

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

Proceeding to Examine Issues Related to a Universal Service Fund	) ) ) )	CASE 09-M-0527
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**CABLEVISION SYSTEMS CORPORATION  
REPLY STATEMENT IN SUPPORT OF THE PHASE III JOINT PROPOSAL**

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Dated: January 18, 2013

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Pursuant to the procedural ruling issued by Administrative Law Judge Howard A. Jack in the above-captioned proceeding,<sup>1/</sup> Cablevision Systems Corporation (“Cablevision”) respectfully submits reply comments in support of the Joint Proposal and Settlement Agreement (“Phase III Joint Proposal”).<sup>2/</sup>

The Phase III Joint Proposal is well within the public interest standard established in the State of New York Public Service Commission’s (“the Commission”) Settlement Guidelines.<sup>3/</sup> The Proposal is based on a substantial record developed in the various phases of this proceeding and is consistent with the law and the policies of the Commission and the State. Support of the Proposal by both a variety of affected utilities and agencies representing the interests of ratepayers demonstrates that the Proposal “strikes a fair balance among the interests of

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<sup>1/</sup> Case 09-M-0527, *Proceeding to Examine Issues Related to a Universal Service Fund*, Ruling on Phase III Procedure (Dec. 7, 2012) (“Phase III Procedural Ruling”).

<sup>2/</sup> Case 09-M-0527, *Proceeding to Examine Issues Related to a Universal Service Fund*, Joint Proposal and Settlement Agreement (filed Nov. 19, 2012) (“Phase III Joint Proposal”). The Phase III Joint Proposal includes an agreement asking the Commission to defer further action on intrastate access charges (beyond that necessary to implement the changes initiated by the Federal Communications Commission’s (“FCC’s”) *ICC-USF Transformation Order*)<sup>2/</sup> until the FCC issues an order addressing the switched access issues raised in its further notice of proposed rulemaking. The Phase III Joint Proposal also includes an agreement to defer review of the Targeted Accessibility Fund (“TAF”) and that the TAF should continue in its current form until January 1, 2016, or until some earlier trigger events occur.

<sup>3/</sup> See Case 09-M-0527, *Proceeding to Examine Issues Related to a Universal Service Fund*, Statement in Support of Phase III Joint Proposal on Behalf of tw telecom of new york, l.p., Level 3 Communications, LLC and Windstream Communications, Inc., at 3 (Jan. 4, 2013) (“tw telecom, et al. Statement”) (listing the Settlement Guidelines established by the Commission in Case 90-M-0255).

ratepayers, investors and the long-term soundness of the [involved] utilit[ies].”<sup>4/</sup> Finally, the proposal settles an issue related to TAF that is unopposed by any party.

**I. THE JOINT PROPOSAL’S AGREEMENT ON DEFERRING CONSIDERATION OF INTRASTATE ACCESS CHARGES IS IN THE PUBLIC INTEREST.**

Contrary to AT&T’s assertions that “there are many sound reasons” for the Commission to “order the Phase III litigation to commence immediately,”<sup>5/</sup> starting wasteful litigation would bring regulatory uncertainty to the State regarding transition schedules for intrastate originating access charges because premature Commission action absent Federal Communications Commission (“FCC”) guidance can be ultimately incongruent with the final direction established by the FCC. As the New York Department of State, Division of Consumer Protection explains, “Given that the FCC will rule on this issue in due course, it would not be a prudent use of state resources to address originating access charges now on a state level, reaching a result that perhaps would eventually be contradicted by the FCC.”<sup>6/</sup> Commission Staff agrees, concluding that “not only [is] it prudent to wait for the FCC to address originating access as part of its overall reform of intercarrier compensation but also . . . [the Commission] acting before the FCC . . . could create a risk of inconsistent federal and state transition schedules and recovery mechanisms.”<sup>7/</sup> Indeed, “[u]ntil the FCC takes action on originating access charges, there is no compelling reason for the Commission to take any further action at this time.”<sup>8/</sup>

In the Phase II Order, the Commission recognized the importance of deferring action to give the parties and the Commission time to incorporate the FCC’s actions on USF into Judge

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<sup>4/</sup> *Id.*

<sup>5/</sup> Case 09-M-0527, *Proceeding to Examine Issues Related to a Universal Service Fund*, AT&T Communications of New York, Inc.’s, and its Regulated Affiliates’ Statement in Opposition to Phase III Joint Proposal, at 6-7 (Jan. 4, 2013) (“AT&T Statement”).

<sup>6/</sup> Letter from Tim Friel, Director, Utility Intervention Unit, New York Department of State Division of Consumer Protection, to Howard A. Jack, Administrative Law Judge, New York Public Service Commission, at 2 (Jan. 4, 2013) (filed in Case 09-M-0527) (“UIU Statement”). The UIU further concludes that the Commission “should focus its attention on overseeing the implementation process for the transition of terminating access charges rather than diverting resources to litigating on the state level an issue that is unsettled on the federal level.” *Id.*

<sup>7/</sup> 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, at 4 (Jan. 4, 2013) (“PSC Staff Statement”).

