



**NEW YORK STATE TELECOMMUNICATIONS
ASSOCIATION, INC.**
SUITE 650 • 100 STATE STREET
ALBANY, NY 12207
(518) 443-2700 • FAX: (518) 443-2810
www.nysta.com

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Jaclyn A. Brillling
Secretary
State of New York
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:

The New York State Telecommunications Association, Inc. (“NYSTA”) hereby submits these comments in response to the Public Service Commission’s (“Commission”) June 29, 2005 *Order Initiating Proceeding and Inviting Comments* issued in the above-referenced proceeding.¹

As requested in the Comp III Notice, NYSTA presents these comments in the form of answers to the series of questions contained in the Notice.

¹ *Order Initiating Proceeding and Inviting Comments*, 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 (Issued and Effective June 29, 2005). (“*Comp III Notice*”)

Introduction

NYSTA applauds the Commission's action in addressing the state of competition in the telecommunications arena today, the impact such competition is bringing to consumers and providers alike, and how these changes will, or should, impact the regulatory model in New York.

Clearly, healthy, robust competition is here. Never before have consumers had such choices in obtaining their telecommunications services. Primarily driven now by new technological capabilities such as Voice over Internet Protocol technology ("VoIP"), both stand-alone VoIP providers as well as digital cable television voice services, intermodal competition has literally exploded over the past year to create a strong competitive alternative along with the existing wireless and competitive wireline services. Added to this competitive mix are other communications technologies such as e-mails, text messaging, blogs, and instant messaging.

One need only look at any element of the mass media for stories every day about the competitive battleground of telecommunications. Clearly, the time for the Commission to act is now. The danger faced can best be described by an August 10, 2005 editorial in *The Wall Street Journal* concerning franchising issues faced by new telecommunications video providers in which author Holman W. Jenkins, Jr. wrote ". . . the opponents should ask themselves what happens when the Bells are cherry-picked to death, leaving only the poor to bear the cost of maintaining the old phone network."²

² "Here Comes Your 19th Telecom Meltdown," Holman W. Jenkins, Jr., *The Wall Street Journal*, August 10, 2005, at p. A11, col. 3, 6.

Maintenance of a robust, reliable, technologically advanced telecommunications network is a primary goal of this Commission.³ Failure to act now will, unfortunately, lead to the outcome envisioned by Mr. Jenkins.

But, how significant are these changes? During the second quarter of 2005, for example, Verizon access line declines have averaged over 80,000 per month.⁴ In the past two years, the company's access lines have decreased by approximately 13 percent, not including loss of growth. While more details are contained in our answers to the Commission's questions, the entire industry has never faced this level of competitive pressure in its history. Moreover, nationwide, wireless customers now outnumber landline customers.⁵

While there will always be those that argue that competition is in its infancy, and as such, regulatory oversight should not be lessened, these same advocates fail to understand the significant marketplace discrepancies that can be created by having one group of participants regulated by the Commission while a significant portion of the marketplace is not. Parties may never agree on some specific number to measure the degree to which competition has arrived. However, the important question to ask is to

³ *Order Concerning Network Reliability Enhancements*, Proceeding on Motion of the Commission to Examine Telephone Network Reliability, Case 03-C-0922, at p. 2 (Issued and Effective July 28, 2004).

⁴ *See, e.g.*: <http://investor.verizon.com/business/wireline.aspx>

⁵ *Local Telephone Competition: Status as of December 31, 2004*, FCC Industry Analysis and Technology Division Wireline Competition Bureau, released July 8, 2005, indicates that at the end of 2004, the number of access lines in New York State served by LECs totaled 8,476,771 (Table 9) and wireless carriers served 10,834,741 customers (Table 13).

what extent will competition either be present, or become available in such short order, as to elicit the type of behavior by providers only seen in competitive marketplaces. NYSTA believes that such conditions clearly exist today in every market in the state, including rural areas.

Consumers across the state have competitive choices. Wireless services are available throughout the state.⁶ With the deployment of broadband services, which the Commission in its 2003 Broadband Report confirmed that consumers across the state have access to high-speed Internet access via Digital Subscriber Line (“DSL”) or cable modem service,⁷ these same consumers have the ability to subscribe to new VoIP services, such as Vonage, Skype, or Packet 8. Cable television provision of telephony services is widespread and can quickly come to a market in those areas currently not served.

As evidenced by the Convergence Matrix issued in this proceeding,⁸ the regulated carriers must operate under rules covering some 33 pages that their intermodal competitors do not. By launching this proceeding, this Commission has recognized that it is time to review its role given the rapidly changing marketplace. The impacts of such

⁶ See: www.wirelessadvisor.com, which the Commission has cited in its *Comments* in the FCC proceeding In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313 and CC Docket No. 01-338. According to the Commission, based on its findings from Wireless Advisor, for its impairment test, all wire centers in the state reflect wireless availability, at Appendix A, p. iii.

⁷ See: *Study of Rural Customer Access to Advanced Telecommunication Service In Compliance with Chapter 132 of the Laws of 2002*, New York State Department of Public Service, February 1, 2003, at p.. (“Broadband Report”)

⁸ *Telephone Regulatory Convergence Matrix*, 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 (Issued July 13, 2005).

a non-symmetrical environment will only lead to the inability of regulated carriers to succeed in the competitive marketplace. Under this scenario, regulated carriers, especially local exchange carriers (“LECs”), will be relegated to being second class carriers of the telecommunications industry, hamstrung by regulations from a different era while new unregulated providers, specifically cable television operators, will dominate the marketplace by providing customers with the most advanced services, including voice, video, and data services.

NYSTA’s comments reflect an industry consensus and, as such, discuss the creation of a level playing field in which all carriers will be able to compete on equal footing. We believe that our approach on issues such as reporting, complaint handling, and flexible pricing represents a measured approach which will benefit not only carriers, but consumers who will receive the fruits of a healthy competitive marketplace throughout the state. Such a result will promote lower prices, technological innovations, and choices for consumers while promoting investment in New York State.

Comp III Questions

Consumer Protections

1. In view of the proliferation of competitive alternatives, is it appropriate for the Commission to relax some of its traditional consumer protections applicable to wireline companies?

