

**Before the
NEW YORK PUBLIC SERVICE COMMISSION**

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

**COMMENTS OF
OMNIPOINT COMMUNICATIONS INC.,
d/b/a
T-MOBILE**

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Dated: August 15, 2005

SUMMARY

As one of the fastest growing nationwide wireless service providers offering digital voice, messaging and high-speed wireless data services to more than 19 million customers in the United States, T-Mobile applauds the NYPSC's focus on fostering competition and appreciates the Commission's history of responsible regulation. T-Mobile is committed to serving the New York market. With a service area reaching 88% of the New York population, T-Mobile has more than 2 million New York subscribers and has thus far invested almost \$1.2 billion in its network in New York alone. One of T-Mobile's primary goals is to compete directly with wireline carriers by providing wireless services that are not only fully substitutable for wireline services, but superior to those services so that consumers have a real choice between technologies and service providers. As an independent wireless carrier, T-Mobile offers a unique perspective in this proceeding and looks forward to working with the Commission to ensure that its policies promote and develop a regulatory paradigm for true intermodal competition.

The principles the Commission espoused in 1996 remain valid today. T-Mobile agrees with the Commission that regulation must be flexible. Where competition is robust, regulatory restraint is best. Where competition is not robust, intervention may be necessary. For example, T-Mobile supports government regulation and enforcement with respect to bottleneck facilities like special access, and agrees with the Commission that oversight should be exercised where there are inadequate levels of intermodal competition. By contrast, T-Mobile respectfully submits that the Commission does not need to adopt additional consumer protection measures for wireless services. Rather, the Commission should maintain policies that foster competition, which creates incentives for carriers to make further investments in order to improve the

customer experience, rather than require carriers to divert resources to focus on regulatory compliance.

With respect to universal service, T-Mobile submits that the Commission's goals and definition of basic service remain appropriate, and that there is no need to expand the list of universal services at this time. T-Mobile urges the Commission to resist the temptation to allow universal service funds to creep increasingly larger over time, which results in an increased funding burden that inhibits competition. Rather, the Commission should foster competition by ensuring that the funding burden is spread evenly among all service types and providers, and that all funding providers are eligible to receive support from the funds to which they contribute.

Based upon its experiences in the marketplace generally and in the State of New York specifically, T-Mobile believes that a reliable network cannot be established by government fiat. Rather, it is the presence of multiple carriers competing for diverse customer demand that fosters network reliability. As such, there is no need to adopt performance measurements for wireless services.

Finally, in light of NANC's review of numbering issues and New York's credible input in this process it is not necessary for the NYPSC to adopt any new numbering measures at this time. In short, there are no problems that require specific action by the Commission at this time. Rather, New York should continue to focus on exercising its current authority over numbering resources in a non-discriminatory fashion.

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**COMMENTS OF
OMNIPOINT COMMUNICATIONS INC., d/b/a T-MOBILE**

Omnipoint Communications Inc., d/b/a T-Mobile (“T-Mobile”), through its attorneys, hereby comments on the regulatory policy questions the New York Public Service Commission raised in its *Order Initiating Proceeding and Inviting Comments*, issued June 29, 2005 in the above referenced docket¹

INTRODUCTION & BACKGROUND

As one of the fastest growing nationwide wireless service providers offering digital voice, messaging and high-speed wireless data services to more than 19 million customers in the United States, T-Mobile applauds the NYPSC’s focus on fostering competition and appreciates the Commission’s history of responsible regulation. It is no surprise that New York has initiated this proceeding to review whether its regulatory policies need to be amended to reflect technological advances in communications. New York has long been a leader with respect to fostering competition and innovation, and T-Mobile looks forward to working with New York to ensure that the Commission follows the best means for achieving its goals.

¹ 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 Initiating Proceeding and Inviting Comments*, issued and effective June 29, 2005 (“Order”).

