



telecommunications network, such an approach must rely upon a transparent process with opportunities for public and industry input, and must be based upon objective fact, logical analysis and the promotion of the public interest.

## **Introduction**

In its introduction to the Order establishing this proceeding,<sup>1</sup> the Commission makes a number of conclusory statements regarding the existence of competition in New York, and enunciates a number of important principles. For example, the Commission asserts that it seeks input from the public on broad principles and appropriate changes to the regulatory framework. At the outset however, this asserted commitment to public input would be buttressed by a public commitment by the Commission to hold public hearings in each major geographic area of the state – and particularly in those areas with poor telephone service quality and dearth of competition – and to hold separate education forums at a sufficient time prior the hearings so that public could be educated upon the relevant issues.

The Commission also states that the asymmetries of the existing regulatory framework is apparent to all the parties and that it will eliminate such asymmetrical aspects of current policies, practices and rules. However, the Commission did not, for all

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<sup>1</sup> 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 Issued June 29, 2005 (“Comp III” or “Comp III Order”).

practical purposes, explain why such asymmetries are harmful to the public interest if, indeed, they are. The reality of the telecommunications industry is that companies selling substantially similar products need no longer be similarly situated with regard to ownership/management of facilities, geographic location, commitment to being a carrier of last resort, and a number of other realities that used to define the telecommunications market in New York. Such a situation does, in fact, lead to regulatory asymmetries. The question to ask however is not simply how one might most effectively do away with such asymmetries, but rather is the public interest served by maintaining, or by eliminating such asymmetries?

Finally, the Commission asserts that its regulatory policies are “ultimately designed to protect the public interest and consumers...”<sup>2</sup> The Committee contends however that the Legislature's intent was that the public service law and Commission's regulations should primarily serve the public interest. To put the public interest second would upend a century of state policy and runs close to contravening the intent and will of the Legislature.

## I. Consumer Protection

In this area of the Comp III Order, the Commission poses four questions which are paraphrased and answered below.

- Assuming the Commission is correct regarding proliferating competition, should the Commission “relax” some of the traditional consumer protections applicable

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<sup>2</sup> Comp III Order at 4.

to wireline companies?

- Should the Commission continue to enforce against “slammers” and “crammers,” and enforce other core consumer protections “notwithstanding the existence of competitive choices . . . and should such protections apply to wireless and VoIP/Cable telephony?
- Should the Commission extend its complaint handling function to wireless and VoIP/Cable telephony, and if so, how?
- What impact might municipally owned wire/wireless networks have?

With regard to the issue of “relaxing” consumer protections, there is insufficient evidence in the record to support the Commission's proposition that there is a “proliferation of competitive alternatives.”<sup>3</sup> Assuming however purely for the sake of argument that the Commission is able to adduce evidence of prolific competition, the mere existence of such competition should not be equated with license to abandon the field of consumer protection. Rather, the Commission must maintain its role in protecting the consumer and, where such action is necessary and proper, expand such role into complaint handling for all platforms.

As far as clarifying that its consumer protection regulations apply to wireless and VoIP/cable telephony as well as to wireline carriers, it is important to note that there are potential federal preemption issues here to consider. Setting aside the federal questions at this stage of the proceeding however, there is a simple logic behind applying the Commission's consumer protection regulations as uniformly as possible. New York's consumers do not distinguish between VoIP, cable telephony, wireless and wireline service providers with regard to consumer protection and functionality. For example: if

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<sup>3</sup> Comp III Order at 23.

a consumer dials 9-1-1, the expectation is that such service will work uniformly across all platforms. Or, if a customer's service is suspended during a billing dispute, a wireline and wireless customer will still be able to call 9-1-1 and operator services, so that public safety are not compromised. The extension of such guarantees to all carriers is in the public interest. To summarize, the protection of the public interest requires that as much as is practicable and permitted by law, the Commission's consumer protection regulations should uniformly encompass similarly situated carriers and carriers providing substantially similar services to consumers.

Finally, with regard to the issue of municipally owned wire/wireless networks, the Commission's question is simply too broad to effectively answer. A responsible answer would need to distinguish between different types of municipal operation, the extent of such networks, whether such network was built as a public-private partnership, whether the network was municipally funded but planned to be spun off into the private sector, and a variety of other complicated policy questions. Consequently, the Committee reserves comment on this issue until later in the proceeding.

## II. Universal Service

Concerning universal service, the Commission asked the following four questions:

- Do the universal service goals enunciated in Opinion 96-13 remain valid?
- Should the definition of “basic service” be re-evaluated to remain appropriate?
- Does there need to be a universal service funding mechanism?
- How should the Commission ensure continued availability of basic service?

The five basic principles of Opinion 96-13 remain valid. Telecommunications service must be available to all consumers, such services must be accessible, affordable and reasonably priced, and the definition of “basic services” must be re-examined periodically. Universal access to high quality and affordable telephony is a matter of vital importance to New Yorkers, especially those individuals living in high-cost, rural or low-income areas. Provision of service to such individuals has long been the intent of the Legislature, as expressed through the public service law, and such amendments as have been enacted from time to time.

Concerning the definition of “basic service,” it is very likely that the time for reconsideration is here. In today's world there are many services that cannot operate properly without touch-tone dialing, for example, which would never have been considered part of “basic service” only a few decades ago. Analogously, there is an argument that some level of “high-speed” Internet access should be considered a “basic service,” given the movement of government and business services onto the Internet and the concomitant increase in flexibility and efficiency for the provider and end user. Whatever one's position on such an issue however, it does appear that there should be a study of the issue of what constitutes basic service, and how such service(s) may be

funded.

