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January 18, 2013

Honorable Jeffrey Cohen
Acting Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Case 09-M-0527

Dear Acting Secretary Cohen:

Pursuant to the December 7, 2012 "Ruling on Phase III Procedure," enclosed please find Verizon's Reply Comments in Support of the Phase III Joint Proposal.

Respectfully submitted,

Joseph A. Post

Joseph A. Post

cc: Honorable Howard A. Jack (E-Mail)
Honorable Eleanor Stein (E-Mail)
Active Party List (E-Mail)
Mr. Alan Flacks (U.S. Mail)

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding to Examine Issues Related to a Universal Service Fund	**Case 09-M-0527**

VERIZON'S REPLY COMMENTS IN SUPPORT OF THE PHASE III JOINT PROPOSAL

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STATE OF NEW YORK
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VERIZON'S REPLY COMMENTS IN SUPPORT OF THE PHASE III JOINT PROPOSAL

Verizon respectfully submits these reply comments in support of the Phase III Joint Proposal.[1]

I. INTRODUCTION

Numerous parties, including Department of Public Service Staff, the Department of State's Utility Intervention Unit, and a diverse roster of industry representatives, joined in submitting comments in support of the Phase III Joint Proposal ("JP").[2] Only AT&T and Sprint submitted opposing comments.[3]

As Verizon showed in its comments, the access-charge provisions of the JP are in the public interest because they will ensure coordination between any action taken by this Commission on originating access charges and the nationwide course that will be set by the FCC.

[1] These comments are filed on behalf of Verizon New York Inc. and Cellco Partnership d/b/a Verizon Wireless. However, both these comments and our initial comments are also supported by Verizon New York Inc.'s affiliates MCI Communications Services, Inc. d/b/a Verizon Business Services and Verizon Long Distance LLC, both of which offer retail toll services and purchase access services from local exchange carriers in New York.

[2] T-Mobile did not file comments but, as already noted, it has submitted a letter to the ALJ indicating that it has no objection to the JP.

[3] Sprint, interestingly, took the opposite position in comments filed with the North Carolina Commission in March 15, 2012. In those comments, Sprint asserted that "it is not necessary to address originated access rates at this time," in light of the fact that "the FCC is considering this issue as well as others in its FNPRM," and because consumer subscription to LEC integrated all-distance offerings limited the "market distortions and consumer harms" caused by originating access charges. *See* http://ncuc.commerce.state.nc.us/cgi-bin/webview/senddoc.pgm?dispfmt=&itype=Q&authorization=&parm2=GBAAAA67021B&parm3=000131826 at 4-5.

Rejecting the JP would promote unnecessary litigation, foster industry disruption, and create a serious potential for conflict with the measures ultimately adopted by the FCC — measures that will seek, as the *ABC Plan* and the *Transformation Order* did, to achieve a finely tuned balance among the conflicting interests of various categories of stakeholders in different parts of the country.[4] Nothing in the AT&T and Sprint comments undermines that conclusion. Moreover, no party has opposed the TAF provisions of the JP.

The JP as a whole is manifestly in the public interest, and it enjoys the support of a diverse range of parties with normally adverse interests. Under the standards for the review of settlements that have been set forth in previous orders, the Commission should adopt the JP.

II. NOTHING IN THE COMMISSION'S *PHASE II ORDER* WARRANTS REJECTION OF THE PHASE III JOINT PROPOSAL

AT&T and Sprint continue to argue that the JP is somehow inconsistent with ¶ 11(b) of the Phase II Joint Proposal, as adopted by the Commission in its *Phase II Order,*[5] and AT&T in particular makes much of the dire consequences that would ensue if the Commission were to begin to "set aside," "reneg[e] on," "scuttle[e]," and "re-write" adopted settlement agreements.[6] However, no such consequences are at issue here, because there is no inconsistency between the Phase II and Phase III Joint Proposals. Indeed, ¶ 11(a) of the Phase II proposal specifically reserved the rights of all parties "to argue for or against any Commission action with respect to . . . intrastate access charges in Phase III of this proceeding." Among the issues that various

[4] The JP creates a "safety valve" by providing that if the FCC has not acted on the *FNPRM* by July 2014, "the Commission should direct an Administrative Law Judge to convene a meeting of all interested entities to discuss what, if any, action would be appropriate at that time."

[5] Case 09-M-0527, "Order Adopting Phase II Joint Proposal" (issued and effective August 17, 2012).

[6] AT&T Comments at 6.

parties had raised in the past concerning "Commission action with respect to . . . intrastate access charges" was the need to coordinate such action with nationwide measures adopted by the FCC — precisely the issue that is addressed by the Phase III JP. That issue was raised on numerous occasions, well before the Phase II Joint Proposal was negotiated by the parties and adopted by the Commission.[7] Under these circumstances, it would be disingenuous for AT&T and Sprint to insist that they did not understand that this issue might be raised in Phase III by one or more parties pursuant to the ¶ 11(a) reservation of rights.