In light of the current competitive landscape, where incumbent carriers are facing intermodal competition, the time is ripe for relaxing consumer regulations associated with wireline carriers. Many of these regulations are found in Parts 606 and 609 of the Commission's Rules, entitled "Billing and Collection Services" and "Rules Governing Provision of Telephone Service to Residential Customers."⁹

NYSTA is not calling for the wholesale removal of these consumer protections. However, due to the competitive nature of the markets, several of these rules are no longer necessary to achieve this stated goal. Parts 606 and 609, for example, should be made inapplicable to all LECs where services are offered on a bundled basis or as a package.

Part 606 addresses issues such as disconnection for non-payment, provided the Telephone Fair Practices Act in Part 609 are followed, as well as how to handle partial payment for services offered. Part 609 generally covers service suspension and termination, deferred payment agreements, service deposits, backbilling, and bill content. In a competitive market where intermodal competitors are under no obligation to follow

⁹ 16 NYCRR Parts 606 and 609.

these rules, the regulated LEC is at a competitive disadvantage. The rules are especially burdensome where carriers have begun offering various services in bundled packages and, in these situations, both Parts should therefore be made inapplicable.

Under current requirements, carriers which receive partial payment for services must first apply the money to cover basic service and then place the remainder into different “buckets” according to a specific formula established in §606.5 of the rules and in a Commission-approved Billing and Collections Settlement Agreement reached in 1992.¹⁰ What NYSTA proposes is that when a customer subscribes to a service bundle which includes basic service, Parts 606 and 609 would no longer be applicable. For those customers that choose to not receive their services through a bundle, a la carte basic service will continue to be available.

On a related note, in a competitive environment, deferred payment arrangements should not be mandated. While regulated LECs will always continue to work with customers to ensure they remain on the network, the specific terms of deferred payment arrangements should no longer be set by the Commission.

2. Are there core consumer protections (e.g., slamming, cramming, termination notices, contract disclosures) that should be enforced by the Commission, notwithstanding the existence of competitive choices? Should a set of core consumer protections apply to wireless and VOIP/cable telephony, as well as traditional wireline?

NYSTA does not support expansion of the Commission’s role in these areas.

¹⁰ See: Case 90-C-1148, where the Commission approved the Agreement which was signed on July 1, 1992 and subsequently modified on November 23, 1993.

3. Does the Commission have a unique role to play in addressing consumer complaints? Should a common forum for the timely handling of consumer complaints be available under the auspices of the Commission? In other words, should the Commission's complaint handling function and the authority to enforce core consumer protections be extended to wireless and VOIP/cable telephony? If so, what should the nature and scope of that function be?

NYSTA believes that there is a role for the Commission with regards to complaints. For those carriers currently regulated by the Commission, the complaint process should be a substitute for the current Service Standards in Part 603 of the Commission's Rules. Instead of these monopoly-era rules, a more appropriate approach would be for the Commission to monitor consumer protection through the complaint handling process.

Regulated carriers understand their obligations regarding consumer protection and the Commission should be able to gauge each carrier's success by knowing that complaints have been made and how they have been resolved. Further, all of the monitoring and reporting required under Part 603 should be eliminated and replaced solely with this complaint handling process. Complaints would also be the sole basis of the annual Commendation Awards.

In addition, complaints should only be accepted if they concern service quality and not rates charged, provided the carrier's rates are within the minimum/maximums approved by the Commission (such price flexibility will be discussed under a separate question).

NYSTA proposes that complaints would be handled by the Commission under the existing Quick Resolution System (“QRS”), which permits carriers to address consumer concerns before they become lodged as complaints. NYSTA believes that individual customer expectations, to the degree measured by Commission complaints, is more appropriate in today’s marketplace.

4. What impact might municipally owned wire/wireless networks have?

As a general rule, NYSTA is opposed to municipalities offering telecommunications services due to the inherent disadvantages that private industry has in competing against governmental entities.

However, NYSTA assumes that given the context of the question that should government networks offer services for a fee to the general public then such providers would be treated similarly to other providers offering similar services.

Universal Service

1. Do the Universal Service goals articulated in 1996 remain valid in 2005?

NYSTA believes the Commission’s Universal Service policies adopted in 1996 remain valid goals for the state. These goals are:

- (1) Basic service should be evaluated and revised as necessary to meet evolving needs.
- (2) Basic service should be available to all residential customers who wish to use them.
- (3) Basic service should be accessible.
- (4) Basic service should be affordable and reasonably priced.

- (5) Funding mechanisms to support Universal Service must be fair, equitable and competitively neutral.¹¹

It is, however, important to view these goals in the context of today's telecommunications marketplace and the fact that hundreds of thousands of New Yorkers are having their basic telecommunications needs met by companies that are not regulated by the Commission. As such, the policies are generally being met in many areas by segments of marketplace participants free from any state regulatory involvement and intervention.

Marketplace discipline, not government regulation, will incent all providers to offer those products and services that meet the needs of consumers in terms of both price and quality. Even though the Commission's principles form the foundation of its Universal Service policy, the marketplace has become sufficiently competitive to allow marketplace discipline to replace much of the regulatory oversight that one group, specifically Commission regulated LECs, must follow. Failure to recognize this fact will only threaten the existence of those now regulated by the Commission due to the costs involved in operating in an asymmetrical regulatory environment as well as the inability to provide services under the same terms and conditions.

With regards to specific comments regarding the Commission's Universal Service goals, individual companies within NYSTA's diverse membership are expected to respond to the funding issue outside of NYSTA's comments.

¹¹ *Opinion and Order Adopting Regulatory Framework*, 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, Case 94-C-0095, Opinion 96-13, at p. 9 (Issued and Effective May 22, 1996).

Additionally, Commission actions at times conflict internally with Commission statements in addressing the future of the state's incumbent LECs as it relates to the continued provision of Universal Service and the challenges faced by the incumbent carriers. For example, when the Commission approved the sale of Berkshire Telephone Corporation to FairPoint Communications, it noted that challenges faced by incumbent carriers, especially the smaller incumbent LECs, call for the consideration of whether Independents not controlled by larger entities will be able to offer advanced services demanded by customers as efficiently as a holding company.¹² In addition, in his presentation at this year's NYSTA Annual Conference, Commission Chairman William Flynn stated that "we approved the acquisition of Berkshire by FairPoint in large part due to the recognition that as the telecommunications industry continues to evolve and inter-modal competitors enter the market, smaller standalone phone companies will face significant difficulties just to maintain their market share and must, therefore, seek partnerships or other creative strategies to cut costs."¹³

However, the recent Commission approval of this sale took 21 months and the decision contained some 28 ordering clauses involving numerous conditions. Contrasting this, FairPoint's acquisition of Bentleyville Telephone Company in the neighboring state

¹² *Order Approving Acquisition Subject to Conditions*, Joint Petition of Berkshire Telephone Corporation, FairPoint Communications, Inc., MJD Ventures, Inc. and FairPoint Berkshire Corporation for Approval of the Merger of FairPoint Berkshire Corporation with and into Berkshire Telephone Corporation, Case 03-C-0972, at pp. 4-5 (Issued and Effective March 18, 2005).

