

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

Proceeding to Examine Issues Related to a Universal Service Fund)		CASE 09-M-0527
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**STATEMENT OF SUPPORT BY THE CABLE TELECOMMUNICATIONS
ASSOCIATION OF NEW YORK, INC. OF THE JOINT PROPOSAL AND
SETTLEMENT AGREEMENT FOR A RESOLUTION OF THE PHASE II ISSUES**

The Cable Telecommunications Association of New York, Inc. (“CTANY”), an industry trade association representing the interests of cable television operators and competitive telecommunications providers in the State of New York, submits this Statement in Support of the Joint Proposal and Settlement Agreement for a Resolution of the Phase II Issues (the “Statement”) entered into on May 8, 2012 (the “Phase II Joint Proposal” or the “JP”), pursuant to the Commission’s Notice soliciting comments in support of or in opposition to the JP.¹

Cablevision Lightpath, Inc. and Time Warner Cable, Inc., both of whom intervened as separate parties and actively participated in this proceeding, reviewed this Statement and have authorized CTANY to state that they concur with the statements made herein.

¹ Case 09-M-0527, *Proceeding to Examine Issues Related to a Universal Service Fund*, Notice Suspending Briefing Schedule and Establishing Schedule for Statements in Support of or Opposition to Phase II Joint Proposal, (issued May 9, 2012).

SUMMARY

CTANY supports the Phase II Joint Proposal as an acceptable alternative to further consideration on the need for, proper administration of and legality of a state fund to assist rural local exchange carriers. Multiple data points (including, as discussed below, Department of Public Service Staff's own analysis) show that, thanks in part to the Commission's pro-competitive, market-opening policies, a very high percentage of customers of rural Independent Local Exchange Companies ("ILECs") have a choice of wireless and/or Voice over Internet Protocol ("VoIP"), in addition to the many other substitutes for traditional phone service that have emerged even in the past few years. In addition, there are complex legal questions that could (in the absence of the Phase II Joint Proposal) consume resources of the Commission and the parties.

Importantly, the JP continues this Commission's longstanding policy to nurture innovative technologies such as VoIP. These policies have produced hundreds of millions of dollars in savings for consumers and made New York a leader in voice competition. By approving the proposed contribution base (and thus avoiding new taxes on VoIP), the Commission can continue its leadership in fostering a business climate for innovation while also addressing the rural ILECs' request for support.

CTANY urges the Commission to adopt the JP in its entirety.

BACKGROUND

This phase of the proceeding has focused on the public policy goal of facilitating telecommunications services in rural areas of New York. The early, investigative stage of this phase evaluated the extent to which New York customers have access to providers who serve as

alternatives to traditional independent Local Exchange Companies (“LECs”). Substantial evidence indicated that only an extremely small number of New Yorkers do not have access to some form of competitive provider.² Department of Public Service Staff’s (“Staff”) own report³ and Staff’s subsequent testimony in this phase indicate that not only is this number small, but has shrunk substantially during the tenure of this case. It is abundantly clear that the Commission’s pro-competition policies are succeeding in bringing advanced and innovative telecommunications services to all New Yorkers, including, *a propos* of this phase, rural customers.

In partnership with the Commission’s pro-competitive regulatory policies, cable telecommunications providers in particular have played a significant role in deploying innovative services throughout rural New York State. They have invested billions of dollars in private capital in infrastructure to bring broadband and cable services to the State’s residents, hospitals, schools and businesses. In the past five years alone, CTANY member companies have invested over \$5.5 billion in New York’s broadband infrastructure.⁴ According to the New York State Office of Cyber Security, this network reaches 96.7% of New York State residents, delivering voice, broadband, and advanced cable services.⁵ These services have promoted opportunities for rural communities and economic development.

² There are between 1,264 and 1,400 residences in the 38 smaller ILEC service areas (not including Verizon or Frontier-Rochester) without cable or wireless platform options. Only 14 ILECs have *any* customers without alternative providers. *See*, Record, Ex. 39, pp. 14-16. *See also*, Recommended Decision on Phase II Issues (Issued January 4, 2012) (the “RD”) at p. 33.

³ Preliminary Staff Report on Cable and Wireless Phone Coverage (the “Staff White Paper”) (Redacted Report), (December 22, 2009).

⁴ <http://transition.fcc.gov/Bureaus/Cable/Reports/fcc99418.txt>; “New York’s Cable Broadband Network” at <http://www.cabletvny.com/> and click the “Download Cable Broadband Report” link on the left. *See also*, <http://transition.fcc.gov/wcb/iatd/comp.html> and “The Impact of New York’s Telecommunications Industry on the State’s Economy” at <http://www.cabletvny.com/> and click the “Download Economic Development Report” link on the right.

⁵ *See* <http://www.broadbandmap.ny.gov>.

Notwithstanding the rapidly diminishing population without alternatives, there was a strongly held view among some of the parties to this proceeding that there remains the need for some form of ‘safety net’ to protect the remote populations that do not yet have access to competitive providers. In the spirit of cooperation and consensus, most of the parties to this phase successfully came together to develop a finite, limited proposal for a subsidy fund that provides more than sufficient funding to provide support for rural ILECs in limited and shrinking areas of the state that do not yet have access to competitive providers.

CTANY supports adoption of the Phase II Joint Proposal as being an acceptable resolution of the issues in this phase of the case and in order to preserve parties’ resources.

ARGUMENT

I. THE JOINT PROPOSAL REPRESENTS A BALANCING OF THE INTERESTS OF DIVERSE PARTIES AND SHOULD BE ADOPTED BY THE COMMISSION IN ITS ENTIRETY

The signatories of the Phase II Joint Proposal represent a large, diverse group of parties with a broad range of interests in this case. These parties filed testimony and comments that represented views ranging from a strong need for a fund to the idea that continued support of ILEC Plain Old Telephone Service or “POTS” frustrates competition and raises complex legal questions that might make Commission action outside of a settlement difficult.

The parties, however, were able to develop a carefully crafted proposal that provides a more than adequate safety net for New York rural customers. This process took many months to accomplish and enormous resources on the part of the parties committed to the settlement process.

While diversity of interest is an important factor in the Commission’s decision whether to adopt a joint proposal or settlement, it is not the only input. In this case, a substantial evidentiary

record exists against which the Commission can mirror the JP. Testimony, comments, reports, and rulings are included in the record. This record adequately supports the notion that the fund suggested in the JP is more than adequate to address the needs identified by those advocating on behalf of a rural fund.

However, given the diversity of parties and the delicate balance struck by the JP, it is also vital to this case and the integrity of the Commission's settlement processes that the JP be adopted in its entirety and faithfully upheld throughout its term. Material conditions on the settlement in any Commission order – in particular any attempt to impose a fee on VoIP providers – would undermine the careful compromise that produced the JP.

II. THE PHASE II JOINT PROPOSAL'S EXCLUSION OF VoIP FOR ASSESSMENT FOR THE FUND IS CONSISTENT WITH THE COMMISSION'S PRO-COMPETITION POLICIES WITH RESPECT TO EMERGING TECHNOLOGIES

While CTANY supports the JP in its entirety and each of its provisions as a signatory thereto, it would like to highlight two critical areas for the Commission's consideration.

Section 4(a) of the JP states that wireless and VoIP providers will not be contributors to the fund. As noted in the introduction above, cable providers have been an invaluable partner with the Commission to bring advanced communications services (including VoIP) to rural areas. The Commission's historic policies have facilitated this deployment, which has required the investment of billions of dollars in private capital by cable and other VoIP providers.

It is notable that not only has VoIP brought competitive services to rural customers, but given the overall level of competition from all platforms, VoIP providers have continued to innovate, integrate with other services, move aggressively to lower price,⁶ and improve service.

⁶ It is estimated that in 2010, VoIP services provided by cable companies saved consumers \$326.5 million and

These dynamics thrive best in an environment that allows private capital to enter and determine customer demand.

The Commission's current policies that facilitate competitive entry and innovation have made this expansion possible. The JP's exclusion of VoIP from the fund is wholly consonant with these policies, and the Commission should embrace this opportunity to continue its pro-competitive and pro-investment approach by approving the JP.

III. THE RESERVATION OF PARTIES' LEGAL RIGHTS IS AN INTEGRAL PART OF THIS JP AND VITAL TO MAINTAINING THE INTEGRITY OF THE COMMISSION'S SETTLEMENT PROCESSES

The second set of critical provisions in the JP that CTANY would like to specifically discuss is the reservation of the parties' legal rights clauses contained throughout the JP. Parties to any Commission settlement process enter that process with the hope and belief that settlement terms will be accepted in their entirety and supported throughout their tenure. However, they also enter the JP with the understanding that, should a settlement be materially altered during adoption, implementation or review, they will retain their right to make any policy or legal arguments that they had absent a settlement, and that the fact of their support of a settlement does not represent a waiver of these rights or arguments. It is in the spirit of maintaining the efficacy of the Commission's settlement processes that the JP includes extensive reservations of parties' rights should the Commission change the provisions of the JP at adoption or during its term. The JP therefore highlights parties' rights to make arguments contrary to the need for a fund at the time of the expiration of the fund and its review by the Commission. CTANY files this Statement in Support with these important reservations present.

created nearly 3,000 more jobs and an additional \$435 million in economic activity in New York. "The Impact of New York's Telecommunications Industry on the State's Economy" at <http://www.cabletvny.com/> and click the "Download Economic Development Report" link on the right.

CONCLUSION

In order to avoid further administrative litigation or appeal, CTANY respectfully requests that the Commission adopt each and every provision of the Phase II Joint Proposal in their entirety as representing an acceptable resolution of the issues in this phase of the proceeding and a product of thorough discussion among diverse parties.

Respectfully submitted,

/s/

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