

COMMONWEALTH OF PENNSYLVANIA

DATE: July 31, 2007

SUBJECT: I-00040105
P-00981428F1000, R-00061375
P-00981429F1000, R-00061376
P-00981430F1000, R-00061377

TO: Office of Special Assistants

FROM: *KB* James J. McNulty, Secretary

Buffalo Valley Telephone Company

Attached is a copy of a Petition for Reconsideration, filed by Buffalo Valley Telephone Company in connection with the above docketed proceedings.

This matter is assigned to your Office for appropriate action.

Attachment

cc: ALJ
LAW

ksb

DOCUMENT
FOLDER

DOCKETED
JUL 31 2007



**THOMAS, THOMAS,
ARMSTRONG & NIESEN**

Attorneys and Counsellors at Law

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August 17, 2007

ORIGINAL

James J. McNulty, 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

2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley
Telephone Company
Docket Nos. P-00981428F1000 and R-00061375

2006 Annual Price Stability Index/Service Price Index Filing of Conestoga
Telephone and Telegraph Company
Docket Nos. P-00981429F1000 and R-00061376

2006 Annual Price Stability Index/Service Price Index Filing of Denver and
Ephrata Telephone and Telegraph Company
Docket Nos. P-00981430F1000 and R-00061377

Dear Secretary McNulty:

Enclosed herewith for filing on behalf of Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company, and Denver and Ephrata Telephone and Telegraph Company are an original and three (3) copies of their Reply to Verizon's Answer to Petition for Reconsideration. A Certificate of Service is attached thereto.

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

Sincerely,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By

Michael L. Swindler
Michael L. Swindler

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cc: Certificate of Service (w/enclosure)

2007 AUG 17 PM 3:49

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ORIGINAL

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2007 AUG 17 P11 3:49

Investigation Regarding Intrastate Access : I-00040105
Charges and IntraLATA Toll Rates of :
Rural Carriers and the Pennsylvania :
Universal Service Fund :
:
2006 Annual Price Stability Index/Service : P-00981428F1000
Price Index filing of Buffalo Valley : R-00061375
Telephone Company :
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2006 Annual Price Stability Index/Service : P-00981429F1000
Price Index filing of Conestoga Telephone : R-00061376
and Telegraph Company :
:
2006 Annual Price Stability Index/Service : P-00981430F1000
Price Index filing of Denver and Ephrata : R-00061377
Telephone and Telegraph Company :

DOCUMENT
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BUFFALO VALLEY TELEPHONE COMPANY,
CONESTOGA TELEPHONE AND TELEGRAPH COMPANY, AND
DENVER AND EPHRATA TELEPHONE AND TELEGRAPH COMPANY
REPLY TO VERIZON'S ANSWER
TO PETITION FOR RECONSIDERATION

DOCKETED
AUG 21 2007

NOW COME, Buffalo Valley Telephone Company ("Buffalo Valley"), Conestoga Telephone and Telegraph Company ("Conestoga"), and Denver and Ephrata Telephone and Telegraph Company ("D&E Telephone") (hereinafter collectively "D&E carriers" or "Companies"), all subsidiaries of D&E Communications, Inc. ("D&E"), and reply to the Answer filed by the Verizon Companies ("Verizon") to the Petition for Reconsideration filed by the D&E carriers in the above-captioned matter on July 26, 2007, as follows:

I. INTRODUCTION

1. By Opinion and Order entered July 11, 2007 ("July 11, 2007 Order"), the Commission, with Vice Chairman James H. Cawley and Commissioner Tyrone

J. Christy dissenting, addressed the D&E carriers' 2006 Annual PSI/SPI Chapter 30 rate filings. The said Order rescinded and amended the Commission's prior June 23, 2006 Orders and rejected the increases in access rates of the D&E carriers implemented pursuant to said Orders. The July 11, 2007 Order also directed the Companies to file tariffs designed to recover their revenue entitlements consistent with their Chapter 30 Plans and provide refunds for access rates from November 15, 2006 forward. Ordering paragraph 4 reads, as follows:

4. That the D&E Companies shall file tariffs or tariff supplements designed to recover their allowable 2006 Annual PSI/SPI revenue in any manner consistent with their Chapter 30 plans. The proposed increases to access charge rates is [sic] expressly rejected. Said tariffs or tariff supplements shall be made within thirty (30) days of the entry date of this Opinion and Order and shall provide refunds for access rates from November 15, 2006 forward.

July 11, 2007 Order, ordering paragraph 4.

2. By Petition for Reconsideration ("PFR") dated July 26, 2007, the D&E carriers sought reconsideration, clarification, and amendment of the July 11, 2007 Order on various grounds. One of the grounds is the D&E carriers' request to amend or clarify ordering paragraph 4 to recognize that any local rate increases pursuant to their Amended Chapter 30 Plans should likewise be applied retroactive to November 15, 2006. In addition, D&E Telephone requests clarification of the July 11, 2007 Order contending that the universal service funding resulting from its basic exchange rates exceeding the applicable universal service rate caps should be retroactive to November 15, 2006.

3. On August 6, 2007, the Office of Consumer Advocate ("OCA") filed an Answer supporting the PFR to the extent D&E Telephone seeks recovery from the

Pennsylvania Universal Service Fund ("PaUSF") retroactive to November 15, 2006, in lieu of the company's residential customers bearing increases above the Commission's established \$18.00 monthly R-1 universal service rate cap.

4. On August 8, 2007, Verizon filed an Answer to the PFR arguing that the PFR does not satisfy the Commission's standards for granting a petition for reconsideration. Verizon then sidesteps the PFR's retroactivity issue and, in an effort to convince the Commission not to recognize D&E Telephone's universal service fund recovery rights retroactive to November 15, 2006, sets forth **new** and **novel** arguments contesting D&E Telephone's right to PaUSF recovery.¹

5. The D&E carriers are compelled to file this Response to the **new** and **novel** contentions raised and relief sought by Verizon and request that the Commission accept this Response as a reply to an answer seeking affirmative relief or raising new matter pursuant to 52 Pa. Code §5.63.² In the alternative and under

¹See Verizon Answer at 2.

²Although not expressly labeled as such, Verizon's Answer to the PFR seeks affirmative relief and raises new matter conforming to the guidelines of 52 Pa. Code §5.62 as set forth in Re Duquesne Light Company, 72 Pa. P.U.C. 131 (1990), and justifying the within reply under 52 Pa. Code §5.63. Verizon's Answer raises questions of law or fact common to those of the petition, including, inter alia, that D&E's PFR "is simply a vehicle for the D&E companies to make a new proposal to extract cash from other carriers ... (Verizon Answer at 2); "Moreover, it is not a foregone conclusion that D&E is entitled to **any** additional subsidies from the USF to support implementation of its annual price change opportunities" (Verizon Answer at 3) (emphasis in original); "The Commission cannot simply accept D&E's claimed entitlement to new USF subsidies without further examination – an examination that should occur in a separate proceeding with notice to all affected parties. It is not a foregone conclusion, as D&E would have the Commission believe, that in choosing to raise its basic service rates Denver & Ephrata is automatically entitled to new USF subsidies" (Verizon Answer at 8); "If the Commission were even to consider providing Denver & Ephrata with any new USF subsidies, it would first have to create a mechanism to obtain the funds to do so..." and "Third, it is not even clear that the \$18 R-1 benchmark still survives today" (Verizon Answer at 9); "... in light of current market realities [the \$18.00 cap] may not be the correct level to determine when a carrier should be permitted to make a claim to the USF. At the very least, it should have increased each year based on the change in the rate of inflation" (Verizon Answer at 10). Verizon challenges the proportionate credit for a cap in B-1 rates expressly resulting from the Global settlement (Verizon Answer at 11).

Second, there is an injury claimed to be suffered by the participant filing the Answer that D&E would "get through the back door the same result that the Commission rejected in its July 11, 2007

(continued...)

the circumstances, D&E requests that this Response be considered under 52 Pa. Code §1.2. Without the Commission's recognition of this Response, D&E will be unfairly denied the opportunity to address Verizon's newly conceived arguments.

II. ARGUMENT

A. The PFR Satisfies 52 Pa. Code §5.572 and the Duick Standard

6. Verizon states that D&E's PFR "does not actually seek reconsideration" but rather "is simply a vehicle for the D&E companies to make a new proposal to extract cash from other carriers...."³ Contrary thereto, D&E's PFR was properly filed pursuant to 52 Pa. Code §5.572, entitled "Petitions for relief." Section 5.572(a) describes such petitions for relief as petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like. Accordingly, the fact that the D&E PFR primarily seeks clarification and amendment on reconsideration of the July 11, 2006 Order is completely appropriate relief under §5.572.

²(...continued)

Order" (Verizon Answer at 2); "that D&E intends to recover revenue from other carriers [including Verizon] rather than from its end users" (Verizon Answer at 7).

Lastly, there is relief sought against D&E. "If the D&E companies wish to make a separate claim to expand their receipts from the USF, then the Commission should address that claim in a separate proceeding and should provide notice and an opportunity to be heard to all carrier contributors to the USF" (Verizon Answer at 3); "At the very least, there is no basis for D&E to claim entitlement to an automatic subsidy for business rates without further examination" (Verizon Answer at 11). "Meanwhile, Denver & Ephrata can file a tariff supplement proposing to charge its customers more than \$18 for R-1 rates and \$23.58 to B-1 rates without USF subsidy, and ask the Commission to waive whatever caps might still exist" (Verizon Answer at 12) (emphasis added).

Having raised additional questions of law and fact, alleged injury and requested relief, Verizon's Answer seeks affirmative relief and raises new matter, warranting this reply by D&E under §5.63.

³Verizon Answer at 2.

7. Verizon further argues that the D&E carriers misstate the Duick standard in their PFR.⁴ To the contrary, the Companies directly quote from the Commission's Duick decision.⁵ Verizon argues the Companies should have also cited that portion of the Duick decision that requires a petition for reconsideration to address "new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission."⁶ This is **precisely** what the PFR does. D&E raises in its petition that while the July 11, 2007 Order directs the D&E carriers to refund the increased access rate revenues back to November 15, 2006, it provides no specific direction that any new local exchange rates and any resulting PaUSF recovery should likewise have retroactive application to November 15, 2006.⁷ Thus, the retroactivity of local rate increases and PaUSF recovery to counterbalance the retroactive refund of the access charge increase is not a "manufactured omission" but is a matter that was clearly "overlooked or not addressed" in the July 11, 2007 Order. Accordingly, the Companies are justified in seeking clarification or amendment of the Order under §5.572.

8. With its 2006 Annual PSI/SPI average residential rate now exceeding the applicable \$18.00 R-1 universal service rate cap, D&E Telephone is seeking amendment or clarification of the July 11, 2007 Order to recognize its right to

⁴Verizon Answer at 3.

⁵See D&E PFR at 6.

⁶Verizon Answer at 3.

⁷PFR at 8.

PaUSF recovery retroactive to November 15, 2006, consistent with its Amended Chapter 30 Plan. At pages 18-19, under Consumer Protections, the Plan provides:

During the pendency of the Pennsylvania USF, the Company retains the right to change and rebalance its intrastate rates in accordance with the PSP [Price Stability Plan], and if such rates are found to be just and reasonable, they shall be permitted to become effective. Further, should the new rates exceed the \$16.00 monthly residential rate ceiling and applicable business rate ceiling established in the Global Order for the duration of the Pennsylvania USF, the Company is permitted to recover the revenue difference arising from application of the Global Order rate ceilings from the Pennsylvania USF. By Order entered July 15, 2003, at Docket No. M-00021596, et al., the Commission approved modifications to the Global Order including a continuation of the USF and an increase of the \$16.00 residential cap to \$18.00.

The July 11, 2007 Order fails to recognize this right and is in need of clarification or amendment to address the application thereof from a timing perspective.

Contrary to Verizon's claim, this is not "a new proposal at the thirteenth hour."⁸ This precise contention was set forth in D&E witness Beurer's testimony where he stated that, "because D&E Telephone's average R-1 rate is approximately \$17.50, allocating the entire 2006 PSI increase to local rates would have increased the average R-1 rates for D&E Telephone above the \$18.00 rate cap requiring the amounts in excess of \$18.00 billed to end users to be credited and collected from the PaUSF."⁹ This testimony was simply overlooked in the July 11, 2007 Order justifying reconsideration under the Quick standard.

B. D&E Telephone's Right to Recovery from the Universal Service Fund

9. **Ignoring** the straight-forward provisions of D&E Telephone's Amended Chapter 30 Plan, the Verizon Answer entertains a lengthy discussion to

⁸Verizon Answer at 3.

⁹D&E Statement No. 1-R at 6.

convince this Commission that D&E Telephone is not entitled to any PaUSF recovery let alone recovery retroactive to November 15, 2006. D&E respectfully submits that Verizon's new and novel statements are contradictory to D&E's Amended Chapter 30 Plan and, therefore, violate ordering paragraph 4 of the July 11, 2007 Order.

1. PaUSF Plan and Global Order

10. Verizon argues that the PaUSF is for the "limited purpose" of supporting access and toll rate reductions¹⁰ and there is "no mechanism" for additional USF funding.¹¹ This argument is flawed.

The existing PaUSF arose from the settlement plan sponsored by Verizon in its petition commencing the Global proceeding at Docket No. P-00991649. In that petition, Verizon (formerly Bell Atlantic-Pennsylvania, Inc.) and the Rural Telephone Company Coalition, et al., proposed a universal service funding plan which they labeled in paragraph 81 of the petition as the "Small Company Universal Service Fund Settlement." The plan was attached in Appendix II to the petition. The alternative petition filed in Global by Nextlink Pennsylvania, Inc., et al., at Docket No. P-00991648, supported the Small Company universal service funding plan with various modifications.¹² The plan was ultimately approved in the Global Order subject to modifications.¹³

¹⁰Verizon Answer at 9.

¹¹Verizon Answer at 10.

¹²Joint Petition of Nextlink Pennsylvania, Inc., et al., Docket Nos. P-00991648 and P-00991649, Order entered September 30, 1999 ("Global Order") at 48-50.

¹³Id. at 150-155.

11. A review of the Small Company Universal Service Fund Settlement plan sponsored by Verizon and as adopted with modifications in the Global Order, shows that the plan was initially established for funding access and toll rate reductions on the part of the rural ILECs. The plan calls for the size of the fund to be recalculated annually to reflect actual access line growth. In addition, the plan specifically recognizes that on an annual basis the size of the fund is "**expected to expand/contract for various reasons**"¹⁴ (emphasis added). Thus, the PaUSF, as approved in the Global Order, does provide for the expansion of the fund for various reasons.

12. One of those reasons is when a fund recipient's local rates exceed the rate cap imposed by the Commission. The initial PaUSF Plan as sponsored by Verizon initially established the monthly average R-1 cap at \$16.00 and the B-1 at the "proportionate amount."¹⁵ Appendix II to the Verizon petition in Global, at page 5, reads as follows:

5) Small ILECs with monthly residential one-party basic, local rates above \$16.00 at the time the Fund is implemented will provide a Universal Service credit in an amount that will effectively reduce the rate to \$16.00 with their business rates receiving a proportionate credit.

The modified plan sponsored by the Nextlink parties and spelled out on pages 48-50 of the Global Order specifically recognized that the fund is to be increased when an ILEC's rates exceed the R-1 rate cap stating: "If insufficient funds exist to cover the new level of USF support to assure compliance with the

¹⁴See Verizon Petition at Docket No. P-00991649, Appendix II, Appendix A at 3.

¹⁵In other words, only when the average R-1 rate exceeds the applicable R-1 cap does an ILEC calculate the "proportionate" B-1 rate cap for universal service funding purposes.

\$16.00 rate ceiling, the Commission will require that the USF be increased to the required level with all contributors paying their respective share of the increase."¹⁶

13. The Commission in the Global Order recognized this **additional** PaUSF funding provision stating, "if such ILEC's one-party residential rate is above \$16.00 per month, and is found to be just and reasonable by the Commission, the revenue associated with the difference between the rate ceiling and the approved rates will be recovered from the Pennsylvania USF."¹⁷ Pursuant thereto, the initial PaUSF level was established to assist those rural ILECs with funding to the extent their local rates exceed the \$16.00 R-1 cap and proportionate B-1 cap.

14. In summary, the PaUSF was not established for the sole purpose of funding access and toll rate reductions by the applicable ILECs as Verizon has stated. Instead, the PaUSF was also established to provide funding for other reasons including those instances where the Commission approves just and reasonable rates for an ILEC which exceed the applicable R-1 rate cap. Further, the Commission's modified PaUSF plan in Global did provide for increasing the funding level.

2. Access Charge Order

15. The Commission in its subsequent Access Charge Order entered July 15, 2003,¹⁸ adopted a Joint Procedural Stipulation sponsored by Verizon, the Rural Telephone Company Coalition and others, that continued the PaUSF beyond

¹⁶See Global Order at 49.

¹⁷Global Order at 201.

¹⁸Access Charge Investigation per Global Order of September 30, 1999, et al., Docket Nos. M-00021596, etc., Order entered July 15, 2003.

December 31, 2003, and increased the applicable average R-1 monthly rate cap from \$16.00 to \$18.00.¹⁹ This Joint Procedural Stipulation specifically provided "[a]ny approved future increases in rates above the \$18.00 rate cap for any ILEC shall also be recoverable from the USF under the exact same terms and conditions as approved in the Global Order."²⁰ Consequently, the Commission in the Access Charge Order again recognized for PaUSF funding purposes those ILECs whose rates exceed the applicable R-1 rate cap of \$18.00. Since the Access Charge Order, the aforesaid cap has not been modified or terminated by the Commission.²¹

3. D&E Carriers Amended Chapter 30 Plans

16. Following the implementation of Act 183,²² D&E Telephone filed an Amended Chapter 30 Plan accelerating its universal broadband commitment to December 31, 2008. The Amended Plan was approved by the Commission.²³ This Amended Plan which remains in effect today specifically provides under Consumer Protections:

During the pendency of the Pennsylvania USF, the Company retains the right to change and rebalance its intrastate rates in accordance with the PSP [Price Stability Plan], and if such rates are found to be

¹⁹See Access Charge Order at Attachment A at 18.

²⁰Id.

²¹In fact, the Commission in its pending investigation into intrastate access charges, intraLATA toll rates, and the PaUSF, at Docket No. I-00040105, has stayed the investigation and continued the PaUSF "until such time as regulations are promulgated eliminating or modifying the Fund." See Order entered November 15, 2006, Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund, ordering paragraph 9. The said November 15, 2006 Order directed no modifications in the \$18.00 R-1 universal service cap established under the Access Charge Order.

²²66 Pa.C.S. §3011-3019.

²³Petition for an Amended Alternative Regulation and Network Modernization Plan for the Denver and Ephrata Telephone and Telegraph Company, Docket No. P-00981430F1000, Order entered June 3, 2005.

just and reasonable, they shall be permitted to become effective. Further, should the new rates exceed the \$16.00 monthly residential rate ceiling and applicable business rate ceiling established in the Global Order for the duration of the Pennsylvania USF, the Company is permitted to recover the revenue difference arising from application of the Global Order rate ceilings from the Pennsylvania USF. By Order entered July 15, 2003, at Docket No. M-00021596, et al., the Commission approved modifications to the Global Order including a continuation of the USF and an increase of the \$16.00 residential cap to \$18.00.

D&E Telephone Amended Chapter Plan at 18-19.

17. Ordering paragraph 4 of the Commission's July 11, 2007 Order directs D&E Telephone to design rates to recover its allowable revenues "consistent" with its Chapter 30 Plan and without increasing its access rates. The local rates set forth in the PFR are designed **consistent** with the D&E Telephone Amended Chapter 30 Plan and such rates exceed the \$18.00 R-1 cap and proportionate B-1 cap. Consequently, under the Plan, D&E Telephone is entitled to PaUSF support to the extent its rates exceed the applicable caps. All D&E Telephone is seeking through the PFR is clarification of the July 11, 2007 Order to provide that the universal service funding should be retroactive to November 15, 2006, the date of the access rate decreases. Without retroactive recovery, D&E Telephone will not be permitted to fully recover its allowable revenue opportunity under its 2006 Annual PSI/SPI Filing. It must be emphasized that D&E Telephone under the Access Charge Order and its Amended Chapter 30 Plan is **not** allowed to charge rates in excess of an average \$18.00 R-1 and the proportionate B-1 rate caps. Instead, D&E Telephone is permitted to recover the revenues from the PaUSF. Violating these two consumer safeguards would be a violation of D&E Telephone's Amended Chapter

30 Plan which in turn would violate the July 11, 2007 Order which requires the new tariffs to be consistent with the Chapter 30 Plan.

18. It is also important to recognize Act 183 at 66 Pa.C.S. §3013(b) states that, "[E]xcept for changes to existing alternative form of regulation and network modernization plans as authorized by this chapter, no change to any alternative form of regulation or network modernization plan may be made without the express agreement of both the Commission and the Local Exchange Telecommunications Company." Accordingly, the Consumer Protections provisions of the Amended Chapter 30 Plan recognizing a \$18.00 R-1 rate cap and proportionate B-1 rate cap with universal service funding must be followed.

