



Verizon Wireless
1300 I Street NW
Suite 400 West
Washington, DC 20005

August 12, 2005

BY HAND

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

Re: Case 05-C-0616

Dear Secretary Brillling:

Pursuant to the Commission's June 29, 2005 "Order Initiating Proceeding and Inviting Comments," enclosed please find an original and fifteen (15) copies of the Initial Comments of Verizon Wireless.

Respectfully submitted,

A handwritten signature in black ink that reads "Lolita D. Forbes". The signature is written in a cursive, flowing style.

Lolita D. Forbes
Senior Attorney

cc: Hon. Jeffrey E. Stockholm, Administrative Law Judge
Active Party List (By E-Mail)
Peter Catalano, Esq.
Mr. Robert Mayer

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Proceeding on Motion of the Commission)
To Examine Issues related to the Transition to)
Intermodal Competition in the Provision of)
Telecommunications Services) CASE 05-C-0616

COMMENTS OF VERIZON WIRELESS

John T. Scott, III
Vice President and Deputy General
Counsel – Regulatory Law

Lolita D. Forbes
Senior Attorney, Regulatory Matters

1300 I Street, N.W.
Suite 400 West
Washington, D.C. 20005
(202) 589-3740

Its Attorneys

August 15, 2005

TABLE OF CONTENTS

I.	INTRODUCTION	
II.	DEREGULATION BY THE NEW YORK LEGISLATURE AND BY THE CONGRESS HAS RESULTED IN A ROBUSTLY COMPETITIVE WIRELESS MARKETPLACE AND APPROPRIATE CONSUMER PROTECTIONS	3
	A. New York Law Provides For Deregulation Of Wireless Services, Which The NYPSC Has Acknowledged.....	3
	B. Congress Mandated A National, Deregulatory Approach to the Wireless Industry	4
	C. Competition Has Benefited Consumers and Proven to be an Effective Substitute for Government Regulation.....	5
III.	THERE IS NO NEED FOR REGULATION BECAUSE COMPETITION, SUPPLEMENTED BY VOLUNTARY ACTIONS OF CARRIERS, FULLY PROTECTS CONSUMERS	8
IV.	THERE IS NOT NEED TO ADOPT SERVICE QUALITY REGULATIONS FOR WIRELESS SERVICES	11
	A. The FCC Fully Regulates CMRS Network Design, Build-Out, and Service Area	12
	B. State Specific Regulations Regarding Trouble Report Rates Should Not Extend to the Wireless Industry.....	14
	C. Wireless Carriers Regularly Evaluate Customer Satisfaction By Addressing Customer Complaints Quickly and Fairly	15
V.	THE NYPSC SHOULD NOT EXPAND ITS UNIVERSAL SERVICE AND NUMERING RULES.....	17
VI.	CONCLUSION	

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Proceeding on Motion of the Commission)
To Examine Issues related to the Transition to)
Intermodal Competition in the Provision of)
Telecommunications Services) CASE 05-C-0616

COMMENTS OF VERIZON WIRELESS

I. INTRODUCTION

Verizon Wireless hereby responds to the New York Public Service Commission’s (“NYPSC”) request for comments regarding its review of telecommunications policies, practices and rules given the state of intermodal competition in New York.¹ The NYPSC acknowledges the rapidly changing telecommunications landscape, including the expansion of consumer choices of telecommunications services and providers. The availability of various sources of intermodal competition is the hallmark of a vibrantly competitive marketplace. While the NYPSC should continue to monitor the marketplace to ensure that consumers are protected and to correct any market failures that will harm consumers, it should not seek to artificially constrain or manage competition through heavy-handed regulation.

¹ The NYPSC notes that in New York consumer choice has been a reality for some time, resulting in choices between wireline, wireless, cable and VOIP providers. The quickened pace of change in the marketplace is the impetus for this proceeding. Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services, *Order Initiating Proceeding and Inviting Comments*, Case 05-C-0616, at 3 (issued and effective Jun. 29, 2005)(“*Competition Order*”).

