

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 15, 2005

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin

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)

BY THE COMMISSION:

INTRODUCTION

Technological and marketplace advances are rapidly changing the telecommunications industry. Many consumers in New York are already benefiting from a vigorous marketplace and have considerable choice. Intermodal forms of competition are quickly gaining acceptance in the marketplace and thus are creating substantial facilities-based competition. Traditional cable providers are offering digital telephone services. Wireless services are being used as basic telephone service by an increasing number of New Yorkers. In addition, advanced broadband services are widely available in New York and emerging applications, such as Voice over Internet Protocol (VoIP), also provide local and national telecommunications services to residences and business users. As intermodal competition flourishes, traditional carriers are being forced to respond.

The Commission has a primary and overarching interest in ensuring that telecommunications services are available at just and reasonable rates and are provided in a safe and adequate manner. New York has long been on record stating its strong preference for competitive markets as the most effective approach to ensure the provision of reasonably priced and reliably provided telecommunications services. We have also recognized that during the transition to competitive markets, the degree of regulation needs to be flexible. Where 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 and ensure adequate consumer protections. This dynamic approach to the developing markets continues to provide the foundation for our efforts today.

The primary reason for regulation is to protect consumers from abuses by dominant suppliers of essential services and the development of our policies has been shaped by that recognition. Our approach has been designed to ensure consumer protection while maximizing competitive benefits. Our focus on the public interest has been defined by the legislature under the Public Service Law and our adherence to the expectations of just and reasonable rates for safe and adequate service remains paramount. The principles that we espoused in 1996 still guide us today:

1. The goal of ensuring the provision of quality telecommunications services at reasonable rates is primary.

The primacy of this particular goal is of fundamental importance. While other goals in this proceeding may be important, even critical, to various parties, their attainment must not come at the expense of this primary goal.

2. Where feasible, competition is the most efficient way by which the primary goal may be achieved.

We have a long and successful history of enabling the development of competitive markets and seek here to establish a framework for further competitive development.

3. Regulation should reflect market conditions.

Our regulatory framework must be designed for the present transitional market, not for yesterday's monopoly nor for the fully competitive market that may ultimately develop. As such, rules

should not be imposed which perpetuate or assume monopoly conditions; neither should regulatory protections be abandoned merely on the promise that the market may eventually provide them.

4. Providers in like circumstances should be subject to like regulation.

Similar regulation should be expected for providers with similar market power. Differential regulation may be appropriate and necessary where significant market power differentials exist.¹

We have continually evolved our general regulatory framework with reference to the above principles. We have taken actions to remove barriers to competition (thus maximizing the availability of competitive alternatives), to create and maintain a level playing field (thus maximizing the effectiveness of competition), and to maintain consumer protections (thus minimizing any detrimental effects from imperfect markets). The general framework guided by these principles continues to be sound.

In New York, we are long past the stage of introducing consumer choice in telecommunications, including in the local markets. Consumers have been making telecommunications choices for many years. Still, the pace of change in the telecommunications sector has quickened in recent years. In the consumer (residential and small business) market, traditional wireline companies now compete with wireless and cable television companies in both the local and long-distance telephony markets, and with the increasing use of the Internet, customers are less dependent on their traditional telephone carrier for communications. Computers are being used as telephones and telephones are being used as computers. Technological changes require that the Commission again re-examine the way it regulates telecommunications services. The asymmetries of current laws, largely designed to address the monopoly-owned infrastructure that provided nearly all telecommunications service a decade or more ago, are apparent to all market participants. Under current law, the regulation of internet

¹ Case 94-C-0095, Proceeding to Develop a Regulatory Framework for the Transition to Competition, Opinion No. 96-13 (issued May 22, 1996), pp.3-4.

protocol (IP) enabled services and wireless is very different from that of traditional telephone services; thus, incumbent carriers are treated differently from newer entrants. While absolute symmetry is likely unachievable, the wholly inconsistent approach to the regulation of substitute services based on the types of technology employed must be re-examined and rationalized consistent with existing legal constraints.

