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April 9, 2012

*Via Hand Delivery*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

In 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 is the Joint Petition for Reconsideration and Stay of the Pennsylvania Telephone Association and CenturyLink in the above-referenced matter as directed by the Commission's Order entered March 20, 2012. Copies have been served in accordance with the attached Certificate of Service.

The Joint Statement of Gary Zingaretti and Jeffrey L. Lindsey, responding to the five questions set forth in the Order, is being filed under separate cover.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By:

Norman J. Kennard

Enclosures  
cc: Certificate of Service

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**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	:	
	:	
v.	:	Docket No. C-2009-2098380 <i>et seq.</i>
	:	
Armstrong Telephone Company –	:	
Pennsylvania, <i>et al.</i>	:	

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**JOINT PETITION FOR RECONSIDERATION AND STAY  
OF THE  
PENNSYLVANIA TELEPHONE ASSOCIATION AND CENTURYLINK**

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Pursuant to 52 Pa. Code §§ 5.572 and 5.41, and the Commission’s March 20, 2012 Opinion and Order, the Pennsylvania Telephone Association (“PTA”)<sup>1</sup> and The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (“CenturyLink”) (collectively the “Rural Local Exchange Companies” or “RLECs”) hereby jointly file this Joint Petition for Reconsideration and Stay with the Pennsylvania Public Utility Commission (“Commission” or “PAPUC”). As addressed herein, the PTA and CenturyLink request that, with the exception of

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<sup>1</sup> The Pennsylvania Telephone Association member companies include the following: Armstrong Telephone Company – Pennsylvania; Armstrong Telephone Company – North; Bentleyville Telephone Company; Windstream Buffalo Valley, Inc.; Citizens Telephone Company of Kecksburg; Windstream Conestoga, Inc.; Windstream D&E, Inc.; Hickory Telephone Company; Ironton Telephone Company; Lackawaxen Telecommunications Services; Laurel Highland Telephone Company; TDS Telecom/Mahanoy & Mahantango Telephone Company; Marianna & Scenery Hill Telephone Company; The North-Eastern Pennsylvania Telephone Company; North Penn Telephone Company; Consolidated Communications of Pennsylvania Company; Palmerton Telephone Company; Pennsylvania Telephone Company; Pymatuning Independent Telephone Company; South Canaan Telephone Company; TDS Telecom/Sugar Valley Telephone Company; Venus Telephone Corporation; Windstream Pennsylvania, LLC; and Yukon-Waltz Telephone Company. 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 are also participating with the PTA.

lifting the Commission-imposed caps on retail rates of the RLECs, the Commission stay its July 18, 2011 Opinion and Order and close this docket.

## I. BACKGROUND

1. On July 18, 2011, the Commission entered an Opinion and Order at consolidated docket numbers I-00040105 and C-2009-2098280, known as the *Rural Access Investigation Order*. The *Rural Access Investigation Order* established a number of steps which were to occur over a period of years designed to reduce intrastate switched access charges for the RLECs down to parity with interstate switched access rates.<sup>2</sup>

2. On August 2, 2011, the PTA and CenturyLink filed a Joint Petition for Limited Reconsideration and Stay (“Original PTA/CenturyLink Petition”) requesting that the Commission grant limited reconsideration of the *Rural Access Investigation Order*; stay its implementation until at least January 18, 2012 in order to retain jurisdiction; and take any action deemed necessary or appropriate to coordinate with the then-pending FCC action on intercarrier compensation, access, and federal universal service.

3. The impetus for the Original PTA/CenturyLink Petition was the filing of the “ABC Plan” at the Federal Communications Commission (“FCC”) on July 29, 2011, less than two weeks after the Commission entered the *Rural Access Investigation Order*, and concern about the impacts that that the ABC Plan could have on the Commission’s own charted path for intrastate access restructuring.

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<sup>2</sup> Since 2002, the Commission has had an open proceeding, at Docket C-20027195, relative to the switched access rates of Verizon Pennsylvania Inc. and Verizon North LLC (“Verizon”). As briefly addressed in the PTA/CenturyLink Petition for Limited Reconsideration and Stay and reiterated here, consumers in rural Pennsylvania would be irreparably harmed due to potential mismatched regulatory results arising from implementation of the *Rural Access Investigation Order*, not only in terms of the lack of coordinated and harmonized state regulatory policy with on-going FCC action, but also relative to Verizon which is not addressed in the *Rural Access Investigation Order* and which is not faced with an order to reduce its switched access rates.

