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Joseph A. Post
Deputy General Counsel — New York



November 19, 2012

Honorable Howard A. Jack
Administrative Law Judge
New York State Department of Public Service
Three Empire State Plaza
Albany, New York 12223

Re: Case 09-M-0527

Dear Judge Jack:

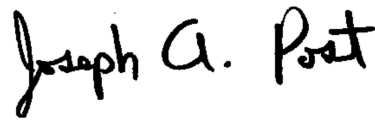
The parties listed in Attachment A (the “Signatories”) hereby submit their Joint Proposal and Settlement Agreement (“JPSA”) for the resolution of Phase III issues (Attachment B). The Signatories are a diverse group that includes two government agencies — Department of Public Service Staff and the Department of State Utility Intervention Unit — as well as CLECs, large and small ILECs, and wireless and VoIP providers. (The Signatories have shared this proposal with non-Signatory parties, in accordance with the suggestion on page 4 of Your Honor’s Procedural Ruling.)

The Signatories believe that the Phase III issues should be resolved in the manner described in the JPSA, in order, in the words of the proposal, “to achieve a fair balance of interests and to encourage the prudent allocation of resources.” Those issues can be addressed more efficiently once certain preceding events at the Federal Communications Commission occur and additional facts arising from the current FCC decision are known. The Signatories also respectfully submit

Honorable Howard A. Jack
November 19, 2012

that the threshold timing issue raised by the JPSA should be resolved before Your Honor, the parties, and the Commission invest a substantial level of effort in litigating the full range of factual and legal issues that the parties may raise in Phase III. This can be achieved either through a separate proceeding for review (and, potentially, approval) of the JPSA by the Commission, or through a preliminary phase of the overall litigation in which the specific timing issues raised by the JPSA are addressed. In either case, we believe that the interests of efficiency would be better served by giving the timing issue raised by the JPSA priority in the case.

Respectfully submitted,

A handwritten signature in black ink that reads "Joseph A. Post". The signature is written in a cursive, slightly slanted style.

Joseph A. Post

cc: Active Party List
Hon. Eleanor Stein
Hon. Jaclyn A. Brillling

ATTACHMENT A

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.

Verizon New York Inc.

ATTACHMENT B

JOINT PROPOSAL AND SETTLEMENT AGREEMENT

This Joint Proposal and Settlement Agreement for a resolution of the Phase III issues in Case 09-M-0527 (the "Joint Proposal") is entered into as of November 19, 2012, by the parties whose signatures are included in Appendix A (together, the "Parties," and each individually, a "Party"). The Parties agree as follows, and respectfully urge the Commission to adopt the operative terms of this Joint Proposal in their entirety as a resolution of Phase III of this proceeding:

1. Remaining Switched Access Rate Issues.

(a) Background. Carriers in New York are currently implementing the switched access rate and rate structures called for by the Federal Communications Commission's ("FCC's") November 18, 2011 "Report and Order and Further Notice of Proposed Rulemaking" in WC Docket 10-90 et al. , 26 FCC Rcd 17663 (the "*ICC-USF Transformation Order*"). Among other things, the FCC declined at this time to mandate changes in rates and rate structures for originating switched access comparable to those that it had prescribed for terminating switched access. As part of the *ICC-USF Transformation Order*, the FCC also issued a Further Notice of Proposed Rulemaking (the "*FCC FNPRM*") in which it solicited comments on, among other things, the further treatment by the FCC of originating switched access services.

(b) Requested Commission Action.

- (1) The Parties respectfully submit that the public interest would be served by the Commission adopting this Joint Proposal without modification and concluding that further action on intrastate switched access rates in New York (other than actions taken to implement the *ICC-USF Transformation Order* and subsequent orders clarifying or reconsidering provisions of that order) is not appropriate at this time. In order to achieve a fair balance of interests and to encourage the prudent allocation of resources, the Commission should not, subject to paragraph 1(b)(2), below, take any additional action until the FCC issues an order addressing those switched access issues identified in the *FCC FNPRM*.
- (2) If the FCC has not issued such an order regarding the *FCC FNPRM* by July 2014, the date of the third step in the transition mandated by the *ICC-USF Transformation Order*, the Parties also respectfully submit that the Commission should direct an Administrative Law Judge to convene a meeting of all interested entities to discuss what, if any, action would be appropriate at that time.

2. The Targeted Accessibility Fund.

(a) It is the Signatories' assessment that the Targeted Accessibility Fund ("TAF") is adequately constituted to accomplish its purposes at least through the milestone dates referred to in paragraph 2(b), below, and that no changes to the TAF, including but not limited to changes to the contribution mechanism and to the list of funded programs and services, are necessary or warranted at this time.