The goal of this proceeding is to conduct a broad review of our telecommunications policies, practices and rules in light of the fast changing telecommunications environment. We intend to eliminate, consistent with the public interest and to the extent practicable, the asymmetrical aspects of current policies, practices, and rules, so as to treat each telecommunications provider of wired and wireless, IP-enabled or traditional circuit-switched, voice, data, or video—as even-handedly as possible given the current statutory constraints. We seek input from the industry and the public on our broad principles and appropriate changes to our regulatory framework. We recognize also that any changes we consider should allow for the possibility of further technological or industry-structure changes (e.g., mergers) in the future. While the future necessarily holds a measure of uncertainty, the time is ripe to examine our current policies, rules and practices to ensure they continue to serve the public interest.

This Order sets forth our basic understanding of the current status of competitive alternatives in the consumer market. It then discusses broad areas of regulatory interests and poses a series of questions designed to examine the need for changes to our current policies. Because our regulatory policies are ultimately designed to protect the public interest and consumers, we will also conduct a series of public outreach forums to describe the changing landscape and seek public input on our policy direction.

The issues we are raising in this proceeding are broad, complex, and have potentially far reaching consequences. The rate of change in the telecommunications industry is swift and it requires an ability to rapidly respond to maintain consumer protections and an appropriate market structure that maximizes the effectiveness of

competition. We intend to prioritize those issues that are most important to the maintenance of a level playing field and are essential to consumer protections.

STATUS OF COMPETITION

As we look to the future of competition in New York, it is important that we fully understand the current status of competition in the state. The most recent analysis of the current status of telecommunications market developments in New York was completed by the Department of Public Service in October 2004 and submitted to the Federal Communications Commission (FCC) to guide its review of unbundling rules under the Telecommunications Act of 1996. Its salient findings are described below.²

Overview

In New York, thirty-nine incumbent carriers provide telephone service to over 12 million retail or wholesale lines. Competitors with their own facilities are using, among other technologies, Voice over Internet Protocol (VoIP), cable telephony, and wireless technology to provide alternatives to voice service over the traditional wireline network. Additionally, consumer's expectations for telecommunications are ever expanding. Consumers not only place voice calls, they use other applications³ that expand their options for communicating. Further, as demonstrated in recent years, economic and technical advances will continue to offer new options for consumers, many of which we may not now envision. Given the rapid evolution of technology, our goal is

² Comments of the New York State Department of Public Service 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 (filed October 4, 2004).
http://www.dps.state.ny.us/fcc/FCC_10_04_04.pdf.

³ Such as email, instant messaging, streaming video, internet bulletin boards, and web logs (or "blogging").

to establish a flexible regulatory framework that promotes innovation and encourages economic investment in this state's telecommunications infrastructure.

In New York, four basic alternatives to the incumbents' traditional wired telephone service exist: (1) cable or IP-enabled cable telephony (such as PacketCable), (2) competitive local exchange carriers (CLECs) that use the incumbents' loops (unbundled network element loops or UNE-L) to serve residential and business customers, (3) wireless, and (4) Voice over Internet Protocol services (such as Vonage) via a broadband connection: digital service line (DSL) or cable modem (such as RoadRunner or Optimum Online). Each of the enumerated alternatives has developed a customer base in New York, and we are confident that consumers in greater numbers will consider these alternatives as consumer awareness increases.

Cable Telephony

Cable telephone with its managed network and E-911 capabilities, provides an option that is rapidly being accepted as an equivalent to traditional wireline service. In New York, cable digital telephone service is widely available from both Time Warner and Cablevision. Several thousands of New Yorkers are establishing cable telephone service in their homes or businesses every week.

Competitive Local Exchange Carriers

Competitive local exchange carriers (CLECs) have been establishing arrangements to provide facilities-based (UNE-L) service in New York over the past eight years.⁴ There are approximately 1,200 such collocation arrangements in New York.⁵ Overall, CLECs using collocation arrangements serve approximately 380,000

⁴ Collocation arrangements are situations where the CLEC connects to the incumbent's facilities at the incumbent's premises. The CLEC typically uses the incumbent's wires (i.e., loops) to provide service to end users.

