

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

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

**STATEMENT OF THE NYSTA SMALLER ILECS IN SUPPORT OF 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 “*Procedural Ruling*”), the NYSTA Smaller ILECs (which are identified in Attachment A), hereby provide this statement in support of the “Joint Proposal and Settlement” (the “*Joint Proposal/Settlement*”) that resolves all Phase II issues in this proceeding and which was filed by a host of divergent parties earlier this month.<sup>1</sup> For the reasons stated herein, the NYSTA Smaller ILECs support the *Joint Proposal/Settlement* and request that the New York Public Service Commission (the “Commission”) approve and adopt the *Joint Proposal/Settlement* in its entirety.<sup>2</sup>

The NYSTA Smaller ILECs respectfully submit that such action 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 potential

---

<sup>1</sup> Although originally filed on May 8, 2012, on May 11, 2012, a revised *Joint Proposal/Settlement* was submitted by the supporting parties. See, Letter from Joseph A. Post, Deputy General Counsel – NY (Verizon), Case 09-M-0527, dated May 11, 2012 and attached document. The NYSTA Smaller ILECs note that this is the document that should be approved.

<sup>2</sup> Pursuant to the *Procedural Ruling*, the NYSTA Smaller ILECs reserve the right to file reply comments on June 1, 2012 to address all submissions regarding the *Joint Proposal/Settlement* by all parties.

litigated outcomes in this proceeding on all Phase II issues,<sup>3</sup> and provides for the establishment of a State Universal Service Fund (“SUSF”) to maintain and advance universal service in the State of New York. As a negotiated resolution of Phase II issues, the *Joint Proposal/Settlement* does not provide everything advocated for by the NYSTA Smaller ILECs in Phase II. However, as is true of any settlement, compromises were necessary to be made by all signatories, including the NYSTA Smaller ILECs, resulting in a proposal for the establishment, operation, and administration of a SUSF that is, on balance, reasonable and appropriate for a settlement of all Phase II issues. Accordingly, because the *Joint Proposal/Settlement* advances the public interest in providing for and ensuring the maintenance of universal service within the rural service areas of the NYSTA Smaller ILECs, the NYSTA Smaller ILECs respectfully request that the *Joint Proposal/Settlement* be approved and adopted by the Commission.

## **II. APPROVAL AND ADOPTION OF THE JOINT PROPOSAL/SETTLEMENT ADVANCES THE PUBLIC INTEREST.**

### **A. The Phase II Issue Resolution was Achieved Through the Combination of Meaningful Collaborative Discussions.**

The signatories to the *Joint Proposal/Settlement* have agreed to the creation of a SUSF and resolved, for a period of four years, the related implementation and operational issues associated with the creation of and disbursements from the SUSF. In the NYSTA Smaller ILECs’ collective view, 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. This review will be

---

<sup>3</sup>This aspect of the analysis of a settlement agreement was articulated earlier in this proceeding when the Commission adopted and approved a settlement that extended the Transition Fund. *See Order Adopting Terms of Phase I Joint Proposal*, Case 09-M-0527, issued and effective July 16, 2010 (“TTFE Order”) at 27. A general discussion regarding the Transition Fund and its creation is provided at page 3 of the TTFE Order. The Transition Fund was last extended by the Commission on March 16, 2012. *See, Order Increasing Cap on Temporary Transition Fund Extension*, Case 09-M-0527, issued and effective March 16, 2012.

conducted based upon the circumstances that then exist, with the Commission, at that time, deciding how best to continue and support the objective of universal service.<sup>4</sup>

A diverse group of carriers engaged in meaningful, good faith collaborative discussions that resolved the Phase II issues as reflected in the *Joint Proposal/Settlement*. The NYSTA Smaller ILECs respectfully submit that the agreement by a diverse group demonstrates that the interests of the Phase II participants have been balanced and considered in the *Joint Proposal/Settlement*, amply supporting the conclusion that the *Joint Proposal/Settlement* is in the public interest.

**B. The *Joint Proposal/Settlement* is a Reasonable Resolution of the Phase II Issues.**

The *Joint Proposal/Settlement* provides a reasonable resolution to the creation of a SUSF. As reflected in the document, the key points of the *Joint Proposal/Settlement* in the NYSTA Smaller ILECs' view are as follows:

1. The creation of the SUSF with the current Targeted Accessibility Fund ("TAF") administrator being designated as the SUSF administrator. *See, Joint Proposal/Settlement* at 3-4 (paragraph 1). This aspect of the *Joint Proposal/Settlement* provides for the TAF administrator to expand its duties and thus minimize costs for the administration of the SUSF. As is true with respect to its administration of the TAF, the SUSF administrator's activities will be subject to Commission oversight, and will simply expand the exemplary TAF administrator functions to the SUSF.
2. A scheduled review of the SUSF beginning at the start of the fourth year of the SUSF. *See, id.* at 4 (paragraph 2). This provision ensures that parties will be provided an opportunity to review and comment on the SUSF process developed in the *Joint Proposal/Settlement* should any changes be required based on circumstances then present and in light of the operation of the SUSF for the first three years.

