THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

October 23, 2015

Honorable Kathleen H. Burgess
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

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

Dear Secretary Burgess:

The City of New York respectfully submits these comments in response to the Public Service Commission (PSC) staff's assessment of the state of telecommunications in New York State.

The City is committed to the goal of universal, affordable broadband availability and vigorously supports programs to ensure that New York City residents, businesses and visitors have access to critically important telecommunications services. Our efforts are tailored to New York City's needs and stem from a strong desire to ensure that regulations reflect the rapidly expanding reliance on broadband and wireless services for communications, whether it be for communications with government and public safety or for communications with employers, family or others in their communities. Our priorities and recommendations for the PSC are outlined below.

Affordable broadband

Quality broadband, in addition to quality telephone service, must be available to New York City residents at an affordable price. The City generally supports the PSC staff's position on the features of a successful low-cost broadband program, as discussed in the staff report on Charter Communications' proposed acquisition of Time Warner Cable[1] and in the comments we submitted in that proceeding.

Furthermore, the City supports the Federal Communications Commission's (FCC) efforts to reform and modernize the Lifeline program.[2] Specifically, we support the FCC's effort to make broadband eligible

[1] Redacted Comments of DPS Staff, Case 15-M-0388, September 16, 2015.

[2] Comments from Coalition of City Mayors to the Federal Communications Commission, WC Docket No. 11-42; United States Conference of Mayor's resolution, June 19-22, 2015.

for these subsidies. This would bring high-speed Internet access within reach of low-income households, helping to eliminate the digital divide, close the "homework gap" and support access to jobs, necessary services, and engagement in civic life. Parties affiliated with the State Universal Service Fund (SUSF) might similarly benefit from modernization efforts.

Recommendation: The City would support the opening of a review of the SUSF before it expires in 2016, including consideration of expansion to broadband service and revised eligibility requirements.

Promoting a Competitive Marketplace

The existence of a competitive marketplace across and amongst sectors is another important means of achieving affordability, fostering innovation, and encouraging investment in broadband infrastructure. The City has a wide range of programs aimed at promoting competition. A few of these programs are highlighted below.

- The City diligently oversees its cable franchises to ensure the equitable delivery of service throughout the franchise areas. The City has conducted an audit of the cable franchise agreement with Verizon to determine where it is failing to compete with incumbent providers and ensure a complete buildout to all residential households in New York City.

- The City has an agreement with Time Warner Cable to extend service into previously unserved areas, such as former industrial zones, through the installation of 20 miles of new fiber optic lines each year.

- In collaboration with Empire State Development, the City has formed "Connect IBZ", two public-private partnerships totaling $5.3 million. Connect IBZ will extend service to businesses in four industrial business zones in Brooklyn and Queens with service options ranging from 10 Mbps to 1000 Mbps (1 Gbps) using both fiber optic and fixed wireless technologies.

- The City has issued a franchise to a consortium of private sector partners to repurpose aging payphone infrastructure into LinkNYC, the world's largest and fastest network of public Wi-Fi hotspots, which will be supported by a major fiber optic deployment through commercial corridors in all five boroughs. The Wi-Fi speeds will be at least 100 Mbps up to 1000 Mbps, with state of the art encryption and hotspot-to-hotspot roaming capabilities, plus free nationwide phone calls and resilient 911 service.

- The City has also made a clear commitment to deliver service directly to residents, and has committed up to $10 million to deliver free service of at least 25 Mbps to five New York City Housing Authority developments that are home to 16,000 residents. The City has also created a line in the capital budget for broadband with an unprecedented allocation of $70 million over ten years.

Recommendation: The broadband map and data repository managed by the New York State Office of Information Technology Services (ITS) is an important resource for the City to promote and measure

competition. The PSC could bolster this resource with more granular and up-to-date data, or by conducting independent verification of key points, such as advertised speeds.