4. Also, on August 2, 2011, AT&T filed a Petition for Reconsideration and Clarification, to which PTA and CenturyLink filed a Joint Answer, agreeing that reconsideration was appropriate, but not for the reasons alleged by AT&T.<sup>3</sup>

5. On November 18, 2011, the FCC's *Connect America Fund Order*<sup>4</sup> was released in which the FCC also directed terminating intrastate switched access rate decreases. Beyond this general result of rate reductions, however, the FCC and PAPUC orders are completely dissimilar in terms of the manner, the breadth and the scope of their respective reform efforts.

6. The *Connect America Fund Order* directs a complex overhaul of both intercarrier compensation and universal service policies in a broadband era, with certain switched access reductions included as part of the FCC's efforts. As to intrastate switched access rates, the *Connect America Fund Order* brings the existing interstate and intrastate access charge regime under Section 251(b)(5) of the Telecommunications Act of 1996 and makes significant, *but not yet complete*, changes to the existing intercarrier compensation process for all carriers.

7. As this Commission has correctly recognized, the *Connect America Fund Order* sets forth a "series of changes and reforms in the federal USF mechanism and in various parameters of intrastate and interstate intercarrier compensation" which "interacts with, and materially affects, rulings that this Commission already has rendered[.]"<sup>5</sup>

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<sup>3</sup> AT&T raised five issues on reconsideration/clarification, but mainly opposed the Commission's retention of a state carrier common line (CCL) charge as a means of assessing cost responsibility of joint and common costs of the local loop to all users of the loop, end-use customers as well as carriers, and the proposed length of the Commission's glide path to parity.

<sup>4</sup> Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, 2011 FCC LEXIS 4859 (Rel., November 18, 2011) ("*Connect America Fund Order*"). A copy of the *Order* is available at the following hyperlink: <http://www.fcc.gov/document/fcc-releases-connect-america-fund-order-reforms-usficc-broadband>. The FCC's February 3, 2012 reconsideration clarifying certain components of the *Connect America Fund Order* is available through the following hyperlink: <http://www.fcc.gov/document/order-clarifying-aspects-usficc-transformation-order-released>

<sup>5</sup> PAPUC March 20, 2012 Order at 5.

8. Most fundamentally, the FCC has now adopted “bill and keep” as the uniform, national methodology for all traffic exchanged with the wireline LEC industry. In doing so, the FCC abandoned the “calling party network pays” model that has dominated intercarrier compensation regimes of the last century.<sup>6</sup> This action eliminates a substantial source of RLEC funding that has been used to maintain affordable local rates and networks. At the same time, the FCC is reducing the federal funding dollars available to the RLECs. The paradigm shift is momentous and all RLECs are currently working to identify and cope with the impacts on their business plans.

9. As addressed below, the FCC has *expressly* preempted state commission jurisdiction to set terminating intrastate switched access rates. The *Connect America Fund Order* schedule for achieving parity between intrastate and interstate switched access rates: is more aggressive than prescribed under this Commission’s *Rural Access Investigation Order*; obtains the objective of complete parity (i.e., no carrier common line charge (“CCL”)); and does not end at parity. Rather, the FCC envisions and mandates decreases in intrastate switched terminating access charges until all traffic is exchanged at a rate of zero.

10. The first two steps of rate reductions under the *Connect America Fund Order* bring terminating intrastate access rates into *complete* parity with functionally equivalent interstate rates. Step One, occurring on July 1, 2012, requires carriers to implement decreases necessary to reduce the difference between intrastate and interstate rates by 50%. At Step Two, scheduled for July 1, 2013, the transition to parity will be completed.<sup>7</sup>

11. Carriers are mandated thereafter to implement additional annual reductions to terminating intrastate switched access rates until a zero rate, or “bill-and-keep,” is achieved on

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<sup>6</sup> *Connect America Fund Order*, ¶ 34.

<sup>7</sup> *Connect America Fund Order*, ¶ 801

July 1, 2018 for price cap carriers, and July 1, 2020 for rate of return carriers.<sup>8</sup> Specifically, beginning July 1, 2014, rate of return carriers will be required to reduce terminating switched end office and functionally equivalent reciprocal compensation rates by one-third of the differential between end office rates and \$0.005 and fully reduce those rates to \$0.005 by July 1, 2016. Price cap carriers are under similar obligations, but their reductions are in thirds in order to have those rates at \$0.0007 by July 1, 2016.

