

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 15, 2012

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
James L. Larocca

CASE 09-M-0527 - Proceeding to Examine Issues Related to a
Universal Service Fund.

ORDER INCREASING CAP ON TEMPORARY TRANSITION FUND EXTENSION

(Issued and Effective March 16, 2012)

BY THE COMMISSION:

INTRODUCTION

In Phase I of this proceeding, we issued an order approving terms and conditions of a joint proposal intended to temporarily extend the Transition Fund,¹ which the Commission had previously established in phasing out the former Intrastate Access Settlement Pool.² The extension provided for additional Transition Fund (TF) moneys of up to \$600,000 (the Temporary Transition Fund Extension, or TTFE), with contributions to that funding ceasing on the earliest of (a) September 30, 2011,

¹ Case 09-M-0527, *Universal Service Fund*, Order Adopting Phase I Joint Proposal (issued July 16, 2010)(Phase I Order).

² Case 02-C-0590, *New York Intrastate Access Settlement Pool, Inc. - Traffic Sensitive and Non-Traffic Sensitive Access Rates*, Order Adopting Comprehensive Plan (December 23, 2003)(TF Order).

(b) the date of completion of steps necessary to put into effect an order, if any, establishing a State universal service high cost fund (SUSF), or (c) the date the additional contributions equaled \$600,000. Under the terms of the Phase I Order, any unexpended amounts remaining in the TTFE at that time were to be returned, *pro rata*, to the carriers who contributed to the TTFE.

The TTFE was intended to give us time to resolve Phase II of this proceeding -- which is considering whether to create an SUSF to supersede the Transition Fund -- while continuing support to certain incumbent local exchange carriers (ILECs) affected by the 2003 elimination of intrastate access charge pooling and reduction of access charges since then. In September of 2011, we determined that an SUSF, if we decided to establish one, could not be in place by September 30, 2011, as assumed in the provisions approved in the Phase I Order. We therefore approved an order eliminating the termination and refund requirement that would otherwise have applied on September 30, 2011, without increasing the amount of the TTFE or establishing a new termination date.³ At current rates of expenditure, the \$600,000 originally approved for the TTFE now is projected to meet the demands upon the fund only through May of 2012.

On January 4, 2012, a recommended decision in Phase II of this proceeding (Phase II Recommended Decision), concerning whether we should establish a State universal service high-cost fund, was issued for exceptions. The Recommended Decision had been completed before the Federal Communications Commission released its recent Report and Order concerning the federal

³ Case 09-M-0527, Order Modifying Temporary Transition Fund Extension (issued September 16, 2011)(TTFE Extension Order).

Universal Service Fund (FUSF),⁴ but its issuance was delayed until after the FCC Report and Order to accommodate considering potential implications of the FCC Report and Order in the exceptions process.⁵ The January 4 Notice issuing the Recommended Decision also invited comment on a possible increase of \$350,000 in the cap on the TTFE, to preclude any gap between the forecast May 2012 expiration of transition funding and ultimate resolution of Phase II issues.⁶ Several parties filed initial comments on the potential TTFE cap increase on January 23, 2012, followed by reply comments on January 31, 2012. A notice of proposed rulemaking pursuant to the provisions of the State Administrative Procedure Act appeared in the *State Register* on January 25, 2012, with comments due by March 10, 2012.⁷

By this order, we increase the maximum amount that may be collected for the TTFE by \$350,000, to a total of \$950,000.

COMMENTS RECEIVED

The New York State Department of State Division of Consumer Protection's Utility Intervention Unit, more than 30 New York State Telecommunications Association, Inc. rural ILEC

⁴ Connect America Fund, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, Developing a Unified Intercarrier Compensation Regime, CC Docket Nos. 01-92, 96-45, A National Broadband Plan for Our Future, GN Docket No. 09-51, Universal Service Fund - Mobility Fund, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (November 18, 2011)(FCC Report and Order).

