

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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IRWINA. POPOWSKY
Consumer Advocate

April 19, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17101

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

Dear Secretary Chiavetta:

Enclosed for filing please find the Answer of the Office of Consumer Advocate to Updated Petitions for Reconsideration and the Affidavit of Dr. Robert Loube in the above-captioned proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Shaun A. Sparks".

Shaun A. Sparks
Assistant Consumer Advocate
PA. Attorney ID# 87372

Enclosure
155316

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate Access	:	
Charges and IntraLATA Toll Rates of Rural	:	Docket No. I-00040105
Carriers, and the Pennsylvania Universal	:	
Service Fund	:	
	:	
AT&T Communications of Pennsylvania,	:	
LLC, <i>et al.</i>	:	
	:	
v.	:	Docket Nos. C-2009-2098380 <i>et al.</i>
	:	
	:	
Armstrong Telephone Company -	:	
Pennsylvania, <i>et al.</i>	:	

ANSWER OF THE
OFFICE OF CONSUMER ADVOCATE
TO UPDATED PETITIONS FOR RECONSIDERATION

In accord with 52 Pa. Code Section 5.572, and the March 20, 2012 Opinion and Order in the above-referenced matter, the Pennsylvania Office of Consumer Advocate (OCA) hereby files this Answer. The OCA Answer responds to the Updated Petition for Reconsideration and Comments of AT&T in response to the Commission's Opinion and Order Entered March 20, 2012 ("Updated AT&T Petition" and "AT&T Comments" respectively) filed April 9, 2012 in this docket. The OCA Answer also responds to the Joint Petition for Reconsideration and Stay of the Pennsylvania Telephone Association and CenturyLink (Updated PTA-CL Petition) filed April 9, 2012 in this docket.

I. INTRODUCTION AND BACKGROUND

On March 20, 2012, the Pennsylvania Public Utility Commission (Commission) issued an Opinion and Order (March 20 Order) in the above-referenced docket. The March 20 Order addresses petitions seeking various relief from the Commission's July 18, 2011 Opinion and Order in the same docket. Specifically, on August 2, 2011, the Pennsylvania Telephone Association and United Telephone Company of Pennsylvania, LLC, d/b/a CenturyLink (PTA-CL) and AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh and TCG New Jersey, Inc. (AT&T) requested relief from the intercarrier compensation policies advanced in the July 2011 Order. The OCA provided a timely Answer to these Petitions on August 9, 2011. On August 11, 2011 the Commission granted reconsideration of those Petitions pending review of the merits.

On August 19, 2011 the Commission issued a Secretarial Letter proposing a mechanism by which Pennsylvania's rural local exchange carriers might achieve revenue neutral access charge rebalancing -- as provided for in the Commission's July 2011 Order. On November 18, 2011, however, the Federal Communications Commission (FCC) issued its Connect America Fund Order¹ that mandated specific changes in interstate and intrastate access rates and comprehensively changed the

¹ *In re Connect America Fund*, WC Docket No. 10-90 *et al.*, FCC 11-161 (November 18, 2011) (CAF Order).

federal universal service mechanisms. This series of events halted implementation of the July 2011 Order and any further action on the Part of the Commission. With the March 20 Order the Commission now reopens the record in the above-referenced docket in anticipation of requirements that may be imposed by the federal access reform directives of the FCC CAF Order.

II. ANSWER TO UPDATED PETITIONS

This section of the OCA Answer, in conjunction with the Affidavit of Dr. Loube, responds to the major issues presented by the updated Petitions of PTA-CL and AT&T. As the March 20 Order notes, Commission consideration and action on these matters is subject to its pending federal appeal of the CAF Order.² Regardless of the eventual outcome of the appeal, however, the CAF Order has not been stayed at this time and the Commission must establish reasonable CAF implementation and compliance procedures. March 20 Order at 6.

While not in complete agreement with either Party, the OCA finds that it has some common ground with both PTA-CL and AT&T regarding the effects of the CAF Order. The OCA submits that adopting these areas of common agreement, as discussed in this Answer, would be in the public interest in that the recommendations protect the interests of both Pennsylvania telecommunications service consumers and providers.

