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October 23, 2015

Hon. Kathleen Burgess  
Secretary  
New York Department of Public Service  
Three Empire State Plaza  
Albany, New York 12223-1350

Re: Case 14-C-0370, *In the Matter of a Study of the State of Telecommunications In New York State* – Comments of T-Mobile

Dear Secretary Burgess:

Pursuant to the Department's Notice Seeking Comments, issued June 23, 2015, and the Department's Notice Extending Deadline for Comments, issued August 19, 2015, T-Mobile Northeast, LLC ("T-Mobile")<sup>1</sup> hereby submits the following comments regarding the Staff Assessment of Telecommunications Services, published by the Department of Public Service, Office of Telecommunications on June 23, 2015 ("Staff Report").

T-Mobile commends the New York State Department of Public Service Staff ("Staff") on its efforts in the preparation of the Staff Report. In furtherance of the Department's review of the current regulatory paradigm, T-Mobile encourages the Staff and the Department to: (a) focus its efforts on certain key findings in the Staff Report so as to ensure alignment with the actual needs of New York consumers and to continue advocacy on their behalf; (b) consider information and recommended policy reforms from uniquely-situated providers, such as T-Mobile, who continue to make significant investment in the deployment of facilities and deliver innovative services that challenge the status quo for the benefit of their customers and wireless consumers generally; and (c) seek direct input from consumers, in the form of surveys, to establish a complete record regarding how individuals and businesses purchase and utilize today's communications services

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<sup>1</sup> T-Mobile provides commercial mobile radio service to subscribers in the State of New York pursuant to licenses issued by the Federal Communications Commission ("FCC"). As America's Un-carrier, T-Mobile is redefining the way consumers and businesses buy wireless services through leading product and service innovation. The Company's advanced nationwide 4G LTE network delivers outstanding wireless experiences to approximately 59 million customers who are unwilling to compromise on quality and value. Based in Bellevue, Washington, T-Mobile US provides services through its subsidiaries and operates its flagship brands, T-Mobile and MetroPCS. See [www.T-Mobile.com](http://www.T-Mobile.com) for additional information.

and their interest in future innovations, so as to better inform the Staff and Department in this proceeding.

## **KEY FINDINGS FOR WIRELESS CONSUMERS**

While the Staff Report provides a sweeping overview of the benefits of wireless competition in the communications sector in the State, additional data, not reflected in the Staff Report, further supports the conclusion that the wireless industry plays, and will continue to play, an increasingly important role in satisfying the communications needs of consumers in New York.<sup>2</sup> Accordingly, the Department and the Staff should consider the following key findings throughout this proceeding in order to ensure that any outcomes remain aligned with the needs of New York consumers.

Consumers have benefitted greatly from this competitive marketplace: strong competitors acting to outperform each other to attract new customers and retain satisfied customers. Market forces, free from the burden of undue regulation, have created a profusion of service offerings, network expansion, improved service quality and reliability, and increased customer value. These benefits are reflected in widespread consumer adoption and sales growth. This is consistent with, and proof of the efficacy of, the Department's longstanding support for allowing competitive markets to be the most efficient means to ensure that consumers' evolving needs are maintained.<sup>3</sup> T-Mobile encourages the Department to continue this market-based approach.<sup>4</sup>

The Staff Report provides an overview of the current market for communications in the State. Notably, the Staff Report highlights the important role that the wireless industry plays in providing competitive and innovative mobile voice and broadband, to consumers in the State. Such key findings include the fact that “. . . wireless networks have led to a new era of voice communications. As these networks continue to deploy more advanced technologies, like LTE, consumers are expected to experience greater quality and reliability which could lead to additional future migrations as their primary voice platform.”<sup>5</sup>

With respect to broadband services, the Staff Report also points to the fact that “[o]ver the last two years, LTE broadband coverage has expanded significantly, providing subscribers with access to faster data speeds from more providers than ever before. . . .” and that this deployment “has raised the broadband bar [allowing] [c]onsumers [to] subscribe to mobile (cellular) wireless data plans from a variety of providers with download speeds in excess of 50 Mbps.”<sup>6</sup>

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<sup>2</sup> T-Mobile supports the comments of CTIA – The Wireless Association® (“CTIA”), which supply the Department with additional data highlighting the continued increases in wireless adoption and usage, the benefits of wireless competition for New York's consumers, and the major deployment investments the wireless industry has made in order to meet large and growing demand for wireless services.