(b) Proposals for changes to the TAF may be raised during the review of Phase II issues called for by ¶ 2(b) of the Phase II Joint Proposal, as adopted by the Commission on August 17, 2012 in its "Order Adopting Phase II Joint Proposal" in Case 09-M-0527, *i.e.*, January 1, 2016. In addition, proposals for changes to the TAF may be raised on or after the date of an FCC order addressing the further switched access issues identified in the *FCC FNPRM*, or in response to any request for Commission review pursuant to ¶ 1(b)(2), above, if a Party proposing such a change, either alone or with another Party, makes a *prima facie* showing that both: (i) such FCC order addressing the issues in the *FNPRM*, or any such proposed action by this Commission pursuant to ¶ 1(b)(2), will have an impact on the Party sufficient to warrant Commission review, and (ii) that the change in the TAF that that Party proposes has a reasonable relationship to that impact and would help to ameliorate it. If a proposal is raised pursuant to the preceding sentence, any other Party may make counter-proposals related to the TAF.

3. Reservation of Commission Authority.

Upon request or its own motion, and upon notice to all Parties and an opportunity to be heard, the Commission reserves the authority to modify the terms of this Joint Proposal, as adopted by the Commission, to the extent permitted by applicable law.

4. Reservation of Parties' Rights.

Nothing in this Joint Proposal will preclude any Party from taking any position whatsoever on the merits of issues related to switched access rates or the TAF in any appropriate proceeding. By way of example only, the Parties note that the *ICC-USF Transformation Order* is being appealed to the United States Court of Appeals for the Tenth Circuit (Case No. 11-9900) and that certain of the Parties are either directly or, through their respective national trade associations, indirectly involved in that appeal; and therefore no provision or recital contained herein is intended to or shall be used to affect any Party's position with respect to the issues raised in the appeal of the *FCC's ICC-USF Transformation Order*.

5. Miscellaneous Provisions.

(a) This Joint Proposal contains the entire agreement of the Parties regarding the Phase III issues and supersedes and replaces any and all prior or contemporaneous written or oral agreements or understandings regarding such issues.

(b) The captions used herein are intended solely to facilitate reading of and reference to the individual provisions of the Joint Proposal, and shall not affect the meaning or interpretation of such provisions.

(c) The Joint Proposal shall not be construed or interpreted for or against any Party under any legal doctrine based on the identity of the “drafter.” Rather, each provision shall be given a fair construction based on the words used in that provision, the terms of the Joint Proposal as a whole, and other generally-applicable rules relating to the interpretation of agreements; provided, however, that no oral or written statement or proposal made by a party during the settlement discussions leading to the Joint Proposal will be admissible as evidence for or against any interpretation of the Joint Proposal.

(d) No Party’s agreement to the terms, provisions, methodology, or principles set forth in this Joint Proposal may be cited or relied upon as an admission or as precedent in any proceeding before the Commission, another regulatory agency, or any court (including, but not limited to the appeal referred to in paragraph 4, above), except in furtherance of the implementation of this Joint Proposal, and no Party is bound by the positions taken in this Joint Proposal on any similar issue in any such proceeding.

(e) This Joint Proposal reflects a negotiated resolution of issues. Each provision of the Joint Proposal is in consideration and support of all other provisions thereof and is expressly conditioned upon the adoption of all other such provisions by the Commission. To the extent that the Commission fails to adopt a material term of this Joint Proposal in its entirety, the Joint Proposal shall be considered null and void, and the Parties to this Joint Proposal reserve the right to pursue their respective positions in this proceeding before any agency, ALJ, or court of competent jurisdiction without prejudice and upon reasonable notice to the other Parties, said notice to be provided by no later than ten (10) business days after issuance of the Commission order addressing this Joint Proposal.

(f) In the event of any disagreement over the interpretation or implementation of this Joint Proposal that cannot be resolved informally among the Parties, the Parties shall promptly negotiate in good faith in an attempt to resolve such disagreement for a period of thirty (30) days. If any such disagreement cannot be resolved by negotiation among the Parties, the matter shall be submitted to the Commission with a request for determination on an expedited basis. A Party may seek review of the Commission’s decision in accordance with the procedures and schedule allowed by law.

(g) This Joint Proposal is being executed in counterpart originals, and shall be binding on each Party who executes such a counterpart, with the same force and effect as if all executing Parties had executed a single original document.

