MOTION TO STRIKE - ATTACHMENT A

REDACTED

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March 28, 2022

Honorable Michelle L. Phillips
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223

Re: Case 15-M-0742

Dear Secretary Phillips:

Enclosed please the Initial Comments of Verizon New York Inc. on the Proposal of the New York Smaller ILEC Companies to Establish a Successor Funding Arrangement.

These comments and Exhibit A thereto contain Protected Information within the meaning of the Protective Order issued in this proceeding. Each passage that constitutes Protected Information is preceded by the notation "**[BEGIN CONFIDENTIAL]**" and followed by the notation "**[END CONFIDENTIAL]**." All Protected Information has been redacted from this filing.

Unredacted copies of the comments and Exhibit A are being provided to the Administrative Law Judge, to Trial Staff, and to parties who have agreed to be bound by the provisions of the Protective Order.

Respectfully submitted,

Joseph A. Post

Joseph A. Post

cc: Honorable Gregg A. Sayre, ALJ
Party List

MOTION TO STRIKE - ATTACHMENT A

REDACTED

NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Review the State Universal Service Fund	**Case 15-M-0742**

INITIAL COMMENTS OF VERIZON NEW YORK INC. ON THE PROPOSAL OF THE NEW YORK SMALLER ILEC COMPANIES TO ESTABLISH A SUCCESSOR FUNDING ARRANGEMENT

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NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Review the State Universal Service Fund	**Case 15-M-0742**

COMMENTS OF VERIZON NEW YORK INC.
ON THE PROPOSAL OF THE NEW YORK SMALLER ILEC COMPANIES
TO ESTABLISH A SUCCESSOR FUNDING ARRANGEMENT

I. INTRODUCTION AND SUMMARY OF COMMENTS

Verizon New York Inc. ("Verizon") submits these comments[1] to explain why the Commission should reject the proposal of the New York Smaller ILEC Companies ("NSICs") to establish a successor funding arrangement ("SFA") that would replace the current State Universal Service fund ("SUSF," or "Fund") after it expires on December 31, 2022.[2]

The comments are organized as follows:

First, we explain why the burden of proof on whether an SFA should be established lies squarely with the NSICs (Section II).

[1] These comments are submitted pursuant to the Commission's February 8, 2022 "Notice Soliciting Comments" in this proceeding, and its Notice of Proposed Rulemaking under the State Administrative Procedure Act (I.D. No. PSC-04-22-00004-P, published January 26, 2022).

As discussed in Section VII below, a great deal of additional information relevant to the matters addressed in these comments will become available in the near future, either through discovery or through filings made by NSIC members. Accordingly, these comments should be regarded as preliminary, and subject to supplementation at a later stage of the proceeding.

[2] The proposal is set forth in Case 15-M-0742, "Petition for Extension of the State Universal Service Fund" (filed December 15, 2021) (the "Petition").

Next, we explain why certain of the smaller ILECs that have flouted requirements set by the Commission in its order establishing the current SUSF should not be permitted to participate in any SFA (Section III).

Finally, we describe the framework that should be applied to assess the need for an SFA (Sections IV and V), discuss certain issues relevant to the administration of an SFA should the Commission decide to create one (Section VI), and address the procedures that should be followed for the remainder of this proceeding (Section VII).

The framework that we propose in Sections IV and V differs in material respects from the framework that has governed the SUSF since it was first created in 2012, as it should.[3] We must respond to the lessons taught by the mistakes of the past rather than repeat those mistakes, and must give due recognition to the impact of changing circumstances. Although the Fund has been with us in various forms for almost twenty years (taking into account both the SUSF itself and its predecessor, the Transition Fund), it — like other relics of the past, such as the post-divestiture access charge regime and universal rate-of-return regulation — has passed its "use by" date, and is ripe for review and reassessment.

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[3] The original Fund was created, with a four-year term, by a 2012 Commission order. *See* Case 09-M-0527, "Order Adopting Phase II Joint Proposal" (issued and effective August 17, 2012) (the "*2012 Order*"). It was extended, under modified terms, for an additional four years in 2016, and then, with further modifications, for an additional two years in 2020. *See* Case 15-M-0742, "Order Adopting Joint Proposal" (issued and effective September 16, 2016) (the "*2016 Order*"), and *id.*, "Order Adopting Joint Proposal" (issued and effective December 23, 2020) (the "*2020 Order*"). The current Fund will expire on December 31, 2022.

The 2012 Fund was preceded by a "Transition Fund" created in 2003, and by extensions of the Transition Fund that were approved in subsequent years. *See* Case 02-C-0595, "Order Adopting Comprehensive Plan" (issued and effective December 23, 2003); Case 09-M-0527, "Order Adopting Terms of Phase I Joint Proposal" (issued and effective July 16, 2010); *id.*, "Order Modifying Temporary Transition Fund Extension" (issued and effective September 16, 2011), and *id.*, "Order Increasing Cap on Temporary Transition Fund Extension" (issued and effective March 16, 2012).

Indeed, the significant changes made to the Fund by the orders adopting the 2016 and 2020 Joint Proposals[4] demonstrate the Commission's willingness to reconsider earlier funding models. Those changes include the introduction of JP ¶ 8(e) in 2016, and, in 2020, a reduction in the term of the Fund from four to two years and the introduction of competitive and financial reporting requirements (¶¶ 2(e) and 2(f)). All of these changes were in the direction of increased scrutiny of NSIC claims that funding was needed to preserve universal service.

Our proposed framework for evaluating any successor funding arrangement, set forth in Sections IV and V, has two key components:

- ***Criteria for assessing the existence of competition in the NSIC service areas.*** Although competition has not been taken into account in prior iterations of the Fund,[5] it is clear that where adequate competitive alternatives to the NSICs' services exist, there is no need to continue subsidizing the NSICs themselves in order to ensure the continued existence of universal service. That should be the only purpose of an SFA — to ensure the continuation of universal service. To the extent that the NSICs are not required for that purpose, there is no justification for creating an SFA to subsidize them.
- ***Criteria for assessing financial need*** that better reflect the realities of the NSICs' operations than the rate-case criteria that currently govern funding decisions.

Although Verizon and other parties are still in the process of gathering information relevant to the proposed framework, it now appears clear that the NSICs will not be able to meet their burden of showing that there is a need for an SFA. But even if the Commission should decide to establish an SFA, then, as shown below, the framework that is proposed in Sections IV

[4] Virtually all of the iterations of the SUSF and the Transition Fund have been created through "Joint Proposals" ("JPs") negotiated by parties and then adopted by the Commission. In some cases in these comments, we refer to the provisions of particular Joint Proposals. These should be understood as shorthand references to the Commission orders adopting the proposals, which is what gives the proposals their binding force.

[5] However, the current Fund includes a competitive reporting requirement (¶ 2(e)), intended to generate information for possible use in this proceeding.

and V provides important guideposts for determining how applications for SFA funding should be assessed in the future.

II. THE POTENTIAL FUND BENEFICIARIES MUST BEAR THE BURDEN OF JUSTIFYING THEIR PROPOSAL FOR ESTABLISHING A SUCCESSOR FUNDING ARRANGEMENT

A. The Fund in its Current Form Fails to Achieve its Goals

The Petition argues incorrectly that the Fund should simply be continued or renewed for at least an additional four years, in precisely its current form:

> [T]he NSIC members respectfully submit that they have provided sufficient information to sustain the conclusion that: (1) there is a need for the SUSF; (2) the SUSF should continue past December 31, 2022; and (3) *the current funding size and framework should continue for at least a four-year period*."[6]
>
> * * *
>
> As a result, the SUSF framework that should continue after December 31, 2022 should follow the framework that the Commission has already determined to advance the public interest. As reflected in the various *SUSF Orders*, this is not the "first rodeo" for the Commission or the parties regarding the SUSF. At the end of the current SUSF Renewal Period (*i.e.*, December 31, 2022), the Commission and all interested parties will have had ten (10) years of experience in the successful operation of the SUSF, without any negative consequences to competitors or the public.[7]

There is no basis for a presumption that an SFA should be established at all, and certainly no basis for establishing it as a mirror image of the current Fund. The current Fund and its predecessors have failed to achieve their central goal, and to extend it would simply be to double down on the mistakes of the past. That goal, as stated in numerous Commission orders, was to provide *temporary*, *transitional* funding that would put the funded companies on a path to

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[6] Petition, Summary Page (emphasis supplied).

[7] *Id.* at 31.

financial self-sufficiency. For example, more than 25 years ago, when it was first considering the creation of a universal service funding mechanism, the Commission stated:

> We are also considering whether some limited, <u>transitional</u> funding is needed for the recovery of a portion of incumbents' embedded costs associated with the provision of basic service in high cost areas. Such funding would provide a limited cushion against significant competitive revenue losses in the early years that are associated with universal service, while requiring the incumbent to adjust to the rigors of a competitive market as time passes. Such a funding mechanism would not <u>guarantee</u> any company perpetual recovery of its total costs, but instead would ensure that remaining captive customers continue to have affordable services available to them.[8]

The Commission returned to that theme in its order adopting the 2016 Joint Proposal. That proposal included, for the first time, a provision (¶ 8(e)) requiring entities seeking new, continued, or modified funding from the SUSF to file a plan that would include "a good faith description as to how the Eligible Recipient may reduce its need for SUSF support at the end of the SUSF's extension period." Paragraph 8(e) also set forth detailed requirements relating to such plans.

In adopting the 2016 Joint Proposal, the Commission identified ¶ 8(e) as a key reason for finding the JP to be reasonable, and in doing so underlined the limited, transitional nature of the Fund:

> We intend to actively review the investment and operational plans proposed by the Joint Proposal to ensure that SUSF recipients are reducing their need for SUSF support. As the Commission indicated in Opinion 96-13, funding was intended to provide only a limited cushion against significant competitive revenue losses in the early years while requiring the ILECs to adjust to the rigors of a competitive market as time passes. Moreover, the funding mechanism was only intended to ensure that remaining captive customers continue to have affordable services available to them. Given our ability to monitor the proposed investment and operational plans to

[8] Case 94-C-0095, Opinion No. 96-13, "Opinion and Order Adopting Regulatory Framework" (issued and effective May 22, 1996), at 14 (emphasis in original).

> ensure that SUSF recipients are actively working to reduce their need for SUSF funding, we find the proposed set of eligible recipients and associated proposed funding amounts to be reasonable.[9]

Most recently, in the *2020 Order*, the Commission reaffirmed that the Fund was intended "to provide only a limited cushion against significant competitive revenue losses while requiring the ILECs to adjust to the rigors of a competitive market as time passes," and to "provide impetus to the smaller ILEC recipients to move away from reliance on the SUSF to a state where they become more financially and operationally efficient, and able to effectively compete."[10]

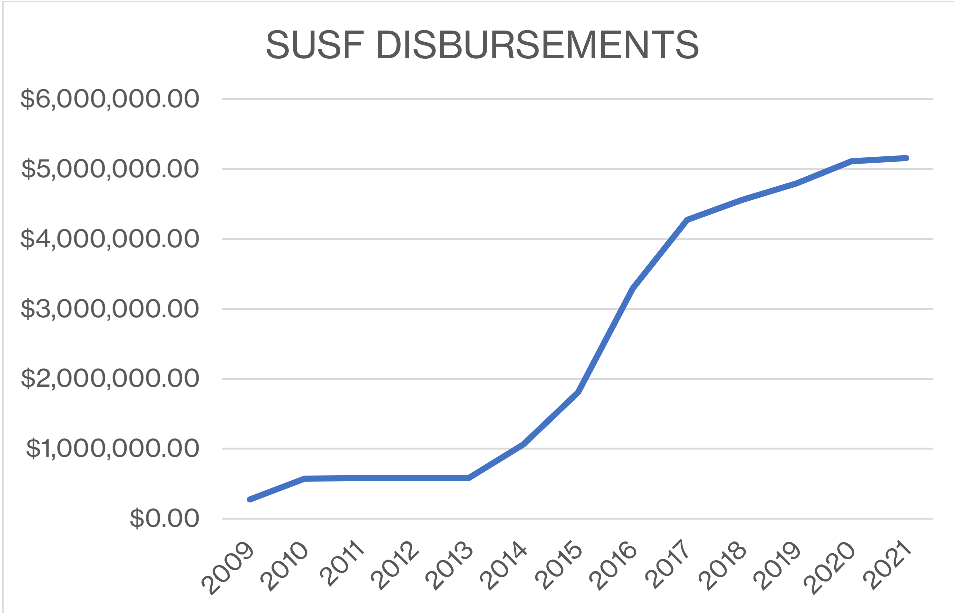
The failure to achieve this goal of a limited and temporary SUSF is demonstrated by the increasing subsidies paid by the Fund since 2009:

Year	Disbursements
2009	$270,512.00
2010	$566,830.00
2011	$579,984.00
2012	$579,984.00
2013	$579,984.00
2014	$1,056,984.00
2015	$1,804,948.72
2016	$3,293,681.65
2017	$4,276,030.76
2018	$4,555,623.00
2019	$4,794,766.96
2020	$5,112,892.92
2021	$5,159,527.08

Source: Fund Administrator

[9] *2016 Order* at 16 (footnote omitted).