⁵ Analysis of Local Exchange Service Competition in New York State, 2002 Competitive Analysis Report, p. 25.

small business and residential customers.⁶ Although these arrangements are used primarily for small business customers, some progress has been made to expand into the residential market. Ten carriers, four of which are cable companies, are actively providing alternative services and CLECs are providing service to residential customers via their own switches in approximately 178 Verizon wire centers.⁷

Wireless

Wireless services are offered to the public using a variety of technologies. Wireless services are almost ubiquitously available in New York and exhibit very high subscription rates. Additionally, there continues to be growing evidence that some consumers, especially younger ones, are willing to forego wireline telephone service, relying solely on wireless.⁸ Because of existing competition within the wireless sector, we have witnessed ongoing efforts by the wireless industry to respond to consumer demands for improved quality of wireless service. Moreover, we expect that the FCC's 2003 order requiring portability of telephone numbers between wireline and wireless carriers⁹ will encourage even more consumers to consider turning to a wireless-only option.

⁶ See Comments of the New York State Department of Public Service 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 (filed October 4, 2004) at pp. 7-11.

⁷ Id.

⁸ According to estimates from the FCC, as many as 68% of United States residents who are between the ages of 18 and 24 own a cell phone. Among that demographic, 15% do not have a landline at home. <http://www.fcc.gov>.

⁹ Memorandum Opinion and Order and Further Notice of Proposed Rulemaking; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues. 18 FCC Rcd. 23697 (2003) (Order) (JA 1-35).

VoIP Telephony

In addition to the foregoing, VoIP services can be obtained by consumers having an internet connection using the cable or telephone companies' broadband platforms (cable modem and DSL). VoIP services have become widely available in New York and companies such as Vonage and AT&T are actively marketing them. Approximately 95% of New Yorkers have access to the latent broadband capability necessary to avail themselves of VoIP telephony.¹⁰ Currently, cable modem subscribers can choose from various VoIP providers. VoIP differs from cable telephone in that some VoIP service providers use the public Internet, as opposed to their own managed facilities. We recognize that a consumer's willingness to subscribe to VoIP telephony depends on the ability to purchase broadband unbundled from voice, and that the unavailability of stand-alone broadband could be an impediment to the proliferation of VoIP telephony.

Competitive Analysis

In comments to the FCC the Department employed an index to assess the level of competition. It proposed that where sufficient competitive alternatives are available in a wire center the FCC limit the availability of the cost based wholesale switching elements from the incumbent local telephone companies. This type of analysis can be useful in determining how vulnerable the incumbents are to competition, and thus how widespread such competition is.¹¹

¹⁰ Study of Rural Customer Access to Advanced Telecommunication Services, NYDPS Report (released 2-1-03) (Report to New York State Legislature on overview of access to advanced telecommunications services by rural customers).

¹¹ The analysis was performed for Verizon only. However, we believe such an approach could have merit for determining the vulnerability of other incumbents to competition in New York.

The index gave weights to various options based on a judgment of the degree of substitutability of the service and economic readiness of the competitive carriers to expand existing offerings. The Department assigned the following weights: cable telephone (weight of 1), CLEC (a weight of 1 where providing residential service and a weight of 0.5 where providing only business service), wireless (weight of 0.5), VoIP telephone (weight of 0.75). Beyond the traditional wireline carrier, if competition were available from all the sources described above in a given wire center, an index value of 3.25 would be determined for that wire center. In the Department's judgment, an index value of 2.75 or above indicated a level of competition sufficient to conclude that competitive carriers will not be impaired without access to unbundled switching. In other words, the wholesale market was sufficiently open to competition to relax wholesale regulation. Additionally, the Department concluded there should be at least three alternatives to the ILECs wireline service and at least three different platforms to protect against market concentration. Given a maximum index value is 3.25, and recognizing that the presence of each alternative is not necessary to conclude that switching be provided on a non- TELRIC basis,¹² the Department determined an index value of 2.75 reflects a suitably robust mixture of alternatives, beyond the incumbent carrier, to serve as an index trigger value.¹³ The Department's specific index analysis found that over 85% of Verizon's access lines are located in wire centers that have an index of at least 2.75. In sum, viable facilities-based telephone options are widely available in New York. We recognize that some parts of the State are more robustly competitive than others and that the industry is dynamic, and, regulation must reflect those realities.