⁵ See Case 09-M-0527, Notice Establishing a Schedule for Filing Exceptions, Seeking Comment on Reassertion of Public Service Commission Jurisdiction over Wireless Telephone Companies for State Universal Service Fund Purposes, and Seeking Comment on Further Extension of the Transition Fund (issued January 4, 2012)(January 4 Notice), p. 1.

⁶ *Id.*, pp. 3-4.

⁷ XXXIV *N.Y. State Register*, Issue 4 (January 25, 2012), p. 17.

members (Smaller ILECs),⁸ trial staff of the Department of Public Service (Staff), and Verizon New York, Inc. and its affiliated wireline companies in New York (Verizon)⁹ filed comments in support of the possible \$350,000 increase in the TTFE cap. AT&T Communications of New York, Inc. (AT&T), the Cable Telecommunications Association of New York, Inc. (CTANY), and Sprint Nextel Corporation (Sprint) submitted comments opposing any increase in the maximum amount of the TTFE.

Supporters of a TTFE increase all agree that an increase in the funding level cap is reasonable and in the public interest. An increase will allow preservation of the *status quo* of financial support and rates for residential telephone service in rural areas of New York with limited alternatives to regulated service during the limited additional time necessary for the Commission to consider and decide the issues concerning whether to create a longer-term SUSF.¹⁰ Verizon notes that it has strongly opposed establishment of a longer-term SUSF, and will continue to do so in its exceptions to the Recommended Decision. Despite the fact that it, together with its regulated wireline affiliates, is the largest contributor to the TTFE and would continue to be the largest contributor to any TTFE increase, Verizon supports the funding cap increase because it would avoid any pressure there might otherwise be for a "rush to judgment" on SUSF issues and provide sufficient opportunity for careful consideration of those issues. Verizon supports the TTFE cap increase on condition

⁸ The Smaller ILECs include all ILECs in New York State except Frontier and Verizon and their respective affiliates.

⁹ In addition, Verizon noted its authorization to state that Cellco Partnership d/b/a Verizon Wireless also supports the potential funding increase.

¹⁰ *E.g.*, comments of Smaller ILECs, citing: Phase I Order, *supra*, pp. 26-27; and TTFE Extension Order, *supra*, pp. 5-6.

that it be limited to \$350,000 and subject to no other changes in the operation of the TTFE.

Opponents of a TTFE cap increase contend that there is ample time for the Commission to decide all issues related to an SUSF before the end of May, and thus no need for an increase.

Staff and the Smaller ILECs each filed reply comments on January 31, 2012. They insist that parties opposing the TTFE cap increase fail to acknowledge not only the time needed for Commission deliberation and decision on exceptions to the Phase II Recommended Decision, but also the additional time required to implement an SUSF, should we decide to establish one. Staff and the Smaller ILECs maintain that a cap increase for the purpose of extending the availability of TTFE support is essential to maintain the *status quo*, taking into account the time that would be needed to implement any SUSF we might determine warranted.

RECENT DEVELOPMENTS

Meanwhile, on January 30, 2012, Verizon, on behalf of itself, CTANY, and unspecified additional parties, filed with the Secretary a notice of impending settlement negotiations on any or all issues addressed in or related to the Phase II Recommended Decision.¹¹ On February 3, 2012, Verizon filed a request for a one-month extension of the briefing schedule for exceptions to the Phase II Recommended Decision, noting that briefs on exceptions were due February 14, 2012, only a few days after negotiations toward a possible settlement of the issues covered in the Phase II Recommended Decision were scheduled to commence. CTANY, which had earlier opposed the TTFE cap

¹¹ On February 1, 2012, Verizon filed a revised notice of impending settlement negotiations, the purpose of which was to reschedule the date of the first settlement conference from February 6 to February 10, 2012.

increase at issue here, supported the proposed extension of the briefing schedule. CTANY stated that, in the interest of facilitating the briefing schedule extension, it would support a TTFE cap increase and extension insofar as necessary to provide for settlement negotiations.¹² The Secretary issued a notice granting the requested briefing schedule extension.¹³ Then, on March 2, 2012, Verizon submitted a request on behalf of itself and various other parties for a further two-week extension of the briefing schedule, to allow for continued settlement negotiations, which the Secretary has also granted.¹⁴ Briefs on exceptions to the Phase II Recommended Decision now are due March 28, 2012, with briefs opposing exceptions due April 19, 2012.

