

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications Of Pennsylvania, LLC,	:	
	:	
Complainant	:	Docket No. C-2009-2098380
	:	
v.	:	
	:	
Armstrong Telephone Company North, <i>et al.</i> ,	:	
	:	
Respondent	:	
	:	
TGC New Jersey, Inc.,	:	
	:	
Complainant	:	Docket No. C-2009-2099805
	:	
v.	:	
	:	
Armstrong Telephone Company North, <i>et al.</i> ,	:	
	:	
Respondent	:	
	:	
TGC Pittsburgh, Inc.,	:	
	:	
Complainant	:	Docket No. C-2009-2098735
	:	
v.	:	
	:	
Armstrong Telephone Company - North, <i>et al.</i> ,	:	
	:	
Respondent	:	

**PRELIMINARY OBJECTIONS AND MOTION FOR STAY OR CONSOLIDATION
ON BEHALF OF THE PENNSYLVANIA TELEPHONE ASSOCIATION**

NOW COMES the Pennsylvania Telephone Association (“PTA”) [EMBARQ MAY JOIN] on behalf of its member companies¹ and files this Preliminary Objection and Motion

¹ The Pennsylvania Telephone Association is the representative of the following companies at the above-captioned docket: Armstrong Telephone Company - Pennsylvania, Armstrong Telephone Company - North, Bentleyville Telephone Company, Buffalo Valley Telephone Company, Citizens Telecommunications Company - New York, Citizens Telephone Company of Kecksburg, Commonwealth Telephone Company LLC d/b/a Frontier Communications Commonwealth Telephone Company, Frontier

to Stay the Complaint filed by AT&T Communications of Pennsylvania, LLC, TGC New Jersey, Inc., and TGC Pittsburgh, Inc. (collectively "AT&T") and in support thereof, avers as follows:

I. BACKGROUND

1. At various times in April 2009, each of the PTA Member Companies were served with a Complaint filed by AT&T against existing access charge tariffs.

2. By stipulation of the parties as approved by Chief Administrative Law Judge Veronica A. Smith, Answers, Motions and/or Preliminary Objections are due on April 30, 2009 as to all Respondents.

3. Commission regulations recognize the filing of Preliminary Objections on numerous grounds, including:

Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.

* * * *

Pendency of a prior proceeding or agreement for alternative dispute resolution.²

The PTA's Preliminary Objections invoke these two aspects of the Commission's Preliminary Objections practice.

Communications of Breezewood, LLC, Frontier Communications of Canton, LLC, Frontier Communications of Lakewood, LLC, Frontier Communications of Oswayo River, LLC, Frontier Communications of Pennsylvania, LLC, Conestoga Telephone & Telegraph Company, Denver and Ephrata Telephone and Telegraph Company, Hickory Telephone Company, Ironton Telephone Company; Lackawaxen Telecommunications Services, Laurel Highland Telephone Company, TDS Telecom/Mahanoy & Mahantango Telephone Company, Marianna and Scenery Hill Telephone Company, The North-Eastern Pennsylvania Telephone Company, North Penn Telephone Company, Consolidated Communications of Pennsylvania Company, Palmerton Telephone Company, Pennsylvania Telephone Company, Pymatuning Independent Telephone Company, South Canaan Telephone Company, TDS Telecom/Sugar Valley Telephone Company, Venus Telephone Corporation, Windstream Pennsylvania, LLC, and Yukon-Waltz Telephone Company. There are 30 companies participating as the PTA. The group should not include Hancock Telephone Company, TDS Telecom/Deposit Telephone Company, and West Side Telephone Company. The group properly excludes Hancock Telephone Company, TDS Telecom/Deposit Telephone Company, or West Side Telephone Company, since these companies do not have a Pennsylvania access tariff; do not have a Chapter 30 Plan and do not currently receive distributions from the existing PaUSF. Given these circumstances, the issues raised by AT&T in this proceeding have no application to these three companies.

² 52 Pa. Code § 5.101(a)(2) and (6).

