C. Kaster, Esquire  
Adeolu Bakare, Esquire  
PA Public Utility Commission  
Office of Trial Staff  
PO Box 3265  
Harrisburg, PA 17105  
[akaster@state.pa.us](mailto:akaster@state.pa.us)

Theresa Cavanaugh, Esquire  
John Dodge, Esquire  
Davis, Wright, Tremaine, LLP  
1919 Pennsylvania Ave, NW  
Suite 200  
Washington, DC 20006  
[johndodge@dwt.com](mailto:johndodge@dwt.com)

John F. Povalitis, Esquire  
Ryan, Russell, Ogden & Seltzer P.C.  
800 North Third Street, Suite 101  
Harrisburg, PA 17102-2025  
[mtotino@ryanrussell.com](mailto:mtotino@ryanrussell.com)  
[jpovalitis@ryanrussell.com](mailto:jpovalitis@ryanrussell.com)

Garnet Hanly, Esquire  
T-Mobile  
401 9th Street, NW  
Suite 550  
Washington, DC 20004  
[Garnet.hanly@t-mobile.com](mailto:Garnet.hanly@t-mobile.com)

August 12, 2011

  
\_\_\_\_\_  
Michael A. Gruin, Esq.