



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

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**In the Matter of Proceeding to Examine  
Issues Related to a Universal Service  
Fund.**

**Case 09-M-0527**

**Complaint of AT&T Communications  
of New York, Inc., Teleport  
Communications Group, Inc., and ACC  
Communications, Inc. Against Verizon  
New York, Inc. and Petition to Examine  
the Intrastate Switched Access Rates  
of Verizon New York, Inc.**

**Case 09-C-0743**

**Petition for the Commission to  
Investigate Verizon New York, Inc.'s  
Intrastate Switched Access Rates.**

**Case 07-C-0347**

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**COMMENTS AND STATEMENT IN SUPPORT**

These Comments are filed on behalf of the Cable Telecommunications Association of New York, Inc. (“CTANY”), the trade association of New York State’s cable television companies and their telecommunications subsidiaries.<sup>1</sup> These comments are filed in response to the Commission’s *Notice Seeking Comment on an Interim Transition Fund* (“Notice”)<sup>2</sup> and

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<sup>1</sup> CTANY consists of member companies operating cable TV systems that serve nearly 5 million cable households – 98% of New York State’s cable subscribers. CTANY also represents programming networks and vendors who deliver cable programming, broadband internet, and digital phone service.

<sup>2</sup> *Case 09-M-0527, Proceeding to Examine Issues Related to a Universal Service Fund*, Notice Seeking Comment On An Interim Transition Fund (Issued August 12, 2011).

reflect support for the Joint Motion filed by Verizon New York Inc. (“Verizon”) today in the above-referenced proceedings.<sup>3</sup>

## **INTRODUCTION**

CTANY supports the Joint Motion filed by Verizon New York Inc. (“Verizon”) on behalf of itself and various parties<sup>4</sup> (including CTANY) which requests that proceedings in Cases 09-M-0527, 09-C-0743, and 07-C-0347 be suspended until June 30, 2012 according to terms set forth in Appendix B in the Joint Motion. CTANY believes that the suspension of the instant proceeding for a limited period of time will allow the parties, the Department Staff, and the Commission to assess and review pending Federal Communications Commission (“FCC”) action regarding, among other things, universal service and interstate access charges.<sup>5</sup> This will enhance administrative efficiency and maximize the use of scarce resources of the various stakeholders. It will allow the Commission, with input from all parties, to craft state remedies (if and as needed) that can be consonant with and leverage any federal mechanisms that are established by the FCC. To facilitate this brief suspension, the Joint Motion would provide a brief, finite extension of the current Temporary Transition Fund Extension (“TTFE”).

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<sup>3</sup> See Letter from Deputy General Counsel Joseph Post to Secretary Brillling providing a Joint Motion to request that proceedings in Cases 09-M-0527, 09-C-0743, and 07-C-0347 be suspended, subject to the limitations and exceptions set forth in the letter, until June 30, 2012 subject to certain conditions contained therein (the “Joint Motion”).

<sup>4</sup> See Joint Motion, Appendix A (the “Joint Movants”).

<sup>5</sup> *Further Inquiry Into Certain Issues In The Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket No. 01-92, 96-45; GN Docket No. 09-51; DA 11-1348, August 3, 2011. See also, *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011). (collectively, the “FCC Dockets”).

## PHASE I & II OF PROCEEDING - BACKGROUND

By Order dated July 16, 2010 in Phase I of this proceeding, the Commission adopted the terms and conditions of a temporary TTFE, which had previously been established by the Commission in phasing out the former Intrastate Access Settlement Pool.<sup>6</sup> The one-time extension provided for additional funding of up to \$600,000, with such funding ceasing on the earliest of: (i) September 30, 2011; (ii) the date of completion of steps necessary to put into effect a Commission order establishing a state universal high cost fund or (iii) the date such additional contributions equaled \$600,000. Under the terms of the July 16, 2010 order, any unexpended amounts remaining in the TTFE at that time must be returned, *pro rata*, to the carriers who contributed to the TTFE. This TTFE was designed to give the Commission time to resolve Phase II of this proceeding, which was established to consider the need for further, limited support for 'high cost' areas.

The Commission Secretary now seeks comment on an interim extension of the TTFE (TTFE-II) to avoid a perceived narrow gap between expiration of transition funding and ultimate resolution of this issue by the Commission. Currently, \$300,000 has been collected from carriers pursuant to the TTFE order. At current rates of expenditure, it is estimated that such an amount would suffice to cover the demands upon the TTFE through November 2011, if the TTFE continued. Moreover, at current rates of expenditure, it is estimated that the remaining \$300,000 committed as part of the TTFE, if collected, would meet the needs of the high-cost subsidy through April 2012.