12. The *Connect America Fund Order* establishes transitional and conditional universal service support mechanisms as part of the FCC's overhaul effort at levels that likely will be lower on an ongoing basis than what the RLECs receive today. This includes modification of federal universal support mechanisms, including the establishment of a new Connect America Fund ("CAF")<sup>9</sup> that, for rate of return ("RoR") carriers, is capped at 2011 levels of \$2 billion and then phased down.<sup>10</sup> Under CAF Phase I, an additional \$300 million will be made available as support for price cap carriers to spur broadband build-outs in areas currently unserved.<sup>11</sup> The FCC has also created a new "mobility fund" that provides \$300 million to accelerate wireless deployment also in areas deemed to be unserved. In CAF Phase II, the CAF Mobility Fund will provide up to \$500 million per year in ongoing support within areas served by price cap carriers.<sup>12</sup>

13. There likely will be local rate increases associated with reduced access charges and fund support, as the industry transitions to bill and keep intercarrier compensation. The

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

<sup>9</sup> *Connect America Fund Order*, ¶ 20.

<sup>10</sup> *Connect America Fund Order*, ¶ 195.

<sup>11</sup> *Connect America Fund Order*, ¶¶ 128, 133.

<sup>12</sup> *Connect America Fund Order*, ¶ 28. Phase II of the CAF Fund will provide up to \$1.8 billion annually in support for areas with no unsubsidized broadband competitor. The CAF Phase II support that is to be distributed through the cost-model/state level commitment process will be available to incumbent price cap carriers. The CAF Phase II support that is ultimately distributed through the competitive bidding process (still to be designed) potentially will be available to any broadband provider that has been designated as an ETC.

*Connect America Fund Order* allows carriers to impose a new annual Access Recovery Charge (“ARC”) consisting of \$0.50 increases each year to monthly charges for residential/single line business end user customers (excluding Lifeline) (to a maximum of \$3.00 for RoR carriers and \$2.50 for price cap carriers), in addition to the current federal subscriber line charge (“SLC”) with the objective of mitigating lost access revenues. For multi-line business customers, the SLC plus ARC may not exceed \$12.50 (\$12.20 for price cap carriers).<sup>13</sup>

14. The *Connect America Fund Order* also shifts support from voice service to broadband. The *Connect America Fund Order* in this regard mandates speeds of at least 4 Mbps downstream/1 Mbps upstream with sufficient latency to allow for real-time applications and services, such as VoIP, and usage capacity reasonably comparable to residential terrestrial fixed broadband offerings in urban areas upon reasonable customer request.<sup>14</sup> Thus, the *Connect America Fund Order* exceeds required Pennsylvania statutory standards.<sup>15</sup>

15. In view of these seismic changes in compensation, the Commission has reopened the above-captioned dockets to receive updated pleadings addressing specific Commission questions regarding the “cross-effects” between the *Connect America Fund Order* and the *Rural Access Investigation Order*. The purpose of the Commission’s effort is to determine the impact upon its July 18, 2011 order and whether to grant a stay of its directives in whole or in part.<sup>16</sup>

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<sup>13</sup> *Connect America Fund Order*, ¶¶ 36-37, 849, 852-53, 908-16.

<sup>14</sup> *Connect America Fund Order*, ¶¶ 26, 206.

<sup>15</sup> See 66 Pa.C.S. § 3012 Definitions (“Broadband. A communication channel using any technology and having a bandwidth equal to or greater than 1.544 megabits per second (Mbps) in the downstream direction and equal to or greater than 128 kilobits per second (Kbps) in the upstream direction.”).

<sup>16</sup> PA PUC March 20, 2012 Order at 11.

## II. ARGUMENT

### A. The FCC's Preemption Analysis.

16. The FCC has pervasively preempted state rate setting of intrastate access charges. The FCC conducted its *Connect America Fund Order* legal analysis under a standard of preemption that is similar to the “judicial conflict preemption doctrine,”<sup>17</sup> in determining to “explicitly supersede the traditional access charge regime and, subject to the transition mechanism [outlined] below, regulat[ing] terminating access traffic in accordance with the section 251(b)(5) framework.”<sup>18</sup> Under this doctrine, rather than exercising unnecessarily broad preemptive powers, the FCC justified its action in establishing a national transition mechanism for both interstate and intrastate access rates on the basis of preempting state action where “state regulation is inconsistent with the requirements of section 251, or when the state regulation substantially prevents implementation of the requirements of section 251 or the purposes of sections 251 through 261 of the Act.”<sup>19</sup>

17. The *Connect America Fund Order* recognizes that “section 251(d)(3) instructs the Commission not to preempt state regulations that are consistent with and promote federal rules and policies, but it does not protect state regulations that frustrate the Act’s policies or our implementation of the statute’s requirements.”<sup>20</sup> In this vein, the FCC’s Order acknowledges

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<sup>17</sup> *Connect America Fund Order*, ¶ 767.

<sup>18</sup> *Connect America Fund Order*, ¶ 764.

<sup>19</sup> *Connect America Fund Order*, ¶ 767 (citing *BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers*, WC Docket No. 03-251, Memorandum Opinion and Order and Notice of Inquiry, 20 FCC Rcd 6830 at 6839, ¶ 19 (2005)) (emphasis in original).

