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April 15, 2005

Via Federal Express

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

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

Dear Secretary McNulty:

I enclose for filing at the referenced docket the original and four copies of the Joint Prehearing Memorandum of Nextel, T-Mobile, and Verizon Wireless.

Thank you for your assistance. If you have any questions or require further information, please do not hesitate to contact me.

Very truly yours,


Christopher M. Arfaa

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Enclosures

cc: Hon. Susan D. Colwell (w/encl.)
Certificate of Service (w/encl.)

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COMMONWEALTH OF 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

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**JOINT PREHEARING MEMORANDUM OF
NEXTEL, T-MOBILE, AND VERIZON WIRELESS**

(April 15, 2005)

Nextel Communications, Inc. ("Nextel"), 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 (together, "T-Mobile"), and Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") (collectively, the "Wireless Carriers") file jointly this prehearing memorandum. The Wireless Carriers discuss their positions on the substantive issues in this proceeding, their hearing witnesses, and a proposed proceeding schedule. Per the Presiding Officer's direction, discussion of the substantive issues is organized in accordance with the issues list set forth by the Commission in its December 16, 2004 Order. However, the Wireless Carriers stress the substantial interrelationship of those issues and thus their discussion herein should be viewed in that light.

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I. Preliminary Statement of Issues

The Wireless Carriers present the following, preliminary issues that are common to all of the specific issues raised by the Commission in its Order and discussed in the following section.

On March 3, 2005, the FCC released a notice of proposed rulemaking that addresses comprehensively the existing regime of intercarrier compensation.¹ In the notice, the FCC seeks comments on numerous issues, including, for example, "whether the changes wrought by the 1996 Act give the Commission the power to assert authority over the intrastate charges at issue."² Specifically, some parties before the FCC have asserted that the FCC has authority to preempt states' authority to alter the intrastate traffic and compensation regimes. The disposition of this issue at the federal level could have a material impact on state universal service support. The Wireless Carriers submit that the Commission should defer its investigation in this proceeding pending completion of the federal rulemaking.³ The Wireless Carriers note that, in relation to a deferral, they find nothing in the Commission's Order dated July 15, 2003 in Dockets M-00021596 *et al.*⁴ (the "2003 Order") providing for the expiration of the Pennsylvania Universal Service Fund ("PA USF" or "Fund") first established in the Global Order,⁵ or for the expiration of the implementing rules for the PA USF at 52 Pa. Code §§ 63.161-63.171.

¹ *I/M/O Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 05-33. The FCC has published the NPRM in the Federal Register, at 70 FR 15030 (March 24, 2005). Comments are due on or before May 23, 2005 and reply comments are due on or before June 22, 2005.

² *Id.*, at ¶ 82.

³ Even if this proceeding is thus deferred, the Wireless Carriers nevertheless seek an expedited, final decision on the issue of state law raised in their Motion filed March 28, 2005 in this proceeding.

⁴ *Re Access Charge Investigation per Global Order of September 30, 1999*, PUC Docket Nos. M-00021596, P-00991648, P-00991649, M-00031694, July 15, 2003 (2003 WL 21921043).

⁵ *Re Nextlink Pennsylvania, Inc.*, Docket Nos. P-00991648, P-00991649 (entered September 30, 1999), 196 P.U.R. 4th 172, *aff'd sub nom. Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Pub. Util. Comm'n*, 763 A.2d 440 (Pa.Cmwlth. 2000), *vacated on other grounds sub nom., MCI WorldCom, Inc. v. Pennsylvania Pub. Util. Comm'n*, 844 A.2d 1239 (Pa. 2004).

Notwithstanding the Commission's establishment of the PA USF in the Global Order,⁶ the Wireless Carriers do not concede that the Commission has the statutory authority under the laws of the Commonwealth to establish and administer a PA USF. The Wireless Carriers note that subsequent to the Commonwealth Court's affirmance of the PA USF established in the Global Order, the General Assembly revised Chapter 30, at 66 Pa. C.S. § 3011 *et seq.*, and, in doing so, repealed 66 Pa. C.S. § 3009, a provision on which the Commission in its argument and the Commonwealth Court in its decision relied in supporting the establishment of the current PA USF. *See Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Pub. Util. Comm'n*, 763 A.2d at 497-498. Additionally, while the new Chapter 30 establishes a "Broadband Outreach and Aggregation Fund (66 Pa. C.S. § 3015(C)), an "Education Technology Fund", or "E-Fund" (66 Pa.C.S. § 3015(D)) and provides for a Lifeline Service subscription for low-income recipients (66 Pa. C.S. § 3019(F)), nowhere does it mention, much less authorize, a Pennsylvania "Universal Service Fund." Moreover, the General Assembly reenacted Chapter 30 since the enactment of the federal Telecommunications Act of 1996. The General Assembly may be presumed to be aware of the federally mandated requirements for implementing state programs to advance and preserve universal service under Section 254 of that Act (47 U.S.C. § 254), including the requirement that "states" implement such funds rather than "state commissions," *id.* § 254(f), and therefore may be deemed to have elected not to implement a Pennsylvania Universal Service Fund consistent with those requirements.⁷

⁶ None of the Wireless Carriers participated in the Global Order proceeding, or in the proceeding culminating in the issuance of the 2003 Order. While 47 U.S.C. § 254(f) expressly provides that federal law does not preempt the Commonwealth from implementing a state universal service fund to which all intrastate telecommunications carriers contribute, any authority the Commission has to implement a PA USF consistent with the requirements of 254(f) must be provided by the laws of the Commonwealth.

⁷ It may be argued that the General Assembly was also aware of the Commission's current PA USF

The Wireless Carriers respectfully submit that the Commission must address its statutory authority to establish and administer a Pennsylvania universal service fund in light of reenactment of Chapter 30, as discussed above. Whether such authority exists is a fundamental legal matter in this proceeding and a decision rendered on it is necessary before any reliance is placed thereon by the parties, by the Presiding Officer in support of her recommended decision, and ultimately by the Commission in support of its final decision.

Moreover, the Commission clearly does not have the statutory authority to extend the current PA USF to wireless carriers. The Wireless Carriers filed jointly a Motion⁸ with the Presiding Officer requesting an expedited decision that the Commission lacks the jurisdiction to require providers of commercial mobile radio service ("CMRS") to contribute the funding of a PA USF. The ruling on this legal issue will have a substantial impact on the extent of the Wireless Carriers' interest and participation in investigating the substantive issues that the Commission has raised in this proceeding by its Order. The decision will also have an impact on the scope of the issues to be investigated in this proceeding by way of discovery, hearing and post-hearing briefs. Thus, the decision rendered pursuant to the Motion affects the activities of all parties in this proceeding. The Wireless Carriers respectfully urge that the Presiding Officer render a recommended decision on the specific relief requested by the Motion, and submit the

regulations and the Commonwealth Court decision upholding them, and that by remaining silent on the establishment and implementation of the Fund impliedly endorsed that exercise of Commission authority. However, such endorsement would include the express exemption of CMRS providers from contributing to the Fund, set forth at 52 Pa. Code § 63.162. Had the General Assembly intended to authorize the Commission to establish a "Pennsylvania Universal Service Fund" to which all telecommunications services providers are to contribute, it could have readily said so in its reenactment of Chapter 30. It did not.

⁸ *Motion of Wireless Carriers for Determination that the Commission Lacks Jurisdiction to Require CMRS Providers to Contribute the Funding of a Pennsylvania Universal Service Fund, and for Bifurcation or Certification for Immediate Commission Review*, filed March 28, 2005. The Motion requested a determination on the specific issue of the Commission's authority under Commonwealth law to require CMRS providers to contribute to the funding of a PA USF, and expressly reserved the right to raise other issues of law, fact or policy in this proceeding.

recommended decision to the Commission for a final decision, well before the substantive and procedural aspects of any hearing held in this proceeding are set.

II. Discussion of Specific Commission Issues

Subject to their preliminary statement of issues above, the Wireless Carriers provide the following discussion on each of the issues the Commission raised in its December 20, 2004 Order initiating this proceeding. The Wireless Carriers reserve the right to raise and address additional issues and to respond to issues identified by the other parties participating in this proceeding as necessary and appropriate during the course of this proceeding.

(a) Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs' territories.

