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January 18, 2013

*Via Electronic Mail*

Honorable Jeffrey Cohen  
Acting Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223

**Re: Case 09-M-0527**

Dear Acting Secretary Cohen:

Pursuant to the Ruling on Phase III Procedure, issued by Hon. Howard A. Jack on December 7, 2012 in this matter, T-Mobile Northeast LLC ("T-Mobile") respectfully submits this reply to the Statement of the NYSTA Smaller ILECs in Support of the Phase III Joint Proposal and Settlement Agreement, filed on January 4, 2013 (the "NYSTA Statement"). The purpose of this reply is to clarify T-Mobile's position with respect to the Joint Proposal and Settlement Agreement submitted on November 19, 2012 (the "Phase III Joint Proposal"), in light of certain assertions contained in the NYSTA Statement.

The Phase III Joint Proposal requests resolution of the remaining issues in this proceeding, relating to intrastate switched access rates and the Targeted Accessibility Fund (the "TAF"). With respect to the TAF, the proposal states that the signatories agree, and request the Commission to find, that "no changes to the TAF, including but not limited to changes to the contribution mechanism and to the list of funded programs and services, are necessary or warranted at this time."<sup>1</sup> The proposal also provides that the signatories may propose changes to the TAF at a later time, under certain conditions. (Joint Proposal ¶ 2(b).)

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<sup>1</sup> Phase III Joint Proposal ¶ 2(a).

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The NYSTA Statement characterizes the provisions relating to the TAF as providing an opportunity to convert the TAF into an access revenue-recovery mechanism for the NYSTA Smaller ILECs:

[T]he NYSTA Smaller ILECs note that the reopeners in paragraph 2(b) of the [Phase III Joint Proposal] associated with reopening the Targeted Accessibility Fund (“TAF”) are particularly appropriate. As an existing state-sanctioned recovery mechanism, the TAF may provide a vehicle for the Commission to consider recovery beyond that associated with rate increases, just as the FCC has done with the establishment of the Recovery Mechanism for certain terminating access charge elements . . . . The NYSTA Smaller ILECs note that the TAF-related triggers . . . provides [*sic*] the same degree of decisional flexibility to the Commission to fashion intrastate exchange access policies for the State of New York that other aspects of the [Phase III Joint Proposal] also provide.<sup>2</sup>

In the footnote immediately following this passage, the NYSTA Statement quotes T-Mobile’s statement of its position with respect to the Phase III Joint Proposal in a way that could be read to imply that T-Mobile supports consideration of proposals to convert the TAF into an access revenue-recovery fund in a future proceeding:

In the event that the [Phase III Joint Proposal] is not adopted, the NYSTA Smaller ILECs do not oppose T-Mobile Northeast LLC’s suggestion that if the TAF is reopened, all aspects of the TAF should be examined.<sup>3</sup>

In order to eliminate any confusion that may arise from the juxtaposition of the NYSTA Small ILECs’ reference to T-Mobile’s position with their characterization of the provisions of the Phase III Joint Proposal regarding the TAF, T-Mobile restates and clarifies its position as follows. T-Mobile informed the Commission and the parties of its position in its letter to Judge Jack dated November 19, 2012:

The need for intrastate access charge reform in New York State has changed in light of the Federal Communications Commission’s (“FCC’s”) November 18, 2011 “ICC-USF Transformation Order.”<sup>4</sup> The ICC-USF Transformation Order, among other things, instituted a number of reforms relating to intrastate terminating switched access charges, “traffic pumping” and intercarrier

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<sup>2</sup> NYSTA Statement at 4-5.

<sup>3</sup> NYSTA Statement at 5 n.12 (citing T-Mobile Letter at 2).

<sup>4</sup> *In the Matter of Connect America Fund, etc.*, WC Docket No. 1090 *et al.*, Report and Order and Further Notice of Proposed Rulemaking,” FCC 11-161, 26 FCC Rcd 17663 (rel. Nov. 18, 2011) (“ICC-USF Transformation Order”),

compensation between wireless service providers and local exchange carriers. These reforms address many of T-Mobile's concerns with respect to the intrastate switched access rates charged by New York's local exchange carriers. T-Mobile therefore takes no position with respect to whether further action by this Commission with respect to intrastate switched access rates is required at this time.<sup>5</sup>

T-Mobile does not oppose the provisions of the Joint Proposal relating to further action by the Commission with respect to switched access charges. With respect to the proposals relating to the TAF, T-Mobile maintains, for the reasons stated in T-Mobile's various filings in this proceeding, that wireless service providers should not be required to contribute to the TAF, and that any consideration of the TAF should include a comprehensive review of the TAF's structure, purpose and necessity.

Therefore, T-Mobile does not oppose the Commission's adoption of the [Phase III] Joint Proposal, so long as the adopting order provides that any consideration of changes to the TAF proposed pursuant to paragraph 2(b) or otherwise will include a comprehensive review of the structure, purpose and necessity of the TAF.<sup>6</sup>

T-Mobile's non-opposition to the Phase III Joint Proposal thus relates to the proposal as it was filed, not the proposal as characterized by the NYSTA Smaller ILECs. Moreover, T-Mobile's position with respect to any future consideration of changes to the TAF refers to the existing consumer accessibility fund created by the Commission, not a future access revenue-replacement fund as envisioned by the NYSTA Smaller ILECs.<sup>7</sup> T-Mobile does not oppose the

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<sup>5</sup> T-Mobile reserves the right to renew its requests for intrastate access reform in the event of any modification of the ICC-USF Transformation Order on reconsideration, review or remand.

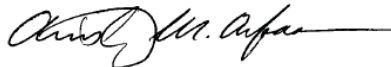
<sup>6</sup> Letter on behalf of T-Mobile to ALJ H. Jack, Case 09-M-0527, at 2 (filed Nov. 20, 2012).

<sup>7</sup> The TAF was established to support specific, consumer-oriented programs: Lifeline, Enhanced 911, Telecommunications Relay Service for the deaf and hard-of-hearing, and Public Interest Payphones. See Cases 94-C-0095 - *Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market*, and 28425 - *Proceeding on Motion of the Commission as to the Impact of the Modification of Final Judgment and the Federal Communications Commission's Docket 78-72 on Provision of Toll Service in New York State*, Opinion and Order Establishing Access Charges For New York Telephone Company and Instituting a Targeted Accessibility Fund (issued and effective June 2, 1998); Case 96-C-117 4 - *Proceeding on Motion of the Commission to Review Regulation of Coin Telephone Services Under Revised Federal Regulations Adopted Pursuant to the Telecommunications Act of 1996*, Order Establishing a Public Interest Payphone Process and Authorizing Targeted Assistance Fund Support (issued and effective September 25, 1998).

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adoption of the Phase III Joint Proposal by the Commission; however, it disagrees with and opposes adoption of the NYSTA Smaller ILECs' characterization of the terms of the proposal relating to future consideration of changes to the TAF.

Respectfully submitted,



Christopher M. Arfaa  
*On behalf of T-Mobile*

cc: Hon. Howard A. Jack (E-Mail)  
Hon. Eleanor Stein (E-Mail)  
Active Party List (E-Mail)  
Mr. Alan Flacks (U.S. Mail)