<sup>20</sup> *Connect America Fund Order*, ¶ 767 (emphasis added).

that states are not prevented “from reducing rates on a faster transition provided that states provide any additional recovery support that may be needed as a result of a faster transition.”<sup>21</sup>

**B. The *Connect America Fund Order* preempts the RLEC terminating switched access rate reductions envisioned under the *Rural Access Investigation Order*.**

18. The *Connect America Fund Order* effectively preempts the terminating intrastate switched access rate reductions envisioned for RLECs under the PA PUC’s *Rural Access Investigation Order*. Both the schedule and objective for achieving parity are more aggressive under the *Connect America Fund Order*. This Commission’s mandated schedule of reductions achieves rate reductions more slowly, and does not achieve full parity. Moreover, under the FCC’s Order, universal service fund support is provided whereas Pennsylvania USF recovery was denied by the Commission.

19. The *Connect America Fund Order* directs the achievement of intrastate and interstate terminating switched access rate parity by July 2013 in a two-step process. The first step of the FCC’s two-step process begins in just a mere three months from the filing of this updated Petition. The *Rural Access Investigation Order* directs a reduction to intrastate terminating switched access rates to *partial* parity in three decreasing steps, which have not yet been triggered.<sup>22</sup>

20. Moreover, the *Rural Access Investigation Order* retained a uniform \$2.50 CCL per access line per month. This Commission retained a uniform \$2.50 CCL per access line per month to take into account the interests of maintaining competitive equity, collecting a fair share

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<sup>21</sup> *Connect America Fund Order*, note 1542 (emphasis added). See also, *Connect America Fund Order*, ¶ 915, note 1808. In allowing further state action, the FCC cautioned that “doing so would not increase the ARC or ICC-replacement CAF support available to carriers in such states[.]”.

<sup>22</sup> *Rural Access Investigation Order*, Annex C at 4. The first, effective July 1, 2012, requires the implementation of a 40% reduction of the difference between intrastate and interstate rates. Reductions to reduce the difference by an additional 35% are required to be implemented within 18 months following the initial reduction, and the final 25% reduction, resulting in intra/interstate access rates at parity, is to be implemented at the expiration of the following 18 months.

of the intrastate RLEC joint and common costs from carriers that utilize the RLECs' switched access network facilities.<sup>23</sup> However, the *Connect America Fund Order* has no CCL on terminating access charges, as the FCC's objective is parity. The *Rural Access Investigation Order's* assignment of a \$2.50/month CCL per access line without additional revenue-neutral recovery through the state universal service fund is patently inconsistent with the *Connect America Fund Order*, particularly given that the FCC's Order parity objectives include additional federal CAF support.

21. The FCC's stated objective to reduce intercarrier compensation to zero (bill and keep) is also not reflected in the Commission's *Rural Access Investigation Order*, which stops at interstate parity plus the CCL as noted immediately above.

22. The FCC's directives override the *Rural Access Investigation Order*, as it is inconsistent with and frustrates the goals of federal policy under the preemption principles set forth in the *Connect America Fund Order*.<sup>24</sup> No court has stayed the FCC's Order and implementing rules. Sprint noted, in pleadings submitted in another jurisdiction, that the "comprehensive and controlling intercarrier compensation regime articulated by the FCC" requires holding in abeyance that state commission's proceeding.<sup>25</sup> This Commission has already opened a separate docket (M-2012-2291824) to address implementation issues regarding the FCC's *Connect America Fund Order* and, therefore, the instant docket can be closed upon finding that *Rural Access Investigation Order* should be stayed in its entirety and as requested herein.

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<sup>23</sup> *Rural Access Investigation Order* at pages 120-22.

<sup>24</sup> *Connect America Fund Order*, ¶¶ 764, 767.

<sup>25</sup> Sprint Comments on Impact of FCC's CAF Order, dated March 15, 2012, at page 2, *In the Matter of: Petition of Sprint to Reduce the Intrastate Switched Access Rates of Rural Incumbent Local Exchange Carriers Operating in North Carolina*, Docket No. P-100,SUB 167. See, <http://ncuc.commerce.state.nc.us/cgi-bin/webview/senddoc.pgm?dispfmt=&itype=Q&authorization=&parm2=GBAAA67021B&parm3=000131826>

23. Clearly, any attempt to somehow render effective and implement the *Rural Access Investigation Order* in terms of RLEC terminating switched access rates would directly conflict with the *Connect America Fund Order* and federal reform efforts. The July 18, 2011 *Rural Access Investigation Order* must be stayed in its entirety with the exception of lifting the Commission-imposed caps to retail rates of the RLECs so as to not frustrate implementation of the *Connect America Fund Order*.