The Wireless Carriers do not take any position at this time on whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs' territories. However, to the extent that such access charges are reduced, the Wireless Carriers do have an interest in what impact such reduction would have on any PA USF for which CMRS providers or their customers would be required to make a funding contribution.

The recent reenactment of Chapter 30 provides that the Commission "may not require a local exchange telecommunications company to reduce access rates except on a revenue-neutral basis." 66 Pa. C.S. § 3017(a). The Wireless Carriers would expect that all available approaches besides simply relying on PA USF contributions and disbursements would be considered to counter-balance further reductions in access charges to maintain revenue neutrality. Such approaches could include without limitation increases in rates for certain "protected services," 66 Pa. C.S. § 3012, permitted increases in rates for "noncompetitive services" (excluding basic

residential and business rates) pursuant to the provisions of 66 Pa. C.S. § 3015(b)(1), and imposition of a subscriber line charge.

Any approach to maintain revenue neutrality relying on contributions to and disbursements from a PA USF must not result in contravention of federal requirements imposed on state programs for the advancement and preservation of universal service pursuant to 47 U.S.C. § 254 and the FCC's implementing rules. Any carrier seeking disbursements from a PA USF must therefore demonstrate by clear and convincing evidence that such disbursements are necessary for the advancement and preservation of universal service consistent with such federal requirements.

(b) What rates are influenced by contributions to and/or disbursements from the Fund?

Any contributions to or disbursements from a Fund must comport with state and federal requirements and be demonstrably necessary to the advancement and preservation of universal service. To the extent that any residual revenue requirement beyond funding from a Fund is sought by a carrier due to further reduction in access charges, other rates or surcharges associated with the carrier's services could be influenced. Such rates and surcharges could include but not necessarily be limited to those identified above with respect to Issue (a).

New section 3018 of the Public Utility Code, 66 Pa. C.S. § 3018, prohibits the Commission from fixing or prescribing the "rates, tolls, charges, rate structures, rate base, rate of return, operating margin or earnings for interexchange competitive services or otherwise regulate interexchange competitive services except as set forth in this chapter." It is not clear whether the Commission is prohibited by this provision from mandating that interexchange

telecommunications carriers pass through any further reduction in intrastate access charges resulting from this proceeding to their customers. Thus, it is not clear that the Commonwealth's consumers would benefit from any reduction in such charges. Consumers could in fact be harmed to the extent that the interexchange telecommunications carriers' service rates are not reduced sufficiently in relation to the increase in other charges end users would pay pursuant to the requirement to maintain revenue neutrality.

(c) Should disbursements from the Fund be reduced and/or eliminated as a matter of policy and/or law?

The Wireless Carriers do not believe that the Commission has the statutory authority pursuant to Commonwealth law to establish and administer a Fund; thus any disbursements from a Fund would be unlawful. That said, disbursements from Fund must be no more than is necessary to advance and preserve universal service consistent with federal requirements, as discussed above. A determination of the need in fact for a Fund must be based on analyses that: (1) clearly define the elements of universal service eligible for funding; (2) compare the costs of providing universal service elements with all revenues associated with providing such elements; and (3) maximize to the extent permitted by law recovery of universal service element costs from end-users and other carriers (e.g., through access charges) on cost responsibility principles. Only through such analyses can any revenue deficiencies for the advancement and preservation of universal service be properly determined and a Fund appropriately sized.

(d) Assuming the Fund expires on or about December 31, 2006, what action should the Commission take to advance the policies of this Commonwealth?

The General Assembly's preamble to recently reenacted Chapter 30, at 66 Pa. C.S. § 3011, sets forth a broadly stated set of telecommunications policies of the Commonwealth,

including policies with respect to universal service. 66 Pa. C.S. §§ 3011(2), 3011(12). The Wireless Carriers have no specific recommendations at this time regarding actions that the Commission should take to advance telecommunications policies in the Commonwealth should the Fund expire on or about December 31, 2006. The Wireless Carriers would be supportive of lawful Commission actions that advance and enhance competition on a non-discriminatory basis among all providers of telecommunications services in the Commonwealth.

- (e) **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?**

As argued in the Motion, the Commission has no statutory jurisdiction over wireless carriers (CMRS providers) and no authority to compel contributions by such carriers or their customers to the Fund. The General Assembly has excepted CMRS providers from the definition of a "public utility", at 66 Pa. C.S. 102(2)(iv). The Commission's general jurisdictional grant of power from the General Assembly is the "general administrative power and authority to supervise and regulate all *public utilities* doing business within this Commonwealth." (emphasis added) 66 Pa. C.S.A. § 501(b). Chapter 30 grants the Commission specific authority (or refrain from authority) with respect to the activities of various "telecommunications carriers." See 66 Pa. C.S. § 3012. However, a "telecommunications carrier" is defined to be "an entity that provides telecommunications services *subject to the*

jurisdiction of the Commission." (emphasis added) *Id.* Clearly, the General Assembly has granted the Commission no authority over CMRS Providers for any purposes.⁹

Thus, if the Fund continues beyond December 31, 2006, the Commission cannot lawfully include wireless carriers in the definition of contributors to the Fund. It follows that registration of wireless carriers with the Commission and determining what a wireless carrier's contribution would be based on is beyond the scope of the Commission's authority to require or determine. Similarly, the issue of how wireless carriers split their revenue bases between intrastate and interstate revenues is not relevant to the Commission's decisions resulting from this proceeding.

If the Commission determines or is determined to have the statutory authority to include wireless carriers in the definition of Fund contributors, and to establish and administer a Fund, then the Commission must address the issue of including wireless carriers in the definition of Fund recipients. Eligibility requirements for wireless carriers to receive funding from the Fund must not be or have the effect of being discriminatory and anti-competitive.

(f) What regulatory changes are necessary to 52 Pa. Code §§ 63.161-63.171 given the complex issues involved as well as recent legislative developments?

The Wireless Carriers have no specific recommendations at this time with respect to changes to the Commission's regulations. The Wireless Carriers do note, however, that the regulations, at 52 Pa. Code § 63.162, properly exempt wireless carriers from the definition of "contributing telecommunications providers" consistent with the definitions at 66 Pa. C.S.A. § 102(2)(iv) and 3012.

If CMRS providers were included the definition of "contributing telecommunications

⁹ Per the Presiding Officer's notice via e-mail to the parties dated March 29, 2005, the Wireless Carriers intend to include these points in oral argument on the Motion at the April 21, 2005 prehearing conference.

providers” (to which the Wireless Carriers do not agree), the prohibition on recovery of Fund contributions through an end user surcharge, at 52 Pa. Code § 63.171, would be unlawful with respect to CMRS providers. As the FCC has recently held, 47 U.S.C. § 332 prohibits the states from dictating “whether and how” CMRS providers may incorporate regulatory fees into their end user bills, and thus preempts state laws purporting to prohibit the recovery of costs such as contributions to universal service support mechanisms through line item charges.¹⁰

III. Proceeding Schedule and Witnesses

The Wireless Carriers have identified a number of legal matters pertaining to the Commission’s statutory authority and authority pursuant to federal law or FCC regulations. The Wireless Carriers submit that judicial economy and preservation of the parties’ resources require a phased approach to this proceeding. During the first phase (“Phase I”) all threshold legal matters identified by the parties in their prehearing memoranda or at the prehearing conference held on April 21, 2005 (other than the legal matter raised in the Motion, for which an expedited schedule as a separate matter for decision has been requested therein) should be briefed and decided by the Presiding Officer. Determination of those threshold legal matters will allow the next phase of the proceeding to proceed with clarity.