² *Pa. PUC v. FCC et al.*, No. 11-9585 (10th Cir. Filed December 5, 2011).

A. OCA Answer to PTA-CL.

The Updated PTA-CL Petition makes three over-arching requests. It first requests that the Commission stay the July 2011 Order and instead implement the terminating access reforms contained in the CAF Order. Updated PTA-CL Petition at 1-3. PTA-CL bases this request on its conclusion that the July 2011 Order is preempted by the CAF Order. The OCA agrees with PTA-CL to the extent that the Commission should refrain from implementing the July 2011 Order access charge reforms in light of the CAF Order. However, the OCA believes a complete stay of the July 2011 Order would be inappropriate because of necessary Carrier Charge allocation issues discussed below.

PTA-CL next argues that, while being preempted on issues of terminating access, the Commission should exercise restraint regarding originating access reform. Updated PTA-CL Petition at 10. Save for the allocation of the Carrier Charge between originating and terminating access (as discussed in the accompanying Affidavit of Dr. Loube), the OCA agrees with PTA-CL. The FCC has indicated that it will embark on originating access reform efforts in the near future. Updated PTA-CL Petition at 10-11. At this time there are no compelling reasons for Pennsylvania to rush into the originating access reform breach. *Id.* At 11-12. PTA-CL also offers that originating access charges are not subject to the same abuses as terminating access charges and do not present urgent public policy issues. Updated PTA-CL Petition at 13. The OCA

agrees.

Lastly, PTA-CL argues that the Commission should retain that portion of its July Order that lifts the retail rate caps currently imposed on Pennsylvania RLECs. Updated PTA-CL Petition at 15. While the OCA understands the PTA-CL rationale for this request, the OCA does not agree that abandoning all rate cap limitations within the confines of this proceeding is appropriate or in the public interest. Rather, the OCA submits that the Commission should seek to harmonize its affordability benchmark approach contained in its Order with the \$30 residential rate ceiling contained in the FCC Order and to utilize that approach to establish a firm level of rate protection for residential consumers. The OCA notes in this regard that PTA-CL provided the following at page 18 of its Updated Petition:

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 regulations plans in order to derive maximum federal CAF/USF support while avoiding unnecessary local rate increases on their rural customers.

The OCA submits that a Pennsylvania total bill rate limitation consistent with CAF Order methodology (currently producing a \$30 cap) would be in the public interest in that it serves to meet affordability goals and works to maximize available federal support. The OCA believes that a \$30 limit is consistent with the goals of the July 2011 Order total monthly bill tariff rate benchmark of \$32 established by the Commission. Regarding benchmark rates, the OCA understands PTA-CL and AT&T to agree with

the OCA on this point. PTA-CL commented that the “PUC’s \$23 benchmark rate and the FCC’s \$30 Rate Ceiling are designed in different, yet complementary ways.” Updated Comments of PTA-CL at 3. AT&T provided examples of how a \$30 total bill benchmark is achievable and consistent with the requirements of the \$30 CAF Order support ceiling. See Updated AT&T Petition at 14-15.

B. OCA Answer to AT&T.

AT&T concludes that under the CAF Order, the Commission is preempted from implementing the terminating access reforms of its July 2011 Order. Nevertheless, AT&T argues that the Commission did not go “far enough or fast enough” to eliminate all access charges in accord with what it believes to be the ultimate goals of the FCC. Updated AT&T Petition at 2-3, 5. To that end, AT&T argues that the Commission should not close this docket but rather should use its continued jurisdiction over originating access to eliminate the \$2.50 Carrier Charge in its entirety and to implement originating access charge reductions such that all access charges are eliminated in accord with what it believes are the FCC’s long-term goals. Updated AT&T Petition at 4.

The OCA and AT&T agree regarding the requirement to implement the terminating access reforms of the FCC Order in lieu of the changes to terminating access contained in the PUC July 2011 Order. As discussed above, the OCA and AT&T are also in general agreement on the comparability of the Commission’s benchmark

rates and the residential rate support ceiling in the CAF Order. Regarding the Carrier Charge, however, while the OCA agrees with the suggested AT&T methodology to allocate the Carrier Charge between originating and terminating access, the OCA does not agree with AT&T that the originating portions of the Carrier Charge, or originating access charges in general, should be reduced or eliminated.