4. The Commission regulations also recognize that “the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.”³

II. PRELIMINARY OBJECTIONS

A. The Requirement to State a Cause of Action

5. According to Commission regulations, a Complaint must aver “an act done or omitted to be done by a person subject to the jurisdiction of the Commission, in violation, or claimed violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of a Commission . . .”⁴

6. The corollary contained in the Rules of Civil Procedure, equally applicable in administrative proceedings, requires that “the material facts on which a cause of action or defense is based shall be stated in a concise and summary form.”⁵ This requirement is satisfied if the pleading: (1) contains averments of all material and relevant facts the plaintiff will eventually have to prove in order to obtain the relief requested; and (2) such averments are sufficiently specific so as to enable the party served to frame an answer and prepare a defense.⁶ This principle “would be thwarted if courts, rather than parties, were burdened with the responsibility of deciphering the cause of action from a pleading of facts which obscurely support the claim in question.”⁷

³ 52 Pa. Code § 5.21(d).

⁴ 52 Pa. Code § 5.21(a).

⁵ Pa. R. Civ. P. 1019(a); see also *City of Philadelphia v. Kane*, 438 A.2d 1051, 1052 (Pa. Commw. Ct. 1982) (In contrast to “notice pleading” jurisdictions, Pennsylvania is a fact pleading state.).

⁶ *Commonwealth v. Shipley Humble Oil Co.*, 370 A.2d 438, 439-40 (Pa. Commw. Ct. 1977); *Philadelphia County Intermediate Unit No. 26 et. al. v. Department of Educ.*, 432 A.2d 1121, 1125 (Pa. Commw. Ct. 1981).

⁷ *Krajsa v. Key Punch, Inc.*, 622 A.2d 355, 357 (Pa. Super. Ct. 1993); cf. *Hohensee v. Luger*, 412 A.2d 1111, 1112 (Pa. Commw. Ct. 1980) (pleading fails where the averments are so deficient that the tribunal could not adjudicate the claim without undertaking to research and rewrite them); Pa. R. Civ. P. 1019(f) (averments of time and place must be specifically averred); e.g. *Smith v. Brown*, 423 A.2d 743, 745-46 (Pa. Super. Ct. 1980) (complaint which, among other deficiencies, asserts defendant violated various

7. The test as to the sufficiency of a complaint is whether the complaining party can prove facts legally sufficient to establish his or her right to relief.⁸ In reviewing the legal sufficiency of a party's claims, the tribunal must accept as true all of the well-plead material facts, as well as all reasonable inferences, and any doubt must be resolved in favor of the ruling of demurrer.⁹

8. Most importantly, in evaluating the legal sufficiency of a complaint, conclusions of law, speculation and unwarranted inferences from the facts, argumentative allegations, and expressions of opinion are not considered to be admitted as true and, therefore, cannot support an otherwise deficient pleading.¹⁰

B. Commission-Made Rates

9. The PTA Member Companies' currently effective tariffs have the full force and effect of law and are binding upon both the utility and its customers.¹¹ Under Pennsylvania law, the rates, terms and conditions of PTA Member Companies' tariffed services are presumed to be just and reasonable.¹² Section 1303 of the Public Utility Code further directs that:

No public utility shall directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto. **The rates specified in such tariffs shall be the lawful rates of such public utility until changed, as provided in this part.**¹³

laws without explaining what those laws were and the extent to which they were violated is insufficient); *Pike County Hotels Corp. v. Kiefer*, 396 A.2d 677, 681 (Pa. Super. Ct. 1978) (in a negligence action, plaintiff must plead factual averments as to the duty owed by the defendant).

⁸ *Firing v. Kephart*, 353 A.2d 833, 835 (Pa. 1976); *Myers v. Ridge*, 712 A.2d 791, 794 (Pa. Commw. Ct. 1998).

⁹ *Marinoff*, supra, 75 Pa. PUC at 491.