4. Verizon's New and Novel PaUSF Contentions are Erroneous

19. As discussed in paragraphs 10-15 hereof, Verizon has been a major participant in the establishment of the current PaUSF recognizing that funding levels may be increased when an ILEC's rates exceed the applicable rate cap and are found just and reasonable by the Commission. In lieu of abiding with the PaUSF, decisions of this Commission and the D&E carriers' Amended Chapter 30 Plans, Verizon has made **erroneous** contentions, which could cloud the appropriate course of action by this Honorable Commission.

20. For example, Verizon states that the only purpose of universal service funding was for "access and toll rate **reductions**."²⁴ Yet, as stated above, the Global Order recognized that funding levels could increase when an ILEC's rates exceed the applicable rate cap. Likewise, Verizon was a sponsor of the Joint

²⁴Verizon Answer at 9.

Procedural Stipulation addressed in the Access Charge Order which specifically recognized PaUSF funding to keep rates below the average \$18.00 R-1 cap.

21. Verizon also states that there is "no mechanism" to obtain additional funds from contributing carriers. This is in sharp contrast to the Small Company Universal Service Fund Settlement Plan that it sponsored in Global which recognized the PaUSF could be expanded for "various reasons." Further, it is in sharp contrast to the Global Order which recognized additional universal service funding when an ILEC's rates exceed universal service rate caps.

22. Verizon claims that D&E cannot engage in rightful recovery of amounts over the set \$18.00 cap without an examination in a separate proceeding with "notice and an opportunity to be heard to all carrier contributors to the USF."²⁵ Verizon's claim is without merit. No complex, independent examination is required. D&E Telephone's Amended Chapter 30 Plan provides for USF funding when the residential R-1 rate cap is exceeded. There is certainly no necessity for further notice and hearings for the purpose of directing the fund administrator to expand the PaUSF consistent with the Global Order to permit D&E Telephone recovery of its 2006 Annual PSI/SPI revenue entitlement under the provisions of its Amended Chapter 30 Plan. Again, the Global Order citing the modifications to the universal service plan sponsored by Nextlink, et al., specifically recognized that the Commission "will require that the USF be increased to the required level" when the R-1 rate cap is exceeded.

23. Moreover, the Commission recognized in its Access Reform Order that due process had been afforded parties regarding the terms of the PaUSF:

²⁵Verizon Answer at 3.

This is a unanimous Joint Proposal. Thus, even though no evidentiary hearing has been held, we believe due process is being afforded the parties in ruling to approve the Joint Proposal since the Joint Proposal was published, and all parties that filed comments to the Joint Proposal are in agreement with the Proposal. Accordingly, since we find the Joint Proposal to be in the public interest, we shall order that the Joint Proposal, included as "Attachment A" to this Order is granted. The PaUSF will continue beyond December 31, 2003, until amended through a rulemaking proceeding which will commence before December 31, 2004.

Access Reform Order at 11.

24. Verizon further contends that the \$18.00 R-1 "benchmark" may not survive today.²⁶ The \$18.00 R-1 rate cap (not benchmark) was established in the Access Charge Order. The cap has never been terminated by the Commission. Moreover, the cap is set forth in D&E Telephone's **effective** Amended Chapter 30 Plan. The July 11, 2007 Order has instructed D&E Telephone to adjust its rates consistent with its Chapter 30 Plan.

25. Verizon also states "there is no basis in today's competitive environment for D&E to claim that it is entitled to USF subsidies from other carriers to cap its business rates."²⁷ Again, the PaUSF has been established by this Commission providing for both residential and business rate credits and universal service funding when the R-1 \$18.00 rate cap and proportionate B-1 rate are exceeded. The D&E Telephone Amended Chapter 30 Plan is consistent therewith. The July 11, 2007 Order has instructed D&E Telephone to adjust its rates consistent with its Chapter 30 Plan.

²⁶Id. at 9-10.

²⁷Id. at 11.

26. It appears that Verizon, on page 11 of its Answer, where it states D&E Telephone's existing B-1 rate already exceeds the applicable rate cap, does **not** understand how the PaUSF process was established, works, and is administered. D&E Telephone did not previously request universal service funding for business rates because the initial criteria for receiving additional PaUSF support for B-1 rates had not been triggered. Only when the average residential local service rate exceeds the \$18.00 rate cap does an ILEC calculate the proportionate business line cap.

5. Other Erroneous Verizon Assertions

27. Verizon, in its Answer, puts forth several other misleading assertions which the D&E carriers are compelled to reply so that such misinformation may be brought to the attention of the Commission:

Verizon Answer - Page 2: Verizon states that "D&E proposes to get through the back door the same result that the Commission rejected in the Order." This is **not** correct. In D&E Telephone's original 2006 Annual PSI/SPI Filing, it sought recovery of its allowable revenue entitlement, in part, through increases in access rates. The revised filing as set forth in Appendix A of its PFR increases local service rates to offset reductions in access rates as directed by the July 11, 2007 Order. The rate design is directly consistent with the provisions of its Amended Chapter 30 Filing. There is certainly nothing "back door" about the filing.

Verizon Answer - Page 3: Verizon states that "[t]he Commission should not allow the D&E companies to use the pendency of this PFR to delay their access reductions." Again, this is **not** the case. The D&E carriers filed on August 13, 2007,

tariff supplements decreasing their access rates consistent with the July 11, 2007 Order.

Verizon Answer - Page 6: Verizon alleges that the Commission by directing refunds only back to November 15, 2006, is "allowing the D&E companies to keep approximately \$1 million in revenues obtained from carrier access customers through these now invalidated rate increases." While the revenue opportunity from the access rate increases was approximately \$1 million, the D&E carriers only billed and collected \$552,135 from non-affiliated carriers for the period July 1, 2006 to November 14, 2006. By comparison, the D&E carriers have spent over \$30 million in capital expenditures to improve their networks in order to become 98% universal broadband compliant at this time. Obviously, the aforesaid additional revenue from access customers pales in comparison to the ongoing capital carrying cost associated with these additional capital expenditures.

Verizon Answer - Page 7: Verizon claims that D&E "does not actually propose to recover **any** of the revenue ostensibly allocated to basic rates from its end users, but rather intends to recover it from other carriers." This is again **incorrect**. D&E Telephone's revised 2006 Annual PSI/SPI Filing set forth in Appendix A to the PFR increases local service rates. These increases now result in 28% of the revenue opportunity originally assigned to access customers to be recovered from end users via local rate increases and 72% recovered via the PaUSF to conform with its Amended Chapter 30 Plan. As a result of exceeding the rate cap in 2006, D&E Telephone's revised 2007 Annual PSI/SPI Filing does not bank any revenue opportunities but instead increases local service rates. The 2007

revenue opportunity would now be 45% recovered from end users via local rate increases and 55% recovered from the PaUSF.

Verizon Answer - Pages 7-8: Verizon claims that if the PFR is approved, D&E Telephone will collect, on an annual basis going forward, an amount from the PaUSF which is "actually more" than the amount its increased access rates were to produce. We respectfully submit that the Verizon numbers are based upon a two-year period reflecting the impact of the revisions to the 2006 and 2007 Annual PSI/SPI Filings. Verizon is comparing the two-year total from PaUSF to the one-year filing originally in access. Thus, Verizon's claim is nothing more than an apples and oranges comparison and has no value whatsoever. The truth of the matter is that D&E Telephone in the PFR reduced access rates and increased local rates consistent with the provisions of its Amended Chapter 30 Plan and pursuant to the directions given by the Commission in its July 11, 2007 Order. This Chapter 30 rate design produces no excess PaUSF recovery whatsoever. D&E Telephone simply requests clarification that its PaUSF recovery rights in accordance with its Chapter 30 Plan are retroactive to November 15, 2006.

III. CONCLUSION

WHEREFORE, Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company, and Denver and Ephrata Telephone and Telegraph Company respectfully request that the Verizon Answer seeking affirmative relief and raising new matter be denied and the D&E carriers' Petition for Reconsideration in this proceeding be granted in its entirety.

Respectfully submitted,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By



Michael L. Swindler
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Attorneys for Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company, and Denver and Ephrata Telephone and Telegraph Company

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Dated: August 17, 2007

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Investigation Regarding Intrastate Access : I-00040105
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and Telegraph Company :

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of August, 2007, served a true and correct copy of the foregoing Reply to Verizon's Answer to Petition for Reconsideration, upon the persons and in the manner listed below:

Via Email and First Class Mail

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October 16, 2007

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ORIGINAL

James J. McNulty, 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

Dear Secretary McNulty:

Pursuant to the Order entered November 15, 2006, enclosed for filing on behalf of the Rural Telephone Company Coalition, Office of Consumer Advocate, Office of Trial Staff and The United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania are an original and three copies of a Joint Status Report to the Commission in the above-referenced investigation.

A copy of the attached Status Report has been served in accordance with the attached Certificate of Service.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By


Jennifer M. Sultzberger

**DOCUMENT
FOLDER**

Enclosure

cc: Honorable Susan D. Colwell
Certificate of Service

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33

ORIGINAL

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate :
Access Charges and IntraLATA Toll :
Rates of Rural Carriers, and the : Docket No. I-00040105
Pennsylvania Universal Service Fund :

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JOINT STATUS REPORT

DOCKETED
OCT 17 2007

Pursuant to Ordering Paragraph 4 of the Pennsylvania Public Utility Commission's ("Commission") November 16, 2006 Order in the above-referenced proceeding, which Order granted in its entirety the Joint Motion of the Rural Telephone Company Coalition ("RTCC"), Office of Consumer Advocate ("OCA"), Office of Trial Staff ("OTS"), and the United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania ("Embarq") and further stayed the above Investigation pending the outcome of the FCC's *Unified Intercarrier Compensation* proceeding at CC Docket No. 01-92, the Parties¹ submit this Joint Status Report. Also, by way of a Joint Motion for Further Stay filed simultaneously herewith, the Parties herein seek an additional twelve (12) month

¹The Parties herein comprise the Rural Telephone Company Coalition, Office of Consumer Advocate, Office of Trial Staff, and The United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania (f/d/b/a Sprint). The RTCC includes the following companies: Armstrong Telephone Company - Pennsylvania, Armstrong Telephone Company - North, Bentleyville Telephone Company, Buffalo Valley Telephone Company, Citizens Telephone Company of Kecksburg, Frontier Communications Commonwealth Telephone Company, Frontier Communications of Breezewood, Frontier Communications of Canton, Frontier Communications - Lakewood, Frontier Communications - Oswayo River, Frontier Communications of PA, Conestoga Telephone & Telegraph Company, D&E Telephone Company, Deposit Telephone Company, Hancock Telephone Company, Hickory Telephone Company, Ironton Telephone Company; Lackawaxen Telecommunications Services, Laurel Highland Telephone Company, Mahanoy & Mahantango Telephone Company, The North-Eastern Pennsylvania Telephone Company, North Penn Telephone Company, North Pittsburgh Telephone Company, Palmerton Telephone Company, Pennsylvania Telephone Company, Pymatuning Independent Telephone Company, South Canaan Telephone Company, Sugar Valley Telephone Company, Venus Telephone Corporation, Windstream Pennsylvania, Inc., and Yukon-Waltz Telephone Company.

stay. The parties expressly advocate a continuation of the current PaUSF under the existing regulations codified at 52 Pa. Code §§ 63.161-63.171.

The Commission in its November 16 Order provided in Ordering paragraph 4 as follows:

7. That upon the expiration of the twelve-month stay of the instant investigation or the issuance of a Federal Communications Commission ruling in the *Unified Intercarrier Compensation* proceeding, whichever occurs earlier, the parties to this proceeding shall submit status reports to the Commission pertaining to common or related matters in the instant investigation and the Federal Communications Commission's Unified Intercarrier Compensation proceeding and the need for any coordination of those matters or any new matters that may arise once the instant investigation is reinstated. Status reports are due thirty days prior to the expiration of the one-year stay or thirty days after the FCC decision is made regarding the *Unified Intercarrier Compensation* proceeding, whichever occurs earlier.

In accordance with this direction, the Parties identify below the primary areas, pertaining to common or related matters in the instant Commission investigation and the Federal Communications Commission's ("FCC's") Unified Intercarrier Compensation proceeding that remain pending at the federal level, including proposed changes to federal telecommunications legislation impacting universal service and pending FCC proceedings impacting universal service, access reform and intercarrier compensation. As discussed in more detail in the Joint Motion for Further Stay, the Parties simultaneously request that the Commission continue its stay action with regard to the PA rural access rates.

Pending Federal Legislation

In late Spring 2007, Congressional Representatives Rick Boucher and Lee Terry, members of the House Energy and Commerce Committee, which oversees telecommunications issues in the House, introduced a bill to reform the federal Universal Service Fund. Called the Universal Service Reform Act of 2007, the bill proposed to cap the growth of the federal USF, in part by limiting the number of eligible carriers and also by compensating them on their actual costs. The act also proposed to allow disbursements to be used for broadband deployment.

This summer, following a recommendation of the Federal-State Joint Board on Universal Service ("Joint Board"), Senators Daniel Inouye, Chair of the U.S. Senate Committee on Commerce, which has oversight of telecommunications issues in the Senate, and Ted Stevens, the ranking member, began writing new legislation intended to address comprehensive universal service reform.

When Congress reconvened on September 4, 2007, the matter of congressional action on universal service reform had not yet been slated for hearings. Given the most recent action from the Joint Board in September 2007 (addressed below), however, it is anticipated at this time that Congress at least for the present may continue to defer to the federal regulators. Deference to the FCC by Congress highlights the need for similar restraint by this Commission to stay the instant investigation.

Recent or Pending Federal Regulatory Actions

At CC Docket No. 01-92, the FCC is undertaking a comprehensive examination of the intercarrier compensation system, including interstate and intrastate access, reciprocal compensation and universal service. The FCC continues to consider its order

instituting a comprehensive intercarrier compensation proceeding to examine these inter-related issues.

Missoula Plan

There is still pending at the FCC a recently submitted proposal, the "Missoula Plan," as filed before the FCC on July 18, 2006. The Missoula Plan was the product of a National Association of Regulatory Utility Commissioners Task Force for Intercarrier Compensation² and included the involvement of numerous working groups and stakeholders. By Order released August 29, 2006, the FCC extended the filing dates for comments and replies to the Missoula Plan to October 25, 2006, and December 11, 2006, respectively, noting "the importance of the issues raised in the Missoula Plan[.]"³ Comments were subsequently filed by numerous parties, including this Commission.⁴

The Missoula Plan remains pending at the FCC as of this writing. While opposed by some, it represents at a minimum evidence of a growing consensus at the federal level that comprehensive intercarrier compensation reform must continue on a due but deliberative course. Indeed, elements of the Missoula Plan have been separately subject to potential independent action by the FCC.⁵ Until Missoula, or another comprehensive

²The proposal was not endorsed by NARUC or its ICC task force.

³*In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Order Released August 29, 2006, at ¶2.

⁴In addition to the filing of comments on the Missoula Plan at the federal level, on August 23, 2006, this Commission entered an Order opening a proceeding at Docket No. M-00061972 requesting interested parties to submit their positions on the Missoula Plan to the Commission by September 5, 2006. Further, the Office of Administrative Law Judge conducted a public workshop and facilitated discussion on the Plan on September 11, 2006.

⁵For example, an element of intercarrier compensation reform which is moving forward is a proposal to address "phantom traffic." In its simplest terms, phantom traffic is traffic that terminates on a local exchange carrier's network but lacks information necessary to determine what intercarrier compensation applies and who should be billed. The FCC on November 8, 2006 issued a Public Notice seeking comments on a potential solution. The matter is pending.

reform, is finalized at the federal level, Pennsylvania's rural carriers remain at risk that further rebalancing of intrastate access rates prior to more definitive FCC action may cause Pennsylvania rural carriers to lose interstate support funds. As stated in the Joint Movants' 2006 Status Report, various components of the Missoula Plan, if implemented after this Commission implements further access reform at the state level, could leave Pennsylvania state consumers with higher local rates and lower federal replacement funds if, for example, the Commission moves to eliminate the State USF.

While the Missoula Plan remains pending at the FCC, the potential remains that if the PUC requires carriers to reduce their state access rates and increase their retail local rates, federal support to Pennsylvania rural carriers from the components under the Missoula Plan or any successor plan could be reduced to reflect the lower need for state access support. Thus, in Pennsylvania, the total bill (SLC plus the local retail rate) for customers of rural Pennsylvania carriers remains subject to increase if the Commission acts prior to the FCC's adoption of a final intercarrier compensation reform plan.

Immediate Commission action with respect to Pennsylvania rural carriers alone would probably have a very small impact on any final nationwide universal service funding requirement. However, immediate action would harm Pennsylvania consumers in the long run by reducing the potential reform available at the federal level, potentially causing Pennsylvania carriers and consumers to pay into any federal restructuring mechanism while receiving little or perhaps nothing in return if reform proceeds too precipitously on a state level.⁶

⁶For example, assume that a carrier is charging a \$6.50 Subscriber Line Charge (SLC), a local rate of \$14.00 and the required intrastate access reduction is \$4 per line. If the PUC takes immediate action that causes the carrier's local rate to become \$18.00 and the SLC remains \$6.50, the consumer's total bill will be \$24.50. If the FCC acts simultaneously to reduce the same intrastate access rate by raising the SLC by \$5, the local rate is \$18.00, as per the PUC's action, and the SLC becomes \$11.50, as per the FCC's action, for a total bill of \$29.50. The consumer then pays twice for the same access charge reduction.

USF Joint Board

In addition to action by the FCC directly (as addressed immediately above), the Joint Board on Universal Service issued a public statement on September 2, 2007, setting forth a set of guidelines for comprehensive reform of the federal USF high cost fund. In its Public Notice, the Joint Board announced that it is "taking a fresh look at high-cost universal service support." The Joint Board has tentatively agreed that support mechanisms for the future will focus on (1) voice, (2) broadband, and (3) mobility. Further, the Joint Board has tentatively agreed on four principles upon which support mechanisms would be based -- (1) cost control, (2) accountability, (3) state participation (**emphasis added**), and (4) infrastructure build out in unserved areas. These principles are in addition to those contained in statute. Finally, the September 2, 2007 Public Notice noted that the Joint Board has tentatively agreed that the equal support rule will not be part of future support mechanisms.

Universal service support, intercarrier compensation and rates for local dial tone service are inextricably linked. As Commissioner Ray Baum of the Public Utility Commission of Oregon explained when testifying before the U.S. Senate Commerce, Science, and Transportation Commission in March 2006:

If carriers lose intercarrier compensation revenues, policy-makers only have so many choices. We can make the companies absorb the losses, we can allow consumer rates to go up, or we can recover some of the lost revenue from the Universal Service Fund.⁷

Commissioner Baum does not confine his explanation to one jurisdiction or another because what occurs in either the federal or state jurisdiction has consequences for the other. The Joint Board's reform of federal high cost support will undoubtedly

⁷Section 3017(a) of Act 183, 66 Pa.C.S. §3017(a) would preclude Commissioner Baum's proposal to compel carriers to absorb losses in Pennsylvania.

impact intrastate and interstate access rates, support received from state universal service funds and retail rates for basic dial tone service.

Absent further action from the Joint Board, Congress may take control over universal service reform. It is anticipated that with the September 2, 2007 Joint Board announcement, Congress may be inclined to re-prioritize legislative efforts so as to first allow the efforts of the FCC and the Joint Board to proceed with USF reform and for the FCC and the Joint Board to first address the complexities of the issues and attempt to develop a broader consensus on intercarrier reform.

FCC Forbearance Orders

In addition to the pending FCC *Inter-carrier Compensation Proceeding*, wherein the specific issues of access charge and universal service funding reform remain pending, the FCC also recently issued three orders that reinforce the FCC's continued concerns, particularly for rural ILECs, over the preservation of rural access revenues and universal service funding in light of the many challenges to intercarrier compensation reform under TCA-96.

On July 26, 2007, the FCC issued an order in *In the Matter of Petition of Core Communications, Inc. for Forbearance from Sections 251(g) and 254(g) of the Communications Act and Implementing Rules*, WC Docket No. 06-100, Released July 26, 2007 ("*Core Forbearance Denial*"). Core sought to have the FCC forbear from applying the preservation under Section 251(g) of TCA-96 of the existing access charge regime for interstate and intrastate interexchange traffic and the rate averaging and rate integration required under Section 254(g). In this Order, the FCC recognized that the two prong goal of TCA-96 was "to foster competition in the local telephone market, while at the same

time ensuring the continued provision of affordable service to all Americans.”⁸ In denying Core’s request to subvert the importance played by the existing access charge regime, the FCC found that Core’s request did not further the public interest. As stated by the FCC:

[T]he record suggests that many LECs depend on access revenues to maintain affordable rates and service quality to consumers, especially in rural areas.⁶¹ Because the record suggests that changes to access revenue streams without more comprehensive intercarrier compensation reform may harm consumers, we find that enforcement of rate regulation under section 251(g) remains necessary for the protection of consumers.

