NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of a Study on the State of Telecommunications in New York State	**Case 14-C-0370**

COMMENTS OF VERIZON NEW YORK INC.

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS

Page

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The critical task facing the Commission in this proceeding is to build on the legacy created by its trilogy of competition orders — the 1989 *Competition Order*, the 1996 *Framework Order*, and the 2006 *Competition III Order* — each of which altered the regulatory agenda of its decade to better reflect the new realities of the telecommunications marketplace.[1] Today, almost a full decade after the *Competition III Order*, the Commission can best advance this ongoing project of forward-looking regulatory reform by eliminating the burdens that the existing regulatory regime continues to place on traditional providers such as Verizon New York Inc. ("Verizon"), which no longer have the market power that provided the original justification for imposing those burdens. It is even more important that the Commission not roll back the clock — as some parties have recommended — by reinstating obsolete models for regulating traditional providers that would ill-serve the needs of the State and its people in the 21st century.

As the Commission recognizes, "[t]he last decade has produced radical change throughout the telecommunications industry."[2] "The communications landscape in New York

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[1] Case 29469, "Opinion and Order Concerning Regulatory Response to Competition" (Op. No. 89-12) (issued and effective May 16, 1989); Case 94-C-0095, "Opinion and Order Adopting Regulatory Framework" (Op. No. 96-13) (issued and effective May 22, 1996) ("*Framework Order*"); Case 05-C-0616, "Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings" (issued and effective April 11, 2006) ("*Competition III Order*").

[2] Case 14-C-0370, "Notice Seeking Comments" (issued June 23, 2015).

State and across the nation, continues its rapid transition to new, more powerful and diverse technologies. Today's networks are providing more advanced and more mobile services at faster speeds to consumers, and supplanting traditional forms of telephone and cable television service."[3] In examining these trends, the Staff Assessment correctly concludes that consumers now "have at their disposal a wide array of services and service providers for their communications needs"[4]; that they "have migrated to competitive network platforms and providers in significant numbers";[5] that "[t]raditional telephone companies have lost significant amounts of market share to competitors";[6] and that providers such as Verizon, although facing significant financial challenges due to these developments, "continue to reinvest heavily in New York State infrastructure."[7] Those conclusions — amply supported by the evidence assembled by Staff — are reinforced by an analysis of the state of telecommunications in New York prepared by economist Dr. John W. Mayo of Georgetown University, which accompanies these comments.[8]

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[3] Case 14-C-0370, Department of Public Service, "Assessment of Telecommunications Services" ("Staff Assessment"), at 3.

[4] *Id.* at 1-2.

[5] *Id.* at 11.

[6] *Id.*

[7] *Id.* at 79.

[8] *See, e.g.,* John W. Mayo, "The Evolution of New York Telecommunications: A Results-Based Regulatory Perspective" (April 2015) (the "Mayo Report"), ¶¶ 7, 81-100, 122-29 (discussing the broader range of capabilities available from modern telecommunications technologies, the expanding adoption of those technologies, and the robust competition, innovation, investment, and declining price trends that characterize the current telecommunications landscape).

Funding for this report was provided by Verizon with an understanding that the study design, data, analysis and conclusions in the report would be under the complete control of the author.

The Commission has frequently acknowledged that new realities require new regulatory models.[9] Although it has done much in recent years to adapt its policies to evolving technology, customer preferences, and market structure, much more remains to be done. In these comments, Verizon[10] discusses the regulatory reforms that the Commission and the State Legislature should adopt in order to ensure that New York consumers continue to enjoy the full benefits of competition, network investment, and innovation.

In Section I, we describe Verizon's position within the communications industry in New York, the financial and other challenges that the company faces as a result of the developments identified by Staff and Dr. Mayo, and the steps that it is taking to respond to those challenges.[11]

In Section II, we set forth proposals for regulatory reform that are firmly grounded in the realities identified in the Staff Assessment and the Mayo Report. Specifically, we propose a regulatory model based on the following principles, as well as specific measures that the Commission should take to implement those principles:

- A "light touch" regulatory regime;
- Leveling the competitive playing field;

[9] *See, e.g., Competition III Order, supra*; Staff Assessment at 4 (discussing the *Competition III Order*); *id.* at 66 ("Since the early 2000's, the Commission has relied upon the presence of vibrant competition, rather than cost of service regulation to promote innovation and investment and constrain prices and ensure quality service of its regulated carriers."); June 23, 2015 Commission Press Release, "PSC Seeks Comment on Telecommunications Assessment" ("In response to growing competition in voice services, the Commission and the Legislature previously opted to streamline the regulatory process to allow greater flexibility and reduce regulatory burdens to ensure traditional carriers remain competitive. Indeed, regulatory bodies across the country, including in New York, have historically supported competitive markets as an effective approach to ensuring core regulatory interests and consumers['] evolving needs are met.").

[10] For purposes of these comments, "Verizon" refers solely to the ILEC Verizon New York Inc. Where other affiliated entities, such as Verizon Wireless, are discussed, they are referred to by their full names.

[11] To the extent not explicitly sourced to publicly available data, information in Section I can be supported by affidavit or declaration, if the Commission desires.

- Primary reliance on competition rather than regulation to serve consumer interests;
- Periodic regulatory review and sunset; and
- Avoidance of protectionism.

Measures consistent with these principles have been adopted in a number of other states with good results, and certainly without the parade of horribles that opponents had predicted.[12]

In Section III, we provide our responses to the specific questions set forth in the Commission's "Notice Seeking Comments," and in Section IV we respond to the petition filed by the "Connect New York Coalition" — a petition that unfortunately offers a number of unfounded and ill-advised proposals that would reduce competition, choke innovation and investment, and in numerous other ways undermine the interests of the State and its people.

I. VERIZON FACES SIGNIFICANT CHALLENGES, BUT IT HAS RESPONDED AND CONTINUES TO RESPOND THROUGH INVESTMENT AND INNOVATION

Verizon faces significant financial challenges as a result of its loss of access lines and revenues to traditional and intermodal competitors. In spite of those challenges, it has continued network investment and innovation. It has also sought to maintain and improve the level of service quality that it provides to *all* of its customers.

A. THE NATURE OF THE COMPETITIVE AND FINANCIAL CHALLENGES FACED BY VERIZON

Since the 1980s, the Commission has been at the forefront of opening the communications market to competition. Verizon fully supports that policy, and unquestionably, it has achieved most of its objectives. However, as a natural and inevitable consequence of that policy, Verizon has lost a substantial portion of its historical wireline customer base and revenues

[12] *See* Mayo Report ¶¶ 61-67.

to competitors — predominantly competitors, such as the cable incumbents, using technologies that are beyond the Commission's regulatory jurisdiction.[13] At year-end 2000, Verizon provided nearly 12 million local exchange access lines to its customers. That number had declined to well under three million by year-end 2014.[14] Verizon has sustained additional revenue losses as a result of Federal and state initiatives to reduce charges for switched access services — initiatives that were themselves adopted in response to changes in the communications industry.[15] As a result of these developments, the company's gross operating revenues in New York State have declined by about a third over the period 2000-2014.[16]

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[13] Indeed, traditional cable providers — and not the "incumbent" LECs — are now increasingly the dominant providers in much of the State for the higher-speed broadband services that consumers increasingly demand.

[14] Verizon's Annual Reports to the Public Service Commission for the years 2000 and 2014, Schedule 61.

See also Staff Assessment at 2, 7, 9 n.16, 11-13 (discussing competitive alternatives that have emerged or expanded in recent years and the resulting loss of market share by traditional telephone companies such as Verizon); *id.* at 29 (noting that the "most significant growth in the Lifeline service category . . . is evident in the consumer adoption of wireless Lifeline service"); U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, "Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2014" (released June 2015) (finding that "the number of American homes with only wireless telephones continues to grow" and that "two in every five American homes (45.4%) had only wireless telephones . . . during the second half of 2013."); FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Local Telephone Competition: Status as of December 31, 2013 (October 2014), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-329975A1.pdf ("*Local Competition Report*"), Figs. 1 and 4 (at end of 2013, traditional switched access lines made up 17% of total retail telephone connections); NY PSC, Press Release, "PSC Seeks Comment on Telecommunications Assessment" (June 23, 2015) (comparing the situation today with that prevailing a decade ago, and noting that: (a) "New York had 12 million traditional landline connections in service[]. Today, less than 4 million lines." (b) "New York had more than 5 million wireless telephones in service. Today, nearly 21 million wireless phones in service — five times more than traditional landlines." (c) "New York had fewer than a million New Yorkers subscribed to telephone service over . . . cable lines. Today, nearly 5 million customers subscribe to Internet Protocol (IP) phone service instead of traditional phone service." (d) "New York had less than 2 million broadband connections serving New York consumers, primarily over telephone and cable systems. Today, some 19 million broadband connections are in service, provided to consumers over a wide range of technology platforms and network providers.").

[15] *See Connect America Fund*, WC Docket No. 10-90, *et al.*, "Report and Order and Further Notice of Proposed Rulemaking," 26 FCC Rcd 17663 (rel. November 18, 2011); Case 09-M-0527, "Order Implementing Originating Access Charge Reform" (issued and effective October 3, 2014). Switched access is a service provided by local exchange carriers ("LECs") such as Verizon that carries calls between another carrier and the local exchange carriers' own customers.

[16] Verizon's Annual Reports to the Public Service Commission for the years 2000 and 2014, Schedule 12.

Moreover, because of the inherent characteristics of network-based industries, and because of Verizon's continued network investment, the size, scope, and costs of Verizon's network have not been reduced by anywhere near a comparable amount. Indeed, Verizon's annual operating expenses and telecommunications plant in service ("TPIS") were actually slightly higher in 2014 than they were in 2000.[17]

The company faces significant financial challenges as a result of competitive revenue losses, its relatively high fixed costs, and the unique burdens imposed upon it by regulation. Its net income was *negative* $1.74 billion in 2014, resulting in a negative rate of return.[18] Its 2014 net cash flow from investing and operating activities was negative $940 million.[19]

Despite these challenges, Verizon and its affiliates are fully committed to the State — as employers, taxpayers, investors, infrastructure creators, and philanthropic donors. The companies:

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[17] Verizon's operating expenses were $7.13 billion in 2000 and $7.81 billion in 2014. Its TPIS was $25.33 billion in 2000 and $27.75 billion in 2014. *Id.*, Schedules 11 and 12.

[18] *Id.*, Schedules 10 and 12. *See also* Staff Assessment at 74 ("Competition in the industry squeezes profit margins and reduces coverage ratios and cash flow metrics. . . . The weakness of the financial metrics suggests existence of competition and the lack of sterling benchmarks indicates that no entity is achieving excess profits in the industry."); *id.* at 75 ("Overall, the [financial] metrics presented demonstrate that nationally, the major players in the telecommunications industry are involved in vibrant competition with each other. Companies are reinvesting in their businesses at strong rates and the stock appreciation in the competitors shares suggest that there is no evidence of any company achieving excess shareholder returns."); *id.* at 78 ("Verizon New York exhibits negative coverage ratios, which means that the company has been reporting large losses in New York State." [footnote omitted]).

Here as in so many other areas, the record has been muddied by the disinformation campaign of the Communications Workers of America ("CWA"), which has repeatedly asserted that Verizon is earning "billions" of dollars in profits. To the extent that these figures have any validity at all, they refer to the finances of Verizon's parent company, which are to a large extent driven by revenues earned not by Verizon itself, but by affiliates that are not engaged in the provision of regulated landline services.

[19] Verizon's Annual Report to the Commission for 2014, Schedule 13. This negative cash flow required the company to take on over $900 million in additional short-term debt.

- comprise one of the largest private employers in New York State, with more than 21,000 employees, who are compensated at levels much higher than those prevalent in the industry;
- have more than 31,000 retirees living in the State;
- comprise one of the largest real property taxpayers, with payments of $300 million in 2014; and
- support more than 5,000 businesses across New York State with more than $2.5 billion in spending, including more than $250 million to 138 minority- and women-owned business enterprises.

Additionally, over the past two years, the Verizon Foundation has provided more than $16 million in funding to New York State programs — more than $10 million to New York City based non-profits alone — focused on education, healthcare and domestic violence prevention. In February of this year, Verizon announced a $50 million gift to Cornell University for the development of the Verizon Executive Education Center on Roosevelt Island. The President of Cornell hailed it as a "transformative gift" that "will help enormously to advance our mission of bringing academia and industry together. . . . The campus will welcome everyone interested in using technology to advance the economy and to make the world a better place, and the Verizon Executive Education Center will be at the center of it."[20]

The company also continues to invest in its network infrastructure and to make substantial expenditures to maintain that infrastructure.[21] Since 2000, Verizon has invested more than $22.2 billion in gross additions to its telephone plant in New York, with more than a billion

[20] Cornell Tech, Press Release, "Cornell Tech Announces $50-Million Naming Gift for Verizon Executive Education Center" (February 2, 2015) (available at http://tech.cornell.edu/news/cornell-tech-announces-50-million-naming-gift-for-verizon-education-center).

