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October 16, 2012

Honorable Howard A. Jack
Administrative Law Judge
New York State Department of Public Service
Three Empire State Plaza
Albany, New York 12223

Re: Case 09-M-0527

Dear Judge Jack:

The parties listed in Attachment A (the “Signatories”) jointly submit this letter to discuss the status of the collaborative discussions concerning Phase III issues. Those discussions have been held pursuant to the Phase II Joint Proposal, the key provisions of which were adopted by the Commission in its August 17, 2012 Order.¹

On October 12, Judge Stein advised the collaborative participants that in her view, “the participating parties had arrived at an impasse and that the collaborative will not continue as presently constituted.” Without violating the confidentiality of the collaborative discussions by disclosing specifics of the parties’ negotiations, the Signatories can nevertheless state that they respectfully disagree with that conclusion.

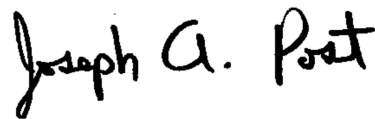
¹ Paragraph 11(b) of the Phase II Joint Proposal provides as follows: “The Parties will hold discussions in an attempt to resolve Phase III issues beginning on a date thirty days after the Commission issues an order in Phase II (the ‘Phase III Commencement Date’). Such discussions will continue for no 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.”

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Even if Your Honor concludes that an impasse has been reached in the collaborative, the Signatories — a diverse group with widely varying interests that constitutes a clear majority of the parties who have been active in this proceeding — believe, based on their exploratory discussions both within and outside of the collaborative, that they should be able to enter into a Joint Proposal with respect to Phase III issues. The Commission has made it clear 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.” (August 17 Order at 19.)

Accordingly, the Signatories respectfully submit that: (a) they should be given a reasonable opportunity to finalize and submit their Phase III Joint Proposal²; and (b) since that Proposal would obviate the need for what would undoubtedly be lengthy and burdensome evidentiary hearings on the merits of the access and TAF issues, it would be to the benefit of both the parties and the Commission to hold approval proceedings related to the Joint Proposal as the first step in any “litigation of all unresolved Phase III issues.”

Respectfully submitted,



Joseph A. Post

cc: Active Party List
Hon. Eleanor Stein
Hon. Jaclyn A. Brillling

² Although the Signatories believe that they might be able to finalize a proposal within two weeks, to avoid any need for extensions we respectfully request that the “reasonable opportunity” should end thirty days from the date of this letter.

Attachment A

New York State Department of Public Service Staff

Cable Telecommunications Association of New York, Inc.

Cellco Partnership d/b/a Verizon Wireless

Frontier Communications New York Incumbent Local Exchange Carriers

Level 3 Communications, LLC

NYSTA Smaller ILECs

tw telecom of new york l.p.

Windstream Communications, Inc.

Verizon New York Inc.