⁶¹See, e.g., ITTA, *et al.* Comments at 9; PTA Comments at 22; USTA Comments at 4, 5-6; WTA Comments at 3, 10-11; Nebraska Companies Reply at 7. See also PTA Comments at 8 (stating that a loss of all access revenues would increase local service rates in Pennsylvania by an additional \$21.18 per line per month above current rates).

Core Forbearance Denial at ¶16 (emphasis added). Similarly, in denying Core’s request to forbear from application of rate integration and deaveraging, which Core alleged required carriers to pay “inflated access charges and creates implicit subsidies that harm the public interest,”⁹ the FCC found the requested relief contravened the public interest. The FCC acknowledged that “[c]arriers generally rely on three revenues streams – revenues from end-user (retail) services, carrier-to-carrier charges (such as access charges and reciprocal compensation), and universal service revenue.”¹⁰ Finding that “customers of those LECs with relatively high access rates will face higher retail rates for interexchange services, or, alternatively, universal service subsidies to those LECs may

⁸*Core Forbearance Denial* at ¶1.

⁹*Core Forbearance Denial* at ¶17.

¹⁰*Core Forbearance Denial* at ¶20.

have to increase to offset the pressure on rates[,]”¹¹ the FCC concluded that the public interest is best served by denying Core’s requested relief.

Shortly thereafter, the FCC issued an order in *In the Matter of Iowa Telecom Petition for Forbearance Under 47 U.S.C. §160(c) from the Universal Service High-Cost Loop Support Mechanism*, WC Docket No. 05-337, Released August 6, 2007 (“*Iowa Forbearance Denial*”). In this case, the FCC denied a petition by rural carrier Iowa Telecom seeking to have applied to it the non-rural federal USF support mechanism rather than the high-cost loop support mechanism applicable to rural carriers because it would increase its USF support under the non-rural mechanism.

Recognizing that TCA-96 codified regulators’ historical commitment to promote universal service, the FCC recited the history of universal service reform from the inception of TCA-96 to the present, including the establishment of the Joint Board, and the creation of two separate support mechanisms for rural and non-rural carriers because “rural carriers face diverse circumstances and that ‘one size does not fit all’” as rural carriers generally serve fewer subscribers, serve more sparsely populated areas, and generally do not benefit as much as non-rural carriers do from economies of scale and scope.”¹² In this order, the FCC also acknowledged its own extension of its interim rural high-cost universal service support rules adopted in the *Rural Task Force Order*¹³ until the FCC concludes its rural review proceeding and noted that the Joint Board actively

¹¹*Core Forbearance Denial* at ¶20.

¹²*Iowa Forbearance Denial* at ¶3.

¹³*Rural Task Force Order*, 16 FCC Rcd 11244 (2001).

continues to consider comments regarding rural reform, anticipating further action from the Joint Board in November 2007.¹⁴

Pending State Matters

In a pending investigation involving the Verizon companies, on January 8, 2007, the Commission entered an order similarly staying Verizon's access charge investigation at Docket No. C-20029195, which is before the Commission on Exceptions and Replies on Remand, following a Recommended Decision on Remand issued by ALJ Cynthia Williams Fordham on December 7, 2005. Verizon's stay also remains pending the outcome of the FCC's *Intercarrier Compensation Proceeding* (CC Docket No. 01-92), or for a period of one year, whichever is less. Absent a further stay, Verizon's access investigation would be subject to further action by January 8, 2008. In addition to provisions affecting access reform in the *Global Order*, Verizon's access reform also has its genesis in the Commission's order of November 9, 2000, at Docket No. A-310200F0002 et al., approving the merger of Bell Atlantic Pennsylvania, Inc., and GTE North, Inc., and in which Verizon North (the former GTE) and Verizon Pennsylvania were required to commence a proceeding to determine consolidated statewide rates for access charges within 2½ years of the merger closing. On March 21, 2002, AT&T filed a

¹⁴In another order issued recently reviewing action by the FCC addressing universal service support, the United States Court of Appeals for the District of Columbia Circuit affirmed an order of the FCC requiring providers of voice over internet protocol services, or VoIP providers, to contribute to the federal USF. In *Vonage Holdings Corporation v. FCC et al.*, No. 06-1276 (C.A.D.C. 2006) (June 1, 2007) (affirming in part the FCC's ruling as it pertained to the levy of the assessment and the safe harbor level, and vacating in part as it pertained to the carrier's carrier rule and the pre-approval of traffic studies), the appellate court affirmed that the FCC had appropriately concluded that by providing connectivity to the PSTN, VoIP providers supply telecommunications service rendering them subject to universal service assessment to support rural and high cost areas such as served by Pennsylvania's RLECs. Thus, the FCC continues to amplify the pool of telecommunications carriers subject to universal service assessments, an action that has further derivative impact on the ultimate value of universal service support on the state level.

complaint against Verizon North, seeking to reduce its access rates to parity with Verizon PA, according to the Commission's directive in the merger order.

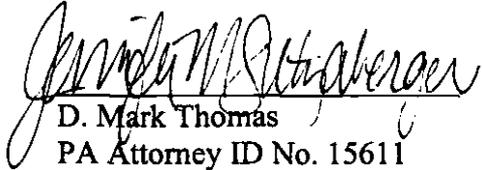
In its order entered January 8, 2007, staying the complaint proceeding, the Commission expressed a concern similar to that expressed in staying the rural access investigation, namely that the potential impact of the FCC's *Intercarrier Compensation Proceeding* and the pending Missoula Plan proposal could affect access charge reform both at the interstate *and* the intrastate levels, and that Verizon's basic local exchange customers may be forced to absorb the effects of the reform into the local rates. The Commission decided it was wise simply to await a final FCC decision before proceeding any further with Verizon's access reform.

Finally, on June 20, 2007, Senator Rob Wonderling introduced Senate Bill 1000 to deregulate Voice over Internet Protocol ("VoIP"). The Pennsylvania General Assembly is back in session and Senate Bill 1000 is pending before the Senate Communications and Technology Committee as of this writing. If passed as proposed, Senate Bill 1000 could directly impact intrastate access charges in that carriers may then use the designation of traffic as VoIP in an effort to avoid paying intrastate access charges. Therefore, once passed, the bill would likely effect the lawful and/or proper coordination of intrastate access charges relative to the state USF.

Conclusion

The Parties below respectfully submit that the existing legislative and regulatory landscape continue to reflect an active, yet incomplete, review of interstate and intrastate access charges and universal service reform at the federal level. For these reasons, and as contended by Joint Movants in the simultaneously filed Joint Motion for Further Stay, it

remains both impractical and inefficient to reactivate the instant investigation at this time and, as requested in the Joint Motion for Further Stay, a further twelve (12) month stay is appropriate.

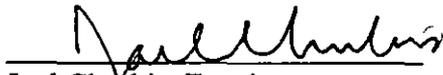


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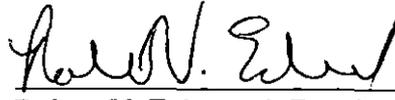
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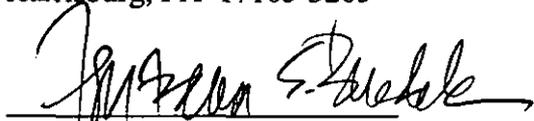
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DATE: October 16, 2007

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate Access : Docket No. I-00040105
Charges and IntraLATA Toll Rates of :
Rural Carriers, and the Pennsylvania :
Universal Service Fund :

CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of October, 2007, served a true and correct copy of the foregoing Joint Status Report on behalf of Rural Telephone Company Coalition, Office of Consumer Advocate, Office of Trial Staff and The United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania upon the persons and in the manner listed below:

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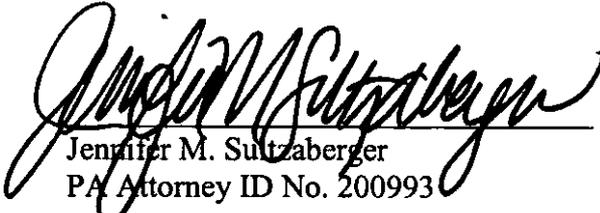
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**THOMAS, THOMAS,
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October 16, 2007

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SECRETARY'S BUREAU

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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

Dear Secretary McNulty:

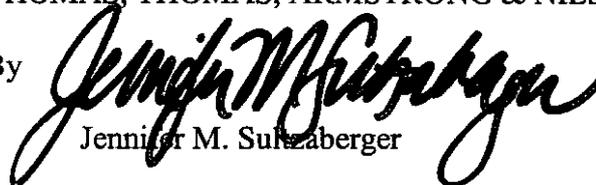
Pursuant to the Order entered November 15, 2006, enclosed for filing on behalf of the Rural Telephone Company Coalition, Office of Consumer Advocate, Office of Trial Staff and The United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania are an original and three copies of a Motion to the Commission requesting the Commission to further stay the above-referenced investigation.

A copy of the attached Motion has been served in accordance with the attached Certificate of Service.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By


Jennifer M. Sultzaberger

DOCUMENT
FOLDER

Enclosure

cc: Honorable Susan D. Colwell
Certificate of Service

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34

ORIGINAL

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate : Docket No. I-00040105
Access Charges and IntraLATA Toll :
Rates of Rural Carriers, and the :
Pennsylvania Universal Service Fund :

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JOINT MOTION OF
THE RURAL TELEPHONE COMPANY COALITION,
OFFICE OF CONSUMER ADVOCATE,
OFFICE OF TRIAL STAFF,
AND EMBARQ PENNSYLVANIA
FOR THE COMMISSION TO FURTHER STAY THIS INVESTIGATION
PENDING RESOLUTION OF THE FCC INTERCARRIER
COMPENSATION PROCEEDING AT CC DOCKET NO. 01-92

DOCKETED
OCT 17 2007

Pursuant to the Order entered November 16, 2006 ("November 16, 2006 Order"), in the above referenced proceeding, which Order granted in its entirety the Joint Motion of the Rural Telephone Company Coalition ("RTCC"), Office of Consumer Advocate ("OCA"), Office of Trial Staff ("OTS"), and The United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania ("Embarq Pennsylvania"), and further stayed the above Investigation pending the outcome of the FCC's *Unified Intercarrier Compensation* proceeding at CC Docket No. 01-92, the Parties,¹ (collectively Joint

¹ The Parties herein comprise the Rural Telephone Company Coalition, Office of Consumer Advocate, Office of Trial Staff, and The United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania. The RTCC includes the following companies: Armstrong Telephone Company - Pennsylvania, Armstrong Telephone Company - North, Bentleyville Telephone Company, Buffalo Valley Telephone Company, Citizens Telephone Company of Kecksburg, Frontier Communications Commonwealth Telephone Company, Frontier Communications of Breezewood, Frontier Communications of Canton, Frontier Communications - Lakewood, Frontier Communications - Oswayo River, Frontier Communications of PA, Conestoga Telephone & Telegraph Company, D&E Telephone Company, Deposit Telephone Company, Hancock Telephone Company, Hickory Telephone Company, Ironton Telephone Company, Lackawaxen Telecommunications Services, Laurel Highland Telephone Company, Mahanoy &

Movants”) hereby file this Joint Motion requesting the Pennsylvania Public Utility Commission (“PUC” or “Commission”) to grant a further stay of the above-referenced investigation for the reasons provided herein and in the Joint Status Report simultaneously filed with this Joint Motion and incorporated herein by reference.

When the Commission initially granted a stay of the above investigation in August of 2005, it granted a further stay for one year, or until the Federal Communications Commission (“FCC”) issued a ruling in its pending intercarrier compensation proceeding at CC Docket No. 01-92,² whichever occurred earlier. The Commission indicated it would entertain future requests for further stays “for good cause shown and for the purpose of coordinating this Commission’s actions with the [FCC’s] ruling in its *Unified Intercarrier Compensation* proceeding.”³ The Commission also required Joint Movants to provide a status report to the Commission at the end of the one year stay “pertaining to common or related matters in the instant investigation” and the FCC’s FNPRM “and the need for any coordination of those matters or any new matters that may arise once the instant investigation is reinstated.”⁴

As discussed in more detail in the Joint Status Report, Joint Movants seek an additional twelve (12) month stay based on the events that have occurred with respect to access reform on the federal level since the Commission granted the current stay and in

Mahantango Telephone Company, The North-Eastern Pennsylvania Telephone Company, North Penn Telephone Company, North Pittsburgh Telephone Company, Palmerton Telephone Company, Pennsylvania Telephone Company, Pymatuning Independent Telephone Company, South Canaan Telephone Company, Sugar Valley Telephone Company, Venus Telephone Corporation, Windstream Pennsylvania, Inc., and Yukon-Waltz Telephone Company.

²See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 05-33, Further Notice of Proposed Rulemaking (released March 3, 2005) (“FNPRM”).

³August 30, 2005 Order, Ordering Paragraph 6.

⁴August 30, 2005 Order, Ordering Paragraph 7.

light of the continued pendency of this issue at the federal level. Joint Movants respectfully submit this Joint Motion with the Commission requesting that the stay be continued for an additional period of one year from the date of Commission entry of an Order acting upon this Motion, or until the FCC resolves the proceeding, whichever occurs first. A further stay of this proceeding would allow all parties to avoid expending unnecessary time and expense in connection with this investigation when various actions at the federal level continue to hold significant promise of impact on the state level.

Moreover, in light of pending federal legislation, recent and pending federal regulatory actions, as well as pending state matters, all of which are briefly addressed herein and are addressed in more detail in the Joint Status Report, Joint Movants also believe it is a more prudent expenditure of this Commission's limited resources at this time to focus on addressing the uniform intercarrier compensation reform proceeding at the FCC, which has potential to greatly impact intrastate access rates. In addition, the uniform intercarrier compensation reform proceeding at the FCC also will influence the evidentiary record to be developed in this matter and the ultimate resolution of this investigation. In support of its Joint Motion, the Joint Movants aver as follows:

1. This investigation was instituted as a result of the Commission's Order entered July 15, 2003, at M-00021596, *In re: Access Charge Investigation per Global Order of September 30, 1999* ("2003 Order"), in which the Commission discussed the continuation of access reform in Pennsylvania in an efficient and productive manner.

2. Following the institution of this Investigation at Docket No. I-00040105, the FCC on March 3, 2005, entered its Order instituting an intercarrier compensation proceeding at CC Docket No. 01-92. In the *Uniform Intercarrier Compensation* proceeding, the FCC is examining the whole system of intercarrier compensation,

including interstate and intrastate access, reciprocal compensation and universal service. In the FNPRM, the FCC stated that one of the main reasons reform is needed is because the current intercarrier compensation system is based on jurisdictional and regulatory distinctions that are no longer linked to technological or economic differences (FNRPM at ¶15). The FCC also established several goals for the intercarrier compensation reform process including the preservation of universal service (FNRPM at ¶32), promotion of economic efficiency (FNRPM at ¶31) and maintenance of competitive and technology neutrality (FNRPM at ¶33).⁵

3. There are three fundamental sources of revenues for RLECs: access charges, toll charges and local service. In the regulators' century of monopoly rate regulation, revenue allocations were guided by the concept of "residual pricing," whereby revenue increases from all other sources were maximized and only the remaining rate increase which could not be absorbed elsewhere (i.e., the residual) was allocated to local dial tone service. Through this regulated process, local service remained at an affordable level because toll and access services were priced above cost to support below cost local service rates.⁶ Further reductions to access will, by necessity, require concomitant adjustments to local service and/or parallel universal support. Otherwise, universal

⁵One factor identified in the FCC reform proceeding is the fact that the industry is no longer served solely by wireline local and long distance carriers but is served by ISPs, wireless providers and VoIP providers. These non-traditional providers play a role in the future communications market and must be considered in intercarrier compensation reform. However, while this Commission does not have full jurisdiction over all of these providers and their services, as demonstrated in the Joint Status Report, the FCC is gradually recognizing the role these non-traditional carriers play in the telecommunications market and the value of recognizing their contributions to the continuation of universal service. See, *Vonage Holdings Corporation v. FCC et al.*, No. 06-1276 (C.A.D.C. 2006) (June 1, 2007).

⁶For a more in-depth discussion of residual pricing, see the Commission's Opinion and Order entered in *Joint Petition of Nextlink Pennsylvania, Inc. et al.*, and *Joint Petition of Bell Atlantic-Pennsylvania, Inc., et al.*, Docket Nos. P-00991648 and P-00991649, Order entered September 30, 1999 ("*Global Order*"), slip opinion at pp. 11-16.

service to rural areas will be compromised. Consequently, access reform remains a process which requires recognition and integration of a multitude of components that may be impacted differently if acted on at the state jurisdictional level while also being considered at the federal jurisdictional level.

4. As discussed in the Initial Motion, various comprehensive access reform proposals intended to replace the "outmoded system of intercarrier payments in the telecommunications industry with a uniform regime suited for competitive markets and new technologies" were submitted to the FCC. While these plans were pending consideration and action by the FCC, on July 18, 2006, the Missoula Plan was submitted to the FCC.⁷ In the year since it was introduced, the Missoula Plan has undergone several amendments and changes, and the FCC has received comments from multiple parties. As described more thoroughly in the Joint Status Report, the Missoula Plan remains pending at the FCC. Although it faces some opposition and will likely be modified, the Missoula Plan signifies a growing consensus at the federal level that comprehensive intercarrier compensation reform must continue on a steady course. Accordingly, until Missoula, or another comprehensive reform, is finalized at the federal level, continuation of this state proceeding at this time poses a grave risk to Pennsylvania's rural carriers of loss of interstate support funding. Moreover, the pending federal action continues to have significant potential to directly impact, if not render moot, the issues in the instant proceeding.

⁷Joint Movants raise and address the Missoula Plan in this Joint Motion and Joint Status Report for the sole purpose of demonstrating the need for further stay of this Commission generic investigation. Discussion of the Missoula Plan in these pleadings should not be construed or interpreted as support of the Missoula Plan by Joint Movants either collectively or individually.

5. Additionally, in late Spring 2007, a bill to reform the federal USF (HR 2054), referred to as the “Universal Service Reform Act of 2007,” was introduced in the House of Representatives, with additional legislation being considered by the Senate. Since the Federal-State Joint Board on Universal Service (“Joint Board”) announced on September 2, 2007, that it is “taking a fresh look at high-cost universal service support,” Congress may continue to defer the deciphering of the complexities of USF and intercarrier reform to federal regulators. This is suggestive of the need for the Commission to exercise similar restraint by staying the instant investigation.

6. Aside from the pending FCC’s *Unified Intercarrier Compensation* proceeding, the FCC has recently issued three orders that serve to reinforce the FCC’s continued concerns over the preservation of rural access revenues and universal service funding, especially for rural ILECS, in light of the many challenges to intercarrier compensation reform under the Telecommunications Act of 1996. The orders are discussed in more detail in the Joint Status Report and demonstrate the FCC’s acknowledgment of its own extension of its interim rural high-cost universal service support rules until the FCC concludes its rural review proceeding. In addition, the FCC orders show that the FCC recognizes the diverse circumstances faced by rural carriers, and that the FCC anticipates further action from the Joint Board in November 2007 concerning rural reform. Further stay of the procedural schedule at Docket No. I-00040105 remains thoroughly justified until changes arising from the federal legislative landscape become settled and a level of clarity is achieved.

7. With regard to pending state matters, in January 2007, this Commission entered an order staying a pending investigation involving the Verizon companies pending the outcome of the FCC’s *Intercarrier Compensation* proceeding, or for a period

of one year until January 8, 2008, whichever is less. Because of the potential impact of the FCC's *Uniform Intercarrier Compensation* proceeding and the pending Missoula Plan proposal on access charge reform both at the interstate and the intrastate levels, the Commission decided it was wise simply to await a final FCC decision before proceeding any further with Verizon's access reform. Furthermore, Pennsylvania Senate Bill 1000, which would deregulate Voice over Internet Protocol ("VoIP"), has been proposed and is currently pending before the Senate Communications and Technology. If passed as proposed, the bill could directly impact intrastate access charges, and, in turn, affect the Pennsylvania USF.

8. Virtually all of the proposals—both at the federal and state level—could have a significant impact on rural access reform. Many of the proposed reforms cover both interstate and intrastate access rates and affect both interstate and intrastate universal service funds. A majority of the proposed plans propose that rural carriers should continue to receive funding of their networks to foster universal service, and in many cases create supplemental rural universal service funding or access charge replacement funding to compensate rural carriers for additional required access reform.

9. Accordingly, Joint Movants contend it would be unreasonable, unproductive, impractical and inefficient for this Commission to act further on rural access reform in advance of the FCC. All the reasons previously set forth by Joint Movants and accepted by the Commission remain timely and relevant, and the current circumstances addressed herein and in the Joint Status Report continue to support a further stay of any action in the pending state investigation until more definitive action is taken by the FCC. Valuable Commission resources should not be needlessly spent developing a potentially inadequate and inapplicable record in an effort to arrive at a

result that is apt to be premature at best, and detrimental to Pennsylvania ratepayers at worst.

