

**BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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

**REPLY OF THE NYSTA SMALLER ILECS TO STATEMENTS FILED REGARDING
THE PHASE II JOINT PROPOSAL/SETTLEMENT**

I. INTRODUCTION

Pursuant to the “Notice Suspending Briefing Schedule and Establishing Schedule for Statements in Support of or Opposition to Phase II Joint Proposal” issued in the above-captioned proceeding on May 9, 2012, the NYSTA Smaller ILECs (which are identified in Attachment A), hereby provide these reply comments to those comments submitted in support of the “Joint Proposal and Settlement” (the “*Joint Proposal/Settlement*”) in the above-captioned proceeding.¹ As the record reflects, there is unanimous support among the commenting parties that the New York Public Service Commission (the “Commission”) should approve and adopt the *Joint Proposal/Settlement* in its entirety. That certain of these parties, who all support such approval and adoption, remain somewhat adversarial in their respective comments only further supports the adoption without change of the *Joint Proposal/Settlement*. Accordingly, the NYSTA Smaller ILECs respectfully request that the Commission approve the *Joint Proposal/Settlement* in its entirety and establish the proposed State Universal Service Fund (“SUSF”) included within the *Joint Proposal/Settlement*.

In taking this action and approving the *Joint Proposal/Settlement*, the Commission can

¹ The May 11, 2012 submission of the *Joint Proposal/Settlement* should be the document approved by the Commission. See Comments of the NYSTA Smaller ILECs in Support of the *Joint Proposal/Settlement*, Case 09-

take the seminal step of creating a cost recovery mechanism that will provide some stability to the NYSTA Smaller ILECs to continue and advance their proven commitment to universal service in the rural areas of the State of New York. The NYSTA Smaller ILECs are willing to undertake this commitment subject to the Commission's current intrastate regulatory oversight and Commission-instituted regulatory service obligations, and are the only entities that have agreed to do so in their respective service areas. In approving the *Joint Proposal/Settlement*, the Commission will also ensure that it retains the flexibility to ensure that changed circumstances are addressed within the program during the life and review of the plan established in the *Joint Proposal/Settlement*.

II. COMMENTERS AGREE THAT THE REQUIRED STANDARDS FOR APPROVAL AND ADOPTION OF THE JOINT PROPOSAL/SETTLEMENT ARE SATISFIED

Seven parties² filed comments regarding the *Joint Proposal/Settlement*. All of the parties filing comments supported the adoption of the *Joint Proposal/Settlement*. The divergence of parties is self-evident; typically the industry segments are not unified on policy matters. Supporting parties include interexchange carriers, wireless providers, the largest incumbent local exchange carrier, rural incumbent local exchange carriers, cable television operators and competitive telecommunications providers, consumer protection advocates and Commission Staff. In addition to the broad cross section of interests that support the *Joint Proposal/Settlement*, it is equally significant that no party submitted comments opposing the

M-0527, filed May 23, 2012 (the "NYSTA Smaller ILEC Comments") at 1, footnote.1.

² The parties filing comments, in addition to the NYSTA Smaller ILECs were AT&T Communications of New York, Inc. ("AT&T"), the Cable Telecommunications Association of New York, Inc. ("CTANY"), Department of Public Service Staff ("Staff"), Sprint Nextel Corporation ("Sprint"), the Utility Intervention Unit of the New York State Department of State's Division of Consumer Protection ("UIU"), and Verizon New York, Inc. and Cellco Partnership d/b/a Verizon Wireless ("Verizon"). The NYSTA Smaller ILECs notes that references to parties'

Commission's adoption of the *Joint Proposal/Settlement*.

Against this backdrop, the comments filed by the parties reinforce the NYSTA Smaller ILECs' comments that the standards have been satisfied for adoption of the *Joint Proposal/Settlement*. Staff, for example, sets forth the standards that should be used by the Commission in review of the *Joint Proposal/Settlement*³ and properly concludes that the standards have been met.⁴ Additionally, Verizon correctly states that the principal issue to be considered by the Commission is whether the proposal is in the public interest.⁵ Further, that the *Joint Proposal/Settlement* is within the range of litigated outcomes is demonstrated by the various parties' positions which were noted in their filed comments⁶ supporting the adoption of the *Joint Proposal/Settlement*. Not only is the *Joint Proposal/Settlement* in the public interest, but the NYSTA Smaller ILECs agree with Verizon that the settlement process that resulted in the *Joint Proposal/Settlement* was proper and procedurally fair.⁷

III. THE ADVERSARIAL NATURE OF THE PARTIES CONTINUES TO BE REFLECTED IN THE COMMENTS; NYSTA SMALLER ILECS PROPERLY DISAGREE WITH ASSERTIONS FROM CTANY AND SPRINT

Although there are obvious differences of opinions between the commenters that do not need to be argued at this point, the NYSTA Smaller ILECs must reply to several points raised by CTANY and Sprint. CTANY incorrectly concludes that a very high percentage of rural customers have choices of wireless or Voice over Internet Protocol options and "that only an

respective comments will be noted by their individual name and the word "Comments".

