



Public Utility Law Project of New York, Inc.

194 Washington Avenue, Suite 420
Albany, NY 12210
Website: www.pulp.tc

Phone: (518) 449-3375
Fax: (518) 449-1769
E-Mail: info@pulp.tc

November 20, 2009

Hon. Jaclyn A. Brillling
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 09-M-0527

Dear Secretary Brillling:

Enclosed please find the Comments of Public Utility Law Project of New York, Inc. in the above-named proceeding. Copies of these Comments are being distributed to the Active Parties List.

If you have any questions, please let me know.

Sincerely,


Louis Manuta
Senior Attorney

**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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**COMMENTS
OF
PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC.**

Introduction

In his November 9, 2009 *Procedural Ruling*,¹ Administrative Law Judge Howard A. Jack directed “Department of Public Service Staff to produce a current factual status report on the availability and extent of deployment of various platforms, technologies, and opportunities in the telecommunications industry and provision of telecommunications services in New York.”² Judge Jack also requested that Department Staff, by November 16, 2009, provide a list of the subjects to be included in the report and the date the report would be completed.³ In addition, the *Procedural Ruling* enumerated the topics open for discussion under Phase I of this proceeding regarding the Transition Fund.⁴ The Active Parties to this proceeding were provided with an

¹ *Procedural Ruling*, Proceeding to Examine Issues Related to a Universal Service Fund, Case 09-M-0527 (Issued November 9, 2009). (“*Procedural Ruling*”)

² *Id.*, at p. 1.

³ *Id.*

⁴ *Id.*, at p. 2.

opportunity to comment on the subjects proposed by Department Staff as well as the selected Phase I topics.

Department Staff timely released its document,⁵ indicating its intention to include the following matters in its status report:

- (a) Identify and count New York State residences for which no wireless service is available in the service areas of all New York State Incumbent Local Exchange Carriers (“ILECs”);
- (b) Identify and count New York State residences for which no cable modem Internet access is available in the service areas of all New York State ILECs; and
- (c) Identify and count New York State residences for which no wireless service or cable modem Internet access is available in the service areas of all New York State ILECs.⁶

Department Staff anticipates completion of its report by December 31, 2009, noting that this date depends on whether wireless and cable television companies “transmit such information in a timely manner for the analysis.”⁷

The Public Utility Law Project of New York, Inc. (“PULP”), an active party to this proceeding, hereby submits comments on both the status report topics and the Phase I topics provided by Judge Jack.

Background

PULP is a nonprofit civil legal services organization founded in 1981 which represents the interests of low and fixed income residential utility consumers before

⁵ Letter from Maureen J. McCauley, Assistant Counsel New York State Department of Public Service, to Judge Howard Jack, Administrative Law Judge New York State Public Service Commission, Case 09-M-0527, dated November 16, 2009.

⁶ *Id.*, at p. 1.

⁷ *Id.* at p. 2.

federal and state agencies and courts in matters affecting affordability, universal service, and consumer protection. Accordingly, issues affecting both the Transition Fund and the Targeted Accessibility Fund (“TAF”), which address support for high cost areas and low income customers, respectively, run to the core of PULP’s purpose. While PULP supports the Department Staff’s decision to include the matters identified above and with Judge Jack’s Phase I topics regarding the Transition Fund, we believe more can and should be included at this critical point in this vital proceeding.

Comments

Certainly an analysis of the availability of telecommunications services in New York State requires an examination of where wireless and cable modem service is available. However, there is no indication as to why Department Staff did not also include the availability of Digital Subscriber Line (“DSL”) and fiber optic service (such as Verizon’s FiOS) offered by local exchange carriers (“LECs”) in its discussions.