[10] *2020 Order* at 19-20.



A significant reason for this failure is that SUSF funding decisions have always been made in traditional rate cases, based on a company's regulated intrastate revenues and costs. *See, e.g.*, 2016 JP ¶ 8(b); 2020 JP ¶ 8(b). [redacted]

[11] The term "Eligible Recipient" refers to one of the (currently 30) companies that are authorized to apply for subsidies from the SUSF.

This breakdown of the model underlying the SUSF undermines any notion that the establishment of an SFA should be presumed. Rather, because of the fundamental failure of the Fund and its predecessors to achieve their central objective over the course of two decades, the burden of proof should be placed squarely on any party that seeks to continue it in its current form, or indeed to establish an SFA at all.[12]

B. The Provisions of the Current Joint Proposal

The express terms of the current (2020) SUSF also support the allocation of the burden of proof to the NSICs in this proceeding. Paragraph 2(b) of the 2020 Joint Proposal provides that an SFA will be established only if the "Commission *determines* … that there is a continued need for the SUSF." (Emphasis supplied) Thus, affirmative Commission action is required to establish an SFA. The current Fund will not be continued past December 31, 2022 by default, and there is no presumption built into the JP that an SFA will be established. The parties requesting a ¶ 2(b) determination from the Commission — the NSICs — properly bear the burden of justifying their request.

C. The NSIC Members' Superior Access to Relevant Information

Under traditional principles of the law of evidence, a key factor in allocating the burden of proof is the identity of the party that has the best access to relevant evidence.[13] That is, for

[12] The existence of the Targeted Accessibility Fund, or "TAF," provides no support for the continuation of the SUSF. The TAF supports a set of services that are universally recognized to be socially-important and non-compensatory, and reimbursement is based on simple rate and cost benchmarks. TAF funding decisions are not based on "revenue requirements" determined through the application of arbitrary cost allocations. The TAF has thus created none of the controversies — and its administration entails none of the complexities — that surround the issue of whether an SUSF is needed to maintain universal service. The competitive and financial issues discussed in these comments do not bear on the TAF. Verizon is not aware of any party that has opposed continuation of the TAF since its creation in the late 1990s.

[13] *See, e.g., Seaman v. Memorial Sloan-Kettering Cancer Center,* 2010 U.S. Dist. LEXIS 21717 (S.D.N.Y. 2010) *29 - *30, *aff'd sub nom. Seaman v. First Unum Life Ins. Co.,* 487 Fed. Appx. 670 (2d Cir. 2012).

example, the principle underlying Publ. Serv. L. § 92(2)(f), which imposes the burden of proof of the appropriateness of rate changes on the utility whose rates are at issue.[14] It is the NSIC members that have the best access to information concerning the key issues in this proceeding — their financial situation, the underlying causes of that situation, their alleged need for subsidies from an SFA, the availability, cost, and potential efficacy of steps they might take to achieve self-reliance, and the existence of competitive alternatives in their service areas.

The superiority of the NSICs' access to relevant information is not affected by the availability to other parties of discovery under the Commission's rules. Discovery is valuable only to the extent that a party knows the right questions to ask, and it can take many rounds of groping in the dark by means of successive rounds of questions and answers before a party begins to acquire that knowledge. No interrogatory responses can give a party an understanding of another party's business that is comparable to what the party itself knows from carrying out its operations day-in and day-out, and having open and unmediated access to the opinions and observations of those conducting that business. Discovery is also limited by the Commission's "special study" rule (16 NYCRR § 5.8(c)), under which, except in "unusual circumstances," "a party will not be required to develop information or prepare a study for another party." Thus, Verizon could not compel a NSIC member to conduct a study of the root causes of its financial condition, and to produce the results of that study to Verizon.[15]

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[14] *See* Case 99-C-0529, "Ruling on Procedure and Schedule" (issued April 27, 1999) (under the "traditional rate-case model," the "ILEC bore the burden of proof, in part because of its greater access to the information needed to set proper rates, and had a corresponding responsibility to provide cost studies").

[15] Additionally, thirteen companies that apparently want to retain their status as Eligible Recipients under any future SFA (see the discussion in the following section) are not parties to the proceeding, and thus are not subject to service of interrogatories or document production requests at all under the Commission's rules. *See* 16 NYCRR §§ 5.3(a), 5.4(a).

III. COMPANIES THAT HAVE NOT FILED THE INFORMATION REQUIRED BY ¶¶ 2(E), 2(F), AND 8(E) OF THE CURRENT JOINT PROPOSAL SHOULD NOT BE ALLOWED TO RECEIVE THE BENEFITS OF ANY SUCCESSOR FUNDING ARRANGEMENT

Paragraph 2(e) of the current (2020) JP requires "any Eligible Recipient that is receiving or will request funding after the SUSF renewal period" (that is, after the period ending on December 31, 2022, when the current SUSF expires) to file detailed data on the location of facilities of potential alternative service providers. Additionally, under JP ¶ 2(f), certain financial data must be filed by "[a]ny Eligible Recipient that is receiving or will request funding following the SUSF Renewal Term." Under JP ¶ 8(e), "[a]ny Eligible Recipient seeking for the first time SUSF disbursements in a rate case …, any Eligible Recipient seeking a change in its SUSF funding …, and any Eligible Recipient seeking continued SUSF disbursements," is required to submit certain information relating to "steps that [it] took in an effort to improve its financial position."

As noted previously, these provisions are not merely terms and conditions of an agreement among private parties. The Commission approved and *adopted* the JP, making its provisions binding and enforceable, and giving them the full force and effect of a Commission order under the Public Service Law. As the Commission stated in its order approving the 2020 JP, "Consistent with the discussion in the body of this Order including the Commission's authority to modify the Joint Proposal, when warranted, the terms of the Joint Proposal filed in this proceeding on October 13, 2020, are *adopted and incorporated as part of this Order*."[16] Of course, as with any Commission order, the Commission retains the authority to modify its

[16] *2020 Order* at 22 (emphasis supplied); *see also id.* at 21.

requirements on a going-forward basis, but that fact gives parties no right to ignore those requirements, which remain enforceable unless and until they are rescinded or modified.

Moreover, the *2020 Order* specifically recognized the importance of these particular requirements to the administration of the SUSF. As it stated:

> The Commission agrees that the JP's requirements for current or future SUSF recipients to file extensive location and financial data, and to submit plans that consider structural and other business alternatives are among the key benefits of the JP. These provisions will help ensure that any future SUSF funding is the minimum amount necessary to achieve the goal of statewide universal service. The Commission intends to actively review this location specific and financial data along with investment and operational plans proposed by the Joint Proposal to ensure that SUSF recipients are reducing their need for SUSF support. As the Commission previously indicated, funding was intended to provide only a limited cushion against significant competitive revenue losses while requiring the ILECs to adjust to the rigors of a competitive market as time passes. The data should assist the Commission in determining whether future SUSF funding is warranted, or whether alternative means of providing funding to eligible recipients should be pursued. In addition, the compilation of location-specific data on alternatives to traditional wireline voice service over the course of the 2021-2022 term of the SUSF Renewal Period should allow the Commission to assess the state of competition in the rural areas served by the smaller ILECs. The ultimate purpose of these provisions is to provide impetus to the smaller ILEC recipients to move away from reliance on the SUSF to a state where they become more financially and operationally efficient, and able to effectively compete.[17]

It is thus significant that fourteen of the Eligible Recipients under the current Joint Proposal have failed to submit the competitive-location information required to be filed by December 31, 2021 under ¶ 2(e)(ii) of the Joint Proposal. These are:

[17] *Id.* at 19-20 (footnote omitted).

Berkshire Telephone Corporation
Cassadaga Telephone Corporation
Champlain Telephone Company
Chautauqua & Erie Telephone Corporation
Citizens Telephone Company of Hammond, NY, Inc.
Dunkirk and Fredonia Telephone Company
Empire Telephone Corporation
Hancock Telephone Company
Margaretville Telephone Company, Inc.
Middleburgh Telephone Company
Ontario Telephone Company, Inc.
Taconic Telephone Corporation
Trumansburg Telephone Company, Inc.
Alteva of Warwick LLC

(None of these companies, except for Middleburgh, is a party to this case.)[18]

That these companies have not made filings under ¶ 2(e) also makes it unlikely that they will make the financial filings required under JP ¶ 2(f) when those are due on March 31, 2022, or (if required) filings under ¶ 8(e).

There are two possible explanations for this failure. The first is that these companies firmly intend *not* to seek funding from an SFA, in which case that intent should be incorporated into any Commission order establishing an SFA. The second possibility is that the companies are defying an order of the Commission by failing to comply with requirements that the Commission viewed as critical to the administration of the Fund. If the latter is the case, it would be an appropriate sanction to exclude the companies from the benefits of any SFA that the Commission may establish.

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[18] Additionally: (a) Nicholville did not submit its ¶ 2(e) data until February 28, 2022, over six weeks after the (extended) deadline imposed by the Commission; **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

On February 22, 2022, Administrative Law Judge Gregg Sayre, the presiding officer in this proceeding, issued a ruling denying a motion by Verizon to exclude the companies from SFA benefits.[19] Judge Sayre's ruling was procedural and thus does not (and, indeed, could not) preclude the Commission, in its final order, from granting the relief requested by Verizon in that motion. Indeed, as the following extracts make clear, the ruling was based on the perceived prematurity of Verizon's motion and on the Judge's conclusion that the issue should be decided by the Commission:

> To put it in a nutshell, Verizon is seeking a form of partial summary judgement from an Administrative Law Judge in a rulemaking *in which comments have not even been filed*. Viewed as such, Verizon's motion is clearly without merit purely from a procedural standpoint. (Ruling at 4; emphasis supplied)
>
> The failure of some ILECs to file the December 31, 2021, data required by the 2020 Order also does not warrant an advance "death penalty" *at this stage of the case*. (Ruling at 4; emphasis supplied)
>
> As the ILECs and UIU argue, the importance of the missing data is only one of many factors that the Commission will consider when it reaches its decision in this case. However, the ILECs that have not filed the December 31, 2021 data should be aware that the absence of the required data may, at the conclusion of this case, lead to a determination by the Commission that they have failed to provide a sufficient showing of a need for post-2022 funding in their service territories, and that they will therefore not be eligible for such funding. (Ruling at 4-5)

IV. WHERE ADEQUATE COMPETITIVE ALTERNATIVES EXIST, THERE IS NO NEED TO SUBSIDIZE LEGACY PROVIDERS IN ORDER TO ENSURE THE MAINTENANCE OF UNIVERSAL SERVICE

A. NSIC Members Face Significant Competition

The NSIC members face substantial competition in their service areas. This is suggested by a number of independent sources, including (1) the line-loss data tabulated in Attachment B to

[19] Case 15-M-0742, "Ruling Denying Motion to Exclude" (issued February 22, 2022).

the NSIC Petition, (2) the Commission's conclusions in its recent order on the ratemaking treatment of loan proceeds received by a subset of the NSIC members under the federal Coronavirus Aid, Relief, and Economic Security ("CARES") Act,[20] and **[BEGIN CONFIDENTIAL]** [redacted]

[20] The Commission stated:

> While we strongly disagree with many of the Small ILEC claims and arguments, the Commission believes that these arguments need not be addressed when deciding the appropriate rate treatment for the PPP loans, due to *the competitive environment in which the Small ILECs now operate*. As the Commission found in its 2018 Tax Act Order, as a result of *customer losses to competitors even before the COVID-19 pandemic*, the intrastate return on equity (ROE) of these 14 Small ILECs fell below the ROE that would have been allowed in a traditional rate case, and often fell below 0%, thus indicating that these ILECs were losing money on their intrastate operations even prior to the Covid-19 pandemic. The Small ILECs' responses to the Commission's March 2021 Order confirmed that the Small ILECs continued to operate during the COVID-19 pandemic in a *highly competitive environment* which negatively impacted earnings.