¹² TELRIC refers to the FCC's forward-looking wholesale costing methodology – total element long run incremental cost.

¹³ This value might be reached, for example, by the presence of residential CLEC service, cable telephone, wireless, and DSL enabled VoIP telephone (3.25), or for business CLEC service, cable telephone, wireless, and cable modem enabled VoIP (2.75).

QUESTIONS REGARDING REGULATORY POLICIES

Consumer Protections

Because telecommunications is an essential service, government has a substantial interest in ensuring that the service is provided under reasonable terms and conditions. Although market forces diminish the need for regulatory protections, we expect consumer protections will continue to be required under all market conditions to discourage fraudulent-type practices (e.g., slamming and cramming), to maintain basic protections (e.g., 911, termination notices, contract disclosures, privacy), and to ensure that special needs customers continue to receive services that render telecommunications accessible (e.g., hearing impaired equipment, Lifeline and Relay services). 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? 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?

Consumers increasingly view wireless service and digital phone service from cable companies and other providers as viable substitutes for traditional wireline phone services. Should a set of core consumer protections apply to wireless and VOIP/cable telephony, as well as traditional wireline? 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?

Universal Service

In Opinion 96-13, we identified the following principles as the foundation for our universal service policy for residential consumers:

1. Basic services should be evaluated and revised as necessary to meet evolving needs.

2. Basic services should be available to all residential customers who wish to use them.
3. Basic services should be accessible.
4. Basic services should be affordable and reasonably priced.
5. Funding mechanisms to support universal service must be fair, equitable and competitively neutral.¹⁴

We continue to believe that affordable basic telecommunications service should remain available to residential customers. Our opinion recognized that as technology and markets change, the list of basic services may require revision to meet evolving customer needs. Factors to be used to guide decisions concerning changes to the basic service list include the level of customer demand for the service, the public benefit it provides, the extent to which it is required to access other essential services (e.g., emergency services), and the cost of providing it. Based on these criteria, the initial (and current) list of basic services includes:

- Single Party Access Line
- Access to Local/Toll Calling
- Local Usage
- Tone Dialing
- Access to Emergency Services
- Access to Assistance Services
- Access to Telecommunications Relay Services

¹⁴ Ibid., p. 9.

- Directory Listing
- Privacy Protections¹⁵

A core element of universal service policy has been to ensure that basic services are affordably priced to all residents who wish to subscribe. This has traditionally been accomplished through constraining basic (local) rates as well as requiring the offering of basic service to low income households at deeply discounted rates (through programs such as Lifeline/LinkUp). As regulators and legislators prepared for local competition in the mid-1990's, some parties predicted there would be upward pressure on basic service rates, especially in rural areas, as competition and other regulatory actions forced prices toward cost. The solution often proposed is to establish explicit universal service funding to be paid to providers of basic service in high cost areas. Although we acknowledged this possibility in Opinion 96-13, and examined the issue in depth in a later phase of the case, we have yet to find such universal service funding necessary to ensure general affordability of basic service.¹⁶ In Case 94-C-0095, we established a more limited "Targeted Accessibility Fund" to fund programs such as Lifeline, emergency services (e.g., "911"), and the Telecommunications Relay Service on an explicit, competitively neutral basis.

Do the universal service goals articulated in 1996 remain valid in 2005? Our view that "basic service" should be periodically re-evaluated appears appropriate in

¹⁵ Ibid., p. 10. In addition, see Section 92.2(a) of Public Service Law and 16 NYCRR 602.1(b). As there were virtually no areas in New York where basic telephone service was not available from wireline carriers and such carriers were subject to common carriage obligations, we found it unnecessary to designate a "carrier of last resort" to guarantee continued service availability. Carriers desiring to withdraw basic service offerings in any service territory are subject to exit requirements to ensure that basic service is not interrupted.

