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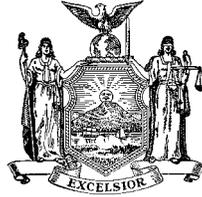
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September 21, 2005

Hon. Jeffrey Stockholm
Administrative Law Judge
3 Empire State Plaza
Albany, NY 12223-1350

Re: Case 05-C-0616 – Proceeding on Motion of the Commission to Examine
Issues Related to the Transition to Intermodal Competition
in the Provision of Telecommunications Services

Dear Judge Stockholm:

Enclosed is a copy of Telecommunications in New York: Competition and Consumer Protection, the staff white paper required to be served today by the August 29, 2005 Procedural Ruling in the captioned case.

Sincerely,

s/ Peter Catalano

Peter Catalano
Dakin Lecakes

enc.

c: parties

**STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE**

Case 05-C-0616 - Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services

**Telecommunications in New York:
Competition and Consumer Protection**

**A White Paper Prepared by the
State of New York
Department of Public Service Staff**

September 21, 2005

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I. Executive Summary

In the late 1970's and early 1980's, the New York Public Service Commission (the Commission) led the nation in enabling competitive provision of formerly monopolistic telecommunications services, including terminal equipment, inside wire, toll and payphones. In the late 1980's, the Commission examined how it might pursue further competition in the telecommunications markets, particularly the private line market.¹ Later, in the mid-1990's, the Commission considered how best to enable competition in the market for local exchange services.² Now, in light of developments in the law, in technologies, and in intermodal competition, the Commission has initiated a third competition proceeding to consider what regulatory changes are appropriate in the current environment.³

The Commission has pursued competitive telecommunications markets because competition spurs innovation, promotes investment, encourages efficiency, reduces prices, and maximizes customer choice. Competition also disciplines providers' behavior, thereby reducing the need for governmental regulation. Indeed, some regulations, particularly when applied asymmetrically to various competitors, can be detrimental to the necessary and natural ebb and flow of competition. Consequently, a purpose of this proceeding is to identify and, when possible, eliminate harmful regulatory asymmetries. We expect competition in all telecommunications markets ultimately will be sufficient to allow the Commission to reduce its regulation to the bare minimum needed to ensure public health and safety, but we are not yet at a point where the Commission can rely solely on market forces to accomplish its goals.

¹ Case 29469, Proceeding on Motion of the Commission to Review Regulatory Policies for Segments of the Telecommunications Industry Subject to Competition, Opinion No. 89-12 (issued May 16, 1989) (Competition I).

² Case 94-C-0095, Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market, Opinion No. 96-13 (issued May 22, 1996) (Competition II).

³ Case 05-C-0616, Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services, Order Instituting Proceeding and Requesting Comments (issued June 29, 2005) (Competition III Order Initiating Proceeding).

Nevertheless, we recognize that significant changes continue to take place in the telecommunications marketplace, requiring the Commission to take further transitional actions now to ensure all providers have a fair opportunity to compete.

Throughout this transition to competitive telecommunications markets, the Commission has established and followed a set of basic principles, which continue to guide us. In the first Competition Proceeding⁴, the Commission determined to pursue competition in all telecommunications markets, while observing the following principles:

- The Commission's commitment to universal affordable telephone service for all New Yorkers must remain undiminished.
- High service quality must be maintained.
- An adequate forum for resolving consumer concerns must continue to exist.
- Rate shock to individual customer classes or groups must be avoided.
- Deregulation must not be the first step toward unregulated monopoly or near monopoly.
- The ability to re-regulate if any of the above conditions are not met must be maintained.

Later, in its order addressing the development of local exchange competition in 1996⁵, the Commission added that:

- The goal of ensuring the provision of quality telecommunications services at reasonable rates is primary.
- Where feasible, competition is the most efficient way by which the primary goal may be achieved.
- Regulation should reflect market conditions.
- Providers in like circumstances should be subject to like regulation.

⁴ Competition I Opinion, pp. 5-6.

⁵ Competition II Opinion, pp. 3-5.

These principles remain appropriate guides to our analysis of and response to current market circumstances.

Even a casual examination reveals that telecommunications markets are considerably different today than they were even a few years ago. Many people carry cell phones and/or wireless personal digital assistants to maintain instant telecommunications capabilities. Some, particularly younger consumers, abandon wireline service altogether. In addition, high-speed internet access, e-mail, instant messaging, and VoIP expand our telecommunications options, competing directly and indirectly with traditional telephone services. Instant messaging migrates from text to voice; internet portals acquire the capability to offer telephone services; wireless and internet based services are increasingly insensitive to time and distance, prompting consumers to substitute them for traditional toll services. Businesses seeking efficiency are increasingly combining voice and data communications onto a single (IP-based) platform. Plain Old Telephone Service (POTS) won't mean a wireline telephone much longer.

While a good portion of this paper will necessarily focus on changes which primarily affect how the Commission regulates incumbent local exchange carriers (ILECs), we would be remiss in failing to emphasize the fundamental benefits this competitive marketplace currently provides, and will increasingly provide, to New Yorkers. The thousands of customers switching monthly from incumbents to competitive intermodal providers do so to obtain savings, innovative service offerings and other value added services. These benefits would be diminished if the Commission were to fail to critically examine and attempt to mitigate the costs of regulatory asymmetries in place in the existing market structure.

Further, to ensure the continued provision of universal basic service, we need to make sure that the public switched telephone network (PSTN) is preserved and made more reliable as a critical component of our economy, public health and safety. We also need to be mindful that the financial health of the incumbent network providers is no longer easily assured as it has been in the past under monopoly regulation. Therefore, it follows that providing the ILECs more freedom, including pricing flexibility,⁶ is an appropriate step for the Commission to consider so as to increase the possibility that the incumbents will remain one of the competitive alternatives in the future and that the competitive marketplace is sustainable.

⁶ Pricing flexibility should not be associated solely with increasing prices; it is also intended to include the lowering of prices to retain customers with competitive options.

Most New Yorkers have the choice of a number of providers of services, including intermodal (e.g., wireless and cable) providers. Indeed, we estimate that 90% of New Yorkers have the choice of at least two intermodal alternatives to the incumbents' wireline networks.⁷ As a result, former monopoly providers are losing customers, lines, usage, and revenues. For example, Verizon New York Inc. (Verizon or Verizon New York) has lost almost 3 million access lines (about 25%) in the past five years. And, the pace of that loss is increasing -- from about 40,000 lines per month in early 2004 to about 87,000 per month during the second quarter of 2005, and to about 94,000 per month in the most recent three months (June-August 2005). Over this period, Verizon's annual local service revenues have declined by nearly \$1 billion. Frontier of Rochester has lost about 23% of its access lines. These losses are not trivial and, with the growth of intermodal alternatives, are no longer offset, at least in part, by increasing wholesale revenues. Further, we estimate the remaining independent ILECs collectively have lost almost 3.5% of their access lines in the past 5 years.⁸

We conclude that Verizon and Frontier Telephone of Rochester, Inc. (Frontier of Rochester) not only face the potential of competition, as evidenced by the widespread presence of facilities-based competitors, but are actually experiencing real losses in market share and revenues. It is clear that the various forms of intermodal competition are undermining their ability to set rates in excess of relevant costs. This loss of monopoly market power both enables and requires the Commission to adapt its regulatory approach to provide them greater latitude to offer and price services free from regulatory constraint, just as their competitors do. Although the other incumbent LECs are also dealing with the effects of growing inter-modal competition,

⁷ We have developed a "competitive indicator" to gauge the number of alternative platforms available. This report uses the term "index", "TRO index" or "competitive index" to refer to the index developed by Staff and presented in our October 10, 2004 comments to the FCC. The term "competitive indicator" refers to a calculation of alternative platforms available to customers. The competitive indicator, while similar to the TRO index, represents a refinement more accurately depicting the competitive alternatives available.

⁸ There is a significant variance in access line losses. For example, Dunkirk and Fredonia lost 12% of its access lines over the past 5 years, while Hancock has lost only 1.4% of its access lines. Appendix C contains a list of access line losses for the independents.

as evidenced by decreasing access minutes,⁹ it is not clear that they all face sufficient direct competition to allow the Commission to grant them further pricing flexibility at this time.

While nearly all New Yorkers have choices to fill their telecommunications needs, some of these options are unavailable in some locations or may be inadequate substitutes for some critical customer segments. Although customers who subscribe to feature-rich packages may find several acceptable substitutes in the market, it is not clear that such meaningful choices are widely available to customers seeking only basic telecommunications needs. In such circumstances, our regulatory approach must continue to ensure the availability of affordable, high quality basic telecommunications capabilities, as the Commission's principles indicate.

Consistent with the Commission's well-established principles, we propose that remaining limits on Verizon and Frontier pricing of non-basic retail services be lifted. This should provide them significant freedom to respond competitively in the marketplace. To ensure that basic service customers remain protected across New York, we further propose that those companies be required to continue to offer a no frills basic service subject to a regulated statewide price cap of \$24.95. The carriers would be permitted to provide a comparable basic offering and to move their current basic rates to this cap over a three year period, with a maximum annual increase of \$5.00 per access line per month.

We are not confident that current market forces are sufficient to allow a similar relaxation of pricing regulations for all of the remaining independent ILECs at this time. However, we propose they be eligible for annual local service rate increases of the higher of \$5.00 per access line per month or 2.5%, up to the rate cap of the basic service offering of Verizon and Frontier of Rochester. Recognizing their need to reduce their dependence on revenue sources that are already being eroded by competitive conditions (e.g., access charges), we recommend local service rate increases be implemented in a revenue neutral manner, with offsetting reductions to intrastate access rates to the point that the intrastate access rates drop to the level of each company's interstate access rates, and recommend these revenue neutral local rate increases be reviewed in an expedited process. Local service rate increases up to the rate cap of the basic service offering would also be allowed to offset earnings deficiencies, but these increases would be allowed after a traditional rate case examination. We believe this approach would allow

⁹ Rural ILEC Initial Comments, Exhibit 5.

ILECs to move toward market-based prices, while preserving affordable basic service and avoiding rate shock. The Commission should also consider granting further pricing flexibility to individual companies that can show they face sufficient competition to justify that action.

The various providers of competing services are subject to different regulations and requirements, which may produce unfair competitive advantages or uneven consumer protections. Removing these regulatory asymmetries is a principal goal in this proceeding. While regulatory symmetry is a desirable goal, it may be necessary or reasonable to accept some asymmetries. Certainly if the public health and safety are at stake, if the costs of the asymmetry are *de minimis*, or when market forces appear inadequate to ensure important protections, it may be inappropriate or unnecessary to eliminate asymmetrical rules. And, in the areas of public safety, network reliability, and core consumer protections, governmental protections are appropriate no matter how much competition exists. Unfortunately, the Commission has uneven jurisdiction over various types of providers, making it more challenging to ensure a fair and level playing field. Nevertheless, as discussed below and in the Convergence Matrix, attached as Appendix B, we propose the Commission eliminate or streamline various non-economic regulations over time in an effort to achieve greater regulatory symmetry.

To protect the public health, safety, and welfare, continued monitoring of overall network reliability remains essential, even in an increasingly competitive environment. To the extent that the Commission currently does not have regulatory authority to impose rules and regulations on some providers, which compromises its ability to address public safety and other mandates, those providers should nonetheless be willing to provide any and all information necessary, (e.g., major service outage notification) on a proprietary basis where requested, to ensure that the citizens of New York are adequately protected and that vital information is available under any and all circumstances. Without this vital information from those providing the backbone facilities of the telecommunications network, we risk the possibility that one or more major networks will become vulnerable and therefore unreliable, possibly resulting in a network that can not continue to operate under extreme conditions, whether it be a natural event (e.g., a hurricane) or a manmade event (e.g. a terrorist attack). At the same time, we expect competition will increasingly force all providers to identify and meet consumers' service quality expectations. We propose eventually moving away from service quality standards toward a limited set of network reliability indicators as competition becomes more pervasive. We suggest a review of

service quality requirements be undertaken a year from now to determine whether we can safely remove certain service quality regulations. In the interim, we propose to continue our monitoring of service quality and network reliability in the current manner. This delay will allow us to evaluate service quality performance as competition grows in the local market. We envision developing a three-pronged reporting mechanism for facilities-based providers¹⁰ to determine the reliability of the network, including: 1. a quarterly measurement of Customer Trouble Report Rate; 2. a quarterly measurement of Mean-Time-To-Repair on customer trouble reports; and 3. an annual report of the reliability and resiliency of their networks, including short-term plans to further strengthen this aspect of a company's network. We plan to consult with providers and other interested parties to define how "network reliability" metrics would be measured and reported. Ultimately, this approach would reduce regulatory asymmetries, while preserving the Commission's ability to monitor and ensure fundamental network reliability.

We appreciate that the FCC requires all service providers to provide access to 911 and to comply with federal wiretap rules, ensuring consumer protections essential to the health and safety of all New Yorkers. In addition, we believe the availability of end-user blocking capability and telephone number blocking capability provide important safety protections and we seek comment on their availability to consumers of services provided via alternative platforms. There are a number of other consumer protections, such as slamming and cramming protections and access to the Statewide Telecommunications Relay Service that because of their important social components should continue. We commend those service providers that provide these consumer protections, and encourage all providers to continue to strengthen consumer protections. We propose that several non-critical consumer protection requirements currently applicable to wireline companies can be streamlined or eliminated, as identified in the Convergence Matrix in Appendix B, and that some should continue to apply only to wireline companies for the present time. We also seek comments on possible incentives, including a Consumer Report card program, that might encourage companies to voluntarily provide consumer protections.

In light of the efforts expended by state and federal regulators, as well as affected parties, to address level playing field issues as they relate to the provision of wholesale services in both

¹⁰ We use "providers" to mean both ILEC and other companies that provide voice services (VoIP, wireless, etc.).

competitive and non-competitive wholesale markets, we propose no changes to those wholesale interconnection requirements at this time. Most interconnection problems between two companies can be addressed through negotiations or the establishment of interconnection standards by the Commission. Under the Telecommunications Act of 1996 (Telecommunications Act or 1996 Act), competitors have the right to negotiate interconnection agreements that best represent the needs of their individual businesses, and may seek arbitration or mediation when such negotiations fail.¹¹ Companies also have the option to enter into commercial agreements.

The many processes the Commission has in place to deal with intercarrier relationships, including the Carrier Working Group, the Change Management process, the expedited dispute resolution (EDR) process for service affecting conditions, and Department of Public Service alternate dispute resolution services, have led to successful cooperative practices among the industry. They should be open to all intermodal competitors that wish to participate. We believe that all companies should be expected to provide customer service record information, timely and accurately, when requested by another service provider to perform customer migrations, as long as the customer gives permission. We recommend that all local service providers abide by the Commission-approved Migration Guidelines and the Mass Migration Guidelines.

Finally, we propose no changes to the Commission's existing universal service policies and regulations. The existing definition of basic service, as it relates to universal service funding mechanisms, remains appropriate for now. So, too, are the existing funding mechanisms, Targeted Accessibility Fund (TAF) and the Transition Fund. Ideally, all providers should be required to contribute to the TAF for funding of Lifeline, 911, Relay Services and Public Interest Payphones, so those services are funded in a competitively neutral manner. We seek comment on such a proposed requirement, as well as how it should be implemented.

Our proposals are only the next steps moving the Commission toward greater reliance on market forces, rather than regulation, to ensure the availability of affordable, high quality telecommunications services in New York. We anticipate taking additional steps in the future as the competitive market develops more fully. Within a year of the release of the Commission's order in this proceeding, we propose to review the extent of competition across New York by wire center. Along with other information, this review would employ the use of the "competitive

¹¹ 1996 Act, Section 252.

indicator" to determine which wire centers remain noncompetitive. Variances in intracompany performance between competitive and noncompetitive wire centers may suggest further streamlining (where variances are negligible). Alternatively if such variances are significant, relaxation of regulations may not be appropriate.

II. Introduction

In June 2005, the New York Public Service Commission initiated this proceeding to examine issues related to intermodal competition for the provision of telecommunications services.¹² This proceeding, like the Commission's previous reviews¹³ of its regulatory policies in light of the then emerging competitive market, was instituted to "conduct a broad review of [its] telecommunications policies, practices and rules in light of the fast changing telecommunications environment."¹⁴ The Commission provided an overview of the market changes and posed a series of questions/issues across five general areas:

Market Power and Regulatory Flexibility;
Universal Service;
Service Quality;
Consumer Protections; and,
Level Playing Field.

The concept of Staff submitting a white paper was discussed at a procedural conference of the parties held on July 11, 2005 and a subsequent ruling provided that the paper would be due on September 12, 2005.¹⁵ That date was subsequently extended, at our request, to September 21.¹⁶ To solicit industry, interested parties' and the public's views on the issues, the Commission invited parties to comment on the issues on August 15, 2005.¹⁷ Comments were received from

¹² Competition III Order Initiating Proceeding.

¹³ See Competition I and II Orders, supra.

¹⁴ Competition III Order Initiating Proceeding, p. 4.

¹⁵ Case 05-C-0616, supra, Procedural Ruling (issued July 13, 2005).

¹⁶ Case 05-C-0616, supra, Procedural Ruling (issued August 29, 2005).

¹⁷ Additionally, we are planning a series of Public Information Sessions and roundtables across the State. Case 05-C-0616, supra, Notice of Educational Forums and Public Statement Hearings on the Commissions Examination of Issues Related to the Competitive Provision of Telecommunications Service (issued September 2, 2005).

twenty-nine parties.¹⁸ In addition, we met with various industry representatives to discuss their views on the markets and their views on regulatory oversight in light of the changing market conditions.

This White Paper provides a general overview of the changing telecommunications market. It presents Staff's conclusions on the state of competition for telecommunication services in New York State. We considered the changes in the industry and parties' comments to develop proposals for changes that recognize and, to the extent applicable, endorse symmetrical oversight of telecommunication services. The proposals made in this report will protect customers, stimulate the telecommunications market in New York and reduce regulatory obstacles, allowing providers to compete in the marketplace, providing consumers quality telecommunication services and competitive alternatives. The White Paper provides our view of an appropriate regulatory regime for today's competitive telecommunications market.

The White Paper is organized as follows:

- I. Executive Summary** – provides an overview of the major findings, conclusions and recommendations of the report.
- II. Introduction** – provides an overview of the industry and the Commission's goals in instituting the proceeding.
- III. Market Power** – provides a framework for analyzing the level of competition in the State. The chapter further discusses the regulatory implications of alternative levels of competition and the need to continue oversight in areas of limited competitive alternatives.
- IV. Universal Service** – considers traditional regulatory issues (what constitutes basic service and whether it should be available to everyone).
- V. Service Quality** – reviews service quality regulations, including existing reporting requirements, and suggests how the regulation of service quality may change in a competitive environment.

¹⁸ A listing of parties that submitted comments and the acronyms that we may use to refer to them is included as Appendix A.

- VI. Consumer Protections** - reviews consumer protection issues and discusses the appropriate approach to these issues in a competitive environment.
- VII. Level Playing Field** – evaluates the symmetry of rules applied to incumbent carriers and their competitors. Included in this chapter are Staff's proposals associated with regulations contained in the Commission's released Convergence Matrix.¹⁹

¹⁹ The Convergence Matrix, released by the Commission on July 14, 2005 identifies the range of regulatory requirements that apply to telecommunications providers so as to highlight asymmetries, constraints and impediments that may need to be streamlined, relaxed or otherwise modified in view of the competitive environment.

III. Market Power and Regulatory Flexibility

Introduction

The Commission's order instituting this proceeding discussed the nature of regulation in a competitive environment and the status of competitive alternatives in the consumer market.²⁰ It also determined that the TRO index used by the Department in comments to the FCC "can be useful in determining how vulnerable the incumbents are to competition, and thus how widespread such competition is."²¹ The Commission asked for comments on various aspects of the TRO index and, more broadly, whether there "is sufficient actual and potential competition for retail telecommunications service . . . to prevent a firm from raising its price or providing poor quality service without suffering commensurate competitive losses?"²²

Competition will drive prices for telecommunication services closer to their cost, resulting in price reductions for some customers and price increases for others compared to today's rate structures. As competitors enter the market they seek to exploit arbitrage opportunities, where regulators have for several reasons (e.g., universal service) decided to deviate from cost-based pricing.

Over the last two decades the fixed cost nature of network technology has evolved to the point where competitors can now take advantage of regulatory rate structures to compete for local customers. Switching features, such as call waiting or call forwarding, involve virtually zero incremental cost to provision from today's switches, and can be provided at a minimal fee by market entrants, yet ILECs charge several dollars per feature. Distance is becoming increasingly irrelevant to the cost of calls due to advancements in fiber optic technology and the market is becoming increasingly distance insensitive, but ILECs still have local, toll and long distance tariffs. The deviation between cost and price may be most pronounced in the rural territories where a value-orientated pricing policy ascribed value according to the number of access lines in the local service territory, yet it is generally accepted that it is more costly to

²⁰ Competition III Order Initiating Proceeding, pp. 3-5.

²¹ Id., p. 8

²² Id., Appendix A, p. 2

service sparsely populated rural areas. This has resulted in the rather anomalous situation where customers in urban, low cost, highly populated areas are not only subsidizing their high cost lowly populated rural counterparts, but are also paying higher rates.

Above-cost pricing for luxury features and value-orientated pricing structures have heretofore enabled ILECs to provide universal service to New Yorkers. How big a role can be debated, but the strategies employed by competitors make clear that price often diverges from cost, and the impact on ILECs is significant. Such pricing by wireless, cable and VoIP directly threatens universal service, and is especially problematic given the general reluctance of those companies to accept any carrier of last resort-like responsibilities.

A more competitive pricing plan would likely increase rates for low end and rural users, while decreasing rates for high end and urban customers, to more closely align the pricing structure with the underlying cost structure of the network. The problem with such an approach is that it may drive the resulting rate to levels which also threaten universal service, and more fundamentally a regulatory solution is not the optimal response to a competitive environment. The challenge we face in this area is how to balance the incumbent company's need to compete so it has an opportunity to earn a reasonable return in an increasingly competitive market, while maintaining our commitment to New Yorkers for universal service.

This section discusses the status of competition in New York, the use of a competitive indicator, and the appropriate regulatory response to competition, after a summary of the history of this issue and the parties' comments.

Background

The Commission has spent the last twenty years constructing a telecommunications environment where true competition can flourish. Each Commission action built on prior decisions. The result is an atmosphere where competitive carriers are able to compete with the incumbent monopoly provider and end-users are receptive to such competition. The actions taken by the Commission have involved opening the once monopoly local exchange market to competition. The Commission has accomplished this in stages, chipping away the monopoly market through actions that balanced the interests of consumers and the marketplace. In 1985²³

²³ Prior to 1985 the Commission encouraged competition through a number of other actions, including, but not limited to actions related to inside wire and customer premise equipment.

with its decision to allow Teleport Communications (Teleport) to compete with Verizon²⁴ (then the New York Telephone Company) for the provision of local exchange private line services,²⁵ the Commission began to allow market forces to replace regulation. The Commission continued this trend, when in 1989 it required an incumbent LEC to provide competitors virtual collocation for the provision of private line services.²⁶ Two years later (1991) the Commission required that incumbent telephone companies provide competitors the physical collocation for the provision of private line services²⁷ and in 1992 the Commission further expanded its physical and virtual collocation requirements to include switched services.²⁸ The Commission ordered loop unbundling for Centrex and private branch exchange (PBX) services in 1991,²⁹ and New York was the first state in the nation to authorize local exchange service competition in 1993 when the Commission provided for the negotiation of carrier-to-carrier interconnection agreements between Verizon (then NYNEX) and competitive LECs, with the opportunity for mediation and

²⁴ Verizon New York Inc. was formerly New York Telephone Company, which also did business under the name NYNEX and Bell Atlantic New York. For simplicity, we refer to the company as Verizon throughout the White Paper.

²⁵ Case 28710, Bypass of Local Exchange or Toll Network, Opinion 85-16 (issued October 3, 1985).

²⁶ Case 29469, Proceeding on Motion of the Commission to Review Regulatory Policies for Segments of the Telecommunications Industry Subject to Competition (issued February 20, 1989).

²⁷ Cases 29469 et. al., Proceeding on Motion of the Commission to Review Regulatory Policies for Segments of the Telecommunications Industry Subject to Competition, Order Regarding OTIS II Compliance Filing (issued May 8, 1991).

²⁸ Case 28425, Access Charges, Opinion No. 92-13 (issued May 29, 1992).

²⁹ Cases 88-C-004, 88-C-063 and 91-C-1174, Review of Telecommunications Industry Interconnection Arrangements, Open Network Architecture and Comparably Efficient Interconnection, Opinion No. 91-24 (issued Nov. 25, 1991).

arbitration if necessary.³⁰ In 1995, the Commission required Verizon (then NYNEX) to offer a discount to resellers for residential service.³¹

In 1995, the Commission approved the Performance Regulatory Plan (PRP) for New York Telephone (NYT).³² The PRP covered a seven-year period beginning September 1, 1995 and ending August 31, 2002. It revised the regulatory framework for NYT in view of the dynamic changes that were taking place in the telecommunications industry and the emergence of competition facilitated by previous Commission actions. The PRP provided market-based incentives for investment by substantially deregulating the company's earnings and providing pricing flexibility for new competitive services. It established comprehensive incentives for improved service quality, and imposed commitments to freeze basic service rates, reduce toll and carrier access rates, limit rate increases for other existing services, and undertake various competitive enhancements and infrastructure improvements.

Efforts to encourage competition in the telecommunications markets were not limited to Verizon. In November, 1994, the Commission established the Open Market Plan (OMP)³³ for an initial term of seven years starting January 1, 1995, subject to further review by the end of the fifth year. The OMP gave Frontier (formerly Rochester Telephone Corporation) a degree of freedom from rate of return regulation, imposed no earnings cap, and authorized reorganization into a holding company arrangement. The OMP reduced and froze basic service rates, placed other noncompetitive services under indexed price caps and allowed competitive services to be flexibly priced. The term of the OMP was subsequently extended, but it expired at the end of 2004.

³⁰ Case 92-C-0665, New York Telephone Company, Performance-Based Incentive Regulatory Plan, Opinion No. 95-13 (issued August 16, 1995). (PRP Opinion)

³¹ Case 95-C-0657 Joint Complaint of AT&T Communications of New York, Inc., MCI Telecommunications Corporation, WorldCom, Inc. d/b/a LDDS WorldCom and the Empire Association of Long Distance Telephone Companies Against New York Telephone Company concerning Wholesale Provisioning of Local Exchange Service by New York Telephone Company and Sections of New York Telephone's Tariff No. 900, Order Considering Loop Resale and Ports Pricing (issued Nov. 1, 1995).

³² Case 92-C-0665, supra, Opinion No. 95-13.

³³ Cases 93-C-0103 et. al., and 93-C-0033, Petition of Rochester Telephone Corporation for Approval of Proposed Restructuring Plan, Opinion No. 94-25 (issued November 10, 1994).

As new companies began entering the local exchange market it became necessary to conduct a more systematic examination of the fundamental issues concerning local exchange competition. To that end, the Commission initiated the Competition II proceeding in 1994. At that time there were limited competitive alternatives, and competition in most areas of the state was negligible. The framework laid out in Competition II was intended to facilitate competitive choice and protect captive customers during the transition to fully competitive markets. The Commission concluded that the "existing pricing flexibility policies (a ceiling of no more than a 25% increase per annum, and a floor of relevant incremental costs) and individual case basis pricing (rates based on costs to an individual customer)"³⁴ were appropriate for dominant providers for competitive services during the transition period, and maintained those policies.

New York continued on its path to a competitive telecommunications market when it became the first state to approve a Regional Bell Operating Company's entry into the long distance market (Verizon's 271 approval) and conditioned that approval on Verizon's providing competitors access to its network.³⁵

In February, 2002, the Commission authorized the Verizon Incentive Plan (VIP),³⁶ a plan with a term of two years, beginning March 1, 2002, with a Service Quality Plan that extended an additional year, through February 28, 2005. The VIP afforded Verizon flexibility with respect to its rates, subject to specified conditions, exclusions, and limitations. General conditions included limiting the overall revenue increase associated with pricing flexibility in each Plan Year and conditioning pricing flexibility on compliance with the Service Quality Plan. Additional conditions placed on pricing flexibility included limiting increases in the charges for First Line Basic Service and excluding certain products and services from upward rate flexibility. The VIP expired in March 2004, and Verizon returned to the basic form of tariff regulation. Rates for

³⁴ Competition II Order, p. 29.

³⁵ CC Docket No. 99-295, Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996, Evaluation of the New York Public Service Commission (submitted October 19, 1996).

³⁶ Cases 00-C-1945 and 98-C-135, Proceeding to Consider Cost Recovery by Verizon, New York, Inc., and Modification of Performance Regulatory Plan, Order instituting Verizon Incentive Plan (issued February 27, 2002) (VIP Order).

basic services can be changed by a tariff filing, but only if Verizon complies with statutory notice and filing requirements, and justifies the change in either a notice and comment or trial-type evidentiary hearing.

Parties' Comments³⁷

The Competition III Order asked for comments concerning the role of the regulator in preventing market power abuses, given the increase of intermodal competition and choices for consumers. The Order solicited comments on the status of competition in the residential retail market, how to define competitive areas and non-competitive areas, and what measure of competition might be employed to determine the appropriateness of retail pricing flexibility. Comments were requested on the use of the Department's TRO index as a viable measure of competition in this proceeding, as well as the reasonableness of the weights assigned in the index.³⁸ The Commission also sought comment on the pricing strategies for non-competitive or less densely populated areas.

Status of Competition

There was a difference of opinion on the level of competition within New York and the appropriate regulatory response, if any, required to address this level of competition. Time Warner for example, while conceding that competition exists in some markets and in some geographic areas, urges the Commission to not view changes in technology and the increase in competition in certain markets as a sign that it is time to fully deregulate the ILECs. The New York State Assembly Standing Committee on Corporations, Authorities and Commissions (CCAC or the Committee), comments there is no practical and objective proof of competition. CCAC reserves much of its comments on market power issues until later in the proceeding, but requests an in depth study of the marketplace and competition be performed. The Consumer Protection Board (CPB) states the degree of substitutability of alternative services to wireline has

³⁷ Comments in this section will be summarized by the following three categories: Status of Competition, Market Analysis/Competitive Index, and Pricing Flexibility/Rates.

³⁸ For more detail on the Competitive Index, see Competition III Order Instituting Proceeding, pages 8-9.

been overstated. The US Department of Defense (DOD) does not agree that there is as much competition as described in the Commission's Order. DOD says that the Commission needs to consider market size and market power of the competitors relative to the incumbent. United Online, Inc. states that the Commission has mischaracterized the Verizon loss of retail lines to intermodal alternatives because many customers maintain their landline even if they have VoIP. Also, United Online, Inc. states that Verizon will recoup many of the resale and UNE-P lines due to the acquisition of MCI by Verizon and the change in FCC rules regarding UNE-P. The AG comments that the Commission should refrain from deregulation and that deregulation is premature. The AG asserts that the Commission first needs to assess the actual current state of New York's telecommunications markets and the realistic potential for their lasting competitive transformation. Cablevision agrees with other parties that Verizon currently retains significant market power and uses that power to inhibit competitors. Cablevision also comments that Verizon's merger with MCI will only increase Verizon's market power and lessen competitive options. Cablevision states that Staff's assessment understates the level of dominance that Verizon has in the local markets where it is the incumbent carrier; and that Verizon's dominant position creates both the ability and incentive to impede and delay entry or expansion of competitors.