Case 21-C-0110, "Order Determining Ratemaking" (issued and effective February 18, 2022), at 9 (footnote omitted; emphasis supplied).

[21] Case 07-C-0349, "Order Adopting Framework" (issued and effective March 4, 2008). In the tabulation of the competitive presence filings, the second column addresses the percentage of *customers* and the third column addresses the percentage of *territory*. The full questions asked in the survey were: Question 1: "What percentage of residences in your telephone service territory have competitive cable telephone service available to them? (Please do not include satellite telephone service.)" Question 2: "What percentage of customers in your telephone service territory currently have non-affiliated wireless telephone service available to them?" Question 3: "How would you characterize, in terms of percentage, the availability of wireless phone service coverage across your telephone service territory? (Please provide a single percentage figure of availability rather than a range of percentages.)" Note that Question 1 refers only to "competitive" cable telephone service (and thus may have been interpreted by some respondents as excluding such service provided by affiliated companies), and that Question 2 refers explicitly to "non-affiliate wireless telephone service," a limitation that may have been applied by some respondents in responding to Question 3 as well).

[redacted]

[END CONFIDENTIAL]

This *prima facie* evidence of competition is confirmed conclusively by the accompanying report on “Examining the Availability of Alternative Voice Service Providers in the Service Areas of Certain Smaller ILECs in New York State,” prepared by Dr. Christian M. Dippon, a Managing Director of NERA Economic Consulting and Chair of its Global Energy, Environment, Communications and Infrastructure Practice. (A copy of the report is provided in Exhibit A.) Dr. Dippon’s report marshals a wide body of evidence — including analyst reports, market data, the filings that have been made under ¶ 2(e) of the 2020 Joint Proposal, and Form 477 data filed with the FCC — to show that affordable competitive alternatives are widely available in the NSIC service areas and are accepted by consumers. Dr. Dippon demonstrates that “*all* households in the NSIC serving areas have choices for their voice services” (emphasis supplied). NERA Report ¶¶ ES6-7, 62; *see also id.* ¶ 53. Indeed, a weighted average of 99.7%

of the households in the NSIC service areas are covered by the well-established and affordable alternatives of wireline broadband and wireless mobile service, even without taking fixed wireless and satellite service into consideration. *Id.* ¶ 59 & Table 17.

B. Competition Obviates the Need for a Successor Funding Arrangement

The SUSF was not created simply to keep NSIC members in business. Rather, it exists to support a goal that lies beyond the continuing existence of those companies. As the Commission stated in its order adopting the 2020 JP, "The SUSF is a fund that provides supplemental revenue support to certain smaller ILECs *in order to keep basic telephone service available to certain customers at affordable rates*."[22] If adequate competitive alternatives to a funded company's services are available, there is no basis for requiring other providers — and particularly its competitors — to subsidize the company's continued operation in order to advance the goal identified by the Commission.

In past proceedings, NSICs have claimed that where adequate competitive alternatives are available for only some of its customers, universal service requires the companies to remain in business both to serve the remaining retail customers and to provide wholesale support to competitive providers. But that argument misses the point that in such scenarios the companies do not need to incur all of the costs associated with operating at their current scope and scale.

If competitive alternatives are available to some, but not all, of a company's customers, then funding should be available to the company only to the extent required to enable it to support the provision of service to end users to whom such alternatives are *not* available. In such a case, the company could reduce the scope and scale of its operations to a level necessary to:

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[22] *2020 Order* at 3 (emphasis supplied).

(a) maintain continuity of retail service to customers (if any) who lack competitive alternatives, and (b) maintain continuity of any carrier-to-carrier services (such as pole attachments) that are relied on by competitive providers of retail voice service. By withdrawing from all or a portion of its retail operations, such companies should be able to avoid a significant portion of the costs associated with call centers, customer dispatches, and other retail functions, as the Commission recognized in developing an "avoided cost" discount for resold ILEC services.[23]

The affected NSIC members should bear the burden of demonstrating the amount of such avoided costs. If the company fails to appropriately re-scale its operations, then the resulting cost savings should be imputed to it in any funding determinations.

C. An Analysis of Competitive Alternatives to the Services Provided by NSIC Members Should Take into Account Wireline Broadband Services, Mobile and Fixed Wireless Services, and Satellite Service

Dr. Dippon's analysis focuses on wireline broadband, mobile and fixed wireless, and satellite services as substitutes for the services being provided by the NSICs. None of these alternatives is regulated by the Commission, and the NSICs argue that this disqualifies them for consideration in this proceeding; "Commission jurisdiction over Universal Service providers," they claim, "is a necessary prerequisite to a Universal Service program based on accountability."[24]

We urge the Commission to reject this self-interested claim that the only appropriate service for customers is the service provided by the NSIC members themselves. The adequacy of alternatives to traditional services should be judged by the test of the market — *i.e.*, whether

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[23] *See, e.g.*, Case 95-C-0657, *et al.*, "Opinion and Order Determining Wholesale Discount" (Opinion No. 96-30) (issued and effective November 27, 1996).

[24] Petition at 15; *see generally id.* at 15-18.

there is substantial consumer acceptance of the alternative. No other test is as meaningful or as consistent with the Commission's stated policy of favoring price and service discipline through competition — where competition exists — over discipline through traditional regulation.[25] Competition is about the primacy of customer choice — it is a mechanism that enables customers to decide for themselves what they want and to "vote with their feet," rather than having providers or regulators decide for them what features, functionalities, and services they want or "need." The test of the market is the only "substitutability" test that should be applied in this proceeding. As the evidence marshaled by Dr. Dippon demonstrates, available wireless and wireline alternatives clearly meet that test.[26]

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[25] *See* 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*"), at 6 ("We have pursued competitive telecommunications markets because competition spurs innovation, promotes investment, encourages efficiency, and maximizes customer choice. Competition also disciplines providers' behavior, reducing the need for governmental regulation. Indeed, some regulations, particularly when applied asymmetrically, can be detrimental to the innovation in pricing and services that occur as a result of true competition.").

[26] In particular, commercially available CMRS (cellular) service clearly meets the substitutability test set forth above. It has achieved widespread consumer acceptance and indeed in some areas is achieving penetration levels approaching or exceeding those of incumbent providers. Almost sixteen years ago, in the *Competition III Order*, the Commission stated that "[i]n our judgment, consumers view these offerings [*i.e.*, VoIP and cellular] as close substitutes to wireline local service." *Competition III Order* at 33-34 (footnotes omitted); *see also id.* at 33 n.72, 34-35. As Dr. Dippon shows, developments since 2006, when the *Competition III Order* was issued, corroborate the Commission's conclusions.

Although satellite and fixed wireless service are at early stages of their product life style, adoption of both will likely expand rapidly within the term of any SFA. *See, e.g.*, NERA Report ¶¶ 26-27, 33. And, as noted previously, the well-established alternatives of mobile wireless and wireline broadband by themselves are available to 99.7% of the NSICs' customers.

[redacted]

The NSIC Petition is based on the premise that the need for SUSF funding should be assessed, as it has been in the past, through the application of traditional rate-case criteria based on the "revenue requirements" of their regulated intrastate services:

> As Attachment D [to the Petition] demonstrates, the actual intrastate rates of return of the NSIC members contrasted with their authorized rates of return confirms that continued SUSF support is critical to maintaining such members' financial health and ability to meet their Universal Service obligations at affordable rates, including those related to a reasonable expectation of their ability to recover and earn on their network investments.[27]
>
> For purposes of this proceeding, the NSIC members understand the continued underlying need of the SUSF to be determined consistent with the time-honored, Commission-overseen intrastate rate case process.[28]

As Joseph Gillan observes in the report accompanying the comments submitted today by the Cable Telecommunications Association of New York ("CTANY"), the NSICs are using "time honored" here as a euphemism for "outdated."[29] [redacted]

[27] Petition at 14.

[28] Petition at 18.

[29] "Assessing the Financial Status of Small ILECs in New York" ("Gillan Report"), ¶ 16.

[redacted]

Mr. Gillan's report demonstrates the problems created by reliance on traditional rate-case criteria:

> [T]here is a fundamental transition underway to move from narrowband voice networks (commonly copper) to broadband networks that support Internet access, video *and* voice (with that latter requiring relatively little incremental effort and a trivial level of capacity). The federal rules underlying the [NSIC Petition's] Attachment D calculation have never been updated to reflect the realities of this transition. Rather, the rules are known to produce distorted outcomes, most particularly by inflating intrastate costs and ignoring critically important revenue streams.
>
> There are two problems. The first is the fixed allocator used to apportion outside plant (for simplicity, loop) costs between the states and FCC. In the early 1980s, the states and the FCC agreed to use a fixed allocator that assigned 75% of the loop cost to the states, with the FCC accepting responsibility for 25%, irrespective of the actual usage of the network. Second, in 2001, the FCC froze the allocations applied to other cost categories, subject to limited opportunities to update these relationships.
>
> … The FCC periodically admits the problems caused by these obsolete rules but has chosen to avoid correction. For instance, in a recent order the FCC extended the separations freeze for a further six years and explained:
>
> * * *
>
>> We [the FCC] agree with NARUC that the existing separations rules, which presume circuit-switched, primarily voice networks, require updating to reflect today's network configurations and mix of broadband, video, and voice services. We also share NARUC's … [and others'] concern that those rules *necessarily* misallocate network costs.
>
> Notably, the specific NARUC comments cited by the FCC provide, in pertinent part,
>
>> The current Separations process necessarily misallocates network costs and revenues — attributing 75% of network costs to states based on the inaccurate presumption that networks are still used primarily for intrastate voice services.
>>
>> But voice is no longer the dominant use of telecommunications networks so even assuming the current split of voice traffic remains approximately 75% intrastate and 25% interstate, use of

> those percentages no longer makes sense. Why? Because voice service use of the common network has been dwarfed by internet and other broadband access services the FCC classifies as interstate.
>
> This means, at least with respect to rate-of-return carriers, States bear 75% of the cost of the network facilities, even though the revenues for broadband and other mixed-use services are allocated to interstate services. This apparent cross-subsidization of interstate services hurts consumers and rural America's ability to compete in a global economy.

> NARUC further explained how the misinformation produced by these obsolete federal rules could be used to portray a distorted picture of unprofitability:
>
> > The misallocation of those network costs are ultimately reflected in the higher rates that the States' consumers and businesses pay for voice services. They skew State and federal universal service programs and provide the basis for arguments that intrastate telecommunications services are "not profitable."
>
> Attachment D is a regulatory fiction, for there no longer *is* a circuit-switched narrowband network operating in New York (except in isolated instances). Each of the petitioning NSICs admit that they use the same access (i.e., local loop) to provide broadband or Internet access service as they use to provide voice, [redacted]. As shown in three case studies of composite financials (provided later in this report) that are publicly available, Attachment D's preordained showing of negative returns does not square with reality.[30]

In some cases, as in the Commission's review of major rate changes pursuant to Public Service Law § 92, reliance on regulated, intrastate costs and revenues may be required by law. However, nothing in the Public Service Law compels the application of those standards in SUSF funding determinations. [redacted]

[30] Gillan Report, ¶¶ 18-23 (emphasis in original; footnotes omitted).

[redacted]

[redacted]

[redacted]

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[31] *See* https://broadband.ny.gov/.

[32] Pub. L. No. 117-2, 135 Stat. 4 (2021).

[33] Pub. L. No. 117-58, 135 Stat. 429 (2021).

[34] *See* https://opendata.usac.org/High-Cost/High-Cost-Funding-Disbursement-Search/cegz-dzzi. Data on that website shows that the NSIC members received between $121,908.00 (Port Byron) and $3,659,719.08 (Deposit) in 2021, for a total of $15,881,399.25.

[35] Reports for 2021 had not yet been filed at the time these comments were submitted.