10. The FCC's authority to preempt the state's regulation of intrastate access and local interconnection and the establishment of alternative cost recovery mechanisms within the intrastate jurisdiction remains a viable issue at the federal level. While interested parties may oppose FCC preemption of state jurisdiction over intrastate access charges, the Commission must seriously consider the potential for its authority in this area to be significantly modified by an FCC decision. Even if the FCC does not fully preempt this area, it is highly likely that it may provide guidelines to the states for access reform or encourage other reforms through incentive mechanisms or otherwise in a manner that could seriously impact Pennsylvania carriers and consumers. Due to the high degree of potential for impending action in this realm, the Commission should heavily consider the negative repercussions of acting on interstate access charges prior to the FCC acting.

11. Any action taken by the FCC will very likely impact Pennsylvania ILECs, intrastate universal service funding and intrastate rates that are paid by Pennsylvania consumers. If an evidentiary record is adduced in this Investigation because the matter is not stayed, that record likely will be become moot or stale given various issues unresolved by the FCC. Also, if changes are made at this time relating to intrastate rates and universal service funding, the Pennsylvania ILECs, which have already implemented substantial intrastate access reform, and their consumers, who have already dealt with substantial local service increases in order to offset prior intrastate access reductions, continue to run the risk that they may receive no credit for such reform under proposals pending before the FCC. The possibility also remains that Pennsylvania ILECs may face

additional subscriber line charges or other rate increases independent of whatever action this Honorable Commission takes. Merely because they may have proceeded too quickly in reducing their access rates prior to federal mechanism being put in place, Pennsylvania consumers and carriers will not be given the opportunity to fully benefit from increased federal funding. In light of the legitimate concern that Commission action at this time would not be prudent and does not comport with sound public policy, Joint Movants submit that a continued stay of the proceeding is appropriate.⁸

12. Accordingly, the Joint Movants respectfully request that the Commission act on this Joint Motion and, based on the very tentative environment of access reform at the federal and state levels and the current unsettled circumstances surrounding USF, issue an Order further staying this matter pending the outcome of the FCC *Unified Intercarrier Compensation* proceeding at Docket No.01-92, for at least a period of twelve months after the Commission enters an Order acting on this Motion, or until the FCC acts on its *Uniform Intercarrier Compensation* proceeding, whichever is earlier.

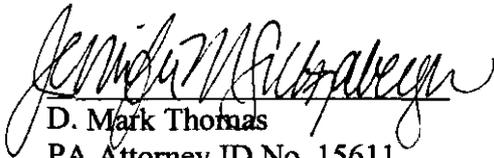
⁸Furthermore, the parties expressly advocate a continuation of the current PaUSF under the existing regulations codified at 52 Pa. Code §§ 63.161-63.171.

WHEREFORE, for all the foregoing reasons, Joint Movants respectfully request that:

1. The Commission issue an Order further staying the proceeding; and
2. Grant such further relief consistent with the foregoing that it deems

reasonable and just.

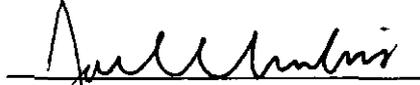
Respectfully submitted,



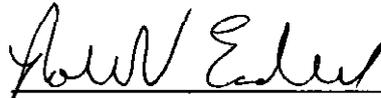
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Regina L. Matz
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PA Attorney ID No. 200993

THOMAS, THOMAS, ARMSTRONG & NIESEN
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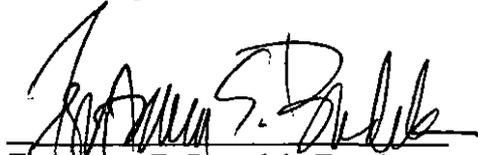
Attorneys for
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The United Telephone Company
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Harrisburg, PA 17101

DATE: October 16, 2007

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate Access : Docket No. I-00040105
Charges and IntraLATA Toll Rates of :
Rural Carriers, and the Pennsylvania :
Universal Service Fund :

CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of October, 2007, served a true and correct copy of the foregoing Joint Motion to Further Stay Investigation on behalf of the Rural Telephone Company Coalition, Office of Consumer Advocate, Office of Trial Staff and The United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania upon the persons and in the manner listed below:

VIA E-MAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

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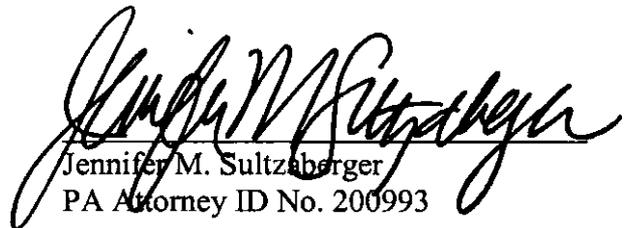
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Jennifer M. Sultzberger
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October 25, 2007

VIA UPS OVERNIGHT

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
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Commonwealth, Keystone Building
Harrisburg, PA 17105-3265

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OCT 25 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund - Docket No. I-00040105

Dear Mr. McNulty:

This office represents Omnipoint Communications Inc. d/b/a T-Mobile, Omnipoint Communications Enterprises LLC d/b/a T-Mobile and VoiceStream Pittsburgh LP d/b/a T-Mobile ("T-Mobile"), an intervenor in the above reference docket.

Please accept this letter as T-Mobile's response, pursuant to 52 Pa. Code § 5.103(c), to the Joint Motion¹ dated October 16, 2007 that has been filed in this matter. While reserving its rights on the substantive issues that have been raised, T-Mobile supports the Joint Motion with regard to the request for a further stay of this proceeding on the terms set forth in Paragraph 12 therein.

Cellco Partnership d/b/a Verizon Wireless, also an intervenor, has authorized the undersigned to state that it concurs with T-Mobile's response to the Joint Motion.

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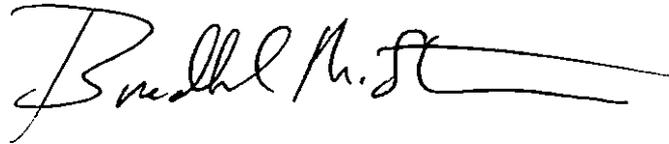
¹ *Joint Motion of the Rural Telephone Company Coalition, Office of Consumer Advocate, Office of Trial Staff, and Embarq Pennsylvania for the Commission to Further Stay This Investigation Pending Resolution of the FCC Intercarrier Compensation Proceeding at CC Docket No. 01-92.*

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James. J. McNulty
October 25, 2007
Page 2

An original and three copies of this letter are provided. Copy of this letter is being provided to those parties listed on the attached Certificate of Service.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradford M. Stern". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Bradford M. Stern

BMS/rma
cc: Service List

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy to the following persons, by first class mail, of the response of Omnipoint Communications Inc. d/b/a T-Mobile, Omnipoint Communications Enterprises LLC d/b/a T-Mobile and VoiceStream Pittsburgh LP d/b/a T-Mobile (T-Mobile) to the *Joint Motion of the Rural Telephone Company Coalition, Office of Consumer Advocate, Office of Trial Staff, and Embarq Pennsylvania for the Commission to Further Stay This Investigation Pending Resolution of the FCC Intercarrier Compensation Proceeding at CC Docket No. 01-92*, filed in Commission Docket No. I-00040105, in accordance with the requirements of §1.54:

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Jennifer A. Duane, Esq.
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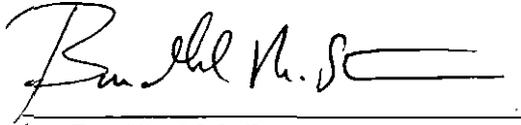
Kristin Smith
Qwest Communications Corporation
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Suite 4900
Denver, Colorado 80202

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OCT 25 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

Dated this 25th day of October, 2007

A handwritten signature in black ink, appearing to read "Bradford M. Stern", written over a horizontal line.

by: Bradford M. Stern
PA Attorney ID #: 57298

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November 1, 2007

VIA FEDERAL EXPRESS

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, PA 17120

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates
of Rural Carriers, and the Pennsylvania Universal Service Fund
Docket No. I-00040105

Dear Mr. McNulty:

Please find enclosed for filing on behalf of Sprint Communications Company L.P., an original and three copies of a Motion for Admission *Pro Hac Vice* of Garnet M. Goins, Esq. and Benjamin J. Aron, Esq., which were served today by U.S. mail upon counsel of record.

I have enclosed an additional copy of the Motion to be date-stamped and returned to me in the enclosed self addressed, stamped envelope.

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

DOCUMENT
FOLDER

Sincerely,



Douglas G. Bonner

Enclosure

cc: Honorable Susan D. Colwell (w/encl.)
Attached Service List (w/encl.)

25226383\V-1

RJP

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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

Docket No. I-00040105

DOCUMENT
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MOTION FOR ADMISSION PRO HAC VICE
OF GARNET M. GOINS, ESQ. AND BENJAMIN J. ARON, ESQ.

Pursuant to 52 Pa. Code §§ 1.22(b) and 5.103, and Rule 301 of the Pennsylvania Rules of Admission (PA.B.A.R. 301), John J. Calkins, a member of the bar of the Commonwealth of Pennsylvania, respectfully moves for the admission of the following individuals to appear as attorneys on behalf of Sprint Communications Company L.P. ("Sprint") in the above-referenced proceeding:

Garnet M. Goins, Esquire
Sprint Communications Company L.P.
2001 Edmund Halley Drive, Second Floor
Reston, Virginia 20191
Mailstop: VARESP0201-A208
e-mail: garnet.goins@sprint.com
Phone: 703-433-4248
Fax: 703-433-4142

Benjamin J. Aron, Esquire
Sprint Communications Company L.P.
2001 Edmund Halley Drive, Second Floor
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Mailstop: VARESP0201-A208
e-mail: benjamin.aron@sprint.com
Phone: 703-592-7618
Fax: 703-433-4142

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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NOV 6 2007

In support of this motion, the movant states:

1. I am an active member of the Pennsylvania Bar (Attorney ID No. 70668). I am in private practice, assisting clients with various litigation and regulatory proceedings, including telecommunications matters.

2. Garnet M. Goins is a member in good standing of the Bars of Massachusetts and Virginia.

3. Ms. Goins has been actively involved in numerous regulatory proceedings on behalf of Sprint or its affiliates, operating in a number of jurisdictions and has previously represented Sprint or its affiliates in matters before the Pennsylvania Public Utility Commission. Ms. Goins has not been subject to any disciplinary action in any state.

4. The verification of Ms. Goins pursuant to 52 Pa. Code § 1.36 is annexed hereto.

5. Benjamin J. Aron is a member in good standing of the Bars of Maryland and the District of Columbia.

6. Mr. Aron is currently involved in numerous regulatory proceedings on behalf of Sprint or its affiliates, operating in a number of jurisdictions. Mr. Aron has not been subject to any disciplinary action in any state.

7. The verification of Mr. Aron pursuant to 52 Pa. Code § 1.36 is annexed hereto.

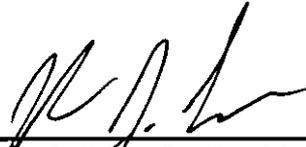
8. Please also accept this motion as Ms. Goins' and Mr. Aron's notice of appearance in this matter pursuant to 52 Pa. Code § 1.24(b)(2).

9. A certificate of service pursuant to 52 Pa. Code § 1.58(a) is annexed hereto.

WHEREFORE, I move that Garnet M. Goins, Esq. and Benjamin J. Aron, Esq. be admitted to practice *Pro Hac Vice* on behalf of the Sprint in the above-captioned proceeding.

Dated: November 1, 2007

Respectfully submitted,



John J. Calkins (Pa. Bar No. 70668)
Sennenschein Nath & Rosenthal LLP
1301 K Street, N.W.
Suite 600, East Tower
Washington, D.C. 20005
(202) 408-6431 (phone)
(202) 408-6399 (facsimile)

Counsel for Sprint Communications Company L.P.

VERIFICATION

I, Garnet M. Goins, hereby state that the facts above set forth regarding me are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

Date: 10/30/07

Signature: Garnet M. Goins

RECEIVED

NOV 01 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VERIFICATION

I, Benjamin J. Aron, hereby state that the facts above set forth regarding me are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

Date: 10/31/07

Signature: Benjamin J. Aron

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Motion for Admission Pro Hac Vice of Garnet M. Goins, Esq. and Benjamin A. Aron, Esq. upon the persons listed below:

Dated at Washington, DC this 1st day of November, 2007.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

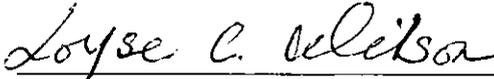
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November 2, 2007

ORIGINAL

VIA OVERNIGHT DELIVERY

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund
Docket No. I-00040105

Dear Secretary McNulty:

I enclose for filing in the above-referenced docket an original and three (3) copies of Sprint's Answer to Joint Motion of the Rural Telephone Company Coalition, Office of Consumer Advocate, Office of Trial Staff, and Embarq Pennsylvania for the Commission to Further Stay This Investigation Pending Resolution of the FCC Intercarrier Compensation Proceeding at CC Docket No. 01-92. All parties have been served in accordance with the attached Certificate of Service.

Please return a file-stamped copy of Sprint's pleading in the enclosed self-addressed, postage-prepaid envelope. If you have any questions, please feel free to contact me. Thank you for your attention to this matter.

DOCUMENT
FOLDER

Sincerely,


Benjamin J. Aron

Enclosure

Cc: Susan D Colwell, Administrative Law Judge
Parties on the attached Certificate of Service

RJP

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate :
Access Charges and IntraLATA Toll :
Rates of Rural Carriers, and the : Docket No. I-00040105
Pennsylvania Universal Service Fund :

PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

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**SPRINT'S ANSWER TO JOINT MOTION OF
THE RURAL TELEPHONE COMPANY COALITION,
OFFICE OF CONSUMER ADVOCATE,
OFFICE OF TRIAL STAFF,
AND EMBARQ PENNSYLVANIA
FOR THE COMMISSION TO FURTHER STAY THIS INVESTIGATION
PENDING RESOLUTION OF THE FCC INTERCARRIER
COMPENSATION PROCEEDING
AT CC DOCKET NO. 01-92**

DOCUMENT
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In accordance with 52 Pa. Code § 5.103, Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively "Sprint") submit this Answer in response and in opposition to the "Joint Motion of the Rural Telephone Company Coalition, Office of Consumer Advocate, Office of Trial Staff, and Embarq Pennsylvania for the Commission to Further Stay This Investigation Pending Resolution of the FCC Intercarrier Compensation Proceeding at CC Docket No. 01-92" (hereinafter the "Joint Motion") filed on October 16th.

I. Introduction and Summary.

In the Joint Motion the filing parties (hereinafter the "Joint Movants") urge the Pennsylvania Public Utility Commission (hereinafter the "Commission") to again stay this investigation pending resolution by the Federal Communications Commission (hereinafter the "FCC") of its *Unified Intercarrier Compensation* proceeding at CC

Docket No. 01-92. Sprint files this Answer on behalf of its interexchange and competitive local exchange carrier (“CLEC”) entity, and its wireless entities operating in this state.

In an Order entered on December 20, 2004,¹ the Commission initiated an investigation to answer six questions.² Those questions were not answered by August 30, 2005, and on that date the Commission entered an Opinion and Order that granted a stay of its investigation into intrastate access and universal service issues for a period not to exceed 12 months or until the FCC issued its ruling in its Unified Intercarrier Compensation proceeding, whichever occurred earlier.³ In the Opinion and Order the Commission specifically rejected a request that it institute a twenty-four (24) month stay.⁴ Subsequently, by Order entered November 15, 2006, the Commission again stayed this investigation.⁵ The Commission indicated that the following factors influenced its decision to again stay this investigation: submission of the so called ‘Missoula Plan’ to the FCC on July 16, 2006, introduction in the United States House of Representatives of a bill called the Universal Service Reform Act of 2006 (HR 5072), and a comprehensive

¹ Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Exchange Carriers and the Pennsylvania Universal Service Fund, Docket No. I-00040105, Order (December 20, 2004)(“*Investigation Order*”).

² Those questions were: (1) whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs’ territories? (2) What rates are influenced by contributions to and/or disbursements from the Fund? (3) Should disbursements from the Fund be reduced and/or eliminated as a matter of policy and/or law? (4) Assuming the Fund expires on or about December 31, 2006, what action should the Commission take to advance the policies of this Commonwealth? (5) If the Fund continues beyond December 31, 2006, should wireless carriers be included in the definition of contributors to the Fund? If included, how will the Commission know which wireless carriers to assess? Will the Commission need to require wireless carriers to register with the Commission? What would a wireless carrier’s contribution be based on? Do wireless companies split their revenue bases by intrastate, and if not, will this be a problem? (6) What regulatory changes are necessary to 52 Pa. Code §§ 63.161 - 63.171 given the complex issues involved as well as recent legislative developments? *Investigation Order*, at 5-6.

³ August 30, 2005 Opinion and Order, Ordering Paragraph 4 (August 30, 2005)(“*Opinion and Order*”).

⁴ *Id.*, at 17.

⁵ November 15, 2006 Order (November 15, 2006)(“*November 2006 Order*”).

legislative telecommunications reform initiative sponsored by Senator Stevens.⁶ The Commission's motivation generally was to wait until the federal landscape was more settled before continuing its investigation.⁷

As articulated more fully below, Sprint urges the Commission to resume its investigation. Intrastate access reform is urgently needed, and will not be realized in Pennsylvania unless the Commission resumes its investigation. Sprint continues to pay intrastate access rates in Pennsylvania that are far higher than the national average.⁸ Moreover, these rates are markedly higher than the interstate rates Sprint pays, and are priced well above the cost of providing such services. This disparity exists despite the fact that the same network components are used for both interstate and intrastate calls.

II. Response to Joint Motion.

1. In response to the assertions in Paragraph 1, Sprint admits that the Commission entered an Order on July 15, 2003 at M-00021596 entitled *In re: Access Charge Investigation per Global Order of September 30, 1999*. Sprint further admits that in that Order the Commission discussed the continuation of access reform in Pennsylvania in an efficient and productive manner.

2. In response to the assertions in paragraph 2, Sprint admits that the FCC issued a Further Notice of Proposed Rulemaking ("FNPR") on March 3, 2005 to address intercarrier compensation issues in its existing CC Docket No. 01-92. The FNPR speaks for itself. It should be noted that no final rules have resulted from the FNPR.

⁶ *Id.* at 12.

⁷ *Id.*

⁸ The rates Sprint pays in Pennsylvania are, on average, the 9th highest rates it pays nationwide. Attachment One to this Answer provides information to illustrate this point.

3. Sprint admits in part and denies in part the assertions in Paragraph 3. Sprint admits that access charges, toll charges and local service are three sources of revenue for rural ILECs, but denies the Joint Movants' characterization of such charges as "fundamental." Much of the paragraph summarizes a past pricing scheme to which no response is required. Sprint denies that further reductions to access charges will, by necessity or otherwise, "require concomitant adjustments to local service and/or parallel universal support." It is for the Commission to decide whether a reduction in access charges need necessarily be linked to any concomitant action. Sprint denies that universal service to rural areas will necessarily be compromised by a reduction in access charges without a parallel adjustment elsewhere. Those services will only be compromised if the market in rural areas responds negatively to increased prices – a question of fact that has not been addressed on the record. Sprint denies that access reform would be impacted adversely if acted on by the Commission separately from pending federal proceedings.

4. In response to Paragraph 4, Sprint admits that various comprehensive access reform proposals describing uniform regimes for a competitive marketplace have been submitted to the FCC. Sprint further admits that so called Missoula Plan is one such plan and that it was submitted to the FCC on or around July 18, 2006. Sprint admits that the Missoula Plan has since been amended and that multiple parties have commented on the Missoula Plan. Sprint admits that the Missoula Plan remains pending at the FCC. Sprint is without the ability to predict whether the Missoula Plan is likely to be amended and therefore must deny such assertion. Sprint denies that the Missoula Plan signifies a growing consensus at the federal level that comprehensive intercarrier compensation

reform must continue on a steady course. Sprint denies that the continuation of the Commission's investigation poses any danger to rural ILECs of loss of interstate support funding. The Commission's investigation inquires into intrastate matters only. Sprint denies that pending federal action threatens to render the instant proceeding moot. Sprint admits that a federal action could have an impact on Pennsylvania's system of regulations as the overlay of federal regulation is obvious, but denies that the potentiality for such an affect supports a conclusion that no action is called for. Sprint avers that the need for the Commission to modify its regulations to conform to future federal regulation or legislation is as likely to follow from action taken in this proceeding as it is to follow from inaction. The difference, however, is that Pennsylvania's consumers will enjoy the benefits of increased competition during such interim period, if any, as may follow.