[21] *See* Staff Assessment at 79 ("The data demonstrates that Verizon and some of the Class B Companies, though facing significant challenges in New York, continue to reinvest heavily in New York State infrastructure.").

dollars invested in 2014 alone.[22] Verizon invested more than $3.5 billion in building out its fiber network in New York City. This high level of investment is particularly striking given the decline in Verizon's wireline business. Indeed, the ratio of gross plant additions to its access-line counts has doubled between 2000 and 2014.[23] The Verizon companies' high level of domestic capital investment was cited in a Progressive Policy Institute report on "U.S. Investment Heroes of 2014: Investing at Home in a Connected World," and in the corresponding report for 2015. As the Commission noted in a recent order:

> Information provided by Verizon on its financial condition supports its assertion that it is experiencing a revenue shortfall due to ongoing access line losses. The data also suggests that the amount of its capital investment in New York exceeds the amount of funds it receives from its New York operations and that the Company is not exporting cash from its New York operations to its corporate parents.[24]

B. CONTINUED INVESTMENT AND INNOVATION: FIBER

Among Verizon's most significant network investments has been the deployment of a Fiber to the Premises ("FTTP") infrastructure in substantial portions of its landline service area. As a result of this initiative, fiber-based service — and wireline competition for higher-speed wireline broadband — is now available to almost half of the housing units in the State. FTTP allows Verizon to offer a wider variety of advanced services to its customers, over facilities that are more reliable and efficient than the legacy copper network. Fiber is immune to many environmental factors that affect copper cable, and is less likely to experience outages during severe weather events and other emergencies. Fiber lines are generally more durable, do not

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[22] Verizon's Annual Reports to the Public Service Commission for 2000-2014, Schedule 13.

[23] Data from Verizon's Annual Reports to the Public Service Commission for 2000 and 2014, Schedules 13 and 61.

[24] Case 15-C-0495, "Order Approving Transfer" (issued and effective October 16, 2015), at 2.

corrode, have a much longer lifespan, and require significantly fewer repairs than copper lines. For example, in the period from May to July of this year, fiber lines experienced only about 14% of the customer trouble report rate for outside-plant troubles that copper lines experienced.

These advantages directly benefit customers. As a result of programs to encourage customers experiencing repeated service issues with copper facilities to migrate to fiber, Verizon and its affiliates across the nation have experienced approximately 1.4 million fewer repair or trouble-shooting dispatches than would have been required had these customers remained on copper facilities. This equates to 1.4 million instances in which customers have not experienced an outage or other problem with their service. And for many of those customers, this also equates to time savings, since they did not have to schedule repair appointments and take time out to meet a repair technician.

Because of its smaller size and weight for equivalent carrying capacity, fiber makes more efficient use of support facilities (poles, conduit, etc.). Fiber facilities are also more energy-efficient than copper because they use light — not an electrical signal — reducing energy consumption and resulting in a greener network.

FTTP facilities are also capable of transmitting data at far greater speeds than the copper network will support. As a result, fiber makes it possible to offer customers a range of advanced voice, broadband, and video services — including the suite of consumer services known as "Fios" — that are not available over copper.

Verizon seeks to decrease its costs, increase network reliability, and improve its customers' experience by migrating services from legacy copper networks to fiber where fiber is available. Migration of a customer's service to fiber may occur under several circumstances. It could occur, for example, when a customer who is currently served by copper facilities orders

Fios services in an area where FTTP facilities are available. In some areas, all customers are being migrated to fiber with the goal of retiring legacy copper facilities in accordance with FCC procedures originally adopted in 2003 and recently updated.[25] And in cases where a customer is located in an area currently served by both copper and fiber, and where Verizon determines that it will improve a customer's service, Verizon may in its discretion elect to repair service problems by migrating the customer's service onto fiber facilities. Verizon works closely with its customers to ensure that these migrations are implemented as seamlessly as possible, and there is no charge for the migration of regulated services from copper to fiber.[26]

The roll-out of FTTP facilities starting in 2004, the expansion of Verizon's FTTP footprint to its current boundaries, and fulfilling Verizon's obligation to build out its network within existing video franchise areas such as New York City, has required an enormous level of capital investment by the company.[27] Expanding Verizon's FTTP footprint beyond its current boundaries would require a substantial increase in the company's already heavy level of network investment, in the face of a negative net income of $1.74 billion and a negative net cash flow of over $900 million. In recognition of these realities, the company does not currently plan to

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[25] *Technology Transitions*, GN Docket No. 13-5, "Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking" (rel. August 7, 2015).

[26] It is important to emphasize that residential customers purchasing regulated voice service on copper can retain that service following migration to fiber facilities without any change in the rates they will pay. There is no requirement that such customers upgrade to Fios in order to continue receiving voice service from Verizon.

Voice mail and other calling features continue to work over fiber just as they did over copper. Customers continue to be able to use fax machines, medical monitoring devices, and home alarms. Accessibility services, such as relay services used by customers who are hearing-impaired or speech-impaired, also continue to work as before. Moreover, eligible customers may continue to receive Lifeline discounts for their service. There are no changes to a customer's ability to call 911. In summary, migrated customers can receive the same plain-old telephone service ("POTS") regardless of whether Verizon provides those services over fiber or copper facilities.

[27] Verizon has 186 cable television franchises in New York State, and in some municipalities the company offers voice and broadband Internet access over fiber without a cable television franchise.

expand its fiber footprint in New York other than to meet existing franchise commitments, but is instead focused on marketing fiber-based services to more subscribers in the communities where fiber is already deployed, given the substantial investments that have already been made.

That decision has naturally been a source of disappointment to some communities where FTTP facilities have not been deployed. In some cases, this disappointment has expressed itself in accusations that Verizon has intentionally avoided making fiber available to economically disadvantaged communities within the State — accusations that have been encouraged by organizations such as CWA that seek to advance economic and institutional interests of their own by forcing Verizon to resume the expansion of its fiber footprint.[28] The facts show otherwise.

Verizon's largest and most significant fiber deployment program in the State has been in New York City, where FTTP facilities have been rolled out and Fios services are being made available to over three million households pursuant to a 2008 cable television franchise agreement. The franchise agreement between Verizon and the City covers the *entire* City — rich, poor, and middle-class alike.[29] Among other obligations imposed on Verizon, the agreement requires that Verizon deploy fiber so as to ensure that at various checkpoints during the deployment process, "the estimated median household income of all homes passed [by FTTP

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[28] CWA has attempted to advance these interests by dominating the discussion at the public statement hearings held by the Commission in this proceeding. About 20% of the speakers at the hearings have either explicitly identified themselves as CWA members or officials, or are current or former Union-represented Verizon employees, or members or representatives of other labor unions. CWA has also engaged in an extensive campaign of advocacy and publicity to line up legislators, officials, and members of the public behind its agenda.

CWA has not been reticent about its intentions to use this and other Commission proceedings to achieve its negotiating and political objectives. "We will rally, engage in informational picketing, *build political and regulatory pressure on the company*, follow all the company rules to the letter, never take shortcuts, pressure company executives and members of the Board of Directors." (http://standuptoverizon.com/; emphasis supplied)

[29] According to Census data, approximately 27% of households in the City have annual household incomes of less than $25,000. This footnote and the following discussion rely on Census data available on the American Community Survey website, http://factfinder.census.gov.

facilities] shall not be greater than the average household income of all households in [the City] . . . ." (§ 5.1.4); and not to "discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area" (§ 5.4). Verizon has met that obligation.

Verizon has also deployed fiber in economically-disadvantaged areas outside of New York City. The state of New York has a median annual household income of $58,003, and 15.3% of its population is below the poverty level. Verizon has rolled out FTTP facilities in areas that are economically far below those statewide averages, such as the City of Schenectady (median household income $38,381; 23.9% of population below poverty level), the City of Poughkeepsie (median household income $39,481; 24.9% of population below poverty level), the City of Newburgh (median household income $35,731; 30.3% of population below poverty level), and the Village of East Syracuse (median household income $27,114; 16.8% of population below poverty level). At the same time, it has *not* rolled out fiber to a number of very high-income communities, such as the Towns of East Hampton (median household income $77,021), Southampton (median household income $78,133), Southold (median household income of $82,657) and Tuxedo (median household income of $93,490); and the Villages of Quogue (median household income of $92,917), Sag Harbor (median household income of $93,831) and Tuxedo Park (median household income of $120,833).

Naturally, a decision not to expand Verizon's fiber footprint will leave some areas with fiber-based service from Verizon and some without. It is easy to pick a high-income community with fiber and a nearby low-income community without, and to use them to argue that Verizon's decision must have been motivated by a desire to avoid the low-income community. Such arguments are specious. There is no basis for any claim that Verizon has redlined low-income areas, as Verizon simply does not conduct business in that manner.

Verizon recognizes the legitimate concerns that have been aired at the public statement hearings by residents who believe that adequate wireline broadband services are not currently available in their communities. Ultimately, however, the solution is not to attempt to compel one company in a hyper-competitive industry — such as Verizon — to make billions of dollars of additional, uneconomic network investments, without regard to the number of customers benefitted, the likely return, or the financial challenges that the company faces. Even if there were a legal basis for such compulsion — and there is not — it would be unsound policy. Public funding or incentive programs may be the answer for communities that have not been adequately served by the competitive market. The Governor's recently-announced broadband program provides one possible model for such initiatives.

C. Continued Investment and Innovation: Wireless

Verizon is also exploring new wireless capabilities and options for consumers, who are increasingly choosing wireless services for their voice, data, and even video usage. Although "on the go" cellular telephone service has long been advancing as a competitive alternative to traditional wireline service — to the extent that 44% of American households are now wireless-only[30] — cellular technology also provides new options for home-based communications services. Such services are available in a variety of configurations and options, and are offered by a number of providers. AT&T, for example, offers "AT&T Wireless Home Service," with a voice-only option (with unlimited nationwide calling) priced at $20 per month. This service keeps the customer's existing phone number and handsets, and includes unlimited nationwide calling, voicemail, Caller ID, Call Waiting and other features. A voice and data option is priced

[30] *See* footnote 14, *supra*.

at $80.26. Wireless products aimed at replacing wireline services are also offered by other providers, including Wal-Mart's StraightTalk.

Even services that are not directly marketed as home-phone replacements are viable alternatives for traditional wireline connections. AT&T offers Mobile Share Value plans with unlimited talk and text plus shared data. Prices start as low as $20/month for 300 MB of data.[31] T-Mobile offers a plan with 1 GB of data and unlimited talk and text for $50.00 per month.[32] Republic Wireless, created in 2010, is offering a plan that includes unlimited minutes, data, and text for an average customer bill of $13.79 per month. Republic's service relies on a Wi-Fi connection as the primary means of placing voice calls as well as data. Only when a Wi-Fi connection is not available does the call switch to a cellular network.[33]

Wireless home telephone service can offer significant advantages to many customers in areas where fiber is not available, perhaps the most important of which is reduced exposure to weather-related service interruptions caused by downed poles and deterioration of copper cable through exposure to the elements.

Verizon currently offers a wireless home telephone service (Verizon Voice Link) as an optional service to a limited set of voice-only customers in parts of its wireline territory where its FTTP network is not available. Voice Link is not offered to customers with special needs that cannot be met by the service. Nevertheless, the capabilities of such home-based wireless services will undoubtedly grow in the future and will be able to meet an increasing range of customer needs.

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[31] http://www.att.com/shop/wireless/plans/mobileshare.html (accessed October 20, 2015).

[32] http://www.t-mobile.com/cell-phone-plans/family.html (accessed October 20, 2015).

[33] https://republicwireless.com/plans/ (accessed October 20, 2015).

D. CONTINUED INVESTMENT IN THE WIRELINE NETWORK AND MAINTENANCE OF SERVICE QUALITY

Even while it explores new technological options for serving its customers, Verizon continues to strive to maintain the quality of service provided to *all* of its customers.

1. Investments in and Expenditures for the Wireline Network

Verizon continues to take reasonable steps to ensure that its wireline copper network is healthy and that customers who are served by that network receive high-quality service. Indeed, the Staff Assessment acknowledged that Verizon "continue[s] to reinvest heavily in New York State infrastructure."[34] The company's capital investments related to the copper network have totaled more than $830 million from 2008 through 2014,[35] and expenses related to that network have totaled more than $4.4 *billion* over the same period. These figures are particularly striking given the company's rapidly diminishing line counts and revenues over those years.

2. Service Quality

Verizon is currently operating under a Service Quality Improvement Plan ("SQIP") that was put in place in 2010 by the Commission. Under the SQIP, Verizon reports two measures of timeliness of repair (OOS>24 and SA>48)[36] for so-called "core customers" — defined as those customers who live in areas of the state without wireline competitive alternatives, or who subscribe to Lifeline service, or who are elderly, blind, or disabled. Verizon is also required to

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[34] Staff Assessment at 79.

[35] This figure does not include the additional capital expenditures that Verizon committed to under its CTRR improvement plan for certain upstate wire centers. Verizon has committed to total spending (capital investments plus expenses) of over $4.7 million under that plan. *See* Case 13-C-0161, Memorandum to the Commission from the Office of Telecommunications (May 18, 2014), approved as recommended and so-ordered by the Commission (issued and effective June 13, 2014).

[36] Timeliness of repair is measured by the OOS>24 metric (percentage of out-of-service trouble reports that are not cleared within 24 hours), and the SA>48 metric (percentage of service-affecting trouble reports that are not cleared within 48 hours). The targeted level of performance for each of those two metrics is ≤ 20%.

report metrics related to the Customer Trouble Report Rate ("CTRR")[37] and repair office answer times. These metrics are reported for *all* customers, not just core customers.

Verizon's performance under the Plan has been excellent.

