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August 15, 2005

VIA HAND DELIVERY

Honorable Jaclyn A. Brillling
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case No. 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 Secretary Brillling:

On behalf of Time Warner Telecom-NY, L.P., enclosed please find an original and fifteen (15) copies of Comments with regard to the above-referenced case.

If you have any questions regarding this filing, please contact me.

Sincerely,



Brian T. FitzGerald

BTF/rsb

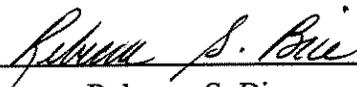
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CERTIFICATE OF SERVICE

Pursuant to the New York State Public Service Commission's Rules of Procedure and June 29, 2005 Order Initiating Proceeding and Inviting Comments, I hereby certify that I caused an original and fifteen (15) copies of the Comments of Time Warner Telecom-NY, L.P. in Case No. 05-C-0616 to be served, by hand delivery, upon the Honorable Jaclyn A. Brillling, Secretary to the Public Service Commission. In addition, copies were served upon the active party service list in the above-referenced case via e-mail.

Dated this 15th day of August, 2005.



Rebecca S. Bice

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Issues Related to the Transition to Intermodal)
Competition in the Provision of Telecommunications)
Services)

Case No. 05-C-0616

COMMENTS OF TIME WARNER TELECOM-NY, L.P.

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Dated: August 15, 2005 4:24 PM

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**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 No. 05-C-0616

COMMENTS OF TIME WARNER TELECOM-NY, L.P.

Time Warner Telecom-NY, L.P. (“Time Warner Telecom”), through its undersigned counsel, respectfully submits these Comments in response to the New York State Public Service Commission’s (“Commission”) June 29, 2005 Order Initiating Proceeding and Inviting Comments (“Order”) in the above-referenced case.

I. INTRODUCTION

In the Order, the Commission announced that it “intend[s] to eliminate, consistent with the public interest and to the extent practicable, the asymmetrical aspects of current policies, practices, and rules, so as to treat each telecommunications provider of wired and wireless, IP-enabled or traditional circuit-switched, voice, data or video – as even-handedly as possible given the current statutory constraints.” Order at 4. The Commission bases the need for such action, in part, on its findings that New York is “long past the stage of introducing customer choice in telecommunications, including in local markets” and that “[t]echnological changes require that the Commission again re-examine the way it regulates telecommunications services.” *Id.* at 3.

Time Warner Telecom, one of the earliest facilities-based competitors in New York, supports the Commission’s re-examination of its telecommunications policies. Certain aspects of Commission regulation, as set forth in more detail below, are no longer effective and should be modified or eliminated for all carriers. Many of the ineffective

requirements are found in Parts 606 (Billing and Collection Services) and 609 (Rules Governing Provision of Telephone Service to Residential Customers) of the Commission's rules. The elimination and/or modification of these specific regulations would promote efficiency and competition. Modifications to the billing and collection and residential customer regulations are warranted, particularly when a customer has elected to obtain service via new bundled service offerings.

The Commission should not, however, view changes in technology and the increase in competition in certain markets as a sign that it is time to fully deregulate incumbent local exchange carriers, particularly Verizon. As the Commission duly noted, "[r]egulation should reflect market conditions" and be designed for the present transitional market, not one that may ultimately develop. *Id.* at 2. Currently, competition does not exist in all telecommunications markets in New York State. While it exists in certain markets and geographic areas, the undeniable truth is, despite the future promise of competition as a result of technological advances, full competition has not arrived and Verizon remains the dominant provider.