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<sup>6</sup> Case 09-M-0527, *Proceeding to Examine Issues Related to a Universal Service Fund*, Order Adopting Terms Of Phase I Joint Proposal (Issued and Effective July 16, 2010) citing Case 02-C-0595, *New York Intrastate Access Settlement Pool, Inc.*, Order Adopting Comprehensive Plan (issued December 23, 2003)(Phase-out Order).

**I. THE COMMISSION SHOULD SUSPEND THESE PROCEEDINGS FOR A LIMITED PERIOD OF TIME TO FACILITATE ADMINISTRATIVE EFFICIENCY**

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CTANY supports the Joint Motion filed by Verizon which requests that proceedings in Cases 09-M-0527, 09-C-0743, and 07-C-0347 be suspended until June 30, 2012 according to terms described in the Joint Motion.

Until very recently, the parties to these proceedings have been engaged in a series of collaborative settlement discussions moderated by Administrative Law Judge Eleanor Stein. The collaborative was suspended on August 5, 2011 after the FCC issued a notice establishing an accelerated schedule related to universal service and intercarrier compensation issues.<sup>7</sup>

CTANY believes that the FCC intends to move expeditiously to address certain issues related to access charges and federal universal service fund issues, which will impact the actions of the PSC and the parties in the instant proceedings. Suspension of the proceedings for a short, fixed period of time will allow parties to assess and review FCC action and would therefore be efficient and productive under these particular circumstances. Such suspension will allow all parties, including the Commission and Department Staff, to maximize the use of their scarce resources. It will also allow any mechanisms created by the State to dovetail with and perhaps leverage any mechanisms established by federal authorities. Such delay will create no foreseeable harm to any of the relevant parties.

CTANY and the Joint Movants recognize that future developments may make it necessary to resume the collaborative discussions in this PSC proceeding. By granting the relief

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<sup>7</sup> *Further Inquiry Into Certain Issues In The Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket No. 01-92, 96-45; GN Docket No. 09-51; DA 11-1348, August 3, 2011.

in the Joint Motion and deferring action a short period to assess FCC action, CTANY believes that settlement discussions involving both funding issues *and* access charge issues could be more productive than discussions of access charge issues alone.

**II. THE COMMISSION SHOULD CONTINUE THE TTFE THROUGH A ONE-TIME, LIMITED EXTENSION SO THAT PHASE II ISSUES RELATING TO A UNIVERSAL SERVICE FUND CAN BE PROPERLY RESOLVED.**

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CTANY has consistently asserted that subsidies of rural carriers are unnecessary given the current state of competition in the State and the rate at which unserved areas are shrinking, but that in any event the level of funding proposed by various parties in this proceeding greatly exceeds any arguably demonstrable need.<sup>8</sup> Further, it has argued that such subsidies in fact discourage competition and the entry of competitors into unserved areas of the State.<sup>9</sup>

Notwithstanding CTANY's historic position and the extensive evidence it submitted in this case, CTANY supports the provisions of the Joint Motion that would provide a short extension of the TTFE for the limited purpose of providing time for Commission deliberations regarding FCC action with respect to access charge and universal service issues.

CTANY also recognizes that the PSC can institute a proceeding at any time to address issues beyond the TTFE-II one-time limited extension. Paragraph 5 of Appendix B of the Joint Motion reflects this assumption and is not intended to reflect any suggestion on the part of the Joint Movants that the record in the instant proceeding supports justification for extension of the TTFE beyond April 2012. Rather, it recognizes that the Commission is empowered to establish

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<sup>8</sup> Record at 327-362.

<sup>9</sup> *Id.*

a *new* proceeding to determine whether such need exists, either on its own motion or that of one or more parties. It is fully anticipated that any such proceeding would allow for the full participation of any and all parties, and that the parties do not hereby waive and expressly reserve their right to oppose such extension and to raise arguments regarding the Commission's authority to create such a fund.

**III. IF THE COMMISSION REJECTS THE JOINT MOTION TO SUSPEND PROCEEDINGS, IT SHOULD ALSO TERMINATE THE TTFE ACCORDING TO ITS TERMS.**

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In the event that the Commission is not willing to suspend these proceedings, the Commission should terminate the TTFE and conclude the temporary subsidy program on September 30, 2011 in accordance with its terms.

**CONCLUSION**

The Commission should suspend the instant proceedings and thereby grant a *temporary, one-time* extension of the TTFE. Doing so should be limited in scope and duration and strict requirements should be met before monies are distributed to recipients on a going-forward basis. Suspending the instant proceedings for a short period of time in order to assess and review FCC action would be efficient and productive under these particular circumstances insofar as it would allow the Commission to consider the implications of potential FCC actions on any further proceedings before the Commission, enhance administrative efficiency, and preserve scarce resources of all interested parties. Such a suspension maintains the status quo and avoids the need for redoing or undoing action during the pendency of FCC consideration.

Dated: August 24, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Maureen O. Helmer". The signature is fluid and cursive, with a large initial "M" and "H".

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