

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

**Case 09-M-0527: Proceeding to Examine
Issues Related to a Universal Service Fund**

**STATEMENT OF THE NYSTA SMALLER ILEC MEMBERS IN SUPPORT OF A
CONTINUATION OF THE TEMPORARY TRANSITION FUND EXTENSION AND IN
SUPPORT OF THE JOINT MOTION TO SUSPEND PROCEEDINGS AND
CONTINUING THE TEMPORARY TRANSITION FUND EXTENSION**

I. INTRODUCTION.

Pursuant to the “Notice Seeking Comment on An Interim Transition Fund” issued by the Commission on August 12, 2011 (the “*Transition Fund Gap Notice*”), the NYSTA Smaller ILEC Members¹ hereby provide these comments in support of a continuation of funding for the Temporary Transition Fund Extension (“TTFE”). In this regard, the NYSTA Smaller ILEC Members have agreed to and support the Joint Motion between Verizon New York, Inc. (“Verizon”), the NYSTA Smaller ILEC Members, , Frontier Communications, Cellco Partnership d/b/a Verizon Wireless, the Cable Telecommunications Association of New York, Inc., the NYS Department of State Utility Intervention Unit, the NYS Department of Public Service Staff, Level 3 Communications LLC, PAETEC Communications, Inc., and tw telecom

¹ The following companies make up the NYSTA Smaller ILECs group: Armstrong Telephone Company – NY, 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, Dunkirk & Fredonia Telephone Company, Edwards Telephone Company, 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 Company, Pattersonville Telephone Company, Port Byron Telephone Company, State Telephone Company, Taconic Telephone Corporation, Township Telephone Company, Trumansburg Telephone Company, Inc., Vernon Telephone Company, Warwick Valley Telephone Company and Windstream New York, Inc.

of new york l.p. filed by Verizon on August 24, 2011 (“Joint Motion”). For the reasons stated herein, the NYSTA Smaller ILEC Members respectfully request that the New York Public Service Commission (the “Commission”) continue the funding of the TTFE and that this funding continuation be accomplished through the approval and adoption in its entirety of the Joint Motion.

The NYSTA Smaller ILEC Members respectfully submit that such action is consistent with and advances both the public interest as well as notions of administrative efficiency and proper use of resources with respect to progression of this proceeding. As the *Transition Fund Gap Notice* states, “the original schedule for issuance of a Recommended Decision and Commission decision-making in Phase II requires additional time.”² Additionally, the Commission recognized that the “TTFE was designed to give the Commission time to resolve Phase II of this proceeding, which is considering whether to create a State Universal Service Fund, which would supersede the Transition Fund.”³ Now, in the interest of allowing a reasonable amount of additional time for the Commission to act regarding the protection of universal service and of allowing the Commission and all interested parties to consider and address within this proceeding recent intervening events at the Federal Communications Commission (the “FCC”), the prior dates for TTFE cessation should be extended and the Joint Motion adopted.

² *Transition Fund Gap Notice* at 1.

³ *Id.*

II. THE PUBLIC INTEREST CONCERNS EXISTING WHEN THE TTFE WAS ORIGINALLY ADOPTED CONTINUE AND THE SUPPORT SHOULD BE CONTINUED.

The continuation of the TTFE is consistent with the public interest concerns that still exist and were considered by the Commission only thirteen months ago when the order creating the TTFE was issued in this proceeding. Additionally, an extension of the TTFE is consistent with the record developed when the Commission created the TTFE. A review of the Commission's "Order Adopting Terms of Phase I Joint Proposal" that was issued on July 16, 2010 (the "*TTFE Order*") reveals that these public interest concerns are as relevant and proper today as they were in July of 2010. The *TTFE Order* held that the TTFE was in the public interest based upon the following public interest findings:

The proposed TTFE will preserve for an additional four months the status quo availability of financial support where needed for basic local residential telephone service, in rural areas that have limited alternatives to regulated service. It will thus help assure stable service and rates in those areas, while providing additional headroom to complete collaboration and, if necessary, litigation to resolve the need for, purpose of, and features of a possible long-term fund to support local residential service in high-cost areas of the State. Accordingly, we find that the proposed TTFE will promote the Commission's policy of striving to maintain safe and reliable telecommunications service at just and reasonable rates for all New Yorkers.

The proposed TTFE also reasonably balances the interests of customers of contributing and receiving companies. Customers of contributing telephone service providers would bear at most a very small overall cost over a short period, in return for greater certainty on an outside time by which there will be a determination on whether any further high-cost area support will be required. Customers of service providers receiving funding would be assured of continued rate support for an additional period over which that question and related issues can be resolved.

We also find the provisions for determining TTFE contributions in proportion to regulated intrastate revenues, for determining eligibility in accordance with existing Transition Fund procedures with enhanced notice, and for administration by the TAF administrator in conformance with existing procedures to afford a practical, reasonable interim approach. These provisions build on experience, provide certainty, and should serve to minimize costs of this interim support measure.