¹³ Remarks By William M. Flynn, Chairman, New York State Public Service Commission, NYSTA Annual Meeting, Verona, NY, June 22, 2005, at p. 2.

of Pennsylvania took less than three months, with the only conditions being that proper notification regarding the transaction be given.¹⁴

Moreover, Department of Public Service Staff's recent White Paper concerning the possible merger conditions regarding the mergers of Verizon and MCI and AT&T and SBC similarly point to an environment that, rather than encouraging growth and efficiencies, actually discourages investment and growth in the state.¹⁵

While NYSTA believes the solutions suggested by the Commission are inappropriate, nonetheless, Commission actions in the area of mergers, sales, and acquisitions are counterproductive to its own stated goals.

2. Our view that “basic service” should be periodically re-evaluated appears appropriate in view of the expanding use of and reliance on high speed and wireless telecommunications capabilities. Does the existing definition of “basic service” remain appropriate in today’s environment?

NYSTA will address this question as it relates to the provision of broadband services and whether such services should be considered “basic service.” NYSTA believes that given the current marketplace dynamics whereby significant competitive incentives exist, the need to include broadband access as a basic service is unnecessary.

¹⁴ *Order*, Joint Application of Bentleyville Communications Corp., d/b/a Bentleyville Telephone Company, and its subsidiary BE Mobile Communications, Inc., for approval of the indirect acquisition by FairPoint Communications, Inc. of all the stock of Bentleyville Communications Corp., Docket Nos. A-310250 F0005 and A-301480 F0002 (Adopted July 14, 2005).

¹⁵ *Department of Public Service Staff White Paper*, Joint Petition of Verizon New York Inc. and MCI Inc. for a Declaratory Ruling Disclaiming Jurisdiction over or in the Alternative for Approval of Agreement and Plan of Merger and Joint Petition of SBC Communications Inc., AT&T Corporation, together with its Certificated New York Subsidiaries, for Approval of Merger, Cases 05-C-0237 and 05-C-0242 (Issued July 6, 2005).

Also, now that the FCC has declared DSL, as well as cable modem service, to be an information service and not a telecommunications service,¹⁶ it would not be an eligible element of basic service.

Significant competition exists, and various technological platforms are available, to provide for the continued roll out of broadband services throughout the state without it being deemed a basic service.

As stated above, even assuming that access to broadband services are deemed a “basic service,” the Commission currently would be unable to control the implementation of such a policy under existing state and federal laws. A determination that such services should be considered basic would therefore add to the current dilemma of requiring one marketplace participant, regulated LECs, to meet a social obligation in a competitive marketplace dooming them to ultimate failure in that marketplace.

As such, expanding the definition to include broadband services is inappropriate.

¹⁶ See: *FCC Press Release* “FCC Eliminates Mandated Sharing Requirement on Incumbents’ Wireline Broadband Internet Access Services -- Decision Places Telephone and Cable Companies on Equal Footing,” dated August 5, 2005.

3. Although, to date, we have not found a need to establish a Universal Service funding mechanism to ensure generally affordable rates in “high cost” areas of the state, does that conclusion remain valid as traditional revenue streams are challenged by growing competition, technological advancement, and evolving intercarrier compensation arrangements?

NYSTA acknowledges that the issue of creating a Universal Service funding mechanism is important to this proceeding, and may become even more relevant depending on the outcome of the FCC’s intercarrier compensation proceeding. However, due to the various environments each of our members face and the differing approaches each has with regards to this critical question, individual members of the Association will be submitting comments directly addressing this issue.

4. What approaches should we pursue to ensure the continued availability of affordable basic telecommunications service to all consumers in New York?

Probably the most important issue related to the above question involves the issue of Universal Service and the costs involved in ensuring reasonable access to all New Yorkers at reasonable rates while at the same time not burdening one class of carriers -- those regulated by the Commission -- with the cost burdens associated with meeting a policy goal.

A more difficult issue to address deals with the costs associated with the requirement to build, operate, and maintain their network as if all New Yorkers will choose the incumbent for their telecommunications needs while at the same time operating in a competitive marketplace. The mechanics of achieving this goal will be discussed in the comments submitted by NYSTA’s members.

Market Power and Regulatory Flexibility

1. The basic issue confronting us today is, given the proliferation of intermodal competition and choices for consumers, what is the appropriate role of the regulator in preventing market power abuses? More particularly, is there sufficient actual and potential competition for retail telecommunications service, including residential basic local telephone service, to prevent a firm from raising its price or providing poor quality service without suffering commensurate competitive losses?

Today's telecommunications marketplace, including the market for residential basic telecommunications service, is sufficiently competitive to prevent market power abuses. The total lines lost by all of the incumbents is growing significantly. During the second quarter of 2005, for example, Verizon access line losses averaged in excess of 80,000 customers per month. In the Manlius exchange, ALLTEL-New York has lost over 10 percent of its access lines to competitors since November 2004. While admittedly a portion of Verizon's losses were second lines serving residential customers, a significant amount of the losses represent basic service primary line residential customers switching to VoIP, cable telephone, and wireless services. However, not captured in the above number is the growth component of access lines as a result of competitive losses. In fact, NYSTA estimates that nearly the same amount of customers will have migrated from Verizon in 2005 than the total number of migrations to all CLECs from 1992 through 2005. These losses represent an unprecedented degree of competition to Verizon.

VoIP is making similar inroads within the Independent territories as well, with cable television providers rolling out digital telephone service in every corner of the state and heavily marketing customers, irrespective of whose telephone exchange boundary

they reside in. Accordingly, customers, in significant numbers throughout the state, now have the ability to receive their telecommunications services from a variety of providers. The mere fact that consumers have a choice, whether or not they have yet exercised that choice, provides significant incentive to prevent market power abuses. NYSTA believes that the time to act is now to level the playing field.