C. Additional considerations regarding Pennsylvania support mechanisms.

The OCA agrees with the finding in the Commission's July 2011 Order that requires interexchange carriers to support ILEC joint and common costs. To this end, OCA recommends that the Carrier Charge be allocated between originating and terminating service on the basis of originating and terminating minutes of use. Next, the OCA recommends that Carrier Charge originating revenue be allocated among inter-exchange carriers on the basis of the carriers' originating minutes in accord with the AT&T proposal. AT&T Joint Affidavit Exhibit C. As noted above, the OCA recommends the continuation of this proceeding to achieve this limited goal. As a part of that process, the Commission must determine the amount of the Carrier Charge assigned to originating access service and how the Carrier Charge assigned to originating service will be collected. In addition, the OCA recommends that the Commission must ultimately address the issue of how to expand the contribution base that funds the Pennsylvania Universal Service Fund. Regarding that issue, the OCA recommends that any entity that contributes to the Federal universal service fund

should also be obligated to contribute to the PaUSF.

While both PTA-CL and AT&T raise the issue of whether FCC required access reductions qualify as exogenous events (triggering the right of the RLECs to raise basic local service rates to compensate for lost revenues), they reach starkly opposite legal conclusions. PTA-CL concludes that these reductions may be classified as exogenous events because they represent a jurisdictional shift with tangible interstate revenue changes. Updated PTA-CL Comments at 4. AT&T on the other hand concludes that FCC limits on access charge recovery are not exogenous events because they are federal in nature and not ordered by the Pennsylvania Public Utility Commission. Updated AT&T Comments at 18-19.

These arguments raise legal issues that may be beyond the scope of the instant Docket. The exogenous event language in the various approved Chapter 30 plans is not uniform. Individual Chapter 30 ILECs must petition the Commission to determine whether a particular exogenous event provision is triggered by CAF Order federally mandated access reform.

Nevertheless, the OCA notes that if these access reforms were to trigger Chapter 30 plan exogenous event revenue recovery, rate limits such as the \$30 residential rate ceiling contained in the FCC Order may serve as an important protection against significant proposed rate increases. The rate limitations discussed above would serve as an essential backstop for local telephone service customers.

Should an RLEC confront the \$30 limit, and exhaust the rate recovery mechanisms contained in the FCC Order (the ARC and the RM), the RLEC may have nowhere else to turn but the PaUSE. For these reasons the OCA strongly recommends that the Commission expand the contribution base of that fund as a part of its continued access reform process.

III. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully requests that the Commission adopt its recommendations contained herein to ensure that Pennsylvania's access reform efforts produce rates that are just and reasonable for all ratepayers, and to ensure that access reform efforts occur in a manner that ensures that efficient, safe, adequate and reasonable telephone service is preserved throughout the Commonwealth.



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Dated: April 19, 2012

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BEFORE THE
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	:	
	:	
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Pennsylvania, <i>et al.</i>	:	

AFFIDAVIT OF DR. ROBERT LOUBE
ON BEHALF OF
THE OFFICE OF CONSUMER ADVOCATE

My name is Robert Loubé. My business address is 10601 Cavalier Drive, Silver Spring, Maryland 20901. I am the Vice President of Rolka Loubé Saltzer Associates. My consulting practice centers on providing expert advice to state agencies involved in telecommunications regulation. Prior to joining Rolka Loubé Saltzer Associates, I worked for the Federal Communications Commission, the Public Service Commission for the District of Columbia, and the Indiana Utility Regulatory Commission. At those commissions I worked on issues associated with universal service, incremental cost, rate design, competition and separations.

I am providing this Affidavit on behalf of the Pennsylvania Office of Consumer Advocate (OCA). The Affidavit responds to the five questions posed in the Pennsylvania Public Utility Commission March 20, 2012 Opinion and Order in the above-referenced matter. In addition, the Affidavit responds to the Updated Petition for Reconsideration and Comments of AT&T in response to the Commission's Opinion and Order Entered March 20, 2012 and associated Joint Affidavit ("Updated AT&T Petition" and "AT&T Comments" respectively) filed April 9, 2012 in this docket. It also responds to the Joint Petition for Reconsideration and Stay of the Pennsylvania Telephone Association and CenturyLink (Updated PTA-CL Petition) and the associated Joint Statement filed April 9, 2012 in this docket.

