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DEWEY & LEBOEUF

August 24, 2011

VIA E-MAIL

Honorable Jaclyn A. Brilling
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Case 09-M-0527 – Proceeding to Examine Issues Related to a Universal Service Fund

Dear Secretary Brilling:

On behalf of Level 3 Communications LLC, PAETEC Communications, Inc. and tw telecom of new york l.p. (collectively, the "Facility CLEC Coalition"), please accept this letter as the Facility CLEC Coalition's comments in response to the New York State Public Service Commission's ("Commission") Notice Seeking Comment on an Interim Transition Fund issued on August 12, 2011 in the above-referenced proceeding (the "Notice"). Each member of the Facility CLEC Coalition is also a Movant of the joint motion that is being concurrently filed with the Commission in Cases 09-M-0527, 09-C-0743 and 07-C-0347, which requests that the Commission suspend those proceedings and adopt a proposal to extend the funding arrangement for the Temporary Transition Fund Extension ("TTFE") to June 30, 2012 (the "Joint Motion"). For the reasons discussed below, the Facility CLEC Coalition requests the Commission grant the Joint Motion in its entirety, thereby addressing the issues discussed in the Notice.

The Commission is considering "whether to rescind the prior provisions that contributions to and disbursements from the TTFE cease on September 30, 2011 and amounts be returned to contributors" and whether to "continue the TTFE until the previously committed $600,000 level of total contributions is exhausted or until Phase II issues relating to a universal service fund are resolved, whichever occurs sooner."[1] The Phase I Joint Proposal in this proceeding established a TTFE to provide the parties and the Commission additional time to resolve issues in Phase II of this proceeding, including whether to create a state Universal

[1] Notice at 2.

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Service Fund ("USF") to supersede the Transition Fund.[2] While the parties attempted to resolve Phase II issues through a collaborative process, that process recently ended without reaching a negotiated result. Accordingly, since no agreement was reached, the TTFE is set to expire on September 30, 2011.

Among other things, to address the upcoming expiration of the TTFE several parties, including each member of the Facility CLEC Coalition, are concurrently submitting to the Commission the Joint Motion.[3] Although some of the Movants, including the Facility CLEC Coalition, have opposed the creation of a new fund, the Joint Motion proposes a temporary extension of the TTFE until June 30, 2012. Under the terms of the proposed extension the currently authorized $600,000 TTFE funding amount would be increased by $50,000. In addition, TTFE contributors, recipient eligibility, the contribution methodology and the refund methodology (subject only to the change in the Contribution End Date to June 30, 2012) will remain unchanged. The Joint Motion also requests that the collaborative process in Case 09-M-0527 be re-opened on or about January 15, 2012 to enable the parties to discuss the status of proceedings at the Federal Communications Commission ("FCC") as of that date and what further action, if any, should be recommended to the Commission and/or to the Administrative Law Judge in order to enable a final Commission decision on USF issues before the extended TTFE expires on June 30, 2012.

The terms and conditions of the proposal set forth in the Joint Motion are reasonable given that the Joint Motion has broad support among normally adversarial parties. Moreover, the suspension of this proceeding and the limited extension of the TTFE as provided for in the Joint Motion are appropriate based on recent FCC actions. On August 3, 2011, the FCC issued a notice establishing an accelerated schedule for the submission of comments on recent proposals related to universal service and intercarrier compensation. Based on this accelerated schedule, the FCC appears poised to act expeditiously to resolve open issues related to access charges and universal service funding.

When the parties entered into the Phase I Joint Proposal, which established a September 30, 2011 deadline for the Commission to take action on state USF issues, they did not have the benefit of knowing that the FCC would likely take action on federal universal service and access charge issues this Fall. If the FCC's action on these issues was not imminent, the Facility CLEC Coalition might support the Commission forging ahead with resolving the state

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[2] Case 09-M-0527 - Proceeding to Examine Issues Related to a Universal Service Fund, Order Adopting Terms of Phase I Joint Proposal (Jul. 16, 2010).

[3] The parties supporting the Joint Motion include: New York State Department of Public Service Staff, New York State Department of State Utility Intervention Unit, the NYSTA Smaller ILECs, Cable Telecommunications Association of New York, Inc., Cellco Partnership d/b/a Verizon Wireless, Frontier Communications, Level 3 Communications LLC, PAETEC Communications, Inc., tw telecom of new york l.p., and Verizon New York Inc. (collectively, the "Movants").

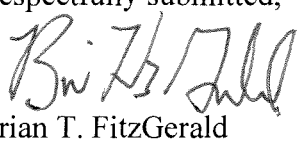
USF issues. The reality, however, is that it appears the FCC may take action on federal universal service fund and access charge issues in the near term. Therefore, it would be inefficient and a waste of Commission and party resources to continue with this proceeding while the FCC action is pending.

Additionally, the Commission should decline AT&T's request to immediately continue with access charge reform for originating service. Such issues should be addressed only after the FCC takes action since it is possible that the FCC may very well issue a decision that addresses both terminating *and* originating access charges. A short extension in the litigation schedule simply makes sense from a practical perspective. Furthermore, as provided in the Joint Motion, the Facility CLEC Coalition is not seeking a permanent halt to the New York proceeding and, in fact, seeks to have the collaborative discussions in this proceeding reconvened by January 15, 2012. Such collaborative discussions would be more productive if the parties are able to reach a comprehensive settlement involving both USF *and* access charge issues in light of federal developments.

Based on the foregoing, the Facility CLEC Coalition respectfully requests that the Commission approve and adopt the Joint Motion's proposal for a suspension of proceedings and an extension of the TTFE until June 30, 2012.

Should you have any questions about this filing, please contact me.

Respectfully submitted,



Brian T. FitzGerald

ALB-104808

cc: Active Party Service List (via e-mail)
Honorable Howard A. Jack (via e-mail)
Honorable Eleanor J. Stein (via e-mail)