**C. The *Connect America Fund Order* and on-going federal activity dictate that the *Rural Access Investigation Order*'s reductions to RLEC originating switched access rates should be stayed at this time.**

24. As noted above, the *Rural Access Investigation Order* also requires reductions in originating intrastate switched access rates.

25. The *Connect America Fund Order* capped intrastate originating access rates for price cap companies,<sup>26</sup> but did not, at that time, order any reduction, as it expressly acknowledged: “Other than capping, ... *the Order does not fully address the complete transition for originating access charges.*”<sup>27</sup>

26. The *Connect America Fund Order* does state, however, that the FCC’s intention is that originating access charges will also be “eliminated at the conclusion of the ultimate transition to the new intercarrier compensation regime.”<sup>28</sup> As part of its *Connect America Fund Order*, the FCC issued a further notice of proposed rulemaking (“FNPRM”) on the subject of originating access. Comments have been filed and are under consideration by the FCC.

27. Among the issues being considered in the FCC’s FNPRM are the appropriate recovery sources for originating access revenue losses and how such alternative recovery should

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<sup>26</sup> For RoR carriers, all interstate switched access rate elements, including all originating and terminating rates, and all intrastate terminating rates are capped as of December 29, 2011, the effective date of the FCC’s Order. *Connect America Fund Order*, ¶ 801.

<sup>27</sup> *Connect America Fund Order*, ¶ 1298 (emphasis added).

<sup>28</sup> *Id.*

be implemented: “We seek comment on how to minimize any additional consumer burden associated with the transition of originated access traffic, and how best to promote IP-to-IP interconnection in this transition.”<sup>29</sup>

28. The FCC’s FNPRM also requests comments on the appropriate regulatory scheme and transition of originating access rate reductions, *including the state role in those matters*.<sup>30</sup> The question of state jurisdiction and whether preemption should occur on this front is also presented: “Although the Commission can exercise its authority to implement a transition, as it does in the Order today, the Commission *could* also defer to the states to create a transition to bill-and-keep for originating access.”<sup>31</sup>

29. Commission implementation of reductions to RLEC intrastate originating switched access rates at this time would frustrate federal reform efforts, could potentially harm Pennsylvania, and would not further any sound public policy or purpose. There is no clarity in the *Connect America Fund Order* as to how the FCC may proceed to reduce intrastate originating switched access rates to zero and premature state action will likely be detrimental to the RLECs and their customers on several fronts.

30. First, it is inefficient for this Commission to proceed with originating switched access reductions while the FCC is considering the same issue. At this juncture, in view of the pending FNPRM, the Commission should defer consideration of any reductions to intrastate originating access charges until at least the FCC provides further guidance.

31. Second, as part of the FNPRM, the FCC will be considering how to minimize any additional consumer burden associated with the transition of originated access traffic.<sup>32</sup>

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<sup>29</sup> *Connect America Fund Order*, ¶ 1301.

<sup>30</sup> *Id.*, ¶ 1299 (emphasis added). *See also, Id.*, ¶ 801.

<sup>31</sup> *Connect America Fund Order*, ¶ 1302.

<sup>32</sup> *Connect America Fund Order*, ¶ 1301.

Certainly, this Commission should not decide to do less for consumers through premature and burdensome implementation of RLEC intrastate originating switched access rate reductions at the same time that the RLECs are dealing with the substantial terminating rate decreases already ordered by the FCC, reductions well past those found prudent by this Commission.

32. End user customers are already being asked to take on significantly greater share of the cost of local service through terminating access reform and, ultimately under bill and keep will pay all costs, without continued universal service funding. Additional local rate increases at this time needed to support reductions in originating access revenue would be excessive and detrimental to end-users.<sup>33</sup>

33. To the extent that the FCC determines that the RLEC will receive some amount of recovery from the CAF, this would mitigate the impact upon local rates. There is no increase in state USF funding to offset local rate increases under the Commission's *Rural Access Investigation Order*. Acting prematurely simply places Pennsylvania in a deeper position of net payer.

34. The PTA and CenturyLink submit that, were the Commission to continue to proceed with different restructuring on a different schedule, such Commission action would conflict with the federal scheme and likely affect the Pennsylvania RLECs' eligible recovery under the federal scheme. With respect to universal service funding, the *Connect America Fund Order's* USF analysis is inextricably tied to the Order's very specific switched access restructuring measures, with the proposed federal funding of Eligible Recovery for RoR carriers

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<sup>33</sup> 66 Pa.C.S. § 3017(a).

and price cap carriers<sup>34</sup> tied to the levels of intrastate access reductions mandated under the *Connect America Fund Order*.

