STATE OF 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 FRONTIER COMMUNICATIONS

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I. INTRODUCTION:

Frontier Telephone of Rochester, Inc., Citizens Telecommunications Company of New York, Inc., Frontier Communications of New York, Inc., Frontier Communications of Sylvan Lake, Inc., Frontier Communications of AuSable Valley, Inc., Frontier Communications of Seneca-Gorham, Inc. and Ogden Telephone Company (collectively "Frontier") hereby submit the following comments to the Public Service Commission (the "Commission" or "PSC") in response to the Assessment of Telecommunications Services (the "Study" or "Assessment") prepared by the Commission's staff (the "PSC Staff"). The Study reveals several overarching themes about telecommunications in New York. Specifically, that: 1) ILECs are experiencing a rapid decline in their market share while their satellite, cable and wireless competitors' market share is growing rapidly; 2) New York customers value broadband access and performance; and 3) consumer protection remains a priority of the Commission. To further explore these and other findings, the Staff has posed a number of questions about the telecommunications industry. In the context of the above themes, Frontier offers the below responses to a number of these questions.

II. RESPONSES TO QUESTIONS PRESENTED:

Maintaining Core Public Interests

1. **Universal Service** - 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?

Frontier's Response: Frontier has long supported Lifeline for voice services because it enables low-income consumers to afford critical communications service. As the Federal Communications Commission's (FCC) Universal Service Monitoring Report (December 2014) indicates, the program has been successful to ensure voice services to nearly all New York citizens. In New York, state Lifeline benefits currently enable over 7,000 low income customers in Frontier's service territory to afford service. Affordability of voice services continues to be critical particularly for rural, low-income and sensitive populations and the New York Lifeline program should continue to provide support for voice services.

Given the life-changing benefits associated with broadband capability and adoption, Frontier supports efforts to modernize and improve the federal Lifeline program to allow benefits to be applied to broadband service. As the Commission is certainly aware, the FCC is undertaking a comprehensive effort to restructure the federal Lifeline program and has requested input on how best to do this in its *Second Lifeline Reform NPRM.*[1] As reflected in its comments in the FCC proceeding, Frontier supports efforts to extend the reach of broadband so that all citizens can participate in today's Internet-driven economy, to streamline the program and to eliminate administrative expense and difficulty where possible.[2]

A key aspect of the FCC's proposed revision to the federal Lifeline program, which Frontier strongly supports, is to remove the responsibility for conducting Lifeline eligibility determinations from providers through the establishment of a centralized third-party verification administrator. Today, may states already successfully utilize a centralized process for benefit eligibility determinations as an effective method to combat fraud, waste and abuse in their program. In addition, Frontier supports consideration of distributing Lifeline benefits directly to the consumer, enabling the consumer to spend a portable benefit on any voice or broadband service that meets their needs. Frontier believes that these revisions are in the public interest and will ensure that the Federal program continues to provide vital support so that eligible consumers can access a broad range of communications tools. Frontier encourages the Commission to wait until the FCC concludes its Lifeline reform proceeding before taking any action on New York's Lifeline Program. This will enable the Commission to use the federal program modifications as a guide and to better identify areas in the New York program to target for incremental improvements.

2. **Network reliability and resiliency** – 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?

Frontier's Response: Any new regulations directed at ensuring network resiliency, emergency restoration and recovery of IP and wireless networks must fall within the Commission's grant of authority. Although the FCC recently reclassified broadband as a "telecommunications service," it maintained its preemption of state regulatory authority over broadband. In its Open Internet Order, the FCC explained that although it was exercising jurisdiction over broadband Internet access service by reclassifying it as a "telecommunications service," nothing changed the longstanding policy of federal preemption of state jurisdiction over broadband.[3] Further, just as the FCC continues to preempt state jurisdiction over broadband, so

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[1] *Lifeline and Link Up Reform and Modernization*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, WC Dkt. No. 11-42, FCC 15-71 (June 22, 2015) ("*Second Lifeline Reform NPRM*").
[2] See comments of Frontier Communications Corporation at http://apps.fcc.gov/ecfs/comment/view?id=6000119886
[3] See *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24 ¶¶ 431-33 (2015) ("Open Internet Order").

too does it continue to preempt state jurisdiction over voice-over-Internet-protocol service ("VoIP"). VoIP has long been held to be jurisdictionally interstate and, therefore, under the exclusive jurisdiction of the FCC. Nothing in the Open Internet Order changed this longstanding precedent. Consequently, a foray by the Commission into the regulation of broadband or broadband-based applications is contrary to federal law.