Almost ten years after the passage of the Telecommunications Act of 1996 ("the Act"), the vast majority of competition is based on resale, UNE-P or a UNE-P substitute provided by Verizon via commercial agreement.¹ Verizon retains control of the underlying network facilities and, therefore, competition via true facilities-based alternatives remains limited. The amount of competition cited by the Commission is undoubtedly overstated since

¹ Even Verizon itself characterizes this type of competition as mere distribution of its own service. It claims in the Verizon/MCI merger proceeding that "MCI is essentially distributing Verizon's services when it uses a commercially negotiated replacement for UNE-P to provide local services. . . ." Case 05-C-0237 – In the Matter of the Joint Petition of Verizon Communications Inc. and MCI, Inc. for a Declaratory Ruling Disclaiming Jurisdiction Over or, in the Alternative, for Approval of Agreement and Plan of Merger, Petitioners Comments on Department of Public Service Staff White Paper, at 11 (Aug. 5, 2005).

the cited figures do not reflect the large reduction in the number of competitive lines that will occur if the Verizon/MCI merger is consummated as proposed.

Verizon's status as the dominant provider of service in the state, owner of a ubiquitous network and gatekeeper of bottleneck facilities affords it certain advantages in the telecommunications market. Any changes in the Commission's regulatory framework must continue to recognize these basic facts. Facilities-based competition must be fostered by ensuring that Verizon's dominance in the market is not used in an anti-competitive manner particularly in those markets that will become even more concentrated as a result of the recently proposed mergers. Thus, the market is not ready for full deregulation of Verizon, and other incumbents.

II. SPECIFIC COMMENTS ON THE STATUS OF COMPETITION

This proceeding assumes that technological advances have dramatically increased competition in New York State's telecommunications markets. See, e.g., Order at 1 ("Many consumers in New York are already benefiting from a vigorous marketplace and have considerable choice.") Based on this premise, the Commission seeks symmetry in the regulation of incumbent carriers and newer entrants. Id. at 4. Symmetry for the sake of symmetry alone is not sufficient. Any modifications must also bolster competition and be in the public interest. Undoubtedly, changes in the Commission's basic regulatory framework for the dominant incumbent providers will significantly impact the telecommunications landscape in New York. Even the Commission recognized that the issues raised in this proceeding are "broad, complex, and have potentially far reaching consequences." Id. Thus, the Commission should proceed cautiously in this endeavor and keep three very important principles in mind.

First, the Commission must strive to create as complete a record as possible on the competitiveness of the relevant markets. The Commission agreed with this position when it stated in the Order that “it is important that we fully understand the current status of competition in the state.” Id. at 5. As a starting point, the Commission must have a thorough understanding of the degree of competition in each segment of the telecommunications market. As in its review of the Verizon/MCI and SBC/AT&T mergers, relevant markets and products must be carefully delineated. The Commission should separately evaluate retail and wholesale markets. In addition, the retail market must be separated into residential/small business and medium/large business segments. The Commission should analyze whether competitive differences exist throughout the state as geography is likely an important part of the analysis. The Commission should also carefully review wholesale markets as products such as special access and transport are utilized by other carriers to provide service to end-users. For wholesale markets, at a minimum, the Commission should examine whether competition exists for transport and high capacity loops.

While it may be true that telecommunications services from alternative technologies such as cable telephony, wireless and VoIP are on the rise, the Commission should be concerned about actual, sustained competition in all markets rather than simply the promise offered by new technologies to provide alternatives. Many of these new technology alternatives are not fully supported by proven business models and, although they may add to the competitive landscape in the future, such alternatives provide insufficient grounds to deregulate New York’s incumbents, particularly the largest incumbent - Verizon. Moreover, if the Commission looks closely, it is likely to find that the newer forms of competition, such as cable telephony, VoIP and wireless services, are focused primarily on the residential and small business retail markets.

For example, cable telephony companies primarily focus on residential markets to take advantage of existing cable plant passing residential households. Intermodal competition is also less likely to develop in business markets as compared to residential markets given the need for different types and capacities of services and the prevalence of fiber/cable to the home as compared to office space. Thus, the argument that sufficient intermodal competition exists to warrant sweeping deregulation in all segments of the market is contrary to market realities.