T-Mobile is an independent commercial mobile radio service carrier operating the largest GSM/GPRS 1900 MHz voice and data network in the country. T-Mobile is the only national wireless carrier that is not affiliated with an independent local exchange carrier ("ILEC"). T-Mobile's entire national voice and data network has been upgraded with 2.5G GPRS technology, providing customers with wireless Internet access at average speeds of 40 Kbps, which increasingly rivals, and in some instances exceeds, the speed of standard dial-up wired connections. Using global technology, T-Mobile offers customers the advantage of using their same wireless phone or handheld devices when traveling worldwide. T-Mobile continually strives to deploy and offer our customers new products and services which will make their lives safer, easier, and more enjoyable. For that reason, strong pro-competitive policies are particularly important to T-Mobile.

T-Mobile's position as a leader in the wireless industry is reflected in its high standards for customer care. Due to its commitment to its customers and its Get More® promise—offering wireless consumers more minutes, more features and more service than other carriers—T-Mobile has won the JD Power & Associates Award for overall customer care performance two years in a row (2004 & 2005). In addition, T-Mobile was the winner of the JD Power & Associates Award for Network Quality in the Northeast Region in both 2004 and 2005.

T-Mobile is rolling out new wireless IP products and services every day. For example, T-Mobile has introduced integrated voice and data services, including PC Internet cards that can be used with a laptop computer or PDA; all in one devices such as the popular BlackBerry wireless handheld with integrated phone; the Windows Mobile-based Pocket PC Phone Edition, a voice enabled PDA that features a full-color HTML Internet experience and pocket version of popular Microsoft software; and the revolutionary T-Mobile Sidekick™ device, an innovative

all-in-one device with a unique swivel-top form factor that includes a QWERTY keyboard, full-color Web browsing, imbedded AOL® Instant Messenger (AIM®) service and built-in camera. Because of its commitment to its customers, T-Mobile has a unique and in-depth understanding of the types of policies that are necessary truly to foster the type of intermodal competition that will benefit New York's citizens.

T-Mobile is committed to serving the New York market. With a service area reaching 88% of the New York population, T-Mobile has more than 2 million New York subscribers and has thus far invested almost \$1.2 billion in its network in New York alone. One of T-Mobile's primary goals is to compete directly with wireline carriers by providing wireless services that are not only fully substitutable for wireline services, but superior to those services so that consumers have a real choice between technologies and service providers. Consumers have grown to appreciate the benefits of wireless services, and a growing number are relying increasingly on wireless. Even consumers who are not heavily reliant on wireless services benefit from the vibrant intermodal competition that strong wireless carriers with innovative service offerings generate (*e.g.*, one rate offerings, free long distance, buckets of minutes). For this reason, New York should continue focusing upon how to create a level playing field and to foster true intermodal competition between independent wireless carriers like T-Mobile and wireline carriers, including ILECs and their wireless competitors.

Recognizing the fast pace of technological change, New York has done a great job at staying ahead of the curve and has never shied away from tackling tough new issues. Although challenges remain, the Commission has eliminated many barriers to competition which has enabled wireless competitors like T-Mobile to offer services to millions of New Yorkers. T-Mobile appreciates the opportunity to work with the NYPSC in this docket to address the

remaining bottlenecks that stifle competition. The principles the Commission espoused in 1996 remain valid today. T-Mobile agrees with the Commission that regulation must be flexible. Where competition is robust, regulatory restraint is best. Where it is not, intervention may be necessary.² As an independent wireless carrier, T-Mobile offers a unique perspective in this proceeding and looks forward to working with the Commission to ensure that its policies promote and develop a regulatory paradigm for true intermodal competition.

I. COMPETITION, NOT ADDITIONAL CONSUMER PROTECTION RULES AND CODES, IS THE BEST WAY TO PROTECT CONSUMERS

The Commission's Order asks parties to comment on whether existing rules and regulations protect consumers.³ Competition is remarkably effective at protecting consumers because service providers know they must work extra hard to protect consumers who have both the right and the ability to receive the services they want from the provider of their choice. When consumers have both the right and the ability to receive the services they want from the provider of their choice, service providers that protect subscribers will be rewarded while service providers who neglect their subscribers will be punished.