The wireless industry's experience is a prime example of the success of regulatory restraint. To the extent that traditional providers of telecommunications services desire regulatory parity with competitive providers such as wireless carriers, the NYPSC should strongly resist the urge to increase regulation on competitive providers and services, especially in the absence of market failures that harm consumers. Instead, the NYPSC should seek ways to decrease regulation overall, thereby maximizing intermodal competition within its state borders, which will promote innovative new products and services for consumers just as it has in the wireless industry.

Verizon Wireless applauds the NYPSC's recognition that competitive markets are the most effective approach to ensure the provision of telecommunications services at just and reasonable rates.² The NYPSC aptly stated:

We have also recognized that during the transition to competitive markets, the degree of regulation needs to be flexible. 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. This dynamic approach to the developing markets continues to provide the foundation for our efforts today.³

Absent evidence of market failures and abuses by dominant providers, which are the antithesis of competitive markets, the NYPSC should not seek to apply regulation to wireless carriers or other competitors in the marketplace. Although the NYPSC raises the possible need for new regulation of wireless carriers, it should not do so. Congress has also limited state regulation of wireless carriers.⁴ Deregulation in New York has resulted in a highly competitive wireless market, as is recognized by the Commission in

² *Competition Order* at 2.

³ *Id.*

⁴ 47 U.S.C. § 332(c)(3)(A).

the *Competition Order*.⁵ New regulatory intervention into that market would not only be unnecessary, it would also be counterproductive.

II. DEREGULATION BY THE NEW YORK LEGISLATURE AND BY THE CONGRESS HAS RESULTED IN A ROBUSTLY COMPETITIVE WIRELESS MARKETPLACE AND APPROPRIATE CONSUMER PROTECTIONS.

A. New York Law Provides For Deregulation Of Wireless Services, Which The NYPSC Has Acknowledged.

The New York legislature suspended application of the Public Service Laws of New York to paging and mobile radio telephone services, which may only be lifted by the NYPSC under certain circumstances.⁶ Specifically, and only after notice and a hearing, the NYPSC must determine that regulation of wireless services should be reinstated, to the extent necessary, to protect the public interest due to a lack of effective competition.⁷

In several recent NYPSC orders, the Commission has acknowledged the limits of its authority to regulate wireless carriers and has instead opted to encourage certain behavior by wireless carriers in lieu of a regulatory mandate. In 2002, in an Order denying a petition for a vertical code assignment, the NYPSC stated, “Wireless carriers, which are not generally subject to our regulation, are reluctant to make any detailed geographically-based network modifications, but expressed a willingness to route 2-1-1

⁵ *Competition Order* at 7.

⁶ Pub. Serv. §5(3).

⁷ *Id.* Absent such a determination, the NYPSC cannot consider extending public service regulations to wireless carriers. Given the stated acknowledgement of robust wireless competition by the NYPSC in the *Competition Order*, such a determination would not be sustainable. Given its acknowledgement of wireless competition, the NYPSC cannot make any determination justifying re-regulation of the wireless industry in New York.

calls to a single statewide call center. The wireless carriers are encouraged to enable their customers to complete 2-1-1 dialed calls in order to satisfy the anticipated demand for Information and Referral service.”⁸ Similarly, the NYPSC recognized that the Public Service Laws did not extend to cellular carriers but nevertheless strongly encouraged wireless carriers to participate in a technical conference regarding the safe delivery of 3-1-1 calls.⁹ In another context regarding network reliability, the NYPSC staff advised that it was premature to reassert regulatory authority over wireless carriers, but expected wireline and wireless carriers to cooperate in an effort to study service quality, specifically trunk group sizing.¹⁰ Thus, in several contexts in which the NYPSC has been presented with the opportunity to justify extending regulations to wireless carriers, it has correctly declined to do so. The same result should obtain in the instant proceeding because, as discussed below, the wireless industry is highly competitive in New York in part because of the absence of burdensome regulation.