I. INTRODUCTION

The CAF Order substantially affects the financial status of Pennsylvania Rural ILECs by reducing their current federal universal service support and by providing limited opportunities to obtain additional financial support. Under the CAF Order, rural price cap carriers could ultimately lose 100 percent of their current federal universal funding, \$41.4 million annually¹. The funding reduction will occur when the FCC adopts its CAF II forward-looking cost mechanism, currently scheduled to be

¹ Source: annualized USAC Second Quarter 2012 FCC Filing, Table HC-01, <http://www.usac.org/about/tools/fcc/filings/2012/q2.aspx>.

affective on January 1, 2013. Price cap carriers, unlike rate of return carriers, will not have the opportunity to recover any of their current Local Switching Support (LSS) as part of the new recovery mechanism (RM) or through the imposition of the access recovery charge (ARC) on end-users. Price cap carriers will have the opportunity to obtain additional relief under the CAF II forward-looking cost mechanism. However, because of the availability of cable service in many areas of Pennsylvania, and because the CAF II mechanism does not provide support in areas where there exists another unsubsidized broadband provider, it appears that Pennsylvania price-cap ILECs will be eligible for only minimal CAF II support.

Under the CAF Order, rate of return carriers will remain so in name only because the FCC will no longer allow those carriers the opportunity to recover their interstate traffic sensitive (TS) revenue requirement. In year one of the reform, these carriers may recover only 95 percent of their interstate TS revenue requirement and by year five of the reform, the revenue requirement recovery decreases to 77 percent.² Rate of return carriers will lose their entire Local Switching Service support on July 1, 2012 and will be required to look to ARC revenues and the RM to address this loss. Thus, the federal universal service support will decrease by the collection of the ARC revenues and the impact of annual reduction in Rate-of-Return Carrier Baseline

² The percent factor is referred to as the "Rate-of-Return Carrier Baseline Adjustment Factor." 47 C.F.R. §51.917(b)(2). In each year the recoverable amount is equal to 95 of the previous amount, so that in year five, $.95 * .95 * .95 * .95 * .95$ equals 77%.

Adjustment Factor.

With regard to early adopter states, the CAF Order only recognizes access charge reduction efforts to the extent that local rates have been increased to offset access rate reductions. The CAF Order fails to recognize Pennsylvania's substantial efforts to reduce access rates by substituting state universal service funding for access revenue.³ This failure increases the final bill paid by Pennsylvania residential consumers.

In addition, the CAF Order grants terminating access service users a free-ride on the facilities of access service providers. The users, such as wireless and inter-exchange carriers, will benefit from a significant cost reduction. Access service providers (Rural ILECs) must simultaneously support their networks and provide free access services to wholesale users of those networks.⁴ Thus, allocating network costs among network users is not an "academic dispute" as AT&T contends.⁵ Rather, as this Commission has long recognized, "the RLECs' intrastate carrier switched access service NTS joint and common costs primarily associated with the RLECs' local loop plant must

³ To recognize Pennsylvania's effort, the FCC should have added to the local rate the per-line amounts carriers received from the PaUSF when determining the maximum amount of ARC charges that would be added to residential consumers' bills.

⁴ The FCC justifies the free-ride given to carriers because it claims that consumers would obtain a benefit from reductions in other rates. That benefit claim has been shown to be illusory and unlikely. See Comments of the National Association of State Utility Consumer Advocates, WC Docket 10-90, filed August 24, 2011.

⁵ AT&T Updated Petition for Reconsideration, page 3.

be recovered from all users of the RLEC's network."⁶ The Commission then stated that "the retention of a uniform CC [Carrier Charge] rate of \$2.50 per access line per month is a balancing act that takes into account the interests of maintaining competitive equity, collecting a fair share of the intrastate RLEC joint and common costs from carriers that utilize the RLECs switched access network facilities, and not impacting the existing PaUSF mechanism which is in need of reform in accordance with the discussion in this Opinion and Order."⁷ I agree with the Commission that all users of the network should contribute to the support of the NTS joint and common cost.