³ See, Staff Comments at 4.

⁴ See, *id.* at 4-5.

⁵ See, Verizon Comments at 2.

⁶ Compare generally, Sprint Comments and CTANY Comments with UIU Comments and NYSTA Smaller ILECs Comments; see also, Verizon Comments at 4.

extremely small number of New Yorkers do not have access to some form of competitive provider.”⁸ The substantial weight of evidence at the Phase II hearing in this proceeding demonstrates, however, that these “competitive” services are not true substitutes for rural carrier services, are not ubiquitously available through-out the rural areas and are not subject to Commission intrastate regulatory oversight. For an extensive discussion of the evidence supporting the need for a SUSF one need only review the NYSTA Smaller ILECs Initial Trial Brief, filed March 15, 2011 in this proceeding at pages 14 to 34. Moreover, CTANY’s suggestion that the SUSF is a “subsidy fund”⁹ disregards the fact that any SUSF disbursements to an Eligible Recipient results from *specific* Commission *fact finding and conclusions* concerning regulated intrastate cost recovery within the traditional rate case process. CTANY’s rhetoric, and similar contentions by other parties (such as the SUSF is a “tax”¹⁰), is factually inaccurate and should not be considered by the Commission in approving the *Joint Proposal/Settlement*.

Sprint’s comments assert their self-interest in arguing that all carriers should not participate in universal service and incorrectly infer that there is an absolute end date to the SUSF.¹¹ Regarding wireless contributions to the SUSF, the NYSTA Smaller ILECs have agreed in the *Joint Proposal/Settlement* that the Commission should not initially, during the four year period, require the participation of wireless carriers and their customers in the contribution base, subject, of course, to paragraph 10 of the *Joint Proposal/Settlement* which retains the

⁷ See, Verizon Comments at 10.

⁸ CTANY Comments at 3.

⁹ *Id.* at 4.

¹⁰ See, e.g., *id.* at 2.

¹¹ Sprint Comments at 2-3.

Commission's rights to address changed circumstances. In any event, this exclusion should be reviewed by the Commission during the review of SUSF which should begin after three years of the SUSF. The NYSTA Smaller ILECs expect at that time the Commission will conclude that having the widest possible contribution base, including wireless carrier customers, to support universal services goals will be a proper modification to the SUSF. To be sure, the NYSTA Smaller ILECs support the adoption of the *Joint Proposal/Settlement*. However, the NYSTA Smaller ILECs still believe that the users of wireless communications are beneficiaries of the goals of universal service and their participation in the contribution to a SUSF should be reexamined during the SUSF review period.

Regarding Sprint's assertion of an absolute end date to the SUSF, this position does not "tell the whole story." Although the SUSF would end without further Commission order, the *Joint Proposal/Settlement* clearly provides for a Commission review of the SUSF and allows for the SUSF, upon Commission order, to continue. Section 2(b) of the *Joint Proposal/Settlement* states that the

(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. (emphasis added.)

Additionally, Section 2(c) of the *Joint Proposal/Settlement* provides that 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."** (Emphasis added) Thus, there are anticipated and clear mechanisms for the SUSF to be extended after year four based upon the Commission's review and the entry of an order extending the SUSF.

IV. THE COMMISSION SHOULD MOVE FORWARD AND ADOPT *THE JOINT PROPOSAL/SETTLEMENT*

All of the comments filed in this proceeding support the adoption of the *Joint Proposal/Settlement* and demonstrate that this adoption by the Commission is consistent with and advances the public interest. The *Joint Proposal/Settlement* is a reasonable resolution of the issues in Phase II, provides for a result that is within the scope of litigated outcomes in this proceeding on all Phase II issues, and provides for the establishment of a SUSF to maintain and advance universal service in the State of New York. The overall, collective view of all commenters supports the conclusion that the *Joint Proposal/Settlement* provides a reasonable path forward during the next four years and provides for a review of the SUSF during year four. The *Joint Proposal/Settlement* is in the public interest by creating a SUSF, providing SUSF disbursements to Eligible Recipients based upon the existing rate case process and establishing funding sources that should be adequate during the four year period (with paragraph 10 of the *Joint Proposal/Settlement* allowing Commission modification to the *Joint Proposal/Settlement* should circumstances change). The public interest is protected because universal service goals will be fostered and advanced, and the Commission will continue its oversight of fund contributors and recipients.

V. CONCLUSION

As demonstrated above and in the comments filed by the parties, the *Joint Proposal/Settlement* should be promptly adopted by the Commission in its entirety.

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Respectfully submitted,

The NYSTA Smaller ILECs

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Their Attorneys

Attachment A
NYSTA Smaller ILEC Members

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