¹⁰ *Id.*; *Giffin v. Chronister*, 616 A.2d 1070, 1072 (Pa. Commw. Ct. 1992).

¹¹ *Stiteler v. The Bell Telephone Company of Pennsylvania, Inc.*, 379 A.2d 339 (Pa. Cmwlth. 1977) (presently effective tariffs are not mere contracts, but have the full force and effect of law and may be relied upon, and are binding upon, both the utility and its customers).

¹² *Lehigh Valley Power C'tee v. Pa. Public Utility Comm'n*, 563 A.2d 557 (Pa. Cmwlth. 1989).

¹³ 66 Pa. C.S. §1303 (Emphasis added).

10. Stating that the “filed rate doctrine” is mandated by Section 1303, the Commission has explained that:

. . . [c]onsonant with the foregoing provision, it is clear that a utility’s lawful rates are the rates specified in that utility’s tariff. Furthermore, it is well settled in the law that a public utility and its customer may not fix rates by contract different from rates contained in a filed tariff, and that the filed tariff rate has the force of law and is binding on both the utility and the customer.¹⁴

11. Further, Section 3303 of the Public Utility Code¹⁵ precludes forfeiture or prosecution for enforcing any regulation or practice pursuant to a rate, regulation or practice contained in a tariff approved by the Commission. Thus, AT&T’s Complaint in essence avers that the PTA companies have adhered to their tariff. This is no violation of the Public Utility Code.

C. Burden of Proof

12. The burden is upon AT&T to produce evidence and persuade the Commission by a preponderance of the evidence that the RLECs’ current tariffed switched access rates are not “just and reasonable” in conformity with their respective plans.

13. The RLECs’ Chapter 30 Plans provide as follows:

Complaints under Section 1309 of the Public Utility Code against existing rates may be filed only if such rates fail to comply with the terms of this Plan. Section 1309 shall be the exclusive basis for filing complaints against existing rates and such a complaint may be sustained only if such existing rates do not comply with the terms of this Plan. In proceedings under this part, the burden of proof shall be on the complainant to show, by a preponderance of the evidence, that the rates are not just and reasonable under Section 1309.¹⁶

¹⁴ *Re Maislin Industries et al.*, Docket No. P-980204 at 295 (Opinion and Order entered March 20, 1990) (citations omitted); *Brockway Glass v. Pa. Public Utility Comm’n*, 437 A.2d 1067 (Pa. Cmwlth. 1981); see also, *Pa. Elec. Co. v. Pa. Public Utility Comm’n*, 663 A.2d 281 (Pa. Cmwlth. 1995) (tariff provisions cannot be “waived”).

¹⁵ 66 Pa. C.S. §3303 (Emphasis added).

¹⁶ See, for example, Chapter 30 Plan of Denver & Ephrata Telephone Co. at 19 (Part E.1).

D. Just and Reasonable Rates

14. Under Act 183, a mere recitation that rates are not “just and reasonable” is not a legally sufficient basis to challenge rates. Section 3015(g) of the Public Utility Code¹⁷ provides that rates developed in accordance with the “annual rate change limitations” of an alternative regulation plan “shall be deemed just and reasonable under Section 1301”:

(g) **Rate change limitation.** Nothing in this chapter shall be construed to limit the requirement of Section 1301 (relating to rates to be just and reasonable) that rates shall be just and reasonable. **The annual rate change limitations set forth in a local exchange telecommunications company’s effective commission-approved alternative form of regulation plan or any other commission-approved annual rate change limitation shall remain applicable and shall be deemed just and reasonable under section 1301.**¹⁸

15. The PTA Companies recognize that, under traditional utility regulation, Pennsylvania appellate courts have found that the intent of the General Assembly is to grant the PUC full powers in regulating services and rates of public utilities. The PUC is granted “a wide range of discretion as to the extent and type of adjustments it makes . . .”¹⁹ The PUC “is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates.”²⁰ PUC discretion is not “unbridled,” however, and “[a]n agency order imposing a rate which is not just and reasonable is unlawful.”²¹

16. On the other hand, the PUC’s broad authority under Section 1301 may be legislatively constrained, if it is made clear by the General Assembly that provisions of the Public Utility Code have been modified.²² For example, where the General Assembly has

¹⁷ 66 Pa.C.S. § 3015(g).