Aside from the fact that it was specifically authorized by ¶ 11(a), the JP is in no way inconsistent with the "litigation of all unresolved Phase III issues" that is called for in ¶ 11(b).[8] First, as Judge Jack recognized in his procedural ruling, a Commission decision declining to take further action prior to the issuance of an FCC order would be a genuine, albeit interim, resolution of the Phase III access charge issues,[9] looking towards a final resolution after the FCC issues an order pursuant to its *FNPRM*. AT&T's interpretation is tantamount to arguing that that resolution is an impermissible one — that in issuing the *Phase II Order* the Commission relinquished its discretion to adopt an approach to access charges based on federal/state coordination. But nothing in that order supports an interpretation with such potentially serious consequences.

Second, a Commission decision adopting the resolution proposed by the JP would be part of the Phase III litigation, not an end run around it. Judge Jack correctly concluded that

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[7] *See, e.g.,* August 16, 2011 e-mail from Judge Jack to the parties.

[8] Since Phase III litigation has been initiated, the issue of whether the litigation requirement has ever been triggered under ¶ 11(b) by a lack of "consensus" among the parties is now moot.

[9] *See* Verizon Initial Comments at 11 n.24.

addressing the coordination issue as the *first* step in the Phase III litigation, through a notice-and-comment process, is a reasonable approach for managing that litigation.[10] Of course, the Commission enjoys widespread discretion with respect to the procedures to be utilized in Commission proceedings, and it is not restricted to resolving matters through discovery and evidentiary hearings.

In short, nothing in the Phase II Joint Proposal or the *Phase II Order* guaranteed AT&T or Sprint that the parties would not argue, or that the Commission would not conclude, that the interim resolution of Phase III issues set forth in the JP is a just, reasonable, and appropriate one, and that it is fully consistent with the public interest.

III. ADOPTING THE JOINT PROPOSAL WOULD NOT UNDERMINE THE PUBLIC INTEREST IN ACCESS REFORM

AT&T and Sprint preach to the choir in asserting the strong public interest in reforming switched access rates, including the rates applicable to call origination. As both companies appear to recognize, no party has been more vocal than Verizon in support of access reform at the FCC. But as noted in Verizon's initial comments, the issue here is not *whether* access charges should be reformed, but rather *how* such reform should be accomplished. More particularly, the issue is whether — now that the FCC has put in place a detailed set of measures for reducing certain access charges, and has indicated its intention to address the remaining issues identified in its *FNPRM* — state commissions should initiate proceedings to develop their own "single-state" approaches to access reform. For the reasons already put forward by Verizon, such an approach would waste resources of the Commission and the parties that could better be

[10] Nothing in the Phase II Joint Proposal made any commitments concerning the timing of the overall litigation, the scope of issues that would be considered, or the order in which particular issues would be addressed.

devoted to other initiatives, and would create a grave risk of conflict between the measures adopted by this Commission and those adopted by the FCC on an industry-wide, nationwide basis.[11]

AT&T suggests that Verizon's positions here are inconsistent with statements made by its affiliates in support of access reform in other states. But all of the statements cited by AT&T were filed long before the FCC issued its *Transformation Order* and its *FNPRM* on originating access and other issues. Thus, none of them raise the specific issue in the specific context that is addressed in the JP. In only one case has a Verizon affiliate argued that intrastate access reform should proceed notwithstanding the issuance of the *Transformation Order*, and that was in Pennsylvania, where the Commission had already completed a lengthy evidentiary proceeding, and based on the record assembled in that proceeding had ordered limited reforms aimed at moving RLEC access charges closer to ILEC rates. In any event, in light of the FCC actions resulting from the *Transformation Order*, the Pennsylvania commission rejected Verizon's (and AT&T's) position, withdrew its previously-issued mandates, and suspended further proceedings.[12]

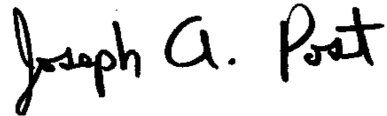
[11] Contrary to AT&T's and Sprint's suggestions, the issue here is not whether the FCC has pre-empted further state action on intrastate access charges, but rather whether such action would best advance the public interest that the Commission is charged with safeguarding.

[12] *See* Verizon Initial Comments at 10 n.22.

IV. SUMMARY AND CONCLUSIONS

For the reasons set forth above and in Verizon's initial comments, the Commission should adopt the Phase III Joint Proposal.

Respectfully submitted,



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