Pole and conduit access in Brooklyn, Queens, Staten Island and the Bronx

Under the New York Public Service Law (PSL), the PSC regulates attachments to utility poles and conduits, PSL Section 119a. On August 6, 2004, the PSC adopted a policy statement on pole and conduit attachments to regulate the process by which attachments to utility poles and conduits are made, in order to promote deployment of competitive telecommunications networks, Case 03-M-0432, Order Adopting Policy Statement on Pole Attachments, August 6, 2004 ("Policy Statement"). Under the Policy Statement, third parties seeking access to infrastructure must submit an application for a pole or conduit attachment license agreement. If a utility pole or conduit owner ("Owner") does not cooperate with a third party attacher who has made a formal request for access to the infrastructure, the third party attacher has the following options:

1. If Owner fails to perform the required preconstruction survey and/or make-ready work within 45 days of receipt of third party attacher's application, third party attacher can hire a utility-approved contractor to do the survey;
2. If there are delays in Owner's make-ready work or other impediments to access, third party attacher can make a temporary attachment and continue preparing for permanent attachment;
3. The PSC advises parties to attempt to work out disagreements in good faith; and
4. As a last resort, the third party attacher can seek dispute resolution by filing a complaint with the PSC through its Expedited Dispute Resolution Process.

Recommendation: The City has received complaints from third parties seeking access to infrastructure in Brooklyn, Queens, Staten Island, and the Bronx that Owners are not complying with the PSC's regulations, thus delaying the deployment of critical infrastructure in the City and impeding competition and customer choice. We urge the PSC to investigate how such policies are being implemented.

Resiliency

After Hurricane Sandy, it became abundantly clear that the safety and well-being of New York City residents impacted by disasters are closely tied to telecommunications resiliency. In an effort to highlight the importance of this issue, the City formed the Special Initiative for Rebuilding and Resiliency and created the Telecommunications Planning and Resiliency Office in DoITT. The City has launched a range of new telecommunications resiliency efforts – including, among others, working with the private sector on business continuity plans, energy efficiency measures, and ensuring building code standards have been upgraded. Work is also underway to reduce the risk of flooding more broadly in the city, all part of a comprehensive, multi-layered resiliency plan. The New York City Economic Development Corporation launched the RISE:NYC competition to identify innovative technologies, including for telecommunications, to help small businesses recover from Sandy and prepare for future challenges. Through these and other efforts, we have raised significant awareness of the issues the City faces. We applaud the State's efforts on this front, as well.

Recommendation: From New York City's perspective, among other measures, adequate power solutions should be required at major and critical cell and broadband sites or hubs. Additionally, backup power options for cable, phone and wireless customers should be available and affordable.[3] The City would also like to see information regarding options easily accessible to customers regarding backup power,[4] coordination or sharing of "real-time" outage report data for use by first responders, and 911 infrastructure resiliency. We would appreciate the State supporting such measures as well.

We also assert that wireless communications is a critical service and that wireless company resiliency and performance transparency is important to customers. The City urges the State to encourage wireless providers to make resiliency and performance information available to customers and localities.[5]

Broadband customer service

Service quality issues related to phone services may be an indicator of issues in related services including broadband and mobile.

Recommendation: The City requests that the PSC explore ways it can support expansion of customer service provisions benefiting broadband customers.

Technology transitions

The City is a major customer of legacy services, and procurement of new or replacement services takes a certain amount of time. As such, the faster the City has access to information about technology transitions the better it can plan for them. In an August 2015 Report and Order,[6] the FCC issued rules requiring Incumbent Local Exchange Carriers (ILECs) to provide 180 days direct notice to Competitive

[3] On August 7, 2015, the FCC adopted certain limited backup power obligations on providers of "facilities-based fixed, residential voice services that are not line-powered to ensure that such service providers meet their obligation to provide access to 911 service during a power outage...." These provisions include offering subscribers the option to purchase a backup solution for at least eight hours of standby power during a commercial power outage in order to enable calls to 911. In addition, within three years of the effective date of the eight hour obligation, providers are required to offer at least one option that provides a minimum of 24 hours of 911 service. *See* In the Matter of Ensuring Continuity of 911 Communications, PS Docket No. 14-174, Federal Communications Commission.