In any event, with respect to resiliency, sufficient resiliency exists in the market today. As the Study finds, service quality has been maintained at satisfactory levels since 2006 during a period of tremendous growth in the range of services and services providers.[4] Today, New York consumers have a multitude of communications channels available to them including wireline and wireless voice services and wireline, wireless, cable and satellite broadband services. According to the NYS Department of Public Service (NYSDPS) website, there are 541 active telecommunications companies in NYS. Further, only 8.5% of households do not have a wireless phone in addition to a landline telephone.[5] This level of competition and redundancy is sufficient to ensure satisfactory resiliency as demonstrated by the service quality levels to date.

That service quality has remained stable during an explosion in the types of communications services from which consumers can choose demonstrates that the best way to ensure continued innovation and investment in network reliability and resiliency is to allow the competitive markets to freely respond to consumer demand for these capabilities. The Commission's regulatory approach has not kept pace with the evolution of competitive service providers in the state and continues to apply different levels of regulation on a given provider depending on the communications medium it utilizes to provide service. As a consequence, there is asymmetrical regulation which burdens traditional operators like Frontier to a greater degree than its competitors, even though the share of consumers they serve through traditionally regulated facilities continues to shrink. As the Study points out, since the PSC's Competition III Order in 2006, access lines in the more heavily-regulated ILEC segment are down significantly; while in the less-regulated VoIP and wireless segments, subscriptions show strong increases.[6] In fact, at the time of the Competition III proceeding, ILECs provided service to 30% of customers - now, the ILEC share is only 10%.[7]

The best way for the Commission to maintain service quality and to further incentivize companies to address reliability and resiliency, is to ensure parity in regulations among competitors. This ensures competitors are treated in a like manner and that resources that could otherwise be used for investing in reliability and resiliency by one company are not diverted to regulatory compliance efforts that its competitors needn't address.

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[4] Study, pp.21, 22, 24, 26, 27
[5] See *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January–June 2014* (Released 12/2014), U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics.
[6] Study, pp. 21, 22, 24.
[7] Study, p.16

3. **Just and reasonable rates** – Is the current competitive environment producing just and reasonable wireline voice prices?

Frontier's Response: Yes. The telecommunications market is highly competitive in NYS with numerous competitors across various platforms. As mentioned above, the NYSDPS website indicates that there are 541 active telecommunications providers in NYS. This competition is effective at producing just and reasonable prices. Consumers have choices among an array of providers and packages of services, which are aggressively priced due to the robustness of competition in markets across the state. Increased price regulation is not only unnecessary but also is a step backward. In fact, many states, including the neighboring state of Connecticut, have completely (or nearly completely) eliminated price regulation and consumers there continue to have an impressive choice of services at competitive rates.[8] New York should follow this example.

In its Competition II Order back in 1996, the Commission adopted the core principle that providers in like circumstances should be subject to like regulations.[9] Application of this principle by the Commission is more critical now than ever. Through a more symmetrical regulatory structure, ILECs will be able to remain viable competitors in the NYS marketplace. This will help ensure just and reasonable prices for consumers by providing additional competitive alternatives.

4. **Service quality** – 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?

Frontier's Response: In general, the Commission does not address consumer complaints of wireless, VoIP and cable companies, but does address consumer complaints for ILECs.[10] As a competitive matter, this bifurcated structure places ILECs at a distinct disadvantage. A system that regulates one type of competitor and not the others damages competition. And, it is inconsistent with the core principles adopted by the Commission in its Competition II Order.[11]

Further, service quality regulations, though well-intentioned, are unfairly applied to landline providers alone. As the Study points out, many people are migrating from traditional telephone service to other technologies. Indeed, only 8.5% of households do not have a wireless telephone.[12] Mandated service quality metrics force ILECs uniquely, into an economic reality their competitors do not share. ILECs must direct finite resources toward compliance with landline voice service requirements *and away from more consumer-valued functions and services* such as expanding video and broadband. Customers would be best served by creating a

[8] For example, in the state of Connecticut, Frontier's triple play package is offered at $74.99 per month.
[9] See Case 94-C-0095, Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market, Opinion No. 96-13 (issued May 22, 1996) (Competition II Order).
[10] See, generally, Study, pp. 22, 25 and Appendix A
[11] See footnote 10 above.
[12] See footnote 6 above.

level playing field for all providers by eliminating (or drastically reducing) service quality regulation in order to allow customer demand and market forces to determine priorities.