¹⁶ In Case 02-C-0595, we approved a comprehensive plan to phase out the New York Intrastate Access Settlement Pool. A component of this plan includes a transition fund, which is designed to keep local rates of independent telephone companies no higher than the corresponding Verizon benchmark rate.

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? 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?

Market Power and Regulatory Flexibility

The exercise of market power over essential telecommunications services, either by demanding unreasonably high prices or neglecting service quality, is not in the public interest. This economic concern may be unwarranted with sufficient competition, but to protect against the exercise of market power, governmental constraints may be required. In particular, oversight should be exercised where there are significant entry barriers, bottleneck facilities, or inadequate levels of intermodal competition.

We established broad policies in Opinion 96-13 concerning the scope and degree of regulatory requirements for recovery of stranded costs, reporting requirements, and price regulation. Recognizing that the risks and rewards of the telecommunications business are fundamentally shifted from ratepayers to shareholders as competitive markets take root, it was observed that incentive regulatory plans must take account of these developments. We also recognized that in this environment there is no regulatory assurance for full recovery of all stranded revenue requirements.

Financial reporting requirements were distinguished based on whether local exchange companies were dominant or non-dominant. We did not modify existing rules and regulations, reporting frequency and the uniform system of accounts for dominant carriers. To avoid unnecessary regulatory burdens, non-dominant carriers were permitted to file financial results using Generally Accepted Accounting Principles (GAAP). We also established basic requirements for all local exchange carriers to ensure that consumer and public interest protections were being maintained.

Finally, we recognized that the freedom to change rates rapidly to best reflect demand and cost is consistent with a competitive market. Pricing flexibility

should commensurate with the degree of competition and we concluded that our then current pricing flexibility policies for competitive services were appropriate for dominant providers. Non-dominant companies were permitted to have pricing flexibility for most services.

One of the basic issues 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 specifically, is there sufficient actual and potential competition for residential retail telecommunications service, including basic local telephone service, to prevent a firm from raising its price or providing poor quality service without consequential competitive losses? 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? Are the criteria and assigned weights reasonable? In particular, is the VoIP telephone weight reasonable in light of current carrier policies concerning the availability of stand-alone broadband?¹⁷ Can price levels from competitive areas serve as a first level gauge of reasonableness for prices in non-competitive areas? How do we define competitive versus non-competitive areas/markets? Should we allow rates in less densely populated areas to increase to their underlying cost levels?

Input is also sought on a broad array of Commission rules and requirements pertaining to economic and operational regulations. We will ask staff to conduct a comprehensive review of Commission regulations related to the telephone industry. The intent of the effort is to identify the full range of regulatory requirements that apply to regulated telecommunications providers so as to highlight asymmetries, constraints and

¹⁷ We also recognize that broadband over power lines (BPL) and other technologies may introduce other alternatives. We invite input on these trends and whether there are steps the Commission can take to promote their development.

impediments that may need to be relaxed or modified. We direct our staff to serve on all parties to this proceeding within ten business days of the date this order is issued a compilation of the full range of regulatory requirements that apply to telecommunications providers. This document should assist parties in providing input to the Commission regarding which areas of our regulatory requirements can be streamlined, relaxed, or otherwise modified in view of the intermodal competitive environment.

Service Quality

We readily conclude that high service quality is essential to ensure New York's leadership in telecommunications and that service quality must be maintained even in an evolving telecommunications market. The basic question we wish to address is how best to adapt our service quality regulation to the marketplace realities. 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)? 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? 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?