[redacted]

REDACTED

[redacted]

B. The Retail Benchmark-Rate Construct Should Be Retained in any Successor Funding Arrangement, but the Rate Should Be Increased to $30/Month

Since the first SUSF proposal was adopted in 2012, the Joint Proposals adopted by the Commission have included a requirement that companies seeking funding must increase their retail basic service rates to a "benchmark" level of $23.00 per line per month (or have that rate level imputed in funding determinations), subject to transitional arrangements for companies whose rates at the time were significantly below that level. This requirement appropriately recognized that companies seeking subsidies should look first to their own retail customers for support (subject to affordability considerations embodied in the $23 benchmark rate), rather than imposing funding burdens on other companies (potentially including their competitors). As the Commission explained in its order establishing the 2012 SUSF:

> The current benchmark rate of $23 per line per month for basic residential local service used in determining need for support from the Transition Fund and the TTFE would be continued under the Phase II Joint Proposal as the "Benchmark Rate" generally to be applied in determining an eligible recipient ILEC's actual need for support. The alternative "Transitional Rate" for imputing revenue would permit some additional leeway and funding in the case of an eligible ILEC with an authorized basic residential local service rate, before filing for SUSF support, of less than $19.50/line/month. The required $3.50 annual increase in the Transitional Rate for such carriers, on the other hand, should help to reduce draws on the SUSF gradually, while escalating the incentive for recipient ILECs to achieve greater efficiencies, move their basic service rates closer to forward-looking costs, and reduce their dependence on external support. We find these benchmarking provisions reasonable.[37]

This "retail-first" construct should be a part of any SFA established by the Commission. Indeed, for the reasons summarized below, it would be appropriate to increase the benchmark rate, for SFA purposes, to a level of at least $30:

1. The benchmark has been in place for 16 years. The Transition Plan incorporated a benchmark rate for residential service "that relied on Verizon's rates which ranged from $15.81 to $19.64."[38] In April 2006, in the *Competition III Order*, the Commission set a new "basic service rate cap" of $23/month.[39] On September 29, 2006, it announced that that rate would be

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[37] *2012 Order* at 18.

[38] *See* Case 02-C-0595, "Notice Soliciting Comments" (issued September 29, 2006).

[39] *Competition III Order, supra,* at 60-61, 78-79.

used as the new residential rate benchmark for determination of Transition Fund eligibility.[40] That benchmark rate was carried forward into the 2010 Temporary Transition Fund Extension and, starting in 2012, into the three iterations (2012, 2016, and 2020) of the SUSF.

2. Applying an inflator to the $23 rate based on general price changes from October 2006 to February 2022 (the latest month for which data is currently available), would increase the rate to slightly over $32, whether the inflator is based on the Consumer Price Index ("CPI") or the Producer Price Index ("PPI") for local telephone service.[41] (Both of those indices are computed and reported by the Bureau of Labor Statistics.)

3. Thirty dollars is also well within the FCC's $52.65 "reasonable comparability benchmark" for fixed voice service in rural areas for 2022. That is the ceiling rate for Eligible Telecommunications Carriers that are receiving funding under certain federal support programs.[42]

4. Finally, the $30 rate is less than 1% of median household income in each of the 23 counties in which the NSICs are located.[43]

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[40] *See* footnote 38, *supra*.

[41] The CPI increased by 40.6% during that period and the local telephone PPI increased by 42.1%.

[42] Federal Communications Commission, WC Docket No. 10-90, Public Notice, "Wireline Competition Bureau and Office of Economics and Analytics Announce Results of 2022 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers" (rel. December 16, 2021). The $56.25 figure is based on rates that include state-regulated fees such as subscriber line charges, state universal service fees, and mandatory extended area service charges, but *not* the federal subscriber line charge. *See id.* at 1 n.2.

[43] Those counties are identified in the response to Information Request VZ-NSIC-7. The county among the 23 with the lowest 2020 median annual household income was Delaware County, at $49,945. Thirty dollars per month, or $360 per year, is 0.72% of that figure.

C. Any Company Seeking Subsidies under a Successor Funding Arrangement Should Be Required to Demonstrate It Has Exhaustively Reviewed, and Implemented Where Appropriate, Alternatives for Improving Its Financial Performance

Any company that seeks funding under any SFA that may be established (including current recipients that seek to continue their existing level of funding) should be required to conduct a rigorous and disciplined review of alternatives that would enable it to address its own financial problems while continuing to provide all functions necessary to the maintenance of universal service within its existing service area — and to implement the most practicable, reasonable, and efficacious of the alternatives that it identifies.

Such a review should be similar to the type of review that might be conducted by a consultant or investment banker advising a troubled company. All alternatives should be "on the table" for purposes of such a review, including alternatives that would make fundamental structural changes in the company's business model. Such structural changes might include the following:

- the sale or spin-off of a portion of the company's business;
- the outsourcing of particular functions; or
- mergers, acquisitions, joint ventures, and other transactions with other providers that might create economies of scope or scale.

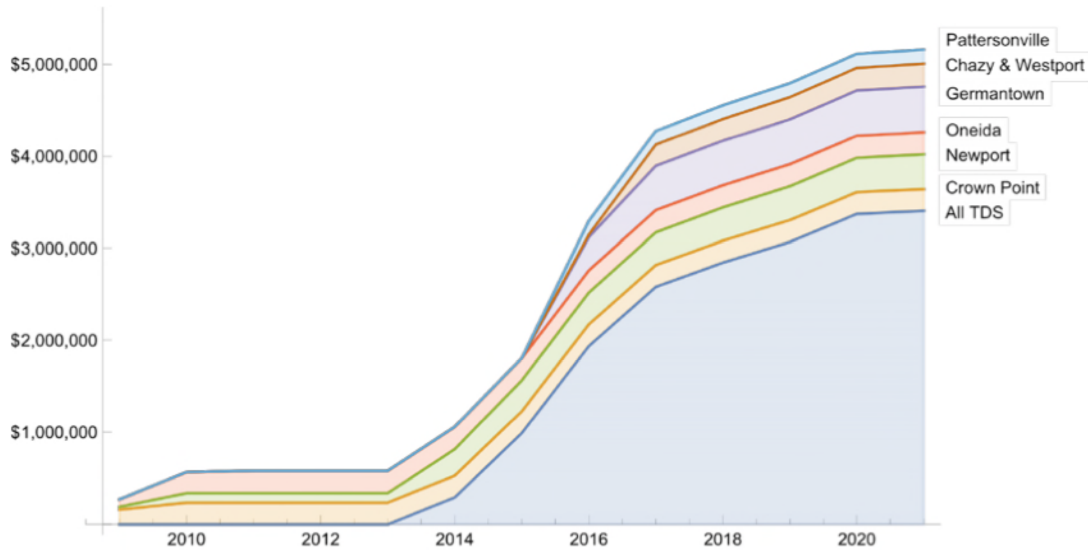
We recognize that because of jurisdictional limitations, the Commission might not be able to compel the company to adopt all — or perhaps any — of the alternatives identified in such a study. Clearly, however, it could decline to consider any funding proposal submitted by a company unless and until such a study is conducted and the Commission determines that no practicable, reasonable alternative to external funding would be consistent with the continued existence of universal service.

It bears repetition and emphasis that the burden of conducting such studies should be placed squarely on the NSIC members. Other parties should not be expected to prove that such transactions *would* be feasible and beneficial. The companies' exclusive access to information concerning the operations and needs of the businesses they manage makes this appropriate. It should also be noted that the ¶ 8(e) filings made by the companies funded under the current SUSF do not obviate the need for such studies. Those filings are replete with conclusory statements about the feasibility, infeasibility, benefits, and lack of benefits of particular options. What is needed here are rigorous, disciplined, and documented studies.

There are substantial reasons for believing that some or all of the NSIC members have not conducted — but should be required to conduct — the types of reviews suggested above. Among other things, this is illustrated by **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** Other small ILECs — who notably are not receiving SUSF subsidies — have undertaken transactions that are intended to increase their financial strength.[44] It is up to the current and future recipients (if any) to justify their failure to do so. And it is up to companies such as the five TDS companies — **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL] —** to explain why their "need" for SUSF funding has increased so substantially over time. (In this context, it is worth

[44] Case 20-C-0553, "Order Approving Transfer of Control with Conditions" (issued and effective June 28, 2021); Case 20-C-0548, "Order Approving Transfer of Control with Conditions" (issued and effective March 23, 2021).

noting that the TDS companies represent the lion's share of both the growth and current size of the Fund,[45] as shown by the following graph of SUSF disbursements.)[46]



Source: Fund Administrator

The existence of the Fund in its current form creates no incentives for such transactions. The incentives that it does create and the focus that it does promote are — in the words of a TDS executive — to "[e]nsure that all Federal and State USF mechanisms are being appropriately worked in order to ensure we maximize overall revenue streams per the rules."[47] That remarkably candid statement makes it clear that "the rules" need to be changed in order to ensure that NSIC members focus on weaning themselves from, rather than "work[ing]," "State USF mechanisms."

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[45] Gillan Report, ¶ 33.

[46] In the graph, disbursements to Oriskany, which as of April 1, 2018 became part of TDS - Vernon, are included in the TDS total.

[47] That is one of the responsibilities listed on the LinkedIn page of Mr. Joel Dohmeier, TDS Telecom, Director – Regulatory Revenue, Strategy & Compliance. *See* https://www.linkedin.com/in/joel-dohmeier-3921636.

VI. IF A SUCCESSOR FUNDING ARRANGEMENT IS ESTABLISHED, CURRENT CONTRIBUTION MECHANISMS, CONTRIBUTION RECOVERY MECHANISMS, AND ADMINISTRATIVE PROVISIONS SHOULD BE RETAINED, BUT THE CURRENT FUNDING CAP SHOULD BE REDUCED

Certain provisions of the current SUSF are reasonable and non-controversial, and should be retained if an SFA is established.

A. Term

The term of an SFA should be no more than two years (the term of the current SUSF), and it should not be subject to renewal under any circumstances. Only a non-renewable fund will focus the funded companies' attention on achieving self-reliance (assuming that they are not already self-reliant when all relevant revenues are taken into account). At the end of a two-year SFA, funding will have been in place for 21 years. That should be enough for a "temporary" "transitional" arrangement meant to facilitate the funded companies' transformation to financially self-reliant entities.

B. Eligible Recipients

Only the eleven companies currently receiving SUSF funding should be eligible for funding under an SFA. An SFA established to promote the transition *to* self-reliance should not be used to encourage migration *away from* self-reliance.

C. Fund Administration

The Fund should continue to be administered by the TAF Administrator, which has shouldered that responsibility since 2003 without, so far as we are aware, complaints from any party.

D. The Contribution Mechanism

The current mechanism for allocating responsibility for financial support of the SUSF is reasonable, mirrors the rules applied to the TAF, is easy to administer, and has a long history of acceptance by the parties. If an SFA is established, that mechanism should be retained.

E. The Contribution Recovery Mechanism

The current mechanism for recovering SUSF contributions through rates or surcharges (2020 JP ¶ 9) enables contributing companies, at their discretion, to spread the burden of support among their customers. Contributors can decide on their own whether to bear the burden themselves or to share it with their customers (with the latter option creating the risk of losing some customers to competitors because of the increased bottom lines of their bills).

F. The Funding Cap

The SUSF includes a cap on the total obligations of the contributing companies (and therefore on the total subsidies available to funding recipients). 2020 JP ¶ 3(d). The following table shows the history of the funding caps:

Year	Cap
2013	$5,000,000
2014	$4,000,000
2015	$4,000,000
2016	$4,000,000
2017	$6,500,000
2018	$6,500,000
2019	$6,500,000
2020	$6,500,000
2021	$6,250,000
2022	$6,000,000

The cap has been an important constraint that reduces the burden that the Fund places upon contributing companies. Caps should remain in place if an SFA is established, but the cap level should be reduced to reflect: (1) the more stringent standards for funding that are proposed here, (2) the proposed exclusion of the fourteen companies that failed to file ¶ 2(e) information or otherwise participate as a party, (3) the proposal that only current recipients would be eligible for future funding, and (4) the importance of increased incentives for a transition to self-reliance. A reduced cap would also be consistent with the fact that the cap has never been exceeded since the Fund was created in 2012, as shown by the following table:

YEAR	DISBURSEMENT	CAP	% OF CAP DISBURSED
2013	$579,984.00	$5,000,000	11.60%
2014	$1,056,984.00	$4,000,000	26.42%
2015	$1,804,948.72	$4,000,000	45.12%
2016	$3,293,681.65	$4,000,000	82.34%
2017	$4,276,030.76	$6,500,000	65.79%
2018	$4,555,623.00	$6,500,000	70.09%
2019	$4,794,766.96	$6,500,000	73.77%
2020	$5,112,892.92	$6,500,000	78.66%
2021	$5,159,527.08	$6,250,000	82.55%

If an SFA is established for more than a single year, the caps should reflect a “glide path” that will reduce the cap from year to year. We suggest a $3,000,000 cap in year 1, reduced to $1,500,000 in year 2.