Several parties, including NYSTA, New York Coalition of Rural Independent Telephone companies, Frontier Communications, and Verizon support the Commission's basic understanding of the current status of competitive alternatives in the consumer market. Both Verizon and Frontier claim the State as a whole is competitive. Verizon's view is that underlying broadband facilities are available ubiquitously in New York State.³⁹ Others take a less optimistic view of the landscape or suggest that competition is not as far along. For example, the Attorney General notes that:

These intermodal providers are not yet ubiquitously available, and thus do not currently serve as replacements for traditional wireline providers...Competition from voice over Internet protocol and cable telephone is only in its infancy. It remains to be seen whether these new intermodal entrants can garner

³⁹ Verizon's comments, p. 8.

sufficient market share to preclude incumbent providers from exercising market power.⁴⁰

Vonage and TW echo this view concluding in sum that it is premature to assume that broadband competition has reached the point where markets alone can be relied upon to ensure service quality in the broadband Internet access marketplace.⁴¹

With respect to business subscribers, large and small (including those the PSC has included in its consumer market), each of the intermodal alternatives falls short of satisfying the communication needs of virtually all businesses in New York state, either because they are not available at the geographic locations where business require connectivity, or because they do not represent functionally equivalent alternatives, or both.⁴²

The Rural ILECs state that, "the advent of the new era of competitive service alternatives within each of the Rural ILECs members' service areas requires change in portions of the asymmetrical aspects of current policies, practices, and rules."⁴³ The Coalition also comments that market forces and technology have created new competitive service offerings within the rural areas that the Coalition serves. NYSTA states that, "healthy, robust competition is here"⁴⁴ and therefore states it is time to allow all regulated incumbent LECs the ability to flexibly price their services, free from rate of return calculations. Frontier concurs with this characterization of the telecommunications market and states that, "well financed intermodal competitors, many of which are far larger than Frontier....are taking customers from the ILECs at a rate of more than

⁴⁰ AG's comments, p. 5

⁴¹ Vonage's comments, p. 10, Time Warner's comments, p. 5. "...the argument that sufficient intermodal competition exists to warrant sweeping deregulation in all segments of the market is contrary to market realities.

⁴² Conversent's comments, Appendix, Susan M. Gately, Lee L. Selwyn and Colin B. Weir Hold the Phone –Hold the Phone ! Debunking the Myth of Intermodal Alternatives for Business Telecom Users in New York, August 2005, p. 1.

⁴³ Coalition's comments, p. 1.

⁴⁴ NYSTA's comments, p. 2.

one million access lines per year."⁴⁵ Frontier goes on to say that this figure obviates Commission development of a competitive index. Frontier urges the Commission to redefine the marketplace: instead of the traditional definition of telecommunications, the range of services should fall under the heading of Network Enabled Services which would be composed of connectivity (last mile and intermediate bandwidth), communications (any electronic interactive correspondence between two or more parties), and content (any electronic transmission of information other than an interactive correspondence between individuals). Verizon states that consumers have a variety of alternatives available to them and those competitive offerings do not depend, as UNE-P and resale-based competition did, on the use of Verizon's network. Verizon also comments that three categories of alternative intermodal services—wireless, cable telephony, and third-party VoIP—currently exist as actual, actively marketed service offerings. Multiple providers have entered the market in each category. According to Verizon, "the demonstrated ability of all three classes of providers to grow their businesses shows that there are no barriers to entry or to the acquisition of new customers."⁴⁶

Many of the competitive local exchange companies (CLECs) comment that the residential and business markets should not be grouped together when examining the current state of competition, or in analyzing the level of competition going forward. The CLECs state that the business market is distinct from the residential market in that business customers, regardless of size, utilize telecommunications services differently than residential subscribers. Conversant also says that "mass market" should be defined as residential and single line business customers only, and that small to medium business is a separate market. These parties conclude that residential and business markets should be separated when measuring competitive alternatives. The CLECs also state that none of the intermodal service alternatives identified in the Commission's Order—cable or IP-enabled cable telephony, wireless, or VoIP - - are viable substitutes for wireline telephony for business customers. Cable telephony is generally not available to business users since these facilities are either not deployed to the locations where businesses operate or are too expensive to extend into buildings. The CLECs, Conversant, CPB, DOD, the AG, and the Cable Telecommunications Association also comment that wireless

⁴⁵ Frontier comments, p. 1.

⁴⁶ Verizon comments, p. 16.

service is a complementary, not substitution technology to wireline service for business customers and most residential customers. These parties also feel that VoIP service is not a viable intermodal competitive alternative for business users because VoIP is an application that can ride over broadband facilities and it does not represent facilities-based intermodal competition. Joint CLECs feel that for business customers, VoIP service faces various service quality, technical and operational hurdles, as well as lacks features critical to the operation of a business such as white pages directory listings.

The wireless parties including Verizon Wireless, Cingular, SPRINT, and Nextel Partners have commented that the wireless industry is highly competitive in New York and, therefore, the Commission should not impose new regulations for wireless carriers. Verizon Wireless argues that price competition in the wireless market has resulted in affordable rates as well as innovative pricing plans and these markets have accelerated even more by the introduction of local number portability for the wireless market.

Market Analysis/Competitive Index

Several parties took exception to the use of an index as presented in the Commission's Order. Specifically, the CLECs and Time Warner suggest that competitive analysis must be done on a market-by-market basis (separate analysis for business versus residential). The Committee prefers measuring actual retail availability of competitive services rather than relying on putative availability (e.g., homes passed). It also comments that it is not convinced that the criteria, assigned weights and underlying assumptions of the competitive index are reasonable. CPB has detailed, specific comments on the Staff's competitive analysis which it felt had numerous flaws. Specifically, CPB had the following comments: the manner in which the index incorporated FCC zip code level data substantially overstated the availability of cable telephone service and VoIP service in New York; the index erroneously assumed that cable telephone service is ubiquitously available in areas served by Time Warner or Cablevision; the index overstates UNE-L⁴⁷ based competition since CLECs have recently reduced their focus on residential customers; the weight of 1 for cable telephony is too high because it does not function when electrical power is out, making it unreliable for emergency situations; weight of 1 for

⁴⁷ UNE-L refers to the form of competition in which the CLEC uses its own facilities except for the loop which it leases from Verizon to serve customers.

UNE-L competitors is too high where service is provided to businesses only; the weight of .5 for wireless is too high because wireless is not a substitute for wireline service; the weight of .75 for VoIP telephone service substantially overstates the degree of substitutability between VoIP and wireline; and the competitive analysis is inferior to Staff's comprehensive merger-related competitive analysis, the latter being supported by well-cited facts.

PULP also takes exception to Staff's competitive index as presented in the Commission's June 29, 2005 Order. PULP does not agree that the competitive index should be done on a wire center by wire center basis. PULP says that there could be areas within the ILEC service territory associated with that wire center that may not have cable telephone service, VoIP service or wireless service. It claims that in those areas of the territory the index value for sufficient competition would not be present even if it were for the wire center in general. PULP also comments that the competitive index system only measures the existence of alternatives to ILEC service at the wire center level and that this is irrelevant to the individual customer who may live in the wire center but who may not have competitive alternatives available. PULP says that the existence of competition must be measured at the individual consumer level and that the Commission's methodology should be modified accordingly.

The Cable Telecommunications Association also has problems with the competitive index because the number of VoIP providers in a region does not mean that they all serve the same potential customers (e.g., residential vs. business, high profit area vs. low). Also, it claims as well that in Staff's analysis no consideration was placed on the actual number of consumers who choose these alternatives in addition to or in lieu of their present provider. Cablevision has similar problems with the index in that the index does not measure the level of competition, but just the presence or absence of competitors. Cablevision also commented that that the weights are based on a judgment as to the degree of substitutability and that the weights and criteria are arbitrary.

Neither Frontier nor Verizon agree with the formulaic or metric approach to a competitive index. Frontier asserts that numbers can be manipulated. Frontier proposes that if a competitive index is needed it should be composed of a competitive trigger at the rate center level if one or more of the following competitors are present: facilities based broadband, wireless, or CLEC delivering local dial tone over its own switching platform. Verizon also states that a metrics based approach should not be adopted because it ignores competitive realities;

understates the need for reform; and introduces new costs, burdens and inefficiencies all of which would be imposed disproportionately upon Verizon. Verizon comments that the analysis should not be done on a wire center basis but on a national basis because the marketing plans of Verizon's competitors are not wire center based. Also, wire centers do not define the technology that Verizon's competitors utilize. Specific problems that Verizon has regarding the competitive index are: it's based on too small a geographic base (by wire center); the index overemphasizes wireline competition; and Staff's numerical standard is essentially arbitrary.

NYSTA was also critical of the competitive index in its comments. NYSTA says that the index is only a snapshot of a point in time, and it fails to reflect the significant potential of cable voice telephony. According to NYSTA, the Commission's index also fails to recognize the simple fact that more providers equal more choices even if providers are utilizing the same technology. NYSTA also takes issue with any approach that focuses on an exchange-by-exchange analysis. It argues that not only is such an approach unwarranted, but it will lead to increased regulatory costs. NYSTA argues that adjustments to regulatory approaches must be done on a total company basis.

Two of the commentors were supportive of the competitive index. DOD agrees that there should be a procedure to measure the presence of competitive modes and agrees that the weights assigned are reasonable. However, DOD does not agree that the outcome of passing this test should be pricing flexibility for basic service. Mr. Bronner comments that the Commission should use the HHI Index and the Department's competitive index to study market concentration issues. Mr. Bronner comments that the Commission should conduct an analysis using the HHI for all telecommunications providers in New York and that the Department's index and weights assigned appear fair. Mr. Bronner recommends that the Commission update the parameters yearly as the market providers change the mix of services offered to consumers.

Pricing Flexibility

There was a mixed opinion by the parties as to whether the Commission should allow pricing flexibility as well as differences as to the degree of such flexibility afforded. Several parties, including PULP, do not agree with the concept of pricing flexibility. PULP concluded that pricing flexibility often limits the consumer's ability to receive and react to appropriate price signals. PULP says that with pricing flexibility, consumers experience price non-transparency in which the provider's price is difficult or impossible to determine prior to the actual transaction.

PULP also commented that pricing flexibility also promotes redlining by service providers. In other words, providers can choose to sell at a lower price where competition is strong and at a higher price where competition is weak. To avoid redlining, PULP recommends that the Commission require rates to be filed by all providers, with flexibility achieved through streamlining filing rules to dramatically shorten the time needed to file rate changes. The DOD commented that the outcome of a competitive index should not be pricing flexibility for basic service. DOD states that:

...if the incumbent wireline LEC is still providing the majority of service—that is less than 50% of residential and small business consumers are relying on cable, VoIP, and/or wireless as their only means of obtaining telecommunications service—there is not sufficient competition for the Commission to abandon surveillance of basic services.⁴⁸

DOD recommends that the Commission maintain price surveillance over basic services, and other services be de-tariffed, similar to what the FCC currently allows. CPB commented that dominant LECs should not be permitted to use market power to increase prices for basic services without a thorough PSC review of the reasonableness of such rate increases. CPB also says that customer bill impacts should be considered before moving rates toward underlying documented costs. Overall rate adjustments should be revenue neutral to the company in reflection that other above cost rates should then decline. The Assembly Committee on Corporations comments that without broad consensus on what constitutes a competitive area, price levels from competitive areas cannot serve as first level gauges of reasonableness for prices in non-competitive areas. CWA states that the Commission should continue to regulate the rates, terms, and conditions of basic telephone service, and recommends that the Commission open a proceeding to consider allowing ILECs to exercise pricing flexibility for non-basic services.

Time Warner did not take issue with the concept of pricing flexibility as a general concept, but recommends that if after a full examination certain market segments are deemed to be competitive, the Commission should authorize only limited pricing flexibility to keep dominant carriers from engaging in short-term, anti-competitive and/or predatory pricing practices. Time Warner further recommends that price floors be established on both standard offer and individual contracts. Mr. Bronner comments that the price levels from competitive

⁴⁸ DOD's comments, p. 6.

areas can serve as a first gauge of reasonableness for prices in non-competitive areas if the services are comparable. Mr. Bronner recommends the Commission use an HHI index and competitive index for specific geographic units to determine competitive versus non-competitive areas. The NY Coalition of Rural Independent Telephone Companies (The Coalition) believes that the entry of just one service provider, when coupled with the uncertainty of intercarrier compensation, is a sufficient basis to authorize pricing flexibility for rural telephone companies. The Coalition believes its members face competition regardless of whether that facilities-based competitor is actually present or not.

NYSTA, Frontier, and Verizon all make specific proposals regarding pricing flexibility and rate caps. NYSTA proposes the following: for non-basic services, current tariffs would be changed to set a minimum price at zero. For independent companies⁴⁹ the maximum price would be changed to an accepted statewide benchmark rate, while Verizon and Frontier would be free to adjust their rates as they see fit. Companies would continue to file informational rate schedules and would be free to have subscriber-specific pricing as long as the price is within the minimum/maximum range specified in the schedules. Upon 10 days notice, any company would be allowed to lower or raise its price range schedule; and bundled offerings would not be tariffed. Frontier and Verizon offer similar proposals, the details of which can be found in their respective filed comments.

Verizon proposes that the basic service offering to be “one single access line, access to local/toll calling, local usage (priced on a usage-sensitive, not flat-rated basis), TouchTone dialing, access to emergency services, access to directory services, access to Telecommunications Relay Services, directory listings and privacy protections – and would be priced pursuant to tariff at a recurring monthly charge for dial tone plus per-minute or per-call rates for local usage.”⁵⁰ Verizon did not suggest an appropriate rate for its proposed basic service offering.

Frontier proposes a similar basic service offering: a single line, un-featured residential service subject to a price cap mechanism established at the higher of the ILEC’s existing rate or

⁴⁹ All companies except Verizon and Frontier of Rochester.

⁵⁰ Verizon's comments, p. 35. fn 76, indicate Verizon's proposal would grandfather flat-rate service.

Verizon-New York's rate for similarly situated customers, plus or minus annual changes in the Consumer Price Index and a limited option of rate rebalancing. Frontier also stated that switched access charges may require some continued level of protection, and proposed a plan where intrastate switched access charges would be fixed at current levels, "with changes permitted only as a result of: (1) discretionary reductions in such charges by an individual ILEC; (2) a generic regulatory proceeding which alters such charges in a revenue neutral manner; (3) a revenue neutral rate rebalancing of such charges, with rebalancing occurring among various switched access elements or between switched access elements and other service prices, except that such rebalancing could not result in an increase in the price cap on basic single line residential telephone service of more than \$1 per calendar year; or (4) approval by the Commission of an individual ILEC's proposal to increase its aggregate switched access rates in a non-revenue neutral manner, with such approval occurring as a result of an expedited proceeding to be completed no more than 60 days after the ILEC files its complete case including any appropriate cost studies."⁵¹

NYSTA proposes even greater flexibility whereby Verizon and Frontier would be granted complete pricing freedom for all services, both basic and non-basic, on a minimum/maximum rate structure. Minimum prices for all companies would be set at zero, Verizon and Frontier would be "free to adjust their minimum and maximum pricing as they believe necessary to effectively compete in their respective markets,"⁵² and the maximum prices for smaller independent ILECs "would be changed to an accepted statewide benchmark rate for a particular service offering."⁵³ Bundled offerings, including those that include basic services, would be de-tariffed.

The Assembly Committee on Corporations reviewing the pricing issue as posed in the Order (if price levels from competitive areas can serve as "first level gauges of reasonableness" for prices in non-competitive areas) concludes that "without broad consensus on what constitutes a competitive area, such a question is meaningless."⁵⁴

⁵¹ Frontier's comments, pp. 11-12.

⁵² NYSTA's comments at p. 20.

⁵³ NYSTA's comments at p. 20.

⁵⁴ CCAC's comments at p. 8

Discussion

This section of the paper presents our proposal for pricing telecommunications services. It is based on the fundamental premise that competition provides benefits to customers unattainable through regulation. We explained those benefits above; here we propose a pricing regime designed to operate in that context. Our primary purpose is to continue to allow the market to flourish and to allow New Yorkers to benefit from the attendant cost efficiencies and innovation.

The Status of Competition

Commission decisions, coupled with advances in technology, have made New York State one of, if not the, most competitive market in the nation. One need only review industry trends for New York. For example, Verizon New York has lost almost 3 million lines in the past five years. Since November 2000, Verizon has lost access lines every month, and those losses are increasing. In early 2004 Verizon was losing about 40,000 access lines per month. During the second quarter of 2005, that figure doubled with the company's access lines declining about 87,000 per month.⁵⁵ The access line losses are not limited, however, to Verizon New York. Access lines for the state's second largest local exchange company, Frontier of Rochester, have also declined by about 16% from 2000 to 2004.⁵⁶ Frontier for its part claims that every location in New York State is subject to competition.⁵⁷ Taken as a whole, the remaining 39 independent companies have lost over 118,000 access lines (8.7%) since 2000.⁵⁸ Importantly, Commission actions to promote competition have centered, primarily, on the circuit switched environment and involved the reliance on the incumbents' networks. Irrespective of Commission actions,

⁵⁵ In the most recent three months (June, July and August 2005) Verizon average line loss increased to about 94, 000 per month.

⁵⁶ Frontier notes ILECs are losing more than one million access lines per year and that "competition in New York State can be confirmed merely by looking out the window. Frontier's Comments at p. 1.

⁵⁷ Frontier's comments, p. 16. Frontier proposes that competition exists if there is at least one alternative facility based provider (Frontier comments at p. 260).

⁵⁸ Independent ILEC Company Annual Reports, Schedule 61.

traditional circuit switched competition is being increasingly displaced with technologies that are independent from the ILECs network (intermodal). Until recently, one could assume that these line losses were primarily the result of circuit switched alternatives (CLECs), wireless substitution,⁵⁹ or the loss of second lines. That assumption may no longer be correct. The introduction of broadband facilities has provided an increasing number of alternatives to New York incumbent telephone voice services. These services, commonly known as Voice over Internet Protocol, were first introduced by companies who did not own any access lines and unlike traditional competitors (CLECs), did not need to lease the local loop from the incumbent LEC.⁶⁰ Thus, the incumbents not only began losing customers, but unlike the loss of a customer to a CLEC (which would still pay the incumbent wholesale costs for the lease of its facilities), the loss of a customer to a VoIP provider did not provide any offsetting wholesale revenues. The prices of obtaining VoIP service has declined over the past two years as well.⁶¹ The market grew significantly more competitive when cable companies began offering telephony services. Buoyed by an extensive network throughout the State, cable companies (primarily Time Warner and Cablevision) began offering services in early 2004.⁶² Time Warner is adding close to 15,000 new telephone customers a week,⁶³ Cablevision is adding 7,000 new telephone subscribers a week,⁶⁴ while companies offering VoIP continue to add subscribers.

⁵⁹ Sprint notes that the price of cellular service has fallen 77% from 44 cents per minute (in 1993) to 10 cents per minute in 2003. Sprint's comments p. 4.

⁶⁰ Vonage was one of the first companies to offer this type of service.

⁶¹ Unlimited local and long distance calling via VoIP providers can cost less than \$25 per month. Sunrocket offers a monthly cost of less than \$17 if customers are willing to pay for one full year in advance. For general information on the cost of VoIP see www.ordervoip.com

⁶² The Commission's Study of Rural Customer Access to Advanced Telecommunication Services Report notes that by the end of 2003 an estimated 95% of New Yorkers would have access to the latent broadband capability necessary to avail themselves of VoIP telephony. See Rural Broadband Report p. 26.

⁶³ *Cable Telephone Speaks Up*, Ben Charny, CNET News.com, published on ZDNet News: May 5, 2005. Numbers cited are nationwide numbers.

⁶⁴ Id.

In late 2004, the New York Department of Public Service conducted a review in response to the FCC's Notice of Proposed Rulemaking.⁶⁵ In comments submitted to the FCC, Staff noted that telecommunications competition is not as critically reliant upon the use of the incumbents' network⁶⁶ and identified that customers served by 276 of Verizon's 540 wire centers had access to alternative wireline offerings. While representing about half of the wire centers, it nevertheless represents over 85% of Verizon New York access lines.⁶⁷

Disagreements remain as to the general extent of competition in New York State, with each party raising issues supporting their respective positions. While Verizon and others cite deployment figures for competitive alternatives as support for declaring the availability of intermodal competition prevalent statewide, little quantification of the level of competition is provided and no party offered a methodology for measuring competition. While we believe there is broad support for concluding that New York is workably competitive, modifying regulation requires a careful balancing of customer and shareholder interests.

While the competitive index provided a measure of the strength of competition to determine the need for a carrier's access to switching, its use to modify regulatory policies on a granular level is not critical at this juncture. Most service packages are offered by carriers on a territory- or region-wide basis, as opposed to by wire center. Further, it would be administratively impractical, at least at this time, to administer the relaxation of consumer protections and service quality measurements on a wire center by wire center basis. For these reasons, Staff does not believe it is productive to use the competitive index to develop granular findings about the extent and strength of competition.

While it is difficult to measure the extent and strength of competitive choice on a micro-basis, Staff believes it is useful to assess the extent and strength of choice more broadly and to make judgments regarding trends and to assess the impact of competition as an overarching constraint on carrier behavior. To the extent carriers offer packages on a region-wide or

⁶⁵ WC Docket No. 04-313; CC Docket No. 01-338 - In the Matter of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Comments of the New York State Department of Public Service (filed October 4, 2004).

⁶⁶ Id. at p. 2.

⁶⁷ Id. at Appendix A, page iv.

territory-wide basis, competitive threat need not be ubiquitous nor uniform to effectively constrain carrier pricing decisions. For these reasons, Staff believes it is appropriate to gauge competition on a carrier's overall territory and to recalibrate regulatory policies in view of, and consistent with that perspective. To make that assessment we conducted a competitive indicator analysis by looking at the availability of alternative platforms for service offerings that customers are using and may use as substitutes for traditional wireline services.⁶⁸ We also considered market trends and their effects on traditional wireline carriers.

Accordingly, we would propose revisions to the Department's TRO index. While we believe that the wire center analysis, as used in the development of the TRO index, remains the most appropriate unit for measuring competition, the use of additional data is required to most accurately measure the state of competition. As discussed below we have developed a means to monitor competition in all parts of the state, including the service territories of the independents. This competitive indicator can be used to guide policy decisions with respect to regulatory obligations. For example, comparisons of service quality between competitive areas and noncompetitive areas may illustrate that there are no differences in performance and, therefore, justify elimination of certain regulatory metrics.

In terms of availability, we considered the extent to which a broadband offering is being made available. Our analysis included zip codes in wire centers where two-thirds or more of the population contained either cable or DSL broadband options. With the availability of broadband connections, customers are able to take advantage of numerous VoIP offerings for telecommunications needs. We note that approximately 35% of New York residential consumers already subscribe to a broadband offering and thus could easily take advantage of existing VoIP offerings.⁶⁹ We expect the trend of broadband growth will continue. We also note that many residential consumers in New York have the ability to seek cable digital phone service.

We also considered the availability of wireless platforms unaffiliated with Verizon. Where at least two wireless platforms that are not affiliated with Verizon are available we have considered this platform to be an alternative to the incumbent's traditional service. While we

⁶⁸ The competitive indicator analysis is described in Appendix E.

⁶⁹ FCC Report on High-Speed Services for Internet Access: Status as of December 2004.

recognize that not all customers can or will view wireless services as a complete substitute for traditional wire line, we believe that a growing number of consumers are willing and able to consider wireless as a viable substitute for wireline service.

We have also considered the extent to which customers are actually subscribing to these alternative service offerings. Nationwide, consumers are signing up for digital phone service at an increasing pace; in New York approximately 35% of residential consumers already subscribe to broadband service; and, depending on the economic area, anywhere between 40%-60% of New Yorkers subscribe to wireless service.⁷⁰ Although we recognize that the market remains dynamic and that these trends are still in their early stages, these trends, together with the incumbent access line loss trends, support the notion that consumers are actually utilizing these alternative services to satisfy their telecommunication needs and are embracing them as substitutes for traditional wireline service. The data on cable digital phone service in particular suggest that customers are willing to use cable service as a substitute for wireline, notwithstanding powering issues. One reason for this may be that many households have wireless services which should operate during a power outage.

We have concluded that if the competitive indicator provides that three platforms (i.e., one traditional land line plus two alternative modes of access) are present in an individual wire center, that market is sufficiently competitive to constrain an incumbent's ability to increase non-basic prices successfully without suffering financial harm. Our analysis of alternative platforms is conservative because it excludes UNE-L, and it does not count digital cable telephony, separate from cable broadband and DSL. Essentially, we identified a universe of three platforms: traditional wireline, wireless, and broadband. If all three were present, we concluded that competition was sufficiently robust so as to constrain the ability of the incumbent to increase its prices excessively.⁷¹ Thus, to the extent that customers have access to broadband (DSL⁷² or cable modem service) and a wireless company unaffiliated with the ILEC, we believe the

⁷⁰ FCC Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Ninth Report, Released September 28, 2004.

⁷¹ The details of this calculation are shown in Appendix E.

⁷² The inclusion of the availability of DSL when offered only with the incumbent telephone company assumes that stand-alone DSL is available.

incumbent is sufficiently constrained from exercising monopoly power over non-basic service offerings. It should be noted that the availability of a platform by itself provides multiple providers. For example, consumer's obtaining cable modem services from Time Warner have the option of purchasing Time Warner's Digital Phone service, yet they are not restricted to this single service provider for telephone service. Once a customer has broadband, they have access to multiple VoIP providers via internet-based applications. Given this environment attempts by Verizon or Frontier to increase its prices by 5% for a \$50 discretionary package would likely yield gains from customers with fewer choices that would be dwarfed by losses from customers who have reasonable competitive options.⁷³

This is because over 92% of customers in Verizon's service territory have these three platforms available to meet their territory communication needs. For Frontier of Rochester, customers in 31 out of their 44 wire centers have three platforms. This represents 87% of their customers. Even if the 92% or 87% value were replaced by substantially lower percentages, the conclusion would be the same. Even when not all customers have three platforms, if a sizeable majority of them do, the aggregate demand facing the ILEC that serves them can be sufficiently price elastic to constrain the ILEC's ability to profitably raise prices.

Telephone services provided via the alternative platforms do not need to be considered perfectly substitutable services from the customer's point of view for them to affect, and to constrain, the pricing decisions of an ILEC. To be price constrained, the ILEC need only

⁷³ For example, at assumed price elasticities of demand of -0.5 for customers without options and -1.5 for customers with options, Verizon would experience a net loss of approximately \$74 million, if it increased prices by 5% on a \$50 package. The details of this calculation are shown in Appendix E. Intermodal competition is too new for studies to be done developing estimates of price elasticities of demand. However, staff's judgment is that we can expect price elasticities of demand for captive customers of -0.5 and of -1.5 for customers with options. The estimate for captive customers is in the range of the shorter-run elasticities used in 1990's NYPSC revenue impact analyses. An estimate for customers with options is hard to develop, but a 1995 market power study done for the FTC by the Michael Ward and reported at <http://www.ftc.gov/reports/telecomm.pdf> shows very large price elasticities of demand for competitive long distance services. ("Lower-bound long-run demand elasticities are estimated to be -10.1 for AT&T and -25.4 for AT&T's two primary rivals." See Market Power Study, Executive Summary, p. vi). The -1.5 we recommend seems conservative, but the analyses in Appendix E use a variety of elasticities to analyze the impact of the uncertainty in this area.

conclude that enough of the customers would switch services. Although 92% of New York consumers have at least two alternative platforms only a fraction (e.g., 7%) of those would need to actually exercise those options to affect the incumbent's financial position.

Pricing

The Commission must balance customer and investor interests in setting rates.⁷⁴ Before the advent of competition, the accepted Commission balance was rate base, cost of service regulation. Investors were allowed a reasonable return on equity, and expenses that customers needed to reimburse the utility for were minimized. That exercise was last undertaken for Verizon, then New York Telephone Company, in 1991.⁷⁵ That regulatory scheme was a surrogate for competition, because the telephone company was thought to be a natural monopoly.

For all the reasons discussed above, the provision of local telephone service is no longer a natural monopoly. Where a company faces significant competition that constrains its power to set prices, a new approach is warranted. In competitive markets consumers benefit by being able to choose a provider that best meets their needs. Firms in competitive markets have strong incentives to continually enhance efficiency and provide attractive and innovative service offerings. In such markets, there is less need for economic regulation (such as price controls or specific regulatory accounting), and price will be controlled by the market. Firms become price takers and are no longer assured of recovering all of their prudently incurred historic costs. Because outcomes in a competitive environment are more directly driven by market forces and are less directly affected by regulatory accounting, the firm's regulated rates of return become less relevant and traditional regulatory accounting (i.e., establishing regulatory assets for future recovery) is no longer viable.

In the case of Verizon, over the last twenty years the Commission has sought to introduce competition into Verizon's toll and local markets, as we explained above. At the same time, it

⁷⁴ MCI v. PSC 231 A.D.2d 284 (3d Dept. 1997).

⁷⁵ Case 90-C-0191 - New York Telephone Company- Revenue Requirement and Rate Design, Opinion 91-4 (issued March 7, 1991).

altered regulation to reflect the increasingly competitive market in which Verizon is operating in order to strike an appropriate balance and to encourage efficiency.

In approving the 1995 Performance Regulatory Plan (the PRP)⁷⁶ the Commission provided an alternative means of achieving the customer/shareholder balance. That forward-looking, non-traditional, long term regulatory plan liberated the company from earning limits and certain price constraints in exchange for price and service commitments and competition enhancing measures.

The Commission then reevaluated the appropriate regulatory framework for Verizon in 2002, when it approved the Verizon Incentive Plan. That plan prominently promoted the consumer benefits of choice and a competitive market place and afforded Verizon retail rate flexibility to respond to competitive pressures. The plan also, among other things, eliminated existing regulatory assets and liabilities and provided that the company would adhere to Generally Accepted Accounting Principles. This change was and is designed to reflect more closely the environment Verizon was operating in as its decisions were being driven increasingly by market forces and regulatory cost of service conventions were increasingly anachronistic. The Commission summarized as follows:

The PRP was a first step away from traditional cost-based rate of return regulation and the VIP was a second step toward a competitive marketplace. In exchange for assuming certain risks, Verizon was granted unprecedented retail price flexibility and eliminated almost all of the vehicles for regulatory rate relief previously available to the company.⁷⁷

Competitive alternatives are now widely available throughout New York.⁷⁸ As a result,

⁷⁶ PRP Order, supra.

⁷⁷ Case 02-C-0959 - Petition filed by Verizon New York, Inc. for Approval, Pursuant to Public Service Law §113(2) of a Proposal Allocation of a Tax Refund From the County of Nassau, Order Allocating Property Tax Refund (issued March 12, 2003).

⁷⁸ One significant development was the fact that Verizon's local telephone markets were declared to be fully open in 1999. CC Docket 99-295, Application by Bell Atlantic for Authorization Under Section 271 of the Communications Act to Provide In Region, Inter-LATA Service in the State of New York (released December 22, 1999). See also comments of the New York State Department of Public Service in the Matter of Unbundled Access to Network Elements, WC Docket No. 04-313; Review of the Section 251 Unbundling

many millions of Verizon's customers have benefited from being able to choose alternative suppliers, as well as from being able to choose more attractive service offerings from Verizon. The impact of competition on Verizon's financial results is obvious. The number of access lines served by Verizon in New York has fallen about 19% over the last five years:

Table 1
Verizon NY Access Line Changes (2000-2004)⁷⁹

Year End	Total Access	Annual Change	Cumulative Change	Annual % Change	Cumulative % Change
2000	11,887,948	-	-	-	-
2001	11,675,173	(212,775)	(212,775)	-2%	-2%
2002	10,811,353	(863,820)	(1,076,595)	-7%	-9%
2003	10,252,109	(559,244)	(1,635,839)	-5%	-14%
2004	9,577,469	(674,640)	(2,310,479)	-7%	-19%

Minutes of use have also declined:

Table 2
Verizon Switched Access – Minutes of Use (2001-2004)⁸⁰

Switched Traffic Sensitive Demand-Minutes of Use (MOU): Premium					
Year	MOU	Change	% Change	Cumulative Change	Cumulative % Change
2001	29,987,922	-	-	-	-
2002	26,587,505	(3,400,417)	-11.3%	(3,400,417)	-11.3%
2003	23,580,058	(3,007,447)	-11.3%	(6,407,864)	-21.4%
2004	20,827,536	(2,752,522)	-11.7%	(9,160,386)	-30.5%

Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338 (filed October 4, 2004).