The question that should be asked is rather straightforward: Is the degree to which competition exists, in terms of actual competitive losses as well as the potential for competitive losses, sufficient for the prevention of marketplace abuses? The answer is an unequivocal “yes” and that failure to recognize this fact and to adjust regulatory oversight of one group of marketplace participants will ultimately lead to their inability to effectively compete against a marketplace of intermodal competitors which are not regulated to any significant degree. This “significant degree” is well-illustrated by the table in the Commission’s Convergence Matrix which, as stated, shows 33 pages of various Commission regulations and state laws applicable to LECs, but absolutely none for Cable Digital Voice/VoIP/Wireless competitors.

A simple fact may illustrate the point to which competition exists in the current non-symmetrical regulatory environment: There are forty incumbent LECs operating under a regulatory construct that has been in existence for some 80 plus years. In the last two years, Verizon has lost more access lines to non-Commission regulated providers than the total number of customers served by the remaining 39 incumbent LECs.

The Commission's question implies that an indicator of market power, or lack thereof, is one characterized by the inability to raise prices and provide quality service. Using these two factors as a litmus test to indicate that a marketplace is indeed competitive is inappropriate for the following reasons.

The first assumption, regarding the inability to raise prices as an indicator of the degree of competition, cannot be viewed as absolute.

Prices can fluctuate in competitive markets. While competition does prevent monopoly abuses, prices have and always will have the opportunity to increase or decrease in response to a competitive marketplace.

Furthermore, prices can and should go up in a marketplace when current prices are well below a market-based price. As an example, Verizon price levels can be viewed as a market price given the size of the market it serves and the fact that the Commission has deemed its rates just and reasonable. Warwick Valley Telephone Company charges \$4.54 for residential telephone service in its Warwick exchange, while customers living on the same block across the exchange boundary in Verizon's Greenwood Lake exchange pay Verizon \$18.19 for flat-rate residential service. Based upon comparable rates using similar sized local calling areas, Warwick Valley Telephone Company's rate of \$4.54 is significantly below a comparable Verizon rate of \$19.64.

Even though Warwick Valley Telephone operates in a competitive marketplace due to the presence of wireless broadband and cable telephony, the current price it charges is so significantly below the market price, that failure to allow it to raise its prices -- even with the possibility it will lose customers as a result of any price increases -- will actually retard competitive entry and sends incorrect price signals to the marketplace.

Given the recognized fact that Commission policy has historically been to limit basic service increases, especially for Independent incumbent LECs, a Commission policy that assumes competition does not exist if companies choose to raise prices is erroneous.

Regarding service quality, the degree to which competition exists today, and the potential that customers have currently in choosing providers, will prevent a general lessening of service quality. However, the definition of what constitutes service quality to customers needs to be reviewed and revised.

Currently, service quality for regulated LECs is governed by a host of defined metrics in Part 603 of the Commission's rules which Commission regulated companies -- and only Commission regulated companies -- must meet.¹⁷ These regulations thus define and represent what is deemed acceptable service quality from the Commission's perspective.

¹⁷ 16 NYCRR Part 603.

The problem with current service quality regulations is that they assume that all customers' definitions of service quality are exactly the same. Evidence clearly indicates that is not the case. Each month, tens of thousands of customers purchase VoIP, cable, or wireless telephone service, each with its own service quality attributes.

However, the current system of Commission mandated service quality regulations assume customer expectations are equivalent across all customers rather than customer specific. Thus, the definition of what constitutes poor quality service is in reality quite variable and should not be viewed in broad, defined terms, as currently is the case. Individual customer expectations measured by Commission complaints is a more appropriate gauge in today's marketplace.

Given the above, the Commission's role should shift from one of directing company behavior to one of monitoring the marketplace. NYSTA proposes that reporting of current service quality indices be eliminated and Commission complaints be used as a measure of service quality in their place.

2. What measure of competition should we consider when determining whether retail pricing flexibility is appropriate? Can the Department's Competitive Index be used for this purpose?

3. Are the criteria and assigned weights in the Department's Competitive Index reasonable? In particular, is the VoIP telephone weight reasonable in light of current carrier policies concerning the availability of stand-alone broadband?

Overall, NYSTA believes that the current level of competition, both in terms of actual number of subscribers being served intermodally, as well as the potential for

competition, provides sufficient incentives against market power abuses and the time is here to allow all regulated incumbent LECs the ability to flexibly price their services, free from rate of return calculations. NYSTA proposes the following regarding flexibly pricing non-basic and basic services. All marketplace participants, except regulated incumbent LECs, are free to flexibly price their services today. LECs should be granted the ability to compete and meet the competition in terms of the ability to flexibly price.

For non-basic services, current tariffs would be changed to set a minimum price for each service at zero. For the smaller Independents, their maximum price would be changed to an accepted statewide benchmark rate for a particular service offering. Verizon and Frontier would be free to adjust their minimum and maximum pricing as they believe necessary to effectively compete in their respective markets. Companies would continue to file an informational rate schedule, as is done today, that sets the general price available within that range. The rate would be similar to the “manufacturer’s suggested retail price” (“MSRP”) of goods in other markets. Should a carrier seek to lower or raise its MSRP, an informational rate schedule would be filed with the Commission on 10 days notice as currently required. However, each company would be free to have subscriber-specific pricing as long as the price is within the min/max range. Such an approach is appropriate because these non-basic services are discretionary, optional services. In addition, bundled offerings would not be tariffed.

Basic services would be treated the same as described above, except that when changing the “MSRP”, tariffs would be filed with 30 days notice. As with non- basic services, basic services offered as part of a bundle or package would be non-tariffed.

With regards to the Department’s Competitive Index and whether that can be used as a measure to allow for flexible pricing, NYSTA offers the following observation.

The index provides an indication of competitive alternatives and is superior to measures such as thresholds based upon access lines or revenues in that it avoids establishing an objective measure that defines a competitive marketplace only when a specific percentage of some measure is reached. Rather, the potential of competition, as measured by the number of available alternatives, is more appropriate.

However, the index fails for a number of reasons and should not be used as a determinant recognizing the level of competition in a marketplace.

As currently proposed, the Competitive Index fails to recognize the significant impact that a single service such as cable telephone, is having on the marketplace. Verizon’s access line reductions are increasing at the rate of tens of thousands per month. This trend is primarily due to new cable voice alternatives.

Next, the Index was developed to measure or define an impairment standard regarding carriers’ abilities to operate in a marketplace, which is inherently more difficult

than individual consumers' abilities to choose an alternative supplier for their telecommunications needs.