With the legal framework developed during Phase I, the parties can then proceed appropriately to an evidentiary hearing during a “Phase II” of this proceeding, for which the Wireless Carriers propose that the Presiding Officer establish, supported by a further pre-hearing conference, the specific factual issues to be addressed. In support of developing the issues to be

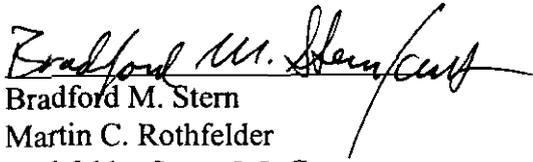
¹⁰ *Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking*, FCC 05-55, CC Docket 98-170, CG Docket No. 04-208, FCC 05-55, released March 18, 2005 (Truth-in-Billing Order), at ¶ 32 (appeal pending).

addressed in Phase II, the Presiding Officer should order that the parties engage in technical conferences, supported by the right to discovery, during Phase I to discuss and, if possible, narrow the factual issues in dispute among them. Based on the foregoing, the Wireless Carriers suggest the following proceeding schedule (assuming this proceeding is not otherwise deferred pursuant to discussion in Section I above):

Filing of Phase I Direct Brief	May 15, 2005
Filing of Phase I Response Brief	May 31, 2005
Presiding Officer Phase I Recommended Decision	June 30, 2005
Phase II Pre-Hearing Conference	July 15, 2005
Phase II Direct Testimony Filed	August 24, 2005
Discovery on Direct Testimony Completed	September 9, 2005
Phase II Responsive Testimony Filed	September 30, 2005
Discovery on Responsive Testimony Completed	October 14, 2005
Phase II Evidentiary Hearings	October 17 to October 28, 2005
Initial Post-Hearing Briefs	November 22, 2005
Reply Post-Hearing Briefs	December 9, 2005
Presiding Officer Recommended Decision	On or About January 28, 2005

Pending a decision on the Motion, the Wireless Carriers have not determined and cannot at this time determine the scope of their participation at hearing in this proceeding. Should the Commission conclude that it currently has authority to require CMRS providers to contribute to a PA USF, which the Wireless Carriers maintain it does not, the Wireless Carriers may address some or all of their above-stated issues at hearing, and anticipate in that event the need to sponsor the testimony of up to three (3) witnesses among them. Should the Commission conclude that it currently does not have authority to require CMRS providers to make state USF contributions, the extent of the Wireless Carriers' participation this proceeding, including their evidentiary presentation, would diminish substantially.

Respectfully submitted,



Bradford M. Stern
Martin C. Rothfelder
Rothfelder Stern, L.L.C.
625 Central Avenue
Westfield, N.J. 07090
bmstern@rothfelderstern.com
(908) 301-1211

Counsel for
Omnipoint Communications Inc.
d/b/a T-Mobile, Omnipoint
Communications Enterprises LLC
d/b/a T-Mobile, Voicestream
Pittsburgh LP d/b/a T-Mobile, and
Nextel Communications Inc.

DATED: April 15, 2005



Christopher M. Arfaa
Susan M. Roach
Drinker Biddle & Reath LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103
(215) 988-2700
christopher.arfaa@dbr.com

Counsel for Celco Partnership d/b/a
Verizon Wireless

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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:

Via Federal Express - Overnight Delivery and E-mail

Philip F. McClelland, Esquire
Office of Attorney General
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg PA 17101-1923
PMcClelland@paoca.org

Steven C. Gray, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg PA 17101
sgray@state.pa.us
(717) 783-2525

Robert V. Eckenrod, Esquire
Pa. Public Utility Commission
Office of Trial Staff
400 North Street
Harrisburg PA 17120
roeckenrod@state.pa.us
(717) 787-1976

Zsuzanna E. Benedek, Esquire
The United Telephone Company of
Pennsylvania d/b/a Sprint
240 North Third Street, Suite 201
Harrisburg PA 17101
sue.e.benedek@mail.sprint.com
(717) 245-6346

Patricia Armstrong, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street, Suite 500
Harrisburg PA 17108-9500
parmstrong@titanlaw.com

Bradford M. Stern, Esquire
Rothfelder Stern, L.L.C.
625 Central Avenue
Westfield, N.J. 07090
bmstern@rothfelderstern.com

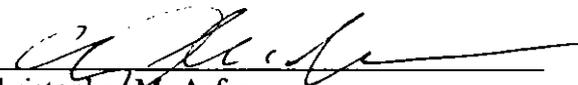
Michelle Painter, Esquire
MCI
22001 Loudoun County Parkway, C2-2-105
Ashburn VA 20147
Michelle.Painter@mci.com

Daniel Clearfield, Esquire
Wolf Block Schorr Solis-Cohen LLP
212 Locust Street, Suite 300
Harrisburg PA 17101
dclearfield@wolfblock.com

Julia A. Conover, Esquire
Suzan DeBusk Paiva, Esquire
Verizon
1717 Arch Street, 32nd Floor
Philadelphia PA 19103
Julia.a.conover@verizon.com
Suzan.d.paiva@verizon.com

John F. Povilaitis, Esquire
Ryan, Russell, Ogden & Seltzer, LLP
800 North Third Street, Suite 101
Harrisburg PA 17102-2025
JPovilaitis@RyanRussell.com

Dated: April 15, 2005



Christopher M. Arfaa
Drinker Biddle & Reath
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103
(215) 988-2700

Counsel for Celco Partnership d/b/a
Verizon Wireless and Cingular Wireless LLC

Suzan DeBusk Paiva
Assistant General Counsel
Law Department



Verizon Pennsylvania Inc.
1717 Arch Street, 32NW
Philadelphia, PA 19103

Tel: (215) 963-6068
Fax: (215) 563-2658
Suzan.D.Paiva@Verizon.com

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April 15, 2005

VIA UPS Overnight Delivery

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

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

Dear Mr. McNulty:

Enclosed please find the original and three copies of the Prehearing Memorandum of Verizon Pennsylvania Inc. and Verizon North Inc. in the above-captioned matter.

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

Very truly yours,


Suzan D. Paiva

SDP/meb

Via Email & UPS Overnight Delivery
cc: ALJ Susan D. Colwell
Attached Certificate of Service

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Prehearing Memorandum of Verizon Pennsylvania Inc. and Verizon North Inc., to 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 15th day of April, 2005.

VIA E-MAIL AND UPS OVERNIGHT DELIVERY

Patricia Armstrong, Esquire
Thomas, Thomas, Armstrong
& Niesen
212 Locust Street, Suite 500
Harrisburg, PA 17108
parmstrong@ttanlaw.com
(717) 255-7600
Counsel for RTCC

Michelle Painter, Esquire
MCI WorldCom, Inc.
22001 Loudoun County Parkway
C2-2-105
Ashburn, VA 20147
Michelle.painter@mci.com
(703) 886-5973

Robert V. Eckenrod, Esquire
Office of Trial Staff
400 North Street
Harrisburg PA 17120
roeckenrod@state.pa.us
(717) 787-1976

Daniel Clearfield, Esq.
Alan C. Kohler, Esq.
Wolf Block Schorr Solis-cohen LLP
212 Locust St., Suite 300
Harrisburg, PA 17101
dclearfield@wolfblock.com
(717) 237-7172

John F. Povilaitis, Esq.
Matthew A. Totino, Esq.
Ryan, Russell, Ogden & Seltzer LLP
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025
jpovilaitis@ryanrussell.com
(717) 236-7714
Counsel for Qwest

Philip F. McClelland, Esquire
Joel H. Cheskis, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923

Zsuzanna Benedek, Esquire
Sprint Communications Company LP
240 North Third Street, Suite 201
Harrisburg, PA 17101
sue.e.benedek@mail.sprint.com
(717) 245-6346

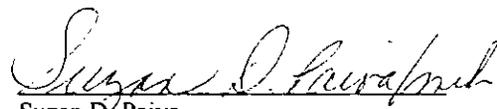
Christopher M. Arfaa, Esq.
Susan M. Roach, Esq.
Drinker, Biddle & Reath LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103
Christopher.arfaa@dbr.com
Susan.roach@dbr.com
(215) 988-2700

Steven C. Gray, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg PA 17101
sgray@state.pa.us
(717) 783-2525

Bradford M. Stern, Esq.
Martin C. Rothfelder, Esq.
Rothfelder Stern, LLC
625 Central Avenue
Westfield, NJ 07090
bmstern@rothfelderstern.com
(908) 301-1211

ORIGINAL

Kristin Smith, Esq.
Qwest Communications Corp.
1801 California Street
Suite 4900
Denver, CO 80202
Kristin.smith@qwest.com



Suzan D. Paiva
Verizon Pennsylvania Inc.
Verizon North Inc.
1717 Arch Street, 32NW
Philadelphia, PA 19103
(215) 963-6068

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

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PREHEARING MEMORANDUM OF
VERIZON PENNSYLVANIA INC.
AND VERIZON NORTH INC.

DOCKETED
JUL 20 2005

Verizon Pennsylvania Inc. and Verizon North Inc. ("Verizon") submit this Prehearing Memorandum for purposes of the prehearing conference scheduled for April 21, 2005, to address certain issues as directed by the presiding officer.