⁷⁹ Source: Verizon Annual Reports to the Public Service Commission, Schedule 61.

⁸⁰ FCC Report 43-01, ARMIS Annual summary Report, Table 11, Demand Analysis.

With these declines in access lines and usage, it is not surprising that Verizon's revenue streams have also declined. As demonstrated in the chart below, these access line losses have resulted in losses in local services revenues of approximately \$1 billion.

Table 3
Verizon NY Local Services Revenues (2001-2004)⁸¹

Local Network Services Revenues in \$ Billions			
Year	Amount	Change	Change
2001	\$4.0	-	-
2002	\$3.9	(\$0.1)	-1.5%
2003	\$3.5	(\$0.4)	-10.5%
2004	\$3.1	(\$0.4)	-11.2%
2001 v. 2004		(\$0.9)	-21.7%

Verizon's switched access revenues have also shown a significant decline:

Table 4
Verizon Access Revenues (2001-2004)⁸²

Switched Access Revenues in \$ Millions			
Year	Amount	Change	Change
2001	\$338.6	-	-
2002	\$254.4	(\$84.2)	-24.9%
2003	\$213.0	(\$41.4)	-16.3%
2004	\$193.1	(\$19.9)	-9.3%
2001 v. 2004		(\$145.5)	-43.0%

⁸¹ Source: Verizon Annual Reports to the Public Service Commission, Schedule 42.

⁸² Id.

It is then not surprising that with reductions in access lines and usage, which led to revenue declines that Verizon's rate of return would be negatively affected:

Table 5
Verizon NY Return on Equity (2001-2004)⁸³

Verizon-NY Total Company Equity Return			
Year	Return	% Change	Cumulative Change
2001	-9.5%	-	-
2002	-10.4%	9.5%	0.9%
2003	-31.9%	206.7%	22.4%
2004	-36.4%	14.1%	26.9%

Even if one accepts the arguments that cellular, cable and other broadband alternatives are not perfect substitutes for ILEC services, it is clear that those services are having a profound negative effect on the financial health of the incumbents. This pattern appears to have accelerated in the first half of 2005 as access line counts for New York reported on Verizon's website have fallen approximately 480,000, or over 9%.⁸⁴

These falling revenues have not been ignored by the agencies that measure Verizon's credit rating. For example, the debt ratings for the parent corporation and all of Verizon's subsidiaries with independent ILEC operations are currently under review for a possible downgrade by Moody's. In its release discussing that decision, Moody's cited persistent revenue declines as a result of continuing access line losses as one the reasons for its concern.⁸⁵ Similarly, Standard and Poor's notes the following: "While UNE-P competition is expected to abate due to regulatory rulings in 2004, it is nevertheless expected to be supplanted by

⁸³ These returns are based on Staff calculations.

⁸⁴ See <http://investor.verizon.com/business/wireline.aspx>. It appears the access line counts found at this website include access lines in Connecticut.

⁸⁵ Moody's Investors Services, Global Credit Research Rating Action: Moody's Downgrades Certain Verizon Subs (NE,NJ,Md,Va, and SW); Ratings of all Vz Subs, Except Vz Wireless, On Review For Possible Downgrade (Rating Outlook for Verizon Wireless is Stable)

heightened competition from the cable TV companies VoIP local offerings in 2005. Such competition is expected to have a much more pronounced impact on the RBOCs."⁸⁶

While a subset of the 3 million lines that shifted to competitive local exchange carriers are associated with MCI and AT&T, neither of which may remain as competitors to incumbents for the mass market service they are now providing, the primary growth of competitive pressure is coming from other modes of telephony. Intermodal competitors have experienced tremendous growth over a similar time period. For example, wireless subscribership in New York has increased from about 7.5 million to about 10.8 million (46%) over the past three years. The largest VoIP provider (Vonage) has gained over 1 million subscribers nationally in just the past four years.⁸⁷ Other cable companies show similar growth. Cablevision had signed up 364,000 subscribers for its digital phone service, and is adding about 1,000 new customers a day. Comcast and Cox Communications both have more than 1.2 million traditional phone subscribers and both are now introducing digital phone service.⁸⁸

Given the shift to a more competitive market and the concomitant risks it imposes on Verizon, we think it reasonable to allow the company some greater flexibility to compete in that market. The Commission has required Verizon to bear some of the burdens of competition (e.g., it assumed the burden of pension write offs that might have been recovered from customers but for the Commission's decision to require Generally Accepted Accounting Principles); it should also be relieved of some of the burdens of regulation. The Commission recently, for example, allowed Verizon to keep the gain on the sale of land that, under the old regime, would have been passed on to customers. That old treatment was found to be inappropriate in the competitive environment in which Verizon was operating.⁸⁹ The decision to allow the company to account

⁸⁶ Standard and Poor's, Peer Comparison: North American Investment Grade Telecom Companies (December 16, 2004).

⁸⁷ See http://www.vonage.com/corporate/press_news.php?currentYear=2005

⁸⁸ Cable's New Pitch: Reach Out and Touch Someone, New York Times, May 8, 2005

⁸⁹ Case 05-C-0091, et. al., Petition for the Approval of the Transfer of Three Parcels of Property, Order Approving Transfers (issued May 20, 2005), Case 99-C-0436 - Petition of Verizon New York Inc. for Approval to Sell its Interest in an Office Building Located at 1166 Sixth Avenue, New York, New York, Order Approving Sale and Directing Disposition of Proceeds (issued June 28, 1999).

for these transactions as a competitive company would, rather than as would a traditional regulated monopoly, was based in part on the assumption that traditional rate of return ratemaking (where rates are typically based on a reasonable return on prudent investment) is no longer relevant because competition has eroded Verizon's ability to recover its investment.

Even apart from the level of competition that exists today, the threat of imminent competition has emerged to the extent that it is already a significant constraint on the ILECs. The static analysis relied on by several of the commentators⁹⁰ fails to recognize that markets are dynamic and that companies make business plans for the future, not the present. Contestable market theory indicates that dominant providers will refrain from monopoly pricing and cost cutting on service quality if competitors can quickly enter and take away a significant share of the incumbent's customers in response to such supra normal profit seeking behaviors. This is the case today. Because the markets are contestable in most of the State, incumbent companies need to act in a manner that greatly constrains monopoly pricing. Even if we were to agree that the markets were not competitive – and we think they are – it seems irrational to argue that, for example, Verizon is not acting as if there was competition and was not pricing its services accordingly. In those circumstances, continuing cost of service price regulation in light of a statewide pricing requirement and minimum service standards is not appropriate for New York.

Our pricing proposal, discussed below, should be adopted by the Commission because it appropriately balances shareholder and customer interests. The provision of telecommunications services is no longer a natural monopoly. A regulatory regime that ignores that reality will not work. It is clear based upon the continued loss of access lines and minutes of use by the ILECs that all forms of intermodal competition are undermining the ILEC's ability to charge revenues sufficient to recover their costs. This is a loss of monopoly market power and requires us to adapt our regulatory approach in such a way as to allow ILECs the freedom to price and provide services for which there is a public demand. While such competition is not ubiquitous, either geographically or demographically, we propose minimum requirements and consumer protections which will protect the interests of those citizens until market conditions change. The loss of minutes of use and access lines described above makes clear that the current system is imposing unreasonable burdens on incumbent telephone companies. While there is some dispute

⁹⁰ E.g., DOD's reliance on current market share, DOD's Initial Comments, p. 8.

about the level of competition, there can be no question that it is acting as a reasonable constraint on the incumbent companies, as discussed above. For these reasons, customers also benefit from this regime. They receive a regulated, basic rate to ensure access while getting the innovation and cost efficiencies that are driven by competition.

Staff believes that pricing flexibility for residential retail service offerings will enable the incumbent LECs to better compete with the intermodal competitors who are unrestrained in their pricing of those same offerings. The residential retail market, specifically feature- or usage- rich packages, is generally competitive throughout the vast majority of the State. However, even in areas determined to be competitive there still remains a need to ensure a basic service offering, at regulated, tariffed rates for consumers who are not interested in such packages, but desire only basic, un-featured access to the network.

Basic Services

A basic service⁹¹ offering should be maintained at a regulated, tariffed rate for those consumers who choose not to purchase bundled service packages, but prefer a single line residential telephone service with no features on a stand-alone basis. We define this basic service offering as a single, residential line without features, offered as a stand-alone service universally throughout all exchanges. The service would include flat-rate local calling where the local calling area is no less than the current area, including Extended Area Service adjacencies, touch tone, the ability to place and receive calls to and from any PSTN telephone number, long distance equal access, full backup power for the minimum hours consistent with what is currently required of the ILEC, full 911/E911, CALEA⁹² and other public safety compliance, full call signaling compliance, compliance with applicable industry standards for sound quality and availability, and the consumer protections provided by Commission regulations. The continued offering of such a basic service will provide adequate protection for the consumers who cannot or choose not to avail themselves of the competitive pricing of bundled service offerings.

⁹¹ The framework we propose is applicable to the residential market only. Analogous flexibility already exists in the Enterprise market and Special Services market.

⁹² The Communications Assistance for Law Enforcement Act (CALEA) a federal wiretapping statute.

This basic service offering would be priced at a level up to a ceiling that is uniform throughout the State. This uniform maximum price better reflects the market conditions that competition has brought to the State. Competitive offerings are available and marketed at uniform Statewide rates. Even the incumbent wireline providers market their bundled and discretionary offerings at uniform rates across their service territories.

The maximum price should be set at a level that reflects current competitive pressures and market restraints. We propose use of the relevant rate for the Manhattan area, arguably the most competitive part of the State. Prior to 2003, Verizon customers in Manhattan were not afforded the option of a flat-rate residential service.⁹³ They were required to subscribe to message rate service, where they would pay a fixed rate for the basic access line and pay for each call either on a per-message or per-minute basis.⁹⁴ In 2003, Verizon introduced its Unlimited Local Plan as an optional usage package to its message rate customers in Manhattan. The plan provided for unlimited local calling in the customer's home region for a flat rate of \$16.34. The introduction of this plan was a competitive response by Verizon to the offering of unlimited local usage plans by its competitors in Manhattan, and was priced accordingly. Verizon's current rate for a basic access line is \$8.61 and the rate for its Unlimited Local Plan in Manhattan is \$16.34. The combination of these two rates result in a rate of \$24.95 for the functional equivalent of a flat-rate residential basic service in Manhattan, and is a reasonable maximum for a statewide basic service offering.⁹⁵

Verizon's unlimited local calling plan was established in a market where other competing providers were offering comparable service packages in a manner that provided market

⁹³ In all other areas throughout Verizon's territory, a flat-rate service was available whereby customers paid a flat charge for the basic access line and a flat-rate for unlimited usage within the local calling area. The rate for unlimited usage varied by Rate Group throughout the State. Customers in all other areas were also able to subscribe to message rate service where they are charged a flat charge for the basic access line and charged for usage on a per-message basis.

⁹⁴ Per message charges applied to local calls within a customer's home region, while per-minutes charges applied to local calls outside the customer's home region.

⁹⁵ In response to the CCAC's concerns that pricing in non-competitive areas not be tied to pricing in competitive areas "without broad consensus on what constitutes a competitive area," we believe that there is in fact a broad consensus that Manhattan is the most competitive area of New York.

discipline for Verizon's offering. That price, therefore, represents a just and reasonable price for consumers. Verizon's local calling plan should remain available at a regulated price. The capped rate should also serve as the long term cap for a comparable basic service offering for the entire state. Carriers would be permitted to provide a comparable basic offering and to move their current basic rates to this cap over a three year period. This rate, therefore, represents a rather unique blend of prices. First, it was initially set in a regulatory proceeding, and found to be just and reasonable. Second, Verizon, in response to competitive threats, added value to this service at no extra charge to customers. Thus this rate effectively represents a regulated rate being disciplined by the marketplace to add value for consumers. Previously found to be just and reasonable, this enhancement makes it even more so from a consumer's perspective.

Some current basic offerings are considerably lower than the \$24.95 rate in some of Verizon's upstate areas as well as other incumbent carriers. These relatively low basic rates stem from a legacy regulatory regime that borrowed higher revenue margins from more lucrative markets to keep rates lower than they would be. In a competitive environment, prices tend to reflect cost and such pricing strategies are no longer workable. Based on recent forward looking cost studies of a competitive, hypothetical, network, which was implemented pursuant to the 1996 Act,⁹⁶ rates are not aligned with costs. In the context of determining the cost of a forward looking competitive network, the FCC's rules required the Commission to establish different rates for elements based on geographic areas to reflect geographic cost differences.⁹⁷ These forward looking studies have demonstrated that the cost of serving Manhattan and major cities is lower than the cost of serving the rest of the state. Thus, the forward looking studies generally showed that serving less densely populated areas of the state were from 44% to 25% higher than the cost of serving Manhattan or other major cities. These cost difference are attributable to the cost of loops.⁹⁸ Given these cost considerations, it is reasonable to apply the basic rate from the

⁹⁶ Implementation of the Local Competitive Provision Telecommunications Act of 1996, CC Doc. Nos. 96-98 and 95-105, First Report and Order (rel. August 8, 1996) *aff'd*, Verizon Communications v. FCC, 535 U.S. 467 (2002).

⁹⁷ 47 C.F.R. §51.507(f).

⁹⁸ Generally see Case 98-C-1357, Proceeding on Motion of Commission to Examine New York telephone Companies Rates for Unbundled Network Elements, Order on Unbundled Network Element Rates (issued January 28, 2002). The Commission adopted rates for a two-wire

metro region to the rest of the state, since cost considerations would justify an even higher rate for those areas.⁹⁹

The current rates for flat-rate residential service in the serving territories of Verizon and Frontier of Rochester would be allowed to increase up to this cap over the course of three years, with a maximum annual increase of \$5.00 per access line per month.¹⁰⁰ The transition to the basic rate would be accomplished by taking the difference between the existing rate and the basic rate, and phasing the increase in equally over a three-year period. This will require annual filing by both Verizon and Frontier of Rochester to implement, and we expect to be informed by our annual reviews as to the adequacy and appropriateness of the measures outlined here.

As previously discussed, several parties take issue with pricing flexibility. PULP cautions that allowing pricing flexibility promotes redlining whereby service providers can choose to sell at a lower price where competition is strong and at a higher price where competition is weak. However, for basic service, our proposal would not allow ILECs to discriminate among consumers based upon the level of competition. The same basic service rate would apply to all customers of the ILEC's service territory. While CPB comments that dominant LECs should not be permitted to use market power to increase prices for basic services without a thorough PSC review of the reasonableness of such rate increases, CPB's approach is inconsistent with a competitive market. Prices for services should be set by the market to the extent possible. Manhattan is the most competitive area of the State. Verizon's flat rate in Manhattan is a fair surrogate for basic telecommunication services statewide. While such a conclusion conflicts with CCAC view that price levels from competitive areas cannot serve as first level gauges of reasonableness for prices in non-competitive areas, we disagree.¹⁰¹ Our proposal is also consistent with the Department of Defense (DOD) which suggests that if the

analog loop in the Manhattan, Other Major Cities, Rest of State zones of \$7.70, \$11.31 and \$15.51, respectively.

⁹⁹ Rate groups were established on a value of service basis based upon the number of lines an exchange could call on toll free basis. The introduction of broad or unlimited calling plans associated with competitive offerings has eroded the value of service concept.

¹⁰⁰ Local service rates for the remaining ILECs in the State will be discussed later in this report.

¹⁰¹ Mr. Bronner comments that the price levels from competitive areas can serve as a first gauge of reasonableness for prices in non-competitive areas if the services are comparable.

incumbent wireline LEC is still providing the majority of service there is not sufficient competition for the Commission to abandon surveillance of basic services. We do not abandon basic service.

Tariff changes recently proposed by Verizon tend to support some of the reasoning underlying our rationale for a \$24.95 rate for basic service. First Verizon's offering was made broadly available at a uniform rate. While our proposal is uniform statewide, and Verizon had two rates—one upstate, one downstate, both depart from the traditional rate groups that were based upon a value-oriented form of rate design previously discussed. Second, Verizon proposes a \$5 rate differential between upstate and downstate areas, consistent with our proposal which increases rural rates and moves them closer to urban rates. The \$5.00 charge for three features is also consistent with our understanding that these features can be offered at a nominal price based upon their incremental cost. And, most importantly, Verizon's proposal supports our contention that the market is competitive, and we can increasingly rely upon competition to discipline prices.

Reducing the basic rate to the levels proposed in Verizon's recent tariff filing would be unreasonable. The basic service product is supposed to represent a regulatory safety net to ensure universal service. The price we selected, moreover, was a stable price provided by Verizon for several years. We are not sure how long the new offering will remain available, and hence are hesitant to adopt a price without a track record to rely upon. Our proposed price is a ceiling price for universal service. Excluding imputation requirements, there is no floor, and if market forces can provide a better price than our basic service package, competition has done its job and customers can take advantage of it. We will continue to monitor and investigate the appropriateness of our basic service package and ensure our commitments to universal service during our annual reviews.

Competition is not limited to the service territories of Verizon and Frontier of Rochester. As previously noted, many of the state's independent telephone companies, historically insulated from wireline competitors as CLECs entered Verizon and Frontier territories, now find themselves facing competition in the form of cable digital phone and VoIP via cable modem service or DSL.¹⁰² While the rate of access line losses is higher for Verizon than that of the

¹⁰² While many of the independents offer DSL, that offering is, with few exceptions, tied to their voice offerings.

independents, they are nevertheless subject to similar competitive pressures.¹⁰³ A snapshot of the access line changes for the independents is included as Appendix C. In its comments the New York Coalition states that its incumbents are experiencing an additional effect of competition, the loss of access minutes. Access revenues of the Coalition companies represent a much greater percentage of total revenues than that of Verizon or Frontier of Rochester.

We propose that the Commission allow the independent ILECs annual local service rate increases at the higher of \$5.00 per access line per month or 2.5% up to the rate cap of the basic service offering of Verizon and Frontier of Rochester. To remedy, where possible, the decline in access revenues brought on by competition, Staff recommends the rate increases be implemented in a revenue neutral manner, with offsetting reductions to intrastate access rates to the point that these rates match each company's interstate access rates. Company petitions for such revenue neutral filings will be reviewed on an expedited basis. Local service increases proposed to offset earnings deficiencies would be dealt with in the context of a traditional rate case review. While we understand that such an approach would provide significant rate increases for customers of some companies, this approach is consistent with that of Frontier for Rochester and Verizon. Basic rates would begin to approach a statewide rate for all companies, including the independent ILECs, while for the independents, intrastate access rates would be more closely aligned to interstate access rates. This approach would move the independents closer to an access rate structure that Verizon and Frontier of Rochester have already adopted, and would ease the financial pressures on the independents who obtain a significant share of their revenues from access rates charged for declining access minutes. Under this proposal, all independent companies would be able to increase their rates in the first year without hitting the Basic Service Offering benchmark, two companies (Oriskany Falls and Pattersonville Telephone) would reach the benchmark in Year 2 and another ten companies would hit the benchmark in Year 3. A preliminary analysis of the rate implications for the independents is included as Appendix D. Increases beyond Year 1 for independent companies (excluding Frontier-Rochester), would require further investigation, either on an industry wide basis similar to the access pool proceeding or on an individual company ad hoc basis.

¹⁰³ From 2000 to 2004 Verizon lost approximately 19% of its access lines, while the independents (including Frontier of Rochester) lost almost 12%.

Non Basic Services

Under our proposal, Verizon and Frontier of Rochester would have full pricing flexibility for all services other than the basic service offering. Prices for services would be offered on a statewide basis throughout each company's serving territory; thus customers in noncompetitive areas of each company would be protected by the market constraints of the competitive areas of each company. This requirement would enable the Commission to ensure that just and reasonable rates are provided throughout a company's territory. We recognize that in a competitive environment companies may treat particular customers differently in order to retain or attract them. While Staff's proposal does not preclude a company from providing promotional offerings consistent with Public Service Law Section 92(5), it does not allow companies to offer discounts to individual customers or classes of customers due to perceived competitive pressures. We recognize that as a policy matter in a fully competitive market such pricing would be rational. However, because we have not established competitive and non-competitive areas, we are not proposing such discounts be permitted as they could lead to geographic pricing disparities. Indeed, such discounts are desirable, but weaken the price constraining aspect of the single statewide price component of our proposal. We seek comment on how to resolve this issue. Thus, given our need to establish a just and reasonable rate for non-basic offerings, and in particular to ensure that non competitive areas are not disadvantaged, and in view of the apparent limited utility of individual arrangements in the mass market, we are proposing a uniform price for non-basic services throughout the carrier's territory.

We disagree with CWA's recommendation that the Commission open a proceeding to consider allowing incumbent LECs to exercise pricing flexibility for non-basic services. No proceeding is required. Non-basic services and packages are available from any number of competitors for the vast majority of New Yorkers. While monitoring of competition is appropriate, review of the pricing of non-basic services before the prices become effective is unnecessary given a basic service offering.

Because it is unclear the extent to which competition has impacted each of the independent companies as it has Verizon and Frontier of Rochester, it is too early to grant pricing flexibility for non-basic services throughout the entire independent's territory. However, we remain aware that there may be some independent companies who are experiencing the greater effects of competition similar to Verizon and Frontier of Rochester. And while our

previously discussed approach to basic service rates of the independent ILECs provides some immediate relief from the financial effects of competitive pressures, we recommend they each be given the opportunity to demonstrate what additional changes need to be made to their rate structures or their overall revenue requirements. The use of Staff's competitive indicator would allow the analysis of each independent company on an ad-hoc basis. Staff will review the company's financial situation and the competitive pressures on a case-by-case basis in response to company petitions.

The pricing proposal is consistent with the principles we set out above. Basic level service would continue to be affordable, while customers have the availability on non-basic services assured by competitive companies. This approach is a balanced one: both customers and shareholders get some benefit while being exposed to some concerns. In total, the regime appears to us to be a reasonable approach, that provides for innovation in a market that is increasingly but not perfectly competitive, and it fulfills the Commission's statutory responsibilities.

Competitive Checkpoint

The underlying premise of this report is that in general, the vast majority of New York consumers have competitive alternatives for telecommunication services and that the availability of these alternatives provides market discipline replacing regulation. This concept continues the Commission's approach:

The goal of ensuring the provision of quality telecommunication services at reasonable rates is primary...Where feasible competition is the most efficient way by which the primary goal may be achieved.¹⁰⁴

The Commission's Order in this proceeding noted that the Commission intended to "identify the full range of regulatory requirements that apply to regulated telecommunication providers so as to highlight asymmetries, constraints and impediments that may need to be relaxed or modified."¹⁰⁵

¹⁰⁴ Opinion 96-13, supra, p. 3.

¹⁰⁵ Competition III Order Implementing Proceeding, pp. 14-15.

The existing state of competition supports a move toward symmetrical regulation of providers of similar telecommunication services. As discussed later in this report, we propose that a number of regulations be eliminated or streamlined. However, acknowledging that the State as a whole is competitive does not suggest that each area within the State is competitive. There may be areas that have not been subject to competition, or to a far lesser extent. Competition will continue to thrive; however, it is important that the extent of that competition be monitored. This is important because as competition continues to thrive and expand, additional regulatory requirements may need to be eliminated. Further, we would include in our review other issues associated with the changing telecommunications environment, including lifeline subscription rates to make sure these programs are providing an appropriate safety net for consumers.

Our conclusions regarding each of these regulatory requirements are discussed in general later in Appendix B. However, we also believe that a review of the level and extent of competition on a more granular level is prudent and propose that a competitive review be conducted within a year of the release of the Commission's Order in this proceeding. The competitive review would be performed via employing the competitive indicator. The competitive indicator represents a refinement of the impairment (TRO) index, and would also be used to gauge the competition in the service territories of the independent companies in New York. We propose that the results of this review be used to further streamline Commission regulations.

Regulatory Requirements

We have identified various categories of reporting requirements relating to economic regulation. The interested parties in this proceeding have identified additional reporting requirements. Many of these others require a separate rulemaking. For example, NYSTA noted that the sale of Berkshire Telephone Corporation to FairPoint Communications took 21 months and the decision contained some 28 clauses involving numerous conditions. Contrasting this, Fairpoint's acquisition of Bentleyville Telephone Company in the neighboring state of Pennsylvania took less than three months, with the only conditions being that proper notification regarding the transaction be given (see NYTSA at p. 11-12). As a result, NYSTA concludes these time delays and extensive conditions discourage investment and efficiencies. Staff

believes the Commission should determine proposals for mergers and acquisitions on a case-by-case basis. In the Berkshire- FairPoint case, NYSTA exaggerates the differences between the New York and Pennsylvania Commissions.¹⁰⁶ However, we believe the process of approving acquisitions can be improved for small telephone companies. Specifically, it would be reasonable for the Commission to consider financial incentives to encourage the acquisition of small telephone companies into larger entities (or as part of larger holding companies) similar to the policy the Commission has instituted for small water companies. The goal of this policy would be to reduce costs and improve network reliability.¹⁰⁷

As long as dominant carriers have market power, we recommend these carriers continue to be subject to more economic regulatory oversight than the non-dominant carriers and providers of wireless, cable digital voice and VoIP services. When appropriate, Staff believes the Commission should move quickly to reduce or eliminate the additional economic regulation imposed on dominant carriers so that it is consistent with the non-dominant carrier regulation. While each of Staff's proposals on the Convergence Matrix are included in Appendix B, the conclusion that follows provides a discussion of the more significant adjustments to economic regulatory requirements that the Commission should pursue.¹⁰⁸

Conclusion

Regulation needs to recognize and adjust to the changing market for communication services in New York. Our proposal provides regulatory flexibility to ILECs for competitive services, retains regulatory oversight over basic service, and promotes symmetry for telecommunications providers based upon the service offering, not the platform upon which the service is offered. The proposal also provides for continued monitoring of the market in this

¹⁰⁶ A major issue in the sale of Berkshire to FairPoint was FairPoint's financial condition and its attempts to restructure its capitalization. Once FairPoint completed its initial public offering (IPO) on February 4, 2005, the Commission approved the acquisition in less than two months.

¹⁰⁷ See Case 93-W-0962 – Proceeding on Motion of the Commission to Establish a Policy to Provide Incentives for the Acquisition and Merger of Small Water Utilities, Statement of Policy on Acquisition Incentive Mechanism for Small Water Companies (issued August 8, 1994).

¹⁰⁸ Each of the subsequent chapters will highlight any Staff proposed changes to regulations.

transition, and if warranted, further streamlining of regulation or other appropriate regulatory actions as may be required or appropriate.

The pricing proposal is consistent with the principles we set out above. Basic level service will continue to be affordable, while customers have the availability of non-basic services assured by competitive companies. The proposal is a balanced one: both customers and shareholders get some benefit while being exposed to some concerns. In total, the regime appears to us to be a reasonable approach that provides for innovation in a market that is not perfectly competitive. This approach also fulfills the Commission's statutory responsibilities.

Increases in basic rates for some customers reflect current market conditions and are, therefore, a consequence of a more competitive market. We believe that the market structure and competitive options have changed dramatically in the last several years to the point where a substantial portion of customers can choose alternative providers of telephone services. Consequently, it is clear that monopoly prices can no longer be extracted from the telecommunications customers and that the actions we propose here, the creation of a basic service package and continued market monitoring, are actions appropriate to the service. Consumers will weigh their telecommunication costs and make decisions on whether to remain with the incumbent service provider or pursue alternate providers. Our proposal allows ILECs and other providers to compete in the marketplace on price, innovation and service and is consistent with the Commission's goal of allowing the market to replace regulation.

IV. Universal Service

Universal service is the goal of ensuring that all residents have access to affordable basic telephone service so they may communicate with anyone else; access public safety, health, education, and assistance services; and participate more fully in society.¹⁰⁹ In Competition II, the Commission established several principles to guide the transition to a competitive market. It also stated that the goal of ensuring the provision of quality telecommunications services at reasonable rates is primary, and that although other goals may be important, attainment must not come at the expense of that primary goal.¹¹⁰ Various mechanisms have been implemented to help achieve this goal.

The Commission established a Targeted Accessibility Fund (TAF) in 1998 to fund public benefit programs such as Lifeline, E-911, and Telecommunications Relay Service on a competitively neutral basis.¹¹¹ It exempted wireless services from TAF, but noted that in the future it might revisit the issue.¹¹² The Commission also created a Transition Fund in recognition of the pressure on local service rates in high cost areas of New York State.

¹⁰⁹ Competition II Order, p. 9

¹¹⁰ Competition II Order, p. 3

¹¹¹ Cases 94-C-0095 et. al, Opinion No. 98-10, p. 2.

¹¹² Cases 94-C-0095 et. al, Opinion No. 98-10, p.37.

Parties Comments

Universal Service Goals

Most parties providing comments on this issue indicated that the universal service goals articulated in 1996 remain valid in 2005. Some parties indicated that the means for achieving the universal service goals should be reassessed in light of today's intermodal market. PULP supports the principles but stated that the Order failed to take into account the lack of progress towards attainment of these goals in recent years. Other respondents agreed with the goals but indicated that they should only apply to wireline companies. First Avenue Networks indicated that the goals require updating to reflect the importance of establishing physically-diverse telecommunications services to key buildings and locations designated by municipal, state and federal governments.

Definition of Basic Service

Frontier Communications indicated that, given the intermodal options available in the marketplace, basic service should be defined as a single residential line without features that is not part of a bundle of other regulated or unregulated services. The Department of Defense stated that the definition of basic service should be expanded to include toll blocking, and a single party access line for the initial and all additional lines. The New York State Assembly Committee on Corporations, Authorities and Commissions, and the New York Coalition of Rural Independent Telephone Companies, stated that the definition of basic services should be re-examined and that it might include some level of high-speed internet access. CWA stated that achieving universal access to high-speed communications networks must also be a priority.

State "High-Cost" Funding Mechanism

With the exception of the New York Coalition of Rural Independent Telephone Companies, the respondents agreed that the need for creation of a high cost fund has not yet been demonstrated; some recognize that there may be a need in the future. Some believe that state action is premature until the FCC resolves the issues at the federal level. Frontier, Time Warner, Cablevision and CTANY believe that if it is proven necessary to create a fund, that it should be competitively neutral, based on a telephone number, and that it should be explicit. NEXTEL urges the Commission to rely on Federal USF funding rather than implementing additional state

specific initiatives. Verizon believes that revenue problems of high-cost LECs should be addressed through the rate case mechanisms.

Affordable Service to All Consumers

Verizon and Frontier both believe that basic, stand-alone service should be ubiquitously offered by the ILEC throughout its territory with regulatory oversight and that all other services should be left to the competitive marketplace. CPB believes that the Commission should review the cause of the national and New York trend in the drop of telephone subscribers and increase awareness of LifeLine and Link Up programs. Verizon Wireless and NYSTA believe that funding of Universal Service needs to be competitively neutral. New York Coalition of Rural Independent Telephone Companies believes new plans and revenue sources are needed to build, maintain and operate high cost networks. Mr. Bronner believes the Commission should conduct studies to determine if customers have real competitive choices. The studies would identify the cost differences between customers with choices versus customers without choices and, if it were determined to be necessary, investigate options to mitigate the differences, such as rate subsidies.