The Order also discusses the use of a competitive index. While the index may be effective for other purposes, it is not adequate to analyze the competitiveness of various segments of the market for purposes of this proceeding. The index appears to involve the assignment of weights to types of providers (i.e., cable telephony, CLEC, wireless and VoIP telephone) “based on a judgment of the degree of substitutability of the service and economic readiness of the competitive carriers to expand existing offerings.” Id. at 9. Staff would evaluate markets on a wire center by wire center basis. If competition from all sources was available in a given wire center, that particular wire center would be assigned an index value of 3.25. An index value of 2.75 or above would indicate an adequate level of competition.

However, the index potentially produces skewed results as it only shows competition on a broad basis in each wire center and, therefore, does not reflect concentration in certain market segments in a given wire center. For example, if competition from cable telephony, CLECs, wireless and VoIP existed for residential service in a given wire center, that wire center would be deemed competitive. Under such an approach, the wire center would be considered competitive despite the fact that Verizon might be the only provider of transport services for that wire center. If Staff decides to use the index approach, it must be more fully

developed and wire centers must be broken down by market segment and evaluated on a more granular level.

If after a full investigation, Staff finds that certain market segments are competitive, the Commission could take measured steps towards deregulation. For example, if Staff determines that the residential market is competitive based on the availability of service from alternative providers, the Commission could, and should, eliminate certain regulatory requirements for all carriers, such as end-user service quality standards, year-end monitoring reports, and trouble reports per end-user.

Second, the Commission must keep some degree of regulation over wholesale service quality. Carrier-to-carrier guidelines and forums and consumer complaint processes will be more important than ever in addressing operational issues. The use of new technologies by service providers only compounds the need for interoperability among providers. Moreover, as competitive pressures increase and regulation decreases, the Commission will need processes to address allegations of anti-competitive behavior by carriers.

Third, the Commission must be careful that it does not unintentionally add to the existing burdens on facilities-based providers of service. All providers must bear equal responsibility for important social policies, such as the Telecommunications Relay System (“TRS”) and E911. The Commission must also keep a baseline of consumer protections applicable to all providers of telecommunications services regardless of the technology used by such entities. Time Warner Telecom respectfully requests that the Commission incorporate these ideas into any proposed regulatory framework.

III. SPECIFIC COMMENTS ON REGULATORY POLICIES

A. Consumer Protections

In the Order, the Commission states, “[b]ecause telecommunications is an essential service, government has a substantial interest in ensuring that the service is provided under reasonable terms and conditions.” *Id.* at 10. Despite this assessment, the Commission questions whether there is a core group of consumer protections that should be enforced notwithstanding the existence of competitive choice. The answer to the Commission’s inquiry is a resounding yes.

The Commission should establish a baseline of consumer protections applicable to all voice service providers, regardless of the technology used to provide such service.² The baseline should focus on prohibitions on slamming and cramming, which are truly service affecting for consumers and have anti-competitive impacts on markets.

It is likewise essential for the Commission to continue to support carrier-to-carrier forums and mandate carrier-to-carrier regulations. Through carrier-to-carrier regulations and forums, carriers in New York have made great strides in resolving difficult operational issues without the need for costly adversarial proceedings. More than ever, the industry as a whole will need to work together to resolve operational issues and to ensure high-quality service for all end-users. This is particularly true in light of the advances in technology and expansion of the different types of service providers identified in the Order.

The Commission also seeks comment on whether it has a unique role to play in addressing consumer complaints. Again, the answer is yes. The Commission’s consumer complaint process provides customers with a forum to seek resolution of issues. In an age of

² While Time Warner Telecom does not believe that municipally owned networks are appropriate in a competitive environment, if allowed, they must be subject to the same complaint and interoperability requirements as all other providers.

multiple carriers and various platforms, a consumer may not be able to determine the root cause of his or her service issue. Service affecting problems will increasingly relate to interoperability among various providers, each utilizing a different technology. The Commission is the logical place for resolution of consumer complaints as it has the authority and expertise to resolve consumer issues in an expedited fashion.