---

<sup>4</sup> For example, in January, 2016, the start date of the SUSF review, the impact on state universal service policies and mechanisms of the current changes in intercarrier compensation and federal universal service issues now being implemented by the Federal Communications Commission will be better understood.

3. The adoption of a reasonable contribution base and methodology. *See, id.* at 4-6 (paragraphs 3, 4 and 5). This contribution methodology is similar to that used for the current Transition Fund and will generally include the now current TAF contributors during the term of the *Joint Proposal/Settlement*. Further, to protect the contribution base, the contribution percentages are frozen based upon 2011 TAF contributions, except for new market entry and complete market exit. The freezing of the contribution percentages and the entry/exit provisions during the four year period is aimed at ensuring that adequate funding is present for the SUSF. Although, the broader participation of other providers, including Voice over Internet Protocol and wireless carriers, in the SUSF contributions will be raised by the NYSTA Smaller ILECs during the SUSF review process in year four, the freezing of contribution percentages at the start of the four year period, subject to re-openers based on identified market changes, should provide for adequate funds during the four year period.
4. The continuation of disbursements to the NYSTA Smaller ILECs that are currently receiving monies from the Transition Fund until a decision is reached on that company's next rate filing. *See, id.* at 7 (paragraph 8(d)). This provision assures that the cost recovery needs arising from these NYSTA Smaller ILECs' rate case orders will continue to be funded, albeit through the SUSF and not the Transition Fund (or current extensions thereof).
5. The continuation of the traditional rate case process to determine funding need for Eligible Recipients (which are each of the NYSTA Smaller ILECs). *See, id.* at 6-7 (paragraph 7, 8(b)). The use of the traditional rate case process will, from the NYSTA Smaller ILECs' perspective, ensure that Commission-determined regulated intrastate costs are used to determine SUSF disbursement need and, thus, Commission fact finding is the driver for the Funding Need from the SUSF.
6. The resolution of the residential benchmark rate at \$23 per line per month and the determination of a transitional process for Eligible Recipients seeking SUSF disbursements if their respective residential local rates are more than \$3.50 below the \$23 benchmark level. *See, id.* at 7 (paragraph 8(c) and the "Section 8(c) Chart"). This transition will avoid rate shock. The permissible and agreed-to use of imputation will also assist in avoiding rate shock and allow local rates to be assessed to consumers at a level that is appropriate for the market at issue based on the operating environment and discretion of the specific Eligible Recipient.
7. The ability for contributing SUSF entities to recover their SUSF contributions from end users through new or increased end-user charges or surcharges. *See, id.* at 8 (paragraph 9). This provision allows a carrier, if that carrier desires, to recover that carrier's SUSF contribution amount along the lines that are currently

in use at the federal level. The reasonableness of any proposed charge by a carrier is ensured by virtue of the fact that the process will use the Public Service Law §92 tariff review process.

8. The reservation clause that provides that the Commission may take actions, if required, during the four year period to modify the *Joint Proposal/Settlement*. *See, id.* at 8 (paragraph 10). This provision provides that, upon certain findings by the Commission, the Commission can tailor the SUSF in a manner that ensures the needs associated with universal service are fostered and advanced should circumstances warrant.

The NYSTA Smaller ILECs respectfully submit that these key points of the *Joint Proposal/Settlement* are reasonable and build upon existing Commission decisions related to the continued provision of universal service and provide for the continued operations and recovery of Commission-approved costs of those smaller Incumbent Local Exchange Carriers currently receiving cost recovery as a result of disbursements from the Transition Fund and the associated extensions of it. *See, supra*, n.3. The SUSF envisioned in the *Joint Proposal/Settlement* creates a mechanism for additional eligible companies to participate in the SUSF based upon future Commission decisions arising from rate case proceedings. These benefits are achieved and advanced through the use of the contribution process and collection procedures arising from the Commission-established TAF to minimize the administrative costs and expenses and maximize the efficiency of the funds collected by the SUSF.

Overall, the NYSTA Smaller ILECs respectfully submit that the *Joint Proposal/Settlement* is in the public interest by creating a SUSF, funding companies based upon the traditional rate case process and providing for funding sources that should be adequate during the four year period. 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.

**C. The Diversity of the Signatories Submitting the *Joint Proposal/Settlement* Reflects the Reasonable Nature of the Compromise Reached.**

The signatories to the *Joint Proposal/Settlement* represent a wide diversity of carriers and entities (incumbent local exchange carriers, interexchange carriers, wireless carriers, and cable television entities), a consumer representative and the Commission Staff. These parties have come together and agreed on the *Joint Proposal/Settlement* for the creation and reasonable implementation of a SUSF.