Finally, the TTFE provisions clearly are within the range of potential litigated outcomes if this phase of the proceeding had been litigated. A potential outcome at one extreme could have been no temporary extension of the Transition Fund during the course of this proceeding. At the other end of the range, an indefinite extension for the remainder of this proceeding could have resulted from litigation. The proposed extension for a definite period falls within those limits. In summation, we find the provisions of the Phase I Joint Proposal on the TTFE in the public interest.⁴

The above-stated Commission pronouncements remain true with respect to the NYSTA Smaller ILECs and the rural customers they serve. Allowing for the continuation of the TTFE to address the universal service cost recovery needs of the NYSTA Smaller ILECs until such time as the Commission resolves the Phase II state universal service issues is proper and in the public interest. Likewise, the ability of the Commission or a petitioning party to seek to increase the size of the TTFE on and after April 1, 2012 is equally in the public interest.⁵

While the *Transition Fund Gap Notice* addressed the continuation of funding, the NYSTA Smaller ILECs join the other parties agreeing to the Joint Motion based on recent intervening events at the FCC. Specifically, the FCC has issued a Public Notice requesting comments on various proposals that address a variety of universal service fund issues and intercarrier compensation issues.⁶ These proposals, if acted on by the FCC, may have significant impacts on the very universal service and intrastate exchange access issues that are currently pending in this proceeding.

⁴ *TTFE Order* at 26-27.

⁵ *See* Joint Motion, Appendix B (para. 5).

⁶ *See*, Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, Public Notice, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, DA 11-1348, released August 3, 2011. As the Commission is aware, the major intercarrier compensation regime that is tariffed at the interstate level is interstate exchange access.

However, with respect to these issues, the NYSTA Smaller ILECs respectfully submit that the Commission's resolution of these issues would be better informed if FCC action, should it occur, is considered. This is, in the NYSTA Smaller ILECs' view, particularly true due to the possible impacts of certain issues raised by the plans before the FCC, including, among other issues, the impact upon intrastate exchange access rates and cost recovery and the appropriate intercarrier compensation of Voice over Internet Protocol traffic identified as intrastate. FCC action on these issues and others within the plans pending at the FCC may have a direct affect on how the Commission will resolve the issues in this case.

In the interim, the Joint Motion's provisions for the establishment of procedures to allow parties to address the impacts of potential FCC actions, additional collaborative discussions in the hope of reaching consensus on such issues, and allowing for a time certain where Phase II issues would be addressed by Administrative Law Judge Jack and decided by the Commission, are entirely reasonable and appropriate. Moreover, as reflected in Appendix B of the Joint Motion, this temporary extension acknowledges the Commission's ability or that of a petitioning party to ensure that the TTFE remains a dynamic cost recovery mechanism should future events require additional TTFE disbursement amounts beyond that contemplated in the Joint Motion.

The NYSTA Smaller ILECs respectfully submit that having a dynamic TTFE to protect universal service in rural areas served by the NYSTA Smaller ILECs, having the ability for the parties and the Commission to consider potential FCC action on some of the very same issues that are now being addressed in this proceeding, and having the parties being able to again see whether consensus on the unresolved issues in this proceeding can be reached, more than

adequately justifies the Commission's approval of the Joint Motion as being in the public interest. The NYSTA Smaller ILECs are confident that the Commission will agree that informed decision making on the critical universal service and intercarrier compensation issues in this proceeding is vital. The Joint Motion allows this to occur in a reasoned and thoughtful manner in light of potential FCC action based on its recent actions inviting comments.

III. APPROVAL AND ADOPTION OF THE JOINT MOTION IN ITS ENTIRETY IS PROPER AND SERVES THE PUBLIC INTEREST.

A. The Diversity of the Signatories Submitting the Joint Motion Reflects the Reasoned Nature of the Compromise Reached.

The signatories to the Joint Motion represent diverse types of interests and include carriers (both incumbent and new entrant local exchange carriers as well along with their related intrastate long distance operations, wireless, and cable television providers) as well as those entities representing consumer interests (the Department of State and Department of Public Service Staff). These parties have come together and agreed on a continuation of the TTFE that allows for a reasonable and agreed-upon process to resolve the issues regarding long-term state universal service policy and implementation.

Without question, the Joint Motion and the signatories to it represent the majority of the many varied and distinct parties directly involved in the proceeding, let alone the distinct interests and positions they represent. This diversity creates a proper and compelling presumption and justification for the conclusion that the Joint Motion is in the public interest.