¹⁸ 66 Pa.C.S. § 3015(g) (emphasis added)

¹⁹ *West Penn Power Co. v. Pa. P.U.C.*, 147 Pa. Cmwlth. 6, 13, 607 A.2d 1132, 1135 (1992).

²⁰ *Popowsky v. Pa. P.U.C.*, 669 A.2d 1029, 1040 (Pa. Cmwlth. 1995).

²¹ *Barasch v. Pa. P.U.C.*, 491 A.2d 94, 106, 507 Pa. 496, 521 (1985).

²² *Mast Hope Rapids Property Owners Council v. Pa. P.U.C.*, 135 Pa. Cmwlth 437, 449, 581 A.2d 994, 1000 (1990).

mandated cost-based rates for electric utilities, the legislative directive must be followed.²³ Nor may the PUC ignore a statutory directive and follow a different ratemaking principle (e.g., gradualism) “to trump other factors without providing a sufficient explanation.”²⁴ And, while the PUC interpretation of the utility tariff is entitled to “great deference and should only be reversed if clearly erroneous,” the violation of a statutory rate cap would constitute reversible error.²⁵

17. That is the Legislature’s intent here. The general Section 1301 “just and reasonable” standard is now **subject to** the provisions of Section 3015(g), a provision that restricts the scope of “just and reasonable” to the terms of the plan. AT&T nowhere asserts that the PTA Member Companies’ current access rates are not in full conformity with their Alternative Regulation Plans.²⁶ Thus, per the statute, these rates, as they conform to their Chapter 30 Plans, are deemed just and reasonable under Section 1301 and, absent such lack of conformity, cannot be challenged by complaint.

E. Failure to State a Cause of Action

18. The relief sought by AT&T is a reduction of the RLECs’ current intrastate tariffed switched access rates down to a level equal to their tariffed interstate rates.

19. Here, AT&T’s Complaint fails to aver legally sufficient facts. Its heavy and lengthy reliance upon conclusions of law, speculation, rhetoric, unwarranted inferences, argumentative allegations, and opinions cannot substitute for well-plead facts necessary to state a cause of action.

²³ *Lloyd v. Pa. P.U.C.*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006) (finding that cost-based rates are required under the Electric Competition Act, 66 Pa.C.S. § 2804(3) and that the PUC had failed to follow this directive).

²⁴ *Id.*

²⁵ *US Steel Corp, v. Pa. P.U.C.*, 850 A.2d 783, 789 (Pa. Cmwlth. 2004).

²⁶ This is the conclusion reached by the Administrative Law Judge below.

20. Despite its length, AT&T's Complaint can point to no provision of the Pennsylvania Public Utility Code, Commission regulation or Order that has been violated by any of the RLECs, except for the broad assertion that existing rates are "unjust and unreasonable." The factual averments upon which AT&T supports this legal assertion are three:

- a. Intrastate switched access rates are higher than interstate switched access rates.²⁷
- b. Access rates are applied to a different calling area for wireless carriers.²⁸
- c. It is this Commission's policy to reduce access charges.²⁹

These allegations fail to identify any violation of any statute, Commission regulation or Order.

21. There is no legal requirement that intrastate rates mirror their interstate counterpart. The Commission has never stated that intrastate rates should mirror interstate rates across the board. There is no such requirement in Chapter 30. The PTA has previously recommended that the traffic-sensitive components should be recalibrated periodically to match the interstate component to avoid arbitrage. On occasion, the Commission had directed the companies to do so. However, there is no ruling that this comparison should be across the board and including of the non-traffic sensitive components, include the CCL.³⁰

²⁷ Complaint at ¶¶ 11 and 12.

²⁸ Complaint at ¶¶ 21 and 22.