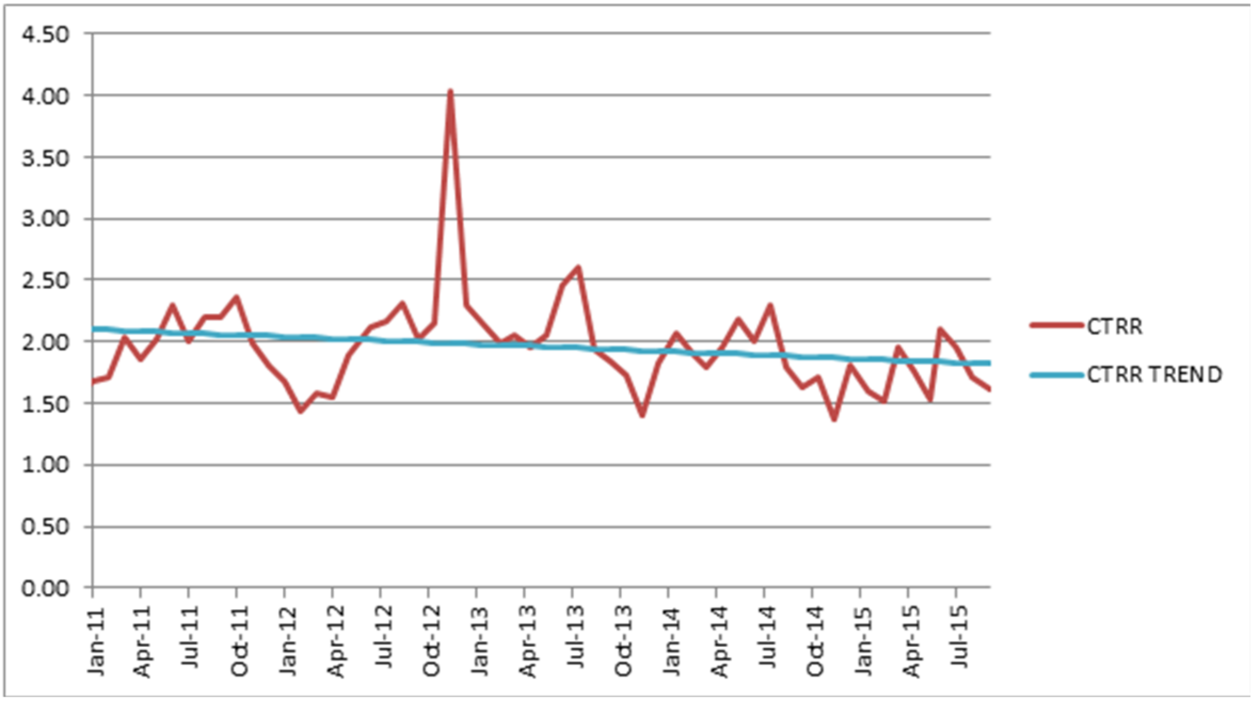
One dimension of service quality is measured by the CTRR, a metric that Staff has also recognized as an important indicator of network reliability.[38] There are actually two CTRR metrics — one that measures the statewide CTRR level, and one that measures the percentage of Central Office Entities that have a CTRR ≤ 3.3 (with a target percentage of 85%). Historical trends for these metrics are shown on the following two graphs. The statewide CTRR shows an improving trend since the SQIP began in 2011, and has generally remained within the 1.5-2.5 range. (The late 2012 spike is due to Superstorm Sandy.) The percentage of entities at or below a 3.3 CTRR also shows a modest improving trend.[39]

[37] CTRR is measured by the number of reported troubles per 100 access lines per month. This includes both out-of-service troubles and service-affecting troubles (such as static on the line).

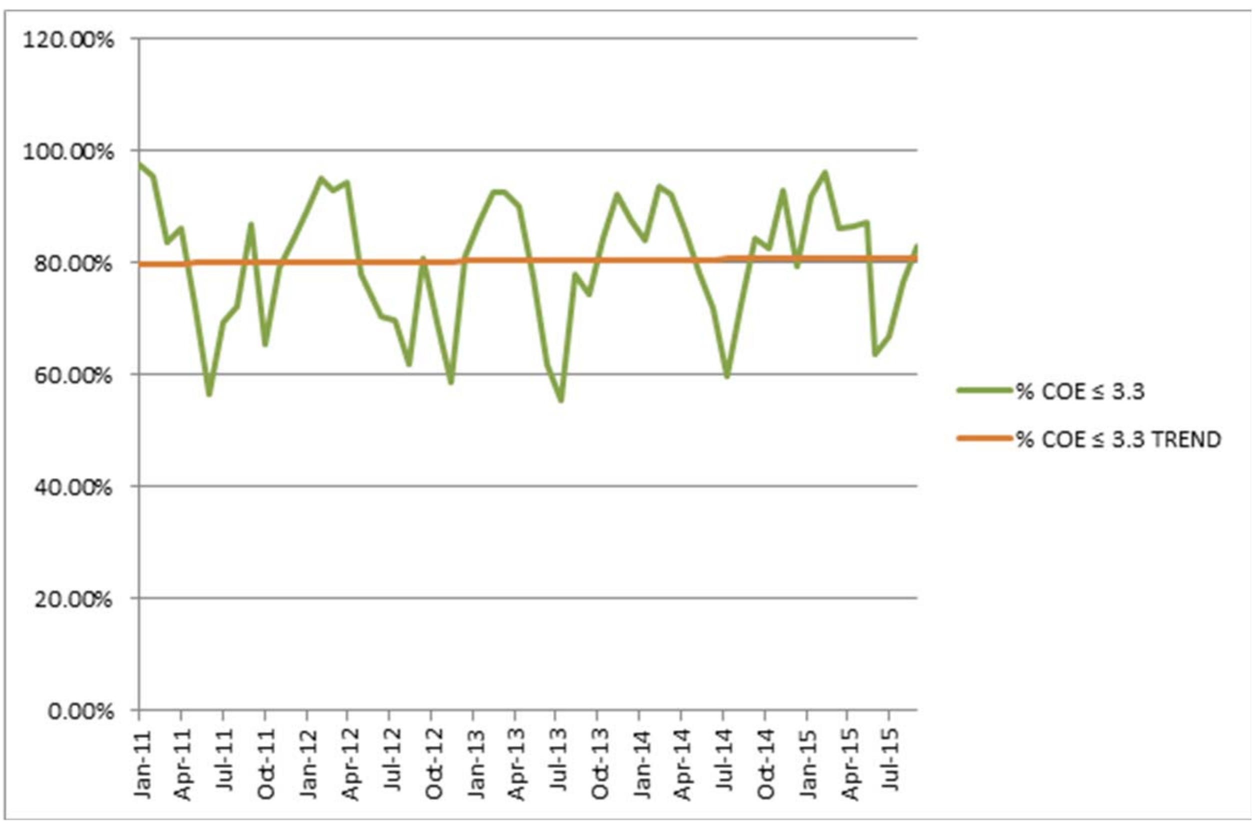
[38] *See, e.g.*, Report of Verizon Service Quality, First Quarter of 2015 (filed May 14, 2015), at 7 (referring to "[t]he Company's performance for network reliability, as measured by the statewide CTRR metric"); Staff Assessment at 22, Figure 6 (graph of CTRR headed "Statewide Telephone Reliability").

[39] Note that for the first graph, which measures the report rate itself, a *decreasing* trend represents improvement. For the second graph, which measures the percentage of Central Office Entities meeting or bettering the 3.3 standard, an *increasing* trend represents improvement. These graphs include 24 months of data past the September 2013 end date of the graph on page 22 of the Staff Assessment.

GRAPH 1: STATEWIDE CTRR LEVELS



GRAPH 2: PERCENTAGE OF CENTRAL OFFICE ENTITIES WITH CTRR ≤ 3.3



With respect to the SQIP's timeliness of repair metrics (*see* footnote 36, above), Verizon has met the 20% target for the OOS>24 and SA>48 metrics for 515 out of 530 "opportunities" — a success level of over 97%.[40] Indeed, although the SQIP properly focuses on timeliness of repair for core customers only, OOS>24 and SA>48 performance is also good when both core and non-core customers are taken into account. The following graphs of OOS>24 and SA>48 performance for all customers show that although repair times are somewhat higher for all customers than they are for core customers only — as may be expected from a performance plan that seeks to encourage prioritization of repair for core customers — both metrics show a clear improving trend.[41]

In reviewing these graphs, it is important to understand that the OOS>24 and SA>48 measures apply only to the small percentage of Verizon's customers who experience troubles (a

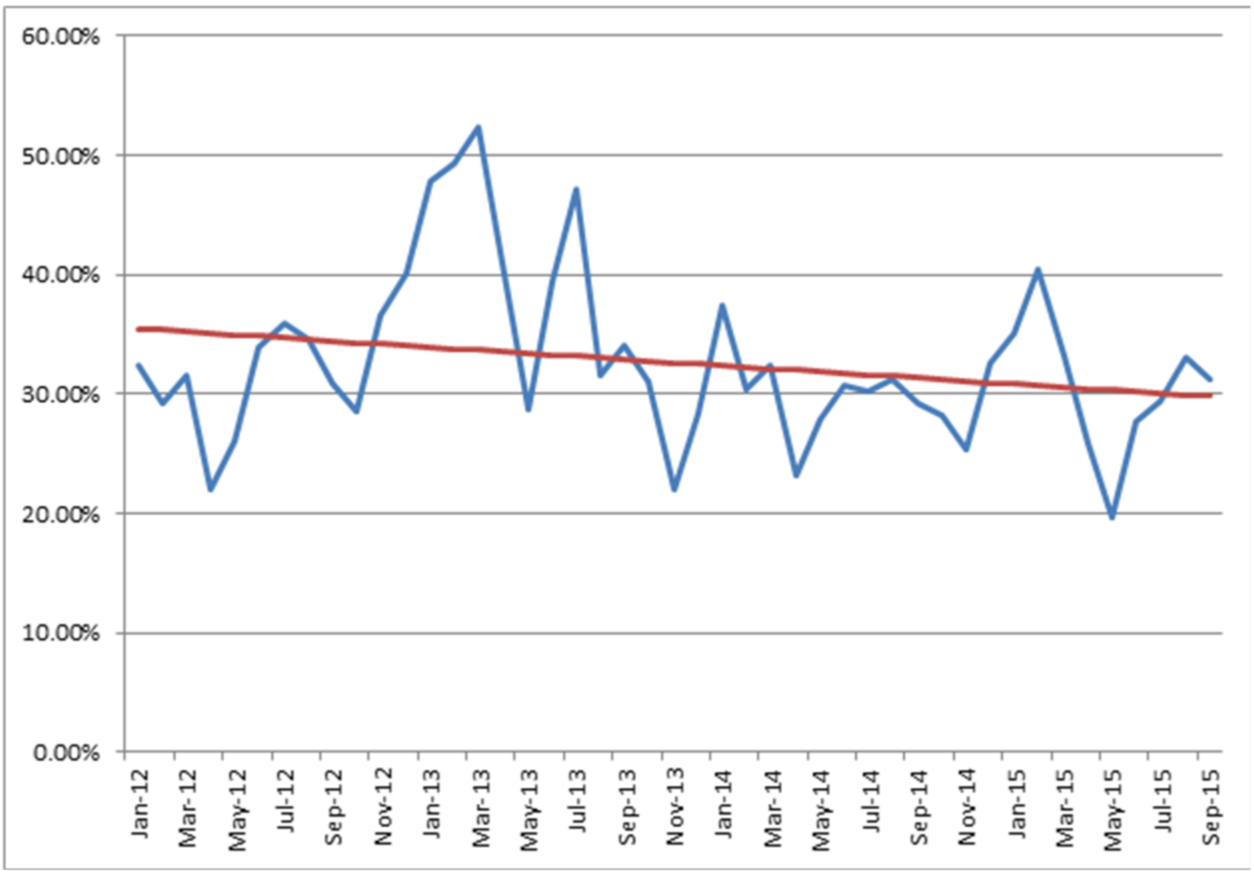
[40] Data through September 2015, excluding four months for which the Commission waived the requirements of the SQIP. The first waiver — for August and September 2011 — resulted from the combined impact of Hurricane Irene, Tropical Storm Lee, and the 2011 CWA/IBEW work stoppage. The second waiver — for November and December 2012 — reflected the impact of Superstorm Sandy.

"Opportunity" here refers to the opportunity to achieve one of the timeliness metrics in one month in one of the five areas into which the State has been divided for purposes of the SQIP. There were 530 such opportunities from January 2011 through September 2015, excluding the four waived months (2 metrics x 5 areas x 53 months).