Verizon entered its appearance in this proceeding on February 4, 2005, and should continue to be represented on the service list by the same counsel indicated in that filing.

I. Statement of Intended Position on the Issues

As directed by the presiding officer, Verizon submits the following positions on the issues identified in the Commission's Order initiating this investigation:

- (a) Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs' territories.**

Verizon does not intend to submit its own proposal for access rate rebalancing for the rural ILECs, but reserves the right to comment upon and submit testimony responsive to any proposals made by any other party. Verizon would support a proposal to defer any additional comprehensive rate rebalancing for these parties pending the FCC's resolution of the issues raised in its Notice of Proposed Rulemaking ("NPRM") in *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-

92 (Rel. March 3, 2005). Verizon has asserted that any consideration of further rebalancing of its own access rates should be deferred pending the outcome of that FCC proceeding.

(b) What rates are influenced by contributions to and/or disbursements from the Fund?

Verizon assumes this question relates to the current fund, as it is presently sized and structured. It is not possible to demonstrate directly what rates might potentially be lower or higher if the fund did not exist. As a general matter, however, if for example Verizon did not have to contribute to the USF it would be free to use the Price Change Opportunity (“PCO”) that the Commission has approved for this purpose to reduce other rates, such as Verizon’s own access rates. It is possible that rates of the rural ILECs would have to be increased if the fund were eliminated, but that is a matter for exploration during the evidentiary phase of the proceeding. It is also possible that the outcome of the FCC’s proceeding could allow (or even require) elimination of the state fund. Verizon reserves the right to respond to any other party’s positions on this issue.

(c) Should disbursements from the Fund be reduced and/or eliminated as a matter of policy and/or law?

Verizon believes that eventually there should be no separate state USF fund. It is a matter for exploration in this proceeding, however, how the fund should be phased out, how much time should be allotted to that process, whether any extensions of the current fund (in its present size and configuration) are necessary to achieve an orderly transition and to what extent the outcome of the federal intercarrier compensation proceeding discussed above will influence this matter. Verizon reserves the right to respond to any other party’s positions on this issue.

- (d) Assuming the Fund expires on or about December 31, 2006, what action should the Commission take to advance the policies of this Commonwealth?**

Verizon understands this question to refer to a situation in which the Commission determines to eliminate the state USF. The Commission should act consistently with the outcome of the FCC's intercarrier compensation proceeding. It may also consider a reasonable phase-out of the fund if necessary. Verizon reserves the right to respond to any other party's positions on this issue.

- (e) 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?**

Verizon supports the Wireless Carriers' assertion that the Commission has no authority to include Wireless Carriers as contributors to a state USF. Verizon reserves the right to respond to the other parties' positions on these issues, particularly the wireless carriers who should be in the best position to provide the specific information requested.

- (f) What regulatory changes are necessary to 52 Pa. Code §§ 63.161-63.171 given the complex issues involved as well as recent legislative developments?**

It is premature to answer this question at this time, given that the answer will depend on what the Commission decides to do with the USF. The possibilities could range from inserting provisions for a phase-out and end of the fund, to conforming the regulations to the FCC's requirements or to eliminating the regulations altogether as

superseded by the FCC's requirements. Verizon reserves the right to respond to any other party's positions on this issue.

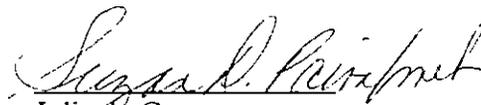
II. Proposed Witnesses

At this time, Verizon has not finalized its exact witness or witnesses or the subject matter of the testimony to be presented at hearing, although to the extent issues regarding the USF are litigated Verizon will present a witness on that subject. The witnesses utilized by Verizon may vary and may be impacted by the issues other parties intend to raise in this case.

III. Proposed Schedule

Verizon will work with the presiding ALJ and the other parties in the proceeding to establish a reasonable procedural schedule, and understands that a scheduling proposal will be presented by the RTCC.

Date: April 15, 2005



Julia A. Conover
Suzan DeBusk Paiva
Verizon
1717 Arch Street, 32nd Floor
Philadelphia, PA 19103
(215) 963-6068

Attorneys for Verizon Pennsylvania Inc.
and Verizon North Inc.

ORIGINAL
Thomas, Thomas, Armstrong & Niesen
Attorneys and Counsellors at Law

SUITE 500
212 LOCUST STREET
P. O. BOX 9500
HARRISBURG, PA 17108-9500

PATRICIA ARMSTRONG
Direct Dial: (717) 255-7627
E-mail: parmstrong@ttanlaw.com

www.ttanlaw.com
FIRM (717) 255-7600
FAX (717) 236-8278

April 15, 2005

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CHARLES E. THOMAS
(1913 - 1998)

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

**DOCUMENT
FOLDER**

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

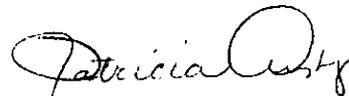
Dear Secretary McNulty:

Enclosed for filing on behalf of the Rural Telephone Company Coalition* is an original and three (3) copies of their Second Prehearing Memorandum in the above referenced proceeding. Copies of the Memorandum have been served in accordance with the attached Certificate of Service.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By



Patricia Armstrong

Enclosure

cc: Certificate of Service

F:\CLIENTS\Utility\Rural Company Coalition\USF Access III\Letters\Sec. McNulty Letter.wpd

*ALLTEL Pennsylvania, Inc., Armstrong Telephone Company - Pennsylvania, Armstrong Telephone Company - North, The Bentleyville Telephone Company, Buffalo Valley Telephone Company, Citizens Telephone Company of Kecksburg, Conestoga Telephone and Telegraph Company, D&E Telephone Company, Deposit Telephone Company, Frontier Communications of Breezewood, Inc., Frontier Communications of Canton, Inc., Frontier Communications of Lakewood, Inc., Frontier Communications of Oswayo River, Inc., Frontier Communications of Pennsylvania, Inc., The Hancock Telephone Company, Hickory Telephone Company, Iron-ton Telephone Company, Lackawaxen Telephone Company, Laurel Highland Telephone Company, Mahanoy & Mahantango Telephone Co., Marianna & Scenery Hill 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, West Side Telephone Company and Yukon-Waltz Telephone Company

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BEFORE The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Administrative Law Judge
Susan D. Colwell, Presiding

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

DOCKETED
JUL 20 2005

DOCUMENT
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SECOND PREHEARING MEMORANDUM
OF
THE RURAL TELEPHONE COMPANY COALITION

In accordance with the Second Prehearing Conference Order dated February 17, 2005, The Rural Telephone Company Coalition ("RTCC") submits this Second Prehearing Memorandum to the presiding officer, Administrative Law Judge Susan D. Colwell, and to all other parties. The February 17, 2005 Order requested parties to respond to specific questions laid out by the Commission in its December 20, 2004 Order instituting this Investigation.

At this second prehearing stage of this investigation, the RTCC responds to those questions with the following summaries. The RTCC reserves the right to modify or augment these responses and its position as this proceeding develops.

¹The RTCC consists of the following rural incumbent local exchange carriers: ALLTEL Pennsylvania, Inc., Armstrong Telephone Company - PA, Armstrong Telephone Company-North, Bentleyville Communications Corporation, d/b/a The Bentleyville Telephone Company, Buffalo Valley Telephone Company, Citizens Telephone Company of Kecksburg, Commonwealth Telephone Company, Conestoga Telephone and Telegraph Company, Denver and Ephrata Telephone and Telegraph Company, Deposit Telephone Company, Frontier Communications of Breezewood, Inc., Frontier Communications of Canton, Inc., Frontier Communications of Lakewood, Inc., Frontier Communications of Oswayo River, Inc., Frontier Communications of Pennsylvania, Inc., The Hancock Telephone Company, Hickory Telephone Company, Ironton Telephone Company, Lackawaxen Telecommunications Services, Inc., Laurel Highland Telephone Company, Mahanoy & Mahantango Telephone Co., Marianna & Scenery Hill Telephone Company, The North-Eastern PA 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, West Side Telephone Company and Yukon-Waltz Telephone Company.

1. A statement of the party's intended position on each of the following issues:

a. Whether intrastate access charges and intralATA toll rates should be further reduced or rate structures modified in the rural ILECs' territories.