TAF/State Universal Service Fund/Social Benefit Programs

The parties generally agree that the TAF is an effective means of funding the public benefit programs for which it is targeted and that it should be maintained. PULP states that LifeLine enrollment has declined as the result of welfare reform and, as enrollment declined no measures were taken to identify new programs to indicate LifeLine eligibility or to find alternative means to reach these customers. PULP urges the Commission to reverse current trends away from LifeLine.

Some parties believe that imposing social policy costs on traditional wireline carriers, but not on wireless carriers, is distorting the market and putting traditional wireline carriers at an unfair and inequitable competitive disadvantage. AT&T stated that if the Commission finds that it does not currently have the requisite enabling authority, the agency should seek amendment to its enabling statute to assure that it can establish contribution obligations for all telecommunications carriers, including wireless and cable telephony providers. Other parties support the Commission's decision to exclude wireless providers from TAF and support the applicability of the TAF to IP-enabled services because IP could displace much of the traditional circuit switched voice services. CTANY states that the Commission is not empowered by the

PSL to assess non-jurisdictional entities for Universal Service funding. Further, cable companies providing cable modem service cannot be ordered to contribute to a state Universal Service Fund. However, they recognize that it is their responsibility to undertake a number of social obligations such as providing access to 911/E911, access to the disabled, and assistance to law enforcement.

Time Warner stated that the TAF places facilities-based CLECs at a disadvantage given the manner in which contributions are calculated.¹¹³ Universal Service contributions should be technology neutral and all providers should be required to support equally the underlying social goals. A technology approach to E911 funding should also be implemented. The current E911 cap applicable to end-users with over 75 lines must be modified to reflect new technology and the emergence of entities that purchase end-user type services but utilize those services to provide carrier type services. All providers should be required to contribute on a technology neutral basis to support E911. Similarly, voice providers should also be required to provision their own directory assistance. Carriers providing such entities with service are providing neither end-user service nor basic service and should not be held responsible for providing to the voice provider directory assistance or any of the other elements of basic service. All providers must bear equal responsibility for important social policies such as Telecommunications Relay Service and E911.

Infrastructure Costs

The New York Coalition of Rural Independent Telephone Companies believes that it is critical for its members to maintain a reliable infrastructure at affordable rates, and that a regulatory framework must allow the rural ILECs revenue recovery through appropriate rate designs, flexibility, and through a State USF designed for Carrier of Last Resort (COLR). The Coalition asserts that the rural LECs provide local services in areas of the State where, in the absence of an appropriate regulatory framework and resulting rate design, the level of services and the rates charged for those services would not be comparable to service levels and rates

¹¹³ According to Time Warner, TAF allows carriers to offset payments to other carriers against intrastate revenues. Thus facilities based carriers that buy limited amounts of UNEs, or other network elements, pay proportionately more into the TAF than carriers using other forms of market entry. Time Warner concludes that this practice is at odds with the Commission policy to encourage facilities-based competition.

charged for similar services in urban areas. Further, changes in rural company rate design brought about by overall changes in technology or market conditions must be balanced against the requirements to provide rural carriers with an opportunity to recover their costs and to maintain basic service levels and rates that are comparable to those charged in urban areas. Finally, the Coalition adds that all providers rely on its network to terminate their end user traffic - the rural infrastructure is a fundamental element of a cohesive universal service policy.

Discussion

The TAF provides valuable public benefits. All voice service providers, however, should be required to contribute to the TAF for funding of Lifeline, 911, Telecommunications Relay Service and Public Interest Payphones, although we acknowledge that some jurisdictional issues may need to be resolved for this to happen. Additionally, the Commission should consider developing an alternate funding method, for example, an assessment of TAF based on phone numbers so that all telephone service providers would contribute. We seek comment on such a funding mechanism and the appropriate timing of such.

We agree with the majority of parties that the need for creation of a high cost fund has not been demonstrated. The existing Transition Fund.¹¹⁴ which can be drawn on through a rate case where a company's local service rates are insufficient to meet its intrastate revenue requirement, has not yet been tapped. Further, our proposed increases to basic rates would help to align rates with underlying costs and any additional revenue problems of high-cost LECs should be addressed through the rate case mechanism.

Additionally, the FCC's universal service plan¹¹⁵ establishes funding mechanisms for carriers (1) serving high-cost areas; (2) providing support mechanisms for low-income customers; and (3) providing discounts to schools, libraries, and rural health care providers. To be eligible, carriers must be designated by state commissions as eligible telecommunications

¹¹⁴ Case 02-C-0595, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of the New York Intrastate Access Settlement Pool, Inc. for Traffic Sensitive Access Rates, Comprehensive Plan, Phase II, Order Adopting Comprehensive Plan (issued December 23, 2003).

¹¹⁵ FCC 97-157, CC Docket No. 96-45, Report and Order, In the Matter of the Federal-State Joint Board on Universal Service (issued May 8, 1997) (Universal Service Order) para. 2.

carriers (ETCs). Services supported by the federal plan include: single party service; voice grade access to the public switched network; dual tone multifrequency (DTMF) signaling; toll limitation services; and, access to emergency services, operator assistance, interexchange services, and directory assistance. A carrier must be able to supply each of these services to be eligible for universal service funding.¹¹⁶

ILECs in New York were certified as ETCs by Commission Order issued December 1, 1997.¹¹⁷ Subsequently, nine CLECs were designated as ETCs in Commission Orders issued December 24, 1997 through December 24, 2003.¹¹⁸ On January 18, 2005, United Systems Access Telecom, Inc. filed a petition to withdraw its designation as an eligible carrier for the

¹¹⁶ The FCC concluded that a reasonable transition period would be allowed for some eligible carriers to provide single party service, E-911 service, and toll-limitation service.

¹¹⁷ Case 94-C-0095, Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market, Order Designating Eligible Telecommunications Carriers and Service Areas, and Granting Waivers (issued December 1, 1997).

¹¹⁸ Case 94-C-0095, supra, Order Designating Competitive Local Exchange Carriers as Eligible Telecommunications Carriers and Service Areas and Granting Waivers (issued December 24, 1997) (Certified Residential Communications Network of New York, Inc., Time Warner AxS of Rochester, Time Warner AxS of New York City, L.P., and Metropolitan Corporation d/b/a Metropolitan Telecommunications); Case 00-C-0995, Petition of Broadview Networks, Inc. for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Universal Service Support Pursuant to Section 214 of the Federal Telecommunications Act of 1996, Order Concerning Designation as an eligible Telecommunications Carrier for Purposes of Receiving Universal Service Support (issued August 7, 2000); Case 00-C-1279, Petition of Primelink, Inc. for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Universal Service Support Pursuant to Section 214 of the Federal Telecommunications Act of 1996 (issued October 11, 2000); Case 03-C-0450, Petition of AT&T Communications of New York, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214 of the Communications Act of 1934, as Amended, Order Regarding Designation as an Eligible Telecommunications Carrier (issued July 24, 2003); Case 03-C-0576, Petition of United Systems Access Telecom, Inc. for Authority to Act as an Eligible Telecommunications Carrier for Purposes of Participating in Federal Universal Support Programs in Accordance with Section 214 and Section 254 of the Telecommunications Act of 1996 (issued July 25, 2003).

purposes of determining universal service obligations. Its petition was approved by the Commission and effective on April 20, 2005.¹¹⁹

The FCC's Low Income support mechanism assists eligible low-income consumers by discounting telephone installation and monthly telephone service fees. Two programs are available to qualified low-income consumers, "Link-Up America," which helps consumers with telephone installation costs, and "Lifeline" which provides credits towards monthly telephone service. To be eligible for Lifeline and Link-up funding, carriers must be designated as ETCs.

The FCC also established a schools and libraries discount program.¹²⁰ The FCC plan relies on interstate revenues to fund the Schools and Library Discount program. This program provides significant benefits for New York's schools and libraries.

The FCC's High-Cost support mechanism provides financial support to companies that provide telecommunications services in areas of the United States where the cost of providing service is high. The high-cost support mechanisms are intended to hold down rates and thereby further the preservation and advancement of universal telephone service.

The FCC's Rural Health Care Providers program provides discounts on intrastate services for rural health care providers and limited toll-free access to internet services for all healthcare providers.¹²¹ Eligible health care providers in rural areas of New York State receive rates comparable to those available in urban areas. The rates charged to eligible health care providers cannot exceed the highest tariffed or publicly available rate charged to a commercial customer for a similar service provided over the same distance in the nearest city in New York State with a population of at least 50,000. In addition, distance-sensitive charges for delivering those services to the rural area in which the health care provider is located is subsidized by the

¹¹⁹ Case 03-C-0576, Petition of United Systems Access Telecom, Inc. for Authority to Act as an Eligible Telecommunications Carrier for Purposes of Participating in Federal Universal Support Programs in Accordance with §§214 and 254 of the Telecommunications Act of 1996, Request to Withdraw its Designation as an Eligible Telecommunications Carrier Designation, Order Regarding Request to Withdraw as an Eligible Telecommunications Carrier (issued April 20, 2005).

¹²⁰ Universal Service Order.

¹²¹ [Http://ftp.fcc.gov/cgb/consumerfacts/usp_RuralHealthcare.html](http://ftp.fcc.gov/cgb/consumerfacts/usp_RuralHealthcare.html).

Rural Health Care Corporation.¹²² Between 1998 and 2004, New York State received \$173,000 in Rural Health Care support.

The Commission has stated that basic service refers to telephone services deemed essential for "minimally acceptable access to, and use of, the public telecommunications network."¹²³ The Commission also identified factors that should be used to guide decisions concerning changes to the basic service list including the level of customer demand for the service, the public benefit it provides, the extent to which it is required to access other essential services, and the cost of providing it. The Commission found, based on these criteria, that the basic services list should include:

- Single party access line
- Access to local/toll calling
- Local usage
- Tone dialing
- Access to emergency services
- Access to assistance services
- Access to telecommunications relay service
- Directory listing
- Privacy protections

In its response to an FCC Notice of Proposed Rulemaking seeking comment on the definition of services supported by universal service, the Department of Public Service agreed with a Federal State Joint Board that "advanced or high speed" services do not meet the criteria for supported services.¹²⁴ According to our filing, the data most recently released by the FCC indicated that 14.4 million high speed lines served residences and small businesses, an increase

¹²² 94-C-0095, Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market, Order Adopting Discount Program for Rural Health Care Providers (issued November 4, 1997).

¹²³ Competition II Order, p. 9.

¹²⁴ CC Docket No. 96-45 - In the Matter of Federal-State Joint Board on Universal Service – Notice of Proposed Rulemaking, Comments of the New York State Department of Public Service (April 14, 2003).

of 27% over the previous period.¹²⁵ Further, according to the FCC, while subscription rates continue to increase, there is no evidence to suggest that a “substantial majority” of households currently subscribe to internet access in any form. The FCC concluded, and the NYDPS agreed, that the use of the internet, while valuable for educational, public health and public safety, is not “essential” nor is there evidence that high speed access would provide capabilities superior to other forms of communications, to deem it essential.¹²⁶

The existing definition of basic service remains appropriate in today's environment. Basic service refers to telephone services deemed essential for minimally acceptable use of and access to the public telecommunications network. The Commission's current definition and elements of basic service are adequate to ensure minimal access and use of the Public Switched Telephone Network.

Conclusion

Universal Service remains a critical goal. The universal service goals articulated in 1996 remain valid, and the existing definition of "basic service" remains appropriate in today's environment. Basic service refers to telephone services deemed essential for minimally acceptable use of and access to the public telecommunications network. The Commission's current definition and elements of basic service are necessary to ensure minimal access and use of the PSTN.

There is also no need to establish a universal service funding mechanism to ensure generally affordable rates in high cost areas at this time. A Transition Fund, with limited resources, exists which may be drawn on by the small independents if the Commission decides in a rate case that the increase the company's intrastate revenue requirement will increase company's rates beyond the Verizon benchmark for that area.

¹²⁵ High-Speed Services for Internet Access: Status as of June 30, 2002, “Industry Analysis and Technology Division, Wireline Competition Bureau, December 2002.

¹²⁶ On the other hand, FCC Chairman Martin recently stated that "promoting the deployment of broadband is the Commission's highest priority," and that he would do whatever he could to help achieve the President's goal of universal and affordable access for broadband technology by the year 2007. See remarks by FCC Chairman Kevin J. Martin, to NARUC, July 26, 2005.

Ideally, all providers should be required to contribute to the TAF for funding of Lifeline, 911, Relay Services and Public Interest Payphones so those services are paid for in a competitively neutral manner. The Commission should consider developing an alternate funding method (e.g. assessment based on working phone numbers).

V. Service Quality

Introduction

Telephone Service Standards

Telephone service problems of the late 1960's and early 1970's prompted the Commission to establish telephone service standards in November, 1973.¹²⁷ Two parts of 16 NYCRR currently address telephone service quality: Part 602 addresses consumer relations and operations management, and Part 603 specifies applicable metrics and reporting requirements. These sections represent the expectations placed on local exchange providers in the provision and maintenance of high quality telephone service.

The first significant change in the service standards occurred when the Commission considered the transition to local exchange competition in Competition II.¹²⁸ At that time, the Commission decided that all local exchange carriers should remain equally subject to the entire general administrative, operational and performance requirements of Parts 602 and 603, but that performance measurement and reporting requirements should vary depending on company size and performance history. In 2000,¹²⁹ the Commission further modified the standards to recognize increased movement away from a monopoly environment: It found some of the metrics and regulations were either: 1) obsolete due to technological changes; 2) not needed to protect the health, safety and welfare of consumers; or 3) unnecessary because market forces should ensure adequate service.

Part 602 – Consumer Relations and Operations Management

Part 602 of the rules and regulations describes the manner of interaction between local exchange service providers and consumers. It contains regulations concerning 1) Customer Service Centers - the general practices and procedures associated with end user expectations for

¹²⁷ Case 26158, Proceeding on Telephone Service Standards, Opinion No. 73-40 (issued November 26, 1973).

¹²⁸ Case 94-C-0095, Proceeding on Regulatory Framework, Opinion No. 96-13 (issued May 22, 1996).

¹²⁹ Case 97-C-0139, Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies, Memorandum and Resolution Adopting Revision of Parts 602, 603 and Section 644.2 of 16NYCRR (issued October 6, 2000).

accessing the customer service centers of service providers; 2) Public Information - the information that service providers should make available to consumers; 3) Service Orders – the requirements that service providers must adhere to when meeting a consumer's request for service; 4) Billing – requirements related to billing, such as requirements to list clearly all charges on bills, give credit for wrong numbers, and have representatives available to explain charges; 5) Consumer Complaints and Trouble Reports – regulations regarding the receipt and handling of consumer complaints and trouble reports; 6) Operator Services - regulations relating to the provision of local operator services, including a requirement to afford access at all hours to local assistance operators capable of connecting calls to appropriate emergency services; 7) Intercept – regulations pertaining to the routing of a call to a recorded announcement because the number dialed is incorrect or unreachable; and 8) Upkeep and Publishing of Telephone Directories.¹³⁰

Part 603 – Service Standards Applicable to Telephone Corporations

Part 603 of the rules and regulations describes the actual service quality metrics, performance thresholds, and reporting requirements that apply to local telephone service providers. It also describes network reliability, service outage and emergency planning requirements which are addressed subsequently. With the exception of Customer Trouble Report Rate, each metric is given a single performance threshold which represents a minimum level that carriers are expected to achieve.

¹³⁰ 16NYCRR, Chapter VI, Part 603.3-603.9.

The following metrics and performance thresholds are included in the Service Standards.¹³¹

Customer Trouble Report Rate (troubles per line/month/100)	
a. per central office switch	5.5 RPHL or less ¹³²
b. percentage of offices at 3.3 or less	85.0% or more ¹³³
Percent Out-of-Service Over 24 Hours	20.0% or less
Percent Service Affecting Over 48 Hours	20.0% or less
Percent Initial Basic Local Exchange Service Line Installations Completed Within Five Days	85.0% or more
Percent Missed Installation Commitments	10.0% or less
Percent Final Trunk Group Blockages	3.0% or less
Business Office Answer Time (answered within 30 seconds)	80.0% or more
Repair Office Answer Time (answered within 30 seconds)	80.0% or more
Operator Assistance Answer Time (either a. or b.)	
a. answered within 10 seconds, or	90.0% calls ¹³⁴
b. average speed of answer	3 sec. or less

All local exchange service providers are required to report Customer Trouble Report Rate (CTRR) monthly performance, while those providers serving more than 500,000 access lines are also required to report monthly performance for all of the above metrics. The rules also permit exemptions from some or all reporting if the provider can demonstrate provision of services through the resale of another service provider's services or purchase of another service provider's unbundled network elements over which it has no direct control. The approval of any exemption request is determined by the Director of the Office of Telecommunications on a case-by-case basis.

¹³¹ 16NYCRR, Chapter VI, Part 603.3.

¹³² RPHL refers to reports per 100 Lines.

¹³³ This only applies to service providers with 7 or more central offices.

¹³⁴ In Case 27946, Proceeding on Requirements Applicable to Customer Owned or Leased Currency Operated Telephones, Opinion Nos. 90-25 and 90-26 (issued September 28, 1990, and October 1, 1990, respectively), the Commission determined that only specifically authorized operator services providers could handle "zero-minus" (0-) calls, i.e., calls when customers dial only the digit zero. The criteria which must be met to obtain such authorization are set forth in 16NYCRR Part 649.6.

The Standards also call for the submission of "Service Inquiry Reports" when service repeatedly falls below the specified performance thresholds. Service Inquiry Reports are a means for the Commission to obtain from service providers a report that explains why performance did not consistently meet the established thresholds of the standards, and identifies any corrective action and the expected date for service to meet the thresholds.

An important part of the Telephone Service Standards, Part 603.5, deals with service interruptions and network reliability. This section of the rules describe company obligations to construct, operate, and maintain their networks in a manner that minimizes service failures. Providers are also required to be guided by accepted industry guidelines and practices, such as the findings and recommendations of the FCC's Network Reliability Interoperability Council (NRIC), in designing and maintaining their networks. Further, they are required to report major service interruptions to Department Staff, and to establish emergency contingency plans designed to prepare for and respond to major service outages, and to file such plans with the Director of the Office of Telecommunications. In addition, the definition and reporting of major service interruptions is per guidelines issued by the Director of the Office of Telecommunications.

Other Indicia of Service Quality

Commission Complaints

Aside from the basic service metrics of Part 603, the number, type and rate (per 1,000 lines) of complaints to the Public Service Commission are also used to judge overall service quality performance of a service provider. Because these complaints are taken directly by the Department of Public Service from consumers, they serve as an independent measure of service quality apart from the measurements reported under Part 603 by the service providers. No formal minimum performance threshold exists for Commission complaints, but the Commission has established a Commission Complaint performance expectation associated with its commendation process as described below.

Annual Commendations

Each year, the Commission issues letters of commendation to individual companies and/or operating divisions of companies for the provision of excellent service quality during the

previous year.¹³⁵ While Part 603 specifies minimum expectations, the commendation process recognizes service quality well above the minimum, and the letters serve to not only recognize such excellent performance, but encourage other companies to strive to better their performance. The commendations are based on the following criteria:

1. 95% or more of all CTRR measurement opportunities for the central offices of a company or its operating divisions/subsidiaries during a calendar year be in the range of 0-3.3 reports per 100 lines (RPHL),¹³⁶
2. A PSC Complaint Rate of 0.075 complaints or less per 1,000 access lines during that year, and
3. Achievement of all applicable incentive plan targets relating to CTRR and PSC complaints.

Special Services Guidelines

Special services are non-basic telephone services. Most are non-switched, and all of them require engineering design review before being installed. The majority of these services are high speed data circuits of 1.5 megabits and higher transmission rates, but they also include alarm, video, foreign exchange and other services. The Commission last revised its Special Service Guidelines in 2001,¹³⁷ making them applicable to all local exchange carriers, and requiring those serving more than 50,000 special service circuits to report performance. Currently, only Verizon reports performance.

The specific metrics include one relating to ordering, two relating to maintenance and three relating to installations, all of which contain performance thresholds. In addition, two

¹³⁵ The commendation process was formalized by the Commission in its Competition II decision (Opinion No. 96-13 at pg. 35) and has been modified in various annual Staff commendation memoranda to the Commission.

¹³⁶ The Telephone Service Standards, 16 NYCRR 603, only require that each central office perform at a CTRR of 5.5 or less. Companies with seven or more offices must have 85% of their offices performing at a level of 3.3 or less. Thus, the commendation criteria exceed the Commission standards.

¹³⁷ Cases 00-C-2051 and 92-C-0665, Special Services Guidelines for Verizon New York, Inc. Opinion No. 01-1 (issued June 15, 2001).

diagnostic metrics exist, one regarding missed appointments due to lack of facilities, and the other that measures the percentage of missed appointments when advance notice of a possible miss was provided to the customer or carrier requesting service.

Loop Transmission Guidelines

An aspect of service quality not addressed by the service standards is the clarity of communications on the physical path, or loop, utilized by service providers to connect end users to local telephone switching offices. Because the minimization of "noise" on subscriber lines is an important component of overall telephone service quality, the Commission in 1980 adopted Loop Transmission Guidelines that specify performance criteria for three basic loop transmission parameters: 1) Attenuation, defined as the decrease in the power level, or loudness, of the voice or data message transmitted over a telephone circuit; 2) Loop Current, defined as the amount of direct electrical current applied from a central office which flows through a subscriber loop in the off-hook condition; and 3) Noise, defined as unwanted electrical signals present on a telephone circuit. These guidelines are used to resolve consumer complaints concerning noise on a basic service line and are specific to a copper loop. However, they specifically do not diminish the responsibility of the telephone companies to maintain adequate transmission performance in other areas not specifically addressed therein.

Network Reliability Proceeding

In Case 03-C-0922,¹³⁸ the Commission began an examination into the reliability of the State's telecommunications network and to seek enhancements where necessary to promote the reliability of the network. Thus far, the Commission has ordered all facilities-based local exchange carriers to identify which of their central office buildings are equipped with dual cable entrances and to provide cost data per building to add a dual cable entrance to those central office buildings in Manhattan that currently lack a dual cable entrance facility. Facilities-based carriers were also ordered to show cause why they should not be required to provide geographic route diversity and other capabilities for most end offices, and to show cause why they should

¹³⁸ Case 03-C-0922, Proceeding on Motion of the Commission to Examine Telephone Network Reliability, Order Concerning Network Reliability Enhancements (issued July 28, 2004).

not be required to offer Critical Facilities Administration Service (CFA).¹³⁹ The Commission also ordered carriers to file additional data concerning costs related to the federal Telecommunications Service Priority (TSP) system and procedures regarding the identification of TSP circuits when more than one carrier is involved. Further action in the proceeding may occur as the need is identified.

Parties' Comments

The Consumer Protection Board (CPB) recognizes the importance of telephone service quality to the state's economy and the health and safety of its residents, and suggests that the Commission press for authority to oversee, and regulate where appropriate, the quality of telephone service provided in New York regardless of the technology used to provide that service. In particular, consumers should have ready access to service quality performance results and to emergency services (E-911). CPB also believes that the Commission should not modify, relax, or eliminate performance-based standards in competitive markets, pointing out that there have been recent serious and continuing service quality difficulties for Verizon even in areas where competition is significant. Further, it says that other areas where competition is somewhat lacking require continued service quality monitoring and enforcement. CPB further believes there is a continuing need to ensure that the wireline services remain secure and reliable because alternative modes of service are currently not as reliable or fully substitutable with wireline service, and market conditions at this time do not warrant streamlining of service quality regulations.

The Attorney General agrees with CPB that the Commission should refrain from deregulating at this time and that service quality measures should apply to all providers, regardless of mode of entry. The AG believes there may be a need to modify existing service quality requirements to accommodate differences in technologies, but that the regulations should remain for wireline service until intermodal competition is further advanced.

From the perspective of an end user with vital interest in service quality, the U.S Department of Defense states that output-oriented measures of service quality are still needed, and urges the Commission to continue the existing requirements for wireline carriers. DOD

¹³⁹ CFA provides Telecommunications Service Priority (TSP) subscribers with route-specific detail of their TSP circuits.

suggests that VoIP, wireless, and cable carriers that meet a certain size threshold should report on critical reliability and service availability metrics such as customer trouble report rate and mean time to repair as well as the frequency of service problems affecting 911, on a quarterly basis. While DOD believes that all providers of telephone service regardless of mode should periodically report service measures, it says that the expected service quality performance levels should not be set by regulatory bodies, but actual performance should be reported and made available for consumer comparison purposes. DOD also recommends disaggregation of results by residential, small business, and large business groupings.

The New York State Assembly Standing Committee On Corporations, Authorities & Commissions (the Committee), opposes deregulating service quality at this time, and suggests that existing service quality regulations continue to be applied uniformly across all platforms, consistent with existing law.

CWA believes that a regulatory commitment is needed to ensure that all New Yorkers obtain a high level of service quality regardless of where they live, which carrier they use or the type of technology utilized to provide the service. The union is concerned that, absent Commission oversight, incumbent carriers such as Verizon will neglect their copper network that provides connectivity for the majority of New Yorkers. As a result, CWA takes a solitary position, arguing that current service quality measures should be strengthened and additional measures for broadband service quality adopted. It states that output oriented measures should be applied to all providers supported by penalties and customer credits.

CTANY notes that service quality regulation is essential when one or more suppliers possess market power and can significantly reduce service without consequences, but that as competition develops, consumer protection and service quality regulations will become less necessary as the marketplace will police the behavior of competitors. Nevertheless, citing jurisdictional issues, CTANY proposes that major State initiatives be deferred until the FCC completes several significant proceedings examining intermodal competition.

Many parties support a continuation of the process of granting exemptions on service performance reporting for those carriers that provide service solely by repackaging or reselling another carrier's service. The CPB believes that the Commendation Program for excellent service is unnecessary. On the other hand, CTANY would retain the existing commendation process, while NYSTA would base commendations solely on complaints to the Commission.

Both the CPB and the Committee want to retain the requirement for the the annual filing of construction budgetary information.¹⁴⁰ while NYSTA believes it should be eliminated and replaced with a revised Annual Report to include basic financial information sufficient to monitor network infrastructure investments.

The wireline providers, and others such as CTANY and wireless carriers, believe that service quality is a competitive issue that should be market driven rather subject to stringent regulatory requirements. In general, the wireline carriers including Verizon, NYSTA, the New York Coalition of Rural Independent Telephone Companies, and Frontier, believe that competition provides the best incentive for carriers to maintain service. They argue that it would be inappropriate to impose regulations on their mode of service while other modes are free of regulation. Likewise, many parties (Frontier, Bronner, Verizon, the Committee, Cablevision and wireless carriers), state that service quality regulation either cannot or should not be applied to any of the competitive modes that currently are not subject to performance requirements.

Thus, with the emergence of intermodal competition, the wireline carriers argue that the current end user service quality regulations should either be eliminated or significantly reduced since, in their view, they impose substantial costs and do not make sense in the current marketplace. In place of the current service standards, NYSTA, Frontier and New York Coalition of Rural Independent Telephone Companies argue for an almost complete repeal of the Commission's consumer protections relating to service quality and the Telephone Service Standards. Instead, they advocate measuring local exchange carrier service quality solely on the basis of customer complaints to the Commission, since this would be minimally intrusive while still allowing the ability to monitor overall service quality. NYCRTC believes that regulatory reform such as this would not compromise the state's economic well-being, security and safety if, in addition, all providers comply with federal outage requirements.

Although Verizon suggests that service quality regulations be eliminated or significantly reduced in competitive markets, it recognizes that certain service quality regulations are still relevant, such as requirements to investigate all consumer trouble reports and complaints, clearing all emergency troubles, and provisions dealing with major service outages. It would also retain certain provisions as a safety net for consumers, such as those dealing with the

¹⁴⁰ 16 NYCRR 644.3.

handling of service orders, operator services, and intercept. However, Verizon does not support extending standards to other modes of communications such as VoIP and wireless because of the Commission's limited ability to regulate such carriers, and in today's intermodal market regulations should be reduced rather than increased.

Vonage argues that it is not a "carrier," per se, but rather an information service provider, and that its services are inherently interstate in nature subject to the exclusive jurisdiction of the FCC. The company also asserts that, based on the presence of competition as well as the physical characteristics of VoIP service, it is unnecessary and impractical to subject it to service quality regulation. Further, Vonage claims that internet application service providers do not control, nor do they possess, any information about the quality of their customers' physical broadband internet connection.

However, Vonage raises a quality concern with regard to the provision of broadband connections. It is concerned about "packet discrimination," whereby companies that either own or control a broadband connection could give priority to information packets generated by their own customers and thereby discriminate against packets generated by a third-party provider's (e.g., Vonage's) customers. In order to stimulate competition Vonage states the Commission must adopt enforceable rules that prevent "packet-discrimination" so that all VoIP traffic is provided equal priority of transmission.

Nextel and Cingular state that the wireless industry is competitive and should not be subject to service quality regulation that they believe is necessary only in a monopoly or near-monopoly environment. Verizon Wireless adds that federal regulations for wireless service quality negate the need for state regulations, and opposes establishing state regulation of wireless. Omnipoint notes that it is involved with the FCC's best practices NRIC Council, whose latest efforts (NRIC VII) are focused on improving practices for interoperability of networks, security, capacity and sustainability during natural disasters, terror attacks or similar events.

Discussion

Protecting public health, safety and welfare remains essential and therefore we should monitor the overall network reliability even in a competitive environment. The existence of competition, even if it is effective and thriving, cannot alone guarantee a reliable network, and there is too much at risk in New York State to conclude otherwise. As we move forward, we

need to continue to monitor the reliability of the telecommunications network and be aware of major service outages to ensure that public health and safety continues to be protected, while promoting a competitive environment that encourages investment in New York State.

The reliability of the telecommunications network in New York State is supported by industry practices and standards, which provide the general framework to ensure that the telecommunications network is constructed and maintained to operate efficiently and avoid service outages to the least extent reasonable.

Networks should be constructed and maintained to keep major service outages at minimal levels, particularly those that may affect emergency services and facilities that carry critical and/or major traffic. Despite the best efforts to avoid such major outages, they can and do occur. As intermodal competition brings forth new and technologically different networks, the Commission should reexamine its policies ensure that these networks are not only reliable, but remain so over time.

Some service quality metrics are useful tools to measure the reliability of networks. The customer trouble report rate, for example, is an indicator of how well the network is functioning, since it measures how often consumers experience a network failure. Similarly, out-of-service over 24 hours and service affecting over 48 hours results indicate how quickly services are restored to their full functionality, which not only reflects the timeliness of the repair workforce, but also the ability of the network to be restored quickly due to things such as spare capacity and automated repair capabilities.

Once competition has more fully developed in all areas of the state, a transition from current reporting requirements to a regime that emphasizes network reliability may be appropriate. We recommend that the Commission reexamine the issue in one year. We believe that company-wide service indicators that include trouble report rate and mean-time-to-repair would serve as indicators of overall network reliability, and would also provide meaningful comparative information to consumers as they choose a service provider. We plan to consult with providers and other interested parties in defining how these network reliability metrics would be measured and reported. We believe that quarterly reporting of these network reliability data, rather than monthly, would reduce the operational burden placed on providers while still meeting our public safety mandate.

