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April 9, 2012

Filed electronically Via ECFS

Marlene H. Dortch
Office of Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

Re: In the Matter of United States Telecom Association Petition for Forbearance
from Certain Telecommunications Regulations, WC Docket No. 12-61.

Dear Ms. Dortch:

The New York State Public Service Commission (NYPSC) submits these comments in response to the Federal Communication Commission's (FCC) Public Notice of the United States Telecom Association's (USTA) March 8, 2012 petition requesting forbearance from a number of FCC regulations.¹ The USTA petition characterizes these regulations as "legacies" of an outdated telecommunications industry. While the NYPSC does not oppose the bulk of USTA's petition, we are concerned that one component of USTA's request may have unintended consequences on low income customers in New York and, therefore, the NYPSC cannot support, at this time, the elimination of the service discontinuance requirements established in 47 U.S.C. §214 of the Telecommunications Act of 1996 (the Act). These requirements insure that the

¹ Those regulations run the gamut, from equal access scripting and open network architecture and comparable efficient interconnection requirements to cost allocation and uniform system of accounting rules. The NYPSC's comments are focused on only one narrow component of USTA's request, service discontinuation approval requirements.

public is provided adequate notice and opportunity to be heard, should a carrier decide to discontinue service over its copper network and transition to broadband. At this point, it is not clear that the service providers would offer Lifeline² service to customers over a broadband network. Therefore, we urge the FCC to consider alternatives to USTA's request that would protect low income residents from the potential loss of Lifeline services while still providing USTA relief from Section 214 requirements.

If no alternative is implemented that protects low income customers, then FCC should not grant forbearance of this regulation. USTA's request in its current form does not satisfy the FCC's three-prong test for forbearance because that action would not serve the public interest. Pursuant to 47 U.S.C. §160 (a), the FCC shall forbear from applying to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, any statutory provision or regulation if it determines that: (1) enforcement is not necessary "to ensure that the charges, practices, classifications, or regulations" for the carrier or service in question "are just and reasonable and are not unjustly or unreasonably discriminatory"; (2) enforcement is not necessary "for the protection of consumers"; and (3) forbearance is consistent with the public interest. USTA claims that, its request to eliminate the service discontinuance approval requirements³ satisfies the FCC's three-prong test. The NYPSC does not agree for the following reasons.

Under 47 U.S.C. §214, "...no carrier shall discontinue, reduce or impair service to a community, or a part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby. . . ." Following a request to discontinue service under this Section, the FCC issues a notice to the public for comment on the potential discontinuance⁴ and

² Lifeline is a subsidy provided to low income customers to mitigate the cost of their telephone service.

³ These requirements are contained in 47 U.S.C. § 214 and 47 C.F.R. §§ 63.60, 63.61, 63.62, 63.63, 63.71(a)(5), 63.71(c) and 63.90(a)(8).

⁴ Under the FCC's rules, an application to discontinue service is automatically granted 31 or 60 days after a request is submitted by a nondominant carrier or dominant carrier, respectively, "unless the Commission has notified the applicant that the grant will not be automatically effective" (47 C.F.R. § 63.71(c)). The rules provide that a discontinuance application is not deemed filed until "the date the Commission releases public notice of the filing." Id.

New York and other interested parties have an opportunity to analyze the impact of the request on its citizens and submit comments if it believes the request is likely to result in adverse consequences. Under USTA's petition, if a provider makes broadband⁵ service available and proposes to discontinue preexisting switched access service, the provider is required only to give notice of the service discontinuance to affected customers and the FCC. Public notice and FCC prior approval would not be required. USTA's proposal may result in serious implications because providers in New York could potentially discontinue their regulated Lifeline service offerings⁶ to low income customers, without prior notice and an opportunity for interested parties to evaluate the consequences of this action. Lifeline customers may not have another option for affordable telephone service; and discontinuance of regulated Lifeline service offerings may adversely affect their access to telecommunications services and to emergency services. This is so, because, in New York, Lifeline service is tariffed and broadband carriers are not certified as Lifeline providers subject to the NYPSC's tariff requirements under Public Service Law §92. USTA's proposal does not serve the public interest and, therefore, fails the second and third prongs of the FCC's forbearance test.

Proponents for forbearance may argue that wireless Lifeline offerings supersede the need for wireline offerings. This is not a reasonable argument, because wireless service is not universally available in New York and, in other cases, it is not a workable alternative. In some cases, where coverage maps indicate that wireless service is available, wireless carriers admit that they cannot ensure availability of service in all of the locations. In New York's Universal Service Fund proceeding, it was noted that: "The record evidence... leads to the inescapable conclusion that so many factors can affect the availability of wireless at any particular location at any particular time that the coverage maps themselves--on which the assessment of availability relies --must be deemed insufficiently credible to serve as a basis for a finding that service can truly be considered available at that location."⁷

⁵ Defined under USTA's petition as at least four megabits per second (Mbps) download and one Mbps upload.

⁶ In New York, Lifeline is a tariffed service and broadband carriers are not currently subject to the NYPSC's tariffing requirements under Public Service Law §92.

⁷ Case 09-M-0527, Proceeding to Examine Issues Related to a Universal Service Fund, Notice and Recommended Decision (issued January 4, 2012), p. 34.

Potential safety concerns may arise if wireless service providers are the only reliable Lifeline providers in an area, because of concerns relating to the reliability of wireless service. Given these reliability questions, customers may not have adequate access to emergency services. In a 2010 Verizon New York Inc. service quality order, the NYPSC concluded that “the unsatisfactory reliability of wireless signals in certain areas of the state and the infirmities of wireless 911 emergency service . . . render the service as still not an adequate substitute for wireline service for all customers at this time.”⁸ The situation has not materially changed since 2010. Access to emergency services is a critical need for all. To restrict the choices for lower income residents to less reliable connections does not meet the test for equitable access to emergency services.

Accordingly, it is necessary for prior evaluation to continue to take place in areas where no available and reliable alternatives exist to the Lifeline service offered by a wireline provider. The availability of reliable, low cost services in all areas for vulnerable populations is the kind of public policy interest that deserves the highest level of scrutiny. Any proposal to discontinue service should, therefore, be subject to FCC scrutiny and notice and comment proceedings in which interested stakeholders can participate and consequences of service discontinuances are examined, rather than allowing them to go into effect without prior approval.

The NYPSC is committed to an evolving regulatory environment where regulation is limited to those services and areas that require it. Ensuring continued, reliable access for low income customers to Lifeline services is one such area.

Respectfully submitted,



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⁸ Case 10-C-0202, Verizon Service Quality Improvement Plan, Order Adopting Verizon New York Inc.’s Revised Service Quality Improvement Plan with Modifications (issued December 17, 2010), p. 15.