Consumers across the state can choose alternative providers relatively easily, including wireless, VoIP, cable telephone service, and competitive LEC services, as compared to providers determining alternatives available to them for network services. Thus, while an index rating of 2.75 may be sufficient for the purposes for which it was designed, it does not adequately measure the totality of competition. The Index is also only a snapshot of a point in time, which fails to reflect that even though a particular competitive alternative such as cable telephony may not be offered today in a small rural exchange, for example, the presence of other currently available alternatives when combined with the significant potential of cable voice telephony, are sufficient to invite appropriate competitive marketplace behavior. Clearly all providers in the state are aware of the significant market inroads made by cable voice services in Verizon's territory in such a short time.

The Index fails to recognize the simple fact that more providers equals more choices even if providers are utilizing the same technology. For example, the availability of four wireless providers increases the available options to consumers more than two providers. Similarly, two broadband alternatives, (*e.g.*, cable modem service and DSL) inherently provide consumers increased alternatives to access VoIP services such as Vonage and some forms of cable voice services. Additionally, the availability of purchasing cable voice services without the need for cable high-speed modem service,

such as is available from Time Warner Cable, increases customer choice without the need to first purchase broadband service.

In summary, we believe the Competitive Index overall fails to recognize the competitive marketplace which exists today, or will exist shortly, throughout the state.

Finally, NYSTA would like to comment on the philosophy presented in the Comp III Notice, as well as in the Staff White Paper released in Cases 05-C-0237 and 05-C-0242 concerning Verizon's merger with MCI, that relaxation of regulatory oversight might be based upon an exchange-by-exchange analysis regarding competitive alternatives.¹⁸ Thus, the potential exists for a two-tiered regulatory approach even within the same company.

Such an approach is unwarranted and will only lead to increased regulatory costs rather than reducing the non-symmetrical regulatory framework under which regulated LECs currently operate.

Whatever method is used to determine the existence of a competitive marketplace, any commensurate adjustments to regulatory approaches should be applicable to the total company. Companies will not, nor do they have the ability to, operate differently in a given exchange dependent upon whether that individual exchange has a certain level of competitive factors. To do so would assume that companies possess some Orwellian system that would allow first a determination that a specific exchange, or even a specific

¹⁸ Merger White Paper

customer, has certain competitive alternatives and then based upon such a determination, develop marketing and operating systems geared to each specific exchange or customer.

If a company operates where competition, or the availability of competitive alternatives, reasonably exists, the company, as a whole, will operate as if the entire marketplace is competitive. Establishing a two-tiered regulatory model is inappropriate and will create additional regulatory hurdles for regulated carriers only, especially for incumbent LECs.

It is clear that significant competition exists throughout the state, or that the threat of competitive alternatives exist, so that all regulated LECs should be allowed to flexibly price their services at this time.

This is especially true for non-basic services, many of which have had competitive alternatives even absent competitive carriers (*e.g.*, voice mail), and which are optional and discretionary services offered to consumers and which should not engender Commission regulatory oversight.

For basic services, the evidence is clear that the state's two largest incumbent carriers -- Verizon and Frontier -- operate in truly competitive markets and, thus, should be able to price their basic services without regulatory approval. It is also clear that areas served by other incumbent carriers are sufficiently competitive to allow flexible pricing for basic services.

4. Can price levels from competitive areas serve as a first level gauge of reasonableness for prices in non-competitive areas?

First of all, all markets in the state are competitive. Competitive choices exist and will continue to increase throughout the state. It would be a burden for this Commission to administer a regulatory plan for a handful of outlier exchanges or very small companies which, due to the ubiquitousness of intermodal choices, will be facing voice competition and competitive losses sooner rather than later and quicker than the ability of the Commission to act. Clearly, changes should be made now based upon not only what companies are experiencing today, but on what the future holds, rather than taking a company-by-company piecemeal approach based upon achieving an arbitrary number.

NYSTA believes that this is true for all of its incumbent LEC members given the degree of competition that exists and the extent to which competitive alternatives are available. Multiple wireless alternatives are available throughout the state. The Commission's own Broadband Report issued in 2003 shows widespread availability of broadband for access to stand-alone VoIP providers.¹⁹ Finally, as demonstrated, cable television companies provision of voice services has exploded and represents a significant alternative not available as little as two years ago.

The important point to note here as elsewhere, is that competitive pressures, when significant enough, will induce appropriate behavior throughout a company even if that company has sub-markets that are not necessarily as competitive. With regards to the

¹⁹ See: Broadband Report.

question presented above, the role of regulation is to protect against monopoly price abuses absent in a competitive marketplace. Since regulatory oversight is designed to prevent market abuses and is deemed a substitute for a competitive marketplace, pricing in competitive markets by extension is reasonable for pricing in non-competitive markets.

5. How do we define competitive versus non-competitive areas/markets?

With the wide availability of broadband throughout the state, as well as cable television and wireless services, all markets in New York State are competitive today. While the Competitive Index is an improvement over other types of measurements, for the reasons discussed above, it is still not an accurate measurement of competition in markets.

Even if one assumes that the more rural areas served by the smaller incumbents are not as competitive as Verizon overall, NYSTA believes the current process of approving rate increases for companies serving such small numbers of customers at rates below those approved for other carriers is clearly inefficient for both consumers and taxpayers.

6. Should we allow rates in less densely populated areas to increase to their underlying cost levels?

The goal of Universal Service, upon which telecommunications policy has been developed since 1934 and even as recently as 1996, is an important policy consideration with regards to rates in rural areas. However, NYSTA believes there is room for rate increases in rural areas to better reflect the cost of providing service in rural areas.

Service Quality

1. How should we adapt our service quality regulation to the marketplace realities?

The existing service standards located in Parts 602 and 603 of the Commission's Rules ("Consumer Relations and Operations Management" and "Service Standards Applicable to Telephone Corporations") simply do not make sense in the current marketplace, where customers accept differing grades of service from competitive alternatives whose services are not subject to government mandated service standards. In NYSTA's view, other than complaint handling, all of the other end user service standards regarding measurement and reporting should be eliminated.

Where competition exists, requiring Commission regulated carriers and only Commission regulated carriers to measure items such as customer trouble report rate ("CTRR"), percent out-of-service over 24 hours, percent service affecting over 48 hours, line installations, final trunk group blockages, and answer time performance when the competition is subject to none of these requirements is an unreasonable burden on regulated-only carriers, especially incumbents. Should service quality deteriorate in these markets, such that installations are not timely made or the business office does not answer requests in a timely fashion, the customer will have the option of filing a complaint or seeking a different provider. In other words, in today's competitive marketplace, should service quality deteriorate, customers will "regulate" service quality

by simply choosing another provider of services. The concern with losing customers to a competitor is the strongest motivating force to incumbents providing quality service.