Our current approach has been to focus on the service quality performance outputs (e.g., the customer trouble report rate) rather than the inputs (e.g., investments in copper versus fiber, digital switching versus packet) used to deliver those results. We sought to balance the primary goal of ensuring quality with a desire to minimize

regulatory costs and apply standards uniformly to similarly situated companies. Opinion 96-13 established that all local exchange carriers would be subject to the same general administrative, operational, and performance standards; however, performance measurement and reporting requirements would vary depending on company size and performance history. The performance levels and metrics were modified subsequently in a separate proceeding and adopted in 2000.¹⁸ Our focus on performance also reflected a desire to reduce regulatory scrutiny of infrastructure inputs and operational decision-making. Essentially, we sought to allow carriers to make their own investment and technology choices free from overt regulation, and to focus our regulation on the results in the form of performance standards.

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? 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?

Should we modify, relax, or eliminate performance-based standards in competitive markets? Are performance standards essential to ensure that consumers have access to a reliable, seamless network of networks and, if so, should they be changed? Is reporting based on size still relevant? Should we focus our reporting requirements on less competitive markets or geographic areas? Should we continue to allow an exception for carriers that provide service solely by repackaging or reselling another carriers' service? Should all carriers be held to a threshold standard for service? Are the customer trouble report rate (CTRR) measures still reflective of the quality of service provided to consumers? Are there other more relevant measures? Should a periodic survey of customer satisfaction be used? Is our Public Service Commission (PSC) Complaint Rate

¹⁸ Case 97-C-0139, Service Quality Standards for Telephone Companies.

Level still relevant? Should we maintain and expand our Commendation Program for excellent service? 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?

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,¹⁹ 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.²⁰

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?²¹

Level Playing Field

We previously established principles to support a level playing field for competitors generally in 1996. Intermodal forms of facilities competition are now widely

¹⁹ The prudence of which is underscored by the events of 9/11 and the Blackout of 2003. We have ongoing proceedings to deal separately with the implications of enhanced attention to network reliability and security. Those issues will be dealt with there (Cases 03-C-0922 and 02-M-0953). We are, however, interested in areas where service quality reporting and performance measurement intersect our interests in reliable, resilient, and recoverable networks, and those issues will be considered here.

²⁰ 16 NYCRR 644.3

²¹ We have also established a separate proceeding to address steps to simplify annual reporting by all telecommunications carriers. The matter of simplified reporting forms will be addressed there (Case 04-C-1637).

available and support multiple platforms, for example cable and traditional telephone, and wireless. Customers also have a choice when using these infrastructures to purchase basic IP-enabled VoIP services from several sources both affiliated (cable or Verizon's VoiceWing) and non-affiliated (Vonage's broadband telephone service) with the underlying infrastructure provider. We are interested in how pertinent these principles remain in this intermodal environment. The previously established principles are:

1. Customers must be able to call all valid telephone numbers.
2. Telephone numbers are a common resource to be shared among carriers.
3. Control of telephone numbers must shift from the incumbent carriers.
4. Customers and competitors must have access to the telephone numbers and directory listings of all other carriers.
5. Interconnection into networks of telephone corporations shall be provided for other public or private networks.
6. Segregable services and functions requested by users shall be provided to the extent technically and economically practicable.
7. A carrier's bottleneck facilities should serve the public interest.
8. Traffic and related data (e.g., billing and routing information) must be exchanged between local exchange carriers.
9. Local exchange carriers are entitled to compensation for the costs of the services provided to each other.
10. Compensation charges and rates should be cost-based, uniform, and encourage long-term efficiency.
11. Policies, prices, and practices should be competitively neutral, and promote competitive equity.

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? Do we need to implement additional number

optimization measures in light of the potential demand for numbers by new competitors?²² Are the numbers and listing information of IP-based subscribers available generally at reasonable terms, or is this a new bottleneck? Are IP-enabled providers able to access the information they require from telephone, cable, and wireless sources to support efficient management of their operations? Do gaps in the availability of number portability represent an impediment to choice? 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? 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?