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?

Frontier's Response: This question relates exclusively to Verizon. Consequently, Frontier offers no response to this question.

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?

Frontier's Response: As the Commission points out, the FCC is currently examining this issue. Frontier encourages the Commission to refrain from any effort to alter its current role vis-à-vis NG911 until the FCC proceeding on the matter is concluded. This is the prudent and responsible course of action since doing otherwise may cause confusion and uncertainty within the industry and among other stakeholders – potentially disrupting operations in the marketplace.

5. **Consumer protections** – Are existing consumer protections (i.e., privacy, consumer advocacy and complaint process, etc.) adequate?

Frontier's Response: Yes. A number of statements in the Study point to the adequacy of consumer protections in New York. First, statewide telephone reliability (as measured by customer reported troubles per one hundred telephone lines per month) has outperformed the Commission's service standard in each time period recorded in the Study (January 2009 – September 2013).[13] This data is a particularly impressive reflection on the telecommunications industry since the time period selected in the Study spans the occurrence of eleven (11) major federally declared disasters in NYS including Hurricane Irene, Hurricane Lee, Superstorm Sandy, and other extreme weather events such as flooding and nor'easter snow storms.[14]

Second, telecommunications complaint rates from 2008 through 2014 remained stable. In fact, the rate at the end of 2014 was more favorable than the rate at the beginning of 2008 – despite the extreme weather events referred to above.[15] These examples indicate that existing consumer protections are not only adequate, but actually quite strong.

[13] Study, p.22
[14]See FEMA website at: https://www.fema.gov/disasters?field_state_tid_selective=38&field_disaster_type_term_tid=All&field_disaster_declaration_type_value=All&items_per_page=20&=GO
[15] Study, p. 24

Lastly, as a general matter, consumer protections at the state level such as privacy and complaint process should mirror the rules established by the FCC. This will provide for greater consistency which will promote more efficient operation of the competitive markets.

<u>Telecommunications Transitional Issues</u>

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?

<u>Frontier's Response</u>: Providers of traditional telephone services that rely on copper-based networks have been placed in a precarious position due, in part, to the state's asymmetrical regulatory structure. And, the Study acknowledges that the Commission does not regulate ILECs in the same manner in which it regulates other competitors despite the Commission's long standing principle that providers in like circumstances should be subject to like regulations.[16] According to the Study, consumer preferences also appear to be shifting away from traditional phone service. In contrast, a recent AT&T survey cited in the Study[17] also indicates that 79% of New Yorkers still maintain a landline (about 30% of which obtain service from non-cable providers).[18]

This combination of factors creates a difficult environment in which to succeed. Nevertheless, traditional telephone service providers like Frontier continue to be legitimate and viable competitors in the marketplace—a testament to our tenacity and the quality of our services. To ensure that this continues to be the case, in the near-term, an immediate no-cost investment that the State can make in the existing copper-based network is to eliminate the regulatory requirements that apply to ILECs but that do not apply to other telecommunications providers. This will "level the playing field" and allow for enhanced competition. Also, with ILEC market share declining to just 10%[19] but still demonstrating a stable service quality that surpasses PSC benchmarks[20], the elimination (or drastic reduction) in the regulatory requirements for ILECs appears to be a no-cost, no-regrets investment in New York's telecommunications infrastructure.

Once regulatory parity is established, any incentives for network investment should be pursued in an authentically technology-neutral manner. This will allow industry participants to make informed decisions on how best to innovate and invest in network infrastructure. Government directing infrastructure investment is inefficient and will stifle innovation in the marketplace.

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[16] Study, Appendix A
[17] Study, p.14.
[18] See Siena College, Cell Phones Used by 90 Percent of New Yorkers (issued March 4, 2015), Crosstabs pp. 1, 2. https://www.siena.edu/news-events/article/cell-phones-used-by-90-percent-of-new-yorkers.
[19] Study, p.16.
[20] Study, pp. 22, 24.

7. 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 five small companies?

Frontier's Response: When the SUSF was established, the Commission indicated it would initiate a new proceeding on or about January 1, 2016 to examine the continued need and use of a SUSF.[21] Frontier encourages the Commission to follow that plan.

State Regulatory Oversight and Jurisdictional Gaps

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

Frontier's Response: Although regulation of broadband and VoIP services is the exclusive jurisdiction of the FCC, the Commission can play an important role in promoting broadband deployment, access and affordability in a number of ways. First and foremost, by establishing regulatory parity among providers, the Commission can ensure that the maximum amount of private capital is available for broadband investment. In addition, the Commission can support the efforts of other state and federal agencies to establish and distribute funding programs for broadband infrastructure, as well as adoption and accessibility.

