

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on August 16, 2012

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman  
Patricia L. Acampora  
Maureen F. Harris  
James L. Larocca  
Gregg C. Sayre, recused

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

ORDER ADOPTING PHASE II JOINT PROPOSAL

(Issued and Effective August 17, 2012)

BY THE COMMISSION:

INTRODUCTION

Earlier in this several-phase proceeding we explained its historical context in "a long series of steps to address the gradual transition of the monopoly heritage telephone system to a much more diverse, competitive, and continually evolving telecommunications environment."<sup>1</sup> While that environment has changed over the years, the Commission has remained dedicated to ensuring that at least a minimum level of local residential telephone service remains universally available throughout New York. In Phase I, we adopted interim measures to further that objective.

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<sup>1</sup> See Case 09-M-0527, *Universal Service Fund*, Order Adopting Phase I Joint Proposal (issued July 16, 2010)(Phase I Order), pp. 1-3.

On January 4, 2012, a recommended decision in Phase II of this proceeding, proposing that we establish a State Universal Service High-Cost Fund (SUSF), issued for exceptions.<sup>2</sup> Before briefs on exceptions were due, Verizon New York, Inc. (Verizon), the Cable Telecommunications Association of New York, Inc. (CTANY), and a number of other parties filed a notice of impending settlement negotiations aimed at resolving the issues addressed in the Phase II Recommended Decision. On May 8, 2012, Verizon filed a Joint Proposal and Settlement Agreement (Phase II Joint Proposal) on behalf of itself, AT&T Communications of New York, Inc. and its regulated affiliates (AT&T), CTANY, Cablevision Lightpath, Inc. (Cablevision), Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless), the Department of Public Service (DPS) trial staff (Staff), the New York State Department of State Division of Consumer Protection's Utility Intervention Unit (UIU), the New York State Telecommunications Association Smaller ILECs (Smaller ILECs),<sup>3</sup> Sprint Nextel Corporation (Sprint), T-Mobile Northeast LLC d/b/a T-Mobile (T-Mobile), and Time Warner Cable (Time Warner).<sup>4</sup> The Phase II Joint Proposal would establish a four-year SUSF and prescribe the terms and conditions pursuant to which the fund would operate. The Phase II Joint Proposal also contains provisions concerning scheduling collaborative efforts or litigation of the issues remaining for Phase III of the proceeding. By this

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<sup>2</sup> Case 09-M-0527, Recommended Decision on Phase II Issues (issued January 4, 2012)(Phase II Recommended Decision).

<sup>3</sup> See Appendix A for the Smaller ILECs' 31 member telephone companies.

<sup>4</sup> Verizon filed a corrected version, with minor editorial changes and clarifications, on May 11, 2012. The term "Phase II Joint Proposal," as used in this order, refers to that corrected version.

order, we adopt the operative terms and conditions of the Phase II Joint Proposal.

BACKGROUND AND PROCEDURAL HISTORY

The Phase I Order sets forth the contextual background for this proceeding and the history of its first phase.<sup>5</sup> That order put in place a temporary extension (Temporary Transition Fund Extension, or TTFE) of the "Transition Fund".<sup>6</sup> The Transition Fund had been established in 2003 to ease upward pressure on local telephone service rates then expected to flow from phasing out the pooling of intrastate access charge revenues among local exchange telephone companies.<sup>7</sup> The TTFE was intended to give us time to resolve the issues in Phase II of this proceeding, while continuing the support that had been available through the Transition Fund.<sup>8</sup> Phase II has focused on whether a longer term successor to the Transition Fund--an SUSF --is warranted to further our policy of ensuring universal telephone service in New York; and, if so, the characteristics and features of such a fund.

Under the terms adopted in the Phase I Order, the parties initially engaged in collaborative discussions aimed at resolving Phase II issues, assisted by Administrative Law Judge

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<sup>5</sup> Phase I Order, *supra*, pp. 1-7.

<sup>6</sup> Phase I Order, *supra*.

<sup>7</sup> See 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).

<sup>8</sup> Phase I Order, *supra*. Subsequent orders extended the life of the TTFE and increased the cap on its amount. Case 09-M-0527, Order Modifying Temporary Transition Fund Extension (issued September 16, 2011); Order Increasing Cap on Temporary Transition Fund Extension (issued March 16, 2012).

(ALJ) Eleanor Stein, through the later part of the summer of 2010. In early fall 2010, the parties filed a report expressing the consensus that further collaborative discussions were unlikely to lead to settlement of the Phase II issues. Phase II then shifted to a litigation track. AT&T, CTANY, tw telecom of new york l.p. / Level 3 Communications LLC / PAETEC Communications, Inc. (Facility CLECs),<sup>9</sup> the Smaller ILECs, the New York State Consumer Protection Board (CPB), Sprint, Staff, T-Mobile and Verizon Wireless (collectively, the Wireless Group), and Verizon all filed direct and rebuttal testimony and exhibits. An evidentiary hearing was held on February 14, 2011. AT&T, CPB, CTANY, the Facility CLECs, the Smaller ILECs, Sprint, Staff, Verizon, and the Wireless Group all submitted initial and reply trial briefs.<sup>10</sup>

At about the time of the hearing on Phase II issues, the Federal Communications Commission (FCC) commenced a rulemaking proceeding concerning federal regulations on universal service support and intercarrier compensation, both matters that, at the intrastate level, are issues in this case.<sup>11</sup> While the litigation ALJ here was preparing his recommended decision in Phase II, developments in the FCC's rulemaking

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<sup>9</sup> A "CLEC" is a competitive local exchange carrier. "Facility CLECs" are CLECs that provide service over at least some network switches, and possibly loops to end-users, that they own, rather than only over facilities owned by and leased from the incumbent local exchange carrier.

<sup>10</sup> Legislation enacted in early 2011, after submission of the Consumer Protection Board's Phase II trial briefs, transferred that agency to the Department of State, where it has subsequently participated in this proceeding as UIU.

<sup>11</sup> *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, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (February 9, 2011)(CAF Rulemaking).

proceeding suggested that its decision there could come relatively soon and have implications that should be taken into account in this proceeding. Although the Phase II Recommended Decision was completed before the FCC acted, its issuance was delayed to provide an opportunity for parties here to consider the implications of the FCC's CAF Rulemaking action in the exceptions process. The FCC issued a decision in the CAF Rulemaking case in November 2011.<sup>12</sup>

ALJ Howard Jack's Phase II Recommended Decision was issued for exceptions on January 4, 2012, with parties encouraged to identify any implications of the FCC's decision.<sup>13</sup> On January 30, 2012, however, Verizon, CTANY, and a number of other parties filed a notice of impending settlement negotiations aimed at resolving the issues addressed in the Phase II Recommended Decision. At the request of various parties, the Secretary extended the schedule for briefing exceptions several times to accommodate the continuing settlement negotiations, which again proceeded under the guidance of Judge Stein. Then, on May 8, 2012, the parties noted above filed the Phase II Joint Proposal (corrected on

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<sup>12</sup> *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).

<sup>13</sup> Case 09-M-0527, Notice Establishing 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). Notice under the State Administrative Procedure Act appeared in the *New York State Register* on January 25, 2012. No one submitted comments in response to that notice.

May 11, 2012). On May 23, 2012, AT&T, CTANY,<sup>14</sup> the Smaller ILECs, Sprint, Staff, UIU, and, jointly, Verizon and Verizon Wireless filed statements in support of the Phase II Joint Proposal. The Smaller ILECs, Staff, and, jointly, Verizon and Verizon Wireless filed replies to statements in support on June 1, 2012.

TERMS OF THE PHASE II RECOMMENDED DECISION

The Phase II Recommended Decision began by recommending that we conclude the Commission possesses the implied statutory power to establish a State universal service high-cost fund.<sup>15</sup> It recommended we find that platforms alternative to ILEC wireline service are unavailable for a significant number of residential locations within the 31 service territories of the Smaller ILECs. Judge Jack further recommended finding that cable modem telephone service and wireless telephone service constitute economic substitutes for traditional wireline basic residential local exchange service. He also recommended finding that the small rural ILECs' financial circumstances have been deteriorating as a result of loss of access lines and associated revenues, threatening their viability and, in turn, their ability to continue to provide reliable, quality service throughout their service territories and ensure the universal availability of basic residential local exchange service; and that these circumstances will be exacerbated with the impending reduction of intrastate access charges, which have historically been priced above cost to subsidize local residential service.

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<sup>14</sup> CTANY's Statement in Support states that Cablevision and Time Warner concur in its comments.

<sup>15</sup> For a full summary of the recommendations in the Phase II Recommended Decision see pp. 139-43 of that document.

The Phase II Recommended Decision proposed that we find an SUSF a reasonable means to achieve and maintain the goal of universal service to residential telephone customers in New York. Under the Phase II Recommended Decision's approach, eligibility for fund disbursements would be limited to the 31 Smaller ILECs. Whether to provide disbursements to a particular requesting ILEC would be determined in a rate case, imputing to the requesting ILEC revenues from basic residential local exchange service at a benchmark rate of \$25.65. The three ILECs already receiving support from the TTFE, however, would continue receiving the current level of support pending completion of a rate case to be filed expeditiously. An ILEC receiving SUSF moneys would have to increase the rate actually charged for basic residential service to the benchmark level in steps of no less than \$3.50 each six months. In addition, the benchmark rate would be increased annually in proportion with inflation. The Phase II Recommended Decision did not propose that we set a cap on fund size at this time, but that we consider the issue under certain circumstances in the future.

Judge Jack recommended that we require all providers of telephone service in New York to contribute to the State universal service high-cost fund, including ILECs, CLECs, intrastate interexchange carriers, cellular telephone (wireless) providers, and fixed and nomadic Voice over Internet (VoIP) providers. That recommendation included taking steps statutorily required to terminate the current suspension of the applicability of the Public Service Law to wireless carriers to the extent of requiring them to contribute to an SUSF. He also recommended that contributions to an SUSF be calculated in proportion to service providers' intrastate retail revenues and that contributors to the fund be given the option to pass

assessments for the fund through to end-use customers via an explicit surcharge.

The Phase II Recommended Decision endorsed appointing the New York Intrastate Access Settlement Pool, Inc.<sup>16</sup> as administrator of an SUSF. It also favored setting a sunset date for an SUSF four years out, with a proceeding commencing after three years to consider whether to continue the fund; and continuation of the fund until completion of the review proceeding. Finally, Judge Jack recommended that the Commission reserve continuing ability to commence a proceeding at any time to consider, in light of changing circumstances, whether to terminate or make adjustments to the fund.

TERMS OF THE PHASE II JOINT PROPOSAL

The Phase II Joint Proposal begins with recitals explaining its background and the context in which it was negotiated.<sup>17</sup> The recitals are not intended as operative provisions, but only for potential assistance in interpreting and applying the operative provisions. Accordingly, we will not

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<sup>16</sup> The New York Intrastate Access Settlement Pool, Inc. administers the "Targeted Accessibility Fund," or TAF, and this order refers to it as the "TAF Administrator." The TAF was established to fund Lifeline service, emergency services (E911), and Telecommunications Relay Service for the hearing impaired. Case 94-C-0095, *Universal Service and Regulatory Framework for Transition to Competition*, and Case 28425, *Impact of FCC Action on Toll Services in New York*, Order Establishing Access Charges for New York Telephone Company and Instituting a Targeted Accessibility Fund (issued June 2, 1998). The TAF Administrator also administers the TTFE, pursuant to the provisions of the Phase I Order, *supra*. It had previously administered the Transition Fund. See Case 02-C-0595, *New York Intrastate Access Settlement Pool, Inc.*, Order Adopting Comprehensive Plan (issued December 23, 2003).

<sup>17</sup> For the full text of the Phase II Joint Proposal, see Attachment I.

discuss the recitals unless we find a need to turn to them for help in construction of the operative terms.

The Phase II Joint Proposal would establish an SUSF for a term of four years, beginning January 1, 2013, administered by the TAF Administrator. It would also provide for the Commission to commence a review proceeding three years later to consider whether to put a successor funding arrangement in place and, if so, its nature and features. The Commission could extend the SUSF beyond the four-year term as might be necessary to allow enough time to complete that review proceeding.<sup>18</sup>

The total amount available for the SUSF for the first year of its existence would be \$5 million, but the contributors' shares of that \$5 million would not be due to the TAF Administrator until January 31, 2013. The TAF Administrator, in consultation with DPS staff, would have authority to determine that some portion of the \$5 million maximum funding is reasonably likely to be unneeded during the first year. In that case, each contributor would have the option of paying only its proportionate share of the amount the TAF Administrator determined likely to be needed in the first year, plus providing the TAF Administrator with a letter of credit for the balance of its first year share, in a form acceptable to the Commission. The amount to be collected in each of the following three years

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<sup>18</sup> The four-year term limit, review proceeding beginning at the three-year mark, and extension of the SUSF through completion of the review proceeding, if necessary, all parallel recommendations in the Phase II Recommended Decision, as does the proposal to designate the TAF Administrator to manage the SUSF. We construe the proposal to allow continuation of the SUSF through completion of the review proceeding to include continuation for the time that might be necessary to implement any successor funding arrangement the Commission might approve, as the Phase II Recommended Decision proposes.

would be the sum of the amounts that had been determined to be disbursable to eligible recipients in need for that year, subject to a \$4 million per year cap. Any portion of the first year \$5 million that goes unused in that year, however, would be carried forward for potential use in any subsequent year in addition to the \$4 million maximum otherwise available.

Under the terms of the Phase II Joint Proposal, contributors to the SUSF would include all companies that contributed to the Targeted Accessibility Fund in 2011. VoIP and wireless carriers would not be required to contribute. The parties to the Phase II Joint Proposal agree not to seek initiation of a proceeding to add wireless carriers, pursuant to PSL §5(6), before the review proceeding to consider a successor fund, mentioned above, occurs. The Commission, however, could consider adding VoIP or wireless providers as contributors, either under the "Reservation Clause"<sup>19</sup> or in that review proceeding.

As a general rule, each SUSF contributor's share of the annual funding amounts would be determined using the TAF contribution methodology in effect during 2011--*i.e.*, in the same proportion that its TAF-assessable revenues bore to the total TAF-assessable revenues of all TAF contributors in that year. There are two "market change" exceptions. First, if a new intrastate telecommunications provider that would have been required to contribute to the TAF in 2011 enters a New York market in 2012 or later, it would be included as an SUSF contributor after its entry, "based on the amount of its then current and ongoing revenues that would have been assessable by

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<sup>19</sup> The Reservation Clause is discussed below.

TAF" had it been in the market in 2011.<sup>20</sup> Second, if an existing TAF contributor exits all New York intrastate markets after the end of 2011 without any successor or assign, its 2011 TAF-assessable revenues would be deducted from the total revenues used to determine the annual "Funding Amount" shares of the remaining contributors.<sup>21</sup>

The Phase II Joint Proposal would limit eligible SUSF recipients to the 31 Smaller ILECs listed in Appendix A, based on need determined in a rate case. In the relevant rate case, need would be determined with basic residential local exchange service revenue imputed at a benchmark rate of \$23 per line per month,<sup>22</sup> if the authorized rate was no more than \$3.50 below that level. If the ILEC seeking SUSF support had an authorized basic residential service rate of less than \$19.50 per line per month before the rate case testing its need, an alternative imputed "Transitional" benchmark rate of \$3.50 more than that authorized rate would apply in determining the level of support needed. The "Transitional" benchmark rate for that eligible recipient would increase by \$3.50/line/month on each anniversary of the effective date of the first rate case approving SUSF support, until the \$23 level was reached. As is currently true for TTFE support, no recipient of SUSF support would be required to raise

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<sup>20</sup> Phase II Joint Proposal, ¶6(a). In determining the proportionate annual Funding Amount share of each contributor in such an event, that same amount of revenue imputed for 2011 would be added to the total TAF-assessable revenues of all contributors for 2011.

<sup>21</sup> *Id.*, ¶6(b). A "successor or assign"--whether by agreement, operation of law, or acquisition of all or a material portion of the exiting contributor's 2011 TAF-assessable customer base--would assume the exiting contributor's annual SUSF funding share.

<sup>22</sup> This proposed benchmark rate is the same as the benchmark rate previously established for determining disbursements from the Transition Fund and now used for TTFE disbursements.

its actual monthly residential basic local exchange service rate to the \$23 level or the "Transitional" level. Each of the three companies currently receiving TTFE support would be "grandfathered" to receive its current level of support from the SUSF until it sought to change its support level by filing a new rate case, in which its need would be determined anew.

Consistent with the Phase II Recommended Decision, the Phase II Joint Proposal would permit contributors to the SUSF to recover their contributions from end-use customers through new or increased charges or surcharges. In addition, its Reservation Clause recognizes the Commission's continuing authority to modify any part of the Phase II Joint Proposal's features, on notice to the parties and after an opportunity to be heard, in the event of significantly changed circumstances.

Subparagraph 11(a) of the Phase II Joint Proposal includes a sentence asserting that nothing in Phase III of this proceeding shall alter its terms, including the \$23 benchmark rate. On the other hand, that subparagraph would recognize the rights of parties to argue for or against any particular Commission action in Phase III, concerning the TAF and intrastate access charges, including any issues concerning a separate support mechanism to offset revenue losses flowing from potential access charge reductions. Finally, the Phase II Joint Proposal includes a basic procedural timeline for Phase III collaborative negotiations and, if necessary, litigation. It would allow up to 60 days for settlement negotiations, beginning 30 days after this order issues. Unless by 30 days into those negotiations the parties reach consensus that all unresolved issues can be worked out within the remaining 30 days, however, collaboration would end and litigation of the unresolved issues would begin.

DISCUSSION

Under our Settlement Guidelines,<sup>23</sup> we must find the provisions of the Phase II Joint Proposal in the public interest if we are to adopt them. In weighing that question, the Settlement Guidelines more specifically contemplate development of a record where settlement opponents have had an opportunity to make an evidentiary case on material issues. The record should also demonstrate a balance among parties with affected interests; consistency with sound environmental, social, and economic policies of the Commission and the State; and results within the range of reasonable results likely from a litigated proceeding. The Settlement Guidelines also envision consideration of whether the settlement reflects agreement among normally adversarial parties.<sup>24</sup>

In this case, all parties have had an opportunity to make an evidentiary case on all material issues: the Phase II Joint Proposal was developed after an evidentiary hearing, briefing to the litigation judge, and a recommended decision. All parties received notice of the commencement of the settlement negotiations that culminated in the Phase II Joint Proposal and, commenting parties note, full opportunity to participate in negotiating sessions, which were held under the auspices of Judge Stein. Thus, all parties have received full procedural fairness in development of the record and none opposes the Phase II Joint Proposal.

The supporting parties express consensus that the Phase II Joint Proposal balances the competing interests of the parties. We concur. It provides for SUSF support to those rural ILECs that can demonstrate specific need--and, indirectly,

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<sup>23</sup> Case 90-M-0255 *et al.*, *Settlement Procedures*, Opinion 92-2 (issued March 24, 1992), Appendix B.

<sup>24</sup> Settlement Guidelines, pp. 5-8.

their customers--that will help ensure the continued availability of basic local residential service in their service areas. On the other hand, it gives security to contributing carriers--and, indirectly, their customers--that the financial support they provide will be limited in amount and duration, with a comprehensive review of need for any successor support mechanism, eligible recipients, appropriate contributors, and all related issues in light of facts and regulatory provisions then extant. The Phase II Joint Proposal also structures the SUSF so that contributors' funds are not tied up unnecessarily, while ensuring availability of adequate funds when they prove needed.

Positions the parties advocated in Phase II litigation ranged from opposing any SUSF at all to establishing an SUSF with no termination date, about \$10 million per year in estimated funding, and a benchmark rate of about \$15 per line per month. The SUSF for which the Phase II Joint Proposal would provide fits within those limits. All other aspects of the proposed SUSF and its administration set forth in the Phase II Joint Proposal received support from one or more parties during the Phase II litigation and appear reasonable in the context of the compromise as a whole. Thus, we find that the material operative terms of the Phase II Joint Proposal fall within the range of reasonable results likely from a litigated proceeding.

By providing for an SUSF for the next four years, the Phase II Joint Proposal is consistent with our long-standing goal of ensuring the availability of affordable basic residential telephone service throughout New York State. Various parties still disagree about whether or not an SUSF is actually needed or desirable for that purpose and other key

issues addressed in the Phase II Recommended Decision.<sup>25</sup> Thus, supporters of the Phase II Joint Proposal note that the parties to it are very diverse in their interests and normally quite adversarial. They include the largest ILEC in the State, the 31 Smaller ILECs, wireless carriers, and cable providers of VoIP service. Among them are parties that would be eligible for SUSF support and parties that would be required to contribute, but be ineligible to receive support. Although not all parties have joined in proposing this compromise, limited term SUSF, none opposes its establishment on the terms set forth in the Phase II Joint Proposal. We note also that UIU and Staff, which are charged with representing the public interest, both support the Phase II Joint Proposal.

The supporting parties agree that establishment of a limited term SUSF under the provisions of the Phase II Joint Proposal will provide secure, adequate support for those rural ILECs that can demonstrate specific need for it. The proposed SUSF would have total contributions of up to \$17 million available over its four-year term. Staff's worst-case estimate of SUSF funding need was \$5.6 million per year, based on a continued \$23 per line per month benchmark rate level--the same as the Phase II Joint Proposal includes--and as many as 17 rural ILECs drawing from the fund.<sup>26</sup>

With only three companies currently drawing support from the TTFE, it appears unlikely that all or most of the \$5 million in available first-year SUSF funding would be disbursed in that year. Specific need would be examined through the rate case process, the same process that has been employed to determine whether disbursements from the Transition Fund and the

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<sup>25</sup> Phase II Joint Proposal, Recitals ¶(h).

<sup>26</sup> Transcript (Tr.) 547-48, 604, 695.

TTFE are in order.<sup>27</sup> Any eligible Smaller ILEC newly seeking support--and any current TTFE recipient pursuing increased support under the SUSF--would have to file a rate case and have that case resolved before it began receiving new or increased financial support. Those rate proceedings would take up at least a substantial part of the first year the SUSF is in effect. Thus, a significant portion of the first year's funding can be expected to carry forward under the terms of the Phase II Joint Proposal and be available to supplement the \$4 million per year in maximum funding available in each of years two through four. We conclude that the total funding level for the proposed SUSF is reasonable.

The provision for a contributor to provide a letter of credit for its share of the portion of the first-year funding that the TAF Administrator projects will not be needed in that year also appears reasonable. As supporters note, this provision protects the interests of companies drawing from the SUSF and their customers, ensuring sufficient funds will be available when needed, while avoiding unnecessarily tying up funds of contributors as the SUSF ramps up.

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<sup>27</sup> The Phase I Order establishing the TTFE originally had a provision for termination of the TTFE on one of several dates or occurrences, with refund of any undisbursed funds to contributors. Commission orders in September 2011 and March 2012, extending the TTFE and increasing the TTFE cap, respectively, contain ordering paragraphs continuing TTFE collection and disbursement "pending the exhaustion [of the TTFE amount] or further order of the Commission." The SUSF detailed in the Phase II Joint Proposal would not be effective until January 1, 2013, and the first contributions to it would not be due to the TAF Administrator until January 31, 2013. Our latest projection for the TTFE is that it will be exhausted in January 2013. Therefore, we expect that available TTFE funds will carry rural ILEC support through to the availability of SUSF funding, with little or none remaining when the SUSF supersedes the TTFE pursuant to this order.

The Phase II Joint Proposal, as agreed by the parties, would limit the pool of contributors to the SUSF to those carriers required to contribute to the TAF in 2011, and any successors in interest. It would exclude VoIP and wireless carriers from contributing. The Phase II Recommended Decision raised a concern over fairness and competitive neutrality if wireless and VoIP providers were not included as contributors. Under the Phase II Joint Proposal, competing categories of carriers that would be required to contribute either actively support or do not oppose the SUSF as proposed, without including wireless or VoIP providers as contributors. Moreover, Staff estimated that a fund of about \$5 million a year would amount to only about a penny or less per customer line per month.<sup>28</sup> Under these circumstances, we find the Phase II Joint Proposal's limitation on contributors to the SUSF acceptable in the context of the overall settlement of disputed issues.

The Phase II Joint Proposal would call for the TAF Administrator to determine SUSF contributors' annual funding shares based upon their *pro rata* percentages of TAF-assessable revenues for 2011. That basic methodology has been used for TAF assessments for many years, as well as for allocating TTFE contributions pursuant to our Phase I Order more recently. Comments in support of the Phase II Joint Proposal indicate that the proposed modification that would freeze contribution percentages at 2011 levels is intended to avoid shifts caused by customer migration from traditional telephone service to alternative platforms. In light of this explanation, we find that slightly modified allocation method reasonable. In addition, the proposed reliance on the TAF Administrator--with its long experience in managing the TAF, Transition Fund, and

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<sup>28</sup> Tr. 501, 544.

TTFE allocations, collections, and disbursements--as administrator of the SUSF will promote economy, efficiency, and the public interest.

The Phase II Joint Proposal would limit potential recipients of SUSF disbursements to the Smaller ILECs. As the Phase II Recommended Decision notes, no other ILECs in the State have expressed an interest in receiving SUSF support.<sup>29</sup> Accordingly, we find the proposed set of eligible recipients reasonable.

The current benchmark rate of \$23 per line per month for basic residential local service used in determining need for support from the Transition Fund and the TTFE would be continued under the Phase II Joint Proposal as the "Benchmark Rate" generally to be applied in determining an eligible recipient ILEC's actual need for support. The alternative "Transitional Rate" for imputing revenue would permit some additional leeway and funding in the case of an eligible ILEC with an authorized basic residential local service rate, before filing for SUSF support, of less than \$19.50/line/month. The required \$3.50 annual increase in the Transitional Rate for such carriers, on the other hand, should help to reduce draws on the SUSF gradually, while escalating the incentive for recipient ILECs to achieve greater efficiencies, move their basic service rates closer to forward-looking costs, and reduce their dependence on external support. We find these benchmarking provisions reasonable.

The Reservation Clause recognizes the Commission's authority to modify the terms and conditions we adopt today in the event that circumstances change significantly in the future. Commission authority to make modifications in the future is

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<sup>29</sup> Phase II Recommended Decision, p. 82.

particularly important in the public interest in light of the continuing evolution of the telecommunications market in New York and the changes the FCC is introducing to the federal universal service funding support and intercarrier compensation policies, the impact of which at the intrastate level will become clearer over the next few years. Notwithstanding the language of the Reservation Clause, however, the Commission's authority to modify terms and conditions applicable to the SUSF in the future extends more broadly than only instances of significant changes in circumstances, as noted below. We therefore find the language in the Reservation Clause attempting to limit the scope of the Commission's authority to make such changes in the future nugatory.

The Phase II Joint Proposal's provisions on scheduling consideration of Phase III issues also appear reasonable. They include a relatively short period to explore a collaborative, negotiated solution of those issues, with a shift to litigation if unsuccessful. We note that, even if Phase III does shift to a litigation track, the parties would be free to resume negotiations toward a settlement, and seek related modification of the litigation schedule, at any time that they believe further collaborative discussions could prove fruitful.

The second sentence of subparagraph 11(a) of the Phase II Joint Proposal can be construed as attempting to prevent the Commission from altering, in light of developments in Phase III of this proceeding, any of the terms of the Phase II Joint Proposal that we adopt here. To that extent, its adoption would be fruitless, because we cannot bind the Commission in a manner that would interfere with its ability to act within the scope of its statutory objectives, powers, and duties in the future. If we had to construe the provision in that way, we would therefore reject it. In the alternative, the second sentence of

subparagraph 11(a) can be read as limiting, as part of their settlement agreement, only the signatory parties' own ability to propose particular solutions to Phase III issues.<sup>30</sup> Under that interpretation, the second sentence of subparagraph 11(a), like the first, affects only the signatories' positions with respect to each other and the Phase III issues. To avoid the interpretation that would render the sentence in question impotent, we construe it to affect only the parties' relations to the issues and each other. Since, under that interpretation, both sentences of subparagraph 11(a) affect only the parties' own positions on Phase III issues, we need not adopt them as part of our order here.

Most of the remaining, "Miscellaneous Provisions" of the Phase II Joint Proposal--subparagraphs 12(a) through (d) and 12(g)--affect only the interests of the signatories *vis-à-vis* each other; or how we should interpret its operative provisions in determining whether to adopt them. Subparagraph 12(e) will be moot, because we are adopting all of the material, operative provisions of the Phase II Joint Proposal. It is unnecessary for us to take action on those elements of the Phase II Joint Proposal and thus we will not adopt them.

Subparagraph 12(f), however, would govern any future disputes that might arise among parties to the Phase II Joint Proposal over the interpretation or implementation of the material, operative provisions we are adopting here. Because the provisions of that subparagraph are themselves potentially operative in the future and are reasonable, we are adopting them, as well.

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<sup>30</sup> The Phase II Joint Proposal as filed is titled a "Joint Proposal and Settlement Agreement," to which it subsequently refers, including in subparagraph 11(a), as "Settlement Agreement."

CONCLUSION

The Phase II Joint Proposal provides for a limited term SUSF that would ensure continued availability of basic residential local telephone service in rural areas of New York during a period when the telecommunications marketplace in the State, and federal policies that may significantly affect it, remain in flux. It would do so at only a modest cost, amounting to no more than a penny a line per month for customers of contributing service providers. Furthermore, adoption of the Phase II Joint Proposal will obviate the costs and delays that could ensue from further litigation of the issues, either before or after any decision we might otherwise render. Accordingly, and as explained in greater detail above, we conclude that the Phase II Joint Proposal conforms with our Settlement Guidelines and adoption of its operative provisions is in the public interest.

The Commission orders:

1. Except for the "Recitals," on pages 1-3, and subparagraphs 11(a), 12(a) through (e), and 12(g), on pages 8-9, and subject to our discussion of the language of paragraph 10, the "Reservation Clause" on page 8, the terms, provisions, and conditions of the Joint Proposal originally filed in this proceeding on May 8, 2012, as corrected and filed on May 11, 2012, and attached as Attachment I (Phase II Joint Proposal) are adopted in accordance with the provisions of this order and incorporated as part of this order.

2. The Secretary may extend any compliance deadline established under the terms, provisions, or conditions of this order and the Phase II Joint Proposal adopted and incorporated in it for good cause.

3. This proceeding is continued.

By the Commission,

JACLYN A. BRILLING  
Secretary

Appendix A  
Attachment I

**APPENDIX A**

**SMALLER ILECs MEMBERS**

Armstrong Telephone Company--New York  
Berkshire Telephone Corporation  
Cassadaga Telephone Corporation  
Champlain Telephone Company  
Chautauqua & Erie Telephone Corporation  
Chazy & Westport Telephone Corporation  
Citizens Telephone Company of Hammond, NY, Inc.  
Crown Point Telephone Corporation  
Delhi Telephone Company  
Dunkirk and Fredonia Telephone Company  
Empire Telephone Corporation  
Fishers Island Telephone Corporation  
Germantown Telephone Company, Inc.  
Hancock Telephone Company  
Margaretville Telephone Company, Inc.  
Middleburgh Telephone Company  
Newport Telephone Company, Inc.  
Nicholville Telephone Company  
Oneida County Rural Telephone Company  
Ontario Telephone Company, Inc.  
Pattersonville Telephone Company  
State Telephone Company, Inc.  
Taconic Telephone Corporation  
TDS Telecom - Deposit Telephone Company  
TDS Telecom - Edwards Telephone Company  
TDS Telecom - Oriskany Falls Telephone Company  
TDS Telecom - Port Byron Telephone Company  
TDS Telecom - Township Telephone Company  
TDS Telecom - Vernon Telephone Company, Inc.  
Trumansburg Telephone Company, Inc.  
Warwick Valley Telephone Company

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

**Proceeding to Examine Issues Related to a  
Universal Service Fund**

**Case 09-M-0527**

**JOINT PROPOSAL AND SETTLEMENT AGREEMENT**

This Joint Proposal and Settlement Agreement for a resolution of the Phase II issues in Case 09-M-0527 (the "Settlement Agreement") is entered into as of May 8, 2012, by the parties whose signatures are included in Appendix B (together, the "Parties," and each individually, a "Party").

**RECITALS**

- a. These Recitals explain the background of this Settlement Agreement and the context in which it was negotiated. They are not themselves operative provisions of the Settlement Agreement, but are included only for any assistance they may provide in interpreting and applying those operative provisions.
- b. The Parties to this Settlement Agreement are also parties to Case 09-M-0527 (the "Proceeding"), which is pending before the New York State Public Service Commission (the "Commission").
- c. In what has been designated as "Phase II" of the Proceeding, the Commission has been considering whether a State Universal Service Fund ("SUSF") should be established to provide financial support to certain telephone corporations in New York State, as determined by the Commission in a rate case and, if so, the terms and conditions under which such fund should operate ("Phase II"). Honorable Howard A. Jack, Administrative Law Judge, has presided over an evidentiary hearing and other proceedings in Phase II. Previous rulings and orders issued by Judge Jack and the Commission also contemplate an additional phase of this case ("Phase III"), in which certain issues related to intrastate access charges and the New York Targeted Accessibility Fund ("TAF") will be considered.
- d. The Parties have a wide range of interests and perspectives on Phase II issues, and took widely varying positions on those issues in their testimony and briefs in the Proceeding.
- e. On January 4, 2012, the Commission released Judge Jack's "Recommended Decision on Phase II Issues" (the "RD"). The RD recommended that an SUSF be established, and made specific recommendations concerning the terms and conditions under which the SUSF would operate. The RD also explained the factual and legal conclusions on which its recommendations were based.

f. On the same date, the Commission issued a notice (the “Notice”) which, among other things, established a schedule for the filing of exceptions to the RD and of briefs opposing exceptions. The Notice also directed the Parties to address the effect on the RD’s recommendations of the FCC’s November 18, 2011 Report and Order in WC Docket No. 10-90, *et al.*, which had been issued after the RD was drafted. In the normal course the Commission would review those filings, along with the RD, and would issue an order addressing the Phase II issues in the Proceeding. The Commission’s order could adopt some, all, or none of the recommendations in the RD. The schedule for the filing of exceptions to the RD and of briefs opposing exceptions was subsequently modified on several occasions in order to allow the Parties to discuss a resolution of the Phase II issues, a process that culminated in this Settlement Agreement. The schedule for the submissions referenced in paragraph g below was also modified.

g. The Notice also called the Parties’ attention to the fact that the RD “addresse[d] the issue of whether obligations to contribute to [an SUSF] should be extended to wireless telephone companies,” and noted that “[s]uch action, if adopted by the Commission, would require that the Commission terminate, in part, the current suspension of the operation of the Public Service Law with respect to those companies. The opportunity to comment provided by this Notice is intended to fulfill the Commission’s obligation to make such a determination after notice and hearing pursuant to Public Service Law § 5(6).” Comments and reply comments on issues arising under § 5(6), including the question of whether that section requires an evidentiary hearing, were to be filed on the same schedule as exceptions to the RD and briefs opposing exceptions.

h. Absent a Commission-approved settlement, many of the Parties would file exceptions urging the Commission to reject or modify all or specified portions of the RD. Different Parties would challenge different provisions of the RD, on a variety of different grounds. Some Parties, for example, might take the position that an SUSF should not be established at all, but that if one is established it should operate in a manner different from that called for by the RD. Other Parties might support the RD’s recommendation that an SUSF be created, but take issue with some of the RD’s conclusions concerning the operation of the SUSF. Other Parties might support the RD in its entirety.

i. The Parties recognize that further Phase II proceedings, including the preparation and filing of exceptions and briefs opposing exceptions, and possible proceedings for reconsideration, clarification, and judicial review following the issuance of the Commission’s order, would be burdensome, costly and time-consuming; that the final outcome would be uncertain; and that some entities, including the Parties, would likely be dissatisfied with that outcome.

j. In view of these uncertainties, costs and risks, the Parties have entered into this Settlement Agreement, which sets forth an agreed-to resolution of Phase II issues that would eliminate any need for a Commission order on the RD’s operative recommendations regarding Phase II and on the factual and legal conclusions underlying those recommendations.

Experienced and knowledgeable counsel and other representatives of the Parties developed the Settlement Agreement together through an exhaustive collaborative process in which alternatives were proposed and debated, resolutions were negotiated, and this final, definitive Settlement Agreement was drafted. The Parties regard the final Settlement Agreement as the joint work product of all of the Parties, the terms of which are within the range of potential litigated outcomes.

k. This Settlement Agreement is a compromise, and reflects a great deal of give-and-take among the Parties. It does not reflect any Party's view of the ideal resolution of all of the Phase II issues. Many, if not all, Parties would — absent a settlement — support different outcomes for specific issues in the exceptions process and/or in subsequent proceedings for reconsideration or judicial review. Nevertheless, the Parties intend to submit this Settlement Agreement to the Commission for approval, and each Party requests that the Commission approve the Settlement Agreement, in lieu of the RD, as a full resolution of the issues raised in Phase II.

l. The Parties recognize that the Commission has frequently asserted that it cannot relinquish certain duties under the Public Service Law, and that the exercise of such duties might require the modification of a settlement if certain changes in circumstances occur following the approval of the settlement. Accordingly, paragraph 10 (the "Reservation Clause") has been included in this Settlement Agreement. The Reservation Clause is intended to reflect, and not to expand, contract, or otherwise alter, applicable law relating to the Commission's rights, powers, and obligations to alter an approved settlement agreement. The Parties recognize and intend that the Reservation Clause applies to each of the other operative provisions of this Settlement Agreement. Although certain operative provisions refer specifically to the Commission's powers under the Reservation Clause, such references are not intended to limit the provisions to which the Reservation Clause applies, or to imply that the Reservation Clause applies to those operative provisions differently than it applies to other operative provisions.

m. Three of the incumbent local exchange carriers in New York State that are included in Attachment A to this Settlement Agreement are currently receiving interim funding through an arrangement known as the Transition Fund, or through various extensions of that fund that have been ordered or approved by the Commission (together, the "TF"), and continued disbursements of funds from the SUSF to these three carriers are addressed in paragraph 8(d) in the Settlement Agreement.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**1. Establishment of an SUSF.**

(a) An SUSF is hereby established, for the purpose of providing financial support as determined in a rate case in accordance with the terms and conditions of this Settlement Agreement.

(b) The SUSF will be administered by the New York State Intrastate Access Settlement Pool, Inc. (the “Administrator”). Subject to the Commission’s directives, the Administrator will have the authority to assess contributions to the SUSF, disburse money from the SUSF to Eligible Recipients, and to take such actions and incur such expenses as are reasonable and necessary to carry out those responsibilities. In doing so the Administrator will be bound by the provisions of this Settlement Agreement and Commission directives approving, interpreting, and implementing the Settlement Agreement.

(c) The SUSF Administrator’s services will be provided in a manner similar to that provided by the Administrator with respect to the TAF.

## **2. Term of the SUSF.**

(a) The SUSF will have a term of four years (the “Term”), beginning on January 1, 2013 (the “SUSF Effective Date”).

(b) The Parties request that the Commission initiate a proceeding on the third anniversary of the SUSF Effective Date in order to consider whether any successor funding arrangement should be put in place following the Term, and if so the terms and conditions that would govern such successor funding arrangement.

(c) The Commission, on its own motion or upon request, may extend the Term beyond the four-year period set forth in sub-paragraph (a), above, if necessary to allow sufficient time to complete the proceeding referred to in sub-paragraph (b), above.

(d) A “Funding Year” is defined as any one-year period beginning on the SUSF Effective Date (or on any of the first three anniversaries of the SUSF Effective Date), and ending the day before the next following anniversary.

## **3. Funding Amounts.**

(a) For purposes of this Settlement Agreement:

- (i) a “Funding Date” is a date on which contributions to the SUSF are due;
- (ii) a “Funding Amount” is the total amount to be contributed to the SUSF on a specific Funding Date;
- (iii) a “Contributor” to the SUSF is as defined in paragraph 4, below; and
- (iv) a Contributor’s “Share” of the Funding Amount is defined in paragraph 5, below.

(b) On each Funding Date, each Contributor shall be required to contribute to the SUSF that Contributor’s Share of the Funding Amount for that Funding Date. The Administrator shall issue an assessment to each Contributor for its Share of a Funding Amount, and shall do so

sufficiently in advance of the Funding Date to ensure that the total Funding Amount will be collected by the Funding Date.

(c) SUSF Funding for first Funding Year. The Funding Amount for the first Funding Year is \$5 million, and the Funding Date for that Funding Amount is thirty days after the SUSF Effective Date. To the extent that the Administrator determines, in consultation with Staff, that it is reasonably likely that a portion of this Funding Amount will not be needed during the first Funding Year, any Contributor may satisfy its obligation under this sub-paragraph by paying its Share of the portion of the Funding Amount that the Administrator concludes will be needed during the first Funding Year, and by providing the Administrator with a letter of credit, in a form acceptable to the Commission, for its Share of the remaining portion of the Funding Amount.

(d) SUSF Funding for subsequent Funding Years after the First Funding Year. Subject to sub-paragraph 3(e), below, the Funding Amounts for each Funding Year after the first Funding Year will be the lesser of (i) the Funding Need for that Funding Year (as determined pursuant to paragraph 8, below), or (ii) \$4 million. The Funding Dates for these Funding Amounts will be determined by the Administrator so as to ensure the availability of funds when needed, but to minimize the collection of funds that will not be needed during a Funding Year. The Administrator may set more than one Funding Date for each of these Funding Years.

(e) Any portion of the \$5 million Funding Amount for the first Funding Year that exceeds the Funding Need for the first year may be used to meet Funding Needs in subsequent years after that subsequent year's \$4 million Funding Amount is collected.

#### **4. Contributors.**

(a) Subject to paragraph 6, below (the "Market Change Exception"), a Contributor is a company that was required to contribute to the TAF during 2011 ("Contributor"). Wireless and VoIP providers will not be Contributors. This sub-paragraph, like all other provisions of this Settlement Agreement, is subject to the provisions of paragraph 10, below.

(b) The desirability and legality of requiring classes of telecommunication providers who are not Contributors under this Settlement Agreement to contribute to any successor arrangement established by the Commission pursuant to sub-paragraph 2(b), above, may be examined by the Commission in the review proceeding referred to in that sub-paragraph. Subject to any determination that may be made under paragraph 10 (the "Reservation Clause"), the Parties will not seek initiation of a Phase-II-related proceeding under Public Service Law § 5(6) before that point.

#### **5. Contribution Shares.**

Subject to the Market Change Exception in paragraph 6 below, each Contributor's Share will be determined using the TAF contribution methodology in effect during 2011; that is, based on the 2011 TAF-assessable revenues of the Contributor expressed as a percentage of the total

2011 TAF-assessable revenues of all Contributors. Subject to the Market Change Exception, no Contributor's Share will change during the Term of this Settlement Agreement.

**6. Market Change Exception.**

Notwithstanding the provisions of paragraphs 4 and 5, above:

(a) Any new intrastate telecommunications service provider that enters a New York market after December 31, 2011, and that would have been required to contribute to the TAF had it been in the market during 2011 (an "Entering Contributor") will be included as a Contributor after its entry into the market based on the amount of its then current and ongoing revenues that would have been assessable by TAF had the entity been in the market in 2011, and such amount will be added to the total 2011 TAF-assessable revenues for purposes of calculating the Share of each Contributor.

(b) A TAF Contributor that exits all intrastate telecommunications markets within the State of New York after December 31, 2011 (an "Exiting Contributor"), and that does not have a Successor or Assign, and that would no longer be required to contribute to TAF, will no longer be a Contributor under this Settlement Agreement. In such case, the TAF-assessable revenues of the Exiting Contributor will be deducted from the total revenues used to determine the Shares of the remaining Contributors. If, however, the Exiting Contributor has a Successor or Assign, then such Successor or Assign will assume the Exiting Contributor's SUSF contribution obligations from that date forward, and will become a Contributor under this Settlement Agreement. For purposes of this provision and of Section 7, "Successor or Assign" means a person or entity that has agreed to assume, or that is required by operation of law to assume, the obligations of the Exiting Contributor, or that has acquired the Exiting Contributor's intrastate telecommunications 2011 TAF-assessable customer base or a material portion thereof.

**7. Eligible Recipients.**

The entities listed in Appendix A to this Settlement ("Eligible Recipients"), and only such entities, or their respective Successors or Assigns (but only with respect to the Eligible Recipients' respective service areas), shall be eligible to receive disbursements from the SUSF. The Administrator shall make disbursements to an Eligible Recipient during each Funding Year based on the Eligible Recipient's Funding Need, as determined pursuant to paragraph 8, below, *provided, however*, that, subject to paragraph 10, below, if the total Funding Need of all Eligible Recipients for a particular Funding Year exceeds the sum of the SUSF funds that are available for that Funding Year (as determined pursuant to paragraph 3, above), then available funds will be distributed pro rata to Eligible Recipients based on their Funding Needs from the date that such SUSF fund levels for that Funding Year are exceeded.

## 8. Funding Need.

(a) The total Funding Need for any Funding Year will be the sum of the Funding Needs for each Eligible Recipient in that year, determined in accordance with this paragraph (the "Funding Need").

(b) Subject to sub-paragraphs (c) and (d), below, the Funding Need of any Eligible Recipient will be determined through the traditional rate case process that is provided for under the Commission's rules, as that process existed before the start of this proceeding. Funding needed to meet Eligible Recipient's revenue requirement will only be provided when the residential basic service rate, as determined by the rate case process, exceeds \$23/line/month (the "Benchmark Rate").

(c) In a rate proceeding under subparagraph (b), above, the revenue attributed to residential basic service will be based on: (1) the rate for such service authorized prior to the rate case, if equal to the Benchmark Rate, (2) the Benchmark Rate, if it exceeds such authorized rate by \$3.50 or less, or (3) otherwise, the Transitional Rate, as illustrated by the appended Section 8 Example Chart. The Benchmark Rate and the Transitional Rate, will be computed as set forth in sub-paragraphs (c)(i) and (c)(ii), below. No Eligible Recipient will be required to actually charge the Benchmark Rate or the Transitional Rate.

(i) **Benchmark Rate.** The Benchmark Rate for residential basic service (*i.e.*, an access line plus local usage) shall be the Benchmark Rate defined in sub-paragraph (b), above. That level represents the rate for intrastate basic service and is not intended to include any applicable taxes, surcharges, the federal Subscriber Line Charge, etc.

(ii) **Transitional Rate.** If an Eligible Recipient's authorized residential basic service rate prior to the rate case under sub-paragraph (b) is more than \$3.50/line/month below the Benchmark Rate, then a transition will be allowed to limit annual residential basic service rate increases to \$3.50/line/month ("Transitional Rate"). The Transitional Rate will be the authorized rate prior to the rate case, increased by \$3.50/line/month on the rate case effective date and on each anniversary of such date until the Benchmark Rate is reached.

(d) **Eligible Recipients Receiving TF.** Eligible Recipients currently receiving funding disbursements through the TF shall continue to receive the current level of disbursements from the SUSF at the initiation of the SUSF and thereafter without any need to file a rate case. Such Eligible Recipient may seek a change in such SUSF funding by filing a rate case pursuant to sub-paragraph (b), and, if it does so, its level of Funding Need thereafter will be as determined by the Commission in the rate case.

**9. Recovery of Contributions.**

Contributors will be allowed, but not required, to recover their contributions to the SUSF through new or increased retail end-user charges or surcharges, and Contributors will have discretion, subject to Commission oversight through the tariff process under Publ. Serv. L. § 92, as to the structure of such charges or surcharges.

**10. Reservation Clause.**

Upon request or its own motion, and upon notice to all Parties and an opportunity to be heard, the Commission reserves the authority to modify any part of this Settlement Agreement if circumstances, including but not limited to changes in market structure and Contributors, in the opinion of the Commission have such a significant impact as to render this Settlement Agreement unreasonable, unnecessary or insufficient for the continued provision of universal service at just and reasonable rates or otherwise contrary to the Public Service Law. All Parties reserve their right to take any and all positions concerning the desirability, legality, or consequences of any action by the Commission related to this settlement. The Parties recognize and intend that the Reservation Clause applies to each of the other operative provisions of this Settlement Agreement. Although certain operative provisions refer specifically to the Commission's powers under the Reservation Clause, such references are not intended to limit the provisions to which the Reservation Clause applies, or to imply that the Reservation Clause applies to those operative provisions differently than it applies to other operative provisions.

**11. Subsequent Phases of Case 09-M-0527.**

(a) Nothing in this Settlement Agreement will prejudice the right of any Party to argue for or against any Commission action with respect to the TAF or intrastate access charges in Phase III of this proceeding, including issues related to the advisability, establishment and operation of a separate recovery mechanism for revenue losses due to reductions in such charges, if such reductions are ordered. However, nothing in Phase III shall alter the terms of this Settlement Agreement, including but not limited to the Benchmark Rate established herein.

(b) The Parties will hold discussions in an attempt to resolve Phase III issues beginning on a date thirty days after the Commission issues an order in Phase II (the "Phase III Commencement Date"). Such discussions will continue for no more than sixty days in total. Unless the Parties' consensus on the thirtieth day after the Phase III Commencement Date is that there is a reasonable possibility that all unresolved issues can be resolved by the sixtieth day, collaboration will end and litigation of all unresolved Phase III issues will begin.

**12. Miscellaneous Provisions.**

(a) This Settlement Agreement contains the entire agreement of the Parties regarding the Phase II issues and supersedes and replaces any and all prior or contemporaneous written or oral agreements or understandings regarding such issues.

(b) The captions used herein are intended solely to facilitate reading of and reference to the individual provisions of the Settlement Agreement, and shall not affect the meaning or interpretation of such provisions.

(c) The Settlement Agreement shall not be construed or interpreted for or against any Party under any legal doctrine based on the identity of the “drafter.” Rather, each provision shall be given a fair construction based on the words used in that provision, the terms of the Settlement Agreement as a whole, the context set forth in the Recitals, and other generally-applicable rules relating to the interpretation of agreements; provided, however, that no oral or written statement or proposal made by a party during the settlement discussions leading to the Settlement Agreement will be admissible as evidence for or against any interpretation of the Settlement Agreement.

(d) No Party’s agreement to the terms, provisions, methodology, or principles set forth in this Settlement Agreement may be cited or relied upon as an admission or as precedent in any proceeding — including, but not limited to, any Phase III proceeding and any SUSF review proceedings — before the Commission, another regulatory agency, or any court, except in furtherance of the implementation of this Settlement Agreement, and no Party is bound by the positions taken in this Settlement Agreement on any similar issue in any such proceeding.

(e) This Settlement Agreement reflects a negotiated resolution of issues. Each provision of the Settlement Agreement is in consideration and support of all other provisions thereof and is expressly conditioned upon the adoption of all other such provisions by the Commission. To the extent that the Commission fails to adopt a material term of this Settlement Agreement in its entirety, the Settlement Agreement shall be considered null and void, and the Parties to this Settlement Agreement reserve the right to pursue their respective positions in this proceeding before any agency, ALJ, or court of competent jurisdiction without prejudice and upon reasonable notice to the other Parties, said notice to be provided by no later than ten (10) business days after issuance of the Commission order addressing this Settlement Agreement.

(f) In the event of any disagreement over the interpretation or implementation of this Settlement Agreement that cannot be resolved informally among the Parties, the Parties shall promptly negotiate in good faith in an attempt to resolve such disagreement for a period of thirty (30) days. If any such disagreement cannot be resolved by negotiation among the Parties, the matter shall be submitted to the Commission with a request for determination on an expedited basis. A party may seek review of the Commission’s decision in accordance with the procedures and schedule allowed by law.

(g) This Settlement Agreement is being executed in counterpart originals, and shall be binding on each Party who executes such a counterpart, with the same force and effect as if all executing Parties had executed a single original document.

## Section 8(c) Chart

		Pre	Commission Authorized Rates			
		Rate Case	Year 1	Year 2	Year 3	Year 4
(1)	Residential Rates	\$23.00	\$23.00	\$23.00	\$23.00	\$23.00
a	Commission Determined Revenue Requirement Shortfall	\$150,000				
b	Funding Over \$23 Benchmark		\$150,000	\$150,000	\$150,000	\$150,000
c	Revenue Requirement Shortfall Below \$23 Benchmark	\$0				
d	Revenue Generated by Transition to \$23 Benchmark					
e	Transitional Funding					
f	<b>Total Funding</b>		<b>\$150,000</b>	<b>\$150,000</b>	<b>\$150,000</b>	<b>\$150,000</b>
(2)	Residential Rates	\$20.00	\$23.00	\$23.00	\$23.00	\$23.00
a	Commission Determined Revenue Requirement Shortfall	\$186,000				
b	Funding Over \$23 Benchmark		\$150,000	\$150,000	\$150,000	\$150,000
c	Revenue Requirement Shortfall Below \$23 Benchmark	\$36,000				
d	Revenue Generated by Transition to \$23 Benchmark		\$36,000			
e	Transitional Funding					
f	<b>Total Funding</b>		<b>\$150,000</b>	<b>\$150,000</b>	<b>\$150,000</b>	<b>\$150,000</b>
(3)	Residential Rates	\$15.00	\$18.50	\$22.00	\$23.00	\$23.00
a	Commission Determined Revenue Requirement Shortfall	\$246,000				
b	Funding Over \$23 Benchmark		\$150,000	\$150,000	\$150,000	\$150,000
c	Revenue Requirement Shortfall Below \$23 Benchmark	\$96,000				
d	Revenue Generated by Transition to \$23 Benchmark		\$42,000	\$84,000	\$96,000	
e	Transitional Funding		\$54,000	\$12,000		
f	<b>Total Funding</b>		<b>\$204,000</b>	<b>\$162,000</b>	<b>\$150,000</b>	<b>\$150,000</b>

Note: Funding and revenue amounts already reflect rate case changes to all rates other than residential basic service rates.

# APPENDIX A

## Eligible Recipients

Eligible Recipients

Armstrong Telephone Company-New York  
Berkshire Telephone Corporation  
Cassadaga Telephone Corporation  
Champlain Telephone Company  
Chautauqua & Erie Telephone Corporation  
Chazy & Westport Telephone Corporation  
Citizens Telephone Company of Hammond, NY, Inc.  
Crown Point Telephone Corporation  
Delhi Telephone Company  
Dunkirk and Fredonia Telephone Company  
Empire Telephone Corporation  
Fishers Island Telephone Corporation  
Germantown Telephone Company, Inc.  
Hancock Telephone Company  
Margaretville Telephone Company, Inc.  
Middleburgh Telephone Company  
Newport Telephone Company, Inc.  
Nicholville Telephone Company  
Oneida County Rural Telephone Company  
Ontario Telephone Company, Inc.  
Pattersonville Telephone Company  
State Telephone Company, Inc.  
Taconic Telephone Corporation  
TDS Telecom - Deposit Telephone Company, Inc.  
TDS Telecom - Edwards Telephone Company, Inc.  
TDS Telecom - Oriskany Falls Telephone Corporation  
TDS Telecom - Port Byron Telephone Company  
TDS Telecom - Township Telephone Company, Inc.  
TDS Telecom - Vernon Telephone Company, Inc.  
Trumansburg Telephone Company, Inc.  
Warwick Valley Telephone Company

# APPENDIX B

## Signatures

SIGNATURE SHEET

Signature: Maureen McCauley  
Name: Maureen McCauley  
Capacity (e.g., Counsel): Counsel for DPS Staff  
Date of Execution: May 7, 2012

On behalf of (name of Party or Parties):  
NYS Department of Public Service Staff

**SIGNATURE SHEET**

**Signature:**

Mary E. Burgess

**Name:**

Mary E. Burgess

**Capacity (e.g., Counsel):**

Counsel

**Date of Execution:**

May 7, 2012

**On behalf of (name of Party or Parties):**

AT&T

SIGNATURE SHEET

Signature: Allison Lee (MP)

Name: ALLISON LEE

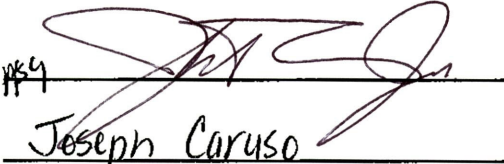
Capacity (e.g., Counsel): PRESIDENT

Date of Execution: 5/8/2012

On behalf of (name of Party or Parties):

CABLE TELECOMMUNICATIONS ASSOCIATION  
OF NEW YORK, INC.

SIGNATURE SHEET

Signature: 

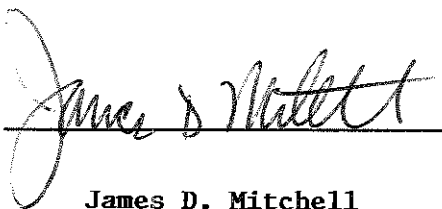
Name: Joseph Caruso

Capacity (e.g., Counsel): SRP - Business Planning & Interconnection

Date of Execution: 5/8/12

On behalf of (name of Party or Parties): Cablevision Lightpath, Inc.

**SIGNATURE SHEET**

**Signature:** 

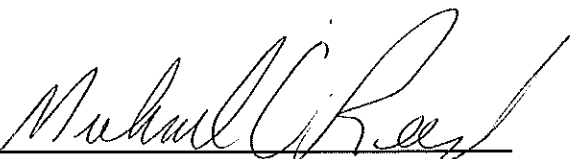
**Name:** James D. Mitchell

**Capacity (e.g., Counsel):** Vice President

**Date of Execution:** May 4, 2012

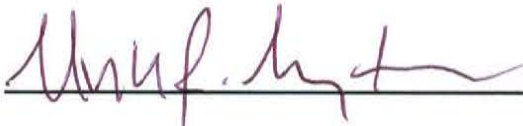
On behalf of (name of Party or Parties): NYSTA Smaller ILECs – Armstrong Telephone Company-New York

**SIGNATURE SHEET**

**Signature:**   
**Name:** Michael C. Reed  
**Capacity (e.g., Counsel):** President - Me.  
**Date of Execution:** 5/7/2012

On behalf of (name of Party or Parties): NYSTA Smaller ILECs –  
Berkshire Telephone Corporation  
Chautauqua & Erie Telephone Corporation  
Taconic Telephone Corporation

**SIGNATURE SHEET**

**Signature:**  \_\_\_\_\_

**Name:** Mark R. Maytum

**Capacity (e.g., Counsel):** President, COO

**Date of Execution:** May 4, 2012

On behalf of (name of Party or Parties): NYSTA Smaller ILECs –  
Cassadaga Telephone Corporation  
Dunkirk and Fredonia Telephone Company

**SIGNATURE SHEET**

**Signature:**

A handwritten signature in black ink, appearing to read "Trent Trahan", is written over a solid horizontal line.

**Name:**

**Trent Trahan**

**Capacity (e.g., Counsel):**

**President and CEO**

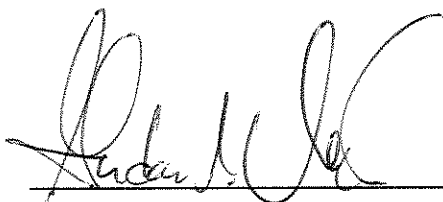
**Date of Execution:**

**May 7, 2012**

On behalf of (name of Party or Parties): NYSTA Smaller ILECs – Champlain Telephone Company

**SIGNATURE SHEET**

**Signature:**



\_\_\_\_\_

**Name:**

\_\_\_Gordon R. Decker\_\_\_\_\_

**Capacity (e.g., Counsel):**

\_\_\_CFO\_\_\_\_\_

**Date of Execution:**

\_\_\_May 7, 2012\_\_\_\_\_

On behalf of (name of Party or Parties): NYSTA Smaller ILECs – Chazy & Westport Telephone Corporation

SIGNATURE SHEET

Signature:



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Name:

Donald A. Ceresoli, Jr.

Capacity (e.g., Counsel):

President

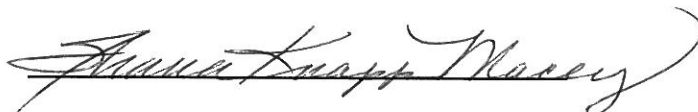
Date of Execution:

5/7/12

On behalf of (name of Party or Parties): NYSTA Smaller ILECs – Citizens Telephone Company of Hammond, NY, Inc.

SIGNATURE SHEET

Signature:

A handwritten signature in cursive script, reading "Shana Knapp-Macey", written over a horizontal line.

Name:

Shana Knapp-Macey

Capacity (e.g., Counsel):

President

Date of Execution:

5/4/12

On behalf of (name of Party or Parties): NYSTA Smaller ILECs – Crown Point Telephone Corporation



**SIGNATURE SHEET**

**Signature:**

A handwritten signature in black ink, appearing to read "Brian J. Ketchum", is written over a solid horizontal line.

**Name:**

**Brian J. Ketchum**

**Capacity (e.g., Counsel):**


**VP & GM**

**Date of Execution:**

**May 4, 2012**

On behalf of (name of Party or Parties): NYSTA Smaller ILECs – Empire Telephone Corporation

SIGNATURE SHEET

Signature:   
Name: Robert Wall  
Capacity (e.g., Counsel): President  
Date of Execution: 5/7/12

On behalf of (name of Party or Parties): NYSTA Smaller ILECs – Fishers Island Telephone Corporation

SIGNATURE SHEET

Signature: 

Name: Bruce C. Bohnsack

Capacity (e.g., Counsel): President

Date of Execution: 5/4/12

On behalf of (name of Party or Parties): NYSTA Smaller ILECs – Germantown Telephone Company, Inc.

SIGNATURE SHEET

Signature: 


Name: Robert C. Wrighter, Sr.

Capacity (e.g., Counsel): President | CEO

Date of Execution: May 4, 2012

On behalf of (name of Party or Parties): NYSTA Smaller ILECs – Hancock Telephone Company

SIGNATURE SHEET

Signature: 

Name: Glen Faulkner

Capacity (e.g., Counsel): Asst. Secretary / Treasurer

Date of Execution: 5/4/12

On behalf of (name of Party or Parties): NYSTA Smaller ILECs – Margaretville Telephone Company, Inc.

SIGNATURE SHEET

Signature: Marjorie R. Becker

Name: Marjorie R. Becker

Capacity (e.g., Counsel): Chief Executive Officer

Date of Execution: May 4, 2012

On behalf of (name of Party or Parties): NYSTA Smaller ILECs – Middleburgh Telephone Company

**SIGNATURE SHEET**

**Signature:** Harley M. Ruppert

**Name:** Harley M. Ruppert

**Capacity (e.g., Counsel):** President

**Date of Execution:** May 4, 2012

On behalf of (name of Party or Parties): NYSTA Smaller ILECs – Newport Telephone Company, Inc.

SIGNATURE SHEET

Signature: Jeffrey S. McGrath

Name: JEFFREY S. MCGRATH

Capacity (e.g., Counsel): VICE PRESIDENT

Date of Execution: 5/4/2012

On behalf of (name of Party or Parties): NYSTA Smaller ILECs – Nicholville Telephone Company

**SIGNATURE SHEET**

**Signature:** James P. McCarty


**Name:** James P. McCarty

**Capacity (e.g., Counsel):** President

**Date of Execution:** 5/4/12

On behalf of (name of Party or Parties): NYSTA Smaller ILECs – Oneida County Rural Telephone Company

**SIGNATURE SHEET**

**Signature:** 

**Name:** Michael T. Carr

**Capacity (e.g., Counsel):** C.F.O.

**Date of Execution:** 5-4-12

On behalf of (name of Party or Parties): NYSTA Smaller ILECs –  
Ontario Telephone Company, Inc.  
Trumansburgh Telephone Company, Inc.

**SIGNATURE SHEET**

**Signature:** Tammy Krisher

**Name:** Tammy Krisher

**Capacity (e.g., Counsel):** President

**Date of Execution:** 5/7/12

On behalf of (name of Party or Parties): NYSTA Smaller ILECs – Pattersonville Telephone Company

**SIGNATURE SHEET**

**Signature:** 

**Name:** Mark R. Evans

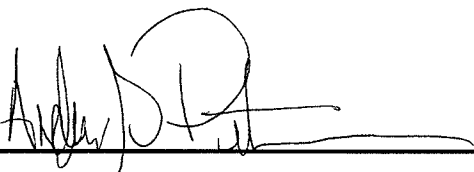
**Capacity (e.g., Counsel):** VP

**Date of Execution:** 5/4/12

On behalf of (name of Party or Parties): NYSTA Smaller ILECs – State Telephone Company, Inc.

**SIGNATURE SHEET**

**Signature:**



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**Name:**

**Andrew S. Petersen**

**Capacity (e.g., Counsel):**

**Vice President – External Affairs & Communications**

**Date of Execution:**

**May 7, 2012**

On behalf of (name of Party or Parties): NYSTA Smaller ILECs –

- TDS Telecom - Deposit Telephone Company, Inc.
- TDS Telecom - Edwards Telephone Company, Inc.
- TDS Telecom - Oriskany Falls Telephone Corporation
- TDS Telecom - Port Byron Telephone Company
- TDS Telecom - Township Telephone Company, Inc.
- TDS Telecom - Vernon Telephone Company, Inc.

SIGNATURE SHEET

Signature: 

Name:     Ralph Martucci    

Capacity (e.g., Counsel):     Vice President, Treasurer, and Chief Financial Officer    

Date of Execution:     May 4, 2012    

On behalf of (name of Party or Parties): NYSTA Smaller ILECs – Warwick Valley Telephone Company

SIGNATURE SHEET

Signature: Ken Schiffman

Name: Ken Schiffman

Capacity (e.g., Counsel): Counsel

Date of Execution: 5/7/12

On behalf of (name of Party or Parties): Sprint Nextel Corporation

**SIGNATURE SHEET**

**Signature:** 

**Name:** Michele K. Thomas

**Capacity (e.g., Counsel):** Principal Corporate Counsel

**Date of Execution:** May 7, 2012

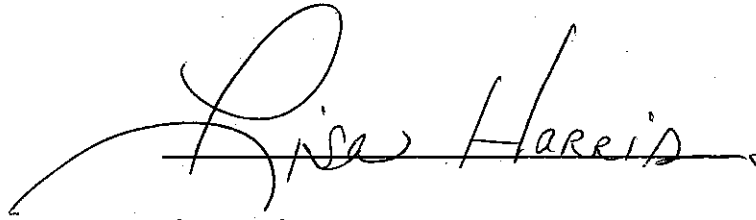
**On behalf of (name of Party or Parties):** T-Mobile Northeast LLC d/b/a T-Mobile

SIGNATURE SHEET

Signature: Julie P. Laine  
Name: Julie P. Laine  
Capacity (e.g., Counsel): Group Vice President + chief Regulatory Counsel  
Date of Execution: 5-7-12  
On behalf of (name of Party or Parties): Time Warner Cable

**SIGNATURE SHEET**

**Signature:**

A handwritten signature in black ink that reads "Lisa Harris". The signature is written in a cursive style with a large, looping initial "L". The signature is written over a horizontal line.

**Name:**

Lisa Harris

**Capacity (e.g., Counsel):**

Director

**Date of Execution:**

May 14, 2012

**On behalf of (name of Party or Parties):**

**UTILITY INTERVENTION UNIT  
DIVISION OF CONSUMER PROTECTION  
NEW YORK STATE DEPARTMENT OF STATE**

SIGNATURE SHEET

Signature:

Joseph A Post

Name:

JOSEPH A. POST

Capacity (e.g., Counsel):

COUNSEL

Date of Execution:

5/7/12

On behalf of (name of Party or Parties):

- VERIZON NEW YORK INC.
- CELLCO PARTNERSHIP,  
d/b/a VERIZON WIRELESS