II. ANSWERS TO COMMISSION QUESTIONS 1-5

On behalf of the OCA I address the five questions posed by the Commission in the March 20 Order.

QUESTION 1: Whether the substance and the time frame of the FCC's intercarrier compensation reforms should totally or partially replace the Commission's intrastate carrier access charge reform directives contained in our *July 2011 Order*.

I concur with AT&T, the Pennsylvania Telephone Association (PTA), and CenturyLink that the July 2011 Order should not go forward with respect to

⁶ July Order, at 118.

⁷ Id., at 120-121.

terminating access rates. However, as the Commission retains its authority over originating access rates it should revise the Carrier Charge such that it is appropriately assigned to originating access service.

Regarding terminating access, the FCC Order mandates specific rate reductions. In the first tariff year beginning July 1, 2012, if intrastate terminating access rates are higher than interstate terminating rates, the intrastate access rate must be reduced by half of the difference between the two rates. One year later, July 1, 2013, the two rates must be equalized.

Pennsylvania Rural ILEC intrastate traffic sensitive terminating access rates are generally equal to, or less than, interstate traffic sensitive terminating access rates. Intrastate rates are higher than interstate rates only when the carrier charge is added to the traffic sensitive rate. However, at this time, there is no explicit rule that assigns the Carrier Charge to either originating or terminating access revenue. Like AT&T, I propose that the Carrier Charge be allocated between originating access and terminating access revenue on the basis of originating and terminating intrastate access minutes.⁸ The AT&T methodology shown in its Exhibit C is a simple and practical solution to the allocation of the Carrier Charge.

With regard to originating access, the Commission has retained its authority over these rates and should allow the rural carriers to continue to collect the

⁸ AT&T Updated Petition for Reconsideration, Exhibit C.

Carrier Charge associated with originating access consistent with the allocation discussed in this Answer. Retaining the originating Carrier Charge meets the Commission mandate that all users of the network should contribute to the support of the network. In addition, the retention of the Carrier Charge prevents an additional increase in residential bills by mitigating the impact of the ARC. Moreover, as pointed out by the PTA and CenturyLink, "Charges on the originating interexchange carrier do not cause the arbitrage problems alleged to be associated with termination. Terminating access – not originating access – has generated traffic pumping and other issues of arbitrage."⁹

QUESTION 2: Will there be cross-effects on various regulated telecommunications carriers with intrastate operations in Pennsylvania and their end-user consumers if the Commission proceeds with the implementation of its *July 2011 Order* while the FCC's directives in the *CAF Order* also are coming into effect?

- a. Can or will the implementation of the *July 2011 Order* have cross-effects with the FCC's mechanisms of Eligible Recovery and potentially available federal CAF support and over what time frame?
- b. Can or will the implementation of the *July 18, 2011 Order* in conjunction with the FCC Order directives have potential cross-effects for end-user consumers of intrastate regulated retail telecommunications services and over what time frame?

⁹ Joint Petition for Reconsideration and Stay of the Pennsylvania Telephone Association and CenturyLink, ¶ 36.

Implementation of the July 2011 Order will have substantial cross-effects with the FCC's mechanisms of Eligible Recovery and potentially available federal CAF support. The cross-effects emerge out of the FCC's mandate to reduce state terminating access rates and the FCC's actions that provide alternative sources of revenue that replace, in part, the revenues lost due to the access rate reduction.

It must be recognized, however, that the FCC's proposed revenue offset is not revenue neutral. The revenue offset in the form of the ARC revenue and RM support is limited by the base factor. The CAF Order contains three base factors depending whether the carrier is Rate-of-Return carrier, a CALLS Study Area, and Non-CALLS Study Area Base Factor. CALLS study areas are price-cap study areas that participate in the CALLS Order.¹⁰ Because the CALLS Order was released on May 31, 2000, many of the Rural price-cap ILECs are Non-CALLS study areas. For those carriers, the base factor is 100% through June 30, 2017 and then decreases to 90 percent per year.¹¹ For these carriers the access reductions will be revenue neutral for the first five years of the program, with complete intrastate access revenue replacement through

¹⁰ In the Matter of Access Charge Reform, et al., CC Docket No. 96-262, *Sixth Report and Order*, FCC 00-193, released May 31, 2000 (CALLS Order). CALLS stands for the Coalition for Affordable Local and Long Distance Service. The Coalition members were AT&T, Bell Atlantic, BellSouth, GTE, SBC, and Sprint.

¹¹ 47 C.F.R. §51.915(b)(9).

June 30, 2017.¹²

For Rate-of-Return carriers, the base factor is 95 percent so that after five years only 77 percent of the FCC mandated intrastate reduction would be recovered through ARC revenues and RM support.¹³ For CALLS study areas, the base factor is 90 percent so that after five years only 59 percent of the FCC mandated intrastate reduction would be recovered through ARC revenues and RM support.¹⁴

In addition, the FCC requires all carriers to charge at least the national average local residential rate. If a carrier chooses to maintain a rate below national average, the FCC will reduce the high cost support of that carrier. This rule will become effective gradually, starting with a rate of \$10.00 on July 1, 2012, \$14.00 on July 1, 2013 and the national average rate starting on July 1, 2014.¹⁵ The national average rate was \$15.62 in October 2007.¹⁶ Due to deregulation in California, Texas and Iowa and allowed rate increases in other states, I anticipate that the national average rate may increase by July 1, 2014. This provision of the CAF Order could impact the fourteen

¹² This statement does not imply that these carriers will not be adversely affected by other reforms. For example, these carriers may lose federal universal service support they currently receive.

¹³ 47 C.F.R. §51.917(b)(2).

¹⁴ 47 C.F.R. §51.915(b)(2).

¹⁵ 47 C.F.R. §54.318.

¹⁶ FCC, Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service, 2008. This publication contains that last survey of urban prices conducted by the FCC.

rate-of-return carriers with local basic exchange rates that are below \$17.00.¹⁷

QUESTION 3: Will the FCC's adoption of a Residential Rate Ceiling for purposes of the federal Eligible Recovery mechanism and associated CAF support distributions have any cross-effects on the Commission's findings regarding the adopted \$23 per month benchmark rate in the *July 2011 Order*?

As an initial matter, while the CAF Order does not address the Commission's \$23 basic local service benchmark, the \$30 CAF Order residential rate ceiling is generally consistent with the \$23 basic local service benchmark.¹⁸ The FCC establishes a \$30.00 residential rate ceiling that it uses to limit the size of the ARC for residential customers. Without this limit, the ARC for rate-of-return carriers can increase by 50 cents per year to a maximum of \$3.00 per-line per-month beginning in July 1, 2017.¹⁹ The ARC for price-cap residential consumers can increase by 50 cents per

¹⁷ According to the Direct Testimony of Roger D. Colton on behalf of the OCA, filed December 10, 2008, Exhibit RDC-4, the following rate of return carriers' rates are below \$17.00: Citizens Telephone of Kecksburg, Laurel Highland, North Penn, Ironton, Armstrong North, Armstrong PA, Lackawaxen, North-Eastern Pennsylvania, Pymatuning, Venus, Yukon-Waltz, Mananoy and Mahantango, Sugar Valley, South Canaan, and Palmerton telephone companies.

¹⁸ The Commission's \$23 benchmark refers only to basic local exchange service. The FCC's \$30 residential rate ceiling includes basic local exchange service plus other mandatory charges. Thus, although measuring different things, this Commission's \$23 basic local rate ceiling and the FCC's \$30 residential rate ceiling are consistent -- as is described below.

¹⁹ 47 C.F.R. §51.917(e)(6).

year to a maximum of \$2.50 per-line per-month by July 1, 2016.²⁰ Federal regulations provide that the Residential Rate ceiling

consists of the federal end user common line charge and the Access Recovery; the flat rate for residential local service, mandatory extended area service charges, and state subscriber line charges, per-line state high cost and/or state access replacement universal service contributions, state E911 Charges and state TRS charges.²¹

If the sum of these elements is greater than \$30.00, the effect of the Residential Rate ceiling is to reduce the ARC such that the sum of the elements will not exceed \$30.00.