2. Are output-oriented performance measures still valid as a means of informing consumer choices, and, if so, should they be expanded to include all modes (wired and wireless, VoIP and cable telephony)?

Even assuming these regulations could be applied to other types of services, regulation should not be increased for others; rather, regulation should be reduced for the state's existing regulated carriers. Otherwise, the Commission regulated LECs will become even more disadvantaged.

3. Should proactive service quality performance oversight and enforcement of whatever breadth be limited to less competitive markets or geographic areas? More importantly, indeed critically, how can this be done in a manner that ensures the overall reliability of the underlying inputs, the interconnected networks themselves?

As stated elsewhere, and just as applicable here, NYSTA believes that given the breadth of competitive alternatives available statewide and the rapid degree to which markets are changing, performance oversight and enforcement should be eliminated statewide for carriers regulated by the Commission. Additionally, it is inappropriate to propose additional network requirements and the costs associated with them, such as diverse routing, on carriers regulated by the Commission given that their existing networks are more reliable than those provided by other modalities with which they compete.²⁰ These carriers have an obligation and incentive to protect their investment in network infrastructure to better ensure calls go through and to serve as a platform for

²⁰ Network Reliability Order.

other services. As NYSTA stated previously, a dual regulatory model applied within a company (including a pass/fail system proposed by Commission Staff in the merger proceeding),²¹ is unnecessary and will only increase costs and burdens on both providers and the state. If incumbents fail to make the proper investments, they will suffer migration to other providers using different platforms as well as a high level of complaints. The Commission regulated LECs are, and have always been, dedicated to ensuring the reliability of the network. Their long list of Commendation Awards are proof positive.

4. Regulatory reform in the area of telecommunications service quality must not compromise the state's economic well-being, security, or safety. How is this done in other critical infrastructure areas (e.g., transportation), and how do those experiences inform us?

New York State's regulatory climate is hampering the state's economic well-being overall and the ability of regulated LECs to compete in a non-symmetrical environment against those not regulated by the Commission. As a result, all telephony providers (large and small) are hindered in their ability to attract investment and remain competitive. Accordingly, the premise of the question is flawed -- NYSTA believes the state's regulated carriers and ultimately the state's economy, etc., will be compromised by continued regulation of one segment of marketplace participants. Additionally, competition in advanced services not regulated by the Commission will ensure increased deployment of advanced services which will translate into a reliable, efficient network for voice services. Customers are flocking to lower cost competitors which are not subject to any of the service quality rules. Part of their lower cost is due to the fact that they do not

²¹ See: Merger White Paper.

need to comply with these outmoded requirements. While service quality is rightfully an important aspect of the Commission's mission, it is a mission that is ensured by customers and the competitive choices they have.

5. Is our performance-centric approach appropriate in an era of intermodal competition, where other service providers (e.g., wireless, VoIP) are not subjected to our regulation?

NYSTA's position is that a performance-centric approach is no longer valid for one marketplace segment and these rules should be eliminated for all regulated providers.

6. If our service quality regulation and reporting were extended to all modalities (wireline and wireless) and all providers (e.g., VoIP and cellular), what, if any, legal constraints apply to extending basic service quality regulation to all modalities?

From a legal basis, the PSL specifically exempts wireless services from the purview of the Commission.²² In addition, the Commission currently lacks the jurisdiction to regulate voice services provided by cable television operators. In addition, in the FCC's November 12, 2004 Vonage decision, it preempted the states from regulating VoIP services, including those provided by cable television operators.²³ (NYSTA understands that New York, as well as a handful of other states, has appealed this determination.²⁴) In addition, the Commission attempted to declare that Vonage is a

²² N.Y. Pub. Serv. Law §§5(3) and 5(6).

²³ See: Vonage Order

²⁴ See: Letter from William M. Flynn, Chairman New York State Public Service Commission to Michael K. Powell, Chairman Federal Communications Commission, dated January 7, 2005.

telephone corporation in a May 21, 2004 order,²⁵ but, at Vonage's insistence, a federal district court granted an injunction preventing the enforcement of the decision.²⁶

As a result of these developments, in order for the state Commission to apply these regulations to the intermodal competitors, the PSL would need to be amended to secure jurisdiction over wireless services and the FCC would need to alter its decision in the Vonage proceeding to permit states to regulate VoIP services, including those offered by cable television companies. NYSTA is not advocating either approach.

7. Should we modify, relax, or eliminate performance-based standards in competitive markets?

Yes, the existing service standards in Parts 602 and 603²⁷ of the Commission's rules should be eliminated, save for the provisions regarding complaint handling.²⁸

Specifically, complaints should only be considered if they are service-affecting complaints, not complaints about rates within the approved range. In addition, answer time performance at customer service centers (§602.3) and the performance metrics in §603.3 (including Customer Trouble Report Rate, Percent Out-Of-Service Over 24 Hours, Percent Service Affecting Over 48 Hours, Installation Performance, Percent Final

²⁵ *Order Establishing Balanced Regulatory Framework for Vonage Holdings Corporation*, Complaint of Frontier Telephone of Rochester, Inc. Against Vonage Holdings Corporation Concerning Provision of Local Exchange and InterExchange Telephone Service in New York State in Violation of the Public Service Law, Case 03-C-1285 (Issued and Effective May 21, 2004).

²⁶ *Vonage Holdings Corporation v. New York State Public Service Commission*, 04 Civ. 4306 (DFE) (S.D.N.Y. July 16, 2004).

²⁷ 16 NYCRR Parts 602 and 603.

²⁸ 16 NYCRR §602.7(a).

Trunk Group Blockages, and Answer Time Performance at the Business Office, Repair Office, and Operator Assistance) are an unreasonable burden on LECs as a result of their largest competitors being immune from these monitoring and reporting requirements.

8. Are performance standards essential to ensure that consumers have access to a reliable, seamless network of networks and, if so, should they be changed?

Performance standards are not essential to provide a reliable network to consumers. For NYSTA's members, they understand their obligation to provide reliable telecommunications service, as discussed above. However, the Commission should not regulate them beyond complaint handling. Otherwise, the current situation where incumbents lose customers to lower priced and unregulated competitors will continue, resulting in a less reliable network which will become more and more beyond the reach of the Commission.

