

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 09-M-0527 - Proceeding to Examine Issues Related to a  
Universal Service Fund.

PROCEDURAL RULING

(Issued November 9, 2009)

HOWARD A. JACK, Administrative Law Judge:

I have reviewed Judge Stein's October 30, 2009, letter reporting on her discussions with parties on the scope of this proceeding and presenting a straw proposal for a process to focus this proceeding and move it along. I have had further discussions with Judge Stein about her recommendations, as well. Based upon her letter and our discussions, I have made the following determinations about procedures and scheduling.

First, as recommended, I call upon 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. Consistent with the parties' consensus preference for working collaboratively in this proceeding, I urge all parties to cooperate with Staff in that effort, including providing relevant information. I request that as soon as possible, but no later than 4:30 p.m. on Monday, November 16, 2009, Staff notify all active parties, Judge Stein, and me of the specific subjects that Staff anticipates addressing in the report and the date by which it expects to be able to file the report. Any active party that wishes to submit comments on the specific subjects Staff proposes to include in the report (whether additions or deletions) must do so by 4:30 p.m., Friday, November 20, 2009.

Second, on the basis of the Transition Fund report that Staff filed on October 2, 2009, I find that the monies in the

Transition Fund may be exhausted within 18 months.<sup>1</sup> Accordingly, and given the potential complexity of issues related to the Targeted Accessibility Fund, it is prudent to begin this proceeding, as recommended, with a Phase I that focuses on issues related to the Transition Fund and its exhaustion. Phase I will address at least the following issues:

1. Should a fund be established to succeed the Transition Fund?
2. If a successor fund is established:
  - a. What are the purposes of the fund?
  - b. Who is eligible for the fund (e.g., pool companies only, non-pool LECs, CLECs, wireless companies, etc.)?
  - c. What are the eligibility requirements for competitive companies (e.g., federal eligible telecommunications carrier guidelines or other criteria)?
  - d. Who would contribute to the fund (e.g., wireline companies, wireless companies, Voice over Internet Protocol provider companies, cable companies)?
  - e. How would contribution levels be calculated (e.g., Targeted Accessibility Fund formula or some modified or alternative approach)?
  - f. Who should administer the fund (e.g., some successor in interest of the New York Intrastate Access Settlement Pool, Inc., the Targeted Accessibility Fund of New York, Inc., some other entity)?
  - g. Should the fund be reevaluated periodically or sunset after a number of years?
  - h. Should the fund be capped? If so, at what level?
3. Should a benchmark rate be established? If so, at what rate level (e.g., comparable Verizon rate, some percentage above or below the Verizon rate, some other method)?

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<sup>1</sup> See Case 02-C-0595, New York Intrastate Access Settlement Pool, Inc., Order Adopting Comprehensive Plan (issued December 23, 2003), attached "Comprehensive Plan - Phase II," ¶10(c).

Any active party that believes there are additional issues--not subsumed within those stated above--that should be included in Phase I may file a statement of what those issues are and why they should be included by 4:30 p.m. on Friday, November 20, 2009. If the party is also filing comments on the issues to be addressed in the Staff factual report mentioned above, the statement on additional issues must be combined in the same document. (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.)

Third, I will convene a teleconference on Tuesday, December 1, 2009, at 10:00 a.m. to discuss the Staff factual status report and issues proposed to be covered in it, the date for its submission, and any proposed additional Phase I issues not subsumed within those stated above. Any active party that wishes to participate in the teleconference must notify my assistant, Jean Simmons, at [jean\\_simmons@dps.state.ny.us](mailto:jean_simmons@dps.state.ny.us), of that desire, and the number of lines the party requests be reserved, no later than 4:30 p.m. on Tuesday, November 24, 2009. Ms. Simmons will provide additional information on how to participate in the teleconference to the interested active parties by e-mail as soon as practical after the close of that notice period.

Fourth, although I remain optimistic about achieving a collaborative resolution of the issues,<sup>2</sup> in order to be prepared for a litigated alternative, the following schedule will apply for Phase I of this proceeding:

All parties file cases in chief	March 5, 2010
All parties file responsive testimony	April 2, 2010
Hearings	April 19 - May 7, 2010
Initial trial briefs filed	June 4, 2010
Reply trial briefs filed	June 18, 2010

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<sup>2</sup> Judge Stein anticipates setting a schedule for the Phase I collaboration effort after the date for filing of Staff's factual report has been determined.

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Further procedures and scheduling for this case will be the subject of future rulings.

(SIGNED)

HOWARD A. JACK