In addition, the Commission questions whether there should be a common forum for the timely handling of consumer complaints under the auspices of the Commission. The Commission's existing Quick Resolution System ("QRS") permits carriers to address consumer concerns in a timely manner and should be continued. It is essential that there be a single complaint forum, under the Commission's jurisdiction, rather than an awkward split in complaint handling between the Commission and the New York State Attorney General's office. Such a split would undoubtedly create customer confusion. It would also be likely to result in widely differing policies and outcomes. Consumers and carriers alike would take comfort in a clear, well-established, one-stop shopping complaint forum. The Commission has expertise in, and a history of, addressing telecommunications issues and it should maintain its preeminence in that role regardless of the technology being utilized by carriers.³

For these reasons, Time Warner Telecom respectfully requests that the Commission establish a baseline of consumer protections and a single common forum for handling consumer complaints that are applicable to all voice service providers.

³ To the extent that the Commission lacks jurisdiction over complaints involving IP-Enabled service providers, legislative change could be sought by the Commission. In the interim, the Commission could enter into an inter-agency agreement with the Attorney General regarding investigation and handling of complaints.

B. Universal Service

The Commission's previous conclusion, that a separate state universal service funding mechanism to ensure generally affordable rates in "high cost" areas is not necessary, remains valid today. The federal universal service support system should remain the primary source of universal service funding in New York. Time Warner Telecom supports a universal service policy that spreads the burden of universal service equally over all providers of voice services. In exploring potential changes to New York's universal service policy, the Commission should continue to move toward an environment where all universal service support is explicit and not implicit. Universal service support has been identified as a general need of society and ultimately it should be obtained via a direct surcharge or tax on all end-users, one that providers should be authorized to identify and pass through to end-users.

Universal service was not intended as a mechanism to provide enhanced services, broadband services, and other non-essential new services. While the technologies utilized to provision services may be evolving from circuit switched to IP-Enabled, the goal of universal service, to provide a minimal level of voice service, TRS, and access to 911 emergency services, should remain constant. Accordingly, Time Warner Telecom opposes any expansion of basic services.

The Commission's current definition of basic services remains appropriate.⁴ Access to additional services such as broadband has not been shown to be necessary, in the public interest or worthy of broad based social support. Indeed, if the Commission were to conclude that access to broadband services was "basic service" it would have no jurisdiction to implement such a policy since it lacks jurisdiction over most broadband service providers.

⁴ The current basic service list encompasses: single party access line; access to local/toll calling; local usage; tone dialing; access to emergency services; access to assistance services and access to Telecommunications Relay Services; Directory Listing; and privacy protections.

Expansion of the “basic service” definition is also impractical at a time when, as the Commission has acknowledged, traditional revenue streams for universal service are under siege and are challenged by growing competition, technological advancement and evolving intercarrier compensation. Id. at 13.

In Opinion 96-13, the Commission outlined the foundation of its universal service policy. That foundation was built upon the following five principles: 1) basic services should be evaluated and revised as necessary to meet evolving needs; 2) basic services should be available to all residential customers who wish to use them; 3) basic services should be accessible; 4) basic services should be affordable and reasonably priced; and 5) funding mechanisms to support universal service must be fair, equitable and competitively neutral. The foundation laid by the Commission in 1996 remains essentially solid and there is no need to radically alter it. The adage, “if it is not broke, do not fix it” applies here.

However, parts of the foundation require minor modification to ensure future stability. As currently designed, the Targeted Assistance Fund (“TAF”) places facilities-based CLECs at a severe disadvantage given the manner in which contributions are calculated for the fund. The TAF funding mechanism 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 fund than carriers using other forms of market entry. Such a result is at odds with the Commission’s long-standing policies to encourage facilities-based competition.⁵ The Commission should correct this historical anomaly.