Rather than seeking to implement new rules or consumer protection codes, the Commission should focus on fostering vibrant intermodal competition in New York, because competition is the most effective and efficient means for ensuring that consumers receive the best possible customer service and the most innovative services at reasonable prices. The strong incentives to gain and maintain subscribers in a competitive marketplace protect consumers far more efficiently than any consumer protection regulation, no matter how well written and

² Order at 2.

³ Order at 10.

implemented. In fact, in a competitive marketplace, prescriptive consumer protection regulations can have the effect of forcing service providers to divert attention and resources away from competition and towards regulatory compliance, and limiting a carrier's ability to respond to the demands and preferences of its customers.

With respect to wireless services in particular, *Congress mandated a pro-competitive, national deregulatory framework for wireless providers, which has enabled wireless to grow into a competitive industry.* As the Commission has recognized, the wireless industry is constantly responding to consumer demands for improved quality of service due to the robust competition for wireless services.⁴ A competitive wireless market has produced lower prices for consumers and better technology. The success of the wireless sector is driven by carriers like T-Mobile offering services attuned to consumer demand as opposed to traditional, regulated, monopoly-based service offerings.

Competition has produced innovative pricing plans like free night and weekend minutes and free mobile-to-mobile calling, and has driven down the price of wireless services, as well as wireline services, even as new capabilities and equipment options are introduced. Further, the advent of wireless local number portability has facilitated consumer choice by making it easier than ever for consumers to switch between wireless service providers, or between wireless and wireline carriers. If a consumer is not happy with her wireless service, she can take her telephone number to another provider. In New York alone, depending upon the area of the state, customers may choose from as many as eight different wireless carriers. Because competition is so strong, particularly among wireless carriers, the market forces wireless providers not only to offer services to meet consumer demand but also to focus on providing excellent customer

⁴ Order at 7.

service. Customer acquisition costs are so high, that carriers have every reason to retain each customer they have fought so hard to acquire. Disgruntled customers can easily switch service providers and, more importantly, tell other potential customers about their negative experience. All of these factors create strong incentives for wireless carriers to keep their customers happy by resolving customer complaints swiftly and to the satisfaction of the consumer.

T-Mobile has a proven track record of resolving, on a timely basis, complaints sent to the NYPSC and strives to resolve all complaints within 30-days of receipt of such disputes. T-Mobile, like most wireless carriers, arms its customers with information on how to contact the company with questions or disputes. T-Mobile seeks to resolve customer complaints promptly and courteously regardless of whether the complaint is received through customer service or through a complaint to the NYPSC.

Wireless providers have developed a set of national standards designed to facilitate the provision of accurate information between consumers and wireless service providers. T-Mobile and more than 30 other wireless carrier competitors have voluntarily signed on to the CTIA Consumer Code, which is a guide for wireless carriers to follow with customers. Realizing the need to ensure customer satisfaction and customer retention, the industry reacted by making significant changes to their systems and implementing the requirements of the CTIA Customer Code *before* any regulatory requirements were even contemplated. Carriers who are signatories to the CTIA Consumer Code have agreed, among other things, to:

- 1) disclose rates and terms of service to consumers and allow at least a 14-day trial period for new service;
- 2) provide specific disclosures in advertising;
- 3) provide service area maps;
- 4) provide customers with the right to terminate service for changes to contract terms;

- 5) identify carrier charges separately from taxes on billing statements;
- 6) abide by privacy protection policies;
- 7) provide ready access to customer service; and
- 8) promptly respond to consumer inquiries and complaints received from agencies.