B. Congress Mandated A National, Deregulatory Approach To The Wireless Industry.

In 1993, Congress amended Section 332 of the Federal Communications Act to implement its vision for a national, deregulatory paradigm for wireless. It determined to rely on competition, not market-distorting regulation, to encourage the development of

⁸ In the Matter of Implementation of N-1-1 Abbreviated Dialing Codes and Assignment of Vertical Service Codes; Petition of Chevra Hatzalah, Inc. for Assignment of a Vertical Service Code, *Order Denying Petition for Vertical Service Code Assignment and Directing Continued Study of N-1-1 Issues*, Cases 00-C-1749 and 00-C-1096 at 4 (issued and effective Feb. 7, 2002).

⁹ Petition of the City of New York Concerning Unblocking Caller ID Information for Calls to the 311 Municipal Call Center, *Order Granting Petition with Conditions*, Case 03-C-0171 at 10 (issued and effective April 18, 2003).

¹⁰ Proceeding on Motion of the Commission to Examine Telephone Network Reliability, *Order Concerning Network Reliability Enhancements*, Case 03-C-0922 at 27 (issued and effective Jul. 28, 2004) (“*Network Reliability Order*”).

this industry to serve consumers. Congress specifically concluded that broad federal preemption was necessary to establish a uniform, federal regulatory framework intended "[t]o foster the growth and development of mobile services that, *by their nature, operate without regard to state lines* as an integral part of the national telecommunications infrastructure."¹¹ As the FCC explained, "Congress, by adopting Section 332(c)(3)(A) of the Act, intended generally to preempt state and local rate and entry regulation of all [CMRS] services to ensure that similar services are accorded similar regulatory treatment and *to avoid undue regulatory burdens*."¹² The FCC also stated, "Congress intended ... to establish a *national* regulatory policy for CMRS, not a policy that is balkanized state-by-state."¹³

C. Competition Has Benefited Consumers and Proven To Be An Effective Substitute For Government Regulation.

This pro-competitive, national deregulatory framework for CMRS prescribed by Congress and implemented by the FCC has enabled wireless competition to flourish, with substantial benefits to consumers. Lower prices and advanced technologies are available to wireless customers today due to the highly competitive wireless services market. Today's wireless phones and other devices offer a myriad of cutting edge features and

¹¹ H.R. Rep. No. 103-111, 103d Cong., 1st Sess. 211, 260 (1993), *reprinted in* 1993 U.S.C.C.A.N. 378, 587 (emphasis added). *See also*, at 259, 1993 U.S.C.C.A.N. 586 ("[T]he legislation establishes uniform rules to govern the offering of all commercial mobile services.")(emphasis added); House Conf. Rep. No. 103-213, 103d Cong., 1st Sess. 473, 490 (1993), *reprinted in* 1993 U.S.C.C.A.N. 1088, 1179 ("The intent of this provision [Section 332(c)(1)(A)], as modified, is to establish a Federal regulatory framework to govern the offering of all commercial mobile services.").

¹² Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 FCC Rcd 1411, 1504 (1994) (emphasis added).

¹³ Petition on Behalf of the State of Hawaii, Public Utility Commission, for Authority To Extend Its Rate Regulation of Commercial Mobile Radio Services in the State of Hawaii, *Report and Order*, 10 FCC Rcd 7872, 7875 (1995) (citation omitted).

conveniences for voice communications. In addition, advanced wireless data services, such as email, photo messaging, and short messaging are still in their infancy; as wireless data speeds increase, mobile access to the Internet will expand and bring an array of new services to consumers on the move.

The deregulation of the wireless industry has been an unparalleled success, resulting in widespread and fiercely competitive wireless service. The success behind the FCC's deregulatory market-driven approach to the CMRS industry is that carrier offerings are driven by consumer preferences rather than regulation. As noted by the FCC, "[c]onsumers continue to contribute to pressures for carriers to compete on price and other terms and conditions of service by freely switching providers in response to differences in the cost and quality of service."¹⁴ These competitive market effects have been accelerated by the advent of local number portability ("LNP"), which allows consumers to switch wireless service providers, without giving up their mobile phone numbers. The competitive market conditions coupled with the availability of LNP are sufficient to ensure that CMRS carriers provide services upon reasonable terms and conditions to consumers throughout New York.