Response:

Beginning with the reductions to access and intralata toll undertaken in early 2000 with the entry of the Global Order and continuing through the second stage of access reform implemented in 2003 and as recently as December 2004 as a result of the Phase II Access Reform proceeding at Docket No. M-00021596, there has been to date significant access reform in Pennsylvania. This investigation has been undertaken to comply with the settlement terms agreed to at Docket No. M-00021596, which in no manner mandated that further changes to the Pennsylvania Universal Service Fund or intrastate access charges had to occur by year end 2006. Consequently, since Pennsylvania has over the course of the past few years actively undertaken gradual but substantial access reform, the RTCC contends that at this time there should be no further mandated change in access charges until the FCC issues an order in the pending Intercarrier Compensation proceeding, at CC Docket No. 01-92, which has been published in the Federal Register and contains a May 23, 2005, and June 22, 2005, date for comments and reply comments. The FCC's proceeding has the potential to impact significantly if not render moot the access charge issues in this proceeding. In fact, one of the issues posed by the FCC is the FCC's authority to replace intrastate access regulation and the establishment of alternative cost recovery mechanisms within the intrastate jurisdiction. Under those circumstances the RTCC Companies believe that the Commission should maintain the status quo until the FCC considers comments and releases its Order at CC Docket No. 01-92 which the FCC has indicated is expected before the end of the year. If changes are made at this time, Pennsylvania companies, which have already implemented substantial intrastate access reform, and Pennsylvania consumers, who have already encountered substantial intrastate access reform, may get no credit for these actions under certain FCC proposals and may face additional subscriber line charges or other rate increases independent of whatever action Pennsylvania has taken. Pennsylvania consumers would potentially be at risk for a "double whammy" or be unable to draw their share from any new federal fund. Thus the RTCC submits it would only be prudent to stay the current proceeding at least until later this year to assess the status and impact of the FCC proceeding. While maintaining the status quo is the RTCC's position, if access charges and/or toll rates are reduced or rate structures modified

prior to resolution of the FCC proceeding, then a host of issues relative to lost revenues, revenue neutrality, etc. must be addressed particularly given the provisions of 66 Pa.C.S. §3017. The specifics of these issues are dependent on the level of reductions and/or modifications or other terms and conditions imposed.

b. What rates are influenced by contributions to and/or disbursements from the Pennsylvania Universal Service Fund?

Response:

Local, toll and access rates are all potentially impacted by the USF. Contributions to and disbursements from the USF are used strictly to support local rates in rural high cost, low population density areas so that the cost and availability of local service is in parity universally, i.e., across the state notwithstanding a consumer's urban, suburban or rural location. Prior to the establishment of the Pennsylvania Universal Service Fund, this local service support was embedded in higher access and toll rates.

c. Should disbursements from the Pennsylvania Universal Service Fund be reduced and/or eliminated as a matter of policy and/or law?

Response:

No. To the contrary, as a matter of policy and law, the Pennsylvania Universal Service Fund should continue. The public policy and statutory support underlying universal service at both the federal and state level is the lynch pin to assuring that ubiquitous and affordable local service remains available to all consumers. As provided in Section 254(b) of the Telecommunications Act of 1995 ("TCA-96"), 47 U.S.C. §254(b):

(b) UNIVERSAL SERVICE PRINCIPLES.—The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(1) QUALITY AND RATES.—Quality services should be available at just, reasonable, and affordable rates.

(2) ACCESS TO ADVANCED SERVICES.— Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) ACCESS IN RURAL AND HIGH COST AREAS.—*Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.*

(4) EQUITABLE AND NON-DISCRIMINATORY CONTRIBUTIONS. —*All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.*

(4) SPECIFIC AND PREDICTABLE SUPPORT MECHANISM.—There should be specific, predictable and sufficient Federal and *State mechanisms* to preserve and advance universal service.

47 U.S.C. §254 (emphasis added).

Recently enacted replacement legislation for Chapter 30 in Pennsylvania, Act 183 of 2004, 66 Pa.C.S. §§3011-3019 ("Act 183"), also provides continued statutory and public policy support for continuation of the Pennsylvania Universal Service Fund.

While the Pennsylvania Universal Service Fund was established under authority of 47 U.S.C. §254(b) and 66 Pa.C.S. §3001, it was very recently reauthorized by 66 Pa.C.S. §3011(2). Both state and federal applicable policy and law justify the continuation of the Pennsylvania Universal Service Fund. Its operation is in accord with funds established in many other states. Neither existing facts nor law justifies reduction or elimination of disbursements from the fund. To reduce or eliminate disbursements from the Pennsylvania Universal Service Fund without satisfying the requirements of 47 U.S.C. §254(b) would amount to an error of law.

d. Assuming the Pennsylvania Universal Service Fund expires on or about December 31, 2006, what action should

the Commission take to advance the policies of the Commonwealth?

Response:

There is no legal or factual basis for the assumption that the Pennsylvania Universal Service Fund expires on or about December 31, 2006, or at any other predetermined point in time. There is no sunset provision in either the regulations establishing the fund or in the state and federal law authorizing the fund. Premising this investigation on that misconception distorts both the goals this Commission should strive to achieve as well as the time frame for achieving them. In the prior Pennsylvania Universal Service Fund proceeding before this Commission, the parties merely agreed not to challenge the fund until after December 31, 2006. There was no provision that it would expire on any date.

As provided in the initial USF plan adopted by the Commission in the Global Order, if the Fund is eliminated, all rate changes accomplished in that initial round of access reform would be undone, access rates would revert to where they were prior to the changes made in the Global Order, and the goal of access reform would be thwarted. Further, since all access reform must be revenue neutral pursuant to 66 Pa.C.S. §3017, elimination of the Fund would by necessity result in significant increases in local, toll and/or access rates, taking this Commission and Pennsylvania consumers backwards, rather than forwards, in terms of advancing the public policy goals of universal service clearly set forth in TCA-96 and Act 183.

e. If the Pennsylvania Universal Service 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?

Response:

As previously stated, the RTCC believes the Commission should maintain the status quo pending further developments at the FCC, as the FCC recently indicated would be forthcoming. As set forth more fully in its Answer to the Wireless Carriers' Motion, while the RTCC believes there are legitimate arguments, both practical and legal, to justify requiring all providers of telecommunications services to contribute to a universal service fund to promote and assure universal service, the RTCC is not

advocating at this time that wireless carriers be required to participate in the fund. Notwithstanding, the RTCC respectfully reserves its right to participate on this issue if it is further pursued.

f. What regulatory changes are necessary to 52 Pa. Code §§63.161-171 given the complex issues involved as well as recent legislative developments?

Response:

Based upon the RTCC's position that the Commission should maintain the status quo and that there is neither a legal nor factual basis to assume that the Pennsylvania USF will cease to exist at any predetermined time in the near or far future, the RTCC believes that there are absolutely no regulatory changes that are required at this time. If anything, recent legislative developments support maintenance of the status quo unless and until events on the federal level require changes. If changes to the Fund are made, the regulations will have to be revised and a rulemaking relative thereto instituted prior to any changes actually being implemented. Any change in USF disbursements or access charges would also necessitate other rate changes to assure revenue neutrality consistent with 66 Pa.C.S. §3017 and each carrier's Chapter 30 plan.

2. A list of additional issues, which the party intends to address in this proceeding, and the party's intended position regarding each one.

Response:

The frequency of access arbitrage, mischaracterization of jurisdictional basis of calls and categorization of revenues by non-ILECs all have the potential to impact access rates and Pennsylvania Universal Service Fund contributions. Such matters as the recent AT&T calling card proceeding before the FCC have a significant potential impact on access and Pennsylvania Universal Service Fund assessments and other matters, which should be addressed.

As an Investigation, the RTCC believes there is no automatic assignment of burden of proof regarding pending issues. Rather, the proponent of any change bears the burden of proof to justify the change.

The RTCC has no additional issues beyond those discussed herein at this time, but reserves the right to respond to other parties' issues and to raise others as a result of the investigation.

3. Recommendations regarding discovery.

Response:

As a generic Commission investigation focused more on policy than fact, and in light of the large number but relatively small size of the RTCC Companies, the RTCC believes that formal discovery should be kept to a minimum as to not render this Investigation unduly burdensome. The RTCC has already agreed to provide parties information informally on a confidential and proprietary basis subject to the Protective Order recently entered by the Administrative Law Judge and will continue to work with parties on this basis.