²⁹ Complaint at ¶¶ 14, 16 and 18.

³⁰ While the PTA has previously supported the notion that the traffic-sensitive components of intrastate access should mirror the interstate level, AT&T makes a claim that intrastate is higher by comparing more than the traffic-sensitive component. Including the intrastate carrier common line charge, which has no interstate counterpart, is a gross miscomparison. On its side, the FCC has spun off the fixed charges into a component labeled the Subscriber Line Charge.

22. Secondly, AT&T refers to its inability to compete because AT&T is required to pay access rates differently than wireless carriers and VOIP providers.³¹

23. However, the application of access charges to wireless carriers, is strictly within the purview of the FCC, which has chosen to define the wireless carrier's local calling area as the entire metropolitan statistical area ("MSA"). In this instance, AT&T is not complaining about the access charge level, but rather the fact that the FCC has approved an application of the rates that is different between the two technologies. Essentially, AT&T's Complaint is that the FCC's application of access charges to wireless carriers is different from the FCC's (and this Commission's) application of access charges in the wireline industry. Again, there is no violation of the Pennsylvania Public Utility Code or Commission Order. The fact that the FCC has directed that access rates be applied to a different geographic area is not jurisdictional to this Commission. The PTA acknowledges the disparity in terminating fees paid by different types of carriers and agree that it should be addressed by the FCC in a comprehensive intercarrier compensation plan.

24. Thirdly, it is not accurate for AT&T to aver that it is this Commission's policy to reduce access charges and, since the last changes authorized in 2003 and 2004, that further access charge reductions are somehow overdue and owed to AT&T. To the contrary, access rates have been set as a matter of Commission policy in the context of its generic investigations. The Commission has never ruled that access charges must be set at cost or reduced below their current level in any context other than in a generic investigation.

25. It is insufficient for AT&T to aver that the preamble to Act 183, which consists of a series of legislative "objectives," refers in any manner to access charges when access

³¹ This same position is taken by AT&T in the currently ongoing investigation. Direct Testimony of AT&T witnesses Nurse and Oyefusi at 20-21.

charges are not explicitly referenced. For example, the original 1993 Chapter 30 contained a specific statement in the text of the statute that access charges should be reduced to a level below 12.5 cents.³² There is no such reference in Act 183. Act 183 mentions access rate levels, only to guarantee revenue neutrality to the RLECs if access rates are reduced. Nor is there any Commission policy that access rates should be reduced to cost.

26. Moreover, a statement of legislation objectives is not a requirement of law. So, even were access charges explicitly mentioned, failure to abide by “an objective” is not a violation of law. [NEED CITATION]

27. Nor is there any requirement that access charges be set at cost. Certainly, there is no such prescription in PTA Member Companies’ Plans. Neither Act 183 nor the Chapter 30 Plans, contains any limits upon access rates. Indeed, the PUC, in approving the PTA Companies’ Plans, rejected AT&T’s proposal that “above-cost access charges” be proscribed in the Plans.³³ The PUC found that AT&T’s attempt to place “limitations on intrastate access charges are untimely” and that the rates resulting from the *Global Order* “shall be considered just and reasonable rates for the purpose of resolving the Companies’ Chapter 30 Plans.”³⁴

28. The Commonwealth Court in *Bell Atlantic*, concluded that Verizon’s access charges need not be reduced to its (incremental) cost, stating:

The Office of Consumer Advocate responds to AT&T by submitting that there is no legal authority requiring the PUC to reduce access rates to the incremental cost of access service. OCA witnesses testified that such a reduction could require customers other than the long distance carriers to pay all of the joint and common costs of the network and therefore should be rejected. The logic of that analysis commends it.... One of the lessons of this proceeding is that the cost of excessively priced elements must be

³² 66 Pa.C.S. § 2007(1) (sunset effective December 31, 2003).

³³ *Re: Armstrong Telephone Company-Pennsylvania v. Pa.P.U.C.*, 2000 WL 350440 at *22 (Pa. P.U.C.) (reciting AT&T Exceptions at 5).