35. While the FCC has not expressly preempted further state access reform, it has cautioned that further state rebalancing will “not increase the ARC or ICC-replacement CAF support available to carriers in such states [that further rebalance].”<sup>35</sup>

36. Third, there is less pressing public policy rationale to reduce intrastate originating switched access rates.<sup>36</sup> Charges on the originating interexchange carrier do not cause the arbitrage problems alleged to be associated with termination.<sup>37</sup> Terminating access – not originating access – has generated traffic pumping and other issues of “arbitrage.”<sup>38</sup>

37. There has been much less issue with originating access in significant part, because the end user customer making the calls chooses the toll carrier and the toll carrier chooses to be in that market. Unlike terminating access, where the carrier sending the traffic is obligated to send the traffic to the local carrier serving the called customer and pay those terminating charges,

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<sup>34</sup> *Connect America Fund Order*, ¶ 851. For RoR carriers, their baseline for recovery will be based on their 2011 interstate switched access revenue requirement currently recovered through interstate access revenues and local switching support (“LSS”) plus Fiscal Year (“FY”) 2011 intrastate terminating switched access revenues and FY 2011 net reciprocal compensation revenue. Eligible Recovery will be the difference between the RoR baseline subject to five percent annual reductions and the revenues from the reformed intercarrier compensation rates in that year based on actual minutes of use multiplied by the associated default rate for that year. Price cap incumbents baseline for recovery will be 90% of their FY 2011 interstate and intrastate access revenues subject to a 10% annual reduction.

<sup>35</sup> *Connect America Fund Order*, ¶ 915, note 1808. Here the FCC states that in order to not “disincent” states from rebalancing artificially low rates, but still protecting consumers, it will “use the *higher of* the relevant rates in effect on January 1, 2012 or of January 1 in the year in which the ARC is to be charged for comparison to the Residential Rate Ceiling, thus accounting for possible increases in consumer rates over time.” (Emphasis in original.) Since PSI increases implemented in 2012 will not be effective January 1, 2012, there appears to be a lag between recognition of local increases implemented under the PSI and their impact on calculation of the permissible ARC. In its discussion of the urban rate floor, the FCC concluded that carriers are required to report local rates to USAC for calculation of high cost support, with the local rates to be reported presumably dependent on the time frame in the USAC reporting requirement. *Connect America Fund Order*, ¶¶ 234-46.

<sup>36</sup> *Connect America Fund Order*, ¶ 777 (“The concerns we have with respect to network inefficiencies, arbitrage, and costly litigation are less pressing with respect to originating access, primarily because many carriers now have wholesale partners or have integrated local and long distance operations.”)

<sup>37</sup> *Connect America Fund Order*, ¶ 800 (“In brief, our transition plan first focuses on the transition for terminating traffic, which is where the most acute intercarrier compensation problems, such as arbitrage, currently arise. We believe that limiting reductions at this time to terminating access rates will help address the majority of arbitrage and manage the size of the access replacement mechanism.”).

<sup>38</sup> *Connect America Fund Order*, ¶¶ 35 and 651.

the carrier serving the calling party has made an affirmative, voluntary decision to serve that customer and to pay the originating charges.

38. For this reason, the FCC will also be reconsidering the current ILEC obligation to provide IXCs with an equal opportunity to serve the ILEC customers' toll service needs. No other industry sector, wireless or cable, is required to offer AT&T or Verizon their customers' toll traffic. In an increasingly competitive environment for local service, the carriers should have an option to provide all toll services. In its Comments to the FCC, the New York Public Service Commission "highlighted that one possibility for originating access charge reform would be to modify requirements relating to equal access obligations. According to the New York Commission, '[i]t is possible that this action will cause the industry to self-remedy the originating access issue by migrating to exclusively bundled local/toll service for its subscribers, similar to the packages offered by wireless and cable telephony providers.'"<sup>39</sup>

39. Finally, there is no record evidence developed to address the scenario that has now been created by the FCC. The financial ramifications and customer impacts of lowering intrastate terminating access rates *below even the current interstate level* (instead of current interstate level plus a \$2.50 CCL as directed by this Commission) along with reductions in originating access parity, is unexplored on the record of this case.

40. In summary, the Commission should exercise sound discretion regarding the timing of any continued reform of originating switched access rates and determine that further action would be premature and is not warranted.<sup>40</sup> Just and reasonable ratemaking requires the exercise of Commission discretion and not flawed and rash decision-making based upon artificial

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<sup>39</sup> *Connect America Fund Order*, note 2357 (citing New York Commission Comments).