4. A proposed schedule for submission of testimony, hearings, and briefing.

Response:

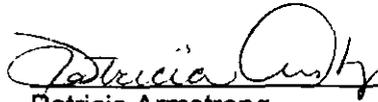
The RTCC believes that both law and policy favor the Commission maintaining the status quo and that nothing further should be done until the FCC issues a final order in the Intercarrier Compensation Proceeding at CC Docket No. 01-92. At a minimum the RTCC also believes that if the Wireless Carriers' Motion is going to be acted on, that it should be fully dispensed with prior to going forward with the remainder of this Investigation. If, however, the Administrative Law Judge deems it necessary to establish a schedule in this investigation at this time, the RTCC submits the following proposed schedule:¹

July 22	All Parties Initial Testimony
September 22	All Parties Responsive Testimony
October 24/25	Hearings
November 10	Briefs
November 22	Reply Briefs

The RTCC intends to continue to discuss possible resolution of the proceeding with the Parties.

¹ If the Commission acts on the Wireless Motion, it would be appropriate to adjust this proposed schedule so that testimony would be due 90 days after entry of a final order on the Wireless Motion, and all other dates would be shifted accordingly and such further adjustments made as necessary to accommodate the Administrative Law Judge and the Parties.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Patricia Armstrong", is written over a solid horizontal line.

Patricia Armstrong
Thomas T. Niesen
Regina L. Matz
Michael L. Swindler

Attorneys for
The Rural Telephone Company Coalition

THOMAS, THOMAS, ARMSTRONG & NIESEN
212 Locust Street
P. O. Box 9500
Harrisburg, PA 17108-9500

DATE: April 15, 2005

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate Access : Docket No. I-0004010
Charges and IntraLATA Toll Rates of :
Rural Carriers, and the Pennsylvania :
Universal Service Fund :

SECRETARY'S BUREAU

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CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of April, 2005, served a true and correct copy of the foregoing Second Prehearing Memorandum on behalf of the Rural Telephone Company Coalition upon the persons and in the manner listed below:

VIA E-MAIL AND HAND DELIVERY

Honorable Susan D. Colwell
Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
2nd Floor West
P.O. Box 3265
Harrisburg, PA 17105-3265

VIA E-MAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

Philip F. McClelland
Senior Assistant Consumer Advocate
Joel H. Cheskis
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Steven C. Gray, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Michelle Painter, Esquire
MCI
22001 Loudoun County Parkway, C2-2-105
Lashburn, VA 20147

Robert V. Eckenrod, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
2nd Floor West
P.O. Box 3265
Harrisburg, PA 17105-3265

Julia A. Conover
Suzan Detusk Paiva
Verizon Pennsylvania Inc.
Verizon North
1717 Arch Street, 32N
Philadelphia, PA 19103

Zsuzsanna E. Benedek, Esquire
240 North Third Street
Suite 201
Harrisburg, PA 17101

Bradford M. Stern, Esquire
Martin C. Rothfelder, Esquire
Rothfelder Stern, L.L.C.
625 Central Avenue
Westfield, NJ 07090

John F. Povilaitis
Ryan, Russell, Ogden & Seltzer LLP
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025

Christopher M. Arfaa
Susan M. Roach
Drinker Biddle & Reath LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103

Daniel Clearfield, Esquire
Alan C. Kohler, Esquire
Wolf Block Schorr Solis-Cohen LLP
212 Locust Street, Suite 300
Harrisburg, PA 17101

Kristin Smith
Qwest Communications Corporation
1801 California Street
Suite 4900
Denver, Colorado 80202

Jennifer A. Duane, Esquire
Sprint Communications Company, L.P.
401 9th Street, NW
Suite 400
Washington, DC 20004


Patricia Armstrong



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

April 15, 2005

ORIGINAL

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

Re: Investigation Regarding Rate Issues Related to
Disbursements from Pennsylvania Universal Service Fund

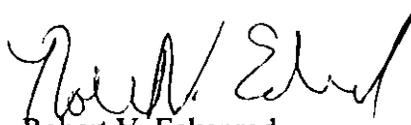
Docket No. I-00040105

Dear Secretary McNulty:

Enclosed for filing please find an original and three (3) copies of the **Prehearing Memorandum** of the Office of Trial Staff (OTS) in the above-captioned proceeding.

Copies are being served on all active parties of record.

Sincerely,


Robert V. Eckenrod
Prosecutor
Office of Trial Staff

DOCUMENT
FOLDER

Enclosure

c: Parties of Record

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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PREHEARING MEMORANDUM
OF THE
OFFICE OF TRIAL STAFF

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TO THE HONORABLE SUSAN D. COLWELL:

In response to the Second Prehearing Conference Order issued by Your Honor ("ALJ") on February 17, 2005 and 52 Pa. Code §5.224, the Office of Trial Staff ("OTS") submits this Prehearing Memorandum. The OTS prosecutor assigned to this proceeding is Robert V. Eckenrod.

Contact information is as follows:

By Mail: Robert V. Eckenrod
Prosecutor
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

By e-mail: roeckenrod@state.pa.us

By Telephone: (717) 787-1976
By FAX: (717) 772-2677

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I. ISSUES

In issuing the Second Prehearing Conference Order, Your Honor directed that the parties address their respective intended position on several issues. In accordance with that direction, the OTS submits this outline of its intended position on each of the following issues:

a. Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILEC's territories.

OTS submits that prior to any consideration of such changes, an offer of specific proof should be made to the effect that customers have received specific benefits as a result of prior access charge reductions. Moreover, before any further reductions in intrastate access charges and intraLATA toll rates are implemented, there must be a specific offer of proof of customer safeguards and specific customer benefits.

b. What rates are influenced by contributions to and/or disbursements from the Pennsylvania Universal Service Fund?

It is the OTS position that Universal Service Fund contributions and/or disbursements subsidize local rates.

c. Should disbursements from the PA USF be reduced or eliminated as a matter of policy and/or law?

Disbursements from the USF should be maintained at their current levels until such time that a robust competitive environment develops.

d. Assuming the PA USF expires on or about December 31, 2006, what action should the Commission take to advance the policies of the Commonwealth?

The determination of what action the Commission should take to advance the policies of the Commonwealth assuming that the PA USF would expire on or about December 31, 2006 requires further inquiry and development on the record. At this time, without further inquiry, OTS has not been able to set forth an opinion on this issue.

e. If the PA USF 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 revenues based by intrastate, and if not, will this be a problem?

The question of whether wireless carriers should be included in the definition of USF contributors, or indeed the jurisdiction of the Commission to mandate such contributions, requires further inquiry and record development. At this time, without further inquiry, OTS is unable to formulate an opinion with respect to this issue.

f. What regulatory changes are necessary to 52 Pa. Code §§ 63.161 -171 given the complex issues involved as well as recent legislative developments?

Again, without further inquiry and development of the above stated issues, OTS is unable to set forth an opinion with regard to what, if any, regulatory changes are needed.

In addition, the OTS has identified a list of applicable preliminary issues.

The current listing of OTS potential issues are as follows:

1. The overall need for further access charge reductions,
2. Proof that customers will benefit if access charges are reduced,
3. The affect of rate rebalancing on residential and business local exchange rates,
4. Cost of service issues as they relate to local service and access charges,
5. Allocation of the cost of any access charge reductions to services other than residential and business local exchange service.

The preceding represents a preliminary statement of OTS positions with respect to the stated issues. The list is as complete as can be made at this time, however, OTS reserves the right to address other issues, as it deems appropriate if any such relevant issues arise.

Most of the discussion of the issues raised by OTS will be supported by direct testimony of the OTS witness in his area of responsibility. However, there may be issues of Commission policy or legal interpretation that are not properly the subject of

testimony; or there may be factual issues that are clear on the record and need not be supported by testimony. OTS reserves the right to dispense with testimony when, in its opinion, an issue can be adequately addressed in brief.

II. WITNESSES

It is currently expected that OTS may call the following witness:

Joseph Kubas, Fixed Utility Valuation Engineer¹

OTS reserves the right to call additional witnesses as is deemed necessary in the development of this proceeding. The above listing of witnesses is provided without analysis of the positions of all parties to this proceeding and without the benefit of complete discovery. All active parties will be notified of any additions to the OTS witness list.