AT&T has pointed out that most of the Pennsylvania charges that are added to the rate for local service to determine the residential rate ceiling fall within a range of \$7.83 and \$8.08.²² AT&T, however, failed to point out that eleven Rural ILECs have touchtone rates that vary between \$0.50 and \$1.50.²³ These touchtone rates are also mandatory local residential rates and must be added to the calculation. Based on AT&T's calculations the effective basic local service rate ceiling in Pennsylvania would be either \$21.92 or \$22.17²⁴ (it would be lower for the eleven Rural ILECs with touchtone charges). Thus, if the Commission in reviewing its July 2011 Order adopted an

²⁰ 47 C.F.R. §51.915 (e)(5).

²¹ 47 C.F.R. §51.915(b)(11).

²² AT&T Updated Petition for Reconsideration, Exhibit B.

²³ See the Direct Testimony of Roger D. Colton on behalf of the OCA, filed December 10, 2008, Exhibit RDC-4.

²⁴ AT&T Updated Petition for Reconsideration, Exhibit B.

affordable basic local rate ceiling greater than \$21.92 or \$22.17 depending on the carrier (and adjusted for touchtone rates), the Commission would be needlessly increasing the rates for Rural ILEC consumers. Therefore, I recommend that the Commission match its affordable rate to the FCC's Residential Rate ceiling.

QUESTION 4: How will the Pennsylvania ILECs that have alternative regulation and network modernization plans (NMPs) in place under Chapter 30 of the Public Utility Code, 66 Pa. C.S. §§ 3011 *et seq.*, be affected by the implementation of the FCC's intercarrier compensation reforms? Will they be able to seek intrastate rate relief of any type beyond the levels provided under the FCC's Eligible Recovery mechanism and associated federal CAF support?

- a. The continuous applicability of the Commission's directives that the mandated intrastate switched carrier access charge reform and the associated "revenue neutral rate rebalancing called for in this Opinion and Order does not implicate the RLECs' various Chapter 30 exogenous event provisions." *July 2011 Order*, at 141.
- b. The legal and technical interaction between the FCC's intercarrier compensation reforms, the "revenue neutrality" mandated for ILEC intrastate carrier access reforms under Section 3017(a) of Chapter 30, 66 Pa. C.S. § 3017(a), the rural ILEC Chapter 30 NMPs, and Section 3019(h) of Chapter 30, 66 Pa. C.S. § 3019(h).
- c. Whether implementation of the contemplated federal ARC by any Pennsylvania Chapter 30 rural ILEC could lead to the permissible creation of revenues that would become part of the intrastate regulated services revenue pool that is utilized in the ILECs' annual price stability mechanism and

**price cap formula submissions under Section 3015
of Chapter 30, 66 Pa. C.S. § 3015(a)(1)(iii).**

The Commission will have to determine whether CAF Order implementation constitutes an exogenous event for any particular ILEC. Each ILEC has as part of its Chapter 30 Plan a provision for including the impacts of exogenous events on its Price Stability Index. Whether and to what extent the exogenous event provision of any particular plan is triggered is a matter for Commission determination.

Exogenous events are generally defined in the Chapter 30 plans as (1) jurisdictional shifts in cost recovery where interstate revenues or costs actually change and (2) subsequent regulatory and legislative changes which affect revenues and/or costs, to the extent not captured in GDP-PI.

At this time, I would not estimate of the size of changes resulting from the CAF Order. Instead, I recommend that the Commission require carriers to calculate and file any exogenous event revenue and cost impacts if and when any such requests are made. I further recommend that the Commission consider the impact of any qualifying exogenous events on the future size and function of the Pennsylvania Universal Service Fund.