VII. A SCHEDULE SHOULD BE SET FOR THE SUBMISSION OF DEFINITIVE FINAL COMMENTS — SUPPLEMENTED AS NECESSARY WITH FACTUAL SUPPORT IN THE FORM OF AFFIDAVITS OR DECLARATIONS — FOLLOWING THE CONCLUSION OF THIS COMMENT PROCESS

This comment process was initiated in part to provide an opportunity for public input under the State Administrative Procedure Act, and in part to respond to a request set forth in NSIC’s procedural proposal to Judge Sayre:

> Arguments in support of continuing the SUSF have already been supplied by NSIC in the [Petition]. VZ and other parties can agree or disagree with NSIC’s arguments and position, and set forth new arguments they contend support their respective positions. However, seeing this is not the first “rodeo” regarding the extension of the SUSF by any active party, waiting

> effectively 5 full months as VZ suggests to state [in testimony] the party's position on the continuation of the SUSF has no rational basis. It is critical that identification of issues in dispute occur at the outset, so parties' presentations can move forward in an efficient manner.[48]

In other words, NSIC's position was that the non-petitioner parties should initially define their general positions in comments, as NSIC's general position had been framed in its Petition, in order to facilitate the framing of NSIC's initial testimony. Verizon opposed this aspect of the NSIC proposal on the grounds that it was unnecessarily time-consuming. At the procedural conference, Advisory Staff suggested that the concern about the preliminary delineation of positions in the case could be met through the filing of SAPA comments (since the publication of a SAPA notice would be required in any event). That was the approach that Judge Sayre adopted. Thus, these comments were not originally considered — and should not be considered — to be the parties' last opportunity to provide input to the Commission's decision-making process.

Additional "process" will certainly be necessary after the filing of these comments (and the reply comments scheduled for April 11, 2022) in view of the ongoing accumulation of record evidence, including the following:

- JP ¶ 2(e) requires that the submissions made on December 31, 2021 be "updated monthly throughout calendar year 2022, if necessary, by any Eligible Recipient that is receiving or will request funding after the SUSF renewal period." (JP ¶ 2(e)(ii)) Moreover, there were numerous defects in the initial ¶ 2(e) filings, which are being explored through interrogatories that have led to supplemental filings that have continued virtually to the date of these comments.

- Submissions under JP ¶ 2(f) filings must be made by March 31, 2022, by "[a]ny Eligible Recipient that is receiving or will request funding following the SUSF Renewal Term." (JP ¶ 2(f)) It is unlikely that those filings can be thoroughly reviewed by the April 11 reply comment deadline.

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[48] New York Smaller ILEC Companies' Response to Verizon New York Inc. Procedural Schedule (dated January 4, 2022), at 1.

- There are various dates on which ¶ 8(e) information must be submitted by companies receiving funding, but the last date specified in JP ¶ 8(e)(ii) is March 31, 2022. However, an Eligible Recipient seeking first-time SUSF disbursements in a rate case filed after March 31, 2022 may be required to make a ¶ 8(e) showing as part of such filing. (JP ¶ 8(e)(ii)(A)(1)))

- 2021 NSIC Annual Report filings are due to be made on March 31, 2022.

- Discovery on other issues is ongoing, and there remain issues to be clarified and resolved with respect to NSIC's answers and objections. We expect that Rule 5.9 conferences and motions to compel discovery will be required in some cases.

- The Technical Conference requested in Section V, above, should be scheduled.

Verizon believes that the needs of the proceeding best can be met through the submission of final, comprehensive comments (building on this comment process, incorporating additional information obtained through discovery or otherwise, and incorporating any necessary legal analysis), together with affidavits or declarations, as necessary, to address factual matters and expert opinions. Based on our review of the issues in the case in the course of preparing these comments, Verizon does not believe that cross-examination in an evidentiary hearing will enhance the quality of the record, and a "paper" process will save time — an important consideration in view of the fact that the Fund is scheduled to sunset on December 31, 2022 — and reduce the burden on the parties of transporting witnesses to the hearing location.

These final comments (with supporting affidavits and declarations) should be filed simultaneously by all parties, followed by a round of simultaneous reply comments, as is being done here. As discussed in Verizon's opposition to NSIC's motion for interlocutory review, simultaneous filings are widely used in Commission practice, and are considered by many parties (including, once, NSIC itself) to be reasonable and efficient.[49]

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[49] Case 15-M-0742, "Response of Verizon New York Inc. to the New York Smaller ILEC Companies' Request for Interlocutory Review" (dated February 10, 2022), at 7-10.

VIII. CONCLUSION AND SUMMARY: VERIZON'S RECOMMENDATIONS

For the reasons set forth above, an SFA should not be established unless the NSIC members meet their burden of demonstrating, in this proceeding, both that no adequate competitive alternatives to their services exist, under the standards set forth in Section IV, above, and that financial need exists under the criteria set forth in Section V, above. Data gathered to date strongly suggests that they will not be able to meet that burden.

If, however, an SFA is created:

- It should be for no longer than an additional two years, with no opportunity to extend it further, and should be limited to current recipients of SUSF funding.
- The retail benchmark rate should be increased to $30/month.
- In assessing future applications for support from the Fund, applicants should be required to demonstrate both: (a) the absence of competitive alternatives, under the criteria set forth in Section IV, above, and (b) financial need under the criteria set forth in Section V, above.
- Existing contribution, administration, and contribution-recovery mechanisms should be retained.
- The current funding cap should be reduced as proposed above.

Respectfully submitted,

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Counsel for Verizon New York Inc.

March 28, 2022

REDACTED

EXHIBIT A

MOTION TO STRIKE - ATTACHMENT A

REDACTED

BEFORE THE STATE OF NEW YORK PUBLIC SERVICE COMMISSION

CASE 15-M-0742
PROCEEDING ON MOTION OF THE COMMISSION TO REVIEW THE STATE UNIVERSAL SERVICE FUND

NERA
ECONOMIC CONSULTING

Examining the Availability of Alternative Voice Service Providers in the Service Areas of Certain Smaller ILECs in New York State

EXPERT REPORT OF CHRISTIAN M. DIPPON, Ph.D.
On Behalf of Verizon New York Inc.

March 28, 2022

Before the State of New York Public Service Commission
Proceeding on Motion of the Commission to Review the State Universal Service Fund

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Expert Report of Christian M. Dippon, Ph.D.

EXECUTIVE SUMMARY

ES1. This report responds to Verizon New York Inc.'s request to identify the type and geographic presence of competitive service providers for voice services in the service areas covered by 17 New York Smaller ILEC Companies (NSICs). Data submitted by these companies to the New York State Public Service Commission and the Federal Communications Commission clearly demonstrates that households located in the NSICs' service areas have several competitive alternatives for voice services.

ES2. The New York State Public Service Commission is attempting to determine whether a Successor Funding Arrangement is required when the current State Universal Service Fund expires on December 31, 2022. To make such a determination, a proper analysis of the competitive options for voice services must include not only what was once considered the domain of the local telephone company, namely plain old telephone service (POTS), but also alternative providers such as wireline broadband, mobile wireless, fixed wireless, and satellite providers. To that end, I examined the scope of all the technology platforms that offer substitute voice services to see what the actual situation in New York State is regarding competitive alternatives for voice services.

ES3. I did not limit my research to only other wireline options because the nature of the telecommunications industry has changed drastically over the years and consumers now have access to voice services from a multitude of providers. To gather the relevant data, I used data submitted by the NSICs to the New York State Public Service Commission, data reported to the Federal Communications Commission on its Form 477 as well as other sources such the New York State Broadband Fund and the Federal Communications Commission's Regional Digital Opportunity Fund auction.

ES4. Focusing on the State of New York, the NYPSC Staff's 2015 report noted that access line counts in the state had dropped almost 70 percent; a trend that had started much earlier. In addition, between 2016 and 2020, all but one of the NSICs reported a decrease in access lines, on average 18 percent. The Staff's 2015 report stated that customers were migrating their primary lines to VoIP and wireless voice services and their secondary lines to cable modem, digital subscriber line, and optical carrier broadband. This trend continued and will continue and expand as newer technologies become available to consumers.

ES5. The 2020 Joint Proposal in the NYPSC's state universal service fund proceeding required the submission of data by the smaller ILECs. Using the data from the NSICs' submissions, I determined that over **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** percent of the households in the study areas have a choice of two wireline options. However, customers are no longer limited to wireline options. In 2021, the NYPSC asked selected NSICs to report the percentage of residences with competitive telephone service options. The responses indicated **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

ES6. Data that is publicly available from the FCC's web site indicate that all consumers in areas served by the NSICs have competitive options. In fact, 83 percent of the households in the NSICs' service areas have wireline alternatives for voice services. When I included mobile wireless, this percentage jumps to over 99 percent of households. Finally, I added fixed wireless and satellite service to my analysis and found that 100 percent of the households in the NSICs' service areas have alternative coverage.

ES7. The only conclusion that can be drawn after examining the available data and using a proper market definition is that all households in the NSICs' service areas have choices for their voice services.

I. INTRODUCTION

1. My name is Christian Dippon. My business address is 1255 23rd Street, Suite 600, Washington, DC 20037. I am a Managing Director at the Washington, DC, office of NERA Economic Consulting (NERA), where I also serve as Chair of the Global Energy, Environment, Communications, and Infrastructure Practice and as a member of its Board of Directors. I have specialized in regulatory and complex litigation matters in the communications, Internet, and high-tech sectors for over 25 years. I hold a Doctor of Philosophy and Master of Arts in Economics and a Bachelor of Science in Business Administration.

2. My relevant experience includes assessing competition in retail and wholesale telecommunication markets, modeling incremental costs for wholesale rate setting cases, studying the competitive ramifications of disruptive technologies and market consolidation, and evaluating the need (or lack of need) for regulatory intervention. I have authored and edited several books as well as book chapters in anthologies and have written numerous articles on telecommunications competition and strategies. I also frequently lecture in these areas at industry conferences, continuing legal education programs, and at universities.

3. I have offered expert testimony in regulatory and litigation cases and have testified in depositions, jury and bench trials in state and federal courts, and domestic (AAA) and international (UNCITRAL, ICC, ICSID, LCIA) arbitrations. I have also offered expert testimony in matters before international courts, the Federal Communications

Commission (FCC), the International Trade Commission (ITC), the Federal Aviation Administration (FAA), and various international regulatory and competition agencies. I attach a copy of my curriculum vitae as Appendix A to this report.

II. Background and Purpose of Report

4. I prepared this report at the request of Verizon New York Inc. (Verizon) in connection with the proceeding now pending before the New York State Public Service Commission (NYPSC) to determine whether to establish a Successor Funding Arrangement (SFA) following the expiration of the current State Universal Service Fund (SUSF) on December 31, 2022. I understand from my review of the relevant documents and discussions with Verizon that the current iteration of the SUSF is a two-year plan that was in put in place because of the NYPSC's adoption in December 2020 of a Joint Proposal offered by several parties.

5. Under the 2020 Joint Proposal, the SUSF will sunset unless the NYPSC determines that there is a need for an SFA following the expiration of the SUSF on December 31, 2022.[1] Each eligible recipient that is receiving or that will request SUSF funding is required by the Joint Proposal to provide location data that identifies addresses and related infrastructure locations (i.e., poles) where: (a) the eligible recipient's broadband network and the broadband network of an alternative provider pass the customer location; (b) the eligible recipient is the only broadband provider that passes the location; (c) no broadband network passes the location; and (d) only an alternative broadband network

[1] See 2020 Joint Proposal ¶ 2(b).

passes the location. The companies eligible for SUSF funding agreed in the Joint Proposal to provide this data before or on December 31, 2021, with subsequent monthly updates as necessary.[2]

6. With the expiration of the SUSF approaching, Verizon tasked me with identifying the type of service providers that offer voice services that could provide alternatives to the service provided by the 17 petitioning New York Smaller ILEC Companies (NSICs).[3] Using the location data submitted by most of the NSICs pursuant to paragraph 2(e) of the 2020 Joint Proposal, Verizon asked me to quantify the percentage of households passed by at least one alternative *wireline* broadband service provider. Verizon also requested that I analyze data in these providers' submissions to the Federal Communications Commission (FCC) and to calculate the percentage of households in the NSICs' service areas passed by at least one competing voice provider *no matter the technology used to provide the service.*

7. Verizon retained me as an independent expert in this matter. As such, neither my compensation nor my firm's compensation is dependent in any way on the substance of my opinions or the outcome of this matter. I may revise and supplement my opinions upon further review and analysis of any new data, materials, analysis, or filings.