<sup>8/</sup> tw telecom, et al. Statement at 6.

Jack’s decision.<sup>9/</sup> Likewise, deferring action on intrastate originating access until after the FCC acts will enable the Commission to “coordinate its action with that of the FCC, a result that would lead to rational policy making”<sup>10/</sup> and avoid potentially significant waste of party and Commission resources.<sup>11/</sup>

Deferring action on intrastate originating access charges will also enable the Commission “to take into consideration what the FCC may do . . . creat[ing] a greater potential for action by the Commission that assures local ratepayers’ interests are maximized based on whatever FCC structure is created.”<sup>12/</sup> Consistency with the FCC’s “national uniform approach will create predictability for carriers and promote efficient pricing”<sup>13/</sup> and is therefore in the public interest.

## **II. THE PHASE III JOINT PROPOSAL REFLECTS THE CONSENSUS OF A VAST MAJORITY OF THE PARTIES.**

Importantly, and as many parties point out, the Phase III Joint Proposal “reflects the agreement of normally adverse parties” including both large and small incumbent local exchange carriers, competitive local exchange carriers, wireless service providers, cable operators, and government agencies – including the Commission’s own staff – charged with protecting the interests of consumers.<sup>14/</sup> As one commenter put it, “[t]hese parties normally have widely varying perspectives on issues that come before the Commission, and it is rare to find them all on

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<sup>9/</sup> Case 09-M-0527, *Proceeding to Examine Issues Related to a Universal Service Fund*, Order Adopting Phase II Joint Proposal, at 4-5 (Aug. 17, 2012) (“Phase II Order”).

<sup>10/</sup> 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 III Joint Proposal and Settlement Agreement, at 3 (Jan. 4, 2013) (“NYSTA Statement”).

<sup>11/</sup> NYSTA Statement at 5; tw telecom, et al. Statement at 6; Case 09-M-0527, *Proceeding to Examine Issues Related to a Universal Service Fund*, Comments of Verizon New York Inc. and Cellco Partnership d/b/a Verizon Wireless on the Phase III Joint Proposal, at 8 (Jan. 4, 2013) (“Verizon Statement”).

<sup>12/</sup> NYSTA Statement at 2.

<sup>13/</sup> tw telecom, et al. Statement at 5. *See also* UIU Statement at 2 (“A national standard approach appears to UIU to be the best approach.”). *See also* Verizon Statement at 7-8 (“[T]he FCC, with its nationwide scope, is better positioned [than state commissions] to promote a balance in how access reform works with other regulatory policy changes . . .”).

<sup>14/</sup> Signatories of the Phase III Joint Proposal are: New York State Department of Public Service Staff; New York State Department of State, Utilities Intervention Unit; 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; Time Warner Cable, Inc.; tw telecom of new york l.p.; Windstream Communications, Inc.; and Verizon New York Inc..

the same side of any single proposal.”<sup>15/</sup> Commission staff agreed with that assessment, describing the parties to the Phase III Joint Proposal as “unlikely to reach agreement on telecommunications issues given the diversity of the interests they represent[,] [y]et all agree that Commission action regarding switched access should be stayed in order to avoid risking inconsistent federal and New York State action.”<sup>16/</sup> The NYSTA suggests that the fact that such a diverse group of carriers and other entities could come together to all support the Phase III Joint Proposal is itself significant evidence that the Proposal is in the public interest.<sup>17/</sup>

While only two parties – AT&T and Sprint – oppose adoption of the Phase III Joint Proposal,<sup>18/</sup> the Commission has not typically required that a settlement proposal be unopposed,<sup>19/</sup> an immediate example being the Commission’s adoption of the Phase I Joint Proposal in this proceeding, which was opposed by three parties.<sup>20/</sup>

### **III. THE PHASE III JOINT PROPOSAL REFLECTS A BALANCE OF INTERESTS.**

There is no basis for AT&T’s claim that adoption of the Phase III Joint Proposal could negatively impact all future settlements approved by the Commission.<sup>21/</sup> To the contrary, nothing in the language of the Phase II Settlement prevents an agreement to defer litigation. Indeed, the Commission itself recognized that modification of the settlement may be appropriate in certain circumstances.<sup>22/</sup> And Parties to the Phase II Settlement reserved the right in

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<sup>15/</sup> Verizon Statement at 3-4. *See also* tw telecom, et al. Statement at 4.

<sup>16/</sup> PSC Staff Statement at 4-5.

<sup>17/</sup> NYSTA Statement at 6.

<sup>18/</sup> *See generally*, AT&T Statement; Case 09-M-0527, *Proceeding to Examine Issues Related to a Universal Service Fund*, Sprint’s Statement in Opposition to Phase III Joint Proposal (Jan. 4, 2013) (“Sprint Statement”). Another party – T-Mobile – did not join as a signatory in the Phase III Joint Proposal but stated that it does not oppose its adoption. *See* Letter from Christopher M. Arfaa, Counsel for T-Mobile Northeast LLC, to Howard A. Jack, Administrative Law Judge, New York Public Service Commission (Nov. 19, 2012) (filed in Case 09-M-0527) (“T-Mobile Letter”).