Output reports alone will not ensure that networks are being maintained well enough to keep reliability optimal. Currently, local exchange providers are required to file an annual Capital Program which summarizes its expended capital dollars during the previous calendar year and provides a construction plan for the next four years, in order to ensure that they are properly planning to invest in and expand the network to meet expected and increasing demand. As basic wireline telephone demand is declining, that requirement is no longer needed. In its place, we suggest that all facilities-based providers file an annual report addressing the existing levels of diversity in and resiliency of their networks, as well as their short-term plans to improve reliability. This report would not necessarily include expenditures, but would discuss compliance with industry standards and best practices. The information would provide the Commission with some assurance as to the state of the telecommunications network and might also identify problems for those companies not implementing certain best practices, perhaps because of competitive duress that may be influencing their infrastructure investments.

This three-pronged reporting process – Quarterly reports on Customer Trouble Report Rate and Mean-Time-To-Repair, and an Annual Report on Network Reliability – should allow us to adequately monitor network reliability.¹⁴¹ The information in these reports, along with Commission complaint data, would allow us to identify problems and seek corrective action from the appropriate service providers if a need is indicated. If this information is received from all facilities-based providers, it should provide a safety net for identifying service quality and/or network reliability issues that a competitive market may not identify on its own, especially in less competitive areas. To the extent that the Commission currently does not have regulatory authority to impose rules and regulations on some providers, which compromises our ability to address public safety and other mandates, we would expect that those providers would nonetheless be willing to provide any and all information necessary, on a proprietary basis where requested, to ensure that the citizens of New York are adequately protected and that vital information is available under any and all circumstances. Without this vital information from those providing the backbone facilities of the telecommunications network, we risk the possibility that one or more major networks will become vulnerable and therefore unreliable, possibly resulting in a network that can not continue to operate under extreme conditions,

¹⁴¹ Major outage reporting and emergency planning would continue in addition to these three reporting processes.

whether it be a natural event (e.g. a hurricane) or a manmade event (e.g. a terrorist attack). At the same time, we expect competition will increasingly force all providers to identify and meet consumers' service quality expectations. By examining this information, we believe that we will be able to monitor and facilitate resolution of network reliability issues while at the same time not overburdening the industry with unnecessary regulation and reporting requirements.

Conclusion

The intent of service standards is to ensure high quality service and provide consumer protections when service quality falters. We propose to move away from the full breadth of service quality standards toward a more focused set of network reliability indicators as competition becomes more pervasive. A three-pronged reporting mechanism for facilities-based providers would allow the Commission to monitor the reliability of the network. While we have monitored service quality on a monthly basis and continue to raise any service-related issues with the appropriate carrier on an "as needed" basis, we have on occasion made specific recommendations to the Commission. Under Public Service Law, the Commission can initiate an investigation, call for testimony by expert witnesses in a service proceeding, hold hearings in the affected locales, direct specific improvements and, if necessary, institute a penalty proceeding. These potential avenues to address service quality deficiencies would continue to be available to the Commission even under the proposed more focused limited set of reporting requirements.

In conjunction with the proposed competitive review,¹⁴² a review of service quality requirements should be undertaken 12 months from now, including service standards results and Special Services Guidelines, to determine whether the competitive market can adequately drive these performances to the point that we can remove certain regulation and transition them into best practices.

¹⁴² This competitive review is further discussed on page 51 of this report.

VI. Consumer Protections

Introduction

For many years, wireline companies comprised a network monopoly, and, therefore, were required to provide many consumer protections to New Yorkers.¹⁴³ However, in today's changing environment, where New Yorkers have a broad range of service providers to choose from, regulatory oversight should be flexible. This section provides a brief overview of existing consumer protections and proposes changes to those protections in this transitional marketplace. Our proposals represent a balanced approach – protecting consumers in essential critical areas, while allowing market forces and consumers' choices to prevail in less critical areas.

The Commission is required to ensure just and reasonable rates for adequate service,¹⁴⁴ and has enacted many rules, guidelines and principles over the years in order to achieve those ends. For example, the Commission has issued consumer Privacy Principles¹⁴⁵ which addressed customer privacy expectations, has adopted federal slamming¹⁴⁶ protections and has developed

¹⁴³ The entire list of protections is contained in the Commission's Rules, Part 600.

¹⁴⁴ Public Service Law, sections 91 *et. al.*

¹⁴⁵ Case 90-C-0075, Proceeding on Motion of the Commission to Review Issues Concerning Privacy in Telecommunications, Statement of Policy on Privacy in Telecommunications (issued March 22, 1991)

¹⁴⁶ Slamming is the illegal practice of changing a customer's telephone service – local, intraLATA service, or interLATA service (including state to state, in state and international long distance) without permission. The FCC revised its slamming liability rules on November 28, 2000. Under the revised procedures, states were able to opt in to become the primary forum for administering the liability rules and resolving slamming complaints. New York did so via letter to the FCC, as required by 47 CFR 64.1110.

cramming¹⁴⁷ guidelines, as well as requiring end user blocking capability which allows consumers to block local chatlines and pay-per-call numbers, such as 900 numbers.¹⁴⁸

The Commission has consistently revisited its consumer protections role in light of the changing telecommunications environment. Competition II, as discussed above, provided a framework for minimum requirements and competitive relationships between multiple carriers that would meet the needs of all consumers, allowing them to shop among service providers to find the package of capabilities, price, and quality that best met their individual needs. The Commission also adopted guidelines to standardize customer migrations between competitive local exchange carriers (CLECs) and from CLECs to Verizon¹⁴⁹ and mass migrations¹⁵⁰ in extraordinary circumstances (e.g., bankruptcy, out-of-business and/or otherwise terminate service), and established general principles and carrier responsibilities for, among other things, the use of end-user customer information.

Parties' Comments

Party comments on specific consumer protections issues raised in the order instituting this proceeding and other pertinent party comments are discussed in this section, as follows: 1) Essential Consumer Protections; 2) Wireline Regulations; 3) Commission Complaint Handling Role; and 4) Municipally owned wire/wireless networks.

¹⁴⁷ Cramming is the practice of placing unauthorized, misleading, or deceptive charges on a customer's traditional (wired) telephone bill. Entities that fraudulently cram people appear to rely largely on confusing telephone bills in order to mislead consumers into paying for services that they did not authorize or receive.

¹⁴⁸ Case 98 C- 1273 - Proceeding on Motion of the Commission as to ACC Telecom, Corp.'s Blocking Obligations with Regard to Its Chatline Services filed in Case 89-C-099. See also Case 04-C-1297 - In the Matter of Local Exchange Carrier Compliance with Chatline Blocking Requirements.

¹⁴⁹ Case 00-C-0188 - Mass Migration Guidelines, Order Adopting Phase II Guidelines (issued June 14, 2002).

¹⁵⁰ Case 00-C-0188 - Mass Migration Guidelines, Order Adopting Revised Mass Migration Guidelines (issued January 2, 2003).

Essential Consumer Protections

In response to the question as to whether or not there are certain consumer protections that should be considered "core", parties views generally fell into three groups: 1) those that believe there are core protections (sometimes called 'social obligations'), that should apply to all service providers; 2) those that believe there are core protections that should only apply to currently regulated companies; and 3) those that believe there are no core protections at all. We note that while there was some consensus among most commentors on what they believe are essential consumer protections, like the provision of E911, and fraud, disclosure and advertising protections, there was disagreement among many of the intermodal service providers as to whether or not additional requirements to enforce adherence to these protections was necessary or warranted.

For example, neither United Online nor Vonage, both applications-based VoIP providers, support slamming and cramming protections, while Time Warner supports both consumer protections. Cablevision and Time Warner also take varying positions on the PSC complaint process. Cablevision generally opposes the need for Commission involvement in the complaint process, while Time Warner supports the role of the Commission to handle such complaints.

CTANY stated that, "...we recognize that it is our responsibility to undertake a number of social obligations such as providing access to 911/E911, access to the disabled, and assistance to law enforcement."¹⁵¹

Vonage indicated that the company is in the process of making network upgrades to fully comply with the recent federal requirement to provision E911 service. Vonage also provides some other consumer protections, including end user blocking and 800 access, as a matter of business practice, but does not offer customers a directory, directory listings, Lifeline service, nor does it have the ability to maintain voice service in the event of a power outage.

Vonage and other VoIP providers emphasized that their services are inherently interstate in nature and subject to the exclusive jurisdiction of the FCC. However, these companies believe

¹⁵¹ CTANY's comments, p. 23.

that they have some social obligations and must adhere to some general laws¹⁵² of applicability, such things as false advertising, disputed billing and general business conduct.

NYSTA does not support any expansion of the Commission's role with respect to the enforcement of core consumer protections requirements, regardless of competition.¹⁵³ Nextel and others in the wireless industry believe that ample core consumer protections are provided by competition, voluntary compliance with industry Code¹⁵⁴ and assurance agreements,¹⁵⁵ and the newly extended FCC truth-in-billing rules. In sum, Nextel believes that there is no justification for additional wireless state specific consumer protection regulation by the PSC.

Verizon stated that it, "...is not opposed to leaving in place certain "core" consumer protection regulations designed to discourage fraudulent practices, ensure that telecommunications services are accessible to special needs customers, and provide other basic protections. Nonetheless, in light of the proliferation of competitive alternatives available to consumers of telecommunications service in New York, and since market forces diminish the

¹⁵² General Business Law (issued February 17, 1909), Consumer Protection From Deceptive Acts and Practices, Article 22-A, Section 349, p. 320, addresses, "Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state...", and enforceable by the Office of the Attorney General.

¹⁵³ NYSTA's comments, p. 7.

¹⁵⁴ Nextel comments, p. 8. In September 2003, the Cellular Telecommunications and Internet Association (CTIA), issued a Consumer Code for Wireless Service (the "Code") to address consumer needs in the competitive marketplace. The policies and standards of performance contained in the Code are consistent with making competition the driver to provide the best possible service to consumers. The Code is designed to be achievable and workable within the nationwide design of wireless networks and for the multi-state nature of the delivery of wireless services. All wireless carriers providing nationwide service and many of the smaller, regional carriers meet or exceed the performance standards contained in the Code and have integrated them into their respective terms and conditions of service upon which they compete for customers.

¹⁵⁵ Id, p. 9. In addition to the Code, pursuant to state consumer protection law, Cingular Wireless, Verizon Wireless and Sprint have signed settlement agreements known as Assurances of Voluntary Compliance ("AVCs") with 33 state Attorneys General. New York's Attorney General has chosen not to join into the AVCs. These agreements follow the requirements of the Code, with some carrier specific deviations, and are enforceable in court by the respective Attorneys General should a carrier that has an AVC not be in compliance with its AVC.

need for regulatory protections, the Commission should ease consumer protection-based restrictions that impose onerous and unnecessary burdens on Verizon and which place Verizon at an unfair disadvantage vis-à-vis its competitors."¹⁵⁶

Relaxing Traditional Regulation

In response to the question as to whether or not the Commission should relax some traditional wireline consumer protections regulations, in view of competitive alternatives, party comments were generally categorized into three groups: 1) those that believe all wireline regulations should be relaxed; 2) those that believe some regulations should be relaxed; and 3) those that believe no wireline regulations should be relaxed.

Frontier suggests that the only regulations that should be retained for wireline companies are Parts 602 (Consumer Relations and Operations Management), 609 (Rules Governing Provision of Residential Telephone Service) and Part 606.5 (Partial Payment Requirements), and these rules should only apply to residential basic service. Frontier proposes complete de-tariffing of all other services besides a basic service.

The New York Coalition of Rural Independent Telephone Companies believes it is appropriate for the Commission to relax some of its wireline consumer protections, once the Commission decides what consumer protections are necessary to ensure a sound public policy. Once identified, the Coalition suggests that a proceeding be initiated to review each current requirement and examine new ones. Once a set of fundamental consumer protection policies is established, the implementing rules should apply equally to all service providers, regardless of technology or current regulatory status."¹⁵⁷

Verizon has suggested that, with the exception of a very small number of consumer protections rules, it believes that the remainder of consumer protections rules should continue to apply to wireline companies, and is willing to continue to conduct its business around them. This is based on the practical position that Verizon remains the dominant telecommunications carrier in New York at the present time.

¹⁵⁶ Verizon's comments, p. 41. Verizon identified slamming, cramming, E911, relay access, termination notices and privacy protections.

¹⁵⁷ New York Coalition of Rural Independent Telephone Companies comments, pp. 11-12.

The Attorney General noted that, "Competition should not become an excuse to allow providers to race to the bottom by removing consumer protections and degrading service quality... the proper response to the development of intermodal competition is to apply basic protections to all providers – not to release those already regulated from affording the protections that consumers need and expect."¹⁵⁸

CTANY stated that it does not believe that sufficient competition exists to relieve the incumbent providers of their obligations to the customers of New York.¹⁵⁹ Likewise, the Public Utility Law Project (PULP) added that there " is simply no basis to eliminate customer rights and remedies simply because there are two or more potential providers."¹⁶⁰

Commission Complaint Handling Role

In response to the questions as to whether the Commission has a unique role to play in addressing consumer complaints, and whether or not the Commission's complaint handling functions and authority to enforce core consumer protections should be expanded to include wireless, cable telephone and VoIP, comments were generally categorized into three groups: 1) those that believe the Commission's complaint handling functions should be extended to all service providers, and should enforce core consumer protections requirements for all service providers; 2) those that believe the Commission does not have the authority to extend its complaint handling role, and does not have the authority to enforce core consumer protections for all service providers; and 3) those that believe that the Commission should eliminate the complaint handling process altogether, and rely on the competitive market to provide adequate consumer protections.

Time Warner and the Office of the Attorney General strongly support the Commission's role to handle all telecommunications consumer complaints, while Cablevision and some other parties believe that there are jurisdictional doubts as to the Commission's authority to handle VoIP consumer complaints; CTANY echoed Cablevision's comments. Nextel stated that the CPB receives and addresses wireless complaints and reports a favorable resolution of 85% of

¹⁵⁸ Attorney General's comments, pp. 8, 10

¹⁵⁹ CTANY's comments, p. 23.

¹⁶⁰ PULP's comments, p. 8.

those complaints, and suggests that the Commission does not and should not play a central role in receiving wireless complaints or providing wireless dispute resolution.¹⁶¹ Nextel believes that there is a lack of evidence showing a need to extend the Commission's regulation into wireless complaints or dispute resolution.

NYSTA does not support expansion of the Commission's role to extend protections and requirements to others, like wireless, cable telephony and VoIP providers,¹⁶² and in general, Verizon also does not believe that the Commission should extend further consumer protections requirements upon unregulated companies.

Verizon Wireless concludes that the Commission should not extend any regulations or complaint handling processes to wireless carriers, but instead continue to rely on the competitive market to drive benefits to New York's wireless consumers.

Municipally Owned Wire/Wireless Networks

In response to the question as to what impact municipally owned wire/wireless networks might have on the state of telecommunications in New York, some commentators were of the same general opinion that they were opposed to municipalities offering telecommunications services because of the inherent disadvantages private industry has in competing against governmental entities. Frontier Communications noted that, "Municipally owned networks, whether wired or wireless, further tilt the playing field against ILECs because of municipalities' exemption from taxes, their ability to finance capital expenditures and operating losses out of tax revenues, and the near-total lack of regulation of such services when provided over either wires or unlicensed spectrum."¹⁶³ However, United Online stated that, "Municipally owned wireline and wireless networks foster additional much needed competition in the broadband internet access marketplace,"¹⁶⁴ and First Avenue commented that, "Municipal facilities might offer alternative,

¹⁶¹ When the Commission receives consumer complaints for wireless phone service, Staff refers complainant to the Office of the Attorney General for resolution.

¹⁶² NYSTA's comments, p. 7.

¹⁶³ Frontier Communications' comments, p. 22.

¹⁶⁴ United Online's comments, p. 9.

physically diverse, facilities-based telecommunications systems to buildings that otherwise might remain served by only one network."¹⁶⁵

Discussion

Traditionally, the Commission has wholly supported a transition to competition, but has also recognized that in a changing competitive environment, the degree of regulation may also require change and flexibility. Where competition is robust, regulatory restraint is the best approach; where it is not, some intervention may be required to restrain the exercise of market power and ensure adequate consumer protections.

In today's competitive environment, several consumer protections are essential for the health and safety of all New Yorkers who subscribe to voice services, regardless of service provider.¹⁶⁶ These essential protections include E911 service¹⁶⁷ and compliance with federal wiretap rules.¹⁶⁸

The Commission has also required wireline carriers to provide blocking capabilities to allow customers, especially parents, to restrict access to 900 and other pay-per-call numbers, as well as to local chatline numbers located on local exchange carrier networks.¹⁶⁹ Many wireless

¹⁶⁵ First Avenue comments, p. 3

¹⁶⁶ Many of the consumer protections are contained in Part 600 of the Commission's Rules which contain many subparts; it is our belief that some rule subparts could be streamlined or relaxed.

¹⁶⁷ FCC Order 05-166 - In the Matters of IP-Enabled Services E911 Requirements for IP-Enabled Service Providers, First Report and Order and Notice of Proposed Rulemaking (Adopted May 19, 2005, Released June 3, 2005), specifies that interconnected VoIP service providers must provide E911 service. See also Case 26443, Proceeding on Motion of the Commission as to the Provision of Universal Emergency No. 911 by Telephone Companies, Order Establishing the Framework for 911 Services (Orders dated 11/20/73 and 1/27/75); Case 28358, New York Telephone Company – Enhanced Emergency Telephone Service (E911), Opinion Number 84-7. (issued April 11, 1984).

¹⁶⁸ Responding to a petition from the Department of Justice, the Federal Bureau of Investigation, and the Drug Enforcement Agency, the FCC determined, on August 5, 2005, that facilities-based broadband internet access service providers and PSTN-interconnected VoIP providers must be prepared to accommodate law enforcement wiretaps.

¹⁶⁹ Cases 98-C-1479, End-User Blocking Requirements, Order Directing Carriers to File Tariffs for Chatline Services and Related Actions (Order dated 2/4/99) and 04-C-1276/1297, End-

and VoIP providers currently provide such blocking capability; however, this essential protection is not ubiquitous among service providers. We seek comment on its availability among non-wireline carriers and an explanation from those who do not provide the service why they have chosen not to.

To allow for the protection of the identity and location of certain consumers such as women living in shelters from violent spouses, as well as judges, lawyers, law enforcement officials and crime victims or their family members, the Commission, in crafting its Privacy Principles, implemented a requirement that all wireline carriers offer per call and all call blocking of telephone numbers. We do not believe this is widely provided by non-wireline carriers however, and we seek comment on its application to non-wireline service providers, as well as its current availability among non-wireline carriers, as well as an explanation from those carriers who do not provide the service why they have chosen not to.

There are several other important consumer protections that were identified by the commenting parties such as Slamming and Cramming rules; access to Statewide Relay Service; appropriate termination notification; general Privacy Protections (as described in the Commission's Privacy Principles); annual notification rights including the customer complaint handling process, disputed billing process, full disclosure, and provision of a directory and directory listing. Many of these consumer protections are already provisioned by alternate service providers, through a combination of regulatory requirements or on a voluntary basis, as a matter of good business practice. In addition, many wireless providers voluntarily adhere to the CTIA Consumer Code for Wireless Service,¹⁷⁰ which contains 10 consumer protections

User Blocking Requirements, Order Directing RNK Inc. to Show Cause (Order dated 10/20/04); Order Resolving Compliance Issues and Authorizing Outreach Program (Order dated 1/21/05); Order on Rehearing (Order dated 5/19/05).

¹⁷⁰ The CTIA Code contains ten standards summarized as follows: 1) For every rate plan or contract, consumers will be given specific disclosures regarding rates and terms of the service; 2) Coverage maps will be provided, illustrating where service is generally available; 3) When initiating or changing service, carriers will clearly state contract terms to customer and confirm changes in service; 4) Each service plan will provide every new consumer a minimum 14-day trial period for new service during which they can terminate service with no early termination fee; 5) In every advertisement that mentions pricing, rates and terms of service will be specifically disclosed; 6) On billing statements, carriers will separately identify carrier cost recovery charges from taxes; 7) Customers will be provided with the right to terminate service for significant changes to contract terms; 8) Ready access to

standards, and have voluntarily signed settlement agreements known as Assurances of Voluntary Compliance (AVCs) with state Attorneys General to provide for voluntary enforcement of the requirements of the Code.

We commend those service providers that have taken significant steps to provide these consumer protections, and encourage all providers to continue to strengthen consumer protections for their customer base.

Existing Wireline Consumer Protections

Part 600 of the Commission's rules and regulations contains many sections of protections that currently apply to all wireline carriers, including incumbent and competitive carriers. The parties' comments range from retention of all protections to complete elimination of all protections; we address those comments, and suggest, as described in the Convergence Matrix Appendix ¹⁷¹, retention, streamlining or outright elimination of certain regulations currently applying solely to wireline carriers. We seek comment on the proposals described below, as well as on other consumer protection regulations that could be streamlined or relaxed immediately.

Partial Payment Requirements

The Commission requires carriers like Verizon to allocate partial payments in a specified order to various categories ¹⁷² thus preventing the disconnection of some services (and, in particular, of local service) if partial payment is made. Verizon, Frontier, NYSTA and other commentors believe that the partial payment system is unduly burdensome because the current

customer service will be provided; 9) Consumer inquiries and complaints received from government agencies will be responded to promptly; 10) Each company will agree to abide by policies for the protection of customer privacy.

¹⁷¹ The Convergence Matrix, detailed in Appendix B, contains a listing of Part 600 rules and other consumer protections rules that are currently applicable to wireline carriers. The matrix also identifies other requirements that should remain for all wireline carriers.

¹⁷² 16NYCRR Part 606.5, Partial payment requirements. Category 1 is reserved for Basic service (which includes local service, directory assistance and E911); Category 2 is specific to IntraLATA service; Category 3 is specific to Calling Packages, including luxury features such as Call ID, Call Forwarding, Call Waiting; Category 4 is specific to Interstate/International services; Category 5 is reserved for internet services. Any customer bill partial payments are first applied to Category 1, and then to the other categories in numerical order.

system of applying partial payments conflicts with the concept of bundled service offerings wherein several services are provided at one monthly rate, making the notion of putting partial payments into a specific service-related bucket difficult to administer. Parties would like the partial payment prioritization method to be eliminated, or have it only apply to basic, unbundled services, allowing companies full flexibility to apply partial payments as they see fit.

We believe that the parties' position may make some sense in today's environment of service bundles and one-rate pricing, but we also recognize that there are a significant number of consumers who make partial payments in order to retain their telephone service. Therefore, we propose to relax the partial payment requirements to the extent that customer partial payments would first be applied to local service. Wireline companies would have full flexibility to apply the rest of the further partial payments in whatever way they deemed appropriate.

Late Payment Charges

Verizon suggests that the Late Payment Charge¹⁷³ is not set at a competitive rate, and the Commission should allow companies flexibility to determine when and how to adjust late payment charges. Verizon claims the current charge of 1.5% monthly or 18% annually "...is less than the late payment charges some of Verizon's competitors are allowed to assess and also less than the late payment charges assessed by creditors like credit card companies, whose outstanding bills often are paid off on a priority basis due to the large, fixed late payment charges and other finance charges they are at liberty to assess."¹⁷⁴

No telephone corporation may charge any residential customer a late payment charge without commission approval.¹⁷⁵ Nothing prohibits a telephone corporation, with the approval

¹⁷³ A late payment charge of 1.5% per month currently applies to amounts previously billed on customers' bills that remain unpaid at the time the next bill is prepared, excluding the previous month's local service charge, but including arrears and previous late payment charges.

¹⁷⁴ Verizon Comments, p. 46.

¹⁷⁵ 16 NYCRR §609.11

of the commission, from imposing a reasonable charge, not in excess of its costs, pursuant to its tariff for restoral of service, dishonored checks and other lawful purposes.¹⁷⁶

Verizon's current tariffed late payment charge is 1.5% per month on amounts that remain unpaid at the time the next bill is prepared, excluding the previous month's local service charge, but including arrears and previous late payment charges. This is less than the late payment charges some of Verizon's competitors, including Verizon Wireless, AT&T, Cablevision, and Time Warner Communications, are allowed to assess and also less than the late payment charges assessed by other creditors.

In its comments Verizon asks that its late payment charges be set at a competitive rate, and requests that 16 NYCRR 609.11 be revised or eliminated to permit it flexibility in setting and adjusting its late payment charge and other fees charged to its customers, such as a charge for a dishonored check. In addition, Verizon requests that the Commission eliminate the provision in its regulations that ties the interest rate Verizon is required to remit to its customers in instances of overbilling to the late payment charge.¹⁷⁷

It is premature, and unnecessary to recommend changes to the current regulations that govern late payment charges at this time. There is, however, no statutory limitation that would prevent Verizon from increasing the late payment charge to delinquent customers, so long as the

¹⁷⁶ Energy utilities are different: 16 NYCRR Part 11 (Home Energy Fair Practices Act sets forth the Commission's rules implementing the Home Energy Fair Practices Act and the Energy Consumer Protection Act of 2002) governs the rights, duties and obligations of every gas corporation, electric corporation, gas and electric corporation, steam corporation and municipality subject to the jurisdiction of the commission by virtue of articles 2, 4 and 4-A of the Public Service Law, their residential customers and applicants for residential service. § 11.15 (Late payment and other charges) states that a utility may impose a one-time or continuing late payment charge, not in excess of 1 1/2 percent per month on the unpaid balance of any bill for service including any interest thereon, provided the utility meets certain notification, billing conditions and that certain customers are not effected (does not impose such charge on any bill that is the subject of a pending complaint before the utility or the commission, etc.)

¹⁷⁷ 16 NYCRR § 634.3, The rate of interest on customer overpayments to telephone utilities shall be the greater of the unadjusted customer deposit rate or the applicable late payment rate, if any, for the service classification under which the customer was billed. Interest shall be paid from the date when the customer overpayment was made, adjusted for any changes in the deposit rate or late payment rate, and compounded monthly, until the date when the overpayment was refunded.

increase is approved by the Commission. Verizon's competitors have the flexibility to charge market based rates for late payment charges and other charges. In addition, a principle goal of this proceeding is to remove regulatory asymmetries. Constraining Verizon and other incumbents when its competitors are not so limited is unreasonable. As such, we would be inclined to support an increase in the late payment charge with the following conditions: late payment charges would not be assessed on lifeline customers, customers who suffer from serious illness, or customers that have amounts in dispute with the DPS. Late payment charges should not be assessed on customers billed under a quarterly payment plan or amounts deferred under a deferred payment agreement. Further, an increase in the late payment charge would be assessed only after customers have received proper notification.

Termination Notice Modification

Verizon proposed that the Commission make one modest change, to allow companies to send termination notices via e-mail or in other electronic form, rather than by mail, to customers who have consented to receive communications through electronic means. We are amenable to Verizon's proposal in light of the proliferation of e-mail as a business-to-customer communications medium, so long as companies seek, and consumers consent, to such types of communications. We also believe that many other business-to-consumer processes, such as Annual Notification Rights, billing questions, information requests, customer disputes and complaints, could also be accommodated via e-mail, interactive websites or fax communications, in much the same manner that the Commission uses e-mail to process consumer complaints.

The Commission's Complaint Handling Role

Some parties believe that the Commission's procedures for handling consumer complaints should be revised and streamlined to further support efficient and timely resolution of customer disputes. Verizon states that Section 96(4) of the PSL provides that complaints should be resolved within 60 days of the final submission of papers to the Commission, but final complaint resolution may sometimes involve a lengthy multi-level process. Under existing regulations, if a customer prevails in a billing dispute, the amount awarded is subject to interest, which can accrue to a significant amount. Since a complaint can take years to resolve, this can result in the imposition of substantial interest charges that Verizon believes are tantamount to severe penalties.

We agree that consumer complaints should be resolved as expeditiously as practicable. The current Quick Resolution System (QRS)¹⁷⁸ process has substantially accomplished that goal. Approximately 80% of consumer problems are resolved at the initial contact stage, without need to be upgraded to the Standard Resolution System (SRS) complaint process.

With respect to comments that lengthy complaint cases lead to substantial interest payments, tantamount to severe penalties, we are unconvinced by Verizon's argument. The majority of consumer complaints are resolved within 60 days. Interest accruals are retroactive to the date the customer's billing error occurred, and the rate of interest is paid at the greater of the unadjusted deposit rate or the applicable late payment rate. In general, with the limited number of cases that fall into this category, we believe the interest accrual rate is not exorbitant, and the possibility exists that limiting the time period for interest accruals could unfairly penalize consumers. .

Municipally Owned Wire/Wireless Networks

We are not aware of any significant development efforts for the provision of municipally owned wire/wireless networks in New York State. We agree, however, with Frontier and others making the same point, that such networks would unfairly tilt the playing field against incumbents which have to pay taxes and incur higher financing costs.

¹⁷⁸ QRS requires service providers to contact any customer with a collection or service related issue within two working hours. All other customers must be contacted by the close of the business day following receipt of the case. The provider will discuss the matter with the customer and take the necessary action to satisfactorily resolve the matter with the customer within 14 days or within five days for Executive Correspondence cases. At any time during or within 60 days after the handling of a customer's QRS case by the service provider, the customer may contact Office of Consumer Services (OCS) and express dissatisfaction with the manner in which the provider attempted to resolve their issue. Should that happen, the case will be reclassified as a complaint (under the Standard Resolution System – SRS), charged to the service provider and submitted to the provider for investigation and a full response to the OCS. The service provider will have 10 calendar days to respond to an SRS Complaint.

Providing Consumer Information

Consumers believe in, and have come to expect, certain protections. Since all service providers regardless of technology want to attract customers, and dismal service quality or lack of attention to consumer protections or concerns could affect consumers' perceptions of a service provider, recognition by the Commission that they are a consumer-friendly carrier might be important to many of them.¹⁷⁹ We seek comment on the value of creating such incentives, as well as whether or not the providing information required in order to become a "preferred" or "certified" carrier would be difficult. We also welcome comment on additional proposals.

Additionally, the notion of establishing a "consumer report card" which might address compliance of various carriers with the wide array of consumer protections articulated in the Commission's Part 600 rules may make sense because the public, used to the protections it has traditionally received from wireline carriers, would be inclined to embrace alternate service providers who offer similar protections.

There is a precedent for such a public acknowledgement. The Office of Telecommunications prepares a memorandum to the Commission on an annual basis which confers commendations on ILECs and facilities-based CLECs that have achieved a certain level of service quality during the preceding 12 month period. It is our understanding that appearing on this list, and receiving Commission recognition, is of great importance to carriers and provides a powerful incentive to maintain good levels of service quality.

The Commission could create similar incentives for carriers to encourage adherence to a list of the Commission's most important consumer protections. For example, it may wish to establish some sort of a non-binding "certification" process for service providers that make these protections available to their potential customers. In addition, we could recognize such carriers through use of the Department's website, where a list of "certified" or "preferred" carriers could be made available to the public. We might also, along the lines of the service quality report, issue an annual "consumer report" which might include such things as the annual number of complaints/contacts recorded against all service providers, service provider outage summaries and/or descriptions of voluntary company compliance with existing Commission protections.

¹⁷⁹ We believe such incentives may also be important to wireline carriers since they already largely provide extensive protections, and may use this as a marketing tool to both retain and attract new customers.

We may also want to consider expanding the Commission's annual service quality commendation process to include wireless or VoIP providers who voluntarily provide data that can be used to gauge service quality performance.

Conclusion

We consider essential protections to be those that are critical for the health and safety of all New Yorker's who subscribe to voice services. Essential consumer protections should apply to all service providers using the PSTN to primarily deliver service to New Yorkers.

Compliance with federal 911 and wiretapping requirements are mandated for all service providers as a matter of federal law. We seek comment on the availability of end-user blocking capability and telephone number blocking capability to consumers of alternative platforms.

There are a number of other consumer protections that have importance for their social components. These include slamming and cramming protections; access to the statewide relay service; termination protections; annual notification rights including customer complaint handling process; disputed billing process; full disclosure of terms, conditions, services, charges; privacy protections; and the provision of a directory and directory listings.