⁵ See 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, Opinion and Order Adopting Regulatory Framework (May 22, 1996).

Universal service contributions should be technology neutral and all providers should be required to support equally the important underlying social goals.

A technology neutral approach to E911 funding should also be implemented. The current E911 cap applicable to end-users with over seventy-five (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. See N.Y. County Law § 304(3) (McKinney 2004). The cap was instituted for the purpose of limiting the burden on an individual business customer. Entities utilizing “end-user” type services to act as voice providers should not have their E911 contribution capped like a typical business end-user. Such “voice providers” should be treated as a distinct class of customer, one to whom the seventy-five (75) line cap does not apply. All “providers” should be required to contribute on a technology neutral basis to support the vital E911 network.⁶

In summary, the Commission’s should not radically alter its existing universal service approach. There is no need to either expand the definition of “basic service” or to establish a new state universal service mechanism for high cost areas. The Commission should, however, correct certain inequities in the existing TAF funding mechanism to ensure that a technology neutral funding approach is utilized.

C. Market Power and Regulatory Flexibility

In the Order, the Commission asks a pivotal question regarding market power and the role of the state regulator (i.e., what is the appropriate role of the regulator in preventing market power abuse?). Order at 13. As the Commission recognized in the Order, “[t]he exercise

⁶ Similarly, such “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.

of market power over essential telecommunications services, either by demanding unreasonably high prices or neglecting service quality, is not in the public interest.” Id. The Commission explained that governmental constraints may be necessary to protect against market power. Id. In addition, the Commission specifically noted that “oversight should be exercised where there are significant entry barriers, bottleneck facilities or inadequate levels of intermodal competition.” Id. All of these factors exist particularly in relation to interconnection, transport and special access facilities, which are critical to the ability of facilities-based providers to expand networks to meet demands of new customers in a timely fashion.

Almost ten years after the passage of the Act, facilities-based carriers still face significant barriers to entry in certain markets. For example, barriers to entry for new transport and special access facilities are high in light of the cost of construction in metropolitan and suburban areas, local franchise issues and costs (which often favor incumbents), difficulty in gaining access to buildings, and capital constraints. Verizon and the other incumbents, as the dominant providers and owners of ubiquitous networks, still control bottleneck facilities such as interconnection and building entrance facilities. Verizon’s dominance and the lack of alternatives, highlighted in Staff’s White Paper on the Verizon/MCI merger,⁷ create an environment for price squeezes and anti-competitive practices. Although Verizon may argue that increases in intermodal competition eliminate any need for regulatory oversight, the opposite is true as Verizon still maintains its dominant position in many markets in New York, particularly those related to wholesale services such as transport and special access.

The existence of all of these factors leads to the conclusion that the Commission must maintain sufficient regulation to prevent short-term market power abuses. While the level

⁷ Case 05-C-0237, Department of Public Service Staff White Paper (July 6, 2005).

of competition varies in markets throughout the state, be it from intermodal competition or otherwise,⁸ Verizon still owns and controls bottleneck facilities. Verizon's level of control will only increase should the proposed merger be approved, necessarily leaving competitive carriers with fewer alternatives for critical facilities such as transport and special access. Thus, as the Commission concludes in the Order, oversight must be exercised to prevent market power abuses.

Time Warner Telecom urges the Commission to view market power issues in a broader sense, as anti-competitive actions. Application of federal anti-trust statutes and requirements are not the only concern in transitional markets. The Commission's public interest standard is not limited to mere application of the federal anti-trust standards. As market segments transition towards competition, there will be an increased need to protect competitive carriers against incumbents' short-term abuses of dominant position, including but not limited to anti-competitive efforts used to win over customers or policies/treatment that handicaps competitive carriers. Although such actions may not rise to the level of anti-trust violations, they are no less damaging to emerging competitive markets. Such damaging actions could occur in both wholesale and retail markets. For example, if an incumbent carrier has the ability to abuse its dominant position in the market to win over specific customers by bidding below cost or utilizing other anti-competitive practices, competition will suffer. Another example is an incumbent's deliberate failure to provision carrier-to-carrier products in a timely fashion. If the incumbent fails to provision such services or prices the underlying wholesale service in an anti-competitive manner, carriers utilizing the wholesale services will be unable to expand their

⁸ See Section II above for a discussion of the competitive index proposed in the Order.

existing customer base and/or to serve the full array of customers in any particular market segment.