APPENDIX A: Signatures

SIGNATURE SHEET

Signature: Maureen J. McCauley

Name: Maureen J. McCauley

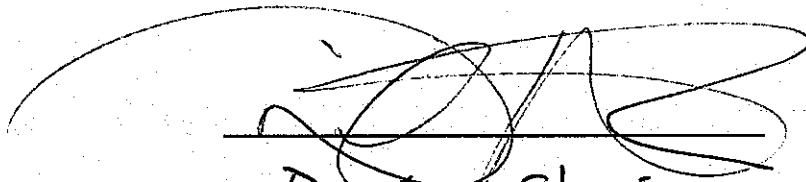
Capacity: Assistant Counsel

Date of Execution: November 19, 2012

On behalf of New York State Department
of Public Service Staff

SIGNATURE SHEET

Signature:

A large, stylized handwritten signature in black ink, appearing to read 'Daniel Shapiro', is written over a horizontal line.

Name:

Daniel Shapiro

Capacity (e.g., Counsel):

First Deputy Secretary of State

Date of Execution:

Nov. 19, 2012

On behalf of (name of Party or Parties):

New York State Department of State,
Utilities Intervention Unit

SIGNATURE SHEET

PARTY: Cable Telecommunications Association of New York, Inc.

By: 

Maureen O. Helmer
Hiscock & Barclay, LLP
80 State Street
Albany, New York 12207
(518) 429-4220

Date: November 19, 2012

SIGNATURE SHEET

Signature:

A handwritten signature in blue ink, appearing to read "Joseph J. Starsick, Jr.", with a stylized flourish at the end.

Name:

Joseph J. Starsick, Jr.

Capacity (e.g., Counsel):

Counsel

Date of Execution:

November 19, 2012

On behalf of (name of Party or Parties):

**Frontier Communications New York Incumbent
Local Exchange Carriers**

SIGNATURE SHEET

Signature: *R. Edward Price*

Name: *R. Edward Price*

Capacity (e.g., Counsel): *Senior Corporate Counsel*

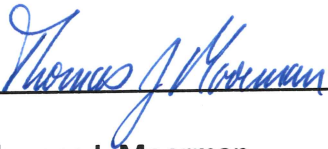
Date of Execution: *11/16/12*

On behalf of (name of Party or Parties):

Level 3 Communications, LLC

SIGNATURE SHEET

Signature:



Name:

Thomas J. Moorman

Capacity (e.g., Counsel):

Counsel for the NYSTA Smaller ILECs

Date of Execution:

November 19, 2012

On behalf of (name of Party or Parties):

NYSTA Smaller ILECs:

Armstrong Telephone Company
Berkshire Telephone Corporation
Cassadaga Telephone Corporation
Champlain Telephone Company
Chautauqua & Erie Telephone Company
Chazy & Westport Telephone Corporation
Citizens Telephone Company of Hammond, New York, Inc.
Crown Point Telephone Corporation
Delhi Telephone Company
Deposit Telephone Company, Inc.
Dunkirk & Fredonia Telephone Company
Edwards Telephone Company, Inc.
Empire Telephone Corporation
Fishers Island Telephone Corporation
Germantown Telephone Company, Inc.
Hancock Telephone Company
Margaretville Telephone Company
Middleburgh Telephone Company
Newport Telephone Company
Nicholville Telephone Company
Oneida County Rural Telephone Company
Ontario Telephone Company, Inc.
Oriskany Falls Telephone Corporation
Pattersonville Telephone Company
Port Byron Telephone Company
State Telephone Company
Taconic Telephone Company
Township Telephone Company, Inc.
Trumansburg Telephone Company
Vernon Telephone Company, Inc.
Warwick Valley Telephone Company
Windstream New York, Inc.

SIGNATURE SHEET

PARTY: Time Warner Cable, Inc.

By: 

Julie P. Laine
Group Vice President &
Chief Counsel, Regulatory
Time Warner Cable, Inc.
60 Columbus Circle
New York, NY 10023
(212) 364-8482

Date: November 19, 2012

SIGNATURE SHEET

Signature: 

Name: Rochelle D Jones

Capacity (e.g., Counsel): Senior VP Regulatory

Date of Execution: 11-17-2012

On behalf of (name of Party or Parties): tw telecom of new york l.p.

SIGNATURE SHEET

Signature: Joseph A. Post

Name: Joseph A. Post

Capacity (e.g., Counsel): Counsel

Date of Execution: 11/19/12

On behalf of (name of Party or Parties): Verizon New York Inc.
Cellco Partnership d/b/a Verizon Wireless

SIGNATURE SHEET

Signature: Jeanne Shearer

Name: JEANNE SHEARER

Capacity (e.g., Counsel): UP- STATE GOVERNMENT AFFAIRS

Date of Execution: 11/19/12

On behalf of (name of Party or Parties): WINDSTREAM COMMUNICATIONS, INC.