Regarding whether or not there should be a universal service funding mechanism, without a far-reaching study of what new services should be considered “basic” and the cost of extending such services ubiquitously throughout New York, there is insufficient evidence in the record of this proceeding to comment. Therefore, the Committee reserves comment on this issue until later in the proceeding.

The Committee reserves comment on the issue of what mechanisms the Commission should use to ensure continued availability of affordable basic telecommunications services to New York consumers.

### III. Market Power & Regulatory Flexibility

Here, the Commission poses a series of six questions that unfortunately, derive logically from the Commission's conclusory statement that there is a proliferation of competition. The absence of practical and objective proof of such competition undermines the exercise and requires, as a practical matter, that the Committee reserves much of its comments on these issues until later in the proceeding. That said, the Committee repeats its position that competition may lead to lower prices for similar services, but is unlikely to promote adequate service delivered to consumers. The Committee also repeats its call for an in-depth study of the marketplace and

competitors, rather than relying solely upon this truncated proceeding to arrive at a series of new policies and proposed regulatory and statutory changes that will protect the public interest while encouraging competition, economic development and the health of New York's telecommunications providers.

With regard to the measures of competition appropriate for determining whether retail price flexibility may be allowed, one important measure would be to use actual retail availability of competitive services rather than relying upon putative availability (e.g., "homes passed"). Concerning the use of the Department of Public Service's (the "Department") competitive index, the Committee is not convinced at this point in the proceeding that the criteria, assigned weights and underlying assumptions of the Department's competitive index are reasonable. Consequently, absent proof sufficient to establish the reasonableness of using such index, the Committee believes it should not be used.

Turning finally to some questions regarding costs/price levels, the Commission asks if price levels from competitive areas can serve as "first level gauges of reasonableness" for prices in non-competitive areas. Obviously, without broad consensus on what constitutes a competitive area, such a question is meaningless.<sup>4</sup> The

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<sup>4</sup> Furthermore, without careful regression analysis to control for variables between areas, even if one could agree upon what constituted competitive and non-competitive areas, any study would be flawed.

Commission also asks if rates in less densely populated areas should be allowed “to increase to their underlying cost levels.” Put differently, the Commission asks if the goal of affordability of telecommunications services should be denied to rural areas. The answer is no. Without affordable telecommunications services, the rural areas of New York will suffer economic devastation, and it is unconscionable that the Commission would propose abandoning its duty to rural New Yorkers.

#### IV. Service Quality

The Commission asks fourteen broad questions about service quality in the Comp III proceeding. Given the length limitations imposed upon party comments however, the Committee will only touch briefly on these issues in this stage of the proceeding.<sup>5</sup>

First, the Commission's existing service quality regulation should be adapted to “market realities” by applying such regulation as uniformly, broadly and specifically as possible across all platforms, consistent with existing law and the Legislature's intent. The public interest requires adequate service from telecommunications providers which, historically, has required application of service quality measures paired with fines, pricing flexibility conditions and, upon occasion, capital investment and staffing

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<sup>5</sup> The Committee also notes here the extreme importance of network security and reliability, both of which are linked to service quality remedial measures and to measures promoting the spread of broadband, and both of which strongly implicate the public interest.

requirements. Furthermore, the Committee's extensive investigations into service quality have shown that outcome oriented performance measures are the most effective means of protecting consumers. Consequently, the applicability of such measures to all modes of telecommunications services should be carefully examined.<sup>6</sup> It is also worth studying the desirability of flexibility in such outcome oriented measures where adequate competition and adequate service can be objectively demonstrated, provided however that such flexibility would most likely best protect the public interest if it were presumptively revocable, but renewable for cause adduced at an evidentiary proceeding.

Second, the Committee commends the Commission for echoing its position that regulatory reform must not compromise the state's economic well-being, security or safety. However, it is not entirely clear that the deregulatory experiences of other critical infrastructure is applicable to telecommunications or, for that matter, even a safe model to adopt. Consequently, the Committee believes that this issue should be studied extremely carefully and should receive the broadest possible public input before any action.

Third, the Committee believes - as its investigations have shown - that performance standards are essential to ensure consumer and business access to a

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<sup>6</sup> The Committee will address any underlying legal constraints to such action(s) later in this proceeding.

reliable, seamless telecommunications network. The “performance-centric” approach appears to remain appropriate, but the Commission should study extending such approach to all modalities and carriers, and the effects such extension would cause in the marketplace. All carriers should be held to a threshold standard for service, and periodic customer satisfaction surveys should be undertaken. With regard to reporting based on size, it would appear more helpful to ask how to lower the cost of reporting the data that the Department needs to safeguard the public interest, rather than whether such data collection should be abandoned. Concerning service quality standards for resellers, the collection of such data would appear valuable to determine if disparate treatment of such resellers' “lines” and customers by the underlying carrier is anecdotal or actual. Regarding the CTRR and Complaint Rate levels, the Committee believes that these should be returned to pre-2001 measures, accompanied by expansion of the Commission's program of commending excellent service.

Finally, submission of construction budgets by LECs should be continued, with the aim of requiring all telecommunications carriers to provide similar data so that the Commission can ascertain the robustness, redundance and quality of the state's telecommunications network.

## V. Numbering Concerns (“Level Playing Field”)

Absent sufficient evidence in this stage of the proceeding to comment meaningfully upon these issues, the Committee reserves its right to comment further and restricts itself to noting that number optimization issues and numbering administration are linked to alleviation or perpetuation of significant barriers to competitive entry into markets, and to significant costs to businesses. Movement toward a system that would eliminate potential harms to economic development arising from improperly implemented numbering systems would therefore be in the public interest and should be supported, consistent with whatever legal constraints exist in this area.