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[2] Ibid, ¶ 2(e).

[3] The 17 NSICs are Armstrong Telephone Company-New York; Chazy & Westport Telephone Corporation; Crown Point Telephone Corporation; Delhi Telephone Company; Fishers Island Telephone Company; Germantown Telephone Company, Inc.; Middleburgh Telephone Company; Newport Telephone Company, Inc.; Nicholville Telephone Company; Oneida County Rural Telephone Company; Pattersonville Telephone Company; State Telephone Company, Inc.; TDS Telecom - Deposit Telephone Company, Inc.; TDS Telecom - Edwards Telephone Company, Inc.; TDS Telecom – Port Byron Telephone Company; TDS Telecom - Township Telephone Company, Inc.; and TDS Telecom - Vernon Telephone Company. (See Case 15-M-0742, "Petition for the Extension of the State Universal Service Fund," December 15, 2021, Attachment A.)

8. The remaining structure of this report is as follows. Section III discusses the types of voice service providers operating in rural New York State and shows that they are suitable alternatives to the services offered by the NSICs. Section IV calculates the percentage of households in the NSICs' service areas that have access to at least one alternative *wireline* provider. Section V calculates the percentage of households in the service areas of the NSICs that have access to one or more alternative provider *no matter the technology*. Section VI concludes. Detailed data backing up the discussion in this report is provided in the tables in the body of this report and in Appendices B through D.

III. TECHNOLOGY PLATFORMS THAT OFFER SUBSTITUTE VOICE SERVICES

9. Rural New York State households have several competitive options when it comes to "flat rate residential service."[4] The technological progress of the late 1990s and the early 2000s resulted in numerous substitute products for the service that is funded by the SUSF. Traditionally, wireline telephone companies were the sole providers of this service. Given that the industry was composed of regulated local monopolies, the copper cable of only one telephone company (i.e., the ILEC) served the entire franchised area. Advances in communications technologies have fundamentally altered the competitive dynamics of the telecommunications industry. The term *flat rate* has become antiquated as unlimited domestic calling has become the norm. Similarly, the concept of *wireline* service has vanished because consumers are largely indifferent or often unaware of whether a copper, fiber, or coaxial cable, fixed or mobile wireless system, or a satellite

[4] Case 15-M-0742, "Order Initiating Proceeding to Review the State Universal Service Fund and Seeking Comments," issued and effective January 22, 2016, pp. 2, 6.

network is being used to meet their demand for voice service at home. From a consumer's perspective, they have access to voice services, and it is not important to them what technology provides it.

10. As recognized by the NYPSC Staff, this phenomenon also applies in the State of New York. In 2015, as part of an extensive study of the State of Telecommunications in New York, the Staff found:

> … previously a terrestrial service provided over copper cable, telecommunication today includes wireline and wireless services, broadband-based services that include over-the-top providers.[5]

The Staff further explained:

> Voice, video and broadband have converged, and each are now available across all technology platforms and offered via copper, fiber, coaxial cable, satellite and mobile networks ….[6]

11. The introduction of competitive options for voice services transformed previous local monopolies to competitive markets. For instance, Telephone and Data Systems, Inc., the parent company of the five TDS NSICs, reported to the Securities & Exchange Commission (SEC) on the impact of platform competition:

> TDS Telecom faces competition from other cable providers, fiber overbuilders, low-cost voice providers, satellite providers, other wireline and wireless providers. Furthermore, the use of alternative communications services such as text messages, video conferencing, and social networks has reduced the demand for traditional voice services.[7]

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[5] Case 14-C-0370, "Staff Assessment of Telecommunications Services," June 23, 2015, p. 1 (hereinafter NYPSC 2015 Staff Report).

[6] Ibid, p. 1.

[7] Telephone and Data Systems, Inc., SEC, Form 10-K, December 31, 2020, p. 6.

12. The introduction of substitute products for regulated flat-rate residential voice service implies a widening of the product market for voice services. As explained by the Department of Justice (DOJ), a product market "consists of a group of substitute products" or "a set of products that are reasonably interchangeable" from the customer perspective.[8] Thus, prior to platform convergence, most everyone considered the ILECs the sole providers of voice services. However, alternative wireline, mobile wireless, fixed wireless, and satellite providers offer these services in today's market. Practically, this implies that to quantify the percentage of households passed by a voice provider, the proper analysis examines the *entire* product market. In the following, I demonstrate that several voice services compete for voice demand in New York State, including advanced wireline, mobile wireless, fixed wireless, and satellite providers.

A. Wireline Broadband Is a Competitive Option

13. Even a narrow market definition would recognize that all wireline telecommunications technologies offer substitute voice services. Wireline providers offer voice services through three main technologies. The first is the *copper network* (plain old telephone service or POTS), which can also offer internet access by allocating and conditioning portions of the bandwidth for internet protocol (IP) traffic as well as digital subscriber line (DSL) service. However, on copper networks, voice and data operate on different channels of the transmission capability made available by the copper facility.

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[8] U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, Updated June 25, 2015, pp. 2, 8–9, https://www.justice.gov/atr/horizontal-merger-guidelines-08192010#4a.

14. A second wireline technology is *voice over coaxial cable networks*. Cable companies have conditioned their legacy coaxial cable networks for the provisioning of broadband internet access. As part of this offering, cable companies offer IP voice services, which convert voice conversations into digital packets (data) and deliver them over the internet via the same coaxial cable that delivers TV (video) content to households. As of 2015, 57 percent of upstate New Yorkers received their home telephone service through their cable company.[9]

15. A third wireline technology is *voice over fiber networks*. This newest wireline technology uses glass fibers to transmit data at speeds far exceeding current DSL or coaxial cable speeds. Fiber-to-the-home (FTTH) networks (also known as fiber-to-the-premises or FTTP networks) extend the fiber to subscribers' homes, whereas other networks extend fiber to network nodes (fiber-to-the-node or FTTN) or to curbs near the subscribers' homes (fiber-to-the-curb or FTTC). Cable companies and other telecommunications companies frequently rely on FTTN by building hybrid fiber coaxial (HFC) networks. HFC networks install coaxial cables between subscribers' homes and nearby nodes and fiber elsewhere. Whether provided over a partial or full fiber network, voice over fiber relies on IP technology. I note that subscribers can also purchase voice services from voice over internet (VoIP) providers that rely on a subscriber's existing broadband connection; these are referred to as over-the-top (OTT) voice providers.

16. Wireline broadband uptake is widespread. An estimated 83.4 percent of occupied US households subscribe to wireline broadband, representing over 117 million households.

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[9] See Siena College Research Institute, "Cell Phones Used by 90 Percent of New Yorkers," March 4, 2015, https://scri.siena.edu/2015/03/04/cell-phones-used-by-90-percent-of-new-yorkers/.

Of these broadband-connected households, 69 percent purchase internet services from cable companies and 31 percent purchase them from other telecommunications companies.[10] It is also common among NSICs' subscribers, with an average of 68 percent purchasing internet along with voice services.[11] Adding voice services to the already widespread wireline broadband services occurs at a price point typically well below the $23 benchmark rate that is incorporated into the SUSF. For instance, VoIP provider Google Voice offers voice services for "free for most residential users since single-number accounts qualify for the free plan."[12] Another VoIP provider, Ooma, advertises, "Get crystal-clear nationwide calling for free with Ooma."[13] Ooma does require payment of taxes and fees that amount to about $4.09 per month and a one-time payment of $99.99 for a base station.[14] Other low-priced VoIP providers include 1-VoIP ($8.97) and AXvoice ($8.25).[15] Similarly, coaxial provider Spectrum offers voice service at $14.99 per month.[16]

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[10] See S&P Global, Market Intelligence, "'US Broadband Market Share Trends, Q4'21," 2022.

[11] All NSICs other than Armstrong Telephone provided data. (See FCC, Form 477 Filing Summary.)

[12] Oliver Rist, "Drop Your Landline: The Best VoIP Home Phone Services," *PCMag*, updated February 24, 2022, https://www.pcmag.com/picks/finally-ditch-that-landline-the-best-voip-home-phone-services.

[13] Ooma, https://www.ooma.com/home-phone/?offer=TELO&purchase_code=SBRD-TELO&xutm_source=SEM&xutm_campaign=SEM-49854035&xutm_medium=SEM-Google&xutm_term=Telo&_vsrefdom=Google-SEM&om_phone=866-575-5585&keyword=%2Booma%20%2Btelephone%20%2Bservice&adid=424864765918&xgclid=EAIaIQobChMIkZDP_7jD9gIVCY3ICh15xQy2EAAYASAAEgKpIfD_BwE&gclid=EAIaIQobChMIkZDP_7jD9gIVCY3ICh15xQy2EAAYASAAEgKpIfD_BwE (accessed March 13, 2022).

[14] Ibid; see also Ooma, https://www.ooma.com/home-phone/savings/#get-tax-calculator-position (accessed March 13, 2022).

[15] The 1-VoIP plan offers unlimited incoming and 500 minutes to North America. The AXvoice plan offers unlimited calling and no hardware charges. (See 1-VoIP, https://www.1-voip.com/residential-voip.php (accessed March 13, 2022); see also AXvoice, https://www.axvoice.com/ (accessed March 13, 2022).)

[16] See Spectrum, https://www.spectrum.com/home-phone, accessed March 17, 2022.

B. Mobile Wireless Is a Competitive Option

17. The rapid introduction of 5G technology is changing the landscape of mobile wireless. There is still a core network and user equipment, but a 5G-capable network operates differently than previous networks. Regardless of the mobile wireless technology employed, whether 4G or 5G, it is and will continue to be a viable option for consumers.

18. The economics literature has long recognized that mobile wireless voice services are a substitute for wireline voice services. Dating back to the middle of the 1990s and into the early 2000s, the literature analyzed the impact of the demand for mobile wireless telephone service on the demand for fixed-line service—what the industry refers to as fixed-to-mobile substitution (FMS). Although the early literature on FMS was somewhat divided, by the early 2000s, it increasingly accepted that fixed and mobile voice services were substitutes. Parker and Röller performed one of the first FMS studies, finding indirect evidence of FMS in the United States.[17] Rodini, Ward, and Woroch arrived at a similar conclusion.[18] Ward and Woroch expanded on their previous work, finding that FMS should increase over time as prices for mobile services continued to fall to where mobile telephony could constrain the fixed-line service providers' exercise of market power, thus rendering the current regulatory regime obsolete.[19] Sung, Kim, and Lee found

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[17] See P. M. Parker and L. H. Röller, "Collusive conduct in duopolies: multimarket contact and cross-ownership in the mobile telephone industry," *Rand Journal of Economics* 28, no. 2 (1997):304–322.

[18] See M. Rodini, M. Ward, and G. Woroch. "Going mobile: substitutability between fixed and mobile access," *Telecommunications Policy* 27, nos. 5-6 (2003):457-476.

[19] See M. R. Ward and G. A. Woroch, "Usage substitution between mobile telephone and fixed line in the U.S.," Arlington, TX: University of Texas (2004).

evidence of FMS in Korea.[20] Sung and Lee confirmed these findings.[21] Madden and Coble-Neal's study showed the first evidence of FMS in Australia.[22]

19. There is also evidence of FMS in New York State. For instance, because of the FCC's decision to limit Lifeline subscribers to either a wireline or a mobile wireless subscription, many subscribers dropped their wireline subscription.[23] Consequently, wireline Lifeline subscriptions declined from 768,000 in 1996 to 137,000 at year-end 2014 in New York State.[24]

20. In addition, data collected by the Centers for Disease Control (CDC) also show the competitive impact of mobile wireless services on wireline voice services.[25] The data show the extensive shift from wireline to mobile wireless over time. Specifically, as of June 2014 (at the time the NYPSC Staff performed the competition study referred to in paragraph 10 above), 8.5 percent of US households relied exclusively on wireline voice services. Seven years later, that percentage decreased to 1.9 percent. Yet, during the same period, the percentage of mobile wireless only households increased from 44 percent to 68 percent.

[20] See N. Sung, C.-G. Kim, and Y. -H. Lee, "Is a POTS dispensable? Substitution effects between mobile and fixed telephones in Korea." (Paper presented at the International Telecommunications Society Biennial Conference, Buenos Aires, July 2000).

[21] See N. Sung, and Y. -H. Lee, "Substitution between mobile and fixed telephones in Korea," *Review of Industrial Organization* 20, (2002):367–374.