<sup>19/</sup> *See* Phase III Ruling at 7.

<sup>20/</sup> *See* Verizon Statement at 5-6. In addition, under the Commission’s Settlement Guidelines, the fact that a settlement may be contested is not dispositive of whether that settlement should. Instead, an objection to a settlement is merely used as a guide in Commission’s assessment. The primary factor in the Commission’s review of whether to adopt a settlement is the public interest, which, as stated above the Joint Proposal meets. *See generally*, Settlement Guidelines Case 90-M-0255.

<sup>21/</sup> AT&T Statement at 6.

<sup>22/</sup> *See* Phase II Order at 18-20.

Paragraph 11(a) “to argue for or against any Commission action with respect to the TAF or intrastate access charges in Phase III of this proceeding.”<sup>23/</sup>

Further, contrary to AT&T’s suggestion, Judge Jack himself characterized the Phase III Procedural Ruling as an outgrowth of the November 2012 “procedural conference *for Phase III litigation*”<sup>24/</sup> and described Commission consideration of the Phase III Joint Proposal as “the first step in Phase III litigation.”<sup>25/</sup> Settlement discussions themselves are a normal part of the litigation process. As Judge Jack explained in his Ruling on Phase III Procedure, “the Phase II Order itself noted that a negotiated settlement could arise during Phase III litigation and affect the litigation schedule.”<sup>26/</sup> Thus Commission consideration of the Phase III Joint Proposal is not precluded by the Phase II Order,<sup>27/</sup> compares favorably with the likely result of litigation, and is “within the range of reasonable outcomes” that could be expected in this proceeding.<sup>28/</sup>

AT&T also asserts that the Phase III Joint Proposal cannot be considered by the Commission to be a reasonable result of the Phase II Order’s requirement that “the Parties will hold discussions in an attempt to resolve Phase III issues” because, AT&T contends, it fails to resolve the issues and instead “‘settle[s]’ the critical access issue by agreeing that it should not be addressed, and instead shunted off for further consideration for at least a year.”<sup>29/</sup> But there is no reason that the Phase II Order must be read to require a long term resolution of Phase III issues, rather than a reasonable short term resolution. As Judge Jack observed, while the agreements in the Phase III Joint Proposal “would not resolve the remaining intrastate access charge issues for the long term[,] [t]hey would . . . resolve those issues temporarily by maintaining the status quo

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<sup>23/</sup> Phase II Order, Attachment 1, at 8.

<sup>24/</sup> See Phase III Procedural Ruling at 2 (emphasis added).

<sup>25/</sup> *Id.* at 7.

<sup>26/</sup> *Id.*

<sup>27/</sup> See Verizon Statement at 10 (“For all practical purposes, the Phase III litigation has already begun, and the issue of whether and when it was required to begin is thus moot. Judge Jack made the appropriate decision in ruling that within that litigation, it made sense to consider the interim resolution proposed by the [Joint Proposal] first, before beginning detailed discovery and evidentiary proceedings on other issues.”).

<sup>28/</sup> See Phase II Order at 19.

<sup>29/</sup> AT&T Statement at 4-5.

for a time, pending FCC action that might significantly influence the issues' long-term resolution.”<sup>30/</sup>

**IV. THERE IS NO OPPOSITION TO THE AGREEMENT THAT THE TARGETED ACCESSIBILITY FUND (“TAF”) SHOULD REMAIN UNCHANGED AT THIS TIME.**

The Phase III Joint Proposal also includes an agreement to defer review of the Targeted Accessibility Fund (“TAF”) and that the TAF should continue in its current form, using the current contribution mechanism, until January 1, 2016, or until some earlier trigger events may occur.<sup>31/</sup> And in his Phase III Procedural Ruling, Judge Jack reported that none of the parties “oppose[ ] the provisions of the Phase III Joint Proposal concerning the TAF.”<sup>32/</sup> Significantly, even the parties that oppose adoption of the Phase III Joint Proposal do not raise any objection to this TAF provision.<sup>33/</sup> Thus even Parties opposing the Joint Proposal appear to agree that deferring litigation can be an appropriate course of action under the Commission’s Settlement Guidelines and Phase II Order. It therefore follows that deferring litigation on all of the issues, including access charges, in the Joint Proposal is likewise appropriate and should be adopted.

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<sup>30/</sup> Phase III Ruling at 8.

<sup>31/</sup> See Phase III Joint Proposal at 2.

<sup>32/</sup> Phase III Procedural Ruling at 6.

<sup>33/</sup> See generally, AT&T Statement; Sprint Statement.

## CONCLUSION

As explained above, Commission adoption of the Phase III Joint Proposal would be in the public interest, consistent with Commission guidelines for settlement agreements, consistent with the Phase II Order, and consistent with the consensus on TAF. The Commission should therefore adopt the Phase III Joint Proposal.

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

I, Darren J. Abernethy, do hereby certify that a true and correct copy of the foregoing Reply Statement has been delivered electronically to the Active Parties listed in this docket, this 18th day of January, 2013:

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