<sup>3</sup> Staff Report at 3.

<sup>4</sup> This approach is consistent with the 1997 Legislature's decision to suspend application of the Public Service Law to cellular telephone service, set forth in Public Service Law §5(6).

<sup>5</sup> Staff Report at 11.

<sup>6</sup> *Id.* at 56.

The Staff Report also recognizes that “. . . wireless broadband speeds (download and upload) on New York networks are on par or better than the national average, and far exceed the global averages. . . again indicating that network providers are making capital investments to enhance wireless infrastructure to meet growing consumer demand.”<sup>7</sup> The Staff Report also concludes that, based on a review of carrier financial metrics, “the major players in the telecommunications industry are involved in vibrant competition with each other . . . [and] reinvesting in their businesses at strong rates . . . ”<sup>8</sup> These significant annual investments are benefitting consumers in the State of New York.

The Staff Report also importantly – and possibly for the first time as a key policy consideration – recognizes that wireless carriers will need critical access to spectrum resources in order to meet the needs of consumers and the opportunity to innovate.<sup>9</sup> The ability of wireless carriers to efficiently and cost-effectively deploy products and services, and to continue to upgrade existing wireless broadband infrastructure throughout the State, is absolutely essential to meet the ever increasing consumer demand for wireless services. The Staff and the Department must cultivate knowledge and understanding in this important policy area and seek opportunities to advocate, particularly at the federal level, for the benefit of New York consumers and to ensure a vibrant competitive marketplace.

#### **SUBSTANTIAL INVESTMENT AND FINANCIAL CONTRIBUTIONS OF T-MOBILE**

The Staff Report includes a detailed analysis of financial data of “the major national carriers, including wireline and wireless phone, cable television (CATV) and satellite (SATV) providers . . . [and] similar data for the small New York independent local exchange carriers . . . concerning key indicators, such as: shareholder returns, credit ratings, cash flow metrics, and investment levels (capital expenditures).”<sup>10</sup> The Staff Report notes the importance of this financial analysis in determining the vibrancy of competition in the provision of communications service in New York, a critical underpinning of the Department’s telecommunications regulatory policies.<sup>11</sup>

Unfortunately, a complete picture of the financial and investment trends in mobile voice and broadband service is not presented in the Staff Report because T-Mobile, the third largest wireless carrier in the nation, has been intentionally omitted from the analysis. The rationale for this omission is set forth in footnote 110 of the Staff Report, which states:

T-Mobile US was formed through the business combination between T-Mobile USA and MetroPCS which closed on April 30, 2013. The accounting treatment of the deal made post transaction stock prices incomparable with the prices pre-transaction. Thus T-Mobile was removed from the analysis.<sup>12</sup>

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<sup>7</sup> *Id.* at 63.

<sup>8</sup> *Id.* at 75.

<sup>9</sup> *Id.* at 76.

<sup>10</sup> *Id.* at 66.

<sup>11</sup> *Id.* at 66-67 and 81.

<sup>12</sup> *Id.* at 70.

The omission of T-Mobile from this financial analysis unduly skews the Staff Report. T-Mobile, therefore, provides with these Comments relevant data regarding T-Mobile's financial performance and its market-disrupting Un-carrier activities, all of which confirms and amplifies the conclusion that "the major players in the telecommunications industry are involved in vibrant competition with each other . . . [and] reinvesting in their businesses at strong rates . . . [with] no evidence of any company achieving excess shareholder returns."<sup>13</sup>

Any examination of the competitive environment in the wireless industry that excludes T-Mobile would be woefully incomplete. T-Mobile, America's Un-carrier, is a driving force spurring increased, consumer-focused, competition in the wireless industry. For example, T-Mobile has turned the wireless industry inside-out, with such paradigm shifting initiatives as eliminating contracts, not charging for airtime usage overages, providing unlimited talk, text and data, unlimited international texting, improving and simplifying handset upgrades, free seven day "test drives" that allow customers to test T-Mobile's network where they most need it, free unlimited music streaming and numerous other "un-carrier offerings."<sup>14</sup>

These customer-experience enhancing campaigns, coupled with unsurpassed customer care, have placed T-Mobile at the top of the J.D. Power and Associates customer care rankings.<sup>15</sup> It has also driven considerable growth in the number of customers choosing T-Mobile service, making T-Mobile the country's third largest wireless carrier.<sup>16</sup> T-Mobile has also recently experienced double-digit growth. For example, T-Mobile reported 14% revenue growth and 25% adjusted EBITDA growth year-over-year<sup>17</sup>.