[22] See G. Madden and G. Coble-Neal, "Economic determinants of global mobile telephony growth," *Information Economics and Policy* 16, (2004):519–534.

[23] NYPSC 2015 Staff Report, p. 29.

[24] Ibid.

[25] See CDC, "Wireless Substitution: Early Release of Estimates from the National Health Interview Survey," January–June 2014, Table 1; January–June 2021, Table 1. (The CDC tracks mobile-phone only usage to adjust its household sampling process.)

Table 1: US Household Telephone Status

	June 2014	June 2021
Landline Only [1]	8.5%	1.9%
Landline with Wireless [2]	44.8%	29.3%
Wireless Only	44.0%	68.0%
Phoneless	2.6%	0.5%
Total	**100.0%**	**100.0%**

Notes: "Nonlandline with unknown wireless" not included in June 2014—reported as 0.0 percent. Parts may not sum to total due to rounding. (1) Category called "landline without wireless" in 2014. (2) Sum of "landline with wireless" and "landline with unknown wireless."
Source: CDC, Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January–June 2014, Table 1; January–June 2021, Table 1.

21. The CDC also publishes these data by state, albeit not as frequently. The most recent data for New York State, as shown in Table 2, reveal that most individuals use either mobile wireless services or combine mobile wireless with wireline services. Only 6 percent relied on a wireline only option.

Table 2: NY State Household Telephone Status

	2019
Landline Only	6.0%
Landline with Wireless [1]	48.1%
Wireless Only	43.9%
Phoneless	2.0%
Total	**100.0%**

Note: (1) Sum of "wireless-mostly adults, "dual users," and "landline-mostly adults."
Source: CDC, National Center for Health Statistics, National Health Interview Survey Early Release Program, 2019, Table 1.

22. A Sienna College survey of New York State residents' mobile phone use confirms the data.[26] The survey, conducted in 2015, found that over 90 percent of New Yorkers subscribe to mobile wireless services. In addition, the survey revealed that mobile

[26] See Siena College Research Institute, "Cell Phones Used by 90 Percent of New Yorkers," March 4, 2015, https://scri.siena.edu/2015/03/04/cell-phones-used-by-90-percent-of-new-yorkers/.

wireless usage far exceeded wireline usage. In fact, the write-up explains, "[T]wice as many New Yorkers make all or most of their phone calls on cell phones compared to those who make all or most of their calls on landlines," and the authors expect "that number will only continue to grow."[27] Mobile wireless providers also offer voice plans on a standalone basis. Specifically, Verizon Wireless offers a standalone voice plan at $35 per month,[28] whereas T-Mobile charges $20 per month for its voice only plan.[29]

23. Mobile virtual network operators (MVNOs), which are resellers of mobile wireless services, also offer voice only mobile wireless plans. MVNOs purchase wholesale capacity from Verizon Wireless, AT&T Mobility, and T-Mobile and retail the capacity under their own brand. For example, MVNO Mint Mobile, which operates on the T-Mobile network, currently offers a plan with unlimited voice and text with 4 GB of data for $15 per month.[30] MVNO Boost, which operates on both AT&T's and T-Mobile's networks, currently offers a plan with unlimited voice and text with 5 GB of data for $25 per month.[31] There are numerous other budget MVNO plans available.[32]

24. Several of the major cable providers also offer mobile wireless phone services through an MVNO agreement with a mobile wireless network operator. For instance, Charter

[27] Ibid.

[28] See Verizon, https://www.verizon.com/plans/prepaid/ (accessed March 15, 2022).

[29] See T-Mobile, https://www.t-mobile.com/offers/unlimited-talk-text-phone-deals (accessed March 15, 2022).

[30] See Mint Mobile, https://www.mintmobile.com/plans/?dnfemfkahqkdlf=BUY3GET1&clickid=2IlWp8WSSxyIT41y4015IxBEUkGTnMx-UXUbxI0&irgwc=1&utm_source=impactradius&utm_medium=affiliate&utm_campaign=ir_mint&utm_content=1978036_444520&tid=impactradius&subid=1978036_444520&irpid=1978036&iradid=444520 (accessed March 14, 2022).

[31] See Boost Mobile, https://www.boostmobile.com/plans.html (accessed March 14, 2022).

[32] See Money Saving Pro, "Best MVNO in 2022, Compare the cheapest MVNO phone plans," https://www.moneysavingpro.com/plans/best-mvno/ (accessed March 14, 2022).

Communications has an MVNO agreement with Verizon and retails mobile wireless service under its Spectrum Mobile brand.[33] Spectrum Mobile offers its internet subscribers a plan for unlimited voice and text with 1 GB of data for $14 per month.[34]

C. Fixed Wireless Is a Competitive Option

25. The product market for voice services also includes voice services provisioned over fixed wireless networks. Unlike mobile wireless where the end user can be mobile, fixed wireless provides wireless services to a fixed location, such as a home. Data traffic travels wirelessly from a fixed location's receiver antenna to a fixed wireless tower. From there, the traffic travels again wirelessly to a fiber backhaul tower, which in turn feeds it into the wireline network.[35] Fixed wireless technology is particularly suitable to rural areas.[36] As recognized by the NYPSC Staff, fixed wireless delivers broadband services; therefore, it can deliver IP voice services.[37]

26. AT&T, T-Mobile, and Verizon all offer fixed wireless access (FWA) services.[38] T-Mobile, which had 646,000 fixed wireless subscribers at year-end 2021, "has an

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[33] See Best MVNO, "Spectrum Mobile In 2022: What You Need to Know," https://bestmvno.com/mvnos/spectrum-mobile/ (accessed March 12, 2022).

[34] See Spectrum Mobile, https://www.spectrum.com/mobile/plans/data-by-the-gig (accessed March 16, 2022).

[35] See, e.g., "How Does a Fixed Wireless … Work? NCTA, November 17, 2018, https://www.ncta.com/whats-new/how-does-a-fixed-wireless-networkwork.

[36] See Jeff Baumgartner, "Fixed wireless, LEO satellite broadband best suited for unserved and underserved areas – study," *Broadband World News*, November 22, 2021, https://www.broadbandworldnews.com/author.asp?section_id=733&doc_id=773672.

[37] See NYPSC 2015 Staff Report, p. 47.

[38] See Ari Howard, "Fixed wireless internet providers," *Allconnect*, updated January 27, 2022, https://www.allconnect.com/internet/fixed-wireless#:~:text=Fixed%20wireless%20towers%20can%20only,fewer%20areas%20than%20satellite%20internet.

aggressive goal of getting 7 million to 8 million FWA customers by 2025."[39] Verizon, which had 150,000 FWA subscribers at the end of the third quarter of 2021 (having grown by 55,000 subscribers in that quarter),[40] has indicated that it expects to have 50 million fixed wireless homes passed by 2025.[41] Out of these 50 million homes, it expects to obtain four to five million subscribers.[42] T-Mobile's fixed wireless service is currently available to about 39 percent of US households, and Verizon's is available to over 15 percent of US households.[43] T-Mobile has around 30 million households passed, and "almost 10 million households …. are within rural America."[44] According to T-Mobile, "Availability is based on network capacity, which is increasing all the time."[45] The coverages of T-Mobile and Verizon are largely additive because there is a limited geographic overlap between T-Mobile's and Verizon's fixed wireless services.[46]

27. Fixed wireless is also a growing voice service option in New York State. As compared with only two locations (Binghamton and Corning) served by T-Mobile as of November

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[39] Sue Marek, "T-Mobile is selling prepaid 5G FWA at Metro stores," *Fierce Wireless*, March 10, 2022, https://www.fiercewireless.com/wireless/t-mobile-selling-prepaid-5g-fwa-metro-stores.

[40] See Jeff Baumgartner, "Verizon has 150,000 fixed wireless access subs," *Light Reading*, October 20, 2021, https://www.lightreading.com/5g/verizon-has-150000-fixed-wireless-access-subs-/d/d-id/772925.

[41] See Sydney Price, "Verizon now expects 70 million broadband passings by 2025," *S&P Global Market Intelligence*, November 19, 2021.

[42] See Joan Engebretson, "Verizon Nationwide Broadband Strategy Includes Fiber, Fixed Wireless, and Satellite Broadband," *Telecompetitor*, March 3, 2022, https://www.telecompetitor.com/verizon-nationwide-broadband-strategy-includes-fiber-fixed-wireless-and-satellite-broadband/.

[43] See Jeff Baumgartner, "T-Mobile's fixed wireless service reach holds edge over Verizon – study," *Light Reading*, February 14, 2022, https://www.lightreading.com/5g/t-mobiles-fixed-wireless-service-reach-holds-edge-over-verizon—study-/d/d-id/775290.

[44] Trey Paul, "T-Mobile Home Internet: Can a Mobile Company Meet Your Home's Broadband Needs?" *CNET*, February 1, 2022, https://www.cnet.com/home/internet/t-mobile-5g-home-internet-review/.

[45] T-Mobile Newsroom, "T-Mobile Launches Transformative 5G Home Internet in Metro by T-Mobile Stores Nationwide," March 10, 2022, https://www.t-mobile.com/news/offers/t-mobile-launches-5g-home-internet-in-metro-by-t-mobile-stores.

[46] See Jeff Baumgartner, "T-Mobile's fixed wireless service reach holds edge over Verizon – study," *Light Reading*, February 14, 2022, https://www.lightreading.com/5g/t-mobiles-fixed-wireless-service-reach-holds-edge-over-verizon—study-/d/d-id/775290.

2020, the company's most recent data from April 2021 show availability in an additional 21 New York State cities and towns (see Table 3).[47] Similarly, Verizon also provides fixed wireless service in numerous locations in New York State.[48] See Appendix B for the zip codes and towns where it provides service as of October 2020.

Table 3: T-Mobile Fixed-Wireless Locations in New York State (April 2021)

Cities and Towns

Batavia	Syracuse	Plattsburgh
Rochester	Binghamton	Corning
Jamestown-Dunkin-Fredonia	Albany-Schenectady-Troy	Glen Falls
Buffalo-Cheektowaga	Seneca Falls	Olean
Cortland	Utica-Rome	Hudson
Oneonta	Amsterdam	New York-Newark-Jersey City
Gloversville	Malone	
Ithaca	Ogdensburg-Massena	
	Watertown-Fort Drum	

Source: T-Mobile Home Internet Cities & Towns, April 7, 2021.

28. Based on the FCC's Form 477 data, 40.8 percent of households on average in the NSIC areas have access to T-Mobile's fixed wireless service.

[47] See T-Mobile Newsroom, "T-Mobile Expands Home Internet to More Than 130 Additional Cities & Towns," November 9, 2020, https://www.t-mobile.com/news/un-carrier/tmobile-expands-home-internet-to-more-than-130-additional-cities-towns.

[48] See Verizon Home Internet Zip Code List, October 1, 2020, https://www.verizon.com/about/sites/default/files/LTE-home-Internet-zip-code-list-09-2020.pdf.

Table 4: NSIC Households Covered by T-Mobile's Fixed Wireless Service (December 2020)

NSIC	Total Households	T-Mobile Fixed Wireless Overlap	T-Mobile as a % of Total Households
Armstrong Telephone Co.	3,294	1,945	59.0%
Chazy & Westport Telephone Corp.	3,579	2,021	56.5%
Crown Point Telephone Corp.	2,701	-	0.0%
Delhi Telephone Co.	2,774	1,004	36.2%
Fishers Island Telephone Corp.	120	42	35.0%
Germantown Telephone Co.	2,992	1,946	65.0%
Middleburgh Telephone Co.	6,928	2,184	31.5%
Newport Telephone Co.	3,166	280	8.8%
Nicholville Telephone Co.	2,273	-	0.0%
Oneida County Rural Telephone Co.	3,861	600	15.5%
Pattersonville Telephone Co.	1,409	790	56.1%
State Telephone Co.	7,622	3,918	51.4%
Telephone & Data Systems, Inc.	18,188	9,306	51.2%
Total/Average	**58,907**	**24,036**	**40.8%**

Note: Values are based on 2010 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.
Source: FCC, "Form 477 Broadband Deployment Data - December 2020 (version 1)," updated November 10, 2021; Steven Manson et al., IPUMS National Historical Geographic Information System.

29. Similarly, Verizon's fixed wireless service is available to households residing in the Census Blocks ("CBs") of the NSICs as shown in Table 5. Based on Form 477 data for December 2021, which is not yet posted on the FCC's website but was provided by Verizon, about one-third of households on average in the NSIC areas have access to Verizon's fixed wireless service.

