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September 21, 2018

VIA ELECTRONIC FILING

Honorable Kathleen Burgess, Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223

Re: Case 17-M-0815 – Proceeding on Motion of the Commission on
Changes in Law that May Affect Rates – Petition for Rehearing
and/or Reconsideration.

Dear Secretary Burgess:

The New York State Telecommunications Association, Inc. (NYSTA) respectfully submits on behalf of its smaller member Incumbent Local Exchange Carriers (ILECs) this letter as a formal Petition for Rehearing and/or Reconsideration of the Commission’s August 9, 2018 Order¹ issued in the above referenced proceeding.² NYSTA believes that based upon the facts presented herein, the requested relief is in the public interest.³

¹ Order Determining Rate Treatment Of Tax Changes in Case No 17-M-0815, Proceeding on Motion of the Commission on Changes in Law that may affect Rates (Order).

² NYSTA’s membership includes all of New York’s ILECs excluding all Frontier Corporation ILECs and Warwick Valley Telephone, a Momentum Company. Thus, this petition is filed on behalf of all NYSTA’s ILEC members, excluding Verizon.

³ The time for NYSTA to submit this Petition was extended to September 21, 2018, by One Commissioner Order issued by Chair John B. Rhodes on September 6, 2018, which Order was confirmed on September 12, 2018.

NYSTA has been an active participant in the proceeding since its establishment by the Commission's Order Instituting the Proceeding issued December 21, 2017. This included NYSTA, along with its member representatives and consultants, attending the Department of Public Service Staff's Technical Conference held February 9, 2018. Given the unique characteristics of the telecommunications industry as compared to other industries regulated by the PSC, NYSTA also held meetings with DPS Staff to separately discuss the issues raised by the Commission Notice.

The above actions were followed by the issuance of the "Staff Proposal to Address the Accounting and Ratemaking of the Tax Cuts and Jobs Act of 2017" on March 29, 2018 (Staff Proposal).

The Staff Proposal recommended that Verizon and Frontier Rochester "*be exempt from the rate and deferral actions recommended here*"⁴ and further, that seven other ILECs (The Frontier affiliates and Windstream) "*...should also be exempt*".⁵ The Staff Proposal then recommended, "*... the remaining ILECs that are not currently receiving SUSF support should be exempt, like Verizon and Frontier Rochester, from the rate and deferral actions recommended herein*".⁶

Finally, the Staff Proposal addressed those companies that receive SUSF support. The Staff Proposal recommended that eight of the twelve companies that are receiving SUSF should have their SUSF support reduced to reflect the lower federal income tax rates.⁷ The eight companies identified in the Staff Proposal filed comments addressing Staff's recommendation.⁸

⁴ Staff Proposal at Page 39.

⁵ Staff Proposal at Page 39.

⁶ Staff Proposal at Page 41.

⁷ Staff Proposal at Page 40.

⁸ These comments advocated for relief from the recommendations regarding reducing SUSF payments given the current adverse financial conditions face by the companies.

Based on NYSTA’s plain language reading of the Staff Proposal, NYSTA chose not to file comments regarding what we believed to be a correct and reasonable determination that all of the ILECs, except the eight smaller ILEC companies identified by the Staff Proposal, should be exempt, *like Verizon and Frontier Rochester*, from rate and deferral actions.

In its Order issued and effective August 9, 2018 the Commission adopted much of the Staff Proposal and exempted Verizon New York, Inc. and Frontier Telecommunications of Rochester, Inc. from all of the rate and deferral provisions being addressed in the proceeding.⁹ The Commission also adopted a Staff modification to their original proposal- as urged by the eight smaller ILECs- to exempt those eight companies currently receiving SUSF support from a possible reduction in SUSF support. The basis for that action was recognition of their current adverse financial condition. Separately, for all of the other 38 ILECs other than Verizon and Frontier Rochester operating in the State, the Commission required that they preserve on their books any excess accumulated deferred federal income taxes (ADFIT) from the Tax Cuts and Jobs Act of 2017 for future disposition by the Commission.¹⁰ No expiration date for the preservation of the deferred account balance, or more detailed specification of possible “disposition” by the Commission, was set forth.

Through this Petition filed on behalf of NYSTA’s smaller member ILECs, NYSTA believes good cause exists to provide these smaller ILECs with the same relief as that given to Verizon New York and Frontier Telephone of Rochester.

Unlike the other industries regulated by the Commission and impacted by Ordering Clause 8 of the Order, the telecommunications industry is mostly a competitive marketplace. As acknowledged by the Staff Proposal, the telecommunications industry has been undergoing a transformation over the last several decades and “... the Commission’s goal of creating effective, facilities-based competition in the telecommunications market in lieu of traditional

⁹ Order, Ordering Clauses 8 and 9. By an Erratum Notice issued August 31 in the proceeding, the Commission corrected the Frontier company name to Frontier Telephone of Rochester, Inc.

¹⁰ Ordering Clause 8.

regulation of the incumbent local exchange carriers (ILECs) has largely been realized".¹¹ The smaller NYSTA member ILECs have not been immune from these competitive market forces. A review of basic statistics from the NYSTA smaller ILECs' 2017 PSC Annual Reports demonstrates this clearly.

Collectively, the 30 smaller NYSTA member ILECs for which this Petition is being filed, which we estimate serve 1-2% of the state's access lines, have experienced a decrease of 62% of their access lines since 2001. All but two of them have negative ROE's for 2017.¹² Yet these companies continue to invest in and expand their networks - particularly to expand and upgrade broadband services to unserved and underserved areas of the state; meet their carrier of last resort and universal service obligations; and provide service consistently recognized as exceptional by the Commission as they compete against much larger national carriers not subject to this proceeding.

NYSTA believes that these facts show that the smaller ILECs should be exempt from all ratemaking and deferral requirements associated with the Tax Cuts and Jobs Act of 2017, including with regard to the treatment of excess ADFIT. Failing this, NYSTA proposes a modification to the Commission's Order to allow the smaller ILECs to begin amortizing any excess ADFIT balances effective January 1, 2018, consistent with IRS accounting rules. If, and when, a company files a rate case, the disposition of any remaining un-amortized balances would be addressed at that time. Beginning the amortization of the excess ADFIT on January 1, 2018, also provides consistency with amortization required for the interstate jurisdiction. This would avoid a period of uncertainty for the affected companies and the difficulty and cost of tracking and carrying jurisdictional liabilities for excess ADFIT over indefinite timeframes.

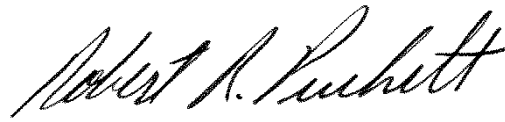
NYSTA believes such an approach would be in the public interest and would provide movement towards more parity in the treatment of the smaller ILECs as compared to other competitors in

¹¹ Staff Proposal at Page 36.

¹² Since some of the ILECs file certain information contained in their PSC Annual Report as Trade Secret, NYSTA has presented aggregate information in this filing.

the telecommunications marketplace. Accordingly, NYSTA urges the Commission to modify the Order and exempt the smaller ILECs from the ratemaking and deferral requirements of Ordering Clause 8, or in the alternative adopt the proposed amortization treatment of excess ADFIT balances as described above.

Respectfully submitted,

A handwritten signature in black ink, reading "Robert R. Puckett". The signature is written in a cursive style with a horizontal line underneath it.

New York State Telecommunications Association, Inc.
By: Robert R. Puckett
President

cc: Joe Dowling, Esq.
Debra LaBelle
Denise Gerbsch