5. The assertions in Paragraph 5 are denied in part and admitted in part. Sprint admits that a bill to reform the USF (H.R. 2054) was introduced in the House of Representatives. Sprint is unaware of and therefore denies that similar legislation is being considered in the Senate.⁹ Sprint admits that the statement attributed to the Federal-State Joint Board on Universal Service was made by that body, but is uncertain whether the statement was made on the date indicated. Sprint can neither confirm nor deny that Congress may continue to defer USF reform to federal regulators – this is mere speculation on the part of the Joint Movants and the opposite proposition could as easily prove true. Sprint denies the Joint Movants' conclusory statement that the Commission need exercise similar constraint. Sprint notes, however, that if Congress does elect to defer USF reform to federal regulators, then the need for the Commission to take notice of any pending congressional bills is obviously eliminated.

⁹ Joint Movants have failed to provide a citation, so research regarding this alleged fact has been difficult.

6. Sprint will not speculate as to the identity of the three orders referenced, but not named or cited, in paragraph 6 and therefore denies the allegations contained in paragraph 6 in full.

7. The assertions of Paragraph 7 are denied. In response to the statements in Paragraph 7, Sprint will not speculate as to the identity of the Order alleged to have been issued by this Commission staying a pending investigation involving the Verizon companies. Insofar as the Joint Movants have not provided a citation to the Commission's Order, Sprint denies the allegations contained in Paragraph 7 in full as they relate to that Order. Sprint denies that any legislation currently pending in the Pennsylvania Senate provides an appropriate justification for further staying the instant proceeding. Access charge reform is urgently, desperately needed and should be instituted with all due haste. Delaying the Commission's investigation for proposed legislation is imprudent. In its November 2006 Order the Commission listed two then pending pieces of federal legislation as the basis for its decision to again stay the investigation. Neither of the two bills became law. The Commission should take notice of this and conclude that it is inadvisable to again stay this investigation in light of proposed legislation at either the state or federal level.

8. The Joint Movants' statement in Paragraph 8 that "virtually all the proposals – both at the federal and state level – could have a significant impact on rural access reform" is hyperbolic and is denied. The remainder of Joint Movants' statements in Paragraph 8 are overly generalized, lack specificity or otherwise require factual conclusions outside scope of Sprint's knowledge. Sprint, for instance, has not calculated

whether “a majority” of referenced proposals indicate rural carriers should continue to receive funding. The statements in this paragraph, therefore, must be denied in full.

9. The allegations of Paragraph 9 are denied. Sprint denies that it would be unreasonable, unproductive, impractical, or inefficient for the Commission to act further at this time. To the contrary, Sprint contends that action on access charge reform is timely, necessary, practical and urgently needed. Sprint denies that any reasons set forth by the Joint Movants, whether currently or previously provided, justify a further delay in this proceeding. This Commission should not delay this proceeding for potential action by the FCC, the United States Congress, the Pennsylvania Senate, or any other regulatory or legislative body. Sprint admits that the Commission’s resources are a scarce and valuable resource, but denies that they would be in any way misapplied by continuing with its investigation in this proceeding. Any record created would be invaluable in affording the Commission a basis from which to determine the relief necessary to end the unreasonably high access charges that plague the Pennsylvania marketplace. Sprint denies that any action taken by this Commission would be premature or detrimental to Pennsylvania’s ratepayers.

10. The assertions of Paragraph 10 are denied. Sprint denies that federal preemption of the Commission’s regulation of intrastate access rates, local interconnection and alternative cost recovery mechanisms is likely or viable. The Commission has offered its well reasoned opinion to the contrary into the record before the FCC,¹⁰ and Sprint asks that the Commission heed its own opinion, one that is clearly contrary to the Joint Movants’, regarding this issue.

¹⁰ See Section III.A.i., paragraphs 15 & 16, *infra*.

11. The assertions of Paragraph 11 are denied. Sprint denies that there is any currently pending federal proceeding that need cause the Commission to further delay action in the instant matter. Access charge reform is urgently needed in Pennsylvania to combat access charges that are amongst the highest in the nation. Those federal matters referenced by the Commission as cause for its last stay have not changed the circumstances facing the Commission: the Missoula Plan is still pending and is no closer to adoption that it was when the November 2006 Order was released, the federal legislation that was cited by the Commission never became law, and the possibility of a uniform federal regime that will upset any action taken by this Commission is no closer to reality today than it was at this time last year. Sprint urges the Commission to recognize that the need for access reform is acute and that there may well never come a time at which the Commission can act without fear of future developments creating the need for subsequent regulation. Inaction today due to the possible necessity for future action by the Commission will do no more than create an unceasing inertia, and the affects of this inertia will be bourn upon the shoulders of Pennsylvania's telecommunications consumers. No result could be more inequitable, and only through prompt action by the Commission in this proceeding can this undesirable result be avoided.

12. The assertions of Paragraph 12 are merely summaries of the Joint Movants' request for relief to which no response is required. As illustrated in this Answer, Sprint opposes the Joint Movants' request for further delay and urges the Commission to restart its investigation.

III. New Matter¹¹.

A. The Commission Should Not Further Stay its Investigation Pending Resolution of any Federal Legislation or Rulemaking.

13. As indicated above, the Commission's November 2006 Order indicated a desire to await resolution of then pending federal legislation and rulemakings. The Commission specifically identified two bills and one pending proposal in a rulemaking before the FCC. Neither of the identified bills passed and became law. Similarly, the pending regulatory proposal identified by the Commission, the Missoula Plan, has not been adopted – likely due to the overwhelming opposition to the Plan by parties including the Commission and many other state public utility commissions.¹² As a result, Sprint has seen little to no activity on this matter at the FCC.

14. Viewed in a microcosm, the failure of these three matters to gain sufficient traction at the federal level to impact Pennsylvania illustrates the risk of the Commission pursuing the passive tactic of waiting for action on the federal level to trigger its own action: patience does not always prevail. Sprint recognizes that the regulatory environment in which the Commission operates is affected by an overlay of federal law. Nevertheless, the Commission's ability to act decisively for the good of Pennsylvania consumers is not unduly impinged by any current uncertainty at the federal level.

¹¹ In an abundance of caution, and in the unlikely event the Commission deems the section captioned "New Matter" inappropriately included in this Answer, Sprint Nextel requests that the Commission, in accord with the provisions of 52 Pa. Code § 1.91 ("Application for waiver of formal requirements"), waive the filing deadline described in the November 2006 Order, Ordering Paragraph 4, and treat the section titled "New Matter" as Sprint's Status Report. Such relief, in the event it is deemed necessary, is warranted as it will further the development of a robust record upon which the Commission may base its decision.

¹² Pennsylvania is on record opposing portions of the Missoula Plan. See Reply Comment of the Pennsylvania Public Utilities Commission, CC Docket No. 01-92 (Filed February 1, 2007) ("Commission's Comment"). Sprint, too, is on record opposing substantial elements of the Missoula Plan. See Reply Comments of Sprint Corporation, CC Docket No. 01-92 (filed February 1, 2007).

i. The Commission Should not Wait for Final Action on the Missoula Plan.

15. The Commission is on record with the FCC “questioning the FCC’s authority to preempt state power over intrastate carrier access rates.”¹³ The Commission stated “none of these provisions [of the Communications Act] expressly relied on by comments in support of preemption give the FCC the authority to reach intrastate communications matters generally or intrastate access rates specifically. Both precedent and legislative history support this conclusion.”¹⁴ Sprint urges the Commission to follow its own counsel when considering whether to continue to wait for action by the FCC or Congress to provide a global, systematic approach to intercarrier compensation and universal service. No such solution is imminent, and no federal solution will, without Commission action, rectify the economic inefficiencies plaguing the Pennsylvania marketplace.

16. Action by the Commission will be required to bring intrastate access charges to cost levels and to replace the inequitable subsidization inherent in the rural incumbent local exchange carriers’ (“rural ILEC”) non-cost-based access charges with such explicit and sufficient support mechanisms as are necessary “to attain the goal of universal service in a competitive environment” – a goal this Commission has long strived to achieve.¹⁵ This conclusion is inescapable in light of the Commission’s well reasoned conclusion that the FCC cannot preempt Pennsylvania’s jurisdiction over intrastate communications and access charges.

¹³ Commission’s Comment, at 3.

¹⁴ *Id.* at 4.

¹⁵ *Re Nextlink Pennsylvania, Inc.*, Order (entered Sep. 30, 1999), 93 PaPUC 172. 196 P.U.R.4th 172, 1999 Pa. PUC Lexis 63. Docket Nos. P-00991648, P-00991649, at *39 (“Recognizing the vulnerability of implicit subsidies to competition, [the Telecommunications Act of 1996] requires that the FCC and the states take the necessary steps to strive to replace the system of implicit subsidies with “explicit and sufficient” support mechanisms to attain the goal of universal service in a competitive environment.”) (*Global Order*).

ii. The Commission Should not Await Passage of Federal Legislation.

17. In the November 2006 Order, the Commission indicated its interest in awaiting resolution of two bills pending in the United States Congress.¹⁶ Sprint avers that just as the Universal Service Reform Act of 2007,¹⁷ identified in the Joint Motion, replaced the Universal Service Reform Act of 2006,¹⁸ a similar bill that failed to become law, there is a substantial possibility that the 2007 bill will also fail to become law and will be replaced by other proposed legislation in 2008. This is simply the nature of the federal legislative process; it moves in fits and starts and does not always reach a timely conclusion. Due to this nature it is not always advisable to use the passage of federal legislation as the trigger for state regulation as there is often no accurate predictor of when such federal action may in fact take place. Sprint posits that in the instant matter, a matter of intrastate commerce well within the settled authority of the Commission, there is no need for the Commission to wait for federal legislative action; rather, there is a pressing need for Commission to act and thereby foster the growth of competition and its attendant benefits in the Pennsylvania marketplace. This cannot happen without action by the Commission and the need for such action should, and does, clearly outweigh whatever perceived benefit is garnered by awaiting federal action and granting the Joint Motion. As discussed below, the Pennsylvania marketplace is in dire need of Commission intervention to remove access charges that are no more than vestiges of a monopolistic marketplace that no longer exists.

¹⁶ November 2006 Order at 12.

¹⁷ H.R. 2054 (2007).

¹⁸ H.R. 5072 (2006)

B. The Need for the Commission to Resume its Investigation is Acute.

18. Pennsylvania consumers are paying far too much to complete intrastate calls to consumers of rural ILECs. Inflated charges for switched access affect the prices of long distance service, wireless service, competitive local exchange service, and Verizon's local service. All Pennsylvania consumers deserve to pay less to communicate with customers of rural ILECs. Sprint is confident that a resumption of this investigation will lead the Commission to conclude that the local service rates of the customers of rural ILECs can remain affordable while eliminating subsidies in intrastate switched access. Further, only by eliminating intrastate subsidies can the Commission effectuate and realize the benefits of the fully competitive environment envisioned by the Telecommunications Act of 1996¹⁹ and embraced by this Commission.

i. Intrastate Access Charges in Pennsylvania are far Higher Than the National Average.

19. At such time as the Commission resumes its investigation, Sprint will be able to fully illustrate for the Commission the extent of the current intrastate subsidy. The magnitude of the subsidy is startling.²⁰ The average per minute intrastate access rate paid to rural ILECs by Sprint in Pennsylvania is the 9th highest in the nation. The intrastate per minute expense paid by Sprint to Pennsylvania's rural ILECs is on the average \$.025 higher than the national average.

20. When comparing the interstate rates of these same rural ILECs, the cost differential is astonishing. Sprint's average intrastate access cost per minute paid to rural

¹⁹ 47 U.S.C. § 151, *et seq.*

²⁰ See Exhibit One which illustrates the cost of intrastate access in Pennsylvania relative to like costs in other states. The impact of the high access charges in Pennsylvania is that Sprint is inequitably forced to pay tens of millions of dollars to rural ILECs instead of having that money available for investment in the infrastructure necessary to provide Pennsylvania consumers with a robust offering of new services.

ILECs in Pennsylvania is \$.0617, while the interstate average cost per minute for these same rural ILECs is less than \$.0096. There is no justifiable reason why Pennsylvania's rural ILECs charge over 6 times more to complete an intrastate call than an interstate call. The cost of these services, which use the same network components, ought to be the same. The cost disparity appears all the more egregious when one considers that the Commission long ago instituted the Pennsylvania Universal Service Fund as a mechanism to maintain the affordability of local service while concurrently removing subsidization from intercarrier pricing.²¹

ii. Analysis of Teledensity Illustrates That Intrastate Access Charges in Pennsylvania are Excessively High.

21. An analysis of teledensity is also instructive in evaluating the per minute cost for intrastate access charges in Pennsylvania versus other states. Teledensity is a measure of the loops per square mile of service territory. A higher concentration of loops per square mile equates to a larger customer base amongst whom to allot fixed costs. The average teledensity of rural ILECs in Pennsylvania is 64 loops per square mile. This compares to a national rural ILEC average teledensity of 14 loops per square mile. Clearly, using metrics based on teledensity one would expect to find that rates charged by rural ILECs in Pennsylvania would be comparatively lower than average national rates for rural ILECs, but the facts are contrary to the expected conclusion.

22. The reality is that Sprint's average intrastate access cost per minute paid to rural ILECs in Pennsylvania is near the highest in the country. This situation exists despite

²¹ Investigation Order at 2-3 ("The affordability of basic local service is maintained in part by contributions to and disbursements from the Fund . . . the Fund helps to maintain the affordability of local service provided by all but the two largest ILECs in Pennsylvania. The Fund was established in 1999 to simultaneously advance the Commission's policies of promoting competition in Pennsylvania's intraLATA toll markets and maintaining the affordability of basic local service.").

data failing to support such pricing. This illustrated economic inefficiency is indicative of the legacy subsidy system that existed in a monopolistic environment, which both Pennsylvania and federal regulators have found to be contrary to the public interest and in need of reform.²² As recently as February of this year, the Commission offered the following advice to the FCC: “The [FCC] should not adopt a plan that perpetuates revenue recovery for carriers, particularly rural carriers, by imposing surcharges to protect switched access revenues.”²³ Sprint suggests that the Commission, upon continuing its investigation, will find that the very system the Commission cautioned the FCC to avoid, a system of revenue recovery through surcharges imposed to protect switched access, is, unfortunately, still in operation in Pennsylvania.

C. The Commission’s Policy Supports a Present Resumption of the Investigation.

23. The Commission has a history of pursuing reform to intrastate access rates. The Commission has stated: “In the 1990s, our policy evolved to favor competition in local markets and its associated benefits. It is now the Commission’s policy to promote competitive local markets by bringing the ILECs’ access charges closer to costs.”²⁴ Sprint supports the Commission’s stated policy and urges it to immediately proceed with its investigation as it is the most reasonable and likely means of timely effectuating this policy. While the importance of the Commission synchronizing its efforts with complementary federal proceedings is certainly not lost on Sprint, Sprint believes that the Commission can and should proceed with its investigation. There may never come a ‘perfect’ time during which the Commission can investigate intrastate access charges,

²² *Global Order*, at *39.

²³ PA Commission’s Comment, at 22.

²⁴ November 2006 Order at 3.

interLATA toll charges and the Pennsylvania Universal Service Fund without concern that developments on the federal level may influence the conclusions reached by the Commission. Simply put, the linkage between federal and state regulation of telecommunications carriers will not allow for this Commission to proceed with absolute certainty that its decisions will not later need to be revisited in light of subsequent developments at the federal level.

24. In the past, the Commission has proceeded with access reform despite the existence of contemporaneous federal proceedings on like issues. Those past decisions have also acknowledged the value of advancing current reform efforts regardless of the potential for later changes that may be necessitated. For instance, the Commission instituted access reforms in 1999.²⁵ The Commission “characterized the Order as the *next step* in implementing continued access reform in Pennsylvania in an efficient and productive manner.”²⁶ It also announced its intention to initiate a further proceeding on rate issues and Pennsylvania Universal Service Fund regulations by a date no later than December 31, 2004. The genesis of the Commission’s current investigation is found in this very pronouncement by the Commission in 1999. While certain elements of the playing field have changed between 1999 and today, it remains clear that the Commission must continue to take those *next steps* it described in 1999 and proceed with its investigation in order to promote competitive local markets by bringing access charges closer to cost levels.

²⁵ See *Global Order*.

²⁶ Investigation Order at 4 (emphasis added).

D. Not All of the Questions Being Investigated Hinge on Federal Issues.

25. The Commission, in evaluating whether to impose another stay of its investigation in light of matters pending before the FCC and Congress,²⁷ ought to consider whether all of the questions involved in the instant proceeding are logically or inextricably linked to those federal proceedings. Sprint contends that the answer to this question is a resounding “no.”

26. The first question posed in the Investigation Order is “[w]hether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs’ territories?”²⁸ The answer to this question does not inherently depend on any federal proceeding as the answer impacts Pennsylvania consumers and is within the Commission’s jurisdiction. As described above, rates charged by rural ILECs in Pennsylvania are well above the national average.²⁹ Once these facts are established in this matter, the Commission will surely recognize that the answer to this question can be determined without any linkage to federal proceedings.

27. The second and third questions posed in the Investigation Order are “[w]hat rates are influenced by contributions to and/or disbursements from the Fund,” and [s]hould disbursements from the Fund be reduced and/or eliminated as a matter of policy and/or law?” These are questions that pertain only to the Pennsylvania Universal Service Fund (“PA USF”), not the federal Universal Service Fund (“USF”). Contributions to the Pennsylvania USF are based on intrastate end-user telecommunications revenue. Disbursements from the PA USF are governed solely by the Commission’s rules and regulations and the laws of Pennsylvania. As the PA USF is funded solely by intrastate

²⁷ See November 2006 Order, at 12.

²⁸ Investigation Order, at 5.

²⁹ See discussion at III. *infra*.

revenues, and as Pennsylvania alone has jurisdiction to prescribe regulations to govern the PA USF, it appears clear that the Commission can address the second and third questions posed in the Investigation Order without concern over federal proceedings. Simply put, those federal proceedings which the Commission has previously taken notice of will not change the amount of intrastate end-user telecommunications revenue generated in Pennsylvania, or how Pennsylvania distributes PA USF funds.³⁰

28. As the above discussion illustrates, it is clear that not all of the questions posed in the Investigation Order hinge on resolution of any federal proceedings. Even if the Commission deems it appropriate to allow proceedings on the federal level to inform its regulation of intrastate matters, there is no impediment to the investigation proceeding on a number of the questions posed. Even for certain other questions that the Commission may deem more closely linked to pending federal matters there is no need to stay the investigation until such time as such federal matters are resolved. The better approach is to proceed with the investigation and take such notice of the various federal proceedings as is necessary or prudent at such time as their resolution seems imminent or developments therein are of sufficient gravity to warrant the Commission's attention.

E. At a Minimum the Record can and Should be Refreshed.

29. It is important to note that several years have passed since this investigation was initiated. Despite the passage of time, little new information has been introduced into the record before the Commission. The Commission has received status reports, but more than reports are needed to affect real change in Pennsylvania. As the record has become

³⁰ Admittedly, distribution of USF funds, if altered, may affect how funds from the PA USF are deemed best distributed, but that does not provide a basis for not investigating solutions to the unreasonably high intrastate access charges rural ILECs charge in Pennsylvania. If changes to the distribution mechanism are later deemed warranted and necessary, that can, and should, be the subject of a later investigation, not a reason not to continue the current investigation.

decidedly stale during the course of two consecutive year long stays. Sprint urges the Commission to, at a bare minimum, refresh the record before determining whether a further stay, as requested by the Joint Movants, is advisable. By refreshing the record, the Commission will find, among other things, that reform of access charge regimes has been implemented in other states during the course of the Commission's stay of its investigation.³¹ In light of the foregoing, Sprint strongly urges the Commission to reopen and refresh the record prior to determining whether a stay is justified.

IV. Conclusion.

30. For all of those reasons provided above, Sprint urges the Commission to reinstate its investigation. The era of subsidizing local service via high access charges has passed, and the Commission should take those actions necessary to remove the subsidies from such charges. In doing so, the Commission will bring the benefits of competition to Pennsylvania consumers – a goal all will support. Only by continuing the instant investigation will the Commission be able to determine the proper course of action. Accordingly, Sprint urges the Commission to continue its investigation.

³¹ States that have reformed and reduced intrastate access charges during the time the instant proceeding has been stayed include, but are not necessarily limited to, California, Texas and Florida.

Respectfully submitted,
Sprint Communications Company, L.P.
Sprint Spectrum, L.P.
Nextel Communications of the Mid-Atlantic, Inc.
NPCR, Inc.



