

**Before the  
State of New York Public Service Commission  
Albany, New York**

---

In the Matter of: )  
Proceeding on the Motion of the Commission to Examine Issues )  
Related to the Transition to Intermodal Competition in the Provision ) Case 05-C-0616  
Of Telecommunications Services. )  
\_\_\_\_\_ )

**COMMENTS OF FIRST AVENUE NETWORKS**

**I. INTRODUCTION**

First Avenue Networks, Inc. (FRNS) is pleased to respond to the request for comments from the New York Public Service Commission.<sup>1</sup> FRNS is a wireless carrier's carrier. We offer rapidly deployable, highly reliable, and flexible solutions for carriers requiring wireless backhaul, fiber network extensions, and broadband connectivity. We also specialize in providing physically-diverse broadband connectivity to government agencies.

FRNS acquired spectrum licenses, transceiver equipment and other related operations from predecessor fixed wireless companies Teligent and Advanced Radio Telecommunications, and now possesses the premier millimeter fixed wireless spectrum holdings in the United States. FRNS management, and a predecessor company, participated in building or restoring business continuity protocol (BCP) and disaster recovery (DR) communications networks in New York post-9/11 using physically-diverse fixed wireless systems.

---

<sup>1</sup> Order Initiating Proceeding and Inviting Comments, Case 05-C-0616 (Issued and Effective June 29, 2005). (hereinafter "Initiating Order")

FRNS urges the Commission to use this proceeding to further establish policies for encouraging state-wide access to physically-diverse, facilities-based telecommunications capabilities.

## **II. COMMENTS**

FRNS structured its comments by reproducing (below) certain questions posed by the NY PSC in the Initiating Order, and then providing suggested solutions.

### **A. Consumer Protections**

- 1. Question: 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?<sup>2</sup>**

It is appropriate to relax consumer protections applicable to wireline companies only to the extent that more than one physically-diverse telecommunications provider alternative exists in buildings the Commission (upon reviewing municipal, state and federal standards) deems must enjoy continuous, uninterrupted carrier-grade service. For example, the Commission may possibly place hospitals, courts, law enforcement facilities, banks, etc., in a category of structures that require this consumer protection.

“Physical diversity” is defined as providing service to a building utilizing physically diverse ingress and egress points to the building separated as far as possible from the telecommunications ingress and egress points utilized by the incumbent network. Furthermore, the

---

<sup>2</sup> Initiating Order at p. 10

telecommunications rights-of-way (ROW) serving the buildings must be separated as far as practical, and at least 25 feet apart. Finally, the telecommunications services on the ROW must divert to local network facilities physically separate from the incumbent local network facilities currently serving that building.<sup>3</sup>

While New York continues to examine certain critical infrastructure issues,<sup>4</sup> it is crucial that the NY PSC examines these issues in the broader real world context. This instant proceeding directly impacts the existence and type of services directly available to the public, and accordingly directly impacts public safety and critical infrastructure communications services available to businesses, government agencies and homes.

**2. Question: What impact might municipally owned wire/wireless networks have?<sup>5</sup>**

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

**B. Universal Service**

**1. Question: Do the universal service goals articulated in 1996 remain valid in 2005?<sup>6</sup>**

---

<sup>3</sup> See generally, Public Law 108-447, Section 414 (December 8, 2004).

<sup>4</sup> For example, Case No. 03-C-0922.

<sup>5</sup> Initiating Order at Appendix A.

<sup>6</sup> Id at p. 12-13.

The universal service goals require updating to reflect the importance of establishing physically-diverse telecommunications services to key buildings and locations so designated by the municipal, state and federal governments.

- 2. Question: 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?<sup>7</sup>**

As long as it evolves to comport with the answer to B(1) above.

- 3. Question: 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?<sup>8</sup>**

As long as universal service funding evolves to comport with the answer to B(1) above.

### **C. Market Power and Regulatory Flexibility**

- 1. Question: One of the basic issues confronting us today is, given proliferation of the intermodal competition and choices for consumers, what is the appropriate role of the regulator in preventing market power abuses?<sup>9</sup>**

The regulator must add to its market power abuse analysis the evolving public safety considerations. Public safety matters require

---

<sup>7</sup> Id at p. 13.

<sup>8</sup> Id at p. 13.

<sup>9</sup> Id at p. 14.

closer scrutiny due to the new challenges facing the public interest in the post-9/11 environment.

#### **D. Service Quality**

- 1. Question: 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 (wire and wireless, VoIP and cable telephony)?<sup>10</sup>**

Consumer, business and government choices should be informed solely by service levels delivered, regardless of modality. When establishing service level criteria the Commission should consciously consider which class(es) of consumers require access to physical diversity, BCP and DR services.

- 2. Question: 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?<sup>11</sup>**

See the answer to A(1) above.

- 3. Question: 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?<sup>12</sup>**

For years the U.S. Department of Transportation encouraged pipeline communications safety standards that included physically

---

<sup>10</sup> Id at p. 15.

<sup>11</sup> Id. at p. 15.

<sup>12</sup> Id. at p. 15.

diverse communications along pipelines and other such facilities.

Railroads also comply with certain federal communications standards.<sup>13</sup>

It is time for NY State to consider the same.

4. **Question: Are performance standards essential to ensure that consumers have access to a reliable, seamless network of networks and, if so, should they be changed?**<sup>14</sup>

A seamless network of networks fails to meet the public interest if it contains bottlenecks. Instead, two or more physically separate and diverse telecommunications networks meets present day needs.

5. **Question: 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?**<sup>15</sup>

Part 603 (Service Standards) require updating to reflect the physical diversity needs articulated above.

6. **Question: 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**

---

<sup>13</sup> Concerning railroads, see generally, 49 C.F.R. Part 220.

<sup>14</sup> Id. at Appendix A, p. 3.

<sup>15</sup> Id. at p. 17.

**order for us to gauge the robustness of telecommunication infrastructure in the state?<sup>16</sup>**

The NY PSC should consider methods for gathering data about whether key buildings and areas can enjoy full telecommunications functionality if the incumbent network fails.

**E. Level Playing Field**

- 1. Question: Have the FCC's recent rule changes restored an appropriate balance for facilities-based provision or is there more we should and could do?<sup>17</sup>**

The Commission could update standards to make certain that microwave system collocation is feasible, and available in a timely manner, upon the roofs of ILEC switching centers. Also, instruct and require incumbents to place more clearly in their tariffs an offering that provides access to any poles, ducts, conduits, rooftops and rights-of-way available to those incumbents. Such availability is critical to facilities-based competition and public safety.

- 2. Question: Where market dominance persists or emerges for the 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?<sup>18</sup>**

See answer to A(1) above.

---

<sup>16</sup> Id. at p. 17.

<sup>17</sup> Id. at p. 20.

<sup>18</sup> Id. at p. 19.

### **III. CONCLUSION**

WHEREFORE THE PREMISES CONSIDERED, First Avenue Networks, Inc. respectfully asks the NY PSC to proceed expeditiously in its consideration of these proceeding, while giving due consideration to the above comments and recommendations.

Respectfully Submitted,

**First Avenue Networks, Inc.**

---

Joseph Sandri  
Anne McPherson  
First Avenue Networks, Inc.  
1730 Rhode Island Ave NW  
Suite 317  
Washington D.C 20036  
Ph(202)/223-2003

Dated: August 15, 2005