Every telecommunication service provider should seek to embrace and implement such protections. We also conclude that there are some non-critical requirements currently applicable to wireline companies that can be streamlined or eliminated (identified in the Convergence Matrix – Appendix B), and some that should continue to apply only to wireline companies for the present time. Staff tentatively concludes that there could be further regulatory refinements (either streamlining or elimination), and seeks additional party comments on what those refinements might be.

VII. Level Playing Field and Wholesale Markets

Background

The Commission has defined a level playing field as "...arrangements among providers of communications services necessary for local competition to be effective."¹⁸⁰ Recognizing that at the time of the Competition II Order "the existing market [was] highly concentrated and largely a monopoly," the Commission stated that its objective was to remove barriers to competitive entry into the local markets and to establish a level playing field for competing providers of local exchange service.¹⁸¹ The Commission was concerned with issues such as interconnection, intercarrier compensation, bottleneck facilities, directory listings, pole attachments, and numbering.¹⁸²

Since Competition II, and in the wake of the Telecommunications Act of 1996, the Commission has taken a number of steps to promote competition and level play.¹⁸³ The

¹⁸⁰ Competition II Order, p. 15.

¹⁸¹ *Id.*, p.15.

¹⁸² *Id.*, pp. 15-27; Case 94-C-0095, Process on Pole Attachments, Order Establishing Additional Process on Pole Attachment Issues (issued March 10, 1995). For example, previous Commission orders required an incumbent LEC to provide competitors with a form of central office interconnection (virtual collocation) for the provision of private line services, Case 89-C-099, Proceeding on Motion of the Commission to Consider the Applicability of the Common Carrier Concept to Modern Telecommunications, Opinion No. 90-9 (issued February 20, 1990); required a ILECs provide "physical collocation" for the provision of private line services (Cases 29469 et. al, Proceeding on Motion of the Commission to Review Regulatory Policies for Segments of the Telecommunications Industry Subject to Competition, Order Regarding OTIS II Compliance Filing, issued May 8, 1991); ordered loop unbundling for Centrex and private branch exchange services (Cases 88-C-004, et al., Open Network Architecture, and Comparably Efficient Interconnection, Opinion No. 91-24 (issued November 25, 1991); expanded physical and virtual collocation requirements to include switched services (Case 28425, Access Charges, Opinion No. 92-13 (issued May 29, 1992); and authorized the negotiation of carrier-to-carrier interconnection agreements between Verizon and CLECs, with mediation and arbitration if necessary (PRP Order).

¹⁸³ The Commission has continued its efforts to ensure a level playing field in New York by establishing a wholesale discount rate for all retail services offered by New York Telephone and Rochester Telephone; setting line sharing rates and addressing provisioning issues related to line sharing; establishing carrier migration guidelines to facilitate the smooth

overarching goal of Competition II was to provide a framework for competitive relationships between incumbent local exchange carriers and new entrants. The principles articulated in Competition II, and reiterated in the order instituting this proceeding, remain the foundation of a level playing field.¹⁸⁴ The level playing principles should be reconsidered in light of these new market participants that use new technologies that are not subject to many of the same regulatory mandates.

Parties' Comments

The parties submitted numerous comments on issues regarding a level playing field. Most of the comments fall within defined subject areas, such as wholesale market operation and interconnection bottlenecks; wholesale service quality; wholesale pricing; intercarrier compensation; interconnection agreements and negotiations; numbering; directory listings; pole attachments; and rights of way.

Wholesale Market Operation and Interconnection Bottlenecks

Most commentators agree that wholesale services, such as copper loops, high capacity loops, and inter-office trunking and transport services, will continue to be required for the foreseeable future, despite the evolution of intermodal competition. Two commentators identify billing as a critical issue. The New York Coalition of Rural Independent Telephone Companies states that rural companies are exempt from provision of these wholesale services under the Telecommunications Act of 1996. Comptel, Broadview Networks, Conversent, WiTel, Cablevision, and Omnipoint would require ILECs to continue providing wholesale services.

transfer of consumers' services; establishing loop hot-cut rates for basic, batch and project hot-cuts; and monitoring of Verizon's Industry Change Control process. Cases 95-C-0657 et al., Determining Wholesale Discount, Opinion No. 96-30 (issued November 27, 1996); Case 98-C-1357, Line Sharing Rates, Opinion No. 00-07 (issued May 26, 2000); Case 00-C-0188, Migration of Customers between Local Carriers, Order Adopting Phase II Guidelines (issued June 14, 2002); Case 02-C-1425, Process for Loop Migrations, Order Setting Permanent Hot Cut Rates (issued August 25, 2004).

¹⁸⁴ Case 94-C-0095, supra, Level Playing Field Issues –Staff Report on Number Portability, Directory, and Intercarrier Compensation (issued February 15, 1995), pp. 14-15; see Competition II Order, pp. 16-17 (enumerating 11 guiding principles).

Commentors do not cite routing information necessary for call completion as a bottleneck, although the New York Coalition of Rural Independent Telephone Companies would require Automatic Number Identification (ANI) on all traffic to prevent access charge revenue loss. Likewise, Frontier cites unbillable, phantom traffic (traffic routed through multiple carriers making it difficult to identify) as a problem.

Broadview suggests that the Commission streamline its processes to address bottlenecks, advocating for ad hoc intervention by Staff on operational and maintenance issues rather than a formal complaint process. Other commentors, including the New York Coalition of Rural Independent Telephone Companies, suggest the Commission's existing processes are sufficient.

Wholesale Service Quality

Most commentors suggest continuing oversight of wholesale services by the Commission is essential, noting that ILECs do not have an economic incentive to provide high quality services to their competitors and recommending the Commission establish baseline standards. AT&T and Broadview and others would keep in place Carrier-to-Carrier metrics and the Performance Assurance Plan (PAP). Some commentors have experienced issues with Verizon's billing system. US DataNet suggests establishing a self-enforcing monitoring, reporting, and payment mechanism for provisioning and maintenance of bottleneck facilities.

Alternatively, Verizon argues it no longer controls monopoly bottlenecks required by its competitors. Verizon would eliminate Carrier-to-Carrier metrics and the PAP, noting that Carrier-to-Carrier Guidelines impose unnecessary and anticompetitive obligations. Verizon also takes issue with the asymmetry of regulations among competing modes and indicates such asymmetry impairs competition by increasing the costs of only one provider. The New York Coalition of Rural Independent Telephone Companies suggests that the Commission's complaint process is sufficient to monitor and address wholesale service issues as they arise.

Wholesale Pricing

Various commentors note continued unbundled access to wholesale products at TELRIC rates is required where there is not a competitive wholesale market or suggest that the Commission may need to revisit Verizon's lists of wire centers ineligible for UNEs. Comptel and others indicate that UNE offerings must continue to be evaluated by the Commission under Public Service Law. Other commentors argue that competitors must have the ability to obtain

access to underlying facilities of the dominant wholesale providers at rates that are related to costs.

In contrast, Verizon advocates elimination of imputation and price floors for wholesale products. Verizon argues that although imputation is used generally to prevent price squeezes, the absence of bottleneck inputs to retail prices makes the requirement unnecessary.

Intercarrier Compensation

Most commentors acknowledge there are problems with the current intercarrier compensation regime. Commentors offer a range of solutions including reducing intrastate access charges; establishing interim rates based on long run incremental costs (LRIC); implementing bill and keep; or deferring to the FCC. Some commentors indicate that access charges must be cost based and should not be used to subsidize LEC competitive services, while others note exchange access minutes of use always have been an integral component of rural carriers' intrastate rate design.

Interconnection Agreements and Negotiations

Commentors acknowledge that the Telecommunications Act of 1996 provides for state action to apply and enforce the federal regulatory scheme including interconnection agreements. Cablevision alleges that Verizon makes entering into such agreements difficult by forcing arbitrations for each new agreement that cost time and legal fees and result in lost business opportunities. The US DOD suggests the Commission should ensure a carrier without interconnection agreements could participate on equal terms with established carriers.

Numbering, Pole Attachments, Directory Listings, and Rights-of-way

Numbering, pole attachments, directory listings, and rights-of-way present specific areas of concern that are not limited to dominant carrier control. In general, many commentors suggest that numbering policies fall under federal jurisdiction. Additionally, some commentors note problems in porting end user numbers to a new service provider, leading to customer frustration, and inhibiting competition. Commentors indicate there is no need for the State to implement new number conservation measures. For most commentors, directory listings are not viewed as a level play concern. AT&T indicates ILECs must allow CLECs to place listings in their directories and directory assistance databases, but defers to the FCC as to VoIP providers.

Commentors generally want to ensure swift access to poles, ducts, conduits, rooftops, and rights-of-way. First Avenue Networks asserts ILEC tariffs should be clarified to allow for such access, as well as microwave collocation on switching center rooftops. Cablevision notes that poles are the most tangible and important bottleneck controlled by incumbents and suggests that cable companies unfairly have been forced to wait months for attachment.

Discussion

Interconnection

In theory, a level playing field requires that the regulation of network interconnection be consistent and non-discriminatory. As noted by the Commission in Competition II, however, the ideal must, at times, give way to the realities of the monopoly history of local exchange markets and "may at times require different treatment of 'incumbents' and 'new entrants' to achieve a fair playing field for successful competition."¹⁸⁵ In the Competition II proceeding, the Commission found that "interconnection continues to be the linchpin of competition,"¹⁸⁶ and each firm's network must be interconnected to other networks in the market to provide service to customers. Moreover, under the Telecommunications Act of 1996, interconnection remains the fundamental obligation for all telecommunication providers, especially ILECs.¹⁸⁷ Regardless of the underlying technology, traffic must be transported from its originating network to its destination through some form of interconnection. The ability of each competitor in the intermodal market to have access to the features, functions, and services of other competitors that it needs to interconnect is essential to the competitive telecommunications market.

Interconnection may, however, be frustrated by an incumbent's exploitation of a monopoly bottleneck. A monopoly bottleneck is any feature, function, or service provided by only one company to which competitors must have access for complete and efficient use of the telecommunications network. Interconnection, especially through monopoly bottleneck telecommunications facilities, has long been the subject of debate and regulatory policy for an

¹⁸⁵ Competition II Order, p. 17.

¹⁸⁶ Competition II Order, p. 20.

¹⁸⁷ See 47 U.S.C. §§251, 252 & 271.

extended period, certainly as far back the court ordered breakup of the Bell System.¹⁸⁸ These existing critical telecommunications infrastructures are difficult to replicate, in part because of the almost prohibitive cost involved. Thus, the Telecommunications Act of 1996 included a basic assumption that local markets could be controlled through manipulation of local monopoly bottleneck facilities.¹⁸⁹ The local distribution network (last mile loop facilities, typically made of copper) has long been thought of as a monopoly bottleneck.¹⁹⁰ In addition, the Commission has found that computerized databases (System Signaling 7- (SS7), service control points- SCP, "800" and intercept databases) are essential to providing local exchange services and access to such for all competitors should be guaranteed.¹⁹¹ While past efforts at spurring competition have involved the unlocking of ILEC's networks, we recognize that we are now in the midst of a developing intermodal competitive market that includes competitors that now supply many of their own facilities. Despite competition, the facilities of a customer's chosen telecommunications service provider will always represent bottleneck facilities in that no caller can reach that particular customer other than through the facilities of that customer's service provider that make up the "last mile" connection. With wireless, cable and other emerging platforms, however, a call may now be placed that never uses the local distribution network (copper local loop) of the incumbent telephone company. In other words, "[t]o a new telecom carrier, the cost of building the connection from the subscriber to its network may still appear to be a 'bottleneck', but it is no longer a monopoly bottleneck."¹⁹²

Advances and changes in technologies have enabled new entrants to compete with incumbent ILECs and CLECs in offering all telecommunications services including local service. Accordingly, use of local wireline loops by CLECs may plummet over time as

¹⁸⁸ See, e.g., *United States v. AT&T*, 552 F Supp 131 (D DC 1982).

¹⁸⁹ Crandall, Robert W. 2005. "The Remedy for the 'Bottleneck Monopoly' in Telecom: Isolate It, Share It, or Ignore It?" Regulatory Policy Program Working Paper Rpp-2005-02. Cambridge MA: Center for Business and Government, John F. Kennedy School of Government, Harvard University. p. 14

¹⁹⁰ *Id.*, p. 3.

¹⁹¹ Competition II Order, p. 25.

¹⁹² Crandall, Robert W. 2005, Supra.

competitors make use of, or develop their own, parallel networks.¹⁹³ Despite the foregoing, we recognize elimination of access to all wholesale products at this time would be premature because many intermodal competitors continue to use ILEC facilities for transport and interoffice trunking.

The Commission recently approved modifications to Verizon's state tariffs that implemented the FCC's Triennial Review Remand Order (TRRO) that limited access to high capacity loops and dedicated transport in competitive markets.¹⁹⁴ Where competitive wholesale markets do not exist, continued access to wholesale products should be guaranteed. The processes established by the TRRO are sufficient to gauge wholesale competition as it develops and are consistent with the Commission's Competition II Order.¹⁹⁵ In light of the efforts expended by state and federal regulators, as well as affected parties, to address level playing field issues as they relate to the provision of wholesale services in both competitive and non-competitive wholesale markets, we believe there is no need to make any changes to those wholesale interconnection requirements. Of note, these requirements are focused on technology constructs that may be superseded as the use of soft switches, increased fiber infrastructure and internet protocol enabled services provide significant economies and increased functionality.¹⁹⁶

We also believe that most interconnection problems between two companies can be addressed through negotiations, or the establishment of interconnection standards by the Commission. Competitors have the right to negotiate interconnection agreements under the Telecommunications Act of 1996 that best represent the needs of their individual businesses.

¹⁹³ Id.

¹⁹⁴ Case 05-C-0203, Verizon's Compliance FCC's Triennial Review Order on Remand, Order Implementing TRRO Changes (issued March 16, 2005).

¹⁹⁵ Competition II Order, p. 17 (stating that regulatory approaches must be flexible enough to adapt to changing conditions and be limited in duration).

¹⁹⁶ An Evolution Path for Numbering and Interconnection, November 4, 2004, AT&T presentation, FCC Future of Numbering Symposium.

The Act also provides for arbitration or mediation when such negotiations fail.¹⁹⁷ Companies also have the option to enter into commercial agreements.

Protecting the health and safety of the public by way of telecommunications continues to be the Commission's paramount goal. Public health and safety relies on the continued availability and operation of a ubiquitous telecommunications network to which all can connect. It is axiomatic that a caller should be able to reach whatever emergency services are necessary to that caller's needs regardless of whichever carrier services each end of the call. Thus, recognizing that interconnection is vital to health and safety issues, during the competitive period that consisted of the ILEC/CLEC market model, the Department and Commission developed processes that contributed to enhancing interoperability of the network. These processes include the Carrier Working Group, Change Management, EDR process for service affecting conditions under the supervision of the Chief of the Intercarrier Operations section of the Office of Telecommunications, and alternate dispute resolution services provided by the Department of Public Service. As that market model developed, we witnessed the growth of cooperative practices among industry participants. Many of these processes have a place in the intermodal market where interconnection continues to be a vital public health and safety issue, and we will make those processes available to all intermodal competitors, to the extent they wish to avail themselves thereof.

Additionally, as with interconnection, the ability of customers to migrate seamlessly from one provider to another is important to preserving a caller's ability to access those emergency services of which that caller may have need. In light of complaints regarding customer migration issues and delays, as well as the impact on consumers should a local service provider exit the market without proper notice and transfer of customers, we believe that all competitors should strive to operate under a common set of principles to achieve seamless migrations. The Commission's Migration Guidelines were designed to facilitate a customer's migration involving two CLECs or a CLEC and Verizon. We believe that companies should provide accurate customer service record information, in a timely manner, when requested by another service provider, so long as the customer gives permission. Additionally, the Commission's Mass

¹⁹⁷ Cases 94-C-0095 *et al.*, Interconnection Agreement Processes, Notice of Procedures for Implementing Sections 251 and 252 of the Telecommunications Act of 1996 (issued June 14, 1996).

Migration Guidelines set forth a CLEC's obligations when it exits the market, thus ensuring an orderly transition and preventing loss of service to customers. We recommend that all local service providers abide by the Commission's Migration Guidelines and the Mass Migration Guidelines.

Carrier-to-Carrier Service Quality

Carrier-to-carrier service quality relates to two major wholesale markets. The first is the wholesale market for carrier-to-carrier services that are used by competitors to serve retail mass markets. Such "wholesale" services include resold lines, loops, and access and interconnection facilities used to terminate and originate mass-market customer calls. The second wholesale market relates to the wholesale purchase of higher capacity facilities to provide service to larger enterprise customers. This second market also relates to the quality of services emanating from both the line and trunk sides of the incumbent wire-line communications providers' end office switches. However, the capacity of the wholesale circuits purchased in this market is typically higher, and often requires "special" engineering.¹⁹⁸

Wholesale service quality has recently been addressed by the Commission in the end user and Carrier-to-Carrier portions of Case 97-C-0139,¹⁹⁹ in the Verizon PAP and the Frontier OMP proceedings. The FCC has also monitored wholesale service quality performance and has instituted a proceeding related to UNE service quality. In light of these proceedings, we believe that wholesale service quality is being addressed adequately, and we will continue to monitor performance through the Carrier-to-Carrier (97-C-0139), Special Services (00-C-2051) and PAP (99-C-0949) proceedings.

A minimum set of basic "core" wholesale service quality measurements should include a limited set of pre-ordering, ordering, provisioning, repair, and billing metrics. Such minimal standards could make the negotiation of interconnection agreements under the

¹⁹⁸ The numerous tariffs and service quality mechanisms that have been developed over the years for special access and high capacity loop services have generated confusion regarding the relevant definition of this product market. In general, this market includes engineered circuits that are used to connect large business customer buildings and large residential locations to incumbent end offices and competitor points of presence. These specially engineered high capacity circuits can be used to provide voice and/or data services.

¹⁹⁹ Review Service Quality Standards for Telephone Companies, Case 97-C-0139.

Telecommunications Act of 1996 more efficient. Numerous industries requiring a large degree of capital investment are subject to government sanctioned quality standards, or abide by collaboratively determined industry standards (i.e., ANSI standards, ISO standards, etc). At this point, the Carrier-to-Carrier Working Group (CWG) has been bridging the transition from government standard making to competitive industry standard setting. We recommend that the CWG continue in this role, and be open to all intermodal competitors that wish to participate.

We are aware that rating and routing information on terminating traffic is omitted by some companies, resulting in phantom traffic.²⁰⁰ The masking of rating and routing information also occurs, in order to arbitrage differences in intercarrier compensation rates. We believe that when the inequities of the current intercarrier compensation regime are rectified, the incentive for obscuring routing information such as CPN or ANI will be lessened.

Monitoring of ILEC Bottlenecks

The Commission addresses concerns about access to a bottleneck facility through complaints made when a competitor's request is denied or delayed without good cause. Where the Commission cannot arbitrate, Staff can be available to mediate disputes. Staff believes that we should continue to monitor competitors' access to bottleneck facilities.

Directory Listings

The Commission has determined that directory listings are part of basic service.²⁰¹ Commission regulations, Part 602.10(a), require all service providers to publish a directory or cause their numbers to be published.²⁰² The Commission has also required that local exchange companies provide access to their directory databases.²⁰³ The Commission should require that all providers who want to provide their customers' name, addresses and telephone number to the local exchange company for inclusion in a directory should have the ability to do so. Non-

²⁰⁰ Phantom Traffic, Balhoff and Rowe LLC, May 2005, June 29, 2005 ex parte presentation by Jeffrey Glover et al. to Commissioner Abernathy.

²⁰¹ Competition II Order.

²⁰² 16 NYCRR 602.10(a).

²⁰³ Case 94-C-0095 – supra, Order Regarding Directory Database Issues, (issued July 22, 1998).

published names, address and numbers may be shared with other local exchange companies but should have a designation that the information may not be shared with the public.

Numbering

The numbering principles identified in the Competition II proceeding, that all customers must be able to call all valid telephone numbers, and that telephone numbers are a common resource to be shared among carriers, are still valid.²⁰⁴ We believe no additional number optimization measures are necessary as long as the Pooling Administrator (PA) implements mandatory number pooling in all area codes for local number portability (LNP) capable service providers, and that the Commission's Order in Case 98-C-0689 the proceeding that instituted pooling trials for all local number portability (LNP) capable companies should be interpreted to that effect.²⁰⁵ After the issuance of the Commission's Order, the FCC required mandating pooling only in locations within the 100 largest metropolitan areas.²⁰⁶ However, the FCC's order also grandfathered all state pooling trials. The New York Department of Public Service has petitioned the FCC to direct the PA to make pooling mandatory for all LNP capable companies in all rate centers in New York.²⁰⁷

Our one area of concern involves gaps in number portability and whether this represents an impediment to choice for consumers.²⁰⁸ The Commission has long held that number

²⁰⁴ Case 94-C-0095, Number Portability Directory, and Intercarrier Compensation, Staff Report in Module 2 (issued February 15, 1995), pp. 14-15; Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation (issued September 27, 1995); Order Requiring Interim Number Portability Directing A Study of the Feasibility of a Trial of True Number Portability and Directing Further Collaboration (issued March 8 1995).

²⁰⁵ Case 98-C-0689, Efficiency of Usage of Telephone Numbering Resources, Order Instituting State-wide Number Pooling and Number Assignment and Reclamation Procedures (issued March 17, 2000).

²⁰⁶ CC Docket No. 95-116, In the Matter of Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286 (issued July 2, 1996), et seq., para. 3.

²⁰⁷ CC Docket No. 99-200, Petition of the New York State Department of Public Service for Mandatory Number Pooling, filed August 26, 2005.

²⁰⁸ Order Initiating Competition III Proceeding, Appendix A, p. 5.

portability is essential in a competitive local exchange market.²⁰⁹ Currently, certain VoIP providers that are not state-certificated LECs or otherwise federally licensed telecommunication providers cannot qualify to obtain numbering resources directly from the North America Numbering Plan Administrator (NANPA) or the PA. Those providers must obtain numbering resources through the purchase of service from other companies. Because the VoIP interconnected service provider does not obtain the numbers directly from NANPA or the PA, it may believe that it is not covered by the FCC's policy requiring the porting of numbers. We believe that such VoIP providers should not prevent consumers porting their numbers. While the porting of numbers within blocks of DID trunks is more complex, it is technically feasible. We seek comment from the parties on proposed resolutions to this issue, and ask that consideration of jurisdictional issues be included in such comments. One way to assure the porting of numbers is for LECs to require their VoIP interconnected service provider customers to allow the porting away of numbers by end users. Another avenue could be the amendment of the Commission approved Migration Guidelines to codify rights regarding porting of numbers. Such amendments could also establish benchmark porting intervals that could be forwarded to national industry groups focusing on the streamlining of number porting intervals and methods.²¹⁰

Rights of Way, Franchises, and Pole Attachments

Utility pole attachment rates must be just and reasonable.²¹¹ The Commission adopted the FCC approach for setting pole attachment rates and for regulating pole attachment operations in New York.²¹² The FCC formula, in turn, has a separate cable formula (which only includes a limited portion of the costs of the pole) and a higher CLEC formula. The Commission has been using the cable formula for the past several years. The conditions that prompted the Commission to adopt the federal approach to pole attachment rates still exist today: make it easier for

²⁰⁹ Case 94-C-0095, , supra, Order Requiring Interim Number Portability of a Trial of True Number Portability and Directing Further Collaboration (issued March 8, 1995), p. 3.

²¹⁰ LNPA Working Group of the North American Numbering Council (NANC), an advisory group to the FCC on numbering matters.

²¹¹ NY Pub. Serv. Law §119(a).

²¹² Case 95-C-0341, Pole Attachment Rates, Order Denying Petitions for Reconsideration and Rehearing (issued October 7, 1997).

attachers to do business by eliminating unnecessary variation in regulatory requirements. Staff recommends that, with one exception described below, use of the cable formula be maintained as well as Commission jurisdiction over pole attachment matters. The service quality issues raised by commentors can be addressed in ongoing Commission proceedings regarding pole attachments.

Cable companies are increasingly competing with telephone companies so the desire to spur competition that led to the discounted cable rate needs to be balanced with the need to treat competitors equally. An argument could be made that cable should pay the higher CLEC rate for attachments where it competes with phone companies. In this circumstance, continuation of Verizon's current rate, which is higher than the cable formula but lower than the CLEC formula is appropriate.

Wholesale Market Pricing

The Commission found in Competition II that compensation charges and rates should be cost-based and encourage long-term efficiency. This principle also should govern an efficient competitive intermodal market. The prices, quality, terms, and conditions of the wholesale market directly affect the competitiveness of the retail market. To the extent a competitor makes use of the facilities of other firms, that competitor should contribute to the cost of maintaining those systems consistent with existing rules.

We recommend that the Commission adopt a set of wholesale pricing principles to ensure that such wholesale products are not used as a vehicle to raise competitors' cost which should form the basis of the Commission's imputation rule. Imputation was a key provision in the New York Telephone PRP, the Frontier Telephone of Rochester OMP, and the Taconic QAP. Imputation is a performance based, output oriented way of monitoring and ensuring communications markets remain reasonably competitive. It provides the Commission with evidence that a company is a vertically integrated provider of a wholesale bottleneck service should a price squeeze occur. We note that the imputation rule may be relevant in fewer instances as bottlenecks are eliminated through competition, and that intermodal competition may even eliminate certain bottlenecks. For the present, however, the imputation rule is required to avoid monopoly abuses that may result from the remaining bottlenecks. In reasonably competitive markets, a vertically integrated provider would not be able to squeeze its competitors

by pricing retail below wholesale, and seek comment on whether we can forgo imputation in any markets. To the extent imputation continues to be necessary, we seek comment on the adoption and comment of wholesale pricing principles.

Transport, Special Access and High Capacity Loops

Wholesale transactions involving transport, special access and high capacity loops are an integral part of the provision of telecommunications services by firms competing in the retail market. When there are few firms with facilities capable of providing transport, special access, and high capacity loops, the wholesale market will not set an efficient price and a regulatory pricing mechanism is required. Previous work by Staff in the FCC's Triennial Review Order proceeding, the Verizon/MCI merger proposal case, Verizon PAP and Verizon special services performance proceedings indicate that in general the transport, special access and high capacity loops markets are not effectively competitive throughout the Verizon service area because there are a limited number of transport routes and high capacity loop routes that offer multiple competitive choices.

Intercarrier Compensation

Intercarrier compensation is the mechanism by which firms compensate each other to originate, transport, or terminate a call on interconnected networks. Prices for intercarrier compensation vary according to call characteristics. Different prices are applicable to interstate, intrastate and local wireline calls, as well as VoIP based and wireless calls. The differing applicable prices are not cost based, are inconsistent with a competitive framework, and are not sustainable in a competitive market environment. We recognize that the FCC has recently received comment on these compensation issues and await their proposed resolution. In the interim, as noted above, Staff is proposing additional steps to reduce the independent telephone companies' intrastate access rates.

Terminating Access

Terminating access rates for intrastate toll calls are significantly higher than for interstate calls, which are higher than reciprocal compensation rates for terminating local calls. Terminating access rates also vary by technology. The costs of terminating a call, however, are virtually the same for local, intrastate, and interstate calls. Such disparate pricing unrelated to

underlying cost is inconsistent with competitive markets. We believe the Commission should continue to strive to drive these rates towards costs to eliminate opportunities for arbitrage and to reduce dependency on this source of revenue. We encourage any company that has identified its own intercarrier compensation issues to file with the Commission a petition with a proposal to amend its intrastate intercarrier compensation rates (both intra-state access and reciprocal compensation).

Other Level Playing Field Issues

We have identified regulatory reporting requirements in Appendix B. Verizon and Frontier submitted several proposals on various aspects of the Commission's reporting requirements to eliminate or substantially streamline unnecessary reporting, which the companies believe will promote fair and effective competition. Some of those issues are discussed in other sections, the remainder are considered below.

PSC Annual Report

Telephone corporations are required to file an annual report, the form and contents of which are to be determined by the Commission.²¹³ ILECs are the only carriers required to file a PSC Annual Report. The Annual Report reports various financial, operating and statistical data to monitor company activities in a consistent manner. An annual report is a valuable monitoring and auditing tool when the Commission utilizes cost-of-service regulation to set customer's rates. However, it becomes less important when regulation shifts to price-cap or incentive regulation, or when rates are based on the competitive market. As part of the Department's program to facilitate more cost effective regulation, we recommend that the Commission streamline the PSC Annual Report to reduce administrative burdens on telephone companies and to more accurately reflect today's current regulatory climate. In addition, when companies are no longer able to seek rate relief with the Commission based on cost-of-service regulation, additional streamlining measures or even elimination of the report, should be considered by the Commission. Verizon suggests that the Commission can eliminate the PSC Annual Report because it would still be able to obtain information concerning Verizon by reviewing Verizon's FCC ARMIS filings.²¹⁴ ARMIS data are readily available from the FCC's web site, and include state-specific and carrier-specific data. However, it is our understanding that the FCC is considering eliminating many of

²¹³ Public Service Law, Section 95(1).

²¹⁴ Verizon comments, p. 30.

the ARMIS requirements in the future. As a result, it is prudent to maintain the Commission requirements at this time. To the extent information contained in the PSC Annual Report is still required to ensure overall service network quality, it can be included as part of the competition monitoring report, discussed below.

Competition Monitoring Reports

In 1997, the Commission began requiring carriers to file a Telecommunications Competition Monitoring Report (TCMR).²¹⁵ The TCMR was instituted to allow the Commission to collect information to monitor the competition in the state. Frontier and Verizon recommend elimination of the TCMR because there is no need to monitor competition in an already competitive market, and it has limited value since many competitors are not required to make filings.²¹⁶

As pointed out by Verizon, the Commission is studying the changes in the TCMR reporting requirements.²¹⁷ The information gathered provides a guide to the Commission for those markets where regulatory attention is most likely required or where regulation can be relaxed. Its elimination is thus premature. We are considering improving the regulatory value of the TCMR by recommending that this requirement be extended to all providers of telephone service. As a result, we recommend the TCMR be maintained for now.

Uniform System of Accounts

The Commission requires ILECs to subscribe to certain accounting requirements in a consistent manner.²¹⁸ Competitive local exchange carriers are allowed by the Commission to file financial data based on Generally Accepted Accounting Principles (GAAP).²¹⁹ Comparable information is important when universal support payments and customer's rates are based on the costs of the ILEC. Frontier proposed to eliminate differences between the New York USOA and

²¹⁵ Case 96-C-0647 et. al, Proceeding to Monitor the Development of Competition, Order Adopting Telecommunications Competition Monitoring Report (issued May 20, 1997).

²¹⁶ Frontier comments, p.14 and Verizon comments, p. 30.

²¹⁷ Case 04-C-1637, Simplified Telecommunications Annual Reports, Notice Requesting Comments (issued February 3, 2005).

²¹⁸ 16 NYCRR Parts 660-684.

²¹⁹ Case 94-C-0095, supra, Opinion No. 96-13 (issued and effective May 22, 1996).

the FCC USOA to align the two accounting system and reduce the costs of recordkeeping.²²⁰ The Commission's USOA has not been substantially revised since 1988.²²¹ Conversely, the FCC's latest comprehensive revision to its USOA was made in 2001²²². Therefore, we recommend that the Commission study the feasibility of adopting the FCC USOA for ILECs in New York. When companies are no longer able to seek rate relief with the Commission based on cost-of-service regulation, we further recommend that ILECs not be required to subscribe to a USOA and be allowed to file financial data based on GAAP.