In addition, T-Mobile has been investing heavily in its network, which has been ranked as the fastest wireless network, both nationally and regionally.<sup>18</sup> T-Mobile has also recently decommissioned the CDMA channels previously used in the MetroPCS networks here in New York and across the country and has re-farmed the MetroPCS spectrum and integrated it into the larger T-Mobile network.<sup>19</sup> T-Mobile has also been deploying network in the 700 MHz band, significantly increasing capacity indoors and in suburban and rural areas, with accelerated roll out planned for the New York market.<sup>20</sup> T-Mobile's capital investments also include billions of dollars

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<sup>13</sup> *Id.* at 75.

<sup>14</sup> See "Un-Carrier Signature Moves," attached hereto as Exhibit A.

<sup>15</sup> See "T-Mobile Tops J.D. Power's Customer Care Study," <http://newsroom.t-mobile.com/news/jd-power-2015.htm>.

<sup>16</sup> See "T-Mobile Has Finally Passed Sprint as the Nation's Third Largest Cell Carrier," <https://www.washingtonpost.com/news/the-switch/wp/2015/08/04/t-mobile-has-finally-surpassed-sprint-as-the-nations-third-largest-carrier>.

<sup>17</sup> See "T-Mobile Reports Double-Digit Revenue Growth and Strong Profitability in Q2," <http://investor.t-mobile.com/Cache/1500074330.PDF?Y=&O=PDF&D=&fid=1500074330&T=&iid=4091145>.

<sup>18</sup> See "Fastest Mobile Networks," <http://www.pcmag.com/article2/0,2817,2485838,00.asp>.

<sup>19</sup> See "T-Mobile Reports Double-Digit Revenue Growth and Strong Profitability in Q2," <http://investor.t-mobile.com/Cache/1500074330.PDF?Y=&O=PDF&D=&fid=1500074330&T=&iid=4091145>.

<sup>20</sup> See "T-Mobile Puts Low-Band to Work," <http://www.lightreading.com/mobile/4g-lte/t-mobile-puts-low-band-to-work-/d/d-id/717349>.

spent acquiring needed spectrum, which investment is slated to expand when T-Mobile participates in the 600 MHz incentive auction scheduled for the first quarter of 2016.<sup>21</sup>

T-Mobile's track record of investing, innovating and challenging the status quo for the benefit of its customers and the wireless consumer, should not be ignored by the Staff or the Department as it continues to review the regulatory paradigm in New York. Accordingly, T-Mobile urges the Department to take this information into account when coming to conclusions about the level of robust competition in the market for wireless broadband services in the State and the positive effects of T-Mobile's Un-carrier presence on the availability of such services at competitive rates, terms and conditions.

### **REGULATORY POLICIES CAN SUPPORT FURTHER INVESTMENT**

As noted herein, the Staff Report proves that the regulatory approach to wireless carriers taken by the Department has helped to foster a vibrantly competitive market for mobile voice and broadband services to the benefit of consumers in the State. However, the Staff Report fails to identify policies the Department has developed and maintained to spur more ubiquitous deployment of mobile voice and broadband services throughout the State. The Staff and the Department would benefit from identifying policies – particularly, those in need of update – in order to ensure fair, non-discriminatory attachment policies, including attachment to distribution poles, transmission facilities, and other related electric utility structures.

For decades this Department has addressed the terms and conditions for attachments to utility poles. The Department has exercised its jurisdiction pursuant to Public Service Law § 119-a, which provides:

The Commission shall prescribe just and reasonable rates, terms and conditions for attachments to utility poles and the use of utility ducts, trenches and conduit. A just and reasonable rate shall assure the utility of the recovery of not less than the additional cost of providing a pole attachment or of using a trench, duct or conduit nor more than the actual operating expenses and return on capital of the utility attributed to the portion of the pole, duct, trench or conduit used.