With regard to the Chapter 30 modernization plans, the Commission should take cognizance of the difference between the definition of broadband in Pennsylvania law and FCC broadband requirements. Pennsylvania law governing Chapter 30 plans defines broadband as 1.544 Mbps downstream and 128 kbps

upstream.²⁵ The FCC, on the other hand, set the broadband requirement at 4 Mbps downstream and 1 Mbps upstream. Comments filed in the FCC proceeding indicate that meeting the 4 Mbps downstream requirement should not be difficult.²⁶ The comments argued that meeting the upstream requirement, however, would be difficult and expensive.²⁷ If Pennsylvania ILECs cannot meet this requirement then they may lose additional federal universal support. To better understand this issue, I recommend that the Commission require the Rural ILECs to provide detailed explanations regarding how they would upgrade their networks to meet the FCC's requirements and the cost of those upgrades.

Regarding ARC revenue used to create permissible revenue as part of the intrastate regulated revenues used in ILEC annual price stability and price cap formula submissions, my initial response is that traditional Separations revenue rules assign revenue according to the jurisdiction that establishes the rate. Because the FCC established the rate, under a traditional interpretation of the rules, ARC revenue would be considered interstate revenue.

However, these are not traditional events. The FCC has crossed jurisdictional boundaries and re-aligned the Separations Rules without submitting those

²⁵ See 66 Pa.C.S. § 3012 Definitions.

²⁶ See for example, the Comments of CWA, Cox, Frontier, and Cellular One filed in WC Docket 10-90, April 18, 2011.

²⁷ See for example, Comments of ADTRAN and AT&T filed in WC Docket 10-90, April 18, 2011.

changes to the Separations Joint Board. Moreover, the CAF Order does not address how ARC revenue and RM support will be treated by the Separations rules. These revenues are also replacing LSS which was a mechanism that transferred expense to the interstate jurisdiction. These revenues are replacing intrastate access services. To the extent that the state rate making procedures require revenue to offset either the change associated with the loss of LSS or reduction in intrastate access revenue associated with FCC mandated intrastate rate reductions the Commission should utilize ARC revenue and RM support.

QUESTION 5: **The need, if any, of appropriate recordkeeping requirements for affected carriers in the event that the FCC's CAF Order is overturned in whole or in part on appeal, and intrastate intercarrier compensation amounts that have been paid or received in the interim need to be adjusted in accordance with the relevant provisions of the Public Utility Code. See generally 66 Pa. C.S. § 1312.**

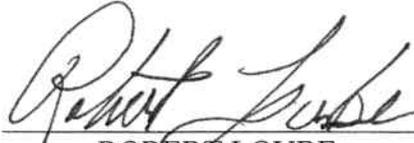
I recommend that the Commission require the carriers to retain records that would allow the Commission to determine whether to adjust any payments if the CAF Order is overturned in whole or in part on appeal. Therefore, each carrier should be instructed to keep monthly records by access service of billing determinants and rates. The monthly records are necessary because FCC reforms are based in part on calendar year events, tariff year events and fiscal year events. The monthly records will allow the Commission and its staff the ability to understand the complex interaction of these three type of measurements.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate Access	:	
Charges and IntraLATA Toll Rates of Rural	:	Docket No. I-00040105
Carriers, and the Pennsylvania Universal	:	
Service Fund	:	
	:	
AT&T Communications of Pennsylvania,	:	
LLC, <i>et al.</i>	:	
	:	
v.	:	Docket Nos. C-2009-2098380 <i>et al.</i>
	:	
	:	
Armstrong Telephone Company -	:	
Pennsylvania, <i>et al.</i>	:	

AFFIRMATION OF DR. ROBERT LOUBE

I, Robert Loube, a consultant to the Pennsylvania Office of Consumer Advocate, having qualifications as set forth above, state that the facts set forth herein are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities.)



ROBERT LOUBE

Sworn and subscribed before me this 19 day
of April 2012.



Notary Public

My Commission Expires:
155283

ERIC M. ANDERSON
NOTARY PUBLIC STATE OF MARYLAND
ANNE ARUNDEL COUNTY
MY COMMISSION EXPIRES JULY 28, 2015

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the Answer of the Office of Consumer Advocate to Updated Petitions for Reconsideration and the Affidavit of Dr. Robert Loube upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 19th day of April 2012.

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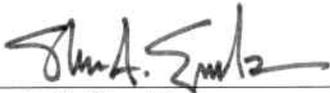
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