III. SCHEDULE

OTS is in position to adopt a schedule that has been agreed to by all the active parties.

Respectfully submitted,



Robert V. Eckenrod
Prosecutor

Office of Trial Staff
Pennsylvania Public
Utility Commission

Dated: April 15, 2005

¹ The OTS witness may be reached at the same mailing and telephone locations as those provided earlier in this Prehearing Memorandum for Mr. Eckenrod. In addition, it is requested that any documents electronically served upon the Prosecutor in this proceeding also be served upon Mr. Kubas at the following e-mail address: jkubas@state.pa.us

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Rate Issues Related to :
Disbursements from Pennsylvania Universal : Docket No. I-00040105
Service Fund :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Prehearing Memorandum**, dated April 15, 2005, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below:

Patricia Armstrong, Esquire
D. Mark Thomas, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street Suite 500
Harrisburg, PA 17108-9500

Michelle Painter, Esquire
MCI Worldcom Communications, Inc.
22001 Loudoun County Parkway
C2-2-105
Ashburn, VA 20147

Zsuzsanna E. Benedek, Esquire
The United Telephone Company
of Pennsylvania d/b/a Sprint
240 North Third Street Suite 201
Harrisburg, PA 17101

Bradford M. Stern, Esquire
Martin C. Rothfelder, Esquire
Rothfelder, Stern LLC
625 Central Avenue
Westfield, NJ 07090

Daniel Clearfield, Esquire
Alan C. Kohler, Esquire
Wof, Block, Schorr & Solis-Cohen
212 Locust Street Suite 300
Harrisburg, PA 17101

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Julia A. Conover, Esquire
Suzan Debusk Paiva, Esquire
Verizon
1717 Arch Street 32nd Floor
Philadelphia, PA 19103

Christopher M. Arfaa, Esquire
Susan M. Roach, Esquire
Drinker, Biddle & Reath, LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103

John F. Povilaitis, Esquire
Matthew A. Totino, Esquire
Ryan, Russell, Ogden & Seltzer, LLP
800 North Third Street Suite 101
Harrisburg, PA 17102-2025

Philip F. McClelland, Esquire
Joel H. Cheskis, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place - 5th Floor
Harrisburg, PA 17101-1923

Steven C. Gray, Esquire
Office of Small Business Advocate
Commerce Building - Suite 1102
300 North 2nd Street
Harrisburg, PA 1710

Administrative Law Judge Susan D. Colwell
Office of Administrative Law Judge
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265


Robert V. Eckenrod
Prosecutor

Dated: April 15, 2005
Docket No. I-00040105



PLEASE DOCKET

OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

April 15, 2005

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

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BTL

Honorable Susan D. Colwell
Administrative Law Judge
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

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

Dear Judge Colwell:

Enclosed please find the Office of Consumer Advocate's Further Prehearing Memorandum in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

Joel H. Cheskis
Assistant Consumer Advocate

Enclosures

cc: All parties of record

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00040105
FA POC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**DOCUMENT
FOLDER**

**FURTHER PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE**

Pursuant to Section 333 of the Public Utility Code, 66 Pa.C.S. §333, and the directive of Administrative Law Judge Susan D. Colwell on February 16, 2005, the Pennsylvania Office of Consumer Advocate ("OCA") hereby submits this Further Prehearing Memorandum. The OCA notes that it filed a Prehearing Memorandum on February 11, 2005 in this proceeding pursuant to the Prehearing Order dated January 13, 2005 and incorporates herein that memorandum by reference. By way of supplement to that memorandum, the OCA submits this Further Prehearing Memorandum:

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JUN 22 2005

I. INTRODUCTION

As the OCA noted in its February 11, 2005 Prehearing Memorandum, this proceeding was instituted by an Order entered on December 20, 2004 by the Pennsylvania Public Utility Commission ("Commission") seeking an investigation into whether there should be further intrastate access charge reductions and intraLATA toll rate reductions in the service

territories of rural incumbent local exchange carriers. Access charges are the rates charged by telephone companies to other telephone companies seeking access to the local loop in order to provide services to the end-user. The Commission sought an investigation into all rate issues and rate changes that should or would result in the event that disbursements from the Pennsylvania Universal Service Fund ("Fund") are reduced. In its Order, the Commission recognized its responsibility for assuring the maintenance of universal service telecommunications services at affordable rates in Pennsylvania as well as the evolving nature of this responsibility. The Commission noted that the Fund helps to maintain the affordability of local service provided by a majority of the telephone companies in the Commonwealth.

In response to the Commission's December 20, 2004 Order, a Prehearing Conference was held before ALJ Colwell on February 16, 2005. At that time, it was determined that the commencement of this proceeding would be delayed to allow for an exchange of data amongst the parties and possible settlement discussions. The commencement of this proceeding was also delayed in light of several ancillary issues, including a pending proceeding regarding intercarrier compensation being conducted by the Federal Communications Commission ("FCC"), at Docket No. 01-92, and the filing of preliminary pleadings regarding the impact of wireless carriers on this proceeding. It was determined that a Further Prehearing Conference would be convened in April, 2005 to re-examine whether it was appropriate to commence this proceeding.

Since the February 16, 2005 Prehearing Conference, the FCC has issued a Further Notice of Proposed Rulemaking ("FNPRM") at the intercarrier compensation docket. Comments in response to the FNPRM are due to be filed on May 23, 2005 and Reply Comments are due to

be filed on June 22, 2005. Furthermore, a Motion regarding the impact of wireless carriers on this proceeding, and responses to that Motion, have been filed. There has also been an initial exchange of preliminary data regarding this proceeding. Additionally, since the February 16th Prehearing Conference, the remanded Commission proceeding regarding the access charges of Verizon Pennsylvania and Verizon North, Inc. has commenced and a procedural schedule, as discussed below, has been established.

II. ISSUES

The Consumer Advocate has intervened into this matter to protect the interest of consumers. Despite the significant changes that have occurred concerning intrastate access rates since the February 16, 2005 Prehearing Conference, the issues raised by the OCA in its initial Prehearing Memorandum remain intact.

In particular, any revenue-neutral reduction in intrastate access charges must be considered in light of the \$18 limit on monthly residential local rate customer charges instituted as a result of the settlement of the last proceeding addressing this issue at Docket No. M-00021956. Any amounts above \$18.00 must come from the Universal Service Fund. This limitation was subsequently codified in Section 3015(G) of the recently enacted Act 183 of 2004. The OCA will also raise the issue of what regulatory changes are appropriate given the pending consideration of the matter of access charges, including intrastate access charges, by the FCC on a national basis. It is further necessary to consider these issues given the changes in the long distance industry.

The OCA intends to address the specific issues articulated by the Commission in its December 20, 2004 Order initiating this proceeding but has not yet finalized its position on these issues at this time. In addition to those issues, the OCA may raise the following issues:

- Is it appropriate for the PUC to further reduce access charges given the FCC's consideration of the intercarrier compensation proposals that would allow the FCC to determine the proper level of access charges? Is it worthwhile to continue local rate rebalancing as the FCC considers doing the same on a national basis?
- To what extent does it continue to be worthwhile to reduce intrastate access charges given changes in the long distance industry? What consumer benefit is likely to flow from further access reductions?
- How should local telephone companies continue to be compensated for access reductions under current Pennsylvania laws given that Pennsylvania continues to have an \$18 limit on monthly residential local rate customer charges as part of the Pennsylvania USF?
- To what extent should joint and common network costs be shifted from access rates to local rates?
- To what extent, if at all, should access charges be reduced and over what period of time?

The OCA intends to participate fully in this investigation and has already issued one set of discovery. The OCA may raise additional issues depending on its investigation, including answers to that discovery, if necessary. If any additional issues arise as a result of this investigation, the OCA will raise them in testimony.

III. PROPOSED SCHEDULE

The OCA and other anticipated active parties have discussed a possible schedule for this proceeding. As noted above, there are other proceedings that are currently underway that address the issue of intercarrier compensation. As such, the OCA submits that any schedule established in this proceeding must consider the status of these other proceedings. Furthermore, the OCA submits that any procedural schedule established for this proceeding must consider the outcome of the pleadings filed regarding the impact of wireless carriers in this proceeding. Significantly, the FCC has also recently indicated that it anticipates it will have new federal rules established regarding intercarrier compensation by the end of 2005.¹ As such, a Recommended Decision in this proceeding by the end of this year could allow for consideration of the new federal rules.