We are particularly interested in revisiting the intercarrier compensation structure established in our prior order. Our original vision was that only facilities-based providers would be allowed to interconnect on the most attractive terms, either incremental based prices or "bill and keep", while others would pay rates similar to interexchange carriers. This vision was later abandoned once the FCC's unbundling rules precluded the availability of unbundled switching at any price other than one based on

²² Is the continued association of geographic locations (e.g., traditional rate centers) with telephone numbers competitively or technically indicated? Should our facilities readiness criteria be applicable to IP-enabled local telecommunications service providers (Case 00-C-0789, Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements between Telephone Companies)? Do the Carrier- to-Carrier Migration guidelines (Case 00-C-0188, Order Adopting Mass Migration Guidelines (issued December 4, 2001)) need to be amended to reflect intermodal customer migration and number porting realities?

total element long run incremental costs.²³ Have the FCC's recent rule changes²⁴ restored an appropriate balance for facilities-based provision or is there more we should and could do?

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?

PROCESS

The market changes that necessitate these questions are occurring rapidly, and we are convinced that our review in this proceeding must be expeditious as well if our policies are to keep pace with those realities. Thus, we ask that parties provide us their comments in writing within 45 days. An Administrative Law Judge from our Office of Hearings and Alternative Dispute Resolution should provide for a process (including reply comments and other options, such as, perhaps, having staff provide a white paper before the parties' reply comments) designed to bring the proceeding to us for resolution in December, 2005. We will decide which, if any, changes to our standing policies are prudent to implement or subject to further exploration. We will also conduct a series of

²³ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 15846-50, (1996)

²⁴ In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of ILECs, Order on Remand (released February 4, 2005), FCC 04-290.

public outreach forums to describe the changing telecommunications landscape and seek public input on our policy direction.

CONCLUSION

Intermodal competition is rapidly changing the face of the telecommunications industry. Many consumers in New York are already benefiting from a vigorous market and considerable choice. Wireless services serve as the basic telephone service for an increasing number of New Yorkers. Advanced broadband services are widely available, and emerging application providers, such as VoIP, also provide local and national telecommunications services to residence and business users. Cable providers offer digital telephone services on their managed networks, while incumbent telephone companies upgrade their networks to provide video. Yet, as intermodal competition flourishes, traditional competitors are losing ground. We estimate that between 1999 and 2004 Verizon lost approximately 37% of its retail access lines.²⁵

Mindful of the ebb and flow of the marketplace, there still may be much we can do to embrace and implement policies that encourage ever more robustly competitive, facilities-based markets and to avoid regulatory policies that hinder their development. To more clearly identify those opportunities, however, we need advice and assistance from consumers and the industry.

²⁵ Of the nearly 4 million retail lines that Verizon lost, approximately 2.8 million shifted to resale or UNE-P (unbundled network element platform) based competitive carriers, with the remaining 1.2 million lines lost to, among other things, full facilities based competitive carriers, wireless carriers and cable modems and DSL replacing second lines. Customers are continuing to shift to competitive carriers at a significant rate.

The Commission orders:

1. A generic proceeding is initiated to address the issues discussed above, and comments for the industry, interested parties and the public are sought as set forth in the order.

2. Parties that want to receive comments of other parties in this proceeding shall provide the Secretary their name, mailing address, telephone number and e-mail address within 30 days of this order. The Secretary will post a service list on the Commission's web site and parties filing comments shall file, within 45 days of the date of this order, 15 copies of their comments with Jaclyn A. Brillling, Secretary, at Three Empire State Plaza, Albany, New York 12223-1350, and shall also serve copies electronically or by mail on the service list posted on the Commission's web site.

Comments should, to the extent possible, conform to the structure and the numbering of the questions listed in Appendix A. Service electronically on parties is permissible unless a party notifies the Secretary when it provides its name that such service is unacceptable and the Secretary so notes in the service list posted on the web site.

3. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

APPENDIX A

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

Universal Service

1. Do the universal service goals articulated in 1996 remain valid in 2005?
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?
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?

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

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?

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?

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

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

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

Service Quality

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

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)?

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?

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?

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?

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?

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

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?

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

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

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

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

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

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

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

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

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?

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?

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?

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

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

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?

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

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?

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?

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?

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?