Table 5: NSIC Households Covered by Verizon's Fixed Wireless Service (December 2021)

NSIC	Total Households	Verizon Fixed Wireless Overlap	Verizon as a % of Total Households
Armstrong Telephone Co.	2,986	1,440	48.2%
Chazy & Westport Telephone Corp.	4,691	948	20.2%
Crown Point Telephone Corp.	n/a	n/a	n/a
Delhi Telephone Co.	2,902	741	25.5%
Fishers Island Telephone Corp.	1,144	957	83.7%
Germantown Telephone Co.	2,480	1,412	56.9%
Middleburgh Telephone Co.	n/a	n/a	n/a
Newport Telephone Co.	2,997	616	20.6%
Nicholville Telephone Co.	2,405	647	26.9%
Oneida County Rural Telephone Co.	3,738	1,148	30.7%
Pattersonville Telephone Co.	1,234	258	20.9%
State Telephone Co.	8,021	2,909	36.3%
Telephone & Data Systems, Inc.	18,043	5,666	31.4%
Total/Average	**50,641**	**16,742**	**33.1%**

Note: n/a = data not available. Values are based on 2020 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.
Source: FCC, "Form 477 Broadband Deployment Data - December 2020 (version 1)," updated November 10, 2021; Form 477 fixed wireless data provided by Verizon; Steven Manson et al., IPUMS National Historical Geographic Information System.

30. T-Mobile charges $50 per month for its fixed wireless service, and there are no equipment charges or data cap.[49] T-Mobile's download speeds range from 35 to 115 Mbps.[50] Verizon charges $70 per month for its service, and its download speeds range from 300 to 1000 Mbps.[51]

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[49] See Trey Paul, "T-Mobile Home Internet: Can a mobile company meet your home's broadband needs?"; see also "T-Mobile Home Internet's Bigger … (Clap, Clap, Clap, Clap) Deep in the Heart of Texas," *Business Wire*, January 19, 2022, https://www.businesswire.com/news/home/20220119005651/en/.

[50] See Ari Howard, "Fixed wireless internet providers," updated January 27, 2022, *Allconnect*, https://www.allconnect.com/internet/fixed-wireless#:~:text=Fixed%20wireless%20towers%20can%20only,fewer%20areas%20than%20satellite%20internet.

[51] Ibid.

D. Satellite Service Is a Competitive Option

31. A proper product market definition for voice service also includes voice services provided over satellites. Satellites offer virtually ubiquitous service in New York State. There are two types of satellites, geostationary and low earth orbit (LEO). Geostationary satellites are located some 22,000 miles above the equator (southern sky).[52] They require a direct line of sight between the satellite and the receiving device.[53] The distance traveled (causing increased latency) can affect the signal although this affects voice service less than other applications, such as video. HughesNet and ViaSat employ geostationary satellites.[54]

32. On the other hand, LEO satellites travel at an altitude of between 99 miles and 1,200 miles.[55] Rather than appearing fixed in the sky,[56] they "employ[] a fleet or swarm of satellites" that travels around the earth.[57] To establish continuous connectivity:

> Over the course of a day, such a satellite comes within range of every point on the earth's surface for a certain period of time. The satellites in a LEO swarm are strategically spaced so that, from any point on the surface, at least one satellite is always on a line of sight. The satellites thus act as moving repeaters in a global cellular network. A LEO satellite system

[52] See Iridium Satellite Communications, "Satellites 101: LEO vs. GEO Satellite Constellations," September 11, 2018, https://www.iridium.com/blog/2018/09/11/satellites-101-leo-vs-geo/.

[53] See TechTarget, "geostationary satellite," https://www.techtarget.com/searchmobilecomputing/definition/geostationary-satellite (accessed March 6, 2022).

[54] See Jed Pressgrove, "Once an Internet Underdog, Satellite Is Having a Moment," *Government Technology*, September 3, 2020, https://www.govtech.com/products/once-an-internet-underdog-satellite-is-having-a-moment.html.

[55] See Iridium Satellite Communications, "Satellites 101: LEO vs. GEO Satellite Constellations," September 11, 2018, https://www.iridium.com/blog/2018/09/11/satellites-101-leo-vs-geo/.

[56] Although geostationary satellites appear as fixed or stationary, they are not. Because they orbit the earth at roughly the same velocity as the earth itself rotates, they appear to maintain a fixed position in the sky to an earthbound observer.

[57] TechTarget, "geostationary satellite," https://www.techtarget.com/searchmobilecomputing/definition/geostationary-satellite (accessed March 6, 2022).

> allows the use of simple, non-directional antennas, offers reduced latency….[58]

33. Although the number of operational LEO satellite constellations remains limited, satellite broadband services from SpaceX's Starlink are already available in 29 countries, including the United States.[59] Starlink provides "fixed-broadband-like latency figures, and median download speeds fast enough to handle most of the needs of modern online life."[60] As of January 2022, the Starlink LEO satellite constellation consisted of 1,469 active satellites with another 272 moving to operational orbits.[61] SpaceX, which can carry about 50 Starlink satellites on each launch, has recently been having about two launches per month.[62] The FCC has authorized Starlink for 4,408 satellites.[63] Starlink, which exited its beta (trial) stage in October 2021,[64] has approximately 100,000 satellite terminals,[65] of

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[58] Ibid.

[59] See Ry Crist, "Starlink Explained: Everything to Know About Elon Musk's Satellite Internet Venture," CNET, March 3, 2022, https://www.cnet.com/home/internet/starlink-satellite-internet-explained/ (hereinafter CNET Starlink explained).

[60] Isla Mcketta, How Starlink's Satellite Internet Stacks Up Against HughesNet and Viasat around the Globe, August 4, 2021, https://www.speedtest.net/insights/blog/starlink-hughesnet-viasat-performance-q2-2021/.

[61] See Jeff Faust, "SpaceX passes 2,000 Starlink satellites launched," *SpaceNews*, January 18, 2022.

[62] See Before the Federal Communications Commission, *In the Matter of the Petition of Starlink Services, LLC for Designation as an Eligible Telecommunications Carrier*, Petition of Starlink Services, LLC For Designation As An Eligible Telecommunications Carrier, 2021, WC Docket No. 09-197, February 3, 2012, p. 4 (hereinafter Starlink FCC ETC Application); see also Stephen Clark, "Fifty more Starlink satellites ready for launch Friday," *Spaceflight Now*, February 24, 2022, https://spaceflightnow.com/2022/02/24/fifty-more-starlink-satellites-ready-for-launch-friday/.

[63] See Jeff Faust, "SpaceX passes 2,000 Starlink satellites launched," *SpaceNews*, January 18, 2022.

[64] See Jon Brodkin, "SpaceX: Chip shortage is impacting "our ability to fulfill" Starlink orders," *Ars Technica*, November 1, 2021, https://arstechnica.com/information-technology/2021/11/starlink-exits-beta-but-spacex-says-orders-are-delayed-due-to-chip-shortage/#:~:text=Starlink%20has%20apparently%20just%20exited,Starlink%20homepage%20late%20last%20week.

[65] See CNET Starlink explained.

which the bulk are in the United States.[66] Starlink offers broadband internet access and will offer standalone voice services.[67]

34. Regarding voice services, Starlink has applied for an eligible telecommunications carrier (ETC) designation as this would make it eligible to participate in the FCC's Lifeline program.[68] Starlink's price for internet access service is $499 for the satellite dish and $99 per month for an internet connection. The price of the dish will likely decrease in the future.[69] Starlink plans to offer its standalone voice service "at rates that are reasonably comparable to urban rates."[70] In addition to Starlink's own telephony service,[71] it is likely that independent VoIP providers will offer voice services using satellites. At least one VoIP provider (Ooma) has indicated that its "home phone service is Starlink compatible."[72]

35. The FCC considered Starlink's internet broadband service quality high enough to qualify for its $20.4 billion Regional Digital Opportunity Fund (RDOF).[73] The FCC held its initial reverse auction (lowest subsidy request wins) in October 2020 and limited it to CBs that were unserved by fixed broadband with minimum 25/3 Mbps speeds (in contrast

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[66] See Tony Lenoir, "Mobile app downloads underscore interest in Starlink," *S&P Global Market Intelligence*, August 3, 2021.

[67] Starlink FCC ETC Application, p. 9.

[68] Ibid, p. 12.

[69] See CNET Starlink explained.

[70] Starlink FCC ETC Application, p. 10. "All Rural Digital Opportunity Fund support recipients, like all other high-cost ETCs, will be required to offer standalone voice service and offer voice and broadband services at rates that are reasonably comparable to rates offered in urban areas." (*Rural Digital Opportunity Fund*, Report and Order, WC Docket No. 19-126 (rel. February 7, 2020), ¶ 42 (hereinafter FCC Rural Fund Order).)

[71] Starlink may deliver telephony service through a white-label managed service provider, other third-party providers, or its own proprietary solution. (See Starlink FCC ETC Application, p. 10.)

[72] Dennis Peng, "How to add home phone service to Starlink satellite internet," *Ooma*, January 14, 2022, https://www.ooma.com/home-phone/add-home-phone-service-to-starlink/.

[73] See EEC Technologies, Broadband Infrastructure Inventory Study for Jefferson County, NY, June 15, 2021, p. 15 (hereinafter EEC Jefferson County Report). RDOF replaced the Connect America Fund.

to the NSIC submissions which respond to whether the "network passes by and to which it is capable of providing broadband service at any speed.").[74] The FCC adopted a technology neutral standard for voice and broadband services at its auction.[75] Starlink won $588 million in subsidies over a 10-year period covering 35 states and 642,925 locations (defined as households and businesses).[76] The broadband deployment conditions of the auction generally require funding recipients "to commercially offer voice and broadband service to 40% of the … number of locations in a state by the end of the third full calendar year following funding authorization, and 20% each year thereafter."[77] All ETCs must advertise the availability of voice service in their service areas.[78] Many more LEO satellite constellations are expected to launch in the coming years.[79]

E. New York State Recognizes Alternative Providers in Rural New York

36. As I noted above, the product market definition for voice service also includes voice services over satellites. This is recognized in New York State where satellite services are already part of its approach to reach difficult to serve residents (i.e., mostly rural). A

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[74] Ibid.; see also 2020 Joint Proposal, ¶ 2(e)(ii).

[75] The FCC did adopt auction weights "that reflect our preference for higher speeds, higher usage allowances, and low latency." (FCC Rural Fund Order, ¶¶ 31, 38.)

[76] See Federal Communications Commission, "Successful Rural Digital Opportunity Fund Auction to Expand Broadband to Over 10 Million Rural Americans, Phase I Auction Allocates $9.2 Billion to Close the Digital Divide in 49 States and the Commonwealth of the Northern Mariana Islands," *FCC News*, December 7, 2020, Winning Bidders.

[77] FCC Rural Fund Order, ¶ 48.

[78] Ibid, ¶ 54.

[79] See Chris Daehnick, Isabelle Klinghoffer, Ben Maritz, and Bill Wiseman, "Large LEO satellite constellations: Will it be different this time?" *McKinsey & Company*, May 4, 2020, https://www.mckinsey.com/industries/aerospace-and-defense/our-insights/large-leo-satellite-constellations-will-it-be-different-this-time.

recent study of broadband services to residents of Jefferson County in upstate New York found numerous CBs served with the assistance of a New NY Broadband Grant. The study found that of the 4,612 Jefferson County CBs covered by grants, the State awarded HughesNet Systems 2,884 (62.5 percent) of them.[80] According to the EEC study, the grants will allow HughesNet to deploy its higher speed Gen5 broadband service. EEC further indicates, "The grant-supported service area will have a monthly rate not to exceed $60, with an installation fee not to exceed $49. These are lower than the provider's current price offerings."[81]

37. As shown in Table 6, at the state level, HughesNet received grants covering almost 79,000 locations (defined as households and businesses) with most of the locations in the following Regional Economic Development Regions (REDC): Capital Region, Central New York, Finger Lakes, Long Island, Mid-Hudson, Mohawk Valley, North Country, Southern Tier, Western New York.[82]

Table 6: Hughes Network Systems New York State Broadband Grant

	Census Blocks	Locations	State Grant	Private & Federal Commitment	Total Investment
	34,296	78,960	$ 15,949,488	$ 13,916,492	$ 29,865,980
Locations per Census Block		2.3			
Per Location			$ 202	$ 176	$ 378

Source: New York State Broadband Program Office, "All