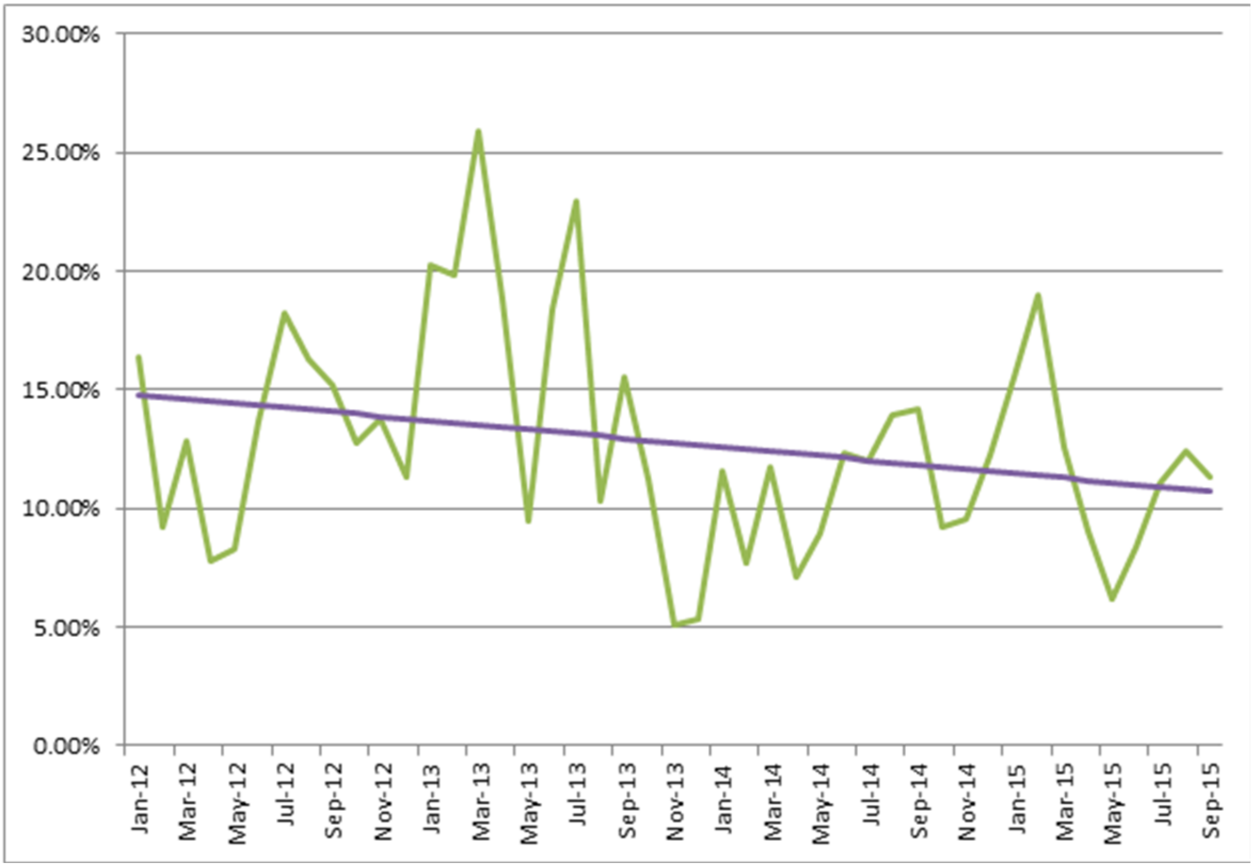
[41] The data in this and the following graphs is for the period through September 2015. The table and graphs present data that has been adjusted to be comparable to the SQIP data. In its 2010 orders adopting the SQIP, the Commission recognized that any cases in which the customer had requested or accepted a deferred repair appointment should not count as an OOS>24 or SA>48 "miss" as long as the company cleared the trouble within the agreed-to timeframe. This rule was also incorporated into the Department's service quality measurement guidelines. Although Verizon implemented this rule in its service quality reporting systems for core-customer troubles, it does not currently record accept/request information for non-core customers. (The capability was not implemented because under the SQIP Verizon is not required to report the OOS>24 and SA>48 metrics for non-core customers.) As a result, all available data related to repair times for non-core customers is overstated because it does not take account of the accept/request exclusion. In order to ensure that aggregate data combining core and non-core repair times is meaningful, the non-core data has to be adjusted to reflect the potential impact of the accept/request exclusion. This was done by computing, for each month of data, the percentage reduction in total repair times that resulted from the application of the accept/request exclusion to core customers. That percentage was then used to adjust the actual repair times in that month for all customers. The adjusted repair times were used to compute adjusted OOS>24 and SA>48 metrics. Because of problems with available 2011 data at the level of detail required for the adjustment computations, this analysis is limited to data covering the period from January 2012 to June 2015.

percentage that is reflected in the CTRR). Thus, an OOS>24 of 20% does not mean that 20% of Verizon's customers experience out-of-service troubles that are not cleared within 24 hours, but rather that of the small percentage of customers who do experience such troubles, 80% (= 100% – 20%) have their service restored within 24 hours.

GRAPH 3: OOS>24 PERFORMANCE FOR ALL CUSTOMERS (CORE AND NON-CORE)



GRAPH 4: SA>48 PERFORMANCE FOR ALL CUSTOMERS (CORE AND NON-CORE)



The median adjusted repair time for all customers is less than 20 hours in almost all months, and generally between 10 and 15 hours.[42]

The number of complaints filed with the Commission by Verizon customers has also shown an improving trend over the years since the SQIP went into effect:[43]

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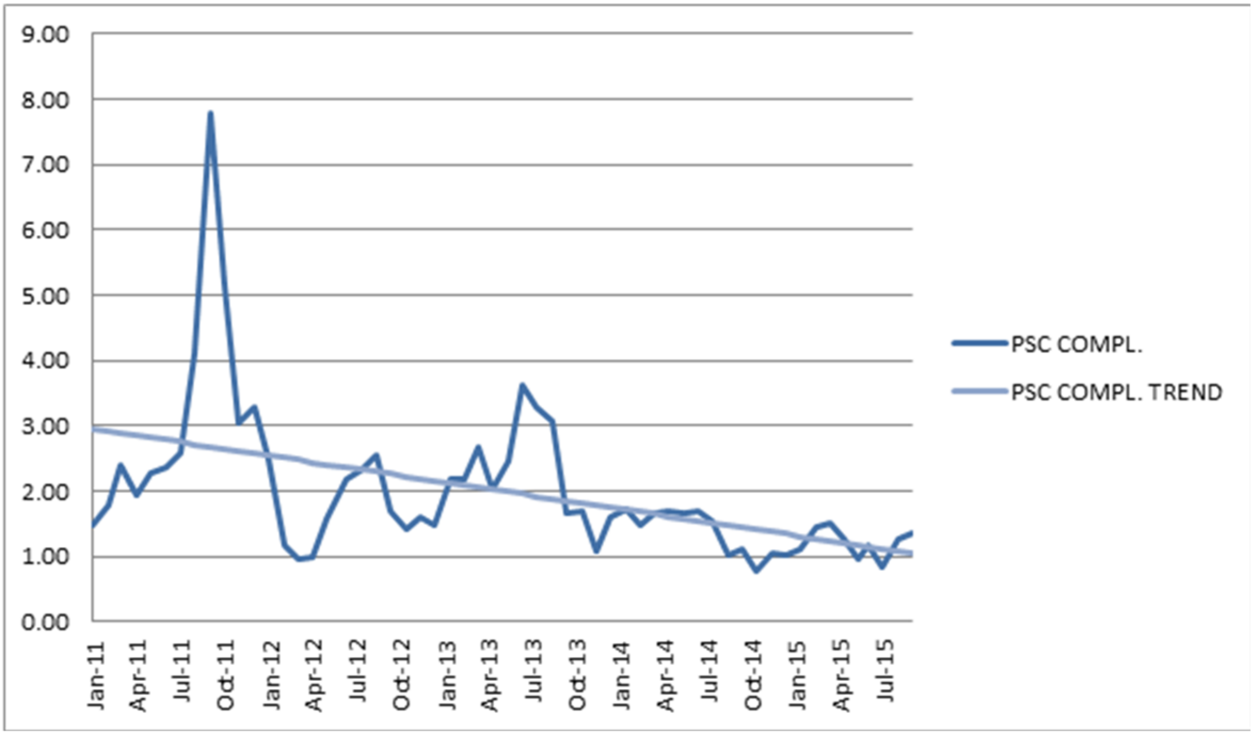
[42] The median provides a better representation of "average" repair time than the mean. This is because repair-time data tends to be right-skewed (in the statistical sense), and as a result the mean is strongly influenced by a relatively small number of outlier, high-repair-time jobs. The median is not sensitive to such outliers.

[43] Verizon does not report complaint volumes as a service quality metric, but the number of complaints filed is monitored and tracked by the Commission.

In an October 19, 2015 filing, the Connect New York Coalition stated that "Verizon failed to meet the PSC benchmark for consumer complaints every month between Jan. 2012 and May 2015." However, the "benchmark" that the Coalition is referring to here is not a minimum performance standard, but a level that warrants issuance of

(continued …)

GRAPH 5: PSC COMPLAINT LEVELS



Verizon's recent performance is also confirmed by Staff findings included in its most recent quarterly assessment of Verizon's service quality, which reported continued improvement in the two-year trend for network reliability, compliance with OOS>24 and SA>48 performance standards for each month of the quarter, continued improvement in the two-year trend for repair answer-time performance, improvement in the two-year trend for major service outages, and complaint levels "better than one year earlier," with an improving trend.[44]

(…continued)

a service quality commendation. It might also be noted that in the most recent month the total number of chargeable complaints against Verizon exceeded the commendation level by only fifteen.

44 Report of Verizon Service Quality, Second Quarter of 2015 (filed September 17, 2015), at 3, 5, 6, 7.

All of this data confirms that — contrary to the unsubstantiated allegations of CWA and the Connect New York Coalition — Verizon is managing its network in a way that affords high-quality service to its customers.[45]

These facts are not widely understood, both because of the complexity of the service quality measurement regime (which increases the likelihood that the significance of reported metrics will be misunderstood), and because of the disinformation circulated by CWA and its allies in such a wide range of forums and media that it tends to drown out the facts about the quality of Verizon's service.

One example of the misunderstanding of service quality data results from the use of metrics such as OOS>24 as a measure of timeliness of repair. It is not usually appreciated that, as noted above, the base of the OOS>24 percentage is the total number of out-of-service troubles in a given area in a given period of time. Thus, if only ten out-of-service conditions occur in a month in an area with 500,000 access lines, and four of those troubles require 30 hours to repair, Verizon would report an OOS>24 of 40% (four out of ten) for that area and that month. This sounds like a high number, being twice the allowed performance standard of 20%, but in fact it means that only four customers in 500,000 (or 0.0008%) were out of service greater than 24 hours.

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[45] *See also* Staff Assessment at 24-25 (discussing J.D. Power survey results showing that Verizon companies "had the largest point score improvement in customer satisfaction levels year-to-year, at 89 points, and improved its ranking from 3rd to 1st between 2011 and 2013, with a score of 729 out of a 1,000 point scale").

In its October 19, 2015 filing, the Connect New York Coalition noted that "Verizon filed 252 Service Inquiry Reports between Jan. 2012 and May 2015 . . . ." Although that figure is correct, it is presented without a proper context. Given the numerous metrics that Verizon is required to report each month (including CTRR levels for each of its 539 Central Office Entities), there were 22,040 "opportunities" for a SIR filing in that 40-month period. Thus, the Coalition's statistic simply shows that performance warranting a SIR occurred only 1.14% of the time.

A second example is the CTRR metric that measures the number of Central Office Entities ("COEs") that have a CTRR of 3.3 or less in a given month. Particularly in the more sparsely populated regions of the State, many such COEs serve only a small number of access lines, in some cases just over a hundred. As customers switch to wireline competitive alternatives or to wireless service (as they are doing, even in those sparsely-populated areas), the line counts diminish further.

The small access-line counts in these wire centers make traditional service quality metrics — such as the number of COEs at which CTRR levels exceed the 3.3 threshold — less meaningful as indicators of the company's performance or of the reliability of its network. In some offices, only a few dozen trouble reports during a month can lead to a CTRR in excess of the 3.3 threshold and even the separately reported 5.5 threshold. Thus, random and unavoidable individual events such as third-party cable cuts can — by putting a small number of customers out of service — have a disproportionate impact on Verizon's service quality statistics. This is demonstrated by the fact that the coefficient of variation (*i.e.*, the ratio of the standard deviation to the mean) for monthly CTRR statistics at Verizon's 539 COEs in New York decreases substantially with the number of access lines served. In other words, CTRR levels in smaller wire centers are, unsurprisingly, more subject to random variation than the levels in larger wire centers. Despite this statistical truism, both large and small wire centers are included by the Commission, without differentiation, in counting the number and percentage of wire centers that exceed the 3.3 and 5.5 thresholds. Verizon submits that the Commission should consider changes in the CTRR reporting process under which existing COEs would be aggregated into entities of sizes that are large enough to reduce the effect of isolated incidents.

A final example of misunderstanding or misrepresentation of service quality statistics is provided by the frequently repeated factoid that Verizon managed to repair only 1.2% (or, in more recent and distorted re-tellings, 1.5%) of out-of-service access lines within 24 hours in the third quarter of 2010 — a claim asserted in a CWA press release in June and that was subsequently repeated in a number of letters recently sent to the Commission. Of course, even if this statistic were valid, it would have little relevance to Verizon's current performance since it relates to a period before the SQIP was adopted. In any event, however, it is *not* valid.

The 1.2% figure derives from a table included in Staff's report to the Commission on Verizon's service quality during the third quarter of 2010.[46] As reported by Staff, the figure expressed the percentage of "opportunities" in which Verizon met the 20% OOS>24 performance standard in the quarter, with an "opportunity" referring to the reporting for a particular service bureau (out of the 28 that then existed) in a particular month. This does *not* mean that Verizon met the 24-hour standard for only 1.2% of out-of-service lines. In fact, Verizon cleared in excess of 53% of out-of-service troubles within 24 hours during that period.

II. THE COMMISSION SHOULD IMPLEMENT REGULATORY CHANGES THAT ARE APPROPRIATE TO THE RAPIDLY CHANGING, HIGHLY COMPETITIVE ENVIRONMENT DESCRIBED IN THE STAFF ASSESSMENT

A. REGULATORY STRATEGIES

Based on the realities described in the Staff Assessment and the Mayo Report, and on Verizon's own experience in the highly competitive but still highly regulated environment in New York, the company recommends that the Commission pursue the following general objectives and strategies to guide its regulatory program.

[46] Report of Verizon Service Quality, Third Quarter of 2010 (filed December 16, 2010), at 3.

A "light-touch" regulatory regime. The extraordinary levels of competition, innovation, and investment that have been seen in the wireless and Internet spaces in recent years have been facilitated by the fact that those industries operated under a "light touch" regulatory regime, rather than the highly prescriptive framework that has been applied to traditional wireline voice providers and services.[47] The Commission should extend similar treatment to Verizon, to the maximum extent permitted by law. Indeed, the Commission has repeatedly recognized the benefits of streamlining regulation in a competitive environment, most notably in its 2006 *Competition III Order*.[48] Adoption of a light-touch regime would build on the Commission's *Competition III* legacy by appropriately recognizing that in a dynamic, highly competitive environment, economic regulation is neither necessary nor desirable — since competition itself efficiently constrains market behavior, and the type of asymmetric regulation that exists in the telecommunications space distorts and undermines competition rather than fosters it.