Finally, the OCA cautions against establishing a schedule in this proceeding that conflicts with the Commission's remanded proceeding regarding the access charges of Verizon and Verizon North. That schedule is as follows:

Direct Testimony	June 8, 2005
Rebuttal Testimony	June 29, 2005
Surrebuttal Testimony	July 11, 2005
Hearings	July 19-20, 2005
Main Brief	August 17, 2005
Reply Brief	August 31, 2005

¹ See, Speech of Commissioner Copps to Federal Communications Bar Association, TR Daily, March 28, 2005.

The OCA will cooperate with the ALJ and other parties in establishing a schedule for this proceeding.

IV. WITNESSES

The OCA intends to present the direct, rebuttal, and surrebuttal testimony, as may be necessary, of the following witness in this proceeding:

Dr. Robert Loube
Rhoads and Sinon, LLC
10601 Cavalier Drive
Silver Spring, Maryland 20901

Telephone Number: 301-681-0338
E-mail Address: bobloube@earthlink.net

Dr. Loube may present testimony in written form and may also attach various exhibits, documents, and explanatory information that will assist in the presentation of the OCA's case. Dr. Loube will address the issues articulated above as well as any other issues that may arise throughout this proceeding. In order to expedite the resolution of this proceeding, the OCA requests that copies of all interrogatories, testimony, and answers to interrogatories be served directly upon Dr. Loube, as well as serving a copy to counsel for the OCA. In order to expedite the resolution of this proceeding, the OCA also requests that discovery questions and responses should also be sent by e-mail to the e-mail address listed above as well as the OCA counsel e-mail listed below.

The OCA specifically reserves the right to call additional witnesses, as necessary. As soon as the OCA has determined whether an additional witness or witnesses will be necessary for any portion of its case, all parties of record will be notified.

V. SERVICE ON THE OCA

The OCA will be represented in this case by Senior Assistant Consumer Advocate Philip F. McClelland and Assistant Consumer Advocate Joel H. Cheskis. The OCA requests that two copies of all documents be served on the OCA as follows:

Philip F. McClelland
Senior Assistant Consumer Advocate
Joel H. Cheskis
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street, Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Telephone: (717) 783-5048
Telecopier: (717) 783-7152
E-mail: pmcclelland@paoca.org
jcheskis@paoca.org

VI. SETTLEMENT

The OCA is amenable to settlement discussions and will participate in whatever settlement discussions are scheduled. The OCA is hopeful that an amicable resolution of this matter can be had through settlement negotiations.

Respectfully submitted,



Philip F. McClelland
Senior Assistant Consumer Advocate
Joel H. Cheskis
Assistant Consumer Advocate

For: Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048

Dated: April 15, 2005

00083961.WPD

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Further Prehearing Memorandum, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 15th day of April, 2005.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Robert V. Eckenrod, Esq.
Office of Trial Staff
Pa. PUC
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17105

SERVICE BY E-MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

Steven C. Gray, Esq.,
Office of Small Business Advocate
300 North Second Street
Suite 1102 Commerce Bldg.
Harrisburg, PA 17101

D. Mark Thomas, Esq.
Patricia Armstrong, Esq.
Thomas Thomas Armstrong &
Niesen
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500

Zsuzsanna E. Benedek, Esq.
240 North Third Street
Suite 201
Harrisburg, PA 17101

Michelle Painter, Esq.
MCI
22001 Loudoun County Parkway
C2-2-105
Ashburn, VA 20147

Bradford M. Stern, Esq.
Martin C. RothFelder, Esq.
Rothfelder Stern, L.L.C.
625 Central Avenue
Westfield, N.J. 07090

Daniel Clearfield, Esq.
Alan C. Kohler, Esq.
Wolf Block Schorr Solis-Cohen LLP
212 Locust Street, Suite 300
Harrisburg, PA 17101

Julia A. Conover, Esq.
Suzan DeBusk Paiva, Esq.
Verizon
1717 Arch Street, 32nd Fl.
Philadelphia, PA 19103

Christopher M. Arfaa, Esq.
Susan M. Roach, Esq.
Drinker Biddle & Reath LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103

John F. Povilaitis, Esq.
Matthew A. Totino, Esq.
Ryan, Russell, Ogden & Seltzer, LLP
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025

Kristin Smith, Esq.
Qwest Communications Corp.
1801 California Street, Suite 4900
Denver, CO 80202



Philip F. McClelland
Senior Assistant Consumer Advocate
Joel H. Cheskis
Assistant Consumer Advocate
Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
*82775

OALJ Hearing Report

Please check Those Blocks Which Apply

Docket No.:	I-00040105		YES	NO
		Prehearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Case Name:	Investigation Regarding Rate Issues related	Hearing Held:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Disbursements from Pennsylvania Universal Service Fund		Testimony Taken:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Transcript Due:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Hearing Concluded:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Location:	HBG	Further Hearing Needed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Estimated Add'l Days:	3	
Date:	April 21, 2005			
		RECORD CLOSED:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ALJ:	Susan D. Colwell	DATE:		
		Briefs to be Filed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Reporting Firm:	Commonwealth Reporting	DATE:		
		Bench Decision:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<div style="display: flex; justify-content: space-around;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold; font-size: 1.2em;">DOCUMENT FOLDER</div> <div style="text-align: center;"> <h2 style="margin: 0;">RECEIVED</h2> <p style="margin: 0;">APR 25 2005</p> <p style="margin: 0; font-size: 0.8em;">PA PUBLIC UTILITY COMMISSION UTILITY'S BUREAU</p> </div> </div>		REMARKS:	SCHEDULE SET, ORDER TO BE ISSUED ON SCHEDULE AND MOTION	

PLEASE PRINT CLEARLY - Incomplete Information may result in delay of processing.

Name and Telephone Number	Address	Who are you representing?
United Telephone Company of PA d/b/a Sprint	240 North Third St. Suite 201 <small>City: Harrisburg State: PA Zip: 17101</small>	Sprint
Telephone: [blank]	E-mail Address: sue.e.benedek@comcast.net	Fax Number: 717-236-1389
Pa. Office of Consumer Advocate	555 Walnut St. <small>City: Harrisburg State: PA Zip: 17101</small>	Philip McClelland Joel Cheskis
Telephone: 717-5048	E-mail Address: pmcclelland@pa.oca.org	Fax Number: 717-7152
MARK STEWART	WOLF BLOCK, 212 LOCUST ST. STE. 300, HBG 17101 <small>City: Harrisburg State: PA Zip: 17101</small>	AT&T
Telephone: 237-7160	E-mail Address: MSTEWARD@WOLFBLOCK.COM	Fax Number: 237-7160

Check this box if additional parties or attendees appear on back of form.

Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.

Name and Telephone Number	Address	Who are you representing?
John F. Poulakitis Telephone: 717-236-7714	Ryan Russell Ogden + SelTZer 800 N. Third ST, Suite 101 City: Harrisburg State: PA Zip: 17102	QUEST
CHRISTOPHER M. ARFAK Telephone: 215-988-2715	Dinkler Biddle + Treanle City: Phila. State: PA Zip: 19103	Cellco partnership, d/b/a Verizon wireless
Thomas J. Sniscak Telephone: 717-236-1300	Henke McKern Sniscak & Kennard P.O. Box 1778 City: Hbry State: PA Zip: 17501	Verizon Pennsylvania Inc. Verizon North Inc.
Michelle Painter Telephone: 703 886 5973	22001 Loudoun County Pkwy City: Ashburn State: VA Zip: 20147	MCI
Thomas Monas Ausby & Neer PAT Armstrong Gene Machy Telephone: 255-7627	212 Locust St PO Box 9500 City: Hbry State: PA Zip: 17108	RTCC
BRADFORD STERN Telephone:	625 Central Ave Westfield City: NT Zip: 07070	Wanted + Mobile
Robert Eckenrod Telephone: 783-6155	P.O. Box 3265 City: Harrisburg State: PA Zip: 17109	OTS
Steve GRAY Telephone: 783-2525	Suite 102 Commerce Bldg City: Hbry State: PA Zip: 17101	OSBA

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.