³⁴ *Id.* at *23.

reduced..., **but not so greatly as to eliminate the support such revenue provides to other areas of the system that need that support.**³⁵

29. Finally, AT&T's suggested relief either is already the subject of another Commission investigation or violates Pennsylvania law. The Pennsylvania Public Utility Code requires that reductions in access rates may only occur "except on a revenue-neutral basis."³⁶ AT&T's Complaint acknowledges, in passing, this requirement,³⁷ but then asserts that the RLECs "may elect instead to offset access revenue reductions by becoming more efficient, or by enlarge the scope of their retail product offerings." Such an outcome has nothing to do with "revenue neutrality" and is not a lawful basis for access charge changes. The only other suggestion made by AT&T, "increases in retail prices," is already the subject of a current Commission investigation that was launched in April 2008, and which is currently pending before ALJ Susan Colwell.

30. In short, AT&T, the party with the burden of proof, has filed a Complaint which contains no reference to any violation by the RLECs of the Pennsylvania Public Utility Code, Commission regulation or Order. While the Complaint contains generalized allegations about rates not being "just and reasonable," there is no factual basis averred by AT&T to support its claims. By failing to establish a factual basis to sustain the Complaint were its allegations proved, AT&T fails to state a cause of action and its Complaint should be dismissed.

III. MOTION TO STAY

31. AT&T's filing, while styled as a Complaint against current tariffed RLEC rates, is really an attempt to:

³⁵ *Bell Atlantic - Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440, 480, 474 (Pa. Cmwlth. 2000).

³⁶ 66 Pa. C.S. § 3017(a).

³⁷ Complaint at ¶ 23.

- a. Force the Commission to renew a generic investigation into switched access rates; or
- b. In the alternative, end run the Commission's investigation by starting another docket on access charge levels.

32. The Complaint filed by AT&T is argumentative and conclusory. As noted above, AT&T has alleged no reason to reduce the RLECs' intrastate switched access rates other than a simple desire to reduce its own expenses. There is no allegation that AT&T will pass its savings on to customers. However, the statutory requirement for RLEC revenue neutrality will result directly in an increase to local rates for RLEC customers.

33. By filing a Complaint, AT&T has created a cumbersome docket of thirty-two (32) Complaints brought by three complainants. AT&T is attempting to use this blunt instrument as a platform to force an industry-wide rate reduction which affects numerous other parties, both public and private.

34. The Commission already has pending a generic docket, the subject of which is intrastate switched access rates.³⁸

35. It is cumbersome and a waste of administrative resources to litigate a Complaint proceeding, when the Commission has ruled or will rule that consideration of this subject matter should be stayed.

IV. MOTION TO CONSOLIDATE

36. The Commission or a presiding officer "may order proceedings involving a common question of law or fact to be consolidated." Both the generic investigation and AT&T's Complaint present identical questions regarding justness and reasonableness of access rates, the resolution of which would rely, at least from AT&T's perspective, on the

³⁸ *Investigation Regarding Intrastate Access Charges and Intrastate Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, Docket No. I-00040105.

same arguments. Indeed, many of the arguments AT&T makes in its Complaint are copied virtually verbatim from AT&T's arguments regarding access charges in the previously-referenced pending investigation.

37. To the extent that the Complaint is not dismissed or stayed, the PTA requests in the alternative that the AT&T Complaint should be consolidated with the generic investigation. There is absolutely no purpose served to have two separate dockets, the subject of which is exactly the same.

38. The Commission has, for the last few years, determined to stay that proceeding and a further one-year stay is currently pending before the Commission upon the joint request of the PTA, Embarq and the Office of Consumer Advocate.

39. If the Commission determines that the generic investigation should be stayed, then so too should AT&T's Complaint. If the generic investigation moves forward, then so too should AT&T's Complaint as part of the same docket. The very same public interest rationale used by the Commission in consideration of the current request for a stay of the generic investigation, applies with equal, if not greater force, to AT&T's Complaint.