Intense price competition has resulted in affordable rates as well as innovative pricing plans such as free night and weekend minutes and free mobile-to-mobile calling.¹⁵ The price of service has fallen consistently, from 44 cents per minute in 1993

¹⁴ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Ninth Report*, 19 FCC Rcd. 20597, 20601 (2004) ("*Ninth CMRS Competition Report*").

¹⁵ As the FCC has recognized, mobile voice calls are far less expensive on a per minute basis in the U.S. than in Western Europe, and at least some indicators show that rates are still decreasing. According to the U.S. Department of Labor's Bureau of Labor Statistics, for

to 10 cents per minute in 2003.¹⁶ And in the period from 1997 through 2003, wireless prices fell 33%, compared to an increase of nearly 15% in general consumer prices.¹⁷ Consumers continue to increase the use of their wireless phones. The average minutes-of-use (hereinafter “MOUs”) per subscriber per month in 2003 was 507 minutes, an increase of 80 MOUs over the previous year.¹⁸

Consumer choice has expanded as CMRS customers can choose among multiple providers as well as a wide array of service and equipment options.¹⁹ As of September 2004, approximately 97% of the total U.S. population lived in counties with access to three or more different carriers offering mobile telephone service, and 88% lived in counties with five or more competing mobile telephone service providers.²⁰ Competition is vibrant not only nationally but also in New York.

The CMRS marketplace is increasingly national. To succeed in the marketplace, CMRS carriers typically operate without regard to state borders and generally have come to structure their offerings on a national or regional basis. This structure reflects the FCC’s decision to distribute licenses based on large geographic areas, which typically span more than a single state.²¹ While flat-rate nationwide calling plans were unknown before 1998, today all of the nationwide CMRS operators have responded to competitive pressures by offering multiple national pricing plans that allows wireless customers to purchase the optimal bucket of minutes to use wherever they are, without incurring

example, the price of mobile telephone service declined by 1.0% during 2003 while the overall consumer price index increased by 2.3%. *Id.* at 20601, 20666.

¹⁶ *Id.* at 20700, Table 9.

¹⁷ *Id.* at 20699, Table 8.

¹⁸ *Id.* at 20700, Table 9.

¹⁹ *See id.* at 20600.

²⁰ *Id.* at 20600, 20609.

²¹ *See* 47 C.F.R. § 24.202(a).

roaming or long distance charges, as well as frequently providing various free nights and weekend options.²²

A more regulatory approach to the wireless industry in New York would harm the free marketplace in which innovations in technology and price competition are flourishing, and would require that carriers divert scarce capital and other resources into regulatory compliance and away from network investments. Imposing such regulations would be a dramatic and unwarranted reversal in policy for this pro-competition Commission.

III. THERE IS NO NEED FOR REGULATION BECAUSE COMPETITION, SUPPLEMENTED BY VOLUNTARY ACTIONS OF CARRIERS, FULLY PROTECTS CONSUMERS.

The *Competition Order* states that “[t]he primary reason for regulation is to protect consumers from abuses by dominant suppliers of essential services.”²³ The NYPSC’s approach is to “ensure consumer protection while maximizing competitive benefits,” which in its estimation, is consistent with guiding principles dating back to 1996.²⁴ The technological changes referenced by the NYPSC that require it to again re-examine the way it regulates telecommunications services, and the asymmetries of current laws,²⁵ should not propel it to regulate the wireless industry where no such regulation is independently justified.

This vibrantly competitive wireless services market has resulted in satisfied wireless customers. The U.S. General Accounting Office recently wrote in a report to

²² *Ninth CMRS Competition Report* at 20644.

²³ *Competition Order* at 2.

