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Honorable Howard Jack
Administrative Law Judge
New York State Public Service Commission
3 Empire State Plaza
Albany, New York 12223

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

Dear Judge Jack,

This letter is in response to your Procedural Ruling issued on November 9, 2009 in Case 09-M-0527 - *Proceeding to Examine Issues Related to a Universal Service Fund* ("Proceeding") and is filed on behalf of the Cable Telecommunications Association of New York, Inc. ("CTANY").

Factual Analysis

With regard to the list of items to be included in the factual analysis as outlined in Staff's letter dated November 16, 2009, CTANY requests confirmation that the factual review set forth in Staff's proposal relates only to the Phase I issues, namely those related to the Transition Fund. CTANY strongly requests that if a Phase II is begun, parties should have an opportunity at that time to discuss additional factual inquiries.

CTANY respectfully suggests that the timeframe proposed by Staff is inadequate to develop any meaningful data with respect to either the items it lays out or the items suggested below. In addition, the data review that should precede and inform a decision regarding whether to institute a Phase II will by its nature be even broader and deserves adequate time to complete after the completion of Phase I. With respect to Phase I, we encourage a timeframe and factual review that creates a full and complete record that would aid Staff, the parties, and you in assessing the issues in Phase I (as described more fully below).

With respect to the Phase I status report to be developed by Staff, CTANY has the following proposed additions:

- ❖ Staff's Phase I factual review should be limited to determining the extent of voice competition in those areas that
 - have a provider that is already receiving money from the Transition Fund or that has a request pending, and
 - areas in New York designated by the Federal Communications Commission ("FCC") as high cost.
- ❖ Staff's factual review should determine which high cost geographic areas served by recipients of the Transition Fund are unserved by facilities-based competitors of any kind, including wireless competitors, Broadband over Power Lines ("BPL"), facilities-based Competitive Local Exchange Carriers ("CLECs"), VoIP providers, FiOS, and satellite providers.
- ❖ In determining the availability of services, Staff should view a service as "available" when customers have physical access to that service.
- ❖ Staff's report lists various sources for obtaining information and indicates that it will rely on information requested from wireless and cable modem providers. CTANY respectfully suggests that Staff review FCC statistical reports, available Armis data, and request information from wireline providers in the relevant geographic areas and from Incumbent Local Exchange Carriers ("ILECs") that are presently eligible to receive funding.
- ❖ Staff's report should review and list all of the subsidies currently available to ILECs who participate in the existing Transition Fund, including federal high cost subsidies and broadband stimulus support.
- ❖ Staff's report should review the finances, including revenue from unregulated services, of ILECs that receive Transition funding.

Phase I Scope

As for the scope of Phase I, CTANY urges you to limit the scope to those issues directly related to the Transition Fund only and to reject recommendations seeking consideration of any issues that should more properly be included in the Phase II review.

To further focus the scope of the Phase I review to the Transition Fund, CTANY recommends the following list of items:

- ❖ Is the Transition Fund necessary in light of other non-subsidized wireline and wireless competitive alternatives?
- ❖ Could limiting eligibility for the Transition Fund to ILECs in areas unserved by any other facilities-based competitors, wireless carriers or BPL push back the Transition Fund exhaust date?
- ❖ Assuming any Transition Fund should continue, what jurisdictional limitations exist with respect to which carriers can be assessed for Transition Fund support?
- ❖ Assuming any Transition Fund should continue, should support be limited to specific, high cost geographic areas, as opposed to average ILEC costs?

- ❖ Assuming any Transition Fund should continue, should all recipients' revenues be considered when determining their need for subsidies, including revenues from deregulated and unregulated services?
- ❖ Should better financial information be provided by ILECs in rate cases where an ILEC is applying for Transition Fund support?
- ❖ Should a deeper examination of ILEC finances occur for those continuing to receive funds?
- ❖ What revenue and subsidization sources should be considered when determining an ILECs' eligibility to receive from the Transition Fund?
- ❖ What non-subsidized wireline and/or wireless providers provide service in the relevant geographic areas?

Finally, CTANY assumes you did not intend these replies to address procedural, scoping, and jurisdictional concerns implicated in this proceeding and reserves its right to do so at an appropriate stage. In particular, it should be noted that several parties at the Procedural Conference expressed their concern that there are issues regarding the initiation of this Proceeding due to the lack of Commission action. CTANY's active participation in this proceeding should not be construed as its conceding this issue or any other legal or procedural issues.

On behalf of CTANY:



Maureen O. Helmer