The Department has also certified to the FCC that it regulates pole attachment matters, thereby preempting the FCC's regulation of such pole attachment matters.<sup>22</sup> The Department has not, however, updated its pole attachment policies in well over a decade.

In addition, the Staff Report fails to identify recent complexities introduced into the Department process to review upgrades to existing wireless facilities on utility transmission towers. It is clear that improvements are needed to such policies in order to provide a more predictable, efficient and

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<sup>21</sup> See "T-Mobile seen as winner in Sprint's decision to bow out of 600 MHz incentive auction," <http://www.fiercewireless.com/story/t-mobile-seen-winner-sprints-decision-bow-out-600-mhz-incentive-auction/2015-09-28>.

<sup>22</sup> See States That Have Certified That They Regulate Pole Attachments, 7 FCC Rcd 1498 (February 21, 1992); 47 U.S.C. § 224.

timely process that ensures the latest technologies are available to wireless consumers and for public safety. In addition, an improved process for new attachments will enhance the deployment of advanced communications services in previously unserved or hard to serve communities in the State of New York.<sup>23</sup>

Accordingly, T-Mobile urges the Staff and the Department to include in its updated Staff Report a discussion of the Department's existing wireless attachment policies. This will allow the Department to take necessary steps as soon as practicable to update such policies to be consistent with State and federal law; and to support more efficient deployment of advance communication services, including mobile broadband.

### **DIRECT INPUT FROM CONSUMER THROUGH SURVEYS**

While the Department has held a series of public hearings regarding the Staff Report and the Department's existing telecommunications industry regulatory policies, a more robust record should be established by seeking direct input from consumers through a survey process. In the past, the Staff and the Department have made use of consumer surveys to assess the status of the marketplace. Conducting a similar survey process as part of this proceeding would enable a more complete assessment of how individuals and businesses utilize and purchase today's communication services.

The Department should have evidence directly from consumers that affirms that they are pleased with the value of the service they receive. They should hear that consumers do feel they have a choice among providers and they are pleased with the service options they have with their chosen service provider. Conducting surveys would also enable the Staff and the Department to develop a better understanding of the future needs of consumers.

In support of the Department's Competition III Order and again in 2007, the Department conducted surveys in order to receive direct input from consumers. The results of these surveys provided meaningful input into the evaluation of the marketplace and consumer interests. For example, the results of a Department survey conducted in 2007, which detailed how satisfied wireless consumers were with their service, served as additional guidance for the Department to maintain light-touch regulation of the wireless industry in the State of New York. Notably, such findings also served as the basis for the Department to include wireless service in consumer information materials developed to inform consumers on how to purchase from among the broad array of products and services. With further updated input from consumers, the Department would be better informed with updated information that would serve as an additional resource to consumers.

Accordingly, T-Mobile urges the Staff and the Department to maintain the opportunity for input into this proceeding by means of consumer surveys. A more robust record, in addition to the Staff Report, would benefit all stakeholders in this proceeding.

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<sup>23</sup> T-Mobile supports the comments of Sprint submitted in this proceeding, which recommend that various attachment policies be considered by the Department to further enable deployment of wireless technology throughout the State of New York.

## **CONCLUSION AND SUMMARY OF RECOMMENDATIONS**

T-Mobile again commends the Department and Staff for all of the effort that has gone into the creation of the Staff Report. As noted above, the Staff Report's overview of the status of competition in the communications industry in New York points out the positive impact the highly competitive wireless industry has had and continues to have on bringing needed mobile voice and broadband services to consumers throughout the State.

T-Mobile asks that the Department and Staff take into consideration the additional information it has supplied in these comments regarding the significant contributions T-Mobile, America's Un-Carrier, has brought, and continues to bring, to this competitive industry sector to the benefit of consumers in New York. T-Mobile also urges the Department and Staff to address in its updated Staff Report the Department's existing wireless attachment policies and to encourage the development of updated pro-competitive wireless attachment policies designed to promote further deployment and upgrades to wireless carrier networks throughout the State, to the benefit of consumers, public safety and the underserved. Finally, T-Mobile recommends the Department supplement the record in this proceeding through consumer surveys designed to seek valuable direct input from consumers regarding how they purchase and utilize communications services today and to determine their future communications needs.

Sincerely,

/s/

Michele K. Thomas  
National Director State Regulatory &  
Numbering Policy