²⁴ *Id.*

²⁵ *Id.* at 3-4.

Congress that approximately 83%, or four-fifths of mobile phone users were satisfied with their service, and 9% were indifferent; a total of 92% of the wireless subscribers surveyed were in large measure satisfied with their service.²⁶ While carriers aggressively work to reduce and eliminate specific complaints, when consumers are asked about their overall satisfaction with their CMRS provider, they generally report overall satisfaction. Regulation is thus not needed to assure satisfactory service. Rather than take a more regulatory approach, the Commission would better serve the residents of New York by ensuring that the State's regulatory and business environment remains progressive, thereby encouraging carriers to increase their presence in the State.

The industry's self-regulation provides additional reason why no NYPSC intrusion into the wireless market is called for. In July 2003, wireless carriers implemented the CTIA Consumer Code for Wireless Service (attached) (the "CTIA Code"). The CTIA Code is a ten-point guide for wireless carriers to follow when interacting with wireless customers or potential customers. It provides consumers with information to help them make informed choices prior to purchasing wireless service, to help ensure that consumers understand their wireless service and rate plans, and to continue to provide wireless service that meets consumers' needs. Carriers who are signatories or who adhere to the CTIA Code have voluntarily adopted the principles, disclosures, and practices (and have thus upgraded their systems to support this effort) set forth in the CTIA Code for wireless service provided to individual consumers. In summary, these carriers do, and certify annually to CTIA that they will:

- Disclose rates and terms of service to consumers

²⁶ U.S. General Accounting Office, Report to the Honorable Anthony D. Weiner, House of Representatives, *Telecommunications, FCC Should Include Call Quality in Its Annual Report on Competition in Mobile Phone Services*, GAO-03-501, at 3 (April 2003).

- Make available maps showing where service is generally available
- Provide contract terms to customers and confirm changes in service
- Allow at least a 14 day trial period for new service
- Provide specific disclosures in advertising
- Separately identify carrier charges from taxes on billing statements
- Provide customers the right to terminate service for changes to contract terms
- Provide ready access to customer service
- Promptly respond to consumer inquiries and complaints received from government agencies
- Abide by policies for protection of consumer privacy

The CTIA Code, along with existing state and federal consumer protection laws, other voluntary agreements by carriers to implement extensive consumer disclosure practices,²⁷ and a fiercely competitive marketplace, ensure that New York's consumers are appropriately protected while they enjoy the benefits of true wireless competition. All of

²⁷ In addition, three of the largest nationwide carriers - Cingular Wireless, Sprint PCS, and Verizon Wireless, last year entered into an Assurance of Voluntary Compliance (AVC) with the attorneys general of 32 states. The AVC requires these wireless carriers to abide by certain requirements addressing matters including (but not limited to) the carriers' respective coverage representations contained in their respective advertising and marketing materials; a cancellation period for new wireless service during which time early termination fees will not apply; and bill disclosures regarding taxes and surcharges. While the New York Attorney General was not a party to the AVC, Verizon Wireless has implemented the requirements of the AVC throughout its national service areas, including in New York.

these measures proactively address the basic protections and more identified in the *Competition Order*.²⁸

The CTIA Code has been adopted on a national basis. This has permitted each participating carrier to implement Code requirements nationally throughout its respective service areas on a uniform basis. This national uniformity thus ensures that *all* consumers, whether urban or rural, whether in a populous or less-populated area, benefit from the industry's consumer commitments.

New York consumers also benefit from regional and national offerings that are not hindered by state-by-state implementation of differing rules that would divert limited resources to regulatory compliance budgets.²⁹

IV. THERE IS NO NEED TO ADOPT SERVICE QUALITY REGULATIONS FOR WIRELESS SERVICES.

In addition to the network reliability proceeding that the NYPSC has already conducted in which the staff determined that it was premature to reregulate wireless,³⁰ the *Competition Order* queries whether existing wireline output-oriented performance measures are still valid and whether they should be extended to wireless carriers.³¹ The examples of service quality performance outputs include customer trouble report rates (CTRR) and complaint rate levels as a measure of customer satisfaction.³² The NYPSC

²⁸ *Competition Order* at 10.

