



Mary E. Burgess
General Attorney

Legal Department
111 Washington Avenue
Suite 706
Albany, New York 12210
Phone: (518) 463-3148
Fax: (518) 763-1477
mary.burgess@att.com

September 7, 2011

Hon. Jaclyn A. Brillling
Secretary
State of New York
Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Cases 09-M-0527, 09-C-0743 and 07-C-0347 (Joint Motion)

Dear Secretary Brillling:

Please accept this letter as the opposition of AT&T Communications of New York, Inc., Teleport Communications, Inc. and ACC Communications, Inc. (collectively "AT&T") to the August 24, 2011 Joint Motion of Verizon New York, Inc. ("Verizon") and other parties (collectively the "Movants") requesting a suspension of all three of the above proceedings, and seeking yet another extension of the Temporary Transition Fund Extension ("TTFE"), despite its legal flaws.¹ New York has a very real and very large access charge problem; that fact is not in dispute. This acknowledged regulatory problem must be addressed and remedied at either the federal or state level. Given the Commission's recently-filed comments to the Federal Communications Commission ("FCC"), which questioned the FCC's authority to preempt state authority over intrastate access charges, it is imperative that the Commission move forward and conduct its inquiry into intrastate regulatory reform now, consistent with the schedules it established over a year ago.²

¹ The TTFE is discriminatory and thus unlawful under Section 254(b)(4) of the Telecommunications Act of 1996, because it only requires contributions from traditional telecommunications carriers (LECs and IXCs) and does not require contribution from all telecommunications providers now serving the New York marketplace. The Commission should not compound the TTFE's unlawfulness by extending it for another nine months and permitting additional collections and disbursements.

² AT&T is a proponent of the ABC Plan pending before the FCC and believes that the FCC has the legal authority to implement all of its component parts.

AT&T and Sprint have patiently followed the Commission's July 2010 Phasing Order adopting the schedule the Movants themselves proposed in reliance upon the Commission's agreement that "the time to address intrastate access reform in New York has come."³ But now that the time for addressing access issues has finally arrived, the Movants seek to avoid their earlier commitments to resolve universal service issues in 2011, and access issues by early 2012, because the FCC has sought comments on multiple proposals that may have national impact. The Commission's own comments to the FCC demonstrate that action, not delay, is the proper way to proceed.

This Commission has long been looked upon as a leader among the states in dealing with thorny regulatory issues. Now, at a time when leadership is needed even more, the Commission risks falling further behind in acting to cure an acknowledged problem within its jurisdiction. The Commission agreed over a year ago that the time to act on access charge issues had arrived, and it echoed that assessment to the FCC last week, arguing that "[r]eforming access charges is long overdue" and that access reforms are "badly needed."⁴ However, the Commission's FCC Comments also express "concerns about the FCC extending federal jurisdiction to intrastate access charges."⁵ Thus, this Commission itself may not agree if the FCC issues an order that preempts state action on intrastate access charges.⁶ Although AT&T strongly believes that any challenge to the FCC's right to impose requirements on intrastate access will be rejected, there remains a question as to when an FCC decision on intrastate access issues might actually be implemented.

On the other hand, Commission action now is fully consistent with both the Commission's recently-filed Comments and with the FCC's urgings that the states take the lead in reforming intrastate access charges. The FCC has expressly sought to encourage, rather than discourage, state commissions to reduce intrastate switched access charges. Its February 2011 Notice of Proposed Rulemaking addressing intercarrier compensation reform acknowledges that such reform "will work best with the [FCC] and state regulators *cooperating* to achieve shared goals."⁷ Thus, the FCC sought comment on how to "include[e] incentives for *states* to complete

³ *Proceeding to Examine Issues Related to a Universal Service Fund*, Case 09-M-0527, Order Adopting Terms of Phase I Joint Proposal, released July 16, 2010 ("Phasing Order"), p. 28.

⁴ Comments of the New York Public Service Commission, I/M/O Connect America Fund, et al., WC Docket No. 10-90 ("FCC ICC Proceeding"), August 24, 2011 ("NYPSC FCC Comments"), p. 8.

⁵ *Id.*

⁶ Other state regulators have raised more forceful concerns regarding the FCC's authority to preempt state action. *See, e.g.* FCC ICC Proceeding Comments of the New Jersey Board of Public Utilities, p. 2 ("the Board opposes any result that usurps the Board's authority to regulate intrastate telecommunication service providers"); Comments of the California Public Utilities Commission, pp. 4-7 (opposing FCC preemption of state jurisdiction over intrastate access rates and reciprocal compensation); Comments of the Pennsylvania Public Utility Commission, pp. 16-18 (preemption proposals cause unnecessary jurisdictional legal conflicts and will throw pre-existing state reforms of intrastate intercarrier compensation such as Pennsylvania's into doubt); Comments of the Connecticut Public Utilities Regulatory Authority, pp. 4-5 (preemption proposal is unlawful and inconsistent with the Telcom Act).

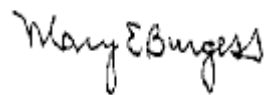
⁷ *I/M/O Connect America Fund, et al.*, including *Developing a Unified Intercarrier Compensation Regime*, WC Docket No. 10-90, et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, released February 9, 2011 ("FCC Notice"), ¶ 13 (emphasis added).

reform of intrastate access charges”⁸ and on “what steps the [FCC] should take *to encourage states to reduce intrastate intercarrier compensation rates* and how we could do so *without penalizing states that have already begun the difficult process of reforming intrastate rates* or rewarding states that have not yet engaged in reform.”⁹ This is clearly a call for state commission *action*, not delay.

Under these circumstances, the Commission should not approve the Movants’ requests for even more time to charge excessive intrastate access rates. Rather, it should place its own influential stake in the ground as to how this important issue should be resolved for New York ratepayers. Other commissions in North Carolina, Ohio and Oklahoma are continuing to conduct access reform proceedings in tandem with the FCC proceeding. Even if the FCC issues a decision this year, there will be more than enough time for this Commission to take the FCC’s decision into account before it rules on access issues next year. If the Commission rules before the FCC decision takes effect, it will have addressed and corrected a continuing problem, and will be well-positioned with a full record so that it quickly could amend its order. Thus, there is every reason for this Commission to follow the schedule it set over a year ago and to drive its resolution of intrastate universal service and access charge issues to a conclusion as soon as possible.

In sum, Movants have failed to demonstrate that the Commission should continue to defer “badly needed” regulatory reform in New York even longer than the time they themselves proposed last year. The Commission should therefore deny the Joint Motion and follow the schedule set out in the Phasing Order by: (i) requiring Judge Jack to issue his Recommended Decision within ten days; (ii) committing to complete its own process of reviewing the Recommended Decision no later than November; (iii) allowing the discriminatory and unlawful TTFE to expire on September 30, and in no event later than November, before the currently collected TTFE funds will exhaust; and (iv) directing Judge Jack to continue with the Commission’s previously-ordered access litigation schedule, which should conclude the access proceeding by May of next year.

Respectfully submitted,



Mary E. Burgess

⁸ *Id.* (emphasis added).

⁹ *Id.* ¶ 544 (emphasis added).