The CTIA Customer Code is only one example of several voluntary steps T-Mobile has taken to address customer service issues. In several instances, T-Mobile has surpassed the CTIA Consumer Code and provided potential customers and current customers consumer friendly tools – most notably is T-Mobile's Personal Coverage Check ("PCC"). The T-Mobile Personal Coverage Check allows prospective and current customers to assess the quality of T-Mobile's signal coverage down to the neighborhood level. Several weeks ago, Commissioner Geoffrey F. Brown of the California Public Utilities Commission ("CPUC"), joined by Commission President Michael R. Peevey and Commissioner Dian M. Grueneich, praised T-Mobile for instituting the PCC.⁵ Commissioner Brown stated that "T-Mobile deserves to be commended for helping the public know what it can and cannot expect from their service." Importantly, the PCC was the result of the company's conscious decision that signing up customers who ultimately will be unhappy with T-Mobile's service makes poor financial sense and is counterproductive in the long run.⁶

⁵ See Statement of Commissioner Geoffrey F. Brown Regarding T-Mobile First To Have On-Line Wireless Telephone Coverage Maps (May 5, 2005) (available at www.cpuc.ca.gov/static/aboutcpuc/commissioners/02brown/statements/05102005_wirelessmaps.htm).

⁶ Another CPUC representative similarly noted that PCC "is a big step forward for consumers, and we hope other carriers follow suit." See "7 On Your Side" Tests Cell Phone Coverage (June 20, 2005) (available at http://abclocal.go.com/kgo/news/7oys/062005_7oys_cell_coverage.html). Given the exceptionally positive reception T-Mobile has received about PCC from its customers, it is very likely that other wireless providers will do exactly that.

T-Mobile's award winning customer service is the result of a focused business strategy. The Get More® promise was developed by T-Mobile to meet the needs of its customers. Personal Coverage Check is one of the tools that allows T-Mobile to deliver on the Get More® Commitment and provides consumers up to the minute information on T-Mobile's network coverage on a block by block basis across the United States. T-Mobile's "Get More" philosophy has also driven the company to provide customers with the best overall value with more minutes, more features and more service than other carriers. These initiatives have also served as a catalyst for further competition among wireless providers as others strive to match T-Mobile's recognized customer service.

For two years straight, T-Mobile has been ranked number one among all wireless carriers in customer service by J.D. Power and Associates. According to the J.D. Power's most recent survey of customer care for wireless carriers, T-Mobile improved upon last year's highest-ranking overall performance, scoring particularly well for answering customer calls promptly and resolving issues during the first call for support.

In a highly competitive industry like wireless, customer service is a clear differentiator, so all of wireless carriers are focusing on customer service due to competition. Because market forces are protecting consumers, regulatory restraint is appropriate, particularly since additional rules could inhibit competition and thus prove to be counterproductive. Moreover, since the introduction of intermodal portability, consumers who are unhappy with their wireline service provider have the option to retain their number while switching to a wireless service provider. As explained above, one of T-Mobile's primary goals is to compete directly with wireline carriers by providing wireless services that are not only fully substitutable for wireline services, but superior to those services so that consumers have a real choice between technologies and

service providers. The mere threat of competition from wireless carriers creates powerful incentives for wireline carriers to improve their customer service in order to prevent their subscribers from switching service providers.

In sum, the NYPSC should maintain policies that foster competition, which creates incentives for carriers to make further investments in order to improve the customer experience, rather than require carriers to divert resources to focus on regulatory compliance. Accordingly, T-Mobile respectfully submits that the NYPSC does not need to adopt additional consumer protection measures for wireless services.

II. NEW YORK SHOULD CONTINUE TO ENCOURAGE INTERMODAL COMPETITION

A. The Current Definition of “Basic Service” for Universal Service Remains Appropriate

The Order asks parties to comment on whether the universal service goals and definition of “basic service” established by the NYPSC in 1996 remains valid.⁷ T-Mobile submits that the Commission’s goals and definition of basic service remain appropriate, and that there is no need to expand the list of universal services at this time. Despite the proliferation of competition and the introduction of new and innovative services, the basic “needs” of consumers have not evolved since this Commission last examined its list of basic services or noted in comments to the Federal Communications Commission that “no new service satisfies the statutory criteria contained in Section 254(c).”⁸ Expansion of the list would unnecessarily introduce new

⁷ Order at 12-13.

⁸ Comments of the NYPSC, *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 02J-1, 17 FCC Rcd 14095 (July 10, 2002) at 5.

challenges to maintaining adequate funding mechanisms that are fair, equitable and competitively neutral.

T-Mobile agrees with the Commission's previous findings that there is no need to establish a universal service funding mechanism to ensure affordable rates in "high cost" areas of the state. Consistent with this approach, T-Mobile applauds the Commission's 2003 forward looking decision in Case 02-C-0595 to phase out the New York Intrastate Access Settlement Pool.⁹ Eliminating the Access Pool all together will align costs and rates, and afford all companies the proper incentives to control their costs. Likewise, there is no reason to adopt additional universal service support or similar mechanisms to replace lost intercarrier compensations revenues. Replacing lost intercarrier compensation revenue would increase the size and funding obligation of an already overburdened support regime and lock-in legacy carrier inefficiencies, which is exactly the opposition of what the Commission must do to promote operational efficiency and true intermodal competition. In effect, to base intercarrier compensation reform on a premise of revenue neutrality to a segment of carriers, regardless of changes in technologies and markets, is to pick a "winner" in the market place (or at least to assure that the particular segment of competitors cannot "lose"); and that is hardly a proper role for regulators.

Services supported by universal service must be defined in a competitively and technologically neutral manner, and universal service support must remain fully portable and available to all carriers, without respect to the technology they use to deliver basic services. In 2004, wireless service providers paid almost 27 percent of all universal service contributions

⁹ Case 02-C-0595, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of the New York Intrastate Access Settlement Pool, Inc. for Traffic Sensitive Access Rates, *Order Adopting Comprehensive Plan*, issued December 23, 2003.

across the country, but received only seven percent of all universal service support.¹⁰ In contrast, ILECs paid around 24 percent of universal service contributions and received 81 percent of all universal service support.¹¹ This imbalance stymies intermodal competition and encourages the use of inefficient legacy networks.

T-Mobile urges the Commission to resist the temptation to allow universal service funds to creep increasingly larger over time, which results in an increased funding burden that inhibits competition. Rather, the Commission should foster competition by ensuring that the funding burden is spread evenly among all service types and providers, and that all funding providers are eligible to receive support from the funds to which they contribute.

B. New York Should Foster Intermodal Competition By Ensuring Non-Discriminatory Access To Bottleneck Facilities and Services

T-Mobile agrees with the Commission that, “[w]here competition is robust, regulatory restraint is the best approach; where it is not, some intervention may be required to restrain the exercise of market power”¹² As this Commission has long recognized, the “primary reason for regulation is to protect consumers from abuses by dominant suppliers of essential services” T-Mobile agrees that the exercise of market power over essential telecommunications services is not in the public interest.¹³ *T-Mobile respectfully suggests that*, rather than adopting sweeping

¹⁰ See Industry Analysis and Technology Division, Wireline Competition Bureau, “Trends in Telephone Service,” at Table 19.15 (May 2004) (“2004 Telephone Trends Report”); Universal Service Administrative Company, Federal Universal Service Support Mechanisms Quarterly Contribution Base for the Second Quarter 2005, at 4 (March 2, 2005) (“USAC 2Q Contribution Report”) available at www.universalservice.org/overview/filings/2005/Q2/2Q2005%20Contribution%20Base%20FCC%20Filing.pdf; USAC 2004 Annual Report at 27.

¹¹ See 2004 Telephone Trends Report at Table 19.15; USAC 2Q Contribution Report at 4; USAC 2004 Annual Report at 27.

¹² Order at 2.

¹³ Order at 13.

regulations in an effort to achieve broad policy goals, the Commission should adopt narrow regulations that target specific, identifiable harms. The harm that flows from control of bottleneck facilities by carriers with market power is well documented and very real. This harm is compounded when the carriers that control bottleneck facilities are able to leverage this control and market power into other markets, like the ILECs can leverage their control over wireline bottleneck facilities into the markets for wireless and broadband telecommunications and information services.

T-Mobile supports government regulation and enforcement with respect to bottleneck facilities like special access, and agrees with the Commission that oversight should be exercised where there are inadequate levels of intermodal competition.¹⁴ To offer their services, intermodal competitors like wireless, satellite and information service providers (*e.g.*, ISPs, VoIP service providers) depend on key wholesale inputs that only the ILECs can deliver. If access to necessary inputs is delayed or the inputs are priced too high, competition will suffer. In turn, consumers will have less choice and will be forced to pay higher prices. Therefore, the presence of even vigorous intermodal competition for end user customers (which is not yet present) is not sufficient to prevent dominant carriers from exercising their control over bottleneck facilities in a manner that harms consumers. In fact, the more vigorous the competitive pressure, the higher the incentives for a dominant carrier to exercise its control over bottleneck facilities in a manner to gain competitive advantage over competitors that rely on those facilities.

T-Mobile depends on Verizon for special access services that are critical inputs to T-Mobile's competitive wireless offerings. In particular, Verizon provides the links that T-Mobile needs to connect its cellular base stations with Verizon's central offices. Verizon is also T-

¹⁴ Order at 13.

Mobile's primary provider of special access circuits for the interoffice transport links that T-Mobile requires for backhauling traffic. Because there are few competitive alternatives for special access services, T-Mobile is, more often than not, forced to buy such circuits from Verizon on the terms and conditions that Verizon demands. The current lack of competition in the supply of special access services gives Verizon (and the other ILECs) the ability and the incentive to take anticompetitive actions against T-Mobile.

The FCC is conducting a review of its rules for special access pricing flexibility and T-Mobile recently submitted comments demonstrating that the FCC's special access pricing flexibility rules are fundamentally flawed.¹⁵ T-Mobile has urged the FCC to tighten its pricing flexibility regime to reflect the lack of competition in the supply of special access.

The NYPSC should take steps to control Verizon's ability to discriminate in the provision of special access services. First, the NYPSC must ensure that Verizon provides special access services and facilities at reasonable, cost based rates. New York should review its pricing flexibility rules for special access services to determine if they are adequately predicting the presence of competition. Second, Verizon must demonstrate through performance reports that it is providing and maintaining special access circuits to competitors on a timely basis.

Verizon's ability to discriminate in the provision of special access will only intensify if it is permitted to merge with one of its largest competitors, MCI. Both the Verizon-MCI merger and the SBC-AT&T merger threaten to radically increase the degree of concentration in the telecommunications industry. To ensure that competition continues to thrive in NY, the NYPSC must continue to promote intermodal competition, including competition from wireless providers. In order to do so, the NYPSC must ensure that the inputs that wireless carriers

¹⁵ *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Comments of T-Mobile USA, Inc. (June 13, 2005).

purchase from Verizon to provide service to consumers are provided on a nondiscriminatory basis at just and reasonable rates.

At the FCC, T-Mobile has opposed approval of the Verizon-MCI and SBC-AT&T mergers because the mergers would result in the two largest ILECs owning the two largest interexchange carriers (“IXCs”) and controlling the two largest wireless carriers. T-Mobile has urged the FCC to only approve the proposed mergers subject to targeted conditions that:

- (i) ensure Verizon and SBC provide special access services and facilities at reasonable, cost based rates;
- (ii) impose performance standards on Verizon’s and SBC’s special access provisioning, maintenance, restoration and repair;
- (iii) impose nondiscrimination requirements on the post-merger companies’ provision of wholesale long distance; and
- (iv) ensure that Verizon and SBC make naked DSL available to consumers without discrimination at cost cost-based rates.¹⁶

In reviewing the Verizon-MCI merger, NY Staff concluded that the merger will increase concentration in the mass market and “produce significant consolidation” in the enterprise and medium size business markets.¹⁷ The NY Staff recommended potential remedies that include some regulation of special access services. T-Mobile urges the NYPSC to adopt the recommendations of the Department Staff, and encourages strong regulatory oversight by the Commission of Verizon’s wholesale service offerings. If bottleneck facilities like special access are not regulated, competition will suffer.