²⁹ See Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing, *Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposal Rulemaking*, 20 FCC Rcd. 6448, 6464, 6467 (2005) ("*TIB Order*") (reiterating the FCC's concerns regarding "a varying patchwork" of state requirements and conflicting state policies which "stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress").

³⁰ *Network Reliability Order* at 27.

³¹ *Competition Order* at 15.

³² *Id.* at 16.

also requests comment regarding legal constraints to extending basic service quality regulation to wireless carriers. Verizon Wireless opposes any such regulation. First, there is no evidence in the *Competition Order* that new state rules are needed or why they would respond to any wireless market failure. Second, many of the FCC's regulations of wireless networks are designed to ensure service quality and negate any basis for state-specific regulations. As provided below, there is a substantial body of federally-mandated service quality regulations of the wireless industry. In other areas where federal regulations do not currently exist, imposing new regulations on the wireless industry (imported from the wireline context) would be wholly inappropriate and harmful. Third, the FCC has exclusive authority to regulate wireless service quality.

A. The FCC Fully Regulates CMRS Network Design, Build-Out, And Service Area

In accordance with its plenary rulemaking authority, the FCC has adopted comprehensive regulations for the design and build-out of CMRS networks.³³ These rules fully regulate who can provide CMRS, and where service must be provided, as follows:

- * Licensing of CMRS providers and competitive bidding procedures (Sections 22.107 to 227; 24.10 to 24.16; 24.24.301 to 24.844);
- * Mechanisms for extending a license into unserved areas (Section 22.949);
- * Geographic service areas (Sections 22.911 to 22.912; 24.102; 24.202);
- * Service commencement and construction periods (5 years build-out, 5 year/10 year benchmarks) (Sections 22.946 to 22.947; 24.103; 24.203);
- * Minimum coverage requirements (22.951; 24.103; 24.203).

³³ See generally 47 C.F.R. Chpts. 20, 22 and 24.

The FCC rules provide detailed technical formulae for determining how extensive network build-out must be to meet the stated coverage requirements.³⁴ The FCC has also adopted exhaustive rules governing the transmission of radio signals over CMRS spectrum. These FCC regulations require all transmitters, including base stations and mobile handsets, to be approved by the FCC through its equipment authorization process.³⁵ These rules also contain specific technical standards – such as emission limits and modulation requirements, antenna height, power, and other specifications, including exposure to RF radiation – used to determine whether equipment satisfies the necessary technical criteria and to govern the operation and use of such equipment.³⁶

Specifically, the CMRS regulations encompass:

- * Emissions and interference (Sections 22.352 to 359; 24.237);³⁷
- * RF radiation emissions (Section 24.50);

³⁴ See 47 C.F.R. Sections 22.911 (calculating service area boundary ("SAB") as a function of antenna power and height); 24.103 (generally requiring coverage for 37.5% of population in service area within 5 years and 75% within 10 years); 24.203 (generally requiring coverage of 25-33% of population in service area within 5 years and 66% within 10 years).

³⁵ See, e.g., 47 C.F.R. § 22.377(a) (requiring transmitters used in Public Mobile Services to be certificated), and § 24.51(a)-(c) (requiring PCS transmitters to be certified by the FCC).

³⁶ See, e.g., An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, *Report and Order*, 86 FCC 2nd. 469, 508 and fn. 80 ("*Cellular Report and Order*") (specifying technical standards for cellular operations and noting that "[c]onformity to the compatibility specifications adopted by the Commission shall be required for type acceptance of a mobile or portable unit for use in the 800 MHz band under Part 22. Conformity to the compatibility specifications for base station equipment shall be required of all applicants for regular authorization"); *Amendment of the Commission's Rules to Establish New Personal Communications Services*, Second Report and Order, 8 FCC Rcd. 7700, 7755-7775, 7708 (1993) (adopting technical rules governing broadband PCS operations).