In light of these concerns, the Commission will need to continue to regulate incumbent carriers. The Commission must establish limits on the degree of pricing flexibility, if it is to be granted, as pricing oversight is necessary to keep dominant carriers from engaging in short-term anti-competitive and/or predatory pricing practices. At a minimum, a price floor should be applied to the incumbent provider on both standard offers and individual case basis contract pricing. This would permit other market participants to question, and have the Commission investigate, the incumbents' or other competitors' rate practices. It is critically important for all providers to have a forum available in which they can challenge pricing and/or other allegations of an abuse of dominant position. Staff should be authorized to investigate such matters and issue findings in an expedited fashion. The structure of the forum could be modeled after the current EDR process or expressly brought within the ambit of the current EDR system. Carrier-to-carrier allegations of short-term abuse of dominant market position, including but not limited to provisioning and pricing practices, must be given expedited treatment to prevent ongoing competitive harm. Not only would the forum provide an express process to investigate and, if necessary, mitigate abuses of dominant position, it would also provide incentive for all carriers to avoid anti-competitive practices. Accordingly, Time Warner Telecom respectfully requests that the Commission consider such a mechanism.

D. Service Quality

There can be no argument that high service quality is essential to ensure New York's continued leadership in telecommunications. Order at 15. However, the Commission's existing retail service quality standards are in many instances no longer suited to the current

environment and should be eliminated. See e.g., N.Y. Comp. Codes R. & Regs. tit. 16, Parts 606 and 609 (2005).

Time Warner Telecom strives to provide its customers with industry leading service quality. Anything less would fail in the market place. Other carriers must do the same. In those geographic areas where there are multiple options for end-user service, continued Commission-mandated service quality regulations are not needed on the retail end-user level. Accordingly, in such areas, all end-user service standards regarding measurement and reporting should be eliminated.

Where competition exists, end-users should be free to select the level of service quality that they require. The Commission should not assume that all customers either need or want a specified level of service quality. For example, customers frequently are willing to trade lower quality voice service for other attributes (such as mobility) or lower prices. Thus, proactive service quality performance and oversight is not required. Market forces for retail end-user services are, in many areas of the state, sufficient to ensure adequate service quality. These forces should be allowed to function. If a carrier fails to provide a desired level of service, the customer is free to, and will, migrate to another carrier. The Commission's current utilization of a performance-centric approach may be eliminated in competitive markets for all carriers. There is no need to establish a threshold service quality standard for retail service as New York consumers benefit when they are able to strike for themselves the proper balance between quality and price.

It is on the wholesale service side that the Commission must maintain its vigilance regarding service quality standards. Carriers do not have the strong economic incentive to provide high service quality to their competitors as they do to their own retail end-

users. Accordingly, service quality relating to the provision of carrier-to-carrier services remains of vital importance, regardless of the technology utilized. The Commission should continue to require that carriers providing wholesale services meet baseline service quality standards. In particular, it is critical that the Commission monitor the incumbents' provision of special access and other necessary competitive inputs.