¹⁶ *In the Matter of Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, DA 05-762, Response of T-Mobile USA, Inc. at 5-6 (May 24, 2005); *In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65 & DA 05-762, Response of T-Mobile USA, Inc. at 4 (May 10, 2005).

¹⁷ Case 05-C-0237, Department of Public Service Staff White Paper, at 5-6 (July 6, 2005).

C. Wireless Competition Leads to Better Service Quality for All Consumers

The Order poses several questions relating to service quality regulation and seeks comment on whether it is necessary to adopt performance measurements for wireless services.¹⁸ At this time, no further data on wireless networks need be collected for the NY PSC to assess the robustness of network infrastructure in the state. Based upon its experiences in the marketplace generally and in the State of New York specifically, T-Mobile believes that a reliable network cannot be established by government fiat. Rather, it is the presence of multiple carriers competing for diverse customer demand that fosters network reliability.

T-Mobile and the other wireless providers operating in New York have previously collaborated over the course of the past several years with the NY PSC in regards to the Commission's Network Reliability docket and the Commission's investigation of the August 2003 Blackout. In both instances, T-Mobile provided detailed information with respect to our network architecture and access to senior technical experts to seek further understanding about our robust network, it's reliability, sustainability and it's performance during both ordinary operations as well as during events such as the immediate hours and days following September 11, 2001, and during the August 2003 Blackout.¹⁹ In addition, the wireless industry provided the Commission details of Federal Communication Commission ("FCC") voluntary wireless initiatives designed to address local and national network performance. Since that time, the FCC has subsequently mandated the previously voluntary network outage reporting for wireless carriers in an effort to provide information and assistance to state and local governments in their

¹⁸ Order at 15.

¹⁹ In fact, T-Mobile's exemplary performance during the August 14, 2003 blackout was recognized publicly as operating reliably. See Brian Virasami, *Schumer Rips Cell Companies: Seeks reform after phones failed during blackout*, *Newsday* (New York), Aug. 25, 2003 at A6.

efforts to ensure reliable communications. As discussed below, national outage reports include sufficient information about New York to enable this Commission to determine if problems exist.

Today, wireless providers follow a number of national service quality regulations. As previously mentioned last year, the FCC adopted mandatory outage-reporting requirements for wireless providers.²⁰ The federal outage performance standards were adopted to protect homeland security and public health and safety.²¹ The outage reports require, among other things, that carriers identify the cause of the outage (*e.g.*, lack of redundancy) so that such outages can be prevented in the future.²²

In previous discussions with the Commission, T-Mobile and the wireless carriers have referenced in detail the activities of the Network Reliability and Interoperability Council "NRIC") in this regard. Wireless carriers continue to participate in the development of national network policies via NRIC that benefit New York. Currently wireless carriers and various other segments of the industry and government, including representatives of New York City, are engaged in Network Reliability and Interoperability Council VII ("NRIC VII") which is focused on improving practices for interoperability of telecommunications networks, security, capacity and sustainability during natural disasters, terror attacks or similar occurrences.²³ At the moment, NRIC VII is particularly concerned with ensuring that E911 and other emergency

²⁰ *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, FCC 04-188 (2004). ("*New Part 4*").

²¹ *New Part 4* at ¶¶ 1 and 101.

²² *New Part 4* at ¶ 6.

²³ *Charter of the Network Reliability and Interoperability Council – VII* (amended Mar. 12, 2004)
<http://www.nric.org/charter_vii/NRICVII_Charter_FINAL_Amended_2004_3_12_04.pdf>.

communications networks are being appropriately supplied by wireless providers.²⁴ NRIC VII is also tasked with determining the baseline level of service quality necessary for emergency communications.²⁵ Focus Group 3A-Wireless Networks is charged with developing best practices unique to wireless networks. The work is scheduled to be completed by the end of September 2005 and the approved reports with recommendations for industry best practices will be posted on NRIC's web page.

Here in New York, the NYPSC has analyzed network reliability and concluded that certain enhancements may be required to ensure the reliability and security of New York's telecommunications networks.²⁶ Moreover, the NYPSC is reviewing the physical and cyber security arrangements of telecommunications utilities to ensure that security arrangements are adequate.²⁷ Similarly, New York has established regulations to ensure priority restoration and provisioning for the most important security and emergency preparedness telecommunication services.²⁸ T-Mobile respectfully submits that these measures are more than adequate to foster and monitor network reliability, and that further redundant measures would only divert carrier resources away from network investment and competition.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Case 03-C-0922, Proceeding on Motion of the Commission to Examine Telephone Network Reliability, *Order Concerning Network Reliability Enhancements and Attached Network Reliability Memorandum*, issued July 28, 2004.

²⁷ Case 02-M-0953, Proceeding on Motion of the Commission as to Telephone and Energy Utility Arrangements for Safeguarding the Security of Their Physical Equipment and Cyber Systems, *Order Instituting Proceeding and Establishing Procedures for Preparation of Security Evaluations*, issued August 2, 2002; Case 02-M-0953, Proceeding on Motion of the Commission as to Telephone and Energy Utility Arrangements for Safeguarding the Security of Their Physical Equipment and Cyber Systems, *Order Directing Further Action*, issued and effective September 30, 2003.

²⁸ Case 03-C-0922, Proceeding on Motion of the Commission to Examine Telephone Network Reliability, *Order Directing Filings Concerning Critical Facilities Administration and Telecommunications Service Priority Services and Requesting Public Comment on This National Security Program* at 4-5, issued June 15, 2005.

D. New York Should Exercise Its Delegated Authority Over Numbering in a Non-Discriminatory Manner that Facilitates Intermodal Competition

The Order asks whether there is a need for NYPSC action on numbering.²⁹ The North American Numbering Council (NANC) is in the process of addressing the impact of technological changes and innovation on numbering. Last November, the FCC held a numbering symposium to determine whether new technologies, innovations and services will affect numbering administration and optimization. Following the symposium, the NANC Chair established the Future of Numbering (FON) Working Group to address the future of numbering in the North American Numbering Plan area. FON, which includes representation by Commissioner Thomas Dunleavy, is investigating new telephone number assignment approaches and future telephone number assignment requirements. Commissioner Dunleavy and other members of the National Association of Regulatory Utility Commissioners, along with various segments of the telecommunications industry have already prepared a significant report which has been provided to the FCC with recommendations on how best to manage the accessibility of and the efficient use of numbering resources with the introduction of new technologies.

In light of NANC's review of numbering issues and New York's credible input in this process it is not necessary for the NYPSC to adopt any new numbering measures at this time. In short, there are no problems that require specific action by the Commission at this time. Rather, New York should continue to focus on exercising its current authority over numbering resources, which was delegated to the state from the FCC, in a non-discriminatory fashion.³⁰ Nonetheless, New York can, and should, *track the progress of NANC's review of these issues at [---

²⁹ Order at 18.](http://www.nanc-</i></p></div><div data-bbox=)*

³⁰ See, e.g., *In the Matter of New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures*, 14 FCC Rcd. 17467 (1999).

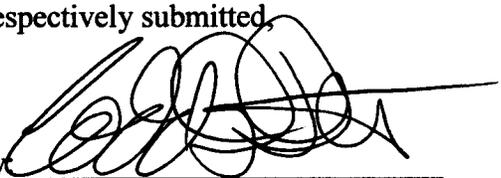
chair.org. Further, the NYPSC should continue to support intermodal competition by ensuring that all telephone numbers remain portable regardless of the type of technology used to provide the service with which they are associated, which is similar to the NYPSC's decision to not grant waivers to carriers for the deployment of local number portability. In the event, that a problem subsequently develops, the Commission can work with NANC and the FCC to address the problem as efficiently as possible.

CONCLUSION

For the foregoing reasons, the Commission should continue to focus on developing a regulatory paradigm which fosters intermodal competition rather than adopting prescriptive wireless business practice regulations designed which inevitably harm consumers by inhibiting competition.

Respectively submitted,

By



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