³⁷ See also 47 U.S.C. § 302a; H.R. Conf Rep. No. 97-765 at 33 (1982), reprinted in 1982 U.S.C.C.A.N. 2261, 2277 ("The Conference Substitute is further intended to clarify the reservation of exclusive jurisdiction to the Federal Communications Commission over matters involving RFI [radio frequency interference]. Such matters shall not be regulated by local or state law, nor shall radio transmitting apparatus be subject to local or state regulation as part of any effort to resolve an RFI complaint...the Conferees intend that regulation of RFI phenomena shall be imposed only by the Commission.").

- * Antenna construction (Sections 22.365; 24.55);
- * Power and antenna height limits (Sections 22.913 to 22.917; 24.131 to 24.132; 24.232 to 24.238).

Through these and other regulations, the FCC has exclusive jurisdiction over radio transmissions.³⁸ In fact, the FCC has fully occupied the field of wireless service quality regulation citing the need for consistent federal standards.³⁹

B. State Specific Regulations Regarding Trouble Report Rates Should Not Extend To The Wireless Industry.

There is no reason to extend the trouble report concept to wireless carriers. The concept has no application to the very different wireless industry and the *Competition Order* has not advanced sufficient justification for imposing a regulation of this type on wireless carriers. Moreover, Verizon Wireless does not keep track of trouble reports in the manner that wireline service providers track trouble reports. First, it handles customer calls reporting service related matters in the same call centers and with the same personnel that receive other customer inquiries. There is no separate number and separate staff for service-related customer calls, and customer care representatives do not attempt to categorize and track each call received.

Second, unlike with wireline service where virtually every service outage or other service problem is identifiable and fixable, service issues such as dropped calls or dead spots where little or no usable signal exists are a fact of life for wireless service providers.⁴⁰ Because wireless carriers do not have “lines,” the cause of many wireless

³⁸ See *Freeman v. Burlington Broadcasters, Inc.*, 204 F.3d 311, 320-21 (2nd Cir. 2000); *Southwestern Bell v. Johnson County Bd.*, 199 F.3d 1185, 1190-91 (10th Cir. 1999).

³⁹ *Cellular Report and Order*, 86 FCC 2nd. at 504.

⁴⁰ Wireline service outages or problems are often related to problems with a particular line or lines. Wireline companies use trouble tickets to track problems with customer lines that are reported to the company. These problems are typically resolved by dispatching a technician to fix

service issues either cannot be readily determined, cannot be pinpointed due to the fact that the customer may have been mobile when the problem occurred, or cannot be solved with a short-term repair solution (for example, when a new cell site is needed to boost coverage in an area but the local community will not permit construction of the site).⁴¹ Accordingly, wireless service providers do not generate trouble reports (referred to by Verizon Wireless as trouble tickets) for most of the service-related calls received.

Requiring CMRS providers to create trouble tickets for each service-related call received would require Verizon Wireless to hire and train separate staff and establish separate phone numbers for service-related complaints. Requiring such reports to be created for each call would also increase the average call handling time as the customer service representative creates each trouble ticket (and would also require additional staff to review each ticket created). As handling time increases, more staff must be added in order to ensure that customer service calls are answered in a timely fashion. Given that most of the service-related calls CMRS providers receive are not addressable, particularly in the short term, there is no added benefit to requiring CMRS providers and their customers to incur this additional expense.

C. Wireless Carriers Regularly Evaluate Customer Satisfaction By Addressing Customer Complaints Quickly And Fairly

The NYPSC need not assert jurisdiction over wireless carriers to gauge the incidence of customer complaints or to conduct periodic surveys of customer satisfaction.

the problem. Wireline companies have historically monitored and reported various metrics relating to the time it takes to cure line troubles.

⁴¹ In the wireless environment, dropped calls, ineffective attempts or poor signal quality can result from a number of factors including terrain or geography, zoning or environmental issues preventing antenna location, periodic network congestion, weather or other environmental condition, or radio interference, or a host of other factors.