DISCUSSION

Our Phase I Order observed that the TTFE would preserve the *status quo* availability of financial support where needed for basic local residential telephone service in rural areas of the State with limited alternatives to regulated service. In that order we noted that the TTFE would help ensure stable service and rates in those areas, while providing time to resolve issues concerning whether to establish an SUSF and, if established, what features it should have. We determined that the TTFE would promote our policy of seeking to maintain safe and reliable telecommunications services for all New York customers at just and reasonable rates, and thus was in the public interest.¹⁵ When we extended the duration of the TTFE

¹² CTANY letter filed February 3, 2012.

¹³ Case 09-M-0527, Notice Modifying Briefing Schedule (issued February 7, 2012).

¹⁴ Case 09-M-0527, Notice Further Extending Briefing Schedule (issued March 6, 2012).

¹⁵ Phase I Order, *supra*, pp. 26-27.

last fall, we reiterated those findings and conclusions, and the importance of maintaining the *status quo* until an SUSF -- if we decided to establish one -- could be implemented.¹⁶

Verizon, the party that, with its affiliates, contributes by far the most to the TTFE, supports the increase. The only parties opposing an increase in the TTFE cap are AT&T and Sprint, which contribute little to the TTFE. But the only argument those opponents of the increase put forward is that they think we have sufficient time to make a decision on the issues addressed in the Phase II Recommended Decision before the end of May of this year.

The recent revisions to the schedule for briefing on exceptions to the Phase II Recommended Decision make it unreasonable to believe we could render a decision in Phase II before the current TTFE funding becomes exhausted in May. In addition, as Staff and the Smaller ILECs maintain, if we decide to establish an SUSF, additional time will be necessary to implement the decision. We note that the parties to the Joint Proposal approved in our Phase I Order believed implementation of an SUSF could take at least three months from the time we might decide to create one.¹⁷ We remain committed to preserving the *status quo* in providing financial support to help maintain stable service and rates in rural areas with limited alternatives to ILEC service pending our decision on whether to create an SUSF and, if so, completion of implementation steps. In our Phase I Order we found the overall cost to customers of companies contributing to the TTFE originally capped at \$600,000 to be very small.¹⁸ An additional \$350,000 or less to keep the

¹⁶ TTFE Extension Order, *supra*, pp. 5-6.

¹⁷ Phase I Order, *supra*, p. 11 and Appendix A, p. 3, ¶ 9(b).

¹⁸ Phase I Order, *supra*, p. 27.

TTFE funded for a few additional months likewise amounts to quite a minor amount when allocated among millions of telephone consumers.

Accordingly, for the same reasons we articulated in the Phase I Order and in the TTFE Extension Order, we find that an increase of \$350,000 in the funding cap in order to extend the TTFE is in the public interest. By this order we do no more than increase the TTFE cap by that amount, to a total of \$950,000. In all other respects, the provisions approved in the Phase I Order, as modified by the TTFE Extension Order, remain in effect.

The Commission orders:

1. The \$600,000 funding limit approved for the Temporary Transition Fund Extension, adopted and incorporated in the Order Adopting Terms of Phase I Joint Proposal issued in this proceeding on July 16, 2010, is increased to \$950,000. Collection and distribution of funding for the Temporary Transition Fund Extension shall continue in accordance with the provisions set forth in paragraphs 3, 4, and 6 of Appendix A of that order, pending the exhaustion of that \$950,000 or further order of the Commission.
2. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary