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January 27, 2010

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

Re: Comments - NBP Public Notice #30
GN Docket Nos. 09-47, 09-51, 09-137

Dear Ms. Dortch:

The following reply comments are submitted on behalf of the New York State Public Service Commission (NYPSC) pursuant to the Federal Communications Commission's (FCC or Commission) above-referenced Public Notice (Notice). Our comments focus on the filings made in response to the FCC's National Broadband Plan - Public Notice #25, FCC Dockets GN 09-47, 09-51 and 09-137, on the proper policy framework for the transition from a circuit switched (PSTN) to an internet protocol (IP) - based communications network. The NYPSC concurs with many of the comments filed by other state regulatory agencies which indicate the need for the FCC to address the regulatory and jurisdictional classification of facilities-based Voice over Internet Protocol (VoIP) services. The NYPSC recognizes the competitive marketplace has significantly altered the need for traditional regulation, but believes the FCC should make clear that states still have a role in protecting consumers in the provision of local telecommunications services, and in fact are uniquely suited to do so.

Many of the comments put forth by the industry focus on why the IP network of the future should be exclusively the jurisdiction of the FCC and how such a decision would provide regulatory clarity and certainty and pave the way for ubiquitous broadband. Many of these points amount to a rehashing of comments from earlier FCC proceedings.

These arguments supporting exclusive interstate jurisdiction over VoIP services and IP networks and encouraging the elimination of the states' role in an IP environment have been unambiguously addressed by the NYPSC (as well as by other state regulatory agencies.)¹ It will serve no purpose here to once again argue issues such as whether VoIP is a telecommunication or information service. These issues have been fully vetted in other forums. What is important to understand and contrary to the general tone of the industry comments, is that the states have a role, in partnership with the FCC, in overseeing the transition of the network as it evolves from a PSTN to an IP network. That partnership will provide a viable, robust, and reliable telecommunications network which will provide for the safety and welfare of the citizenry in addition to supporting competition in the industry.

Since the first steps were taken toward a competitive marketplace over two decades ago, the states and the FCC have had separate oversight roles – but both were equally important in insuring the development of a competitive marketplace. The Telecom Act of 1996 set the guidelines for transition to competition and clearly identified those areas which were best served by state oversight. There is merit in the FCC setting certain national policy that provides for uniformity, reliability, viability, and accessibility of networks. On the other hand, states are in a better position to provide oversight, remediate problems, and enforce regulations at the local level. States will remain interested in issues such as carrier of last resort obligations, carrier interconnection, intercarrier compensation, network reliability, and interoperability, just to name a few.

The evolution from a circuit switched to IP network will not occur overnight. Many issues involving incumbent carriers, competitive local exchange carriers and wireless providers will arise. Some issues may be addressed at the national level and will have direct impact at the state and local level. IP-based next generation E911 services will need to be rolled out and Public Safety

¹ See NYPSC comment to FCC on intercarrier compensation, CC Docket No. 05-337, et al. (filed November 8, 2008).

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Answering Points (PSAPs) will need to be retrofitted. In order to ensure that networks remain robust and reliable, the states need tools such as service quality metrics and outage reporting records. Without such information and data, regulators would lack the ability to identify or anticipate potential service affecting situations – a less than an acceptable approach.

Given the dynamics of the telecommunications industry and the convergence of networks one can only guess what the industry will be five years from now. But regardless of where it might be, the FCC and the states will both have roles in insuring that consumers are protected, that networks remain robust and reliable, and that competition and customer choice flourish - all three in an evolving regulatory environment where regulation will be limited to those areas that require it.

Respectfully submitted,



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