

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17105-3265

Investigation Regarding Intrastate Access  
Charges and IntraLATA Toll Rates of  
Rural Carriers and The Pennsylvania  
Universal Service Fund

Public Meeting held July 19, 2012  
1189996-OSA  
Docket No. I-00040105

AT&T Communications of Pennsylvania,  
*et al.*

Docket No. C-2009-2098380, *et al.*

v.

Armstrong Telephone Company -  
Pennsylvania, *et al.*

Implementation of the Federal  
Communications Commission's Order of  
November 18, 2011, as Amended or  
Revised and Coordination with  
Certain Intrastate Matters

Docket No. M-2012-2291824

**STATEMENT OF COMMISSIONER WAYNE E. GARDNER**

I must respectfully dissent from the position of the majority which affords "exogenous event" consideration for those revenue losses that will be experienced by our jurisdictional local exchange companies (LECs). Our jurisdictional LECs anticipate substantial revenue losses due to the regulatory policies of the Federal Communications Commission (FCC) set out in the FCC Connect America Fund Orders<sup>1</sup> concerning intercarrier compensation for telecommunications traffic and related implementation of this policy.

I do not define the FCC order and the revenue consequences flowing from the FCC Connect America Fund Order (CAF Order) as an exogenous event under the approved Chapter 30 Plans of our Rural LECs (RLECs), at this time. Exogenous events are generally defined as: (1) jurisdictional shifts in cost recovery where interstate revenues or costs actually change; (2) subsequent regulatory and legislative changes (state & federal) which affect revenues and/or costs, to the extent not captured in GDP-PI [gross domestic product price index]; and (3) unique changes in the telephone industry which are not reflected in the overall inflation factor as measured by GDP-PI and are outside the Company's control.

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<sup>1</sup> See In re: Connect America Fund, 26 FCC Rcd 17663 (Rel. November 18, 2011), *pets. for review pending sub nom. In re: FCC*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

The majority position accepts, as a plausible argument, that the revenue losses, which are federal jurisdictional, qualify for exogenous events treatment under the jurisdictional shift in costs category referenced in the RLECs' governing Chapter 30 Plans. The majority acknowledges that the CAF Order triggers an opportunity for carriers to seek recovery mechanisms for Eligible Recovery revenue which is lost each year. This recovery applies to Pennsylvania RLECs operating under Chapter 30 Plans. By allowing RLECs to seek exogenous events treatment of the CAF Order, carriers will argue that the anticipated losses in access revenues should be considered as revenues which are not captured by the respective Price Stability Mechanism in their respective Chapter 30 Plans.

My view is that access charge revenues have always been viewed as a transitional regulatory mechanism to move from a prior monopoly environment to one of competition, so it is not prudent or honest for any entity to argue that the revenue stream represented by access charge revenues at both the state and federal levels were to be continued indefinitely. Revenue losses due to the CAF Order are subject to a complex scheme of financial mitigation based on FCC administrative processes involving, among other issues, Eligible Recovery amounts and the opportunity to seek partial recovery from a carrier's end user customers through imposition of a limited, monthly Access Recovery Charge on wireline telephone service. This amount is also subject to offsets by "banked revenues" (revenues to which the carrier is entitled but has chosen not to implement) of our jurisdictional companies. Clearly, carriers can simply implement their bank revenues in an attempt to recover any access charge reductions.

Furthermore, the revenue losses caused by the CAF Order are interstate. As noted in the analysis of Commissioner Cawley, FCC jurisdictional separation rules may not be able to properly account for what federal Eligible Recovery support amounts are properly attributable to the intrastate jurisdiction. Pennsylvania wireline consumers should not be required to "pick up the tab" for a federal policy with which the Commission disagrees.

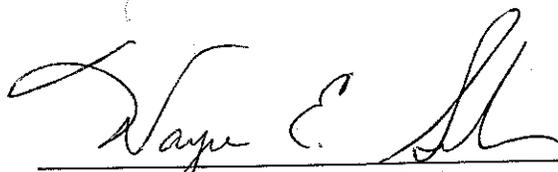
This Commission and the FCC have a fundamental disagreement concerning a just and reasonable rate that reflects an adequate contribution to the joint and common costs incurred by the terminating carrier who is responsible for maintaining the loop that is the "last mile" into an end-user's home. The CAF Order essentially values this obligation at zero under a uniform, national, "bill and keep" regulatory regime. The bill and keep approach requires the terminating carrier to fund the joint and common costs of the loop primarily from its own end-user subscribers and the carrier cannot recover these costs from other carriers.

This Commission has, historically, attempted to account for the joint and common costs through a carrier line charge. The carrier line charge has usually been imposed as a recurring fee on each access line. By whatever mode an end-user chooses to obtain his or her telecommunications service, *e.g.* wireline, wireless, cable, computer (Internet), or satellite, all providers benefit by the existence of the local loop. The local loop is vital infrastructure for the proper and seamless functioning of the Public Switched Telephone Network. This is so, even as the nation moves toward universally available and universally deployed broadband.

Under any scenario that I can envision, at this time, providing exogenous events treatment of the revenue losses occasioned by the CAF Order is not sound as a matter of law or policy.

July 19, 2012

Date

A handwritten signature in cursive script, appearing to read "Wayne E. Gardner", written over a horizontal line.

Wayne E. Gardner, Commissioner