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Dated: 11/2/07

EXHIBIT ONE

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PA PUBLIC UTILITY COMMISSION
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Teledensity & Average Rates

		Interstate	Intrastate	USF Loops per
		Ave. Rate	Ave Rate	Square Mile
1	State A	\$ 0.0114	\$ 0.1255	13
2	State B	\$ 0.0346	\$ 0.0965	3
3	State C	\$ 0.0282	\$ 0.0868	1
4	State D	\$ 0.0262	\$ 0.0766	2
5	State E	\$ 0.0107	\$ 0.0693	10
6	State F	\$ 0.0156	\$ 0.0655	47
7	State G	\$ 0.0121	\$ 0.0635	29
8	State H	\$ 0.0539	\$ 0.0633	13
9	Pennsylvania	\$ 0.0096	\$ 0.0617	64
10	State I	\$ 0.0100	\$ 0.0585	18
11	State J	\$ 0.0154	\$ 0.0567	27
12	State K	\$ 0.0143	\$ 0.0566	13
13	State L	\$ 0.0153	\$ 0.0556	13
14	State M	\$ 0.0083	\$ 0.0540	34
15	State N	\$ 0.0086	\$ 0.0539	42
16	State O	\$ 0.0218	\$ 0.0521	2
17	State P	\$ 0.0155	\$ 0.0491	2
18	State Q	\$ 0.0165	\$ 0.0465	3
19	State R	\$ 0.0340	\$ 0.0465	1
20	State S	\$ 0.0171	\$ 0.0463	16
21	State T	\$ 0.0183	\$ 0.0438	21
22	State U	\$ 0.0232	\$ 0.0424	18
23	State V	\$ 0.0085	\$ 0.0424	54
24	State W	\$ 0.0117	\$ 0.0400	2
25	State X	\$ 0.0114	\$ 0.0397	20
26	State Y	\$ 0.0337	\$ 0.0383	1
27	State Z	\$ 0.0155	\$ 0.0350	7
28	State AA	\$ 0.0173	\$ 0.0332	10
29	State BB	\$ 0.0106	\$ 0.0310	44
30	State CC	\$ 0.0094	\$ 0.0296	11
31	State DD	\$ 0.0070	\$ 0.0286	62
32	State EE	\$ 0.0096	\$ 0.0270	4
33	State FF	\$ 0.0057	\$ 0.0268	193
34	State GG	\$ 0.0147	\$ 0.0265	15
35	State HH	\$ 0.0109	\$ 0.0265	11
36	State II	\$ 0.0057	\$ 0.0238	70
37	State JJ	\$ 0.0079	\$ 0.0209	16
38	State KK	\$ 0.0093	\$ 0.0191	44
39	State LL	\$ 0.0144	\$ 0.0190	5
40	State MM	\$ 0.0031	\$ 0.0183	521
41	State NN	\$ 0.0160	\$ 0.0169	7
42	State OO	\$ 0.0147	\$ 0.0147	132
43	State PP	\$ 0.0074	\$ 0.0145	120
44	State QQ	\$ 0.0088	\$ 0.0124	36
45	State RR	\$ 0.0119	\$ 0.0092	249
46	State SS	\$ 0.0128	\$ 0.0090	59
47	State TT	\$ 0.0105	\$ 0.0074	162

* Three states with few or no Rural ILECs have been excluded.

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate :
Access Charges and IntraLATA Toll :
Rates of Rural Carriers, and the : Docket No. I-00040105
Pennsylvania Universal Service Fund :

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CERTIFICATION OF SERVICE

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

I hereby certify that I have this 2nd day of November 2007, served a true and correct copy of Sprint Corporation's Answer to the Joint Motion of the Rural Telephone Company Coalition, Office of Consumer Advocate, Office of Trial Staff, and Embarq Pennsylvania for the Commission to Further Stay This Investigation Pending Resolution of the FCC Intercarrier Compensation Proceeding at CC Docket No. 01-92 on the following persons by First Class U.S. Mail.

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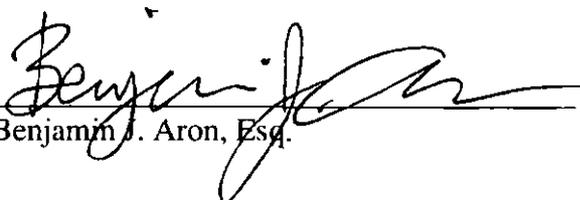
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ORIGINAL

DOCUMENT
FOLDER

Re: Investigation Regarding Intrastate Access Charges and IntraLATA
Toll Rates of Rural Carriers, and the Pennsylvania Universal
Service Fund, Docket No. I-00040105

RUP

Dear Secretary McNulty:

Qwest Communications Corporation ("Qwest") is a party to the above-captioned proceedings. Qwest has reviewed the Answer of Sprint communications Company, L.P., Sprint Spectrum, L.P., Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively "Sprint") in opposition to the Joint Motion of the Rural Telephone Company Coalition, Office of Consumer Advocate, Office of Trial Staff and Embarq Pennsylvania (collectively "RLEC Coalition") requesting a third stay of the Pennsylvania Public Utility Commission's ("Commission") *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105.

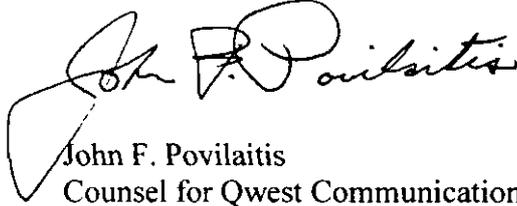
Qwest supports Sprint's position that the RLEC Coalition's Joint Motion should be denied and urges the Commission to reinstate its investigation at this docket without further delay. No federal action directly impacting rural local exchange company intrastate access charges is imminent, and further delay prevents the Commission from making progress on the important access charge and universal service issues identified as the focus of this investigation almost three years ago in December of 2004.

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Sincerely yours,



John F. Povilaitis
Counsel for Qwest Communications Corporation

JFP:ck

c. Certificate of Service

The Honorable Susan D. Colwell,
Administrative Law Judge

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**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 :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document(s) in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

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Date: November 5, 2007



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Counsel for Qwest Communications Corporation

COMMONWEALTH OF PENNSYLVANIA



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William R. Lloyd, Jr.
Small Business Advocate

November 5, 2007

(717) 783-2525
(717) 783-2831 (FAX)

HAND DELIVERED

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P. O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT
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ORIGINAL

**Re: Investigation Regarding Intrastate Access Charges and
IntraLATA Toll Rates of Rural Carriers, and the
Pennsylvania Universal Service Fund
Docket No. I-00040105**

Dear Secretary McNulty:

I am delivering for filing today the original plus three copies of the Answer and New Matter to the Joint Motion of The Rural Telephone Company Coalition, Office of Consumer Advocate, Office of Trial Staff and The United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania for the Commission to Further Stay This Investigation Pending Resolution of the FCC Inter-carrier Compensation Proceeding at CC Docket No. 01-92, on behalf of the Office of Small Business Advocate.

Two copies have been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

Sincerely,

Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Hon. Wendell F. Holland, Chairman
Pa. Public Utility Commission

Hon. James Cawley, Vice Chairman
Pa. Public Utility Commission

Hon. Kim Pizzigrilli, Commissioner
Pa. Public Utility Commission

Hon. Tyrone Christy, Commissioner
Pa. Public Utility Commission

Parties of Record

29

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Investigation Regarding Intrastate Access :
Charges and IntraATA Toll Rates of Rural : Docket No. I-00040105
Carriers, and the Pennsylvania Universal :
Service Fund :

**ANSWER AND NEW MATTER OF THE
OFFICE OF SMALL BUSINESS ADVOCATE
TO THE MOTION OF THE
RURAL TELEPHONE COMPANY COALITION,
OFFICE OF CONSUMER ADVOCATE,
OFFICE OF TRIAL STAFF, AND THE UNITED TELEPHONE COMPANY OF
PENNSYLVANIA d/b/a EMBARQ PENNSYLVANIA**

Pursuant to 52 Pa. Code §5.103(c), the Office of Small Business Advocate (“OSBA”) answers the Joint Motion of the Rural Telephone Company Coalition, Office of Consumer Advocate, Office of Trial Staff, and Embarq Pennsylvania (the “Moving Parties”) for the Commission to Further Stay this Investigation Pending Resolution of the FCC Inter-carrier Compensation Proceeding at CC Docket No. 01-92 (“Joint Motion”) filed with the Pennsylvania Public Utility Commission (“Commission”) on October 16, 2007.

Responses to the Joint Motion’s Numbered Paragraphs

1. Admitted.
2. The FCC Order at CC Docket No. 01-92 speaks for itself.
3. The averments of Paragraph 3 are denied, and the OSBA demands strict proof thereof.

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4. The proposals of the various parties to FCC CC Docket No. 01-92, as well as the so-called Missoula Plan, speak for themselves. It is admitted that the FCC proceeding could significantly impact the issues raised in this proceeding.

5. It is admitted that any action taken at the federal level could significantly impact the issues raised in this proceeding.

6. The FCC orders speak for themselves. It is admitted that any action taken by the FCC could significantly impact the issues raised in this proceeding.

7. The Commission Order in the Verizon Access Charge investigation speaks for itself. Furthermore, Pennsylvania Senate Bill 100 speaks for itself.

8. The proposals at both the federal and state levels speak for themselves.

9. It is admitted that the proceedings before the FCC have not yet concluded and could significantly impact the issues raised in this proceeding.

10. It is admitted that any action taken by the FCC could significantly impact the issues raised in this proceeding.

11. It is admitted that any action taken by the FCC could significantly impact the issues raised in this proceeding.

12. The averments of Paragraph 12 are requests for relief to which no response is required.

New Matter

13. If the Commission grants the Joint Motion, the Commission should state whether the RTCC / Sprint / OCA / OTS / OSBA Joint Access Proposal in Response to the Commission's Access Charge Investigation – Phase II (“Joint Access Proposal”) remains in effect. The Commission approved that Proposal by Order at Docket No. M-00021596 (Order entered July 10, 2003). The Joint Access Proposal capped the maximum weighted average R-1 rate at \$18, and limited increases to the weighted average business rates on a dollar basis to less than or equal to the increases to weighted average residential rates on a dollar basis.

14. The Joint Access Proposal indicated that the \$18 cap on weighted average residential rates would remain in effect “for a minimum three (3) year period January 1, 2004 through December 31, 2006.” Joint Access Proposal, “Elements of Proposal” section, Paragraph 4.

15. The Commission has taken no formal action to extend the cap on R-1 and business rates beyond December 31, 2006. Therefore, there is a question as to whether this, or any other, element of the Joint Access Proposal remains in effect.

Conclusion

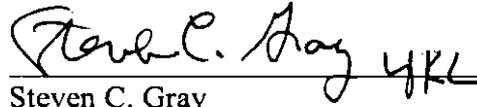
THEREFORE, the Office of Small Business Advocate requests that the

Commission:

- 1) Grant the Joint Motion in its entirety; and
- 2) State whether the caps on R-1 and business rates in the RTCC / Sprint /

OCA / OTS / OSBA Joint Access Proposal in Response to the Commission's Access Charge Investigation – Phase II remain in effect.

Respectfully submitted,



Steven C. Gray
Attorney I.D. No. 77538
Assistant Small Business Advocate

For:

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Small Business Advocate

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Dated: November 5, 2007

VERIFICATION

I, William R. Lloyd, Jr., hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information, and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

Date: November 5, 2007

William R Lloyd, Jr.
(Signature)

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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 :

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CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Answer and New Matter to the Joint Motion of the Rural Telephone Company Coalition, Office of Consumer Advocate, Office of Trial Staff, and The United Telephone Company of Pennsylvania For the Commission to Further Stay This Investigation Pending Resolution of the FCC Inter-carrier Compensation Proceeding at CC Docket No. 01-92, on behalf of the Office of Small Business Advocate, by e-mail and first class mail (unless otherwise noted) upon the persons addressed below:

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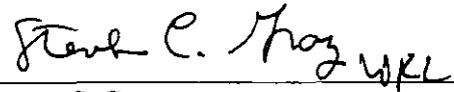
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Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

Date: November 5, 2007

CHRISTOPHER M. ARFAA, P.C.

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DOCUMENT
FOLDER

November 5, 2007

ORIGINAL

Via Federal Express – Overnight Delivery

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor, Room-N201
Harrisburg, PA 17120

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NOV 05 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Investigation Regarding Intrastate Access Charges and
IntraLATA Rates of Rural Carriers, and the Pennsylvania
Universal Service Fund, Docket No. I-00040105

DOCKETED
NOV 7 2007

Dear Secretary McNulty:

I write on behalf of Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless), an intervenor in the referenced matter.

On October 25, 2007, T-Mobile¹ filed a response to the October 16, 2007 joint motion seeking a further stay of this matter² (Joint Motion). T-Mobile's response states that, while reserving its rights on the substantive issues that have been raised, T-Mobile supports the request for further stay. T-Mobile's response also states, correctly, that Verizon Wireless concurs with T-Mobile's position as stated in the response. The purpose of this letter is to amplify and clarify Verizon Wireless's position on the issues raised by the Joint Motion.

First, Verizon Wireless intervened in this matter for the limited purpose of asserting that the Commission lacked jurisdiction under the Public Utility Code to impose state universal service contribution obligations on commercial mobile service providers such as Verizon Wireless. Verizon

¹ Omnipoint Communications inc. d/b/a T-Mobile, Ominpoint Communications Enterprises LLC d/b/a T-Mobile, and Voicestream Pittsburgh LP d/b/a T-Mobile (collectively referred to as T-Mobile).

² Joint Motion of the Rural Tel. Co. Coalition, Office of Consumer Advocate, office of Trial Staff, and Embarq Pennsylvania for the Commission to Further Stay This Investigation Pending Resolution of the FCC Intercarrier Compensation Proceeding at CC Docket No. 01-92, filed on or about Oct. 16, 2007, Pa. PUC Docket No. I-00040105.

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Wireless's intervention was in response to Question (e) set forth in the Commission's December 20, 2004 Order initiating the pending investigation, which asked whether the Commission should include wireless carriers in the definition of contributors to the Pennsylvania Universal Service Fund. Verizon Wireless and the other wireless intervenors have consistently asserted that, pursuant to 66 Pa. C.S.A. § 102, the Commission lacks jurisdiction over their provision of commercial mobile services and thus lacks authority to compel their contribution to the Fund.³ While ALJ Colwell issued an Order agreeing with the jurisdictional arguments raised by wireless carriers, she nevertheless declined to excuse the wireless carriers from participating in the pending proceeding.⁴ Verizon Wireless continues to take the position that the Commission lacks jurisdiction to impose universal service obligations on wireless carriers and, in any event, would not support any attempt to shift the burdens and costs of access reform to wireless carriers in the form of USF contributions or otherwise.

Second, we note that on September 11, 2006, in response to the preceding stay motion, the Verizon Pennsylvania wireline companies proposed bifurcation of this matter for the purpose of allowing proceedings to continue with respect to certain rural incumbent telephone companies' intrastate access rates. In their own joint response to that motion, Verizon Wireless and T-Mobile stated that they took no position on bifurcation for that purpose, "provided that any proceeding on that limited matter would neither address nor seek to respond to the issues raised in Question (e) set forth in the Commission's December 20, 2004 Order initiating this investigation, or any related issues."⁵ Similarly, while concurring in the instant request for stay generally, Verizon Wireless takes no position on whether the Commission should continue or initiate any proceeding with respect to the intrastate access rates of any specific rural incumbent telephone company, provided that any such proceeding neither addresses nor seeks to respond to the issues raised in or related to Question (e) set forth in the Commission's December 20, 2004 Order initiating this investigation.

³ See, e.g., Order Disposing of Motions, Docket I-00040105, slip op. at 1-6, 8 (June 8, 2005) (describing wireless carriers' position); see also Status Report of Wireless Carriers, Docket I-00040105, at 1 n.1 (filed Aug. 30, 2006) (re-asserting argument).

⁴ See Order Disposing of Motions, Docket I-00040105, slip op. (June 8, 2005).

⁵ Answer of the Wireless Carriers to the Motion of the Rural Telephone Company Coalition, Office of Consumer Advocate, Office of Trial Staff and Embarq for the Commission to further stay this Investigation Pending Resolution of the FCC intercarrier compensation proceeding at CC docket No. 01-92, Docket No. I-00040105, at 1-2 (filed Sept. 19, 2006).

Hon. James J. McNulty

November 5, 2007

Page 3

I have enclosed three additional copies of this letter and have provided copies to ALJ Colwell and to the parties as indicated on the attached Certificate of Service. Please do not hesitate to contact me should you have any questions.

Very truly yours,


Christopher M. Arfaa

cc: Hon. Susan D. Colwell
Certificate of Service

ORIGINAL

CERTIFICATE OF SERVICE

I, Christopher M. Arfaa, hereby certify that I have this day caused to be served a copy of the foregoing document upon the persons listed below by the means indicated in accordance with the requirements of 52 Pa. Code § 1.54:

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Kristin Smith
Qwest Communication Corporation
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Dated: November 5, 2007

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Verizon Pennsylvania Inc.
Verizon North
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Jennifer A. Duane, Esquire
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November 5, 2007

DOCUMENT
FOLDER

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

ORIGINAL

Re: Investigation Regarding Intrastate Access Charges and IntraLATA Rates
of Rural Carriers, and the Pennsylvania Universal Service Fund
Docket No. I-00040105

Dear Secretary McNulty:

I am counsel of record for Cellco Partnership d/b/a Verizon Wireless in the
referenced matter. My office address and contact information have changed. My new
information is as follows:

Christopher M. Arfaa
CHRISTOPHER M. ARFAA, P.C.
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NOV 05 2007

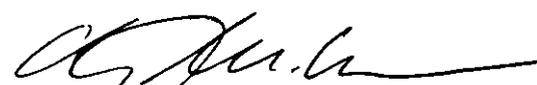
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

I have enclosed three additional copies of this letter and have provided copies to
ALJ Colwell and to the parties as indicated on the attached Certificate of Service.

Please do not hesitate to contact me should you have any questions. Thank you
for your assistance.

Very truly yours,

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NOV 07 2007


Christopher M. Arfaa

RJE

cc: Hon. Susan D. Colwell
Certificate of Service

alo

CERTIFICATE OF SERVICE

I, Christopher M. Arfaa, hereby certify that I have this day caused to be served a copy of the foregoing document upon the persons listed below by the means indicated in accordance with the requirements of 52 Ps. Code ' 1.54:

Via First Class Mail, Postage Prepaid

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Dated: November 5, 2007

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*Counsel for Cellco Partnership d/b/a
Verizon Wireless*

COMMONWEALTH OF PENNSYLVANIA

DATE: November 5, 2007

SUBJECT: I-00040105

DOCUMENT
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TO: Law Bureau

FROM:  James J. McNulty, Secretary

DOCKETED
NOV 05 2007

Investigation regarding rate issues related to disbursements
from Pennsylvania Universal Service Fund

Per e-mail dated November 2, 2007, from Frank Wilmarth, Law Bureau, pursuant to the Status Report and separate Joint Motion for Further Stay filed with the Secretary's Bureau on October 16, 2007, the above docketed proceeding is being reassigned to your Office for appropriate action.

cc: OSA

jih

Suzan DeBusk Paiva
Assistant General Counsel



ORIGINAL

Verizon Pennsylvania Inc.
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November 8, 2007

VIA UPS OVERNIGHT DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building, 2nd Floor
Harrisburg, PA 17120

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NOV 08 2007
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: Investigation Regarding Intrastate Access Charges and IntraLATA Toll
Rates of Rural Carriers, and the Pennsylvania Universal Service Fund
Docket No. I-00040105

Dear Mr. McNulty:

Enclosed please find the original and three copies of Verizon's Response to the Motion of the Rural Telephone Coalition, Office of Consumer Advocate, Office of Trial Staff, and Embarq for a Further Stay of This Investigation, in the above-captioned matter.

If you have any questions, please feel free to contact me.

Very truly yours,


Suzan D. Paiva

SDP/slb

VIA UPS DELIVERY
cc: ALJ Susan D. Colwell
Attached Certificate of Service

45

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Investigation Regarding Intrastate Access :
Charges and IntraLATA Toll Rates of : I-00040105
Rural Carriers, and the Pennsylvania :
Universal Service Fund :

**VERIZON'S RESPONSE TO THE MOTION
OF THE RURAL TELEPHONE COMPANY
COALITION, OFFICE OF CONSUMER ADVOCATE,
OFFICE OF TRIAL STAFF, AND EMBARQ FOR A
FURTHER STAY OF THIS INVESTIGATION**

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The rural incumbent local exchange carriers ("RLECs")¹ are seeking their third stay of an investigation that was opened to reduce extremely high RLEC switched access rates and to consider altering or eliminating the "interim funding mechanism"² of the state universal service fund ("USF"). These two vehicles supply the RLECs with substantial subsidies by forcing a transfer of revenue"³ from other telephone carriers to the RLECs. Having staved off any substantive progress in this investigation for almost three years now, the RLECs once again seek to delay the day when they finally must try to justify this flow of subsidies on the merits. Verizon⁴ opposes continuation of a full

¹ The Motion for a stay was filed by the Rural Telephone Company Coalition ("RTCC"), a group comprised of the rural ILECs identified in footnote one to the Motion, along with the Office of Consumer Advocate ("OCA"), Office of Trial Staff ("OTS"), and The United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania ("Embarq").

² *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 (Opinion and Order entered December 20, 2004) at 3.

³ *See Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 (Opinion and Order entered November 15, 2006) at 6 (quoting *Global Order* at 142) (conceding that the USF is nothing but an "exchange of revenue" from some carriers to others).

⁴ This response is filed on behalf of the Verizon ILECs, Verizon Pennsylvania Inc. and Verizon North Inc., as well as Verizon's CLEC, MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, (collectively referred to as "Verizon"). This matter also affects Verizon's IXC affiliates, which reserve the right to join as parties when the investigation commences substantively. Verizon Wireless has made a separate filing on this issue.

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stay of this investigation, and instead urges the Commission to act now to reduce the gap between the highest RLEC access rates and the rates Verizon and other carriers are permitted to charge for the same services.

Every year that these subsidies are allowed to remain in place unexamined, other carriers are required to divert millions of new dollars from their own networks to the RLECs. This enormous revenue flow from other carriers to the RLECs should be a matter of urgent concern to the Commission. In 2006 the state USF paid out almost \$34 million in subsidies, and it has paid a total of over \$250 million since its inception in 2000 – all funded by other carriers. At the same time, the Commission has allowed the RLECs to avoid any meaningful examination of their access rates, and has not required any RLEC access rate reductions since 2003. This lack of action has contributed to a widening gap between many of the RLECs' excessive Pennsylvania intrastate access rates and the much lower rates charged for the same access services by the Verizon ILECs and other carriers, as well as the lower rates that the FCC permits RLECs to charge for the same type of access services in the interstate jurisdiction.

For example, while Verizon charges on average about 1.7 cents per minute for intrastate switched access service in Pennsylvania – a rate that a Commission ALJ has recognized is “well below the national average” for ILEC intrastate access rates⁵ -- most of the RLECs' switched access rates average over 4 cents per minute, and some are as high as even 7 or 10 cents per minute. And while Verizon's carrier charge is 58 cents per line per month, most RLECs still maintain much higher carrier charges. Many range

⁵ *AT&T Communications of Pennsylvania, LLC v. Verizon North Inc.*, Docket No. C-20027195 (Recommended Decision on Remand, November 30, 2005) at 64.

around from \$4 per line, per month, but some are as high as \$10 or even over \$15 per line, per month.⁶

While certain RLECs steadfastly maintain that they require these extremely high access rates to operate – an argument they have avoided proving for years – some have broken ranks and reduced their rates to much lower levels, calling into question why the others cannot do the same.⁷ Similarly, most CLECs operating in Verizon territory comply with Act 183’s requirement to charge access rates no higher than Verizon’s.⁸ Most RLECs, however, continue to charge access rates many multiples of the rates charged by Verizon and these other carriers.

This Commission already determined that RLEC access rates should be lowered, and there is no reason to wait any longer to start moving those rates in the right direction. For almost ten years now this Commission’s goal has been to reduce access charges – and particularly extremely high RLEC access rates. While it has significantly reduced Verizon’s access rates – so that they are “well below the national average” – it has made no similar progress in achieving that goal for most RLECs. The RLECs have avoided consideration of the merits of this issue for almost a decade. The *Global Order* in 1999 called for an investigation to be initiated “on or about January 2, 2001, to further refine a solution to the question of how the Carrier Charge (CC) pool can be reduced,” and

⁶ See, e.g., PTA Access Tariff No. 11 carrier charges: Citizens Telephone Co. of Kecksburg \$11.18, Ironton Telephone Co. \$17.99, Marianna & Scenery Hill Telephone Co. \$16.50, Palmerton Telephone Co. \$10.03, South Canaan Telephone Co., \$11.02.

⁷ See, e.g., Frontier Communications of Pennsylvania, LLC Tariff Pa. PUC 15, Supplement 15, Section 3, Sixth Revised Sheet 4 and Section 6, Fourth Revised Sheet 122.

⁸ See 66 Pa. C.S. § 3017(c). Verizon filed three complaints against CLECs that have failed to comply with this statute, and those matters are pending before the Commission.

directed that at the conclusion of this investigation “the pool will be reduced.”⁹ Rather than commence the investigation in early 2001, the Commission gave the RLECs additional time “to put together a settlement proposal in an effort to save time and costs involved with litigation and to narrow the issues.”¹⁰ It was clearly the intent that this “settlement proposal” would propose to further reduce their access rates.

In January of 2002, the Commission “opened a docket at M-00021596 . . . to accommodate the access charge investigation required by the *Global Order* in the form of a collaborative proceeding.”¹¹ On July 15, 2003, it approved a joint RLEC proposal to rebalance their rates in defined steps by increasing end user rates and decreasing access rates, which the Commission explained was simply “the next transitional step in access charge reform in Pennsylvania in an attempt to avoid a rate shock to Pennsylvania local telephone consumers.”¹² In adopting the Joint Proposal, the Commission held that it would “not require the ILECs to incur the expense of producing detailed cost studies” at that time, but cautioned the RLECs that it expected their access rates to continue to decrease, stating “we do not intend to declare the access rates established by this Order as the final word on access reform. Rather, this is the next step in implementing continued access reform in Pennsylvania in an efficient and productive manner.”¹³ By order entered December 20, 2004 the Commission opened the present investigation “to consider whether intrastate access charges and intraLATA toll rates in rural ILECs’ territories

⁹ *Global Order* at 56.

¹⁰ *Access Charge Investigation per Global Order of September 30, 1999*, Docket Nos. M-00021596, etc., (Opinion and Order entered May 5, 2003).

¹¹ *Id.*

¹² *Access Charge Investigation per Global Order of September 30, 1999*, Docket Nos. M-00021596, etc., (Opinion and Order entered July 15, 2003).

¹³ *Id.*

should be *decreased* and to consider any and all rate issues and rate changes that should or would result in the event that disbursements from the Pennsylvania Universal Service Fund are reduced and/or eliminated.”¹⁴

But there has been no substantive progress in this case. On August 30, 2005, at the RLECs’ request, the Commission stayed that investigation for a period not to exceed twelve months to await developments at the Federal Communication Commission (“FCC”) regarding intercarrier compensation. By order entered November 15, 2006 the Commission extended that further stay for another 12 months. Shortly thereafter, on reconsideration, the Commission reiterated its “strongly expressed” policy “for further access reductions” by the RLECs, but still required no action.¹⁵

Once again the RLECs argue that this Commission should keep their excessive access rates in place for another year, to await action by the FCC on its pending Intercarrier Compensation Proceeding at CC Docket No. 01-92. While the FCC should and is expected to address the interrelated issues of intercarrier compensation and universal service in a comprehensive fashion, this Commission should act now to address the problem of excessive RLEC intrastate access rates in Pennsylvania. Bringing RLEC access rates into line with the access rates charged by all other carriers in the Commonwealth is fully consistent with the FCC’s approach. The FCC has *already* decided that economically efficient competition and the consumer benefits it yields cannot be achieved as long as carriers seek to recover a disproportionate share of their

¹⁴ *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 (Opinion and Order entered December 20, 2004), Ordering ¶ 1 (emphasis added).

¹⁵ *Denver and Ephrata Telephone and Telegraph Company Supplement No. 251 to Tariff PA PUC No. 15 and Supplement No. 10 to Tariff PA PUC No. 16*, Docket No. R-00061377; *2006 Annual Price Stability Index / Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company*, Docket No. P-00981430F1000 (Opinion and Order entered December 8, 2006) (emphasis added).

costs from other carriers, rather than from their own end users.¹⁶ The FCC emphasized that such irrational access rate structures “lead to inefficient and undesirable economic behavior.” *CALLS Order*, ¶ 129. With specific regard to relatively small, rural carriers, the FCC found that rationalizing their switched access rates will enhance incentives for interexchange carriers to originate service in rural areas and will foster facilities-based competition for residential subscribers in those areas. *MAG Order*, ¶ 11.

With the expiration of the second 12-month stay, the Commission should reopen this case and take concrete steps to implement the decision that it made years ago to reduce excessive RLEC access rates closer to the level that other carriers are permitted to charge. The Commission should not allow these excessive access rates to remain in place for another year, as the RLECs request. It should instead at least require the RLECs to make substantial progress to reduce their access rates. In particular, it should require each RLEC to file and serve on all parties to the investigation information disclosing its intrastate switched access rate elements and its average rate per minute of use for the year 2006 and for available periods of 2007. It should then convene an accelerated proceeding to determine whether each RLEC should implement access rate reductions/rebalancings in the upcoming year. What the Commission should *not* do is allow the RLECs with extremely high access rates to keep those rates in place for yet another year.¹⁷

¹⁶ See generally *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board On Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (May 31, 2000) (“*CALLS Order*”); *Multi-Association (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report & Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report & Order in CC Docket No. 96-45, and Report & Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) (“*MAG Order*”).

¹⁷ Verizon intends to ask the Commission to continue for another year its stay of the Verizon access case at Docket C-20027195 to await action in the FCC intercarrier compensation proceeding. The access

Notwithstanding the pendency of the FCC proceeding, other states have acted to address this unfair gap between small LEC access rates and those charged by other carriers such as the large ILECs. For example, an administrative law judge of the California Public Utilities Commission issued a recommendation on October 16, 2007 taking steps to eliminate the disparity between the access rates charged by the large ILECs and those charged by RLECs. The California decision would cap the access rates of mid-sized independent ILECs at no greater than the rates charged by Verizon or AT&T, and require small ILECs to phase out non-cost based access rate elements over their next two rate cases.¹⁸ This Commission, too, should take concrete steps to eliminate the disparity between many RLECs' excessive access rates and those charged by Verizon and other carriers, even if it chooses to wait for the FCC's guidance on other aspects of universal service and intercarrier compensation.

In addition to proceeding with an immediate investigation targeted at achieving real reductions to excessive RLEC access rates over the next year, the Commission also should ensure that RLECs cannot backslide from the *status quo* with respect to any related issues for which the Commission might stay action to wait for the FCC. **First,**

rates of Verizon, as well as certain of the RLECs and most CLECs, are already relatively low and the Commission need not take urgent action without waiting for the FCC to address more comprehensively the interrelated issues of intercarrier compensation. Indeed, if the Commission is to shrink the unfair gap between the excessive rates of certain RLECs and these other carriers' rates, then it must proceed with some action as to the RLECs while staying action as to Verizon. Any further reduction in Verizon's rates would require all CLECs to reduce their rates or demonstrate cost justification for higher rates. 66 Pa. C.S. § 3017(c). Forcing these carriers to reduce their already low access rates before addressing the untenable situation of the RLEC access rates would only widen the already considerable gap between what the RLECs are charging versus what other carriers are permitted to charge for the same service. Moreover, Verizon has already submitted cost studies and opened this issue up to scrutiny on the merits, and has implemented substantial access reductions since the *Global Order*. The RLECs should be required to do the same, so that the Commission has a complete record before it. In sum, the RLEC problem must be addressed first.

¹⁸ *Order Instituting Rulemaking To Review Policies Regarding Intrastate Access Charges*, Rulemaking No. 03-08-018, Final Opinion Modifying Intrastate Access Charges (CA PUC October 16, 2007).

consistent with its November 15, 2006 order issuing the second stay of this investigation, the Commission should explicitly prohibit any RLEC from increasing its switched access rates during the stay period.¹⁹ **Second**, the Commission should require the RLECs to comply with all orders arising out of the second stay of this investigation in 2006, including making Verizon and other carriers whole for the subsequently rejected attempts by certain of the moving parties to raise their access rates during the period of the stay.²⁰ **Third**, if it is going to stay consideration of the merits of altering or eliminating the USF, then the Commission should decline to entertain any arguments to expand the USF during the period of the stay, including increasing any carrier's collection from the USF, but rather should maintain the *status quo* on the size and configuration of the USF – which already provides the RLECs with over \$30 million in subsidies each year.

RESPONSE TO INDIVIDUAL PARAGRAPHS OF MOTION

1. The Commission's July 15, 2003 Order at docket number M-00021596 is in writing and speaks for itself, and all characterizations are denied.
2. The FCC's March 3, 2005 Order at docket number 01-92 is in writing and speaks for itself, and all characterizations are denied.

¹⁹ See 11/15/06 Order at 5 (RLECs seeking to increase access rates during the stay period "should be prepared to fully support the justness and reasonableness of any proposed increase to intrastate access charges during the stay of this proceeding both in regard to Chapter 30 and the policies that underlie the Pennsylvania Universal Service Fund.")

²⁰ In its November 15, 2006 Order issuing the second stay the Commission initiated expedited proceedings to reconsider the D&E companies' rate increases and specifically noted that revenues from D&E's increased access charges "may be subject to refund." (11/15/06 Order, Ordering ¶ 10). By Order entered July 11, 2007 the Commission rejected D&E's access rate increases and directed the D&E companies to reduce their tariffed rates going forward and to "provide refunds for access rates from November 15, 2006. . ." (7/11/07 Order, Ordering ¶ 4). The D&E companies filed a Petition for Reconsideration ("PFR"), which did not challenge the invalidation of the access rate increases or the required refund, but simply argued that one of the three D&E ILECs should be reimbursed for its portion of the refund through the state USF. While D&E filed tariff supplements decreasing its access rates going forward, D&E has not provided Verizon the refund of overpayments from November 15, 2006 through August 13, 2007.

3. This paragraph contains assertions of fact that the RLECs must prove by assembling an evidentiary record on these issues. Verizon generally admits that access, local and toll rates are a source of revenue for the RLECs, but the very issue to be addressed in this investigation is whether those RLECs that still maintain excessive intrastate switched access rates should be required to reduce them.

4. Verizon admits that various proposals have been submitted to the FCC, including the proposal referred to as the "Missoula Plan." Those proposals are in writing and speak for themselves and all characterizations are denied.

5. Any legislation that has been proposed before Congress is a matter of public record and is in writing and speaks for itself. All characterizations are denied. Moreover, the RLECs' claims about what Congress "may" do are nothing but speculation.

6. The uncited orders of the FCC discussed in this paragraph are in writing and speak for themselves, and all characterizations are denied.

7. Verizon admits that on January 8, 2007 the Commission issued an order at Docket C-20027195 staying a case involving the intrastate switched access rates of the Verizon ILECs (Verizon PA and Verizon North). That order is in writing and speaks for itself and all characterizations are denied. Verizon further admits that a bill relating to Voice over Internet Protocol ("VoIP") service known as Senate Bill 1000 is pending before the Pennsylvania Senate. That bill is in writing and speaks for itself and all characterizations are denied. Verizon specifically denies that the bill, if passed, "could directly impact intrastate access charges" or the state USF. The bill does not concern either of these issues.

8. This Commission has already found that matters that may be decided by the FCC could impact the issues before the Commission in this investigation. The question before the Commission is whether it should act now to reduce the untenable gap between the excessive access charges of many RLECs and the rates charged by other carriers for the same service. It should do so.

9. This paragraph sets forth the RLECs' request for relief. For the reasons set forth in the introductory portion of this response (which are incorporated), Verizon opposes the continuation of the stay of this investigation.

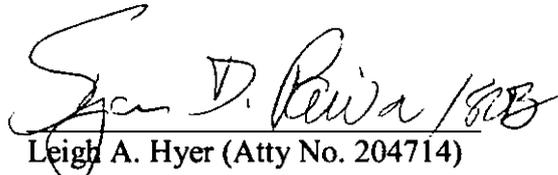
10. Verizon admits that one issue before the FCC is whether it can and should preempt state jurisdiction over intrastate access charges. The RLECs' discussion of what the FCC might do with that issue is nothing but speculation. The question before the Commission is whether it should act now to reduce the untenable gap between the excessive access charges of many RLECs and the rates charged by other carriers for the same service. It should do so.

11. The RLECs' discussion of what might happen if the FCC takes certain action is nothing but speculation. Verizon agrees that these are important considerations, and indeed were at least in part the basis for the Commission's previous stay orders. However, simply assembling a full record on the issues surrounding the RLECs' excessive access rates will not cause any harm. The Commission can then determine on a full record whether it would be prudent and sound public policy to reduce the access rates of those RLECs that have been permitted to maintain excessive access rates for years now. The RLECs would then be required to support their rhetoric with evidence.

12. This paragraph sets forth the RLECs' request for relief. For the reasons set forth in the introductory portion of this response (which are incorporated), Verizon opposes the continuation of the stay of this investigation.

CONCLUSION

For the foregoing reasons, the Commission should deny the motion to extend the stay of this investigation and should act promptly to reduce excessive RLEC access rates as described in this response.



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Dated: November 8, 2007

Attorneys for Verizon Pennsylvania Inc.,
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Verizon's Response to the Motion of the Rural Telephone Coalition, Office of Consumer Advocate, Office of Trial Staff, and Embarq for a Further Stay of This Investigagion, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 8th day of November, 2007.

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November 8, 2007

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ORIGINAL

Re: Investigation Regarding Intrastate Access Charges and
IntraLATA Toll Rates of Rural Carriers, and the
Pennsylvania Universal Service Fund
Docket No. I-00040105

Dear Mr. McNulty:

Enclosed for filing please find an original and three copies of the Answer of AT&T Communications of Pennsylvania, LLC to the Joint Motion of the Rural Telephone Company Coalition, Office of the Consumer Advocate, Office of Trial Staff, and Embarq Pennsylvania for the Commission to Further Stay This Investigation Pending Resolution of the FCC Intercarrier Compensation Proceeding at CC Docket No. 01-92.

Respectfully submitted,


Amanda L. Mulvaney

ALM:nmr
Enclosures

cc: Attached service list

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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)

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**ANSWER OF AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC TO THE
JOINT MOTION OF THE RURAL TELEPHONE COMPANY COALITION,
OFFICE OF THE CONSUMER ADVOCATE, OFFICE OF TRIAL STAFF, AND
EMBARQ PENNSYLVANIA FOR THE COMMISSION TO FURTHER STAY
THIS INVESTIGATION PENDING RESOLUTION OF THE FCC
INTERCARRIER COMPENSATION PROCEEDING AT CC DOCKET NO. 01-92**

Over eight years ago the Commission's *Global Order* promised that access rates would be reduced and implicit subsidies would be eliminated. Ongoing delays in this proceeding are perpetuating ICO access rates that far exceed the ICOs' corresponding interstate rates for the exact same functionality. Access charges for one of the largest ICOs, Commonwealth Telephone, are more than *7 cents per access minute*, far exceeding its 2.7 cent interstate charges, and *more than four times higher than Verizon's corresponding intrastate charges*. Another large ICO, Embarq, is maintaining intrastate access charges of nearly 5 cents per access minute, while its corresponding interstate charges are less than a penny. Likewise, Denver & Ephrata continues to have intrastate access charges approaching 6 cents per minute, but less than 2.5 cents interstate. North Pittsburgh's intrastate access charges are nearly 5 cents per minute, but interstate charges just slightly above 2 cents. Conestoga's intrastate charges are nearly 4.5 cents per minute, but its interstate charges are only 2.7 cents. As a general matter, these

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relationships hold true for virtually all of Pennsylvania's ICOs, large and small, in all parts of the Commonwealth.

These high ICO access rates are distorting Pennsylvania telecommunications prices. They make long distance prices higher than they should be for all Pennsylvanians, including (because long distance rates are averaged) consumers in Pittsburgh and Philadelphia. The implicit subsidies hidden in access charges cause rates for some services to be under-priced, while other rates remain too high. As a result, the pricing signals being given to Pennsylvania customers are blurred, resulting in consumers shifting usage to services which may be less economically efficient (but subsidized), and causing telecommunications-dependent businesses to configure their services in ways that avoid being saddled with disproportionate subsidy obligations, or in some instances, causing those employers to locate in other states where telecommunications pricing is more economically rational. At bottom, the implicit cross-subsidies inherent in Pennsylvania access rate are a regulatory house-of-cards that simply cannot be maintained in a competitive telecommunications market.

The Commission should resume this proceeding with the objective of removing implicit subsidies by reducing intrastate ICO access rates to appropriate levels and, in general, rebalancing reduced ICO revenues through, for example, increases to retail rates and a state universal service funding mechanism. This will result in more economically rational prices for all ICO services.

For these reasons, and as explained more fully herein, AT&T Communications of Pennsylvania, LLC (AT&T"), pursuant to 52 Pa. Code §§ 5.61 and 5.103, opposes the Joint Motion of The Rural Telephone Company Coalition ("RTCC"), the Office of the

Consumer Advocate (“OCA”), the Office of Trial Staff (“OTS”) and Embarq Pennsylvania (“Embarq”) to delay this Investigation for yet another year pending the outcome of the Federal Communications Commission’s (“FCC”) intercarrier compensation proceeding at Docket No. 01-92 (“IC Docket”). An eight year delay has been long enough.

I. Background

1. The Commission instituted this specific proceeding on December 20, 2004, to consider “whether there should be further intrastate access charge reductions... in the service territories of rural incumbent local exchange carriers...”¹ At the outset, this case was to be an important next step in the Commission’s continuing commitment to reduce switched access charges² within the Commonwealth, a commitment first made over eight years ago in the September 30, 1999 *Global Order*.³ The *Global Order* reduced the switched access charges of all Pennsylvania local incumbent exchange carriers, but made special note that rural local exchange carriers recognized the need to reform both access rates and toll rates on a revenue neutral basis in order to have an opportunity to remain competitive on a going-forward basis.⁴ The *Global Order* also recognized the need to

¹ *Order Instituting Investigation*, Docket No. I-00040105, entered December 20, 2004 at 1. The Order further provided for investigation of rural carrier intraLATA toll rates and consideration of whether rate changes should await the determination of whether disbursements from the Pennsylvania Universal Service Fund were reduced. *Id.*

² The Commission has declared special access charges to be competitive – these proceedings involve switched access charges. Opinion and Order in Dockets I-00040105, P-00981428F1000, R-00061375, P-00981429F1000, R-00061376, P-00981430F1000 and R-00061377 (July 11, 2007), at 8 (citing to the *Global Order*).

³ *Re Nextlink Pennsylvania, Inc.*, Docket No. P-00991648; P-00991649, 93 PaPUC 172 (September 30, 1999)(“*Global Order*”).

⁴ *Id.* at 52. The Order also cited the testimony of witness Laffey, who noted that existing implicit subsidies in rural carrier access rates and toll revenue streams needed to be removed and rebalanced, and that the RTCC Settlement Plan “reflects a first step in the process of addressing access reform and universal

eliminate implicit subsidies from access charges in Pennsylvania. Specifically, the *Global Order* stated as follows:

“Recognizing the vulnerability of implicit subsidies to competition, TA-96 requires that the FCC and the states take the necessary steps to strive to replace the system of implicit subsidies with "explicit and sufficient" support mechanisms to attain the goal of universal service in a competitive environment.”⁵

2. The Commission has since reiterated its commitment to reduce access charges, especially in rural areas, going so far as to explicitly endorse access reductions as an important public policy objective. As recently as July, 2007, in an *Opinion and Order* rejecting proposals by some rural ICOs to actually *increase* access rates,⁶ the Commission again underscored the importance of continuing its policy to reduce high access charges:

It is important to note that since the *Global Order* of September 30, 1999, this Commission has been lowering intrastate access charges in an effort to transition from a monopolistic to a competitive environment in rural areas within the Commonwealth. Generally, since *Global*, we have only discussed the reduction of access charges. The fact that we never expressly stated that increases to access charges were precluded... does not mean the Commission intended to carve out an exception to our general public policy rule of lowering intrastate access charges...⁷

service. It is not intended as a final solution. It is proposed as an interim measure to allow the Commission to begin to address these issues while providing additional time to develop a permanent plan.” *Id.* at 53, 54.

⁵ *Global Order* at 26.

⁶ Opinion and Order in Dockets I-00040105, P-00981428F1000, R-00061375, P-00981429F1000, R-00061376, P-00981430F1000 and R-00061377 (July 11, 2007). In this proceeding, several rural local exchange carriers known collectively as “The D&E Companies” sought unsuccessfully to raise switched access rates.

⁷ *Id.* at 7, citing to the Commission’s November 15, 2006 *Investigation Order*.

The Commission's *Opinion and Order* further noted that:

We agree with Verizon that Act 183 and Section 3017(a) support this Commission's policy goals that local exchange carriers reduce dependence on access revenue from other carriers and rebalance those revenues.⁸

3. On August 30, 2005, believing that federal action affecting access charges and universal service could be imminent, the Commission entered an Order in this Proceeding ("*August 30, 2005 Order*") staying the investigation for one year, or until the FCC issued a ruling in its pending intercarrier compensation proceeding found at CC Docket No. 01-92,⁹ whichever occurred earlier. The Commission specifically refused the ICOs' request to delay the case indefinitely or for a period of twenty-four months, stating that it was important to "balance the interests of the participating parties in this investigation and of the end-user consumers of telecommunications services within Pennsylvania." *August 30, 2005 Order* at 17.

4. Likewise, over a year later, on November 16, 2006 ("*November 16, 2006 Order*"), in response to a joint motion of the rural local exchange carriers and others similar to the instant Joint Motion, the Commission once again stayed this proceeding for another year in anticipation of federal action.

5. To date, however, there has been no federal action by way of enacted legislation or a further FCC order affecting intrastate access charge levels or universal service.

6. Although AT&T is steadfast in its view that the FCC and/or Congress should implement intercarrier compensation reform as quickly as possible and that the Missoula

⁸ *Id.* at 34, 35.

⁹ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 05-33, Further Notice of Proposed Rulemaking (released March 3, 2005)("FNPRM").

Plan is the appropriate framework for doing so, at this juncture there is nothing to indicate that the FCC or Congress intends to act anytime soon. Indeed, given the upcoming federal elections; the issues that are already on the FCC's agenda; and the complexities of crafting comprehensive national solutions to these issues, resolution is unlikely in the short term.

II. Argument

7. The lack of progress on comprehensive reform at the national level provides an opportunity for the states to act on access and universal service reform. That should be a welcome development for this Commission because, indeed, the Commission has indicated that is precisely what it wants. This Commission's FCC Comments opposing the Missoula Plan made clear that this Commission prefers to forge ahead with its own access reform and rate rebalancing policies:

Pennsylvania created a self-contained state universal service fund and an \$18 residential local rate cap, supported by our state universal service fund, to comply with federal law while balancing economic with universal service on a competitively neutral basis. **The disproportionate benefits set out in [Missoula] undermine Pennsylvania's efforts by relying on an unnecessarily broad preemption of state authority. The proposed preemption stops Pennsylvania from continuing these local and access rate reforms.**¹⁰ (emphasis added).

Re-starting this proceeding will enable the Commission to put its words into action. If the Commission wants to "continu[e] local and access rates reforms" as it has indicated to the FCC, this proceeding will enable the Commission to deal with Pennsylvania access charges that are too high, to wean ICOs from dependence on access subsidies, and to

¹⁰ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Docket No. CC 01-92, Comment of the Pennsylvania Public Utility Commission, at 5 (filed October 26, 2006).

rebalance ICO rate structures in a economically rational manner that will further development of efficient competitive markets here in Pennsylvania.¹¹

8. The Joint Movants' request for yet another stay cannot be squared with the Commission's December 20, 2004 Order commencing this proceeding:

As stated in our prior Order of July 15, 2003, at M-00021596, In re: Access Charge Investigation per Global Order of September 30, 1999, at 12, at that time we did not declare the access rates established by that Order as the final word on access reform. Rather, we characterized the Order as the next step in implementing continued access reform in Pennsylvania in an efficient and productive manner... In the Commission's judgment it is now an appropriate time to consider further access charge reform.¹²

9. Likewise, the Joint Movants' request is at odds with the Commission's July, 2007 Order rejecting ICO attempts to increase access rates:

[G]enerally, since *Global*, we have only discussed the reduction of access charges. The fact that we never expressly stated that increases to access charges were precluded... does not mean the Commission intended to carve out an exception to our general public policy rule of lowering intrastate access charges...¹³

* * * * *

We agree with Verizon that Act 183 and Section 3017(a) support **this Commission's policy goals that local exchange carriers reduce dependence on access revenue from other carriers and rebalance those revenues.**¹⁴ (emphasis added).

¹¹ Opinion and Order in Dockets I-00040105, P-00981428F1000, R-00061375, P-00981429F1000, R-00061376, P-00981430F1000 and R-00061377 (July 11, 2007), at 7, citing to the Commission's November 15, 2006 *Investigation* Order.

¹² *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 (December 20, 2004).

¹³ Opinion and Order in Dockets I-00040105, P-00981428F1000, R-00061375, P-00981429F1000, R-00061376, P-00981430F1000 and R-00061377 (July 11, 2007), at 7, citing to the Commission's November 15, 2006 *Investigation* Order.

¹⁴ *Id.* at 34, 35.

10. Although the Joint Movants argue that it would be “unreasonable, unproductive, impractical and inefficient” for this Commission to act further on rural access reform in advance of the FCC,¹⁵ just the opposite is true. The Commission, in the interests of securing reasonable, productive, practical and efficient implementation of Pennsylvania-specific access reform and rate rebalancing policies must act now to rekindle the investigation. As shown in the opening paragraph of this pleading, ICO access rates remain exceedingly high more than eight years after the Commission promised to fix the problem.

11. Finally, even if the Commission prefers to move cautiously due to the prospects of federal intercarrier compensation reform, there is still no harm in moving this proceeding along *now*. The litigation of this case is going to take time. Once the Commission resumes this proceeding, it will be some months before discovery is completed, hearings are held, briefs are filed, a Recommended Decision is issued, and the Commission has before it a Pennsylvania-specific record that will facilitate further Pennsylvania-specific access reform and rate rebalancing. If during the course of this Commission’s investigation it becomes apparent that interstate reform is imminent, or even likely, the Commission could again defer this proceeding, or could craft a state remedy to be consistent with whatever federal action will be implemented. Were that to occur, the work effort put forward in this proceeding would not be wasted, because the information gathered would give the Commission, its Staff and the parties a much clearer picture of where Pennsylvania stands.

¹⁵ Joint Motion at par. 9, p. 7.

III. Conclusion

An eight year wait for ICO access reform and rate rebalancing is far too long. A two and one-half year stay in this proceeding has harmed Pennsylvania consumers and Pennsylvania's economic development. AT&T respectfully requests that this Commission reject the Joint Motion and resume this investigation to determine how best to reduce ICO access charges, rebalance rates, and promote competition within the Commonwealth.

IV. AT&T's Response to the Joint Motion's Numbered Paragraphs

AT&T responds to the specific allegations of the Joint Motion as follows:

1. Admitted. AT&T adds that the Commission formally initiated this proceeding in its December 20, 2004 Order in the above-captioned matter.
2. Admitted in part, in that the FCC has instituted the Uniform Carrier Compensation proceeding, CC Docket No. 01-92. The remaining allegations are conclusions of law or paraphrase the FCC proceedings which speak for themselves; therefore, AT&T neither admits nor denies same.
3. Admitted in part, in that rural local exchange carriers do rely in part on access charges, toll charges and local service charges for parts of their revenue. AT&T avers that the remainder of this paragraph contains incomplete information (e.g., it does not admit that rural carriers also derive income from other sources, including yellow pages, directories, vertical features, Internet services and the like), and also contains legal and policy conclusions which AT&T neither admits nor denies.

4. Admitted in part, in that the Missoula plan was filed with the FCC, and that the Plan has undergone several amendments and changes. AT&T admits that the plan has faced opposition. AT&T further denies that moving forward with the instant Pennsylvania access proceedings would pose any risk, "grave" or otherwise, to Pennsylvania's rural local exchange carriers. AT&T neither admits nor denies those allegations that are conclusions of law or policy, as Pennsylvania and FCC proceedings speak for themselves.

5. Admitted in part, in that in the Spring of 2007 there was introduced in the House of Representatives a bill entitled "Universal Service Reform Act of 2007," and also that the Federal-State Joint Board on Universal Service announced in September of 2007 that it was "taking a fresh look at high cost universal service support." The remaining allegations concerning the need to let federal regulators deal with the "complexities" of Pennsylvania's rural access and universal service issues, and suggesting the need for another stay, are denied.

6. AT&T makes no answer to these allegations as the referenced FCC dockets speak for themselves.

7. AT&T admits the allegations in part, in that the Commission has stayed these proceedings in the past, and there is a VoIP bill pending in Pennsylvania. AT&T denies that the allegations concerning delay and further delay of these proceedings are wise or warranted, or that the VoIP bill has anything to do with affecting the Commonwealth's rural access and rebalancing policies.

8. AT&T makes no answer to these allegations as they are merely Joint Movants' conclusions of law or policy.

9. AT&T denies these allegations, and avers again that further delay by this Commission would be counterproductive and harmful to the Commonwealth.

10. AT&T makes no answer to these allegations concerning preemption as they are conclusions of law. AT&T denies that there is a high degree of probability of impending federal action, or that any such action would negatively impact the Commonwealth should this Commission implement its pro-competitive access reform policies prior to continuing to await the possible intervention of other regulatory forces. AT&T avers that further delay in these proceedings poses the real threat to Pennsylvania.

11. AT&T admits in part only that potential FCC action in this realm, should it ever occur, could have some impact in Pennsylvania. AT&T denies that the Commonwealth will incur any risks associated with continuing once again to implement its pro-competitive access reform and rebalancing policies.

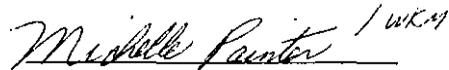
12. AT&T denies these allegations, as further delay in this arena can only harm the Commonwealth and its pro-competitive access reform and rebalancing policies.

WHEREFORE, for all of the foregoing reasons, AT&T respectfully requests that the Commission:

- (1) Deny the Joint Movants' latest motion to delay these proceedings another year;
- (2) Reopen the instant proceedings concerning rural access charges and rate rebalancing in order to continue to implement the Commonwealth's pro-competitive access reform and rebalancing policies;
- (3) Establish a procedural schedule; and

(4) Grant such further relief consistent with the foregoing that it deems reasonable and just.

Respectfully submitted,



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DATE: November 8, 2007

**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)

CERTIFICATE OF SERVICE

I hereby certify that I have on this 8th day of November, served a true and correct copy of the foregoing Answer on behalf of AT&T Communications of Pennsylvania, LLC to the Joint Motion of the Rural Telephone Company Coalition, Office of the Consumer Advocate, Office of Trial Staff, and Embarq Pennsylvania for the Commission to Further Stay This Investigation Pending Resolution of the FCC Intercarrier Compensation Proceeding at CC DOCKET NO. 01-92 upon the persons listed below:

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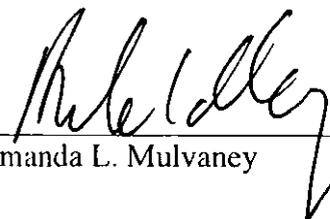
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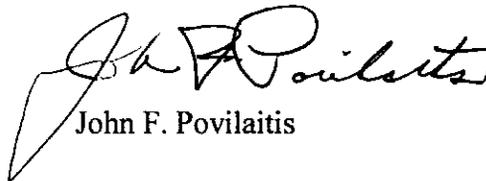
Re: Investigation Regarding Intrastate Access Charges and IntraLATA
Toll Rates of Rural Carriers and the Pennsylvania Universal
Service Fund, Docket No. I-00040105

DOCUMENT
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Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of the Answer of Qwest Communications Corporation to the New Matter of the Office of Small Business Advocate to the Motion of the Rural Telephone Companies, Office of Consumer Advocate, Office of Trial Staff and the United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania to further stay the above-captioned investigation. Copies have been served in accordance with the attached Certificate of Service.

Very truly yours,


John F. Povilaitis

Enclosures
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c: Certificate of Service
The Honorable Susan D. Colwell

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BEFORE THE
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Investigation Regarding Intrastate Access :
Charges and IntraLATA Toll Rates of Rural :
Carriers and the Pennsylvania Universal :
Service Fund :

Docket No. I-000405

**ANSWER OF QWEST COMMUNICATIONS CORPORATION TO THE NEW
MATTER OF THE OFFICE OF SMALL BUSINESS ADVOCATE TO THE
MOTION OF THE RURAL TELEPHONE COMPANIES, OFFICE OF
CONSUMER ADVOCATE, OFFICE OF TRIAL STAFF AND THE UNITED
TELEPHONE COMPANY OF PENNSYLVANIA d/b/a EMBARQ
PENNSYLVANIA**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Qwest Communications Corporation ("Qwest") answers the new matter of the Office of Small Business Advocate ("OSBA") filed in response to the Joint Motion of the Rural Telephone Company Coalition, Office of Consumer Advocate, Office of Trial Staff and the United Telephone Company d/b/a Embarq Pennsylvania ("Joint Motion") to further stay this proceeding filed at the above-captioned docket before the Pennsylvania Public Utility Commission ("Commission"). Qwest answers as follows:

13.¹ Denied. The allegations in this paragraph regarding the Joint Access Proposal and the Commission's Order entered on July 10, 2003 at Docket No. M-00021596 are denied as the documents speak for themselves. To the extent that the allegations in this paragraph represent a prayer for relief, no response is required.

14. Denied. The allegations in this paragraph regarding the Joint Access Proposal are denied as the document speaks for itself.

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15. Admitted in part and denied in part. It is admitted that the Commission has not taken any formal action at public meeting to extend the R-1 and business rates beyond December 31, 2006. The remaining allegations in this paragraph regarding the legal effect of the Commission's failure to take any formal action represent a legal conclusion to which no response is required.

Conclusion

The allegations in the conclusion constitute prayers for relief to which no response is required. However, the Commission should deny OSBA's request that the Commission state as part of its adjudication of the Joint Motion, whether the caps on the R-1 and business rates should remain in effect. Any rate determinations on the proper level of the R-1 and business rates made without providing adequate notice and a meaningful opportunity to be heard² violates the due process rights of interested parties. *See Cmwlth. v Thompson*, 444 Pa. 312, 316, 281 A.2d 856, 858 (1971).

² The United States Supreme Court has stated that the hearing must be "meaningful" and "appropriate to the nature of the case." *Bell v. Burson*, 402 U.S. 535, 542, 91 S. Ct. 1586, 1591, 29 L. Ed. 2d 90, 96 (1971) (*citations omitted*). Consistent with *Bell*, Pennsylvania courts have recognized that with regard to the opportunity to be heard the "fundamental requirement of due process is the *opportunity* to be heard at a *meaningful* time and in a *meaningful* manner." *Cresco, Inc. v. Pa. Pub. Util. Comm'n*, 622 A.2d 997 (Pa. Cmwlth. 1993).

WHEREFORE, Qwest respectfully requests that the Commission deny OSBA's request for a determination on the proper level of the R-1 and business rates to the extent that such a determination occurs without a formal adjudication where interested parties are provided with adequate notice and opportunity to be heard on the rate issues.

Respectfully submitted,

Dated: November 14, 2007



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ORIGINAL

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 :

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I hereby certify that I have this day served a copy of the foregoing document(s) in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

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Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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Harrisburg, PA 17120

ORIGINAL

Re: Investigation Regarding Intrastate Access Charges and IntraLATA
Toll Rates of Rural Carriers and the Pennsylvania Universal
Service Fund, Docket No. I-00040105

Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of the Amended Answer of Qwest Communications Corporation to the New Matter of the Office of Small Business Advocate to the Motion of the Rural Telephone Companies, Office of Consumer Advocate, Office of Trial Staff and the United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania to further stay the above-captioned investigation. Footnote No. 1 was inadvertently omitted from the Answer which was filed yesterday. Copies have been served in accordance with the attached Certificate of Service.

DOCUMENT
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Very truly yours,


John F. Povilaitis

Enclosures
JFP:ck

c: Certificate of Service
The Honorable Susan D. Colwell

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

Docket No. I-00040105

DOCUMENT
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**AMENDED ANSWER OF QWEST COMMUNICATIONS CORPORATION TO
THE NEW MATTER OF THE OFFICE OF SMALL BUSINESS ADVOCATE TO
THE MOTION OF THE RURAL TELEPHONE COMPANIES, OFFICE OF
CONSUMER ADVOCATE, OFFICE OF TRIAL STAFF AND THE UNITED
TELEPHONE COMPANY OF PENNSYLVANIA d/b/a EMBARQ
PENNSYLVANIA**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

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13.¹ Denied. The allegations in this paragraph regarding the Joint Access Proposal and the Commission's Order entered on July 10, 2003 at Docket No. M-00021596 are denied as the documents speak for themselves. To the extent that the allegations in this paragraph represent a prayer for relief, no response is required.

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¹ Paragraphs 1 through 12 represent OSBA's Answer to the Joint Motion to further stay this proceeding.

14. Denied. The allegations in this paragraph regarding the Joint Access Proposal are denied as the document speaks for itself.

15. Admitted in part and denied in part. It is admitted that the Commission has not taken any formal action at public meeting to extend the R-1 and business rates beyond December 31, 2006. The remaining allegations in this paragraph regarding the legal effect of the Commission's failure to take any formal action represent a legal conclusion to which no response is required.

Conclusion

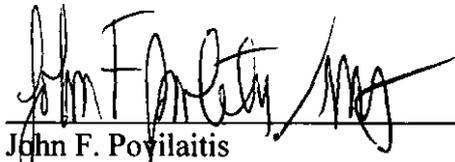
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Respectfully submitted,

Dated: November 15, 2007



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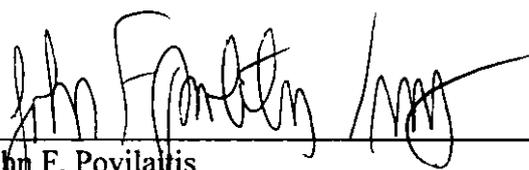
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