

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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

REPLY STATEMENT IN SUPPORT  
OF THE PHASE III JOINT PROPOSAL  
BY TIME WARNER CABLE, INC.

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Dated: January 18, 2013

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**CASE 09-M-0527**

**REPLY STATEMENT IN SUPPORT  
OF THE PHASE III JOINT PROPOSAL  
BY TIME WARNER CABLE INC.**

Time Warner Cable Inc. (“TWC”) hereby submits this Reply Statement in Support of the Joint Proposal and Settlement Agreement (“Phase III Joint Proposal” or “JP”) in response to the Honorable Howard Jack’s Procedural Ruling in this case.<sup>1</sup>

On January 4, 2013, the signatories to the Phase III Joint Proposal (the “Proponents”) filed statements in support of the JP. Only two parties to this case, AT&T Communications of New York, Inc. (“AT&T”) and Sprint Nextel Corporation (“Sprint”), (together, the “Opponents”), filed statements in opposition to the Phase III Joint Proposal. Contrary to the Opponents’ assertions: the JP reflects the parties’ support of the provisions of the Phase II Joint Proposal that ensure that each party would maintain its right to take any position in subsequent phases of this proceeding; is supported by the Settlement Guidelines’ support of parties’ ability to coalesce around a common position; is supported and/or not opposed by a diverse group which includes stakeholders on both sides of the economic issues as well as public interest representatives; is consonant with the position taken by TWC and others that there should be “...harmonized and coordinated intercarrier compensation rates under a federal framework...”<sup>2</sup>; and, most importantly, is in the public interest. TWC respectfully urges adoption of the Phase III Joint Proposal.

**The Phase III Joint Proposal is Consistent with the Phase II  
Settlement Agreement and the Settlement Guidelines**

AT&T states that the JP should be rejected as being “...Contrary to the Letter and Spirit of the Phase II Settlement Agreement and Commission Order...”<sup>3</sup> and threatens the processes and

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<sup>1</sup> Case 09-M-0527 - *Proceeding to Examine Issues Related to a Universal Service Fund*, Ruling on Phase III Procedure (“Procedural Ruling”) (Issued Dec. 7, 2012).

<sup>2</sup> *Connect America Fund et al*, WC Docket No. 1090 et al., Comments of Time Warner Cable Inc., p. 19.

<sup>3</sup> Case 09-M-0527, *Proceeding to Examine Issues Related to a Universal Service Fund*, AT&T Communications of New York, Inc.’s, and its Regulated Affiliates’ Statement in Opposition to Phase III Joint Proposal (“AT&T

principles embodied in the Commission’s Settlement Guidelines. The Opponents’ comments, however, ignore a key component of the JP. Paragraph 11(a) states that 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...” This strong reservation of rights clause clearly authorizes the parties to support *any* position in Phase III, including a ‘no action’ or ‘deferred action’ position on any and/or all of the issues. To allow parties to take such a position, but prohibit them from coalescing around such position and proposing a settlement agreement that embodies such a position, essentially negates the value of this reservation clause. In addition, suggesting that the *only* valid settlement that should be considered by the Commission is one which reduces access charges ahead of the federal schedule threatens the Commission’s settlement processes in a way far more profound than the one incorrectly suggested by the Opponents.

Further, there is an inherent inconsistency between the Opponents’ view of the access provisions and their view of the TAF provisions contained in the JP. Their argument that a ‘deferred action’ scenario is not a ‘resolution’ of the issues is belied by their support of (or non-opposition to) the JP provisions that the TAF not be addressed further pending specific PSC and/or FCC related actions.<sup>4</sup>

### **The Phase III Joint Proposal is Supported by a Diverse Group of Private and Public Sector Stakeholders**

Sprint incorrectly asserts that the JP is supported by a group of “...access collecting LECs...”<sup>5</sup> As pointed out in the initial statements of support by TWC , Cablevision Systems Corp. (“CSC”) and numerous others, the JP is supported by not only LECs, but by numerous other private sector stakeholders. It is supported as being in the public interest by both the Department of Public Service Staff and the Department of State’s Utility Intervention Unit.

A company similarly situated to the Opponents, T-Mobile, by letter filed contemporaneously with the JP, does not oppose the access charge provisions of the JP. T-Mobile raised some modest concerns that, should TAF issues come into play, all TAF issues be open to debate. However, as

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Statement”), (January 4, 2013), p. 3.

<sup>4</sup> As expressed by the Opponents during the Procedural Conference conducted by Judge Jack.

<sup>5</sup> Case 09-M-0527, *Proceeding to Examine Issues Related to a Universal Service Fund*, Sprint’s Statement in Opposition to Phase III Joint Proposal, (“Sprint Statement”), (January 4, 2013), p. 1.

Verizon correctly points out in its comments,<sup>6</sup> the JP's provisions in paragraph 2(b) which permit 'counterproposals' to any proposal (without qualification or limitation) make clear that this is indeed the intent of the JP.

It is in fact the diverse nature of this broad-based coalition that often find themselves on opposite sides of policy debates that strongly argues for adoption of the Phase III Joint Proposal.

### **The Joint Proposal is Consistent with TWC's Positions At the FCC and in Other Jurisdictions**

AT&T and Sprint present a litany of examples where TWC and various other Supporters express support for access charge reform at the FCC and elsewhere. Support for access charge reform is not inconsistent with support for deferring New York action until the FCC has acted. As noted in the introduction herein, TWC has supported the idea that there be "...harmonized and coordinated intercarrier compensation rates under a federal framework..." As stated in TWC's Statement, its support for the JP arises from concerns about administrative efficiency and parity with other jurisdictions, not out of opposition to access charge reform.

Sprint also raises the concern that originating access rate reform at the FCC is unlikely in the near future. It points to the fact that the Further Notice of Proposed Rulemaking ("FNPR") openly considers deferring the transition of originating access rates to bill and keep to the states.<sup>7</sup> The JP addresses this eventuality by providing a backstop such that if there is no federal action by July of 2014 the parties will reconvene under an Administrative Law Judge to discuss whether further action is necessary at the state level.

### **The Phase III Joint Proposal is in the Public Interest**

Contrary to the Opponents' assertions and consistent with the statements in support of the two agencies tasked with representing the public interest and/or consumers in this case as well as numerous other parties, the Phase III Joint Proposal is in the public interest. It avoids the risk of redundant and/or inconsistent action on the part of federal authorities, protects consumers as well as

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<sup>6</sup> Case 09-M-0527, *Proceeding to Examine Issues Related to a Universal Service Fund*, Comments of Verizon New York Inc. and Cellco Partnership D/B/A Verizon Wireless on the Phase III Joint Proposal, ("Verizon Comments"), (January 4, 2013), p. 5, fn 10.

<sup>7</sup> Sprint's Statement, p. 3.

market participants, and sets a timetable for reexamination of TAF issues that allows for consideration of all appropriate inputs.

### Conclusion

Neither of the Opponents have raised questions that provide procedural or substantive grounds for the Commission to reject the Phase III Joint Proposal. The initial statements in support make it abundantly clear that the JP is consistent with the Phase II Settlement Agreement, the Commission's Order adopting that agreement, and the Commission's Settlement Guidelines. It is supported by a group of diverse parties on both sides of the economic issues at stake and includes public interest representatives. Time Warner Cable Inc. respectfully urges the Commission to adopt the Phase III Joint Proposal in its entirety.

Respectfully submitted,

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By: /s/ *Maureen O. Helmer*

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