<sup>40</sup> This same conclusion is warranted for any of the other aspects of intercarrier compensation left to the FCC's FNPRM. In the FNPRM, the FCC is contemplating whether further regulatory action should be taken regarding intermediate carrier functions and certain terminating carrier access functions not yet included in the bill and keep end state established by the *Connect America Fund Order*.

timelines sought by originating IXC's that will already be receiving substantial expense decreases on the terminating side.<sup>41</sup>

**D. The *Rural Access Investigation Order* should be stayed with the exception of the current retail rate caps.**

41. One exception to a permanent stay of the *Rural Access Investigation Order* is necessary and in the public interest –the removal of any retail local rate caps (residential and small business) which may still be lingering.<sup>42</sup> The *Connect America Fund Order* does not preempt the Commission's historical duty to regulate rates for basic local exchange service under the “just and reasonable” standard.<sup>43</sup> The *Connect America Fund Order* does, however, exert considerable influence upon the end user customers' bills as it relates to implementation of the complexities of that Order.

42. The *Connect America Fund Order* contains provisions that drive the RLECs to increase their monthly local rates. The *Connect America Fund Order* designs an additional end-user charge (the ARC) in order to recover a portion of the revenues lost as a result of access reductions. The ARC will be calculated separately and may be combined with the existing SLC for billing purposes.

43. The FCC has also established a new “urban rate” floor precluding carriers from receiving certain CAF support where their local service rates are below the floor. Initially set at

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<sup>41</sup> As the *Connect America Fund Order* correctly acknowledged, Section 252(b)(5) of the Act does not explicitly address originating charges. *Connect America Fund Order*, at ¶ 1298. Unlike terminating switched access, originating switched access charges do not fit the reciprocal compensation paradigm for the transport and termination of telecommunications. Moreover, originating access traffic is not exchanged for the purpose of delivery to the receiving carrier's customers. Rather, originating access is the purchase of an input required to initiate a service with one's own customer and not the exchange of traffic for termination to another customer. Thus, originating access is different from terminating access and need not be – nor should it be – subject to reform now.

<sup>42</sup> The degree to which the Commission or any of the parties believe that rate caps are still in place (as implemented in the Commission's *Global Order* and/or as modified by subsequent Commission orders) is unclear and has been the subject of intense debate.

<sup>43</sup> 66 Pa. C.S. § 1301.

\$10.00 as of July 1, 2012, the rate floor is raised to \$14.00 on July 1, 2013. Thereafter, the rate floor is to be generally set annually by the Wireline Competition Bureau, based upon an annual survey of voice rates. Where local end-user rates plus state regulated fees<sup>44</sup> are below the floor, certain Fund support will be reduced, on a dollar-for-dollar basis, for every dollar below the floor.<sup>45</sup> This is a penalty for local rates that the FCC has judged as too low. The FCC will not consider CAF support for rates that are below the urban rate floor and has set forth very specific mandates with respect to local rate levels by the creation of incentives/disincentives using CAF dollars.

44. At the same time, the *Connect America Fund Order* imposes other restrictions, reductions, and/or modifications to existing and proposed support mechanisms, all of which will place further pressure on local rates.<sup>46</sup> The *Connect America Fund Order* phases out high cost support where unsubsidized competitors (facilities-based provider of residential terrestrial fixed voice and broadband service) offer the minimum broadband requirements in the ILEC's study area.<sup>47</sup> Moreover, for RoR carriers, the *Connect America Fund Order* also limits reimbursements for capital and operating expenses effective July 1, 2012; extends corporate operations expense limits to existing HCLS and ICLS mechanisms;<sup>48</sup> phases out the safety net adjustment component of high cost funding as the cap is reduced and reset;<sup>49</sup> eliminates local switching support as a separate support component and reduces recovery under the CAF;<sup>50</sup> and caps per

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<sup>44</sup> Specifically, state SLCs (excluding federal SLCs), state universal service fees, and mandatory extended area service charges.

<sup>45</sup> *Connect America Fund Order*, ¶¶ 197, 234-47.

<sup>46</sup> Although the FCC provides relief in the form of a waiver request that carriers may file, the FCC warns that such petitions will not be "granted routinely" and will be "subject to a rigorous, thorough, and searching review comparable to a total company earnings review." *Connect America Fund Order*, ¶¶ 202, 540.

<sup>47</sup> *Connect America Fund Order*, ¶¶ 103, 200, 280-84. The method for determining overlap is part of the ongoing FNPRM.

<sup>48</sup> *Connect America Fund Order*, ¶¶ 196, 210-33.

<sup>49</sup> *Connect America Fund Order*, ¶¶ 198, 248-52.

<sup>50</sup> *Connect America Fund Order*, ¶¶ 199, 253-57.

line support at \$250/month with a gradual phase-down over three years beginning July 1, 2012.<sup>51</sup> For price cap carriers, the *Connect America Fund Order* has frozen all existing federal high cost support, effective January 1, 2012. On an interim basis, the FCC will provide that frozen support to those carriers, generally in an amount equal to the high-cost support each carrier received in 2011 in each study area, albeit subject to the urban rate floor reductions and with specific requirements for use of that support.<sup>52</sup>

45. Meanwhile, the *Rural Access Investigation Order* envisioned a residential state tariffed “benchmark” rate (but not a cap) of \$23.00 (exclusive of state taxes, fees, surcharges etc.) or approximately \$32.00 for an affordable total bill rate below which USF support is precluded and above which USF support is *not* provided but *might be considered at some future time*.<sup>53</sup>

46. Since there are many moving pieces associated with the FCC’s reform efforts and, because the FCC has determined that local rate increases above the urban rate floor, but below the residential rate ceiling will significantly impact many RLECs’ level of federal CAF/USF support, and given that the PAPUC at this time has provided no new USF support, the Commission must afford RLECs the flexibility to address their local rates in a manner that maximizes that federal support. Otherwise, the RLECs either would be denied recovery of mandated lost access revenues (by imposing upon them a state rate cap) and/or would be compelled to forego access to federal universal service funding, further aggravating Pennsylvania’s status as a net-contributor state of federal USF funds.

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<sup>51</sup> *Connect America Fund Order*, ¶¶ 201, 272-79.

<sup>52</sup> *Connect America Fund Order*, at ¶¶ 128, 133, 150 and 151. See also, *Id.*, at ¶ 180 regarding transitioning from CAF I to CAF II for incumbents.

<sup>53</sup> *Rural Access Investigation Order* at 157-58. The PA PUC also imposed a “corresponding business benchmark.” *Id.* at 180.

47. The Commission should allow the RLECs the option to implement local rate increases as necessary, within the confines established by the FCC, through the means of their existing state alternative regulation plans in order to derive maximum federal CAF/USF support while avoiding unnecessary local rate increases on their rural customers.

48. Clearly, removal of the local rate caps is necessary to achieve fully and completely the benefits under the *Connect America Fund Order*, as existing, and as yet, to be determined by the on-going FCC proceedings. The Commission's ability to be flexible and responsive as events unfold is necessary and is in the public interest.

49. The Petitioning local exchange companies will, of course, still be required to file and seek Commission approval for any local rate changes under the just and reasonable standard of state law, but there should be no automatic, generically applicable rate cap limiting their ability to make proposed changes to the Commission and in this respect the *Rural Access Investigation Order* should not be stayed.

### III. CONCLUSION

50. The *Connect America Fund Order* is complex, far reaching and will require significant industry and Commission resources to implement. As this Commission noted to the General Assembly, the "implications from the *CAF Order* are extremely fluid as the order is voluminous, complex, and undergoing implementation and clarification by the FCC on a continuous basis."<sup>54</sup>

51. Given the timeframes and the customer recovery implications of the FCC's Order, the PA PUC should wait and evaluate the impacts of these changes.

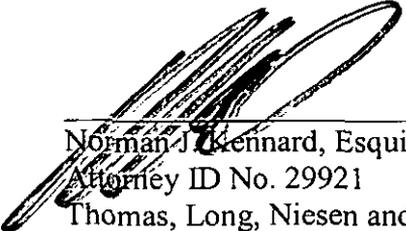
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<sup>54</sup> See, Letter to Chairman Godshall dated February 22, 2012, page 1.

52. Accordingly, the *Rural Access Investigation Order* of July 18, 2011 – with the exception of Commission removal of the previously effective residential and small business rate caps – conflicts with and otherwise frustrates the federal means and goals of the FCC begun in the *Connect America Fund Order* and, therefore, should be stayed permanently.

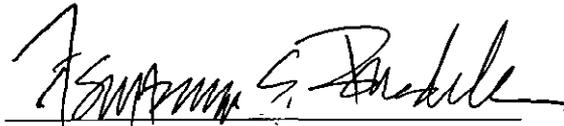
53. Instead, while implementing the FCC’s mandated access restructuring, universal service, and intercarrier compensation changes, the Commission should close this docket. The Commission has opened Docket No. M-2012-2291824 and efforts should focus on the task of implementing the FCC’s *Connect America Fund Order*.

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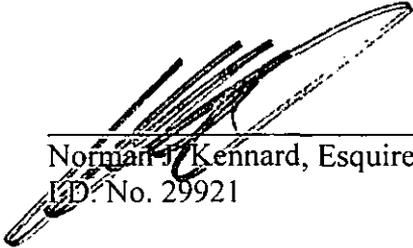
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