Regulatory Reserves

Regulatory reserves occur when there are differences between accounting for rate-regulated enterprises under FAS 71 and GAAP for enterprises in general. These differences relate to the timing to the recognition of certain revenues and costs and result in regulatory assets and liabilities. Frontier proposes to eliminate any remaining reserves, which serves to provide an overhead against the ILECs future financial results in a competitive market, and require significant resources to maintain, research, and reconcile.²²³ In conjunction with rate plans, the Commission has allowed companies to eliminate regulatory assets and liabilities. For example, the Commission authorized Verizon to file certain financial data based on the GAAP and amortize the PSC and GAAP differences over a three-year period with limited exceptions²²⁴. One of the exceptions was retiree medical costs. It was incorporated in the rate plan to protect employees (i.e. plan assets can only be used to pay benefits and administrative fees) and customers (i.e. requiring Commission approval if all or substantially all of a plan is annuitized,

²²⁰ Frontier comments, p. 14.

²²¹ Case 8579, "Commission Memorandum Order and Resolution Concerning Revised Regulation and Accounting Principles" (effective January 1, 1988).

²²² In the Matter of 2002 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286 Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 97-212, and 80-286 (adopted October 11, 2001)

²²³ Frontier comments, p. 14.

²²⁴ Case 00-C-1945, Proceeding to Consider Cost Recovery by Verizon and to Investigate the Future Regulatory Framework, Order Instituting Verizon Incentive Plan (effective February 27, 2002)

settled, or curtailed). To the extent ILECs operate in a competitive telecommunications market, it is reasonable to consider company proposals to write-off its regulatory assets and liabilities, since the Commission will no longer be in a position to guarantee recovery or refund of such costs.

Refunds

The Commission has the power to order companies to credit refunds to customers (e.g. tax refunds) in the manner and to the extent determined just and reasonable by the Commission.²²⁵ In addition, the Commission requires the reporting of certain tax refunds. These requirements are important in traditional cost-of-service regulation because of the close relationship between actual costs and rates. For example, it is fair for the Commission to order tax refunds if the company is allowed to recover tax deficiency payments. Verizon believes the environment of cost-of-service regulation no longer exists for telecommunication carriers.²²⁶ As a result, it asserts that the Commission should determine that it would be reasonable for a company not subject to cost-of-service regulation to retain gains from any tax or other refunds. Consistent with the Commission's recent determination, it is reasonable to allow a company to retain refunds when it operates in a competitive marketplace and operates in a regulatory environment which eliminates almost all of the vehicles for regulatory rate relief previously available to the company.²²⁷

Gains on the Sale of Assets

Under Section 99(2) of the Public Service Law, telephone corporations are required to obtain Commission approval to transfer a telephone corporation's franchise or assign, transfer, or lease its telephone works and systems. For ILECs, the Commission often requires any gains relating to the sale of assets be credited to customers since customers paid for these assets through rates based on cost-of-service regulation. As discussed above, Verizon believes this regulation no longer exists for telecommunication carriers and companies should be allowed to retain these gains. Verizon's proposal on the gains is consistent with recent Commission Orders

²²⁵ Public Service Law, section 113(2), also 16 NYCRR Part 89.3.

²²⁶ Verizon's comments, p. 26.

²²⁷ Case 02-C-0959, supra, Order Allocating Property Tax Refund" (issued March 12, 2003)

which allowed Verizon to record the gains as proposed by the company .²²⁸ As explained by the Commission, Verizon is now subject to significant competition and our regulation should reflect that reality. In such markets there is less need for economic regulation – such as specific regulatory accounting. However, the Commission required Verizon to maintain certain information. Therefore, Verizon's proposal is reasonable given the protections explained in the Order.

In addition, Verizon proposes that the Commission treat these transfers as presumptively reasonable, and that it should streamline the formal approval process.²²⁹ We disagree with Verizon that the Commission should assume all transfers are reasonable. Although there may be ways to streamline the process, we recommend the Commission continue to scrutinize these transfers to ensure overall service network quality is not compromised and guard against potential abuses associated with concentration of market power. Public Service Law 99(2) was amended in July 1996 to require the Commission to act on petitions within 90 days. Unless the Commission, or its designee, determines and informs the applicant in writing within the 90 days that the public interest requires the Commission's action, the petition is deemed granted. We envision that petitions involving companies who operate in a competitive marketplace will be generally approved in 90 days if the proposal does not impact overall service network quality.

Review of Procurements

Section 115 of the Public Service Law authorizes the Commission, whenever it is of the opinion that the public interest so requires, to require that certain contracts be let to the lowest bidder, as determined through a public offering.²³⁰ The Commission also requires the filing of procurement procedures and certain cost-plus contracts.²³¹ As the competitive marketplace begins to influence the setting of prices, the need to review a company's procurement process becomes less relevant. Therefore, we agree with Verizon that the requirement to regularly file procurement procedures and certain cost-plus contracts can be streamlined or even eliminated.

²²⁸ Case 05-C-0510, supra, Order Approving Transfer (issued June 15, 2005); Cases 05-C-0091 and 05-C-0092, supra, Order Approving Transfers (issued May 20, 2005).

²²⁹ Verizon comments, p. 28.

²³⁰ Verizon comments, p. 33

²³¹ See 16 NYCRR Parts 685-686 for the filing of procurement procedures and certain cost-plus contracts.

Detariff Voicemail

Verizon argues that the tariffing requirement in PSL 92(1) applies only to "telephonic communication" as used in PSL 2(18) and that voice messaging is information, not communication and therefore does not need to be tariffed. It relies on the FCC classification of voice messaging as an "information service" that unlike "telecommunications service" is not subject to common carrier regulation.

Voice messaging has been a tariffed service and, given the flexibility and streamlining we propose be afforded Verizon, we don't see the tariff requirement as burdensome. The Commission should deny Verizon's request.

Streamline Hearings

Verizon requests that the Commission waive the ten- and thirty-day notice periods of PSL §92, allowing amendments to become effective on one-day's notice, as well as all newspaper publication requirements, for all retail tariff filings, regardless of whether the filing introduces a new service, withdraws an existing one, changes the price of an existing service, or changes some other term or condition of the service. Verizon argues that it should be allowed to file flexible pricing tariffs, that would allow price changes within a presumptively reasonable range specified in the tariff on one-day's notice, without the necessity of a new tariff filing. Verizon bases its request on the Commission's determination in Competition II that the "freedom to change rates rapidly to best reflect demand and costs is consistent with a competitive market [and] pricing flexibility must be accorded companies in competitive circumstances."²³² Verizon supports its position by indicating that the tariff requirements do not apply to non-jurisdictional services or providers such as VoIP, wireless services, and traditional wireline services that are jurisdictionally interstate. Verizon also asks that although a hearing is statutorily required for a major change, the extensive body of regulations and policy statements no longer is applicable and that the Commission should indicate in its order in this case that it does not intend to use rate case type procedures for major changes.

Verizon makes reasonable points, but the Commission has been able to adapt its practices over the last several years to accommodate these concerns. We recommend that the Commission

²³² Competition II Order p. 29.

provide that any company that feels it can justify a departure from existing policies petition for the treatment it seeks at the time it files a case, and that the Commission resolve it then.

Conclusion

Level playing field issues are an important aspect of maintaining a competitive environment. For that reason, the Commission should resolve these issues as we discussed above.

Appendix A

Parties Commenting in Case 05-C-0616 (and the acronyms used to refer to them)

- 1) **Attorney General Spitzer (Attorney General, AG or DOL)**
- 2) **AT&T Communications of New York, Inc. ACC Corp., TC Systems, Inc., Teleport Communications Group, Inc. and Teleport Communications of New York, Inc. (AT&T)**
- 3) **Cable Telecommunications Association of New York, Inc. (CTANY or the Cable Association)**
- 4) **Cablevision Systems Corporation (Cablevision)**
- 5) **Cingular Wireless, LLC (Cingular or Cingular Wireless)**
- 6) **Committee on Corporations, Authorities and Commissions (Assembly Committee on Corporations, Assembly Committee)**
- 7) **Consumer Protection Board (CPB)**
- 8) **Conversent Communications of New York, LLC (Conversant)**
- 9) **Communications Workers of America AFL-CIO (CWA)**
- 10) **First Avenue Networks, Inc. (First Avenue)**
- 11) **Frontier Telephone of Rochester, Inc., Citizens Telecommunications Company of New York, Inc., Frontier Communications of New York, Inc., Frontier Communications of Sylvan Lake, Inc., Frontier Communications of AuSable Valley, Inc., Frontier Communications of Seneca-Gorham, Inc. and Ogden Telephone Company (Frontier)**
- 12) **Broadview Networks, Inc., BridgeCom International, XO, Communications, Inc. and CTC Communications (Broadview)**
- 13) **CompTel, Covad Communications, Gillette Global Network d/b/a Eureka Networks, A.R.C. Networks, Inc. d/b/a Infohighway Communications, Intelcom Solutions, Inc. and Transbeam (CompTel)**
- 14) **Kevin Bronner**
- 15) **New York Coalition of Rural Independent Telephone Companies (Rural ILECs, Rural Incumbents)**
- 16) **Nextel Partners of Upstate New York (Nextel)**
- 17) **New York State Telecommunications Association (NYSTA)**
- 18) **Omnipoint Communications Inc. d/b/a T-Mobile (Omnipoint)**
- 19) **Plug Power**
- 20) **Public Utility Law Project (PULP)**

- 21) Sprint Communications Company, LP and Sprint Spectrum d/b/a Sprint PCS**
- 22) The U.S. Department of Defense (DOD)**
- 23) Time Warner Telecom – NY (Time Warner)**
- 24) United Online, Inc. (United Online)**
- 25) USDataNet Corp d/b/a USA DataNet (USA DataNet)**
- 26) Verizon New York (Verizon)**
- 27) Verizon Wireless**
- 28) Vonage**
- 29) WilTel Communications**

Telephone Regulatory Convergence Matrix

**Listing and Analysis of the Reporting Requirements
for Telecommunications Industry in New York State**

Schedule 1 - Market Power and Regulatory Flexibility

Schedule 2 - Universal Service

Schedule 3 - Service Quality

Schedule 4 - Consumer Protections

Schedule 5 - Level Playing Field

Comprehensive Listing and Analysis of the Reporting Requirements
for Telecommunications Industry in New York State

<p>NYPSC Opinion Nos. 89-12 (Case 29469) and 96-13 (Case 94-C-0095) set the framework for lightened regulation of competitive carriers. As discussed in the Matrix accompanying the Order initiating this proceeding, the regulatory status of cable digital voice and VoIP are subject of litigation and wireless services are not regulated by the Commission.</p>				
No.	Description	ILEC	CLEC/IXCs/Resellers	Recommendation
Market Power and Regulatory Flexibility				
1A	Annual Report	PSL 95 (described in 16 NYCRR Part 641) requires various financial, operating and statistical data to monitor company activities in a consistent manner.	See 1B below.	Streamline.
1B	Transition Competition Monitoring Report	In Case 96-C-0647 (Orders dated 5/20/97 and 2/18/00), CLEC/IXC/Resellers were only required to file a Transition Competition Monitoring Report (TCMR). In Case 04-C-1637 (Notice dated 2/3/05), the Commission will consider revising this report.	Same as ILEC.	Streamline.
2	Information Required in the Annual Report	PSL 111 requires the disclosure of security holder information when the holdings are 1% or more of the voting capital.	In Case 96-C-0647 (Order dated 5/20/97), this requirement was dropped.	Maintain.
3	Transfer and Ownership of Stock	PSL 100 (described in 16 NYCRR Parts 31, 39) requires Commission approval when a telephone company acquires another telephone company's common stock or if 10% or more is acquired by anyone.	Same as ILEC.	Streamline.
4	Financing Petition	PSL 101 (described in 16 NYCRR Parts 18, 37) requires Commission approval prior to issuing long-term securities.	Same as ILEC. Part 37 provides for limited filing requirements for radio-telephone utilities and resellers.	Streamline.
5	Reorganizations, Mergers, Dissolutions, and Bankruptcy	PSL 101-a, PSL 108, and PSL 119 (described in 16 NYCRR Parts 38, 47) requires Commission approval of a company's reorganization and bankruptcy plan.	Same as ILEC.	Streamline.
6	Loans to Other Parties	PSL 106 requires public utilities to receive Commission approval to make loans to an affiliate or any officer.	Same as ILEC.	Maintain.
7	Use of Revenues	PSL 107 (as described in 16 NYCRR Part 56) requires Commission approval for utilities to use funds from the rendition of public service to make investments in non-regulated businesses.	Same as ILEC.	Streamline.
8	Control over Holding Companies and Affiliate Transactions	PSL 110 gives the Commission jurisdiction of holding companies that control utilities, and of affiliate transactions (as described in Case 88-C-136, Order dated 2/8/90).	Same as ILEC.	Streamline.
9	Notification Concerning Tax Refunds	16 NYCRR 89.3 requires utilities whose rates for utility service are under the jurisdiction of the Commission to notify the Commission of certain tax refunds.	Same as ILEC.	Streamline.

Comprehensive Listing and Analysis of the Reporting Requirements
for Telecommunications Industry in New York State

<p>NYPSC Opinion Nos. 89-12 (Case 29469) and 96-13 (Case 94-C-0095) set the framework for lightened regulation of competitive carriers. As discussed in the Matrix accompanying the Order initiating this proceeding, the regulatory status of cable digital voice and VoIP are subject of litigation and wireless services are not regulated by the Commission.</p>				
No.	Description	ILEC	CLEC/IXCs/Resellers	Recommendation
<p>Market Power and Regulatory Flexibility</p>				
10	Uniform System of Accounts (USOA)	PSL 94, 95 (as implemented in 16 NYCRR Parts 660-684) require telephone utilities to subscribe to certain accounting requirements in a consistent manner. In Case 00-C-1945 (Order Instituting Verizon Incentive Plan, dated 2/27/02), the Commission authorized Verizon to file certain financial data based on GAAP.	In Opinion No.89-12, the Commission determined that CLEC/IXCs/Resellers would be lightly regulated, including requiring only basic financial statements. In Opinion 96-13, the Commission determined that non-dominant carriers are not required to subscribe to a USOA and may file financial data based on GAAP.	Streamline.
11	Requirements for Applications Under the USOA and Accounting Changes	PSL 95 (as implemented in 16 NYCRR Parts 46, 48) requires companies to file certain information when requesting to defer items beyond the calendar year. It also requires the Commission be notified of any material accounting changes.	See discussion on USOA (Item 11).	Streamline.
12	Notification of the Issuance of Securities	PSL 101, 16 NYCRR Part 620 requires a telephone company to notify the Commission when it issues securities.	Same as ILEC.	Streamline.
13	Transfer of Property	PSL 99 (2) (as implemented in 16 NYCRR Part 31) requires approval from the Commission when a telephone company sells utility property.	Same as ILEC.	Streamline.
14	Request for New Rates	PSL 92, 97 (as implemented in 16 NYCRR Part 61) addresses the Commission's ratemaking authority and telephone company requirements.	Same as ILEC.	Streamline.
15	Refunds and Emergency Rates	PSL 113, 114 (as implemented in 16 NYCRR Part 61) permit the Commission to establish reparations, refunds and temporary rates.	Same as ILEC.	Streamline.
16	Destruction of Records	16 NYCRR Part 55 (as described in Part 661.8 in the USUAL), provides that companies shall not destroy any records beyond those specifically under Part 42 of the Federal Communications Commission (FCC) governing the preservation of records of communication common carriers.	CLECs and IXCs are required to comply with Part 55. Resellers are exempt per 16 NYCRR Part 648.	Maintain.

Comprehensive Listing and Analysis of the Reporting Requirements
for Telecommunications Industry in New York State

<p>NYPSC Opinion Nos. 89-12 (Case 29469) and 96-13 (Case 94-C-0095) set the framework for lightened regulation of competitive carriers. As discussed in the Matrix accompanying the Order initiating this proceeding, the regulatory status of cable digital voice and VoIP are subject of litigation and wireless services are not regulated by the Commission.</p>				
No.	Description	ILEC	CLEC/IXCs/Resellers	Recommendation
<p>Market Power and Regulatory Flexibility</p>				
17	Preservation and Retention of Records	PSL 94(2) (as implemented in 16 NYCRR Parts 642, 651) states the Commission can prescribe the regulations governing the preservation of records for telephone companies. These regulations include the time period records must to be kept.	16 NYCRR Part 651 does not require CLECs, IXCs, and resellers to comply with these rules and regulations.	Streamline.
18	Utility Contract and Procurement Procedures	PSL 115 (as implemented in 16 NYCRR Parts 685, 686) requires telephone companies to file with the Commission the procedures used to contract and procure services, equipment or materials to be used in their utility operations. This regulation also requires telephone companies to submit to the Commission certain contracts that are of a cost plus nature and all contracts over \$1,000,000.	In Opinion No. 89-12, the Commission determined that CLEC and IXCs would be lightly regulated, requiring only basic financial statements. Resellers are exempt per 16 NYCRR Part 648.	Streamline.
19	Annual Intrastate Operating Revenues	Pursuant to PSL 18-a, companies report intrastate operating revenues to PSC's Office of Finance and Budget to determine assessment.	Same as ILEC.	Maintain.
20	Market Entry	PSL 99 requires carriers to obtain a Certificate of Public Convenience and Necessity (CPCN) and file a tariff.	Same as ILEC.	Maintain.
21	Contractual/Tariff	PSL 92(1) requires the tariff to govern the terms of service.	Same as ILEC.	Streamline.
22	Operating Requirements	PSL 92 requires rate schedules to be filed and amended as necessary with every Commission approved rate or service change. Provides detail on how tariff schedules shall be printed and submitted to the Commission and be open to public inspection. Statute provides for a minimum of 10 to 30 days prior to implementation of any proposed and/or "major changes". CPCN Requirements, Opinion 96-13. General description of services offered.	Opinion 96-13 did not require new entrants to provide any particular service. The carriers should meet Minimum Basic Service. 16 NYCRR Parts 647, 648 Exempt resellers from most obligations of telephone companies contained in 16 NYCRR Parts 600-648.	Streamline.

**Comprehensive Listing and Analysis of the Reporting Requirements
for Telecommunications Industry in New York State**

NYPSC Opinion Nos. 89-12 (Case 29469) and 96-13 (Case 94-C-0095) set the framework for lightened regulation of competitive carriers. As discussed in the Matrix accompanying the Order initiating this proceeding, the regulatory status of cable digital voice and VoIP are subject of litigation and wireless services are not regulated by the Commission.

No.	Description	ILEC	CLEC/IXCs/Resellers	Recommendation
Universal Service				
1	Consumer Protection	FCC requires Lifeline service to be offered to low income eligible and public assistance customers. Opinion 96-13 sets the framework for continued support of Lifeline services for New York carriers.	Same as ILEC	Maintain.
2	Performance Requirements	Opinion 96-13 requires contributions to Targeted Accessibility Fund (TAF) for lifeline, safety and emergency services, 911 and Telecommunications Relay Services (TRS) support.	Same as ILEC	Maintain.
3	Universal Service	Opinion 96-13 establishes common carrier obligations.	Same as ILEC.	Maintain.

**Comprehensive Listing and Analysis of the Reporting Requirements
for Telecommunications Industry in New York State**

NYPSC Opinion Nos. 89-12 (Case 29469) and 96-13 (Case 94-C-0095) set the framework for lightened regulation of competitive carriers. As discussed in the Matrix accompanying the Order initiating this proceeding, the regulatory status of cable digital voice and VoIP are subject of litigation and wireless services are not regulated by the Commission.

No.	Description	ILEC	CLEC/IXCs/Resellers	Recommendation
Service Quality				
1	E-911	16 NYCRR 602.8(a) Operator access requirements (a) Each service provider shall provide access from its exchanges at all hours to local assistance operators who shall be capable of connecting calls to appropriate emergency services.	Same as ILEC	Maintain.
2	E-911	16 NYCRR 602.9(a) Intercept requirements Intercept shall consist of operator intercept or a suitable recorded announcement, providing sufficient information to callers to indicate the reasons for being intercepted as well as directions to assist them in completing the call.	Same as ILEC	Maintain.
3	911/Consumer Protection	Case 26443 (Orders dated 11/20/73 and 1/27/75) and Case 28358 (Order dated 4/11/84) establish the framework for 911 services, including mandating the provision of Universal Emergency Telephone Number "911" by Telephone Companies. Opinion 84-7 (Case 28358) provided the framework for provision of enhanced or E-911.	Same as ILEC	Maintain.
4	E-911	16 NYCRR 602.8(c) E911 overflow requirements (c) All service providers shall provide network overflow to local operators on all originating trunking that carries emergency calls destined for enhanced 911 emergency report centers. Each such call overflowing to the operator shall be identified as an emergency call, and the operator shall have automatic number identification on the telephone line used by the calling party.	Same as ILEC	Maintain.
5	Annual Capital Construction Filings	16 NYCRR 644.3 requires all ILECs to file construction budgets with the Office of Telecommunications	Facilities-based CLECs that provide local service are required to file construction budgets.	Streamline.
6	Operating Requirements	16 NYCRR 602 Minimum Basic Service Req. Opinion 96-13. (Case 94-C-0095, 5/22/96)	Same as ILEC	Maintain Definition of Basic Service. Streamline rest as shown below.
7	Consumer Protection	Customers have access via toll free telephone # to service centers	Same as ILEC	Maintain.

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No.	Description	ILEC	CLEC/IXCs/Resellers	Recommendation
Service Quality				
8	Consumer Protection	16 NYCRR 602.3 Routed to representative within 60 seconds.	Same as ILEC	Eliminate.
9	Consumer Protection	Notices to customers and public on means to contact service centers.	Same as ILEC	Eliminate.
10	Consumer Protection	Advise customers of options where special circumstances exists for installation or maintenance.	Same as ILEC	Maintain.
11	Consumer Protection	Installation appointments within 5 days.	Same as ILEC	Maintain.
12	Consumer Protection	Emergency trouble calls cleared at all hours.	Same as ILEC	Maintain.
13	Consumer Protection	16 NYCRR 602.7(d) Out of service not requiring unusual repair cleared within 24 hours.	Same as ILEC	Maintain.
14	Consumer Protection	Public notice of major outages.	Same as ILEC	Maintain.
15	Consumer Protection	Representative available at all hours to receive trouble calls.	Same as ILEC	Maintain.
16	Performance Requirements	16 NYCRR 603.1 603.1 declares service standards that apply to companies that provide local exchange service under normal operating conditions. No level of performance is required in force majeure situations.	Same as ILEC	Maintain. To be evaluated in Commission's lookback.
17	Performance Requirements	16 NYCRR 603.3 603.3 sets forth a series of metrics and performance thresholds each provider is expected to meet or exceed related to maintenance service, installations, network performance and answer time by the provider for problem calls.	Same as ILEC	Maintain. To be evaluated in Commission's lookback.
18	Performance Requirements	16 NYCRR 603.4 603.4 gives the Director of the Office of Telecommunications the authority to establish reporting guidelines and supporting reporting metrics for service performance reports.	Same as ILEC 16 NYCRR 648 exempts resellers from certain reporting requirements	Maintain. To be evaluated in Commission's lookback.

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No.	Description	ILEC	CLEC/IXCs/Resellers	Recommendation
Service Quality				
19	Performance Requirements	Performance Thresholds Customer trouble report rate 5.5% or less per central office (3.3% or less at 85% of central offices if company has 7 or more central offices)	Same as ILEC 16 NYCRR 648 exempts resellers from certain reporting requirements	Maintain. To be evaluated in Commission's lookback.
20	Performance Requirements	20% or less out-of-service over 24 hours	Same as ILEC 16 NYCRR 648 exempts resellers from certain reporting requirements	Maintain. To be evaluated in Commission's lookback.
21	Performance Requirements	20% or less service affecting over 48 hours	Same as ILEC 16 NYCRR 648 exempts resellers from certain reporting requirements	Maintain. To be evaluated in Commission's lookback.
22	Performance Requirements	80% or greater installation performance within 5 days	Same as ILEC 16 NYCRR 648 exempts resellers from certain reporting requirements	Maintain. To be evaluated in Commission's lookback.
23	Performance Requirements	10% or less installation performance commitments missed	Same as ILEC 16 NYCRR 648 exempts resellers from certain reporting requirements	Maintain. To be evaluated in Commission's lookback.
24	Performance Requirements	80% or greater business office answer time within 30 seconds	Same as ILEC 16 NYCRR 648 exempts resellers from certain reporting requirements	Maintain. To be evaluated in Commission's lookback.
25	Performance Requirements	80% or greater answer time repair office	Same as ILEC 16 NYCRR 648 exempts resellers from certain reporting requirements	Maintain. To be evaluated in Commission's lookback.

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No.	Description	ILEC	CLEC/IXCs/Resellers	Recommendation
Service Quality				
26	Performance Requirements	90% or greater Operator answer time within 10 seconds	Same as ILEC 16 NYCRR 648 exempts resellers from certain reporting requirements	Maintain. To be evaluated in Commission's lookback.
27	Performance Requirements	Network Performance final trunk group blockages 3% or less	Same as ILEC 16 NYCRR 648 exempts resellers from certain reporting requirements	Maintain. To be evaluated in Commission's lookback.
28	Performance Requirements	Case 27635 (Order dated 4/2/80) provides guidelines specifying the transmission, operating and design parameters of a local loop, specifically attenuation, loop current and noise. Reiterates the necessity for phone companies to maintain adequate transmission performance in other areas as well.	Same as ILEC if using own facilities	Maintain. To be evaluated in Commission's lookback.
29	Performance Requirements		PSL 92-c, 16 NYCRR Part 649, Case 90-C-0666 Establish requirements for providers of operator, alternative operator services (AOS) and COCOT services.	Maintain. To be evaluated in Commission's lookback.
30	Reporting Requirements	16 NYCRR 603.4 authorized the Director of the Office of Telecommunications to prescribe the format, content and reporting times (except where otherwise provided) of each report required to be filed. Exempts companies with fewer than 500,000 access lines from reporting on all metrics in 603.3 except customer trouble report rate; requires service inquiry report when final trunk group blockages exceed 3% for three months.	Same as ILEC. Resellers may seek exemptions. 16 NYCRR Part 648 exempts resellers from certain reporting requirements	Maintain. To be evaluated in Commission's lookback.

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No.	Description	ILEC	CLEC/IXCs/Resellers	Recommendation
Service Quality				
31	"Primary" Considerations	16 NYCRR 603.5 Service Interruptions (a) Each service provider shall establish and implement procedures regarding the construction, operation, and maintenance of its network, which are intended to minimize service failures. (3) Be guided by accepted industry guidelines and best practices, such as the findings and recommendations of the FCC's Network Reliability Councils, relating to fiber optic, signaling, switching, digital cross-connect and power systems, 911, fire prevention, mutual aid and restoration, performance, interconnections, changing technologies, emergency communications, and other topics related to network reliability.	Same as ILEC if using own facilities	Maintain. To be evaluated in Commission's lookback.
32	Construction/Maintenance	16 NYCRR Part 604 New Construction of Distribution Facilities	Same as ILEC if using own facilities	Maintain.
33	Construction/Maintenance	16 NYCRR Part 607 Underground Telephone Construction 607.2 Clearance requirements of new subsurface telephone facilities from gas and liquid petroleum pipelines	Same as ILEC if using own facilities	Maintain.
34	Construction/Maintenance	16 NYCRR 607.3 Clearance requirements of subsurface telephone facilities constructed to replace existing facilities. Whenever subsurface telephone facilities are replaced for any reason, the new facilities shall be constructed in accordance with section 607.2 of this Part, to the extent reasonable and economically practicable.	Same as ILEC if using own facilities	Maintain.

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No.	Description	ILEC	CLEC/IXCs/Resellers	Recommendation
Service Quality				
35	Construction/Maintenance	16 NYCRR Part 689 Telephone Facility Construction – Clearance From Subsurface Gas and Liquid Petroleum Pipeline Facilities. These rules identify distances underground cables , conduits, manholes and other subsurface structures, including poles and anchors, must be maintained from gas and petroleum facilities.	Same as ILEC if using own facilities	Maintain.
36	Reporting Requirements	16 NYCRR 602.7 Public notification of major service outages, including areas affected and schedule for expected service restoration.	Same as ILEC	Maintain.
37	Reporting Requirements	16 NYCRR 603.5 Service Interruption Procedures – Plans and Filing Requirements to be made with the Commission.	Same as ILEC	Maintain.

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No.	Description	ILEC	CLEC/IXCs/Resellers	Recommendation
Consumer Protection				
1	Operating Requirements	16 NYCRR 602.10 Directory Listing. All service providers must publish or cause their customers' numbers to be published, and distribute free of charge, directories of their customers annually and provide emergency instructions to contact police, fire, etc., and instructions for placing long distance calls, and a local contact number and a representative for customers call for trouble assistance.	Same as ILEC.	Maintain.
2	E-911	16 NYCRR 602.10(a)(2) Directories. Information pertaining to emergency calls to such agencies as the police and fire departments shall appear conspicuously in the opening pages of the directory.	Same as ILEC	Maintain.
3	Consumer Protection	16 NYCRR 602.3 - 602.7 Provides for public access to information concerning rates, rate zones or boundaries upon which rates are based and information relating to changes in services and rates proposed in an informational filing, a pending tariff or rate filing.	Same as ILEC	Maintain.
4	Consumer Protection	16 NYCRR 602.3 Customer service centers accessible during normal working hours.	Same as ILEC	Eliminate.
5	Consumer Protection	16 NYCRR 602.4 Rate and service information available on request.	Same as ILEC	Eliminate.
6	Consumer Protection	Reasonable effort to advise customer of any delay.	Same as ILEC	Eliminate.
7	Consumer Protection	Reasonable attempts to notify customers when trouble will be cleared.	Same as ILEC	Eliminate.

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No.	Description	ILEC	CLEC/IXCs/Resellers	Recommendation
Consumer Protection				
8	Billing Notice Requirements	16 NYCRR 602.6 Bills shall be issued monthly unless otherwise provided for in the company's tariff and must list all charges and credits on the customer's monthly account. Billing for local calls and services can cover one month in advance along with a detailed listing of all toll calls. Providers shall have a representative available during business hours to explain any charges on the billing statement. List all charges and credits on bills. Credit for wrong numbers. Requires agents to credit bills within one business day of payment.	Same as ILEC.	Maintain.
9	Consumer Protection	16 NYCRR 602.7(a) Prompt investigation of complaints.	Same as ILEC	Maintain.
10	Consumer Protection	16 NYCRR 602.7(g) Assist with reporting obscene calls.	Same as ILEC	Maintain.
11	Consumer Protection	16 NYCRR 605.2(b)(2) End-user initiated blocking shall always be available for content services, to the extent technically and economically feasible. Cases 98-C-1479 (Order dated 2/4/99) and 04-C-1276/1297 (Orders dated 10/20/04, 1/21/05 and 5/19/05) require blocking capability from each customer's phone of 900 and other pay numbers including chat lines.	Same as ILEC	Maintain.
12	Billing Notice Requirements	16 NYCRR 606.4 Provides that in any non-payment situation, basic telephone service may only be disconnected for non-payment of basic local exchange service charges.	Same as ILEC.	Streamline.
13	Billing Notice Requirements	16 NYCRR 606.5 Covers application of partial payments to charges specified by the customer or if not specified, in the following order: a) full amount of the partial payment to basic local service excluding unrelated features and long distance calls; b) after payment of basic charges, applies to interLATA long distance; c) charges for other regulated services; d) any amounts in dispute to be deducted from the amount owing prior to the applications of any payment.	Same as ILEC	Streamline.