[4] In its August 2015 Report and Order, the FCC also adopted provisions requiring covered service providers to disclose to subscribers the following information: (1) availability of backup power sources; (2) service limitations with and without backup power during a power outage; (3) purchase and replacement options; (4) expected backup power duration; (5) proper usage and storage conditions for the backup power source; (6) subscriber backup power self-testing and monitoring instructions; and (7) backup power warranty details, if any. *See* In the Matter of Ensuring Continuity of 911 Communications, PS Docket No. 14-174, Federal Communications Commission.

[5] In 2013, the FCC looked into promoting transparency to consumers as to how mobile wireless service providers compare in keeping their networks operational in emergencies. *See* In the Matter of Improving the Resiliency of Mobile Wireless Communications Networks, PS Docket No. 13-239, Federal Communications Commission. The City submitted comments in this proceeding.

[6] In the Matter of Technology Transitions, GN Docket No. 13-5, Federal Communications Commission.

Local Exchange Carriers (CLECs), retail customers, and State and Tribal governments regarding technology transitions that will affect them. The City also shares the PSC's goal of identifying viable strategies for Next Generation 911 transition. We appreciate the PSC's work to pinpoint issues and identify standards as we continue to study the transition.

Recommendation: The City encourages the PSC to establish real time information sharing with municipalities regarding notifications that it receives from ILECs planning transitions under the new FCC rules. The City also requests that the PSC support increased notice to customers and local governments regarding these technology transitions. For example, we recommend that carriers provide a plan for any conversion of their central office technology from copper to fiber, with the number of services and customers to be converted, as well as the impact analysis to the customers (i.e., cost, downtime, change of requirements such as power, etc.).

For the broader set of customers, the City further asserts that a seamless transition will only occur if carriers replacing copper-based services assure that customers continue to have access to services of functionality and price comparable to the legacy service being replaced. Technology transition should not be a method to impose additional functions at additional costs on consumers who do not want them.

Further, as noted above, replacement of copper-based services with fiber-based services should be accompanied substantively by significant enhancement of backup power facilities available to maximize operability of communications infrastructure and equipment under power outage conditions. The capacity for copper-based phone service, line-powered to operate even when the power is out, is a core feature to which customers should continue to have access as legacy systems are replaced. Moreover, the burden of action to ensure power availability at customer premises should not be shifted to consumers without giving them access to available backup options and adequate notice and information.

Copper maintenance

The copper retirement issue is about more than notifying consumers. ILECs must maintain the copper infrastructure where they are currently required to provide service and other comparable alternative service options are not available. Also, as the City noted in its comments to the FCC in the technology transition proceeding, if maintenance of a redundant copper network is not cost effective for providers shifting to fiber, required disposition of legacy copper in place to an entity or entities interested in using such infrastructure may be appropriate. A copper infrastructure disposition to another entity or entities could result in a resilient and affordable option for some customers and could ease many transition issues.

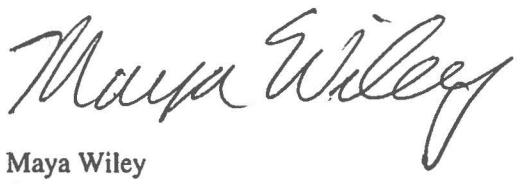
Recommendation: According to news reports and New York City Council testimony,[7] the ILEC in New York City is not always maintaining its copper infrastructure or responding to service and repair requests in a timely manner. Therefore, the City requests that the PSC consider actions that will ensure continued

[7] Various news articles including: http://arstechnica.com/business/2015/02/verizon-will-fix-your-landline-in-a-month-or-give-you-wireless-right-now/; http://www.nypress.com/local-news/20150303/verizon-problems-on-east-side/1. Also, issues with phone service outages New York City Council hearing, October 14, 2015

quality of service for customers, whether copper customers or fiber customers, and to ensure ILEC accountability.

Thank you for this opportunity to comment. We urge the PSC to utilize its authority to advance the priorities and recommendations noted above.

Respectfully submitted,



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