

STATE OF NEW YORK  
DEPARTMENT OF PUBLIC SERVICE

CASE 09-M-0527

Proceeding to Examine Issues Related to  
a Universal Service Fund

DEPARTMENT OF PUBLIC SERVICE STAFF  
STATEMENT IN SUPPORT OF JOINT PROPOSAL  
and SETTLEMENT AGREEMENT

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**I. INTRODUCTION**

This statement is submitted by the Staff of the Department of Public Service (Staff) in Support of the Joint Proposal and Settlement Agreement (Joint Proposal or JP) which arises from Case 09-M-0527, a proceeding to examine universal service fund issues. Following issuance of a Recommended Decision on January 4, 2012, interest in discussing the possibility of a negotiated settlement in lieu of a Commission decision was explored. Parties willing to pursue settlement reached agreement in a Joint Proposal on May 7, 2012. The Joint Proposal was filed with the Secretary to the Public Service Commission (Commission) on May 8, 2012<sup>1</sup>. Signatories to the Joint Proposal include Verizon New York, Inc., Cable Telecommunications Association of New York, Inc., NYSTA Smaller ILECS, Sprint Nextel Corporation, AT&T, Cellco Partnership d/b/a/ Verizon Wireless, Time Warner Cable, T-Mobile Northeast LLC d/b/a T-Mobile, Cablevision Lightpath, Inc., Utility Intervention Unit, Division of Consumer Protection, NYS Department of State, and NYS Department of Public Service Staff.

**II. JOINT PROPOSAL OVERVIEW**

The Recommended Decision concluded, consistent with Staff's testimony, that a state fund was needed to ensure universal service in New York State, especially for consumers lacking an available alternative to ILEC wireline service. Staff's principal objective in entering the ensuing settlement negotiations was to represent and advocate for establishment of a state fund that would ensure availability of affordable basic residential local service rates for all New Yorkers. In addition, because of the accelerating rate of change in telecommunications and the

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<sup>1</sup> A revised copy that included changes the Parties had agreed to, but that were not reflected in the version filed with the Secretary on May 7, was submitted to the Secretary on May 11, 2012.

commensurate public interest need to respond quickly at times to those changes, Staff was aware that any agreement reached required acknowledgement of the Commission's authority to modify such an agreement pursuant to its statutory powers. Also, based on longstanding experience in rate cases, Staff believed that the fairest and most efficient method for establishing the revenue requirement for a company seeking to draw from a state fund was to ensure that Staff retained methodological and rate design flexibility. Staff advocated for these positions and the JP provisions reflect that result.

### **III. JOINT PROPOSAL TERMS**

#### **a. State Fund Term and Review**

The Joint Proposal establishes a state universal service fund (SUSF), administered by the Targeted Accessibility Fund (TAF or Administrator), with Commission oversight. The SUSF is slated to begin on January 1, 2013 and expire after 4 years on January 1, 2017, with Commission review regarding need for continuation of the SUSF after three years. During the pendency of a review proceeding, the Commission may extend the SUSF beyond the agreed to 4 year term if necessary, in order to complete its review.

#### **b. Funding**

Overall, \$17 million is committed to fund the SUSF for its 4 year term. Funding amount for Year 1 of the SUSF is \$5 million. If that amount is not required to meet funding obligations, the Administrator is authorized to collect less from contributors who will satisfy their funding obligations by providing the Administrator with a letter of credit for the amount not collected. Following Year 1, the funding need or \$4 million, whichever is less, will be collected for Years 2, 3, and 4.

#### **c. Contributors**

Contributors will be all regulated telephone corporations operating in New York State currently required to contribute to the TAF during 2011. Voice over Internet Protocol (VoIP) and wireless providers are not required to contribute to the SUSF. The desirability of expanding the funding contribution base beyond current participants may be re-examined when the Commission reviews the need for continuing the SUSF in Year 3. Parties, however, agreed not to initiate a proceeding that would require the Commission to impose Public Service Law §5 (6) (a) authority over wireless carriers before the Year 3 review period.

d. Contribution Methodology

The current TAF formula will be used to calculate contributions to the SUSF, i.e., total intrastate regulated revenues less intercompany payments. Contributors' share of fund payments will be based on 2011 TAF assessed revenues subject to correction for market entry and exit. If a new intrastate telecommunications provider enters the New York State market after December 31, 2011 and would have been required to contribute to TAF during 2011, that entrant will be required to contribute to the SUSF. A TAF contributor exiting all intrastate telecommunication markets in New York State, without transfer to a successor or assign, after December 31, 2011, would not be required to contribute to the SUSF.

e. Contribution Recovery

Contributors may, but are not required, to recover their SUSF contributions, subject to Commission oversight, through new or increased end-user charges or surcharges, via the tariff process.