9. Is reporting based on size still relevant? Should we focus our reporting requirements on less competitive markets or geographic areas?

All of the state's markets face competitive pressures today as illustrated in the Commission's Broadband Report (where there is broadband, there is voice competition) and the availability of digital cable television service.²⁹ As a result, reporting requirements must be eliminated to help balance the playing field.

10. Should we continue to allow an exception for carriers that provide service solely by repackaging or reselling another carriers' service?

²⁹ See: Broadband Report.

We believe complaints should be the only measure of service quality and they should apply to all regulated LECs.

11. Should all carriers be held to a threshold standard for service?

No, in competitive markets, service standards levels will and should be dictated by the marketplace. With all of the service standards placed on incumbents and their recognized high level of reliability, customers are still migrating to intermodal competitors subject to no service standards and their less reliable networks. Keep in mind that wireless and cable television providers experienced major outages during the August 2003 Blackout, while landline telephones continued to operate with only a few minor exceptions as a result of the backup power at the telephone company central offices.³⁰ As a result, there is no need for a service standard threshold because the choice of competitors has become even more important than service quality in the eyes of many consumers.

12. Are the customer trouble report rate (CTRR) measures still reflective of the quality of service provided to consumers?

While CTRR may reflect service quality from one perspective, it has become somewhat meaningless given that it does not apply to a significant portion of the marketplace. The monthly reporting of CTRR is a strong example of a reporting requirement that only applies to one segment of the same market and is unnecessary in a competitive market. On a related note, carriers such as Warwick Valley Telephone have

³⁰ *Initial Report of the New York State Department of Public Service on the August 14, 2003 Blackout*, released March 1, 2005, at p. 82.

very low CTRR levels (as well as prices) and have consistently received Commendation Awards, but are still losing customers to cable telephony providers. If anything, a reduction in the carrier's service quality will result in an increased rate of loss, whether or not it needs to report on CTRR.

13. Are there other more relevant measures than the CTRR?

Yes, NYSTA believes that complaint handling is the most relevant measurement of service quality available today. For telephone companies, the mechanism and rules are already in place for the Commission to receive and act on complaints. Basing service quality on complaints also allows the public to establish its own level of acceptable service, which would then be enforced by the agency. Accordingly, complaints reflect specific customer needs, unlike CTRR or other measurements. As stated above, complaints would only be accepted if they are service affecting, not complaints about rates within the approved levels.

14. Should a periodic survey of customer satisfaction be used?

No, NYSTA does not believe a customer satisfaction survey would be workable because the Commission can only act on results with respect to regulated carriers.

15. Is our Public Service Commission (PSC) Complaint Rate Level still relevant?

Yes, NYSTA believes that customer complaints are a relevant measure of the quality of the service they are providing and as we have proposed, would apply in lieu of Part 603 to companies regulated by the Commission.

16. Should we maintain and expand our Commendation Program for excellent service?

NYSTA supports the continued use of the Commendation Program, however, it should be limited to complaint handling only and the CTRR requirements should be eliminated.

17. Parts 602 (Consumer Relations and Operations Management) and 603 (Service Standards) were streamlined in 2000 to better reflect the competitive environment; should these regulations be re-examined in light of the changing market? Is additional streamlining needed?

The proceeding which amended Parts 602 and 603 was a multi-year venture which employed a collaborative of the entities which would be directly affected by the result -- ILECs and CLECs. In many respects, it was a successful collaborative because all of the entities to be subject to the new rules were active participants in the process which created the rules.

That time period feels like it was truly the last century. Many of the participants in the collaborative have ceased providing service or have merged with other providers. In addition, many powerful competitors today which are not regulated by the

Commission were not in the market during the service standards collaborative. As a result, despite the best efforts of the Commission and its Staff, the regulations have become obsolete in an incredibly short period of time.

The specific sections of Parts 602 and 603 that should be eliminated have been noted in NYSTA's response to question 7 above.

18. In 1996, we emphasized our duty to know how the state's telecommunication infrastructure varies by region, how that infrastructure compares with the rest of the world's, and how effective competition is in providing services demanded by consumers. The primary vehicle for gathering this information is our requirement for local exchange carriers (LECs) to submit annual construction budgets. Is this information still needed? If so, should it be modified in some fashion? Are there more relevant indicators that we should monitor? Are capital dollars still relevant or should we only consider benchmarks and outputs? Should intermodal competitors contribute data in order for us to gauge the robustness of telecommunication infrastructure in the state?

NYSTA recommends elimination of the requirement to file annual construction budgets and as discussed below, replace such a filing requirement with submission of a revised Annual Report. We believe that a streamlined Annual Report would include basic financial information sufficient to monitor network infrastructure investments. . Providing a streamlined report of basic financial information, especially if other requirements are eliminated (such as the above discussed service standards, as well as diverse routing requirements), seems to strike a reasonable balance between avoiding overly restrictive regulation and providing information the Commission deems necessary to serve its proper role in overseeing LEC networks.

That said, while this question addresses construction budgets, other reporting requirements, such as the Annual Report filed by incumbents in its current form, should be eliminated as an unnecessary burden. Much of the information contained in the report is unnecessary in the current environment and represents clearly a non symmetrical requirement placed only upon the incumbent LECs. Oriskany Falls Telephone Company provides a good example. The company serves approximately 700 access lines, or the number of customers competitors gain from Verizon in one-half day. Accordingly, it clearly does not make sense to require incumbent LECs to continue to file an over 120-page Annual Report document each year. We believe that in order to satisfy the Annual Report requirement of the Public Service Law,³¹ only the following information gathered in the Annual Report should be retained, including General information on the company, officers, and directors (taken from the newly introduced Telecommunications Company Critical Information Form, which would be eliminated) and financial information such as balance sheet, plant account information, and income statement.

Other information currently contained in the Annual Report is either unnecessary or only needed at specific times (such as the reporting of control changes, which require Commission approval prior a sale) or are supplied as needed during other proceedings such as that requested and supplied during the pendency of a rate case.

There are no longer any reasons for the detailed information contained in the current Annual Report. NYSTA proposes a revised Annual Report containing basic

³¹ N.Y. Pub. Serv. Law §95.

financial information which will provide the necessary information for the Commission, including its ability to monitor new network investments in lieu of a construction budget.

With a revised Annual Report, the Commission would have a single source of information which would provide a reasonable understanding of the state of the incumbent LEC networks.