Wholesale service quality is equally important in the new IP-Enabled environment. A carrier utilizing IP technology on its own IP-Enabled network will often assign voice packets priority, thus ensuring that they are not rejected should there be network congestion. The assignment of a priority prevents excessive latency which has a profound impact on voice quality. There is a need for the Commission to expand its current carrier-to-carrier service quality oversight to the IP-Enabled environment utilized for voice traffic. Adequate provider-to-provider rules would make it clear how packetized voice traffic is to be handled. A net neutrality standard should apply. Underlying IP network owners should be required to negotiate with voice providers regarding the required quality of service and the price for that level of service. Accordingly, Time Warner Telecom respectfully requests that the Commission adopt these service quality measures.

E. Level Playing Field

The Commission notes that, in its view, “intermodal forms of facilities competition are now widely available and support multiple platforms, for example cable and traditional telephone, and wireless.” Order at 17-18. The Commission further states that “[c]ustomers also have a choice when using these infrastructures to purchase basic IP-enabled VoIP services from several sources both affiliated (cable or Verizon’s VoiceWing) and non-affiliated (Vonage’s broadband telephone service) with the underlying infrastructure provider.”

Id. at 18. While it is true that intermodal competition does exist, it is not as ubiquitous in all markets as the Commission's statement implies.

Regardless, the principles underlying creation of a level playing field that were established in 1996 should be extended to reach all providers of voice services. All voice service providers, utilizing any technology, must be required to comply with a baseline set of rules regarding provider traffic exchange and customer migrations. Thus, the Commission's focus on level playing field issues should continue, as provisioning and customer migration need to function seamlessly if New York's end-user customers are to reap the benefits of competition. Because IP-Enabled providers are not currently classified as carriers, there are additional levels of complexity necessary to achieve the goal of flawless customer migrations. Many of the issues that the Commission faced and solved in the CLEC-to-CLEC migration context need to be faced and resolved in the IP-Enabled provider to CLEC or IP-Enabled provider to IP-Enabled provider context.

The Commission's existing level playing field principles therefore remain vital in today's environment. Those principles are as follows: 1) customers must be able to call all valid telephone numbers; 2) telephone numbers are a common resource to be shared among carriers; 3) control of telephone numbers must shift from the incumbent carriers; 4) customers and competitors must have access to the telephone numbers and directory listings of all other carriers; 5) interconnection into networks of telephone corporations shall be provided for other public or private networks; 6) services and functions requests segregated by users shall be provided to the extent technically and economically practicable; 7) a carrier's bottleneck facilities should serve the public interest; 8) traffic and related data (e.g., billing and routing information) must be exchanged between local exchange carriers; 9) local exchange carriers are

entitled to compensation for the costs of the services provided to each other; 10) compensation charges and rates should be cost-based uniform, and encourage long-term efficiency; and 11) policies, prices and practices should be competitively neutral, and promote competitive equity.

Commission level playing field principles relating to numbering resources are particularly relevant in a voice IP-provider environment. The Commission's existing numbering principles should be made equally applicable to new, IP-based voice services.⁹ Numbering resources remain critical to the timely and efficient provision of voice services.

The Commission inquires whether "gaps in the availability of number portability represent an impediment to choice?" Order at 5. The answer is a resounding yes. Customers, particularly business customers, which are the core of Time Warner Telecom's end-users, are heavily attached to and dependent upon their existing telephone numbers. Businesses invest significant resources to advertise and build customer recognition often based on a particular telephone number. If such entities cannot port their number, they will not switch providers.

While the Commission is correct that federal law plays a primary role in number administration, *id.* at 18, the state has an important role in managing provider-to-provider interactions relating to numbering resources. To the extent IP-Enabled entities utilize numbering resources either directly or indirectly, they must be required to comply with the numbering administration and number portability rules that govern the use of numbers by all authorized carriers. While the Commission's jurisdiction over the IP-Enabled entities is in flux, the Commission retains full jurisdiction over the authorized carriers from whom the IP-Enabled

⁹ The FCC has granted a waiver to allow SBC IP Communications, Inc., a VoIP provider, to independently access numbering resources. In the Matter of Administration of the North American Numbering Plan, CC Docket 99-200, Order (rel. Feb. 1, 2005). The VoIP provider was required to comply with all industry numbering rules and guidelines.

entity obtains numbering resources and connectivity to the public switched network. The Commission should require the CLEC or regulated carrier to include as a condition of offering number service to IP-Enabled entities that the IP-Enabled entity will comply with all existing numbering guidelines and rules as if it were a carrier.