40. In 2002, AT&T filed a complaint similar to the one filed here against Verizon North seeking, among other relief, a determination that Verizon North's access charges were unjust and unreasonable. Verizon filed an Answer and Motion to Dismiss the Complaint, in which it contended that the Commission had already acknowledged in the *Global Order* that, as a matter of policy, "it is not simply a question of slashing access charges, as AT&T would have it, but rather 'implicit subsidies' must be replaced with 'explicit and sufficient' support mechanisms to attain the goal of universal service in a competitive environment."³⁹ As Verizon further stated, "[i]t is not necessarily the case,

³⁹ *AT&T Communications of PA, Inc. v. Verizon North Incorporated*, Docket NO. C-20027195, Verizon Answer and Motion to Dismiss at 3.

moreover – as AT&T presumes – that the Commission will decide that the best course is to immediately reduce access charges to cost. In fact, the Commission has previously rejected that very proposal.”⁴⁰ Verizon moved to dismiss AT&T’s complaint as premature and procedurally improper, and a matter more appropriately addressed in a generic proceeding involving all incumbents.⁴¹

41. In its Answer opposing Verizon’s Motion, AT&T contested withholding further access reductions for Verizon North while the RLEC investigation was pending.⁴²

42. By Initial Decision dated May 17, 2002, the Chief Administrative Law Judge recommended dismissal, without prejudice, in favor of pursuing the issues raised in the broader investigation, noting that the Commission already had commenced an access charge investigation pending and that it was a “cleaner and clearer way to deal with this situation.”⁴³

43. On exceptions, the Commission framed the issue presented as “whether it is prudent to permit AT&T’s Formal Complaint against Verizon North to proceed separately from the consolidated investigations established by our *Global* and *Merger Orders*.”⁴⁴ The Commission continued by noting that “[i]t is important to note at this point that it is our preference that the Parties endeavor to address and resolve the issues addressed in AT&T’s Formal Complaint against Verizon North in the context of the collaborative proceeding at Docket No. M-00021596, which is the vehicle that is currently in place to

⁴⁰ *Id.* at 4.

⁴¹ In January 2002, the Commission opened a proceeding to address further access reductions for Spring and the RLECs. This resulted in a July 15, 2003 Order adopting further rural access reform for Sprint and the RLECs as set out in a Joint Access Proposal joined by all parties to the investigation.

⁴² AT&T Answer to Motion to Dismiss at 6. *Access Charge Investigation per Global Order*, Docket Nos. M-00021596, *et al.* (Order entered July 15, 2003)

⁴³ *AT&T Communications of PA, Inc. v. Verizon North Incorporated*, Docket No. C-20027195, Initial Decision dated May 17, 2002 at 2, Attached as [REDACTED].

⁴⁴ *Id.*, Opinion and Order entered December 24, 2004 at 13.

conform with the directives of our *Global* and *Merger Orders* for a statewide access charge investigation.⁴⁵

44. Based upon this preference, the Commission urged the parties to facilitate a settlement, but otherwise consolidated AT&T's complaint with an on-the-record investigation into Verizon's access rates, which investigation this Commission has stayed, as it has for the RLECs, pending the outcome of the FCC's *Intercarrier Compensation* case at CC Docket No. 01-92. Accordingly, the AT&T complaint against the RLECs should be consolidated with the pending investigation and stayed.

V. **CONCLUSION**

WHEREFORE, for the above-stated reasons, the Pennsylvania Telephone Association respectfully requests that the Commission dismiss AT&T's Complaint, or, in the alternative, stay the Complaint or consolidate it with the Commission's currently-pending generic rural access charge investigation.

Respectfully submitted,

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Date: April 30, 2009

⁴⁵ *Id.*, Opinion and Order entered December 24, 2004, at 14.

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CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of April, 2008, served a true and correct copy of the foregoing document upon the persons listed below by first class mail, postage prepaid:

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(April 23, 2009)

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