Level Playing Field

1. Recognizing that federal law plays a significant role in numbering administration, should the numbering principles referred to above be equally applicable to new, IP-based numbering solutions?

In its February 1, 2005 order, the FCC determined that VoIP providers can have access to numbering resources directly through NANPA.³² While the numbering principles listed by the Commission are important and are recognized by the ILECs and CLECs, NYSTA believes their extension to VoIP providers is an issue for the FCC to address.

2. Do we need to implement additional number optimization measures in light of the potential demand for numbers by new competitors?

After it was granted authority to implement numbering conservation measures by the FCC, the Commission instituted number pooling around the state.³³ These efforts

³² *Order*, In the Matter of Administration of the North American Numbering Plan, Docket No. 99-200, FCC 05-20 (Effective February 1, 2005).

³³ *Order*, In the Matter of New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures, CC Docket No. 96-98, FCC 99-247 (Effective September 15, 1999).

have removed the jeopardy status of the affected NPAs, freeing up hundreds of thousands blocks statewide. At the moment, the numbering “crisis” seems to be under control and we see no need to take further actions now.

3. Are the numbers and listing information of IP-based subscribers available generally at reasonable terms, or is this a new bottleneck?

If the numbers are ported from the incumbent, they are included in the directory, but if it is a new code in use by the VoIP provider, the directory publisher would not have any knowledge of the code’s use. Thus, in certain specific circumstances, such numbers and listing information are generally not available, but, to date, there has been no customer demand for such information. On a related note, wireless customers have voiced concern about establishing a wireless directory to list their numbers. We believe that customer expectations about listing their numbers in directories have changed and demand to be listed has waned.

4. Are IP-enabled providers able to access the information they require from telephone, cable, and wireless sources to support efficient management of their operations?

The answer to this question is “yes” because they are gaining significant customer share in every market where they operate. Calls are going through to the landline customers, so the VoIP providers must be receiving the information they require.

5. Do gaps in the availability of number portability represent an impediment to choice?

NYSTA is not aware of any gaps in the availability of number portability. Instead, the FCC has required (and the Commission has enforced the obligation of) all LECs throughout the state to be LNP capable for wireless providers -- including rural carriers.³⁴ In the case of rural carriers, they have been porting to wireless carriers and, where there is a CLEC operating in the rural areas, they must port to them as well. It is NYSTA's understanding that some VoIP providers are working with specific CLECs as gateway providers and porting is accomplished between the two telecommunications carriers. If any issues arise involving porting between an incumbent and a VoIP provider that is not associated with a CLEC, such an issue would need to be addressed by the FCC.

6. Are routing and rating information routinely exchanged, or are carriers exerting dominance to obscure the information necessary to ensure appropriate compensation and efficient network management?

While routing and rating information is routinely exchanged, even prior to the entry of VoIP providers in the state, incumbents have lost significant revenues due to phantom traffic, traffic where the originating or terminating NPA/NXX information is missing, has been scrubbed, or replaced with erroneous information.

³⁴ *See: Order Denying Petition*, Petition of Multiple Communications Companies for a Suspension of Wireline-to-Wireline Number Portability Obligations, Case 03-C-1508 (Issued and Effective April 19, 2004).

7. Have the FCC's recent rule changes restored an appropriate balance for facilities-based provision or is there more we should and could do?

The FCC's actions earlier this year addressed the future of UNE-P provisioning, laying out a timetable for its phase-out.³⁵ Such a question is best responded to by Verizon, AT&T, and other carriers directly affected by the outcome.

8. How has the playing field leveled for the state's smaller incumbent carriers? In our original order, we implemented a modified version of the "joint proposal" originally offered by the New York State Telephone Association. That proposal envisioned a gradual change in the relationship among local carriers, under which the incumbents would all gradually transition to a common basis for exchange of traffic and intercarrier compensation that would be symmetrical with the state's competitive local exchange carriers. How is the transition proceeding?

In the past several years, steps have been taken to eliminate EAS settlements between Verizon and the Independents and, for the few remaining carriers receiving the payments, the settlements will be phased-out in the near term. In addition, the Independents all exchange traffic with CLECs and compensate each other on a symmetrical basis. Specifically, traffic exchanged between an Independent and a CLEC operating in a Verizon exchange which is EAS to the Independent's exchange is accomplished as it is done between the Independent and Verizon directly. The only differences that arise are when virtual NXX codes are used by the CLEC or the billing records have been altered by another provider (phantom traffic). In these cases, the traffic is exchanged, but any problems with compensation are due to the incompleteness or alteration of the billing records.

³⁵ *Order on Remand*, In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-290 (Released February 4, 2005).

The Joint Proposal referenced in the question refers to a multi-part proposal from the Commission's September 1995 Order which established a lower access charge rate for full-service, facilities-based LECs.³⁶ Other types of providers (such as business-only LECs and IXCs) would continue to pay the existing charges. This general framework was adopted by the Commission, but other topics, such as LNP, directories, 911, and Universal Service contribution, were left to other proceedings.

9. Where market dominance persists or emerges for bottleneck facilities or functions that are critical for fair competition, active government oversight must exist. Are the Commission's processes adequate to remedy potential bottleneck issues?

NYSTA does not believe that given the current state of intermodal competition on both the wholesale and retail levels that bottleneck facilities exist. NYSTA believes the solution is to permit the incumbents to operate more on the same terms as the intermodal competitors. Such a result will promote the free-flow of competition, while retaining the Commission's oversight of the network.

³⁶ *Order Instituting Framework For Directory Listings, Carrier Interconnection And Inter-carrier Compensation*, Proceeding 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, Case 94-C-0095 (Issued and Effective September 27, 1995).

Conclusion

NYSTA appreciates the opportunity to present responses to the Commission's queries on this vital topic. New York has led the nation in establishing policies to promote competition and now should lead by recognizing the changing role of regulation in light of the new competitive pressures. These new regulations would replace the existing end user service standards with complaint handling, permit flexible pricing, eliminate certain requirements relating to products offered as service bundles, and minimize reporting. By acting proactively to address the changed competitive environment, the Commission can best assure that the public will continue to receive the most reliable telecommunications service available and stimulate investment in New York State.

Sincerely,

Robert R. Puckett, President
Louis Manuta, Vice President -- Regulatory Counsel
New York State Telecommunications Association, Inc.
100 State Street
Suite 650
Albany, New York 12207

518-443-2700
518-443-2810 (FAX)