Absent such requirements, carriers providing numbers to an IP-Enabled entity are frequently placed in a difficult position. This occurs where an entity providing voice service as an IP-Enabled voice provider “sits behind” a third-party CLEC for numbering purposes.¹⁰ The IP-Enabled provider “sitting behind” often requests that the CLEC port-in an active end-user number from another carrier. The CLEC has inadequate authority under the existing rules to port the number because the CLEC has not received a valid letter of authorization (“LOA”) from the actual end-user customer and has no “carrier” to represent that the LOA has been received. Carriers are entitled to rely on such representations among themselves because they are subject to the same migration guidelines and porting rules. IP-Enabled providers are not currently bound by the same rules and guidelines. As a result, the CLEC does the port, but bears the risk of being challenged since it was based only on the representation of the IP-Enabled provider.

Another example of number related difficulties that Time Warner Telecom has faced in other jurisdictions also occurs where an entity providing voice service as an IP-Enabled voice provider “sits behind” a third-party CLEC for numbering purposes. The IP-Enabled provider ports-in a number but then refuses to execute a LOA to port-out the number, thus holding the number and the customer hostage by blocking the number from being ported. This anomaly is possible because the “end-user” that is listed for porting regulation purposes is the IP-Enabled provider. Thus, in this situation, the requirement for an LOA from the end-user, which

¹⁰ The IP-Enabled voice provider looks in many respects like a large end-user customer of the CLEC.

was designed to protect the integrity of the porting process, is being utilized in a manner that allows the IP-Enabled provider to hold a customer hostage. This improper outcome would be remedied if IP-Enabled providers were required either directly or indirectly to comply with existing carrier porting and numbering rules. Accordingly, the Commission's carrier-to-carrier migration guidelines must be amended to reflect intermodal customer migration and number porting realities. Id. at 19, fn. 22.

The Commission also poses the question of whether or not additional number optimization measures must be implemented in light of the potential demand for numbers by new competitors. Time Warner Telecom sees no need for additional number optimization at this time. The pace of number exhaust appears to have slowed and the mechanisms currently in place appear sufficient to meet the demand. Should significant and unanticipated demand materialize, the Commission's existing process is adequate to address any increase in numbering resource need at that time.

One level playing field issue that is not addressed by the Order relates to the unequal playing field created by local franchise requirements and fees. The need to pay such fees and meet such requirements hinders Time Warner Telecom and other facilities-based providers' ability to compete on an equal basis with the incumbent providers that pay no local franchise fees. Franchise fees also place no burden on traditional resellers or UNE-P providers. Application based IP-Enabled voice service providers also avoid local franchise fees.¹¹ The undeniable fact is that full facilities-based providers such as Time Warner Telecom pay significant franchise fees to local and municipal authorities. Currently, the incumbent provider, resellers (including UNE-P and commercial product) and application based IP-Enabled service

¹¹ Ironically, application based IP-Enabled service providers avoid practically all cost associated with use of the underlying facilities.

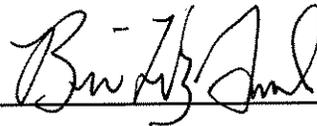
providers are not required to meet the same burden. This places Time Warner Telecom at a distinct cost and market disadvantage. To level the playing field, the Commission should either pre-empt the local franchise requirements or ensure that all carriers are required to bear the burden on an equal and non-discriminatory technology neutral basis.

IV. CONCLUSION

Time Warner Telecom respectfully requests that the Commission incorporate the above Comments into its proposed regulatory framework.

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Respectfully submitted,



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