These measures will enable New York to continue an impressive and enviable rate of growth in broadband availability. Today, every municipality in New York has access to one or more wired or wireless networks that can provide voice, video and data services to residents and businesses.[22] Over 95% of the state has access to the FCC benchmark speed of 25 Mbps download / 3 Mbps upload,[23] and 98% of the State has 200 Kbps speed in at least one direction.[24] New York's broadband speeds are significantly faster than the national average and other countries.[25] New York's adoption rate is ranked highly by the FCC and is 10 percentage points higher than the national average.[26] And, competition is robust (e.g. over 100 different broadband providers), especially at lower speeds.[27] These facts are indicators that a light regulatory touch is working effectively and that it is the appropriate approach for broadband here in New York. New York should look to complement what it already has in place rather than overlay a whole new regulatory framework designed to achieve a goal that the market is already achieving independent of regulation.

[21] Case# 09-M-0527, Joint Proposal and Settlement Agreement, Paragraph 2(b), p.4.
[22] Study, p.50.
[23] Study, p. 51
[24] FCC Internet Access Services: Status as of 12/31/13 (Dated October 2014), Table 18
[25] Study, pp. 61-62
[26] Study, p. 59
[27] Study, pp. 52-57, 61.

With regard to considerations relating to broadband deployment and access, the Commission must keep in mind the consumer demands on broadband speeds and the challenging geographic features that exist in some parts of the State (e.g. mountains, lakes, state parks). These factors indicate that technology-neutral policies and incentives will best serve residents and businesses in New York. For example, Frontier has partnered with Hamilton County to bring 12-40 Mbps broadband speeds to one of the most rural counties in the United States. This project is delivering desirable speeds and is providing economic development and quality of life benefits to this area of the State located in the protected Adirondack Park. In Warren County, Frontier partnered with the Town of Thurman to deploy an innovative solution which used “white space” technology to provide internet access. These projects are examples of the importance of collaboration and innovation—rather than dogmatic adherence to performance requirements that are largely aspirational for many NYS citizen—in bringing high quality and transformative broadband access to unserved and underserved communities. Flexibility with regard to technology and broadband speed will enhance an already robust marketplace and result in greater affordability and access.

As the Study correctly observes, broadband speed can drive cost[28] and consumer demands for speed vary.[29] According to the Study, cost continues to be the leading driver for non-adoption of broadband services (other than not wanting broadband at all).[30] As set forth above, one way in which the Commission can potentially address this issue is through reform of the state Lifeline program.

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

Frontier’s Response: There continue to be impediments to fair competition for ILECs in NYS. To the extent that these impediments are removed or curtailed, ILECs can better allocate resources toward broadband expansion and compete more effectively.

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?

Frontier’s Response: No. Limited state regulation has produced favorable results in New York with respect to the core interests identified in the Study: (a) rates, (b) service quality, (c) consumer protections, (d) universal service, (e) emergency reporting, and (f) entry/exit.

(a) Rates. Please see responses to Questions 3 and 8.

(b) Service Quality. Please see responses to Questions 2, 4, and 5.

[28] Study, p. 60
[29] Study, p. 48
[30] Study, p.59

(c) Consumer Protections. Please see responses to Questions 2, 3, 4, and 5.

(d) Universal Service. Please see responses to Questions 1, 7 and 8.

(e) Emergency Reporting. Please see responses to Questions 2 and 4.

(f) Entry/exit. Please see responses to Questions 2, 3, 6, and 8.

Because the limited state regulation on wireless, VoIP and broadband services has yielded positive results in New York, this approach should be continued. Further, a lighter regulatory touch should also be adopted vis-à-vis the Commission's oversight of the ILEC segment since the ILEC segment is providing the same services in a manner that is surpassing Commission benchmarks on consumer-oriented issues.

11. 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?

Frontier's Response: In general, the State should encourage innovation and competition in the marketplace by exercising restraint in the regulation of services provided through Internet Protocol and other new and emerging technologies. Availability of competitive video service is an area of increasing innovation and demand in New York. Frontier encourages the Commission to support a transition to statewide video franchising in order to promote competition and to streamline competitive entry into the video market in the state. This will provide enhanced consumer choice as well as additional investment in broadband and video services. In other states that have followed this model, such as Connecticut, consumers have a rich array of video providers and services from which to choose at competitive prices.