Due to the competitiveness of the industry, the high customer acquisition costs, and the advent of local number portability, wireless carriers are highly motivated and have strong financial incentives to resolve each complaint quickly and satisfactorily in an effort to retain their customers. Verizon Wireless takes each and every complaint it receives seriously, whether it receives the complaint directly from their customers or through an agency such as the Commission.⁴² Each wireless carrier has market-based competitive incentives to resolve each and every complaint quickly, satisfactorily, and fairly – knowing that a wireless customer can easily change services to a competing provider quicker and easier than ever before.

Furthermore, all carriers who have agreed to abide by the CTIA Code have agreed to provide information explaining how consumers can contact them in writing, by toll-free telephone number, or otherwise, with any inquiries or complaints.⁴³ Wireless carriers often include this information on all billing statements, in written responses to consumers' inquiries, on websites, and upon request during calls to customer service. All carriers abiding by the CTIA Code have further promised to respond in writing to all state or federal administrative agencies within 30 days of receiving written consumer complaints from any such agency. The Commission thus need not assert jurisdiction over wireless carriers to ensure efforts to reduce customer complaints, appropriate complaint resolution, and overall customer satisfaction.

⁴² In 2004, Verizon Wireless received only 2.21 monthly complaints per million customers from state PUCs. Thus far in 2005, Verizon Wireless has received only 1.54 monthly complaints per million customers from state PUCs.

⁴³ The three carriers operating under the AVC have also agreed to this requirement, as well as to respond within a reasonable time and in good faith to all matters addressed in the AVC.

V. THE NYPSC SHOULD NOT EXPAND ITS UNIVERSAL SERVICE AND NUMBERING RULES

Wireless carriers do not currently participate in the NYPSC's universal service program designed to ensure provision of certain basic services. The current list of basic services referred to in the *Competition Order* includes one 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 Services, Directory Listing, and Privacy Protections.⁴⁴ A state fund to support RLEC operations should only be considered after demonstration, through a close review of LEC rates, costs and existing federal subsidies, that carrier subsidies are necessary to ensure affordable access to service in New York's high cost areas. To date there has been no showing of need for an expanded USF in New York. If in the future, need is demonstrated for a targeted fund to support RLEC operations, wireless carriers should not be required to contribute to such subsidies. Competition within the wireless industry and with other industry segments has assured that wireless subscribers enjoy the benefits of affordable basic services and more. Imposing a state USF assessment on wireless carriers or their customers would increase the cost of service and make wireless service less accessible and affordable to New York customers.

Although the FCC has plenary jurisdiction over numbering administration, it has delegated certain aspects of that authority to states like New York.⁴⁵ As such, the NYPSC can address area code relief and number conservation within its borders – over all carriers, including wireless carriers. Any additional authority beyond that currently delegated would require FCC authorization and would potentially subject carriers

⁴⁴ *Competition Order* at 11-12.

⁴⁵ 47 U.S.C. § 251(e).

operating in New York to varying numbering obligations in the various states in which they operate. The FCC is currently considering whether and how existing numbering policies and rules should extend to new IP based services. There is no need for the NYPSC to duplicate that effort.

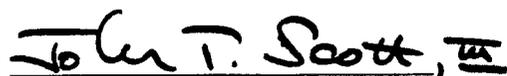
VI. CONCLUSION

For the foregoing reasons, the NYPSC should not extend any regulations to wireless carriers, but instead continue to rely on the competitive market to drive benefits to New York's wireless consumers.

Respectfully submitted,

VERIZON WIRELESS

By:

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style and is underlined.

John T. Scott, III
Vice President and Deputy General Counsel
– Regulatory Law

Lolita D. Forbes
Senior Attorney, Regulatory Matters

1300 I Street, N.W.
Suite 400 West
Washington, D.C. 20005

(202) 589-3740

Its Attorneys

August 15, 2005