Without question, the *Joint Proposal/Settlement* and the signatory parties to it represent the majority of the many varied and distinct parties directly involved in the proceeding, let alone the distinct interests and positions they represent. This diversity alone, in the NYSTA Smaller ILECs' view, creates a proper and compelling presumption that the *Joint Proposal/Settlement* is in the public interest.

**D. The Public Interest is Achieved through the Adoption and Approval of the *Joint Proposal/Settlement* in its Entirety.**

From the initiation of the negotiation process, the NYSTA Smaller ILECs efforts were directed toward the establishment of policies and substantive terms and conditions that addressed their respective need for a SUSF and cost recovery policies and procedures that would govern the fund. In a manner fully consistent with the Carrier of Last Resort obligations that each of the NYSTA Smaller ILECs has, the creation of a SUSF and the related policies and procedures remain necessary to provide the degree of regulatory stability and certainty required for these companies. The need for stability and certainty arising from any state universal service program is required not only to foster the economic development within the communities the NYSTA Smaller ILECs' serve, but also to continue to allow the SUSF-eligible NYSTA Smaller ILECs to

invest in infrastructure necessary to maintain and advance universal service within the higher cost to serve rural areas of New York.

With these objectives and needs in mind, the NYSTA Smaller ILECs sought to achieve an agreement with all parties that recognized the need for the SUSF and an implementation process of it that was consistent with the Commission's existing cost recovery policies and related mechanisms. To be sure, the *Joint Proposal/Settlement* reflects the fact that meaningful consensus building has occurred, rather than additional litigation to resolve long-term SUSF issues. That result is clearly in the public interest when added to the fact that, on balance, the compromises reached are reasonable.

As indicated above, the NYSTA Smaller ILECs understand (as they expect the other signatories also understand), that in any compromise, give and take is necessary and no party's position is adopted on every issue. Ultimately, however, the *Joint Proposal/Settlement* adequately addresses the NYSTA Smaller ILECs' objectives and needs in a manner that they were willing to accept as a way of moving the process forward and providing for the creation of a SUSF. Thus, from the NYSTA Smaller ILECs' perspective, the balanced, compromised framework included in the *Joint Proposal/Settlement* is appropriate and should be adopted by the Commission based on a finding that the *Joint Proposal/Settlement* will advance, and thus be in, the public interest.

Accordingly, the NYSTA Smaller ILECs respectfully request that the Commission approve the *Joint Proposal/Settlement* in its entirety and implement the SUSF envisioned in the *Joint Proposal/Settlement* beginning on January 1, 2013 (*see, id.* at 4 (paragraph 2(a))), and direct the SUSF administrator to collect funds so that the SUSF is fully funded for year 1 within 30

days of January 1, 2013 (*see, id.* at 5 (paragraph 3(c)) and thereafter as provided for in the *Joint Proposal/Settlement*. *See, id.* at 5 (paragraph 3(d)).

For all of the reasons stated herein, the NYSTA Smaller ILECs respectfully submit that the public interest is advanced by the adoption of the *Joint Proposal/Settlement*. The *Joint Proposal/Settlement* reflects a reasoned compromise of the parties' respective positions and provides for the advancement of universal service objectives for rural areas of the State of New York. Consequently, the NYSTA Smaller ILECs respectfully request the *Joint Proposal/Settlement* be approved promptly and adopted in its entirety.<sup>5</sup>

### **III. CONCLUSION**

As demonstrated in Section II, *supra*, the *Joint Proposal/Settlement*'s structure builds upon prior Commission actions and policies related to universal service objectives in the State of New York. The *Joint Proposal/Settlement* advances prior Commission actions and policies by continuing to allow the eligible NYSTA Smaller ILECs to meet and advance their respective universal service commitments in the areas they serve. In adopting and approving the *Joint Proposal/Settlement*, the Commission will avoid the prolonged and otherwise protracted expenditure of resources that immediate litigation of these issues may create, and reach a resolution of all Phase II issues that is in the public interest.

---

<sup>5</sup>The *Joint Proposal/Settlement*'s substantive provisions are interdependent and represent a series of compromises that are, in turn, a cohesive whole.

Accordingly, the NYSTA Smaller ILECs respectfully request that a recommendation be made promptly to the Commission that it should adopt the *Joint Proposal/Settlement* in its entirety.

Date: May 23, 2012

Respectfully submitted,

**The NYSTA Smaller ILECs**

By:

  
\_\_\_\_\_  
Thomas J. Moorman  
Woods & Aitken LLP  
2154 Wisconsin Ave., N.W., Suite 200  
Washington, D.C. 20007  
Tel. (202) 944-9502  
tmoorman@woodsaitken.com

James A. Overcash, NE Bar No. 18627  
Woods & Aitken LLP  
301 South 13th Street, Suite 500  
Lincoln, Nebraska 68508  
(402) 437-8500  
jovercash@woodsaitken.com

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