Leveling the playing field. To the maximum extent possible, the State should seek to ensure that all companies competing with each other in the communication ecosystem operate under the same rules, and that those rules reflect today's marketplace realities. The light-touch

[47] *See, e.g.,* Mayo Report ¶¶ 5, 6, 31, 33-38, 40-51, 57-67, 69, 105, 130-46 (discussing the benefits of light-touch regulation, the movement towards a light-touch regime in other states, and the existence of non-regulatory mechanisms that constrain market behavior in such a regime, and refuting claims that a "parade of horribles" will result from such a regime).

[48] *See* Staff Assessment at 4 ("The last time the Commission embarked on a broad review of the telecommunications market in New York was in 2006 with its Competition III proceeding. Therein, the Commission determined that the significant and growing level of intermodal competition from digital cable networks, wireless networks and over-the-top providers reduced the incumbents' market power. The Commission found that a lightened regulatory approach for traditional incumbent telephone carriers was warranted and necessary in order to level the playing field and enable them to remain viable providers into the future. The Commission concluded that the residential market for non-basic service was effectively competitive, rejecting claims that for various reasons, such as the assertion that cellular service was not totally substitutable or that VoIP was not generally available, incumbent telephone companies still had market power. The Commission expected to reduce regulation and rely more heavily on market forces to achieve just and reasonable rates, and to maintain adequate service quality. In the wake of its Competition III proceeding, the Commission initiated several efforts to eliminate outdated regulations and provide for pricing flexibility where competition existed.").

regulatory regime should be extended to traditional providers in order to ensure fairness, facilitate competition, and promote investment and innovation. It should also take into account that, increasingly, it is not the traditional telephone providers who are the "incumbents" for many of the services that are important to consumers (such as wireline high-speed broadband and video services) — it is cable providers.

Reliance on competition rather than economic regulation. Over the last 25 years, the Commission has repeatedly recognized that competition disciplines prices and service quality more effectively and efficiently than regulation can. The Commission should resist those who now seek to persuade it to abandon its pro-competitive policies and replace them with a restored regime of rate cases, arbitrary cost allocations, and regulatory micromanagement. Regulatory intervention should be narrowly tailored, and should occur only if and where necessary to protect specifically-defined consumer interests that are not adequately protected by competition.

Forbearance authority. As a general matter, the Commission should forbear from regulation where regulation would not achieve its objectives or would be counterproductive, and the Legislature should expand the Commission's authority to do so. The discretion granted by the current statute gives the Commission extensive forbearance-like authority now; this should be extended and formalized by the Legislature.

Periodic regulatory review and sunset. As technology, markets, and consumer preferences evolve, regulations should be subject to ongoing review and specific sunset dates, in order to ensure that they remain relevant and that they continue to advance the above objectives rather than hinder them.

Avoiding protectionism. Regulators and legislators should avoid the buggy-whip mentality that seeks at all costs to ensure the preservation of an outdated status quo — including obsolete technologies and services, counterproductive ways of doing things, existing providers and business models, and existing job functions. Regulatory policy should focus on protecting competition, not individual competitors and their business plans.

B. SPECIFIC MEASURES THAT THE COMMISSION SHOULD TAKE TO IMPLEMENT THESE STRATEGIES

In order to advance the strategies and general objectives outlined above, the Commission should adopt the following measures.

Measures to facilitate network evolution. The Commission should avoid creating obstacles and deterrents to the deployment of new and more reliable technologies. It should, for example, avoid policies that would require the maintenance of duplicate networks (*e.g.*, copper and fiber) in a given area, or that would require the preservation of outmoded services that can be provided only over copper, or that would limit Verizon's ability to migrate customers from copper to fiber facilities.[49] Verizon incurs substantial costs to continue maintaining copper networks in areas where fiber has been deployed — costs that are incurred no matter how little those networks are utilized. Such costs hamper further investment in and enhancement of next-generation infrastructures that would benefit consumers.

The Commission should also encourage, not deter, the development and roll-out of wireless alternatives to traditional wireline service.

[49] The recent FCC orders relating to copper retirement and to back-up power for fiber- and coaxial-based services — *Ensuring Continuity of 911 Communications*, PS Docket No. 14-174, "Report and Order" (rel. August 7, 2015); *Technology Transitions*, GN Docket No. 13-5, "Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking" (rel. August 7, 2015) — and the FCC's ongoing review of technology transition issues eliminate any arguable need for the imposition of independent state requirements related to fiber roll-outs and migrations, particularly in view of the additional complexity and potential inconsistency that such independent requirements could create.

On the other hand, neither the Commission nor the Legislature should attempt to *require* Verizon to expand its deployment of fiber or other new technologies. In the current market-dominated, post-rate-case environment, the Commission cannot ensure Verizon the opportunity to earn a return of (and on) risk capital invested in network deployment; and otherwise uneconomic investments cannot be financed from monopoly profits earned elsewhere (because there are no such profits). Compelled investments would only increase the substantial financial challenges that Verizon faces in attempting to meet the needs of the full range of its customers. It would also undermine competition by imposing asymmetric requirements on Verizon that are not imposed on its unregulated or less-regulated competitors, some of which (mostly cable providers) offer advanced broadband services in the absence of comparable wireline services.[50]

Measures to facilitate the streamlining and evolution of service offerings by carriers. The Commission should maintain a flexible and streamlined process by which regulated companies can revise their service offerings in response to the market (*e.g.*, through the grandfathering and elimination of obsolete services). Verizon should be permitted to grandfather or withdraw tariffed services without lengthy Staff review, provided that customers are given reasonable notice and an opportunity to switch to alternative products offered by Verizon or its competitors.

Verizon cannot maintain a competitive position in the market if it, and it alone, is required to continue offering services with high costs and negligible demands, that rely on vendor-discontinued equipment, or that have been superseded in the market by more efficient

[50] *See* Staff Assessment at 54 ("Seven [percent] (7%) of households have only a single wireline broadband provider. The 7% is comprised as follows: DSL serves fewer than 2% of the households and cable modem services about 5% of households. Fiber-to-the-premises is almost never the sole broadband option, being a relatively newer technology and network architecture and, as a result, primarily exists as a competitive alternative to other established network types.").

alternatives with a broader range of functionalities. Such obsolete services absorb administrative, technical, and financial resources that can better be invested in innovative new products.

Permitting market exit where appropriate. The Commission should permit companies such as Verizon to discontinue service offerings in geographic and product markets where adequate alternatives (including competitive services) are available to consumers, without regard to the regulatory status of those alternatives.

De-tariffing and deregulation. Legislation enacted in 2013 added § 92-g to the Public Service Law, de-tariffing non-basic retail services. Verizon now offers de-tariffed services through an online Product Guide, which can be updated and revised in a streamlined fashion. The Commission retains authority under the new de-tariffing regime to require changes in such offerings in accordance with the requirements of Publ. Serv. L. § 97.

The de-tariffing regime should be preserved and extended. Economic regulation of retail services should be eliminated altogether, except in narrowly-defined cases of demonstrated market failure.

Elimination of remaining vestiges of rate-of-return regulation. It has been more than 25 years since Verizon last sought the revenue protection of rate-of-return regulation by filing a rate case.[51] In that quarter century, Verizon and the Commission have progressively moved away from a regulatory regime in which rates are set at a level that will recover a Commission-determined "revenue requirement" computed on the basis of accounting data and cost allocations. Significant numbers of retail products are now subject to various forms of pricing

[51] Case 90-C-0191 was filed in March 1990. *See* Case 90-C-0191, "Opinion and Order Concerning Revenue Requirement and Rate Design" (Op. No. 91-4) (issued March 7, 1991), at 1.

flexibility, with prices that can be changed — in some cases subject to specified constraints, such as minimum and maximum prices — on short notice and with no substantive Commission review. In no cases are rates set on the basis of an overall company "revenue requirement," nor could they be, given the level of competition and consumer choice. In fact, and as should be, the most significant determinant of Verizon's actual prices is consumer demand, rather than any regulatory construct.

Verizon's income and rate of return in New York are both far below any levels that would be considered "reasonable" under traditional regulation. Indeed, they are ***negative***. However, as a result of competitive price pressure, a rate-case order authorizing Verizon to increase its overall rate levels because its actual revenues are below its "revenue requirement" would have no practical significance to the company. Nor could there possibly be any lawful basis for setting a revenue requirement *below* current revenue levels (resulting in even lower returns). Accordingly, a traditional rate case initiated either by the Commission or by Verizon is unthinkable in the foreseeable future. In short, the Commission's regulation of Verizon long ago entered the post-rate-case era, and yet many of the rules and regulations tied to that era remain.

The Commission recognized these realities in the *Competition III Order*, stating that:

> [C]ost-of-service regulation can no longer function when competition successfully constrains market prices. Under those circumstances, companies cannot obtain net revenue relief by raising rates, and, accordingly, they can no longer be reasonably assured of the recovery of and on invested capital. While crediting tax and other refunds and gains on the sale of utility assets to customers may have been equitable under cost-of-service regulation, it no longer is. While we decline to conclude that these asset transfers are presumptively reasonable until we are convinced to the contrary, we expect to continue to allow utilities that we determine are facing significant competitive pressures to retain refunds and the gains on

> the sale of assets *so long as cost-of-service based regulation for the company is no longer relevant*.[52]

The Commission and the Legislature should eliminate or minimize the remaining vestiges of rate-of-return regulation for companies such as Verizon.

In particular, the Commission should eliminate economically-inefficient and unnecessary restrictions on leases and sales of assets. Currently, the Commission treats a wide variety of non-network assets (*e.g.*, office space) as "works or system" within the meaning of Publ. Serv. L. § 99(2), thus triggering burdensome procedures requiring notice to the Commission and, in many cases, prior Commission approval when these assets are sold or transferred. Such requirements are unnecessary for companies such as Verizon in this highly-competitive, multi-provider, "post-rate-case" era, and restrict the free flow of capital to more productive uses. Legislative changes to § 99 would be desirable, but even if such changes were not made, the Commission has considerable discretion to administer the current statute in alternative ways that are less intrusive to the re-adjustment of a company's investments in a changing environment.[53] The Commission should implement such alternatives.

Similarly, financial and operational reporting obligations — including the Annual Report requirement for ILECs — should be eliminated altogether. The Commission has taken some

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[52] *Competition III Order* at 125-26 (footnote omitted; emphasis supplied).

[53] For example, the Commission might identify by order or rule certain *categories* of transactions (*e.g.*, sales of underutilized office space) that do not raise any of the concerns underlying § 99(2), and that thus warrant approval. In effect, such a categorical order or rule would constitute the "written consent" required by the section. Nothing in § 99(2) precludes the requisite "written consent" from being issued on a categorical rather than an individual basis, and prior to rather than following notice of any specific transaction. This approach would mean that any transactions within the categories identified by the Commission could proceed immediately, without any further review by Staff and the Commission, without the timing issues created by the scheduling of Commission sessions, without the necessity for a Session Memo, and without the 90-day waiting period that might otherwise be required.

steps in that direction, but the residual reporting requirements imposed on Verizon (and *only* on Verizon and other regulated ILECs) remain burdensome and unnecessary.

Service quality regulation. As noted above, in 2010 the Commission adopted a Service Quality Improvement Plan (the "SQIP") for Verizon.[54] The plan was based on a strategy of streamlining service quality reporting obligations and prioritizing repair service for "core" customers who either have special needs or who live in the few remaining areas of the State where there are no wireline competitive alternatives available.[55]

The SQIP was an appropriate response to several factors, including the growth of competition, the increased availability and adoption of alternatives to traditional wireline telephone service, and the asymmetry of the prevailing regulatory framework for service quality. It advanced the Commission's forward-looking policy of "allow[ing] competition to set the level of service quality wherever possible."[56]

In 2013, the Commission concluded that "the underlying premise in support of the SQIP — to protect Verizon's wireline residential customers most in need of protection in the face of declining resources and increased competition — is as compelling today as it was when we adopted the Plan. Choice for residential customers has not diminished, the residential market has become more robust; and, Verizon continues to lose market share and revenues to both cable and

[54] *See* Case 10-C-0202, "Order Adopting Verizon New York Inc.'s Revised Service Quality Improvement Plan with Modifications" (issued and effective December 17, 2010). *See also* Case 10-C-0202, "Order Directing Verizon New York Inc. to File a Revised Service Quality Improvement Plan" (issued and effective June 22, 2010).

[55] Less than 2.5% of the population of the State lives in such "white space" areas, thus demonstrating the ubiquity of competition. It should be noted that many residents of white spaces enjoy the availability of wireless service from one or more providers.

[56] Case 10-C-0202, "Order Directing Verizon New York Inc. to File a Revised Service Quality Improvement Plan" (issued and effective June 22, 2010).

wireless alternatives. Re-establishing service quality standards for all of Verizon's wireline residential customers is simply not warranted, given the maintenance of forceful competition."[57]

That conclusion remains valid today. As shown in Section I(D)(2), above, Verizon has delivered excellent performance under the SQIP. The Commission should continue to pursue streamlined service-quality regulation, and should resist calls for rolling back the salutary reforms embodied in the SQIP.

III. RESPONSE TO THE SPECIFIC QUESTIONS SET FORTH IN THE "NOTICE SEEKING COMMENTS"

A. UNIVERSAL SERVICE

> **<u>Question 1</u>: Currently, the Commission's focus is ensuring access to affordable voice services. Are current Lifeline programs adequate to provide this access? Due to the migration from wireline to wireless services, and the increasing importance of broadband in our society and the documented digital divide, and recognizing the FCC's apparent interest in expanding Lifeline to embrace broadband, should the scope of universal service oversight be broadened to include wireless and broadband services? What if any modification of Commission policy is warranted?**

There can be no doubt that the Lifeline program has achieved its goal of ensuring access to voice services in this State.[58] As the Staff Assessment notes, FCC data demonstrates that 98 percent of occupied housing units in the State have some form of voice service, whether wireline or wireless.[59] Alternative voice services are widely available.[60]

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[57] Case 10-C-0202, "Order Resolving Petition and Requiring Further Investigation" (issued and effective January 18, 2013), at 2.

[58] *See* Staff Assessment at 30 ("Based on the historical data of the past decade, the availability of Lifeline services to New Yorkers has grown significantly, both in terms of the multi-platform providers, and in the overall subscription levels. . . . Lifeline continues to be a valuable program to ensure that residents have access to phone service, and assist New York in achieving its universal service goals.").

[59] *See* Staff Assessment at 8; Mayo Report ¶ 80; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, "Universal Service Monitoring Report" (2014), Table 6.6. The table in the FCC report is based on data from the Census Bureau's American Community Survey. *See* Mayo Report ¶ 66 n.117.

The question of whether the Lifeline program should be repurposed in whole or in part to support services other than voice, and how such support would be funded, are important ones, but the Commission must be mindful of the limitations on its jurisdiction in these areas. Although administered in part by the states, Lifeline is a federal program that is closely linked to other federal programs, and whose scope and parameters are set by the FCC.[61] The FCC is currently considering modifications to the program that would expand its coverage to include broadband service.[62] Any action by the Commission to modify the Lifeline program would have to be authorized by and consistent with FCC mandates, and thus — particularly in view of the pending rulemaking proceeding at the FCC — would be premature at this time.

The Commission's jurisdictional limitations are also relevant to the more general question of whether its "universal service oversight" should be extended to broadband and wireless services through the implementation of separate state programs. In its recent *Net Neutrality Order*, for example, the FCC reaffirmed that broadband Internet access is an exclusively interstate service, and that state commissions currently have no authority to require universal service contributions from providers of such service.[63] Under § 6(5)(a) of the Public

(…continued)

[60] Staff Assessment at 8-11.

[61] *See* 47 CFR §§54.401, 54.405, 54.409, 54.410.

[62] *Lifeline and Link-Up Reform and Modernization*, WC Docket No. 11-42, *et al*., "Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order" (rel. June 22, 2015). Verizon and its regulated affiliates filed their comments in this proceeding on August 31, 2015. *See* *http://apps.fcc.gov/ecfs/document/view?id=60001223280*.

[63] *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, "Report and Order on Remand, Declaratory Ruling, and Order," 30 FCC Rcd 5601 (rel. March 12, 2015), ¶¶ 431-33.

Service Law, the Commission has no jurisdiction over cellular (CMRS) services, and thus has no jurisdiction to compel universal service contributions from CMRS providers.

As important as the jurisdictional issues is the fact that there is no *policy* basis for extending the Commission's universal service programs to broadband or wireless service. Both types of service are widely deployed within the State, and a high percentage of residents have a choice among competitive providers.[64] Market mechanisms have clearly been tremendously successful in bringing the benefits of broadband and wireless to increasing numbers of residential and business customers in the State. Moreover, as already discussed, the explosive growth, diversity, and innovation that have characterized these services have occurred in the absence of traditional regulation, and without the costs, constraints, or "encouragement"

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[64] The National Broadband Map (http://www.broadbandmap.gov/summarize/state/new-york) shows that 98% of the State's population has access to wireline broadband service with download speeds of 25 Mbps or greater (compared to a national average of 85.3%), and that 99.2% of the population has access to wireless broadband service with download speeds of 10 Mbps or greater. About 96% of the State's population has access to 2 or more wireline broadband providers, and 99.9% of the State has access to two or more wireless providers.

Akamai Technologies' "State of the Internet" report for the second quarter of 2015 (available at https://content.akamai.com/PG2060-SOTI.html?gclid=CNuI_oXI08gCFcsWHwodWksOPg) shows that New York ranks tenth among the states in average connection speed (with a year-over-year positive change of 14%), and ninth in peak connection speed (with a year-over-year positive change of 16%). New York is also listed among the top ten states in broadband adoption at various speed tiers.

See also Mayo Report ¶¶ 100-103; Staff Assessment at 50 ("[E]very municipality in the State has access to one or more wired or wireless networks, capable of providing video, voice and data services to residents and businesses. Satellite video, voice and broadband services, as well as terrestrial wireless voice and data services are also widely available throughout New York . . . ."); *id.* at 51 ("At the current FCC 'advanced telecommunications capability' benchmark speeds of 25 Mbps download/3 Mbps upload, Staff estimates that 95% of the state now has access." [footnote omitted]); *id.* at 51 n.86 ("Staff estimates that 95% of the state also has access to 50 Mbps."); *id.* at 53-57.

On wireless availability, *see* Staff Assessment at 10 ("There are currently about 19.4 million residents of New York State, and essentially all have access to multiple wireless service providers. As of year-end 2012, approximately 20.7 million voice customers in New York have adopted wireless service."). By year-end 2013, the number had increased to 21.4 million subscribers. *Local Competition Report, supra.* According to the National Broadband Map (see above), 89.8% of New Yorkers have access to four or more wireless broadband providers.

associated with such regulation. Competition, not regulation, is driving the deployment of broadband technologies, new services, and innovative applications.[65]

As Verizon discussed in its comments in Case 09-M-0527, overly broad universal service subsidy programs can have adverse consequences of their own, including the promotion of inefficiencies and competitive distortions. For these reasons, universal service funding programs should be narrowly targeted to address specific, identified market failures; at present, no such failures have been identified that require Commission intervention to promote broadband or wireless availability.[66]

B. NETWORK RELIABILITY AND RESILIENCY

<u>Question 2</u>: Given the significant consumer migration to communications services provided over Internet Protocol (IP) and wireless networks, is the current regime for ensuring network resiliency, emergency restoration and recovery adequate?

The FCC, with its wider jurisdictional reach, has broad ranging and effective programs in place for ensuring reliability and resiliency in both IP and wireless networks.[67] Moreover, both wireless and VoIP providers are voluntarily working cooperatively with Staff in reporting network outages. There is no identified need for the Commission to attempt to impose any

[65] As previously noted, there are areas of the State where competitive high-speed broadband service has not fully penetrated. The broadband grants recently proposed by Governor Cuomo and approved by the Legislature should help reduce those gaps.

[66] To the extent that poverty is a barrier to broadband *adoption* (as opposed to availability) — *see* Staff Assessment at 59-60 — that issue should be addressed through programs funded by broadly-imposed taxes that spread the subsidy burden throughout the economy. That burden should not be imposed narrowly and inequitably on telecommunications providers — thus creating a financial disincentive to network deployment.

[67] *See, e.g.*, 47 C.F.R. Part 4 (Reporting Requirements for Disruptions to Communications); *id.* Part 12 (Resilience, Redundancy and Reliability of Communications). Issues relating to resilience and reliability are also being considered in a number of open FCC dockets, including PS Docket No. 13-75, *Improving 911 Reliability*; PS Docket No. 11-60, *Reliability and Continuity of Communications Networks, Including Broadband Technologies*; PS Docket No. 15-80, *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications*; and PS Docket No. 13-239, *Improving the Resiliency of Mobile Wireless Communications Networks*.

further requirements on intermodal service providers, and any such attempt would in any event raise significant jurisdictional issues.

C. JUST AND REASONABLE RATES

<u>Question 3</u>: Is the current competitive environment producing just and reasonable wireline voice prices?

The short answer is, "yes." Initially, it is important to emphasize that just and reasonable rates do not necessarily mean *lower* rates. As Dr. Mayo noted in his Report, "[t]he key . . . to well-functioning markets is not the assurance of perpetual price decreases or of low prices *per se*, but rather is the ability of prices to act as efficient signals to both consumers and producers of current market conditions."[68] Dr. Mayo went on to explain that "[i]t is widely recognized that regulated prices have often deviated markedly from efficient prices. A principal case in point was the historical suppression of local telephone service prices with the corollary regulatory taxation of long-distance prices as a source of financial support for those lower prices."[69] Indeed, in its *Competition III Order* the Commission recognized the need to raise the then-prevailing basic local service rates — which were inimical to the emergence of local exchange competition — toward more economically rational, cost-based levels.[70]

In any event, as Dr. Mayo demonstrates, wireline service is becoming increasingly affordable, and low-priced competitive alternatives for such service are widely available.[71] There is no basis for any concern that current prices are not just and reasonable. Ample, robust,

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[68] Mayo Report ¶ 106 (footnote omitted).

[69] *Id.* n.149.

[70] *See, e.g., Competition III Order* at 59.

[71] Mayo Report ¶¶ 114-21.

facilities-based competition, and the widespread availability and adoption of intermodal alternatives to conventional wireline service, ensures that that situation will persist.

D. Service Quality

> **<u>Question 4</u>: The Commission collects voice service quality data from all incumbent carriers and Time Warner Cable. [a] Standards for measuring service quality are not uniform across industry measure segments; would the public interest be advanced by developing uniform metrics for all segments? [b] The Commission's current emphasis is on protecting Verizon's "core" customers (those with special needs, Lifeline customer, or with no competitive choice) who purchase plain old telephone service (POTs). Should that emphasis be reconsidered to include all customers and services? . . .**

Standards for measuring service quality. The robust competition that exists for voice services — particularly in the wireless and VoIP markets — eliminates any arguable need for extending the scope of the Commission's regulatory jurisdiction by seeking to monitor or regulate the quality of wireless or VoIP services. Indeed, as Dr. Mayo's report makes clear, innovation, investment, competition, service improvements, and price reductions have flourished in new communications markets under a regime of light-touch regulation.

The Service Quality Improvement Plan. For reasons already discussed, the SQIP is firmly rooted in the undeniable changes that have occurred in telecommunications markets and consumer preferences — changes that the Commission recognized in 2010 when it adopted the Plan, and that are further confirmed by the Staff Assessment and the Mayo Report. Moreover, the Plan advances important policies, including the prioritization of service for the most vulnerable classes of customers. As the Commission found in 2013, the justifications underlying the SQIP are more cogent than ever, and the Commission should decline to follow the recommendations of those who would overturn it and reinstitute policies that are ill-suited to the 21st century.

E. NG-911

Question 4 (cont.): . . . [c] Existing Commission regulations are designed to ensure reliable access to E911 via the wireline telephone network (i.e., trunking routes, redundancy and location information). The FCC is also examining the reliability of 911 service for wireless and IP networks. What should be the Commission's role in ensuring adequate routing and reliability for NG911?

Two factors counsel against the Commission's adoption of NG911 requirements at this time. First, the transition to NG911 systems is in its early stages, and as of 2013 the FCC had noted that there were no fully-enabled NG911 systems in operation.[72] The technical and regulatory framework for NG911 is likely to evolve before it is fully implemented, and, as a result, the Commission should be wary of prematurely adopting requirements that may be a poor fit for the framework that finally emerges.

Second, the NG911 framework is being developed by the FCC, and it is of necessity dominated by uniform, nationwide specifications and requirements.[73] The FCC's 2013 report to Congress recommended "eliminating state regulations that hinder the deployment of NG911" or "impede NG911 deployments."[74] The Commission must thus be careful to avoid imposing requirements that may be inconsistent with or duplicative of those that will ultimately be adopted

[72] Federal Communications Commission, "Legal and Regulatory Framework for Next Generation 911 Services: Report to Congress and Recommendations" (February 22, 2013) (available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-319165A1.pdf ("Report to Congress"), § 3.1.2.

[73] *See 911 Governance and Accountability; Improving 911 Reliability*, PS Docket No. 14-193; PS Docket No. 13-75, "Policy Statement and Notice of Proposed Rulemaking," 29 FCC Rcd 14208 (rel. November 21, 2014), ¶ 2 ("State regulators and local emergency response agencies play critical roles in ensuring that 911 is available when needed and that every 911 call will be answered, and it is undoubtedly in the public interest that the [FCC] should work in close partnership with these stakeholders to carry out its responsibility. Nevertheless, we know that the technologies and commercial relationships that form the foundation of the 911 system are transitioning and, as a result, becoming increasingly interstate in nature. The [FCC] is uniquely positioned to ensure 911 reliability on a national scale and across different communications platforms and technologies, to promote the deployment of new and innovative 911 technologies by an increasingly diverse array of stakeholders, and to ensure that the benefits of advanced 911 service extend to all Americans.").

[74] Report to Congress, *supra*, §§ 4.1.2.2, 4.3.1.1.

by the FCC. It should avoid adopting rules that may be preempted in the near future or that could result in a costly patchwork of regulation.

For these reasons, the Commission should not seek to develop or implement an independent NG911 construct or to impose its own regulatory framework on this emerging technology. NG911 may well touch upon state interests (such as the question of TAF funding and cost recovery raised in the Staff Assessment[75]), but it would premature to attempt to anticipate or assess those impacts, or to develop remedial measures, at this time. Instead, the Commission should continue to monitor developments at the federal level and to participate in national forums considering NG911 issues.

F. Consumer Protections

<u>Question 5</u>: Are existing consumer protections (i.e., privacy, consumer advocacy and complaint process, etc.) adequate?

Yes. New York consumers currently enjoy robust legal protections at the state and federal level that are aimed at ensuring that they are treated fairly, and that reasonable measures are taken by providers to protect their privacy. As discussed in the Staff Assessment, the Commission's Office of Consumer Services ("OCS") has call centers at numerous locations across New York State, and provides "multi-lingual consumer assistance for electric, natural gas, water, steam, telephone and cable television throughout New York."[76] Customers with complaints regarding their voice or video services can write to OCS' offices or file complaints electronically through the Department website.[77] It should be emphasized that while the OCS is

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[75] Staff Assessment at 35-36.

[76] *Id.* at 22.

[77] *Id.*

a specialized unit within the Department of Public Service that is specifically charged with focusing on consumer issues, the Commission's mission to protect consumers of jurisdictional services is reflected more broadly throughout its authorizing statutes and adopted regulations.[78]

In addition to the OCS and other offices and functions within the Department of Public Service, New York has strong statutory language that protect consumers from unfair and deceptive trade practices on the part of all companies that provide services in the State, regardless of whether those services are subject to Commission regulation. In particular, § 349 of the General Business Law protects consumers from unfair and deceptive practices by providing that "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state" are "unlawful," giving the Attorney General enforcement authority, and affording a private right of action to consumers as well. This statute is an important tool for the Bureau of Consumer Frauds and Protection, part of the Economic Justice Division in the New York State Attorney General's Office, which prosecutes business and individuals engaged in fraudulent, misleading, deceptive or illegal trade practices.[79] The Bureau also mediates complaints initiated by individual customers. Indeed, a separate bureau within the Attorney General's office — the Internet Bureau — focuses specifically on protecting consumers from unlawful conduct associated with the Internet. Its website describes its role in protecting consumers as follows:

[78] *See, e.g.*, Publ. Serv. L. §§ 91, 92, 92-a, 92-b, 92-e, 92-f; 16 NYCRR Parts 600 (Rules Governing Service to Non-Residential Customers), 602 (Consumer Relations and Operations Management), 603 (Service Standards Applicable to Telephone Corporations), 609 (Rules Governing Provision of Telephone Service to Residential Customers), 890 (Customer Service and Consumer Protection Standards for Cable Television).

[79] *See* http://www.ag.ny.gov/bureau/consumer-frauds-bureau. *See also* Mayo Report ¶¶ 49-50 (discussing the growth of the NY AG's office into a "formidable institution" and the expanded role it has taken in telecommunications matters).

> The Internet Bureau of the New York Attorney General's Office is committed to protecting consumers and families from new and developing online threats. As a pioneer in this field, the Office has brought cutting edge cases and entered important settlements related to a wide range of online and technology issues, including child safety, privacy, deceptive or illegal trade practices, consumer fraud, spyware, spam, discrimination, and free speech.
>
> The Internet Bureau accepts tips and complaints directly from the public, and mediates disputes between consumers and online sellers, service providers, and Internet companies. It also drafts legislation, issues reports on emerging technology issues, and educates the public on Internet matters.[80]

In addition to these state-level consumer protections, both the Federal Trade Commission and the Federal Communications Commission ("FCC") provide a further layer of consumer protection against unfair, deceptive and fraudulent business practices, and protection of consumer privacy.[81]

Many of the Commission's consumer protections have evolved over many years and were adopted at a time when there was little competition for telecommunications services. Now that the New York market is highly-competitive, it is essential that the Commission explore opportunities to streamline its rules and regulations with a view towards eliminating unnecessary or redundant regulations and simply allowing providers of competitive services to be subject to the consumer protection rules that apply to other competitive services. By doing so, the Commission will not only improve the ability of providers to adopt measures to ensure compliance with existing rules, but will reduce the cost those providers face in complying with outdated rules.

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[80] http://www.ag.ny.gov/bureau/internet-bureau.

[81] *See* Mayo Report ¶¶ 46-47 (discussing increased role of the FTC and FCC in consumer protection).

G. TELECOMMUNICATIONS TRANSITIONAL ISSUES

Question 6: What is the future of copper based networks and traditional telephone services? Should Commission policies provide an incentive for modern network investment? Does the State have an interest in maintaining high-cost legacy networks and services if investment is inadequate?

The Commission has recognized that "financial losses due to competitive alternatives have made it increasingly difficult for Verizon to invest in its copper network . . . ."[82] At the same time, as discussed above, fiber will not be deployed to all areas of the State. Requiring firms such as Verizon to make uneconomic deployment decisions will simply increase the financial challenges they already face, and diminish their ability to provide adequate service to all of their customers. Nor are such requirements necessary since, as shown above, Verizon has maintained the reliability of its networks and continues to provide good quality service to its customers. It has also made fiber-based service available to a significant proportion of the residents of the State.

In the face of these realities, the Commission should follow the two principles previously discussed: (1) it should not adopt policies that deter fiber deployment or that undermine the financial benefits of such deployment (for example, by requiring the maintenance of redundant copper networks in areas where fiber networks are in place and can provide service to requesting customers); and (2) it should not seek to prevent experimentation with innovative alternatives to copper-based wireline service, including wireless alternatives.

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[82] Case 10-C-0202, "Order Resolving Petition and Requiring Further Investigation" (issued and effective January 18, 2013), at 20.

<u>Question 7</u>: The State Universal Service Fund (SUSF) is due to sunset on December 31, 2016. The fund currently supports seven small telephone companies that cumulatively provide service to approximately 10,000 customers. Should the SUSF sunset as scheduled? If so, will adequate telecommunications services continue to be available for those consumers currently subscribed to services provided by one of these . . . small companies?

The Commission has indicated that it intends to initiate a proceeding by the end of this year to consider what successor arrangements, if any, should be put in place after the sunset of the current SUSF. Verizon will reserve its detailed comments on the SUSF to that proceeding. In general, however, Verizon's current views on universal service funding are consistent with the positions that it set forth in its "Phase II" briefs in Case 09-M-0527, where it demonstrated the inefficiencies and competitive distortions created by "high cost" funds such as the SUSF, the existence of better alternatives, and the need for tight restrictions on disbursement of funds if a SUSF is implemented.

Despite its general opposition to such funds, Verizon is willing to enter into discussions with other parties looking towards possible joint proposals on successor arrangements for the current SUSF. Indeed, in Case 09-M-0527, significant initiatives — including the establishment of the Transition Fund and the current SUSF, and reductions in switched access charges — were taken on the basis of negotiated joint proposals. The Commission has frequently recognized the benefits that can be created by encouraging such negotiations and adopting such proposals, rather than attempting to reach a litigated outcome that may not be satisfactory to any party.

H. State Regulatory Oversight

As the telecommunications market continues to evolve to meet consumer demands in many areas of the State, the challenge facing the Commission going forward will be balancing the State's interest to cultivate investment and competition within the telecommunications industry, while ensuring equitable access to advanced services for all citizens.

Question 8: "What should be the Commission's role in promoting broadband deployment, access and affordability?

Question 9: What regulatory barriers could be streamlined to facilitate broadband expansion and competition?

Question 10: There has been widespread consumer adoption of wireless, VoIP and broadband services, however, the Commission does not currently regulate these services. Are these regulatory gaps impeding the maintenance of core public interests?

As previously discussed, under the *Net Neutrality Order* the Commission has no jurisdiction over broadband Internet access, an interstate service, and no jurisdiction over CMRS service under Publ. Serv. L. § 6(5)(a). Moreover, the data marshalled in the Staff Assessment and the Mayo Report demonstrate that broadband and wireless services are widely available in the State from multiple providers. As the Mayo Report explains, "light touch" regulation has created a supportive environment for innovation and investment in the broadband area (as for wireless service), and the Commission should be careful to avoid undermining those benefits through excessive regulation. As noted by the Commission, "there has been widespread consumer adoption" of unregulated services, and that fact alone demonstrates that there are no regulatory gaps to be filled. Customers are increasingly choosing unregulated services, so there is no basis to assume that regulation is somehow caring for some unmet customer need.

Accordingly, and as discussed earlier in these comments, there is no need for the Commission to take measures to expand broadband deployment at this time (particularly through "universal service" funding or compelled network deployments), and the Commission should not seek to regulate broadband, wireless, VoIP, or other intermodal services and technologies.

> **<u>Question 11</u>: What aspects of State laws/regulations should be changed, streamlined, or expanded to adapt to consumer preferences and the current state of technology and the current federal legal regime?**

See discussion in Section II, above.

IV. THE POSITIONS SET FORTH IN THE PETITION OF THE CONNECT NEW YORK COALITION ARE NOT FACT-BASED, AND ARE GROUNDED IN OBSOLETE AND COUNTERPRODUCTIVE POLICIES

The Commission's notice solicited comments on the petition filed by the Connect New York Coalition. That petition unfortunately offers a number of unfounded and ill-advised proposals that would suppress competition, choke innovation and investment, and in numerous other ways undermine the interests of the State and its people.

In general, the Petition relies on questions and unsupported assertions, rather than any attempt to develop a factual record. To a large extent, the petition is devoted to simply asking the Commission to investigate issues. If those issues are germane to this proceeding, then the Coalition should offer evidence or cogent policy arguments for changing the Commission's current approaches. To the extent that the Petition does offer purported facts, they do not withstand scrutiny. Indeed, the Petition does not even establish a *prima facie* case that would warrant any "investigation" beyond that already undertaken in the Staff Assessment. And the Coalition's policy claims — particularly its disdain for competition and consumer choice as mechanisms for restraining market behavior — are poorly aligned with the needs of the people of this State and with current market realities.

A. THE COALITION'S OVERLY-BROAD APPROACH TO DEFINING "BASIC SERVICES" WILL UNDERMINE COMPETITION AND DETER INNOVATION AND INVESTMENT

The Commission's 1996 *Framework Order*[83] put forward a list of the features and functionalities that were deemed to constitute "basic service" — the ubiquitous availability of which was identified as the goal of the State's universal service policy. The Commission stated that:

> As the competitive transition evolves, we will continue to ensure the provision of basic telephone service, at an affordable rate, to New York's customers. Basic service is a dynamic term that refers to those telephone services deemed essential to minimally acceptable access to, and use of, the public telecommunications network. Those services deemed to be basic should be made universally available.[84]

At the time, the Commission identified nine specific features and functionalities that it deemed to be part of "basic service." Most of those are non-controversial and reflect features that are required by federal law or that are ubiquitously available today as part of any mass-market communications service. Some, however, reflect a service model rooted in the 1990s rather than in the realities of the 21st century.

One such "basic service" feature, for example, is directory listings. It is clear that consumers no longer believe that a default white pages listing is a necessary or even a particularly important aspect of their service.[85] (If they did believe this, so many of them would

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[83] *See* footnote 1, *supra*.

[84] *Framework Order* at 9.

[85] *See* Case 10-C-0215, "Order Granting Waiver with Conditions" (issued and effective October 15, 2010), at 10 ("Customers today have many options in terms of locating telephone numbers. Statistics suggest that telephone directories are not nearly as valuable as they were even a decade ago."); Michael Felberbaum, "Dark Days for White Pages: Companies Yank the Cord on Residential Phone Books as Use Fades," AP Newswires (November 11, 2010) ("Fewer people rely on paper directories for a variety of reasons: more people rely solely on cell phones, whose numbers typically aren't included in the listings; more listings are available online; and mobile phones and caller ID systems on land lines can store a large number of frequently called numbers.").

not be "cord-cutting" and migrating to wireless-only service in which customer names are not included by default in white-pages listings.[86]) The Commission should no longer require this as an aspect of "basic" service.

Similarly, access to live-operator-based "assistance" services should no longer be required as an aspect of universal service. Customers can place calls or obtain information in a wide variety of ways, and competing providers should be willing to offer alternatives and compete for customers based (in part) on the convenience and quality of the alternatives that they provide.

The Coalition, instead of recognizing that any list of mandatory "basic services" must be streamlined if it is to reflect the diversity of consumer preferences in the 21st century, doubles down on the 1996 definition, calling it "starkly inferior" and offering a long laundry-list of additional functionalities that all providers should be required to offer, such as support for fax machines, "credit card processing," access to the virtually obsolete 976 "dial-up" services, "ATM business machines," "DVR services," and so forth.

Defining a rigid set of basic services hinders the development and offering of innovative new service models, and the investment and flexible response to changing consumer preferences that are associated with such innovation. Features and functionalities should be set by the competitive market — *i.e.*, by consumers. In a competitive market, there should not be one rigid service model, but many, each competing to best meet disparate consumer needs and preferences. In failing to recognize the importance of service diversity and the primacy of consumer choice,

[86] Nor do all VoIP providers offer their customers the option of being included by default in white-pages listings.

the Coalition's proposed expansion of the basic service list would be a big step in the *wrong* direction.

The Coalition also proposes to identify broadband as a basic service, apparently to give it a basis for requiring providers to deploy fiber and take other actions in support of broadband availability. Verizon's views on such proposals have already been set forth in these comments.

B. THE COALITION'S RECOMMENDATIONS ON PROCESS ISSUES WILL PREVENT THE FAIR AND EFFICIENT RESOLUTION OF COMMISSION PROCEEDINGS

The Coalition is not only dissatisfied with the substance of the Commission's actions; it also opposes the procedures that the Commission uses. Its objections are unfounded.

1. The Use of Joint Proposals

The Coalition argues that "[r]ather than litigated and public proceedings, most Commission decisions are called 'settlement agreements' or 'Joint Proposals' of staff and company. Selected interests are often consulted and the Commission usually (not always) approves the Joint Proposals, often rejecting criticisms on the ground that it is a compromise within the range of litigated outcomes."[87]

Resolution by settlement (or, more precisely, through "Joint Proposals" negotiated by multiple parties with widely varying interests and presented to the Commission for approval) is in fact relatively uncommon in telecom proceedings. They have nevertheless achieved some notable successes — particularly, as noted above, in connection with the creation of the State Universal Service Fund. Such joint proposals have resulted in outcomes that accommodate and balance the interests of a broad range of parties and that avoid the need for inefficient, lengthy, and unnecessary proceedings — while giving parties opposed to aspects of the proposal a fair

[87] Petition at 9.

opportunity to present their views. There is no reason why this process should not continue to be utilized in the future.

2. Formal Evidentiary Hearings

The Coalition accuses the Commission of "explicitly abandon[ing] formal evidentiary processes."[88] This call has been echoed by letters filed with the Commission by stakeholders who ask that *this* proceeding be conducted through such a process.

The fact of the matter is that formal evidentiary hearings, with pre-filed testimony, exhibits, and cross-examination, can be an extraordinarily inefficient way to resolve regulatory proceedings involving complex legal, policy, and factual issues that can be better presented by the parties — and resolved by the Commission — through the use of written submissions such as briefs, comments, affidavits, and declarations. Moreover, such proceedings encourage unnecessary grandstanding instead of cogent policy analysis. Formal hearings have their place — and the Commission utilizes the procedure where appropriate — but there is no need, benefit, or legal requirement to use them in all cases. Both the Commission itself and the courts have recognized that, except for a very limited range of proceedings in which formal hearings are required by law, the Commission has wide-ranging discretion to utilize procedures that are most appropriate for particular issues and proceedings.[89]

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[88] *Id.*

[89] *See, e.g., Competition III Order* at 63-64. *See, e.g., Campo Corp. v. Feinberg,* 279 A.D.302, 305, 110 N.Y.S.2d 250, 253 (3d Dep't), *aff'd,* 303 N.Y. 995, 106 N.E.2d 70 (1952); *Executone/Monroe County v. PSC,* 71 A.D.2d 138, 422 N.Y.S.2d 148 (3d Dep't 1979); *Air Call New York Corp. v. PSC,* 62 A.D.2d 1127, 404 N.Y.S.2d 429 (3d Dep't 1978); *Legislature of County of Rockland v. PSC,* 49 A.D.2d 484, 375 N.Y.S.2d 650 (3d Dep't 1975); *Leroy Fantasies, Inc. v. Swidler,* 44 A.D.2d 266, 354 N.Y.S.2d 182 (3d Dep't 1974); and *Jericho Jewish Center v. PSC,* 208 A.D.2d 1152, 617 N.Y.S.2d 598 (3d Dep't 1994).

In particular, this proceeding is primarily concerned with regulatory policy, and is most appropriately handled through a notice-and-comment process — as, indeed, was the *Competition III* proceeding. If the Commission concludes as a result of its policy analysis that further fact-finding is required for specific, discrete issues, it can initiate appropriate proceedings at that time.[90] There can be no basis, however, for arguing that the proceeding as a whole should be conducted through a formal, evidentiary process.

3. The State Freedom of Information Law

The Petition also argues that the Commission's procedures are defective because "vital information in the possession of the Commission in these informal proceedings is often kept from the public on the grounds that it is 'trade secret'"[91] The Coalition is apparently referring here to § 87(2)(d) of the State Freedom of Information Law ("FOIL"), which exempts from disclosure agency records that "[a] are trade secrets or [b] are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise."[92]

Of course, as a duly-enacted State law, § 87(2)(d) is binding on the Commission. To the extent that the Coalition is here recommending changes to the statute, its recommendations are contrary to the Legislature's clearly-articulated judgments concerning the need for protection of

[90] Even if the Commission reaches such a conclusion, fact-finding can be conducted through means other than formal evidentiary proceedings with cross-examination — including exchanges of affidavits and Staff investigations. Determining what proceeding would be appropriate in this case would be premature until the Commission determines *whether* supplemental fact-finding is required and, if so, on what issues.

[91] Petition at 10.

[92] *See Verizon v. Publ. Serv. Comm'n*, 46 Misc.3d 858, 991 N.Y.S.2d 841 (Sup. Ct. Alb. Cty 2014).

trade secrets and confidential commercial information. As the State's highest court has recognized, § 87(2)(d) was enacted to advance the State's policy of protecting trade secrets,[93] and of "protect[ing] businesses from the deleterious consequences of disclosing confidential information, so as to further the State's economic development efforts and attract businesses to New York."[94]

Moreover, Verizon competes with businesses that are essentially free of Commission regulation, and those businesses have less (if any) need to file confidential documents with the Commission. Thus, reducing or eliminating the confidentiality protections afforded by FOIL disproportionately harms Verizon and benefits its competitors, thus distorting competition and undermining the Commission's goal of fostering competition on a level playing field. As an eminent Commission Administrative Law Judge, the late Joel A. Linsider, once observed, "[p]ublic disclosure of information by government agencies is an extremely important policy; but we would frustrate our own efforts to promote competition if those very efforts, which require us to obtain competitively sensitive information, led to the release of that information to competitors of the firm providing it and, in consequence, to market distortions."[95]

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[93] *See, e.g., Verizon v. PSC, supra*; *New York Tel. Co. v. Publ. Serv. Comm'n*, 56 N.Y.2dd 213, 219-20, 436 N.E.2d 1281, 1282-83, 451 N.Y.S.2d 679- 680-81 (1982) (referring to "[t]he importance of trade secret protection and the resultant public benefit").

[94] *Encore College Bookstores v. Auxiliary Services Corp.*, 87 N.Y.2d 410,420, 639 N.Y.S.2d 990, 663 N.E.2d 302 (1995).

[95] Case 99-C-0529, "Ruling Concerning Proprietary Material" (issued December 13, 1999), at 2. *See also* Case 00-C-2051, "Ruling Concerning Trade Secret Status" (issued October 29, 2001), at 3.

C. CONTRARY TO THE COALITION'S CONTENTIONS, VOICE SERVICE IS UNIVERSALLY AVAILABLE WITHIN THE STATE, AND THERE IS NO NEED FOR ANY CHANGES TO THE LIFELINE PROGRAM

The Coalition alleges that New York is "slipping in terms of the percentage of households with voice service," citing a figure of 94.1%.[96] In fact, as noted previously here and in the Staff Assessment, the correct figure is 98%.[97]

D. ROLLING BACK THE CLOCK ON SERVICE QUALITY REGULATION TO THE PRE-SQIP MODEL WOULD BE COUNTERPRODUCTIVE

The Petition repeatedly alleges that service quality and network reliability have declined significantly.[98] As shown in Sections I(D)(2) and III(D) above, this is not the case; and there is in any event no basis for the Commission to return to the service-quality regulation model that prevailed prior to the SQIP.

E. THERE IS NO FACTUAL BASIS FOR THE COALITION'S ALLEGATIONS OF FINANCIAL IRREGULARITIES AND MISREPORTING BY VERIZON

1. In General

The Coalition claims that "[t]here is significant evidence challenging the notion that legacy systems are money losers, and evidence indicating that even if they are, the losses have been inflated by accounting techniques. There is reason to believe that providers are cooking the books."[99] There is absolutely no basis for these allegations.

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[96] Petition at 10.

[97] The Coalition's figure appears to be based on the less appropriate Current Population Survey data, while Staff's figure is based on American Community Survey data. For the distinction between the two data sets, *see* Mayo Report ¶ 66 n.117.

[98] Petition at 11-13.

[99] *Id.* at 15. The financial challenges faced by legacy providers are widely recognized in the financial community — they are not just a talking point confected by the providers themselves. In fact, six years ago The Economist magazine noted that "[i]f the telephone network in New York State were a stand-alone business, it would already

(continued …)

In support of its contentions that Verizon's financial filings "at best present conflicting data,"[100] the Coalition alleges that "in 2010, Verizon New York's SEC Report [*i.e.*, a report prepared for the benefit of the company's bondholders] had revenues of $7.2 billion, but the [company's annual report to the Commission] only showed about $4.98 billion, a difference of $2.24 billion. Fundamental policies cannot be based on such uncertain financial data." In fact, this alleged discrepancy is based on the different approaches to accounting for revenues that are used in the two reports, as explained in Schedule 2b of Verizon's Annual Report to the Commission for 2010, which reconciles the figures in the bondholder report and the Annual Report.[101] Far from being an unexplained discrepancy that creates "uncertain financial data," this difference was the fully-disclosed result of certain differences in accounting treatment.

The Coalition next argues that in 2011 Verizon "reported an intrastate operating loss of approximately $1.5 billion and a negative 28.08% intrastate rate-of-return." The Coalition notes that although "[t]hese losses gave Verizon a right to temporary rate relief," "[i]t never sought such relief, an unusual decision given its legal entitlement if the facts were true."[102] Apparently, it has not occurred to the Coalition that filing for rate relief, temporary or otherwise, through a rate case would be futile for Verizon, since its rates are constrained not by rate-of-return

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(…continued)

be in bankruptcy. In recent years it has lost 40% of its landlines and revenues have dropped by more than 30%." THE ECONOMIST, August 13, 2009, "Leaders."

[100] Petition at 5.

[101] *See* note 1 on Schedule 2b, which explains the difference in terms of the differences in accounting treatment of subsidiary operations and certain uncollectibles.

[102] Petition at 9-10.

regulation but by market conditions, as discussed in Section II(B). The Commission and Staff, if not the Coalition, are aware of that fact.[103]

As with its other claims, the Coalition has not made even a *prima facie* showing that Verizon's financial accounting warrants a Commission investigation.

2. Alleged Subsidization of Wireless Companies

The Coalition falsely asserts that "wireless costs are being paid by [Verizon's] wireline customers."[104] But the "costs" that the Coalition is referring to here are *wireline* costs — specifically, the cost of landline facilities that are provided on a wholesale basis to wireless providers, and used by them for functions such as backhaul. Such costs are no different from the costs that Verizon incurs in providing other wholesale — and, for that matter, retail — services to other groups of customers. Verizon incurs capital costs and expenses in order to create and maintain a wireline network that can be used by a wide variety of customers with widely varying needs. Customers with a need for a particular service pay the charges associated with that service, thus helping Verizon to recover the capital and operating costs of its network. There is no reason why CMRS providers should be treated differently in this respect than any other class of wholesale or retail customers, or why the costs incurred in serving that one specific class of

[103] "[C]ost-of-service regulation can no longer function when competition successfully constrains market prices." *Competition III Order* at 125-26. "The [Commission's] decision to allow the company to account for these transactions [*i.e.*, real estate sales] as a competitive company would, rather than as would a traditional regulated monopoly, was based in part on the assumption that traditional rate of return ratemaking (where rates are typically based on a reasonable return on prudent investment) is no longer relevant because competition has eroded Verizon's ability to recover its investment." Case 05-C-0616, "Telecommunications in New York: Competition and Consumer Protection, A White Paper Prepared by the State of New York Department of Public Service Staff" (September 21, 2005), at 39-40.

[104] Petition at 16.

customers should uniquely be regarded as "subsidies."[105] Indeed, Verizon competes with a number of companies in the provision of backhaul services, many of which do not have wireless-service affiliates.

The fact that Verizon is investing in backhaul facilities for wireless carriers demonstrates as much as any other fact Verizon's commitment, notwithstanding the substantial financial losses it has sustained, to ensuring that that State has a telecommunications infrastructure second to none — a state-of-the-art network that will meet the needs of the people and businesses of this State in the future as well as in the present. There are currently more wireless subscriptions in New York than there are households, and Verizon need make no apology for investing in wholesale facilities that enable the wireless industry to provide its widely-demanded services. Moreover, the reason there is significant demand for backhaul is that wireless carriers are upgrading to provide wireless broadband services. In this way as well, Verizon's wireline investments are helping to fuel the State's broadband future and are fully paid for by wireless carriers purchasing access to and use of those facilities. Clearly, such investments are in the public interest.

The Coalition also alleges "troubling" "disparities" between the amounts being paid to Verizon by different wireless providers — disparities that it uses to insinuate that Verizon is favoring its own wireless affiliate.[106] But its analysis is based on a mish-mash of disparate data. For example, in assessing AT&T's total payments to Verizon in 2009 and 2010, which it claims to be "approximately $500 million," the Coalition apparently relies on a statement in a 2010

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[105] Additionally, many of the services offered to wireless providers are jurisdictionally interstate. The appropriateness of Verizon's charges for such services raises issues beyond the Commission's jurisdiction.

[106] Petition at 16-17.

financial report that "[w]e [*i.e.*, Verizon] generated revenues from services provided to AT&T and Sprint (primarily network access and billing and collection) of $237 million and $104 million in 2010 and $279 million and $119 million in 2009, respectively."[107] The Coalition's use of the numbers ignores the fact that (unlike Verizon Wireless) both Sprint and, to a much greater extent, AT&T, have substantial wireline as well as wireless operations in New York, so that these numbers have no necessary connection to the volume of *wireless* business conducted by either company or to the cost of services used by their wireless operations. The Coalition's approach of dividing these expenditures by its estimate of the number of wireless customers that Sprint, Verizon Wireless, and AT&T serve is thus meaningless. It also ignores the fact that wholesale expenditures by wireless carriers will vary from year to year as the carriers upgrade their backhaul capacity on different schedules. Thus, one carrier may incur substantial upgrade-related costs in one year, and relatively light ones in the following year, while another carrier may advance or defer upgrade costs to other years. An analysis that focuses on two selected years thus does not necessarily provide comparable data for different carriers.

V. SUMMARY AND CONCLUSIONS

The Commission should adopt the reforms identified in these comments, in order to promote innovation and investment and to eliminate the anticompetitive regulatory disparity between incumbent LECs and other unregulated or lightly-regulated providers. It should reject the recommendations of the Connect New York Coalition and other groups that seek to reinstate

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[107] Verizon New York Inc., "Consolidated Financial Statements As of December 31, 2010 and 2009 and for the years then ended," at 9.

outdated regulatory models that are not well-calculated to serve the needs of the State and its citizens in the 21st century.

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