DSL and fiber optics deployment rates vary significantly from region to region of the state and Department Staff can not assume that just because telephone service is available at a particular household by a LEC that DSL service is available there as well. In fact, some of the smaller Independent LECs may report close to ubiquitous DSL coverage in their telephone service operating territories, while other LECs may have large gaps in DSL availability due to, among other things, the geographic limitations of the service. However, identifying DSL deployment is a necessary component of Judge Jack’s requested analysis of “the availability and extent of deployment of various platforms, technologies, and opportunities in the telecommunications industry and

provision of telecommunications services in New York.” The intermodal competition offered by wireless carriers and cable Voice over Internet Protocol (“VoIP”) providers is undoubtedly important to measure, but a complete picture requires inclusion of “nomadic” VoIP providers, which ride on top of cable modem service or DSL connections, as well as fiber optics deployment. Thus, the entire market can not be adequately analyzed without inclusion of DSL and FiOS.

As a result, PULP suggests the following additional items be included on Department Staff’s list:

Identify and count New York State residences for which no Digital Subscriber Line access is available in the service areas of all New York State ILECs.

Identify and count New York State residences for which no fiber optics lines, such as Verizon’s FiOS, are available in the service areas of all New York State ILECs.

Moreover, Judge Jack outlined a list of topics to be addressed for the Phase I discussion of the Transition Fund. He went on to write in his *Procedural Ruling* that “Issues to be addressed in Phase II of this proceeding, relating to the Targeted Accessibility Fund, will be determined at a later date if necessary.”⁸

PULP has two concerns with this statement. First, if consideration of the Transition Fund can not be resolved in a collaborative and hearings and briefs are necessitated, Phase I, as envisioned by Judge Jack, may not be complete until towards the end of 2010. Should this occur, it is not anticipated that a Phase II discussion of TAF will even begin until 2011. Optimistically, even if a collaborative can resolve the Transition Fund issues, commencement of Phase II may be at least nine months away.

⁸ *Procedural Ruling*, at p. 3.

As a member of the TAF Board of Directors, PULP is well aware of the ever increasing dire financial situation facing TAF and the services it supports (Lifeline, E-911 access, and the relay service for the deaf). This information has been shared with the parties to this proceeding via a Department Staff Report released on October 2, 2009.⁹

According to this report, in the past 10 years, the average monthly contributions to TAF have dropped by over \$200,000 a month, while the assessment ratio has doubled from .005% to .01%. Moreover, in 1999, the total assessable revenue was \$7.2 billion and in 2008 was \$4.5 billion. During this same time period, the demand for TAF resources to support Lifeline (by far, the largest percentage of TAF) has jumped from \$19.5 million to \$28.5 million a year. This demand is only going to accelerate as carrier rate increases are approved and rates charged to Lifeline customers continue to be frozen. Consideration of how to begin to address these issues regarding TAF's solvency and assessment ratio should not be delayed at all, especially not for a year or more. Further, the population eligible for Lifeline is growing and prompt reforms are needed to ensure that Lifeline will continue to be available to all who are eligible.¹⁰


On top of this, Judge Jack states that these Phase II issues will be addressed "at a later date if necessary." PULP emphatically states that consideration of TAF's financial issues is, indeed, necessary. The issues facing the Transition Fund and TAF are different, but both require urgent attention. We hereby request that consideration of the future of both funds be considered simultaneously and that the discussions begin immediately.

⁹ *Targeted Accessibility Fund Report by Department of Public Service Staff, Case 09-M-0527, October 2, 2009.*

¹⁰ Using Supplemental Nutrition Assistance Program (a/k/a Food Stamps) data from the state Office of Temporary and Disability Assistance, there are over 1.3 million households eligible for Lifeline in New York State, but only 300,000 subscribe. More information regarding the declining Lifeline enrollment is available in the White Paper *Assistance Only For Some – Twenty-Four Years of New York State's Lifeline Discount Telephone Program* (http://www.pulp.tc/LM_Lifeline_White_Paper_-_09-11-09.pdf).

We appreciate the opportunity to share our concerns.

Respectfully Submitted,


Gerald Norlander, Executive Director
Louis Manuta, Senior Attorney
Public Utility Law Project of New York, Inc.
194 Washington Avenue, Suite 420
Albany, New York 12210
518-449-3375
www.pulp.tc

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