f. Eligible Recipients

Only the smaller rural telecommunications providers listed on Appendix A of the Joint Proposal are eligible for funding. An eligible company must first establish through a rate case that there is a revenue deficiency requiring residential rates above \$23. The rate case process will be used without restricting Staff's determination regarding appropriate analytical tools. Any rate increase will be phased in by no more than \$3.50 per year. Companies whose revenue needs exceed \$23, but whose rate after the \$3.50 increase falls short of \$23 will be funded to subsidize rates below \$23. Companies may impute the established rate rather than charging it. In addition, the 3 companies currently receiving TTFE funds are grandfathered into the SUSF.

g. Modification of SUSF

The Commission may modify the Joint Proposal if it believes circumstances have "render[ed] this Settlement Agreement unreasonable, unnecessary or insufficient for the continued provision of universal service at just and reasonable rates or otherwise contrary to Public Service Law."

h. Collaboration/Litigation Schedule Regarding Other Issues

No later than 30 days after the Commission issues an order with respect to the Joint Proposal, the Parties will begin discussing the remaining Phase III issues in this proceeding. The Phase III collaboration will end 30 days after discussions begin if it is determined there is not a

reasonable possibility of settlement within 60 days of the Commission order. Litigation will begin at that point.

#### **IV. Standard of Review**

The Commission's standard for reviewing settlement agreements is found in its *Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines*<sup>2</sup> (Settlement Guidelines). These Settlement Guidelines establish the following criteria for deciding whether a settlement is in the public interest:

- a. A desirable settlement should strive for balance among (1) protection of the ratepayers, (2) fairness to investors, and (3) the long term viability of the utility; should be consistent with sound environmental, social and economic policies of the Agency and the State; and should produce results that were within the range of reasonable results that would likely have arisen from a Commission decision in a litigated proceeding.
- b. In judging a settlement, the Commission shall give weight to the fact that a settlement reflects the agreement by normally adversarial parties.

The Joint Proposal was arrived at in full compliance with all Commission rules. All parties were given notice of settlement negotiations as required by 16 NYCRR 3.9(a) and had an opportunity to participate by teleconference. After thorough discussion, Parties with diverse interests regarding competition and establishing an SUSF, i.e., companies eligible for funding, companies contributing to the fund but not eligible for funding, and companies not contributing to the fund but nevertheless competing to some degree with eligible recipients, compromised to reach the SUSF framework outlined. As with most compromises, the individual components on which compromises were reached form a series of inter-related provisions comprising an agreement in totality. If that overall agreement is in the public interest, that is all that is required pursuant to the Commission's standard for reviewing whether a settlement is in the public interest.

#### **V. The Joint Proposal Is in the Public Interest**

Staff's recommendation to the Commission is that the Joint Proposal should be adopted because it is in the public interest. Key factors justifying this recommendation are as follows:

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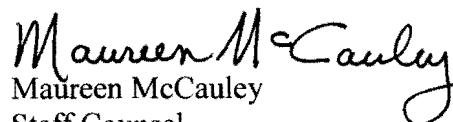
<sup>2</sup> Cases 90-M-0225 and 92-M-0138 - Opinion No. 92-2 (issued March 24, 1992).

- 1) The Joint Proposal establishes a state universal service fund for four years, enabling recipients who draw from the fund to continue providing basic residential local service at the Commission's current benchmark rate of \$23 a month during the SUSF's term.
- 2) The contribution base for the SUSF will consist of regulated telephone companies operating in New York State, currently required to contribute to TAF, based on intrastate regulated revenue. Contributors and eligible recipients agreed on a fund amount that they deemed adequate.
- 3) Rate case methodology flexibility used by Staff to establish a revenue requirement is retained for establishing revenue needed by a company seeking to draw from the SUSF.
- 4) Need for continuing the SUSF is reviewable after three years. This will give the Commission an experience base for evaluating whether the SUSF should continue beyond its 4-year period and if so, pursuant to what terms.
- 5) Commission's authority to modify such an agreement and act pursuant to its statutory powers is acknowledged.
- 6) The TAF Administrator will oversee contributions and disbursements. This minimizes administrative costs and uses a proven methodology for collection and disbursements.
- 7) A schedule for completion of Phase III of the proceeding is established. If insufficient progress toward resolution of issues via collaboration is made, then the proceeding switches to litigation mode.

## **VI. CONCLUSION**

The Joint Proposal entered into in this case comports with the Commission's Settlement Guidelines and is in the public interest for all of the reasons discussed above. Provisions of the Signatory Parties' agreement fall within the potential result of a litigated case. Therefore, Staff respectfully requests that Your Honor find that the terms of the Joint Proposal are in the public interest and that you recommend that the Commission adopt the terms in their entirety.

Respectfully submitted,

  
Maureen McCauley

Staff Counsel  
NYS Department of Public Service

Dated: May 23, 2012  
Albany, New York