B. The Public Interest is Achieved through the Adoption and Approval of the Joint Motion in its Entirety.

From the initiation of this process, the NYSTA Smaller ILEC Members' efforts were directed toward the establishment of policies and substantive terms and conditions that address

the need for rational intrastate rate design and cost recovery policies in a manner fully consistent with the NYSTA Smaller ILEC Members' Carrier of Last Resort/Common Carrier obligations. Access to a stable cost recovery mechanism is required to foster the economic development within the communities the NYSTA Smaller ILECs serve and to continue to allow the TTFE-eligible NYSTA Smaller ILEC Members to maintain and advance universal service within the higher cost to serve rural areas of New York. With these bedrock principles in mind, the NYSTA Smaller ILEC Members believe that the adoption of the Joint Motion recognizes the need for assurances that the TTFE continues in a manner consistent with the Commission's existing cost recovery policies and mechanisms. The Joint Motion also allows the Commission and interested parties to consider the impacts of potential FCC action on issues similar to, and possibly creating impacts upon, the unresolved issues in this proceeding.

Although in any compromise, give and take is necessary, the Joint Motion adequately addresses the NYSTA Smaller ILEC Members' principles in a manner that they are willing to accept as a way of moving the process forward in a rational manner. The Joint Motion reflects a reasoned compromise of the parties' respective positions on this aspect of the case and affords a good plan to move this process forward in a manner that allows for the continuation and advancement of universal service objectives for rural areas of the State of New York.

IV. ASSUMING, ARGUENDO, THAT THE JOINT MOTION IS NOT ADOPTED IN ITS ENTIRETY, THE FOLLOWING TTFE GAP PROPOSAL SHOULD BE ADOPTED.

Although the NYSTA Smaller ILECs respectfully submit that, as shown above, the Joint Motion remains the best approach to address the unresolved issues in this proceeding, the NYSTA Smaller ILECs also recognize that the Commission may not adopt the Joint Motion as it

has been proposed. If this were to occur (which is not the NYSTA Smaller ILECs' request), the need for gap funding for the TTFE remains as well as the need to authorize the Targeted Accessibility Fund, Inc. ("TAF") to collect and disburse funds (both funds collected and not disbursed as well as funds committed but not collected) on and after September 30, 2011. Accordingly, the NYSTA Smaller ILECs respectfully submit that, should the Commission determine not to adopt the Joint Motion, the public interest would be served by adopting the following gap proposal for the TTFE:

1. Extend the TTFE through 12/31/12 unless the Commission acts first on the resolution of Phase II issues;
2. The current funding level that was committed to but not collected by the TAF to date - \$300,000 – would be collected in order to continue to allow recovery;
3. The Commission would specifically authorize the TAF to both collect and disburse TTFE funding on and after September 30, 2011 until otherwise directed by the Commission;
4. After the first six months of the extension period (*i.e.*, on and after April 1, 2012), the TTFE funding and disbursements could be increased for the remainder of the period prior to Phase II issues being resolved, if so ordered by the Commission or in order to reflect new rate cases that would require additional TTFE beyond those funding amounts currently committed to in the Joint Proposal; and
5. Should Phase II issues not be resolved by the Commission, any interested party is free to petition the Commission for an extension of funding beyond 12/31/12 or the Commission may order such an extension itself.⁷

Again, if the Joint Motion is not adopted by the Commission (which is not the request of the NYSTA Smaller ILECs), the NYSTA Smaller ILECs respectfully submit that this alternative gap proposal for a TTFE extension provides the Commission with sufficient time to resolve the

⁷ To the best of the NYSTA Smaller ILECs' understanding, the amount of support for this alternative gap proposal is unknown. While the NYSTA Smaller ILECs fully support the Joint Motion to both extend the TTFE under the terms identified in it and to temporarily suspend this proceeding, this alternative proposal *solely* relates to the gap in TTFE funding and should be considered *only* if the Commission decides not to approve the Joint Motion.

Phase II issues. By meeting the needs for an extension of the TTFE as identified in the *Transition Fund Gap Notice* and doing so in a manner that serves and advances the public interest in continuing universal service within the rural areas of New York served by the NYSTA Smaller ILEC members, this alternative could be adopted by the Commission although, again, the best and preferred course is the adoption of the Joint Motion.

V. CONCLUSION.

As demonstrated above, the Joint Motion builds upon prior Commission actions and policies related to universal service objectives in the State of New York as well as the TTFE Order. The Joint Motion advances the efficient conduct of this proceeding by providing an outline and time frame for future events. Likewise, the Joint Motion advances prior Commission actions and policies by continuing the TTFE and supporting universal service.

Accordingly, the NYSTA Smaller ILEC Members respectfully requests that the Commission adopt the Joint Motion in its entirety and continue the TTFE in order that it can be implemented as soon as is reasonably practicable. Only in the event Joint Motion is not adopted by the Commission, the NYSTA Smaller ILECs respectfully request that their alternative gap proposal be adopted.

Respectfully submitted,

The NYSTA Smaller ILEC Members

By:



Thomas J. Moorman
Woods & Aitken LLP
2154 Wisconsin Ave., N.W., Suite 200
Washington, D.C. 20007
Tel. (202) 944-9502
tmoorman@woodsaitken.com

James A. Overcash, NE Bar No. 18627
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508
(402) 437-8500
jovercash@woodsaitken.com

Date: August 24, 2011

Their Attorneys