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No.	Description	ILEC	CLEC/IXCs/Resellers	Recommendation
Consumer Protection				
14	Billing Notice Requirements	16 NYCRR 609 (TEFPA Rules for residential customers) Covers the rules for disconnection of non-payment of basic local telephone service. Provide itemized statements, call detail provided at no extra charge. May block non-standard services for non-payment. Blocking for non-payment may not restrict access to 911 or operator.	Same as ILEC.	Streamline.
15	Billing Notice Requirements	16 NYCRR 609.12 requires the content of bills sent to residential customers to include detailed information about the account, its location and activity along with a due date and instructions on how the bill may be paid along with an itemized statement of charges contained within the bill. New customers will be given 60 days to determine if the services delivered are the services wanted and can change such within a period of time. All bills shall be clear and understandable and accurate. Specific information shall include: name, address, account #, name of service provider, business address, telephone # to contact provider, amount owed, date due, late payment charges, credits, adjustments, statement as to how bill may be paid, itemized list of services.	Same as ILEC.	Maintain.

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No.	Description	ILEC	CLEC/IXCs/Resellers	Recommendation
Consumer Protection				
16	Service Suspension	16 NYCRR 609.4 - 609.11 establishes suspension of service rules for customer failure to pay charges due during a 6 month period or failure to pay amounts related to a deferred payment plan; Requires telephone companies to verify that no payment has been received or posted on the day of suspension or termination; Prevents termination until 20 days after a notice has been served on customer and no suspension can be made until at least 8 days since providing notice; There shall be no deposits for service as a condition for receiving local telephone service (exceptions listed in NYCRR 609.9); Where a deposit is required customers may pay it in installments not to exceed 6 months; Deposits may not be required when customer is on any state assistance; Interest is required to be paid on deposits (PSL 117); Deposits may not exceed twice the monthly bill for local service; May not bill for unbilled service more than 24 months old; May not terminate service for nonpayment of amounts unbilled over 6 months old; Must offer fixed income and disabled customers a deferred payment schedule adjusted to receipt of	Same as ILEC.	Propose legislative change to accomplish Streamline.
17	Billing Notice Requirements	16 NYCRR 609.4 - 609.11 The TEFPA Rules governing provision of telephone service to residential customers and the steps to be followed before a disconnection of service is executed for non-payment of basic charges or the failure to make a deferred payment on a schedule agreed to by the company and its customer.	Same as ILEC.	Streamline.
18	Billing Notice Requirements	16 NYCRR 609.6 allows a residential customer to designate a third-party to receive copies of bills as a protection against non-payment.	Same as ILEC.	Maintain.

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No.	Description	ILEC	CLEC/IXCs/Resellers	Recommendation
Consumer Protection				
19	Billing Notice Requirements	16 NYCRR 634 requires telephone companies to provide interest on customer overpayments (payment of more than the amount due and not refunded within 30 days). Interest shall be based on the greater of the unadjusted customer deposit OR the applicable late payment rate, if any, under the service class the customer was billed.	Same as ILEC.	Maintain.
20	Operating Requirements	Privacy Protections found in Case 90-C-0075 (Order dated 3/22/91) address customer privacy expectations, consideration of privacy when new services are introduced and customer education of any new technologies and services that may affect privacy.	Same as ILEC.	Maintain.
21	Interest on Customer Overpayments	PSL 117 requires utilities to pay customers interest on deposits and customer overpayments under certain circumstances. (as described in 16 NYCRR, Parts 600 and 634)	Same as ILEC.	Maintain.
22	Consumer Protection	PSL 117 may require deposits of up two months service. Must pay interest and be refundable after one year with no delinquencies.	Same as ILEC	Maintain.
23	Consumer Protection	PSL 92-a (described in 16 NYCRR Part 602.8) requires sale or lease of equipment to hearing impaired by all regulated landline telephone corporations, the charge for which shall not exceed its cost if purchased or if by lease or lease with an option to buy under rates approved by the Commission.	Same as ILEC	Maintain.
24	Consumer Protection	PSL 92-b - Limitation on deposits for elderly customers (62 years of age or over)	Same as ILEC	Maintain.
25	Consumer Protection	PSL 92-e - Consumers are protected from any unauthorized switching of their service by federal and state rules against slamming. Slamming penalty potential of up to \$5,000 per occurrence.	Same as ILEC	Maintain.

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No.	Description	ILEC	CLEC/IXCs/Resellers	Recommendation
Consumer Protection				
26	Consumer Protection	Case 00-C-0188 (Orders dated 1/8/01 and 12/4/01) adopted guidelines to standardize customer migrations between CLECs and from CLECs to Verizon and mass migrations in extraordinary circumstances (e.g., bankruptcy, out-of-business and/or otherwise terminate service). Establishes general principles and carrier responsibilities for, among other things, the use of end-user customer information.	Same as ILEC	Maintain.
27	Operating Requirements	Opinions 92-37 and 94-9 (Cases 89-C-191 and 90-C-0165) – Automatic Number Identification (ANI). Contains terms and conditions for the use of ANI, the technology which identifies, among other things, the telephone number of the billing party.	Same as ILEC.	Maintain.
28	Consumer Protection	PSL 118-3(a) requires a refund or credit to a customer when there has been an overpayment.	Same as ILEC	Maintain.
29	Consumer Protection	Notify customers of estimated first bill prior to processing a request.	Same as ILEC	Eliminate.
30	Consumer Protection	60 day grace period to select a different service when customer incurs an installation charge.	Same as ILEC	Eliminate.
31	Performance Requirements		Opinion 90-12 (Case 27946) adopted revised regulations for resellers of customer owned or leased currency operated telephones (COCOTS)	Maintain.

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No.	Description	ILEC	CLEC/IXCs/Resellers	Recommendation
Consumer Protection				
32	Performance Requirements		PSL 90 (3) requires the PSC to establish and assess penalties for non-compliance with COCOT regulations. COCOT phones must provide information to users about the rates for local calls, the name and telephone number of the owner and information on how to obtain refunds.	Maintain.
33	Performance Requirements		16 NYCRR Parts 648, 650 and Case 27946 Define regulations applicable to COCOT resellers	Maintain.

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No.	Description	ILEC	CLEC/IXCs/Resellers	Recommendation
Level Playing Field				
1	Local/Municipal	PSL 99, 16 NYCRR Part 604 1. NYC--Approval of DoITT and licenses/pole attachment agreements from Empire City Subway to install physical plant. Individual landowners require ROW agreements. 2. Rest of State—Franchise required generally. If no franchise and/or row agreement and/or licenses, then eminent domain rights as a Transportation Corporation, if qualified. [Note: All facilities-based providers must have authority to do business in each municipality, usually in the form of a local franchise.]	Same as ILEC if a facilities provider. [Note: All facilities-based providers must have authority to do business in each municipality, usually in the form of a local franchise.]	Maintain.
2	Pole Attachment Rates	PSL 119a requires just and reasonable rates for attachments to poles or conduit for all utilities. In Opinion 97-10, the Commission adopted the FCC's approach.	Same as ILEC.	Maintain.

ACCESS LINE COUNT CHANGES (2000-2004)

COMPANY	Total 2000	Total 2004	Line Count Change	% Change
AllTel	103,091	94,937	-8,154	-7.91%
Armstrong	3,548	3,571	23	0.65%
Berkshire	6,828	6,562	-266	-3.90%
Cassadaga	1,639	1,485	-154	-9.40%
Champlain	6,180	5,914	-266	-4.30%
Chautauqua & Erie	12,435	11,495	-940	-7.56%
Chazy & Westport	4,092	3,935	-157	-3.84%
Citizens Tel. Co. of NY	315,603	308,864	-6,739	-2.14%
Citizens Tel Co. of Hammond NY	1,886	1,959	73	3.87%
Crown Point	1,122	1,128	6	0.53%
Delhi	5,449	5,516	67	1.23%
Deposit	9,376	9,646	270	2.88%
Dunkirk & Fredonia	11,419	10,046	-1,373	-12.02%
Edwards	2,507	2,844	337	13.44%
Empire	8,745	8,287	-458	-5.24%
Fisher's Island	1,078	1,078	0	0.00%
Frontier Comm of NY	77,973	73,221	-4,752	-6.09%
Frontier Ausable Valley	6,851	6,643	-208	-3.04%
Frontier Comm Seneca- Gorham	10,172	9,452	-720	-7.08%
Frontier Sylvan Lake	20,854	19,395	-1,459	-7.00%
Germantown	3,080	3,003	-77	-2.50%
Hancock Tel	1,906	1,879	-27	-1.42%
Margaretville Tel	4,550	4,476	-74	-1.63%
Middleburgh Tel	7,150	7,220	70	0.98%
Newport Telephone Co.	3,782	3,704	-78	-2.06%
Nicholville Tel	2,697	2,549	-148	-5.49%
Ogden Telephone	23,353	21,414	-1,939	-8.30%
Oneida County Rural Telephone Co.	3,904	3,848	-56	-1.43%
Ontario Telephone	5,349	4,885	-464	-8.67%
Orinskay Falls (TDS)	716	704	-12	-1.68%
Pattersonville Tel	1,481	1,336	-145	-9.79%
Port Bryon	3,786	3,680	-106	-2.80%
State Telephone	8,978	8,777	-201	-2.24%
Taconic Telephone	27,494	28,601	1,107	4.03%
Township Tel (TDS)	4,435	5,868	1,433	32.31%
Trumansburg Tel	7,445	7,065	-380	-5.10%
Vernon Tel (TDS)	2,875	2,929	54	1.88%
Warwick Valley	18,568	19,058	490	2.64%
Total	742,397	716,974	-25,423	-3.42%

Indicates Line Loss

SOURCE: Annual Reports for 2000 and 2004, Schedule 61, Access Lines in Service

Cost to Reduce Intrastate Access Rate to Interstate Rate vs. Proposed Revenue Reductions

	<u>Intrastate</u>	<u>Interstate</u>			<u>Cost to</u>	<u>Year 1</u>	<u>Years</u>	
	<u>Access</u>	<u>Access</u>	<u>Intrastate MOU</u>	<u>Interstate MOU</u>	<u>change Intra-</u>	<u>Revenue</u>	<u>Required</u>	
	<u>Rate</u>	<u>Rate</u>			<u>to Interstate</u>	<u>Reduction</u>		
					<u>Rate</u>			
Armstrong	0.051800	0.014759	N/A	N/A		\$ 214,260	-	
Berkshire	0.043275	0.007624	N/A	N/A		\$ 300,000	-	
Cassadaga	0.051800	0.018326	5,016,764	3,308,959	\$ 167,931	\$ 89,100	1.88	
Champlain	0.051800	0.011191	20,447,813	20,726,102	\$ 830,365	\$ 300,000	2.77	limited by 24.95 in Year 3
Chautauqua & Erie	0.051800	0.016542	29,720,900	32,825,782	\$ 1,047,899	\$ 300,000	3.49	
Chazy & Westport	0.051800	0.007624	11,873,599	11,268,054	\$ 524,528	\$ 236,100	2.22	
Citizens Hammond	0.051800	0.018326	6,046,582	3,515,533	\$ 202,403	\$ 117,540	1.72	
Crown Point	0.051800	0.018326	3,235,937	3,159,677	\$ 108,320	\$ 67,680	1.60	
Delhi	0.051800	0.009408	19,930,593	12,489,755	\$ 844,897	\$ 300,000	2.82	
Deposit	0.051800	0.009408	29,875,397	21,185,450	\$ 1,266,477	\$ 300,000	4.22	
Dunkirk & Fredonia	0.051800	0.016542	22,661,615	19,470,022	\$ 799,002	\$ 300,000	2.66	
Edwards	0.050028	0.007624	15,821,614	3,748,469	\$ 670,899	\$ 170,640	3.93	
Empire	0.051800	0.011191	26,101,394	18,641,029	\$ 1,059,951	\$ 300,000	3.53	
Fishers Island	0.051800	0.018326	N/A	N/A		\$ 64,680	-	
Frontier NY	0.021315	0.002899	351,473,781	N/A	\$ 6,472,730	\$ 535,087	12.10	
Frontier Ausable Valley	0.038567	0.002899	19,704,593	N/A	\$ 702,823	\$ 300,000	2.34	
Frontier Seneca Gorham	0.031328	0.002899	27,225,907	N/A	\$ 774,004	\$ 300,000	2.58	
Frontier Sylvan Lake	0.027529	0.002899	55,714,148	N/A	\$ 1,372,238	\$ 300,000	4.57	
Germantown	0.051800	0.009408	10,712,442	7,514,999	\$ 454,121	\$ 180,180	2.52	
Hancock	0.051800	0.018326	5,292,649	5,299,641	\$ 177,166	\$ 108,540	1.63	
Margaretville	0.051800	0.011191	10,769,262	10,035,909	\$ 437,329	\$ 269,760	1.62	
Middleburgh	0.051300	0.011191	27,986,073	14,955,626	\$ 1,122,492	\$ 300,000	3.74	
Newport	0.051800	0.016542	10,291,808	6,519,698	\$ 362,868	\$ 222,240	1.63	
Nicholville	0.051800	0.009408	10,022,417	6,432,377	\$ 424,870	\$ 152,940	2.78	limited by 24.95 in Year 3
Ogden	0.021777	0.007764	33,199,267	N/A	\$ 465,205	\$ 300,000	1.55	
Oneida County	0.051800	0.014759	9,859,251	7,253,170	\$ 365,196	\$ 230,880	1.58	
Ontario	0.051800	0.009408	N/A	N/A		\$ 293,100	-	
Oriskany Falls	0.049366	0.005840	3,154,275	1,061,920	\$ 137,293	\$ 42,240	3.25	limited by 24.95 in Year 2
Pattersonville	0.051800	0.018326	3,200,396	2,949,171	\$ 107,130	\$ 80,160	1.34	
Port Byron	0.051800	0.009408	14,703,138	6,029,742	\$ 623,295	\$ 220,800	2.82	
State	0.051800	0.005840	15,563,040	23,095,375	\$ 715,277	\$ 300,000	2.38	
Taconic	0.035960	0.011191	82,960,471	85,101,752	\$ 2,054,845	\$ 300,000	6.85	
Township	0.051800	0.011191	14,569,762	8,813,402	\$ 591,663	\$ 300,000	1.97	
Trumansburg	0.051800	0.005840	35,651,864	30,276,027	\$ 1,638,559	\$ 300,000	5.46	
Vernon	0.051800	0.012975	9,069,525	4,746,074	\$ 352,124	\$ 175,740	2.00	
Warwick Valley	0.022412	0.006207	N/A	N/A		\$ 300,000	-	
Assumptions					\$ 26,873,899			

Sources: 8/31/05 file from Steve Sokal; Backup to Rural Coalition Exhibit 5 from Kevin S. on 9/2/05; Frontier Data from LNP; Basic Rates 3 Years -2495.xls

Competitive Indicator Method and Revenue Impacts

In light of the parties' comments, Staff has performed a streamlined, yet more conservative, analysis of competition in New York when compared to our previous analyses. Staff's Competitive Indicator analysis now identifies three platforms; traditional wireline, wireless, and broadband. Should all three platforms be available to customers in a particular area, Staff has concluded that competition is sufficiently robust so as to constrain the ability of the incumbent to increase its prices excessively. To conduct its analysis, Staff relied on the following information:

For broadband availability: Staff relied on confidential December 2004 FCC Form 477 information to ascertain if customers in a wire center serving area had cable or DSL broadband internet access options. Using information on the residential population of each zip code within each wire center, staff attempted to identify the proportion of the population in each wire center which had either cable or DSL broadband available to them. If staff found that two thirds or more of the population weighted zip codes in a wire center contained either cable or DSL broadband options, then staff concluded that broadband was a reasonably competitive platform in that wire center.

For wireless availability: Using FCC wireless antenna databases,¹ staff identified the number of wireless providers in each wire center service territory. Staff concluded that wireless was a reasonable competitive platform if two or more unaffiliated wireless providers located antennas in the wire center service territory.

Based on the foregoing information regarding availability, Staff created a Competitive Indicator score for each wire center. Each wire center was assigned either a score of 0, 1 or 2 depending upon the number of intermodal platforms reasonably available within its service area. The raw scores of each wire center were then converted to the percentage of the state's population served by those centers to determine what percentage is served by no alternative platforms, one alternative or both alternatives.

As demonstrated by Table 1, below, we find that 90% of New York's customers have both alternative intermodal options.

¹ The FCC's Universal Licensing System Database can be accessed via the Wireless Telecommunication Bureau's database webpage, located at: http://wireless.fcc.gov/database_info.html#search (visited September 19, 2005).

Table 1		
New York State Wire Centers For All Local Exchange Companies		
Number of Intermodal Platforms	Count of Wire Centers	Percent of Population Served by Wire Centers
0	30	0.37%
1	316	10.10%
2	441	89.53%
Total	787	100.00%

Additionally, roughly 93% of Verizon's New York service territory customers have two alternative competitive options via intermodal platforms

Table 2		
Verizon New York Wire Centers Only		
Number of Intermodal Platforms	Count of Wire Centers	Percent of Population Served by Wire Centers
0	13	0.17%
1	163	7.19%
2	327	92.64%
Total	503	100.00%

Staff finds that a lower, but still significant majority of independent LEC customers have two alternative intermodal platform options

Table 3		
Independent LEC Wire Centers Only		
Number of Intermodal Platforms	Count of Wire Centers	Percent of Population Served by Wire Centers
0	17	1.87%
1	153	32.07%
2	114	66.05%
Total	284	100.00%

Staff finds that 87.25 percent of Frontier of Rochester customers have two alternative intermodal platform options

Table 4		
Frontier Telephone of Rochester Wire Centers Only		
Number of Intermodal Platforms	Count of Wire Centers	Percent of Population Served by Wire Centers
0	0	0.00%
1	13	12.75%
2	31	87.25%
Total	44	100.00%

Competitive Indicator Method

Parties commented that the manner in which Staff's previous index incorporated FCC Zip Code level data substantially overstated the availability of cable telephone service and VoIP service in New York State. Staff's Competitive Indicator addresses this concern via a more comprehensive allocation of Zip Code level data to wire centers. For instance, Zip Code level information on the availability of broadband is no longer entirely allocated to one wire center or the other. Also, the entire wire center is no longer coded as though having broadband availability if just one Zip Code contains a broadband customer. Only in instances when every Zip Code was listed as having broadband availability in FCC Form 477 would staff's Competitive Indicator method identify that wire center as having broadband benefiting 100% of the wire center's population.

However, Staff's Competitive Indicator also considers the population² of each Zip Code and provides a weighted number if broadband is not available in all Zip Codes associated with a wire center. Thus, if only 4 of the five Zip Codes in a wire center were listed on FCC Form 477, and if those 4 Zip Codes represented 80% of the wire centers population, staff's new method would indicate that broadband availability pertains to 80% of the wire center's population.

Staff's method determines which fraction of a wire center population is benefited by broadband availability on a carrier by carrier basis. Staff totals up the fractions for each carrier to arrive at an overall availability score. For instance, if there were 2 carriers,

² The total population figures staff used may be overstated due to the manner in which census blocks population totals were assigned either to wire centers or Zip Codes if the census block straddles a wire center or Zip Code boundary.

each with an 80% fraction, Staff's method would score the wire center as 1.6. Staff considered broadband as being a competitive platform if the total availability score for the wire center was greater than 66.7%.³

Similarly, staff developed a Competitive Indicator score for DSL availability using FCC Form 477 data coupled with an identical scoring procedure.

Wireless Platform Availability⁴

Staff's analysis of wireless platform availability is based on the FCC's Antenna Structure Registration databases.⁵

Staff downloaded records for "antenna structures" having a New York location. Staff identified and added the cell phone and tower company names to the FCC's data and then sorted the information by those identifiers.⁶

The horizontal and vertical coordinates for each antenna structure were plotted in the NYDPS GIS. The system was then queried spatially to determine the actual wire center within which the antenna structure is located. Staff also identified wireless providers in each wire center service territory. Staff assigned a wireless availability score of 1 to the wire center if it appeared that two or more unaffiliated wireless providers located antennas in the wire center service territory.⁷

³ Staff's choice of 66.7% reflects a reasonable balance between erroneously indicating that too many customers have broadband availability, and erroneously failing to indicate that customers in the wire center have broadband alternatives when broadband is, in fact, available in some of the wire center's Zip Codes.

⁴ Based upon identification of wire centers with two or more *unaffiliated* cell provider antennas.

⁵ See <http://wireless.fcc.gov/cgi-bin/wtb-datadump.pl>, and http://wireless.fcc.gov/uls/data/complete/r_tower.zip, last visited September 19, 2005.

⁶ All the NY data has been retained in staff's compilation, and thus, staff's dataset contains towers that, at first glance, may appear to be unrelated to cell phone activity. Those towers, however, although many may be owned by municipalities, often support cell competitor antennas. While we can say a structure exists that is owned by a tower company that leases to cell phone companies, we cannot tell from this information if there is a cell phone antenna on that structure, nor which cell phone company has an antenna on the structure.

⁷ Staff assumed that all customers in major cities (UNE Zone "1A" or "1B") have wireless platform alternatives. This overlay was to address major city antenna mismatch issues.

Illustration of Lack of Market Power as a Result of Intermodal Options

In addition to the foregoing, it is critical to point out that the ILECs will be constrained from raising the prices of discretionary packages given the percentage of customers having reasonable intermodal options. As noted above, 93% of Verizon NY's customers have two alternative platforms available to them. Verizon's service territory covers a residential market of approximately six million lines.

Assume that customers with two options have a price elasticity of -1.5, and that customers without options (e.g., captive customers) have a price elasticity of -0.5. If Verizon were to increase the price of a discretionary package, on a uniform statewide basis, from \$50.00 per month by 5% to \$52.50, staff estimates that Verizon would actually lose \$73,848,579 in revenues on an annual basis.⁸ Although Verizon would gain more revenues from its initial 441,000 captive customers (\$544,526 per month), such gains would be more than offset by losses in revenues from the initial base of 5,559,000 customers which have reasonable competitive options (\$6,698,575 in monthly losses).

Staff expects that 392,306 of Verizon's customers would switch to other suppliers in the face of such a 5% non-transitory price increase. Revenue losses would be even larger if Verizon were to increase prices by 20% to \$60.00 given these customer demand and market characteristics. Staff estimates that a 20% discretionary package price increase would result in a Verizon revenue loss of \$290,610,303 per year. Below are tables showing the results of numerous revenue scenarios under varying price elasticity and price increase assumptions.

⁸ Staff's revenue estimates are based upon the constant elasticity demand formulations used in previous telecommunications company NYPSC rate case rate design revenue impact analyses.

TABLE 5: REVENUE IMPACT SCENARIO SUMMARY

Revenue Impact Scenario	competitive price elasticity	captive price elasticity	base package price	price increase	annual revenue impact if 92.65% of customers have two alternative platform options	annual revenue Impact if 75% of customers have two alternative platform options	annual revenue impact if 50% of customers have two alternative platform options
Scenario 1	-1.5	-0.5	50	5%	(73,848,579)	(42,844,234)	1,071,269
Scenario 2	-1.5	-0.5	50	20%	(290,610,303)	(149,347,888)	14,968,880
Scenario 3	-1.25	-0.25	50	5%	(30,574,823)	810,015	45,264,460
Scenario 4	-1	-0.5	50	5%	6,534,317	22,225,569	44,451,138
Scenario 5	-2	-0.75	50	5%	(155,581,338)	(117,526,418)	(63,624,264)

Revenue Impact Scenario 1

		total residential market (customers)	competitive price elasticity	captive price elasticity	base package price	price increase	
		6,000,000	-1.5	-0.5	50	5%	
Proportion customers with two alternative platform options	base of customers with options	base of captive customers	number of customers with options that switch	percentage of customers that switch	monthly revenue effect customers with options	monthly revenue effect captive customers	annual net revenue effect
0.9265	5,559,000	441,000	(392,306)	7.06%	(6,698,575)	544,526	(73,848,579)
0.9	5,400,000	600,000	(381,085)	7.06%	(6,506,980)	740,852	(69,193,536)
0.85	5,100,000	900,000	(359,914)	7.06%	(6,145,481)	1,111,278	(60,410,435)
0.8	4,800,000	1,200,000	(338,743)	7.06%	(5,783,982)	1,481,705	(51,627,335)
0.75	4,500,000	1,500,000	(317,571)	7.06%	(5,422,484)	1,852,131	(42,844,234)
0.7	4,200,000	1,800,000	(296,400)	7.06%	(5,060,985)	2,222,557	(34,061,133)
0.65	3,900,000	2,100,000	(275,228)	7.06%	(4,699,486)	2,592,983	(25,278,033)
0.6	3,600,000	2,400,000	(254,057)	7.06%	(4,337,987)	2,963,409	(16,494,932)
0.55	3,300,000	2,700,000	(232,885)	7.06%	(3,976,488)	3,333,835	(7,711,831)
0.5060985	3,036,591	2,963,409	(214,296)	7.06%	(3,659,081)	3,659,081	(6)
0.5	3,000,000	3,000,000	(211,714)	7.06%	(3,614,989)	3,704,261	1,071,269
0.45	2,700,000	3,300,000	(190,543)	7.06%	(3,253,490)	4,074,688	9,854,370

Revenue Impact Scenario 2

		Total residential market (customers)	competitive price elasticity	captive price elasticity	base package price	price increase	
		6,000,000	-1.5	-0.5	50	20%	
proportion customers with two alternative platform options	base of customers with options	base of captive customers	number of customers with options that switch	percentage of customers that switch	monthly revenue effect customers with options	monthly revenue effect captive customers	annual net revenue effect
0.9265	5,559,000	441,000	(1,330,125)	23.93%	(24,217,525)	2,104,565	(290,610,303)
0.9	5,400,000	600,000	(1,292,081)	23.93%	(23,524,849)	2,863,353	(247,937,948)
0.85	5,100,000	900,000	(1,220,299)	23.93%	(22,217,913)	4,295,030	(215,074,595)
0.8	4,800,000	1,200,000	(1,148,516)	23.93%	(20,910,977)	5,726,707	(182,211,241)
0.75	4,500,000	1,500,000	(1,076,734)	23.93%	(19,604,041)	7,158,384	(149,347,888)
0.7	4,200,000	1,800,000	(1,004,952)	23.93%	(18,297,105)	8,590,060	(116,484,534)
0.65	3,900,000	2,100,000	(933,169)	23.93%	(16,990,169)	10,021,737	(83,621,181)
0.6	3,600,000	2,400,000	(861,387)	23.93%	(15,683,233)	11,453,414	(50,757,827)
0.55	3,300,000	2,700,000	(789,605)	23.93%	(14,376,297)	12,885,091	(17,894,474)
0.522774425	3,136,647	2,863,353	(750,519)	23.93%	(13,664,655)	13,664,655	(0)
0.5	3,000,000	3,000,000	(717,823)	23.93%	(13,069,361)	14,316,767	14,968,880
0.45	2,700,000	3,300,000	(646,040)	23.93%	(11,762,425)	15,748,444	47,832,233

Revenue Impact Scenario 3

		total residential market (customers)	competitive price elasticity	captive price elasticity	base package price	price increase	
		6,000,000	-1.25	-0.25	50	5%	
proportion customers with two alternative platform options	base of customers with options	base of captive customers	number of customers with options that switch	percentage of customers that switch	monthly revenue effect customers with options	monthly revenue effect captive customers	annual net revenue effect
0.9265	5,559,000	441,000	(328,899)	5.92%	(3,369,714)	821,812	(30,574,823)
0.9	5,400,000	600,000	(319,492)	5.92%	(3,273,332)	1,118,111	(25,862,651)
0.85	5,100,000	900,000	(301,742)	5.92%	(3,091,480)	1,677,167	(16,971,762)
0.8	4,800,000	1,200,000	(283,993)	5.92%	(2,909,629)	2,236,222	(8,080,874)
0.75455531	4,527,332	1,472,668	(267,860)	5.92%	(2,744,345)	2,744,345	0
0.75	4,500,000	1,500,000	(266,243)	5.92%	(2,727,777)	2,795,278	810,015
0.7	4,200,000	1,800,000	(248,494)	5.92%	(2,545,925)	3,354,334	9,700,904
0.65	3,900,000	2,100,000	(230,744)	5.92%	(2,364,073)	3,913,389	18,591,793
0.6	3,600,000	2,400,000	(212,995)	5.92%	(2,182,221)	4,472,445	27,482,682
0.55	3,300,000	2,700,000	(195,245)	5.92%	(2,000,370)	5,031,501	36,373,571
0.5	3,000,000	3,000,000	(177,496)	5.92%	(1,818,518)	5,590,556	45,264,460
0.45	2,700,000	3,300,000	(159,746)	5.92%	(1,636,666)	6,149,612	54,155,349

Revenue Impact Scenario 4

		total residential market (customers)	competitive price elasticity	captive price elasticity	base package price	price increase	
		6,000,000	-1	-0.5	50	5%	
proportion customers with two alternative platform options	base of customers with options	base of captive customers	number of customers with options that switch	percentage of customers that switch	monthly revenue effect customers with options	monthly revenue effect captive customers	annual net revenue effect
0.99999999	6,000,000	0	(285,714)	4.76%	0	0	1
0.9265	5,559,000	441,000	(264,714)	4.76%	0	544,526	6,534,317
0.9	5,400,000	600,000	(257,143)	4.76%	0	740,852	8,890,228
0.85	5,100,000	900,000	(242,857)	4.76%	0	1,111,278	13,335,341
0.8	4,800,000	1,200,000	(228,571)	4.76%	0	1,481,705	17,780,455
0.75	4,500,000	1,500,000	(214,286)	4.76%	0	1,852,131	22,225,569
0.7	4,200,000	1,800,000	(200,000)	4.76%	0	2,222,557	26,670,683
0.65	3,900,000	2,100,000	(185,714)	4.76%	0	2,592,983	31,115,797
0.6	3,600,000	2,400,000	(171,429)	4.76%	0	2,963,409	35,560,910
0.55	3,300,000	2,700,000	(157,143)	4.76%	0	3,333,835	40,006,024
0.5	3,000,000	3,000,000	(142,857)	4.76%	0	3,704,261	44,451,138
0.45	2,700,000	3,300,000	(128,571)	4.76%	0	4,074,688	48,896,252

Revenue Impact Scenario 5

		total residential market (customers)	competitive price elasticity	captive price elasticity	base package price	price increase	
		6,000,000	-2	-0.75	50	5%	
proportion customers with two alternative platform options	base of customers with options	base of captive customers	number of customers with options that switch	percentage of customers that switch	monthly revenue effect customers with options	monthly revenue effect captive customers	annual net revenue effect
0.9265	5,559,000	441,000	(516,823)	9.30%	(13,235,714)	270,603	(155,581,338)
0.9	5,400,000	600,000	(502,041)	9.30%	(12,857,143)	368,167	(149,867,710)
0.85	5,100,000	900,000	(474,150)	9.30%	(12,142,857)	552,251	(139,087,279)
0.8	4,800,000	1,200,000	(446,259)	9.30%	(11,428,571)	736,334	(128,306,848)
0.75	4,500,000	1,500,000	(418,367)	9.30%	(10,714,286)	920,418	(117,526,418)
0.7	4,200,000	1,800,000	(390,476)	9.30%	(10,000,000)	1,104,501	(106,745,987)
0.65	3,900,000	2,100,000	(362,585)	9.30%	(9,285,714)	1,288,585	(95,965,556)
0.6	3,600,000	2,400,000	(334,694)	9.30%	(8,571,429)	1,472,668	(85,185,125)
0.55	3,300,000	2,700,000	(306,803)	9.30%	(7,857,143)	1,656,752	(74,404,695)
0.5	3,000,000	3,000,000	(278,912)	9.30%	(7,142,857)	1,840,835	(63,624,264)
0.45	2,640,000	3,360,000	(245,442)	9.30%	(6,285,714)	2,061,735	(50,687,747)
0.20490853	1,229,451	4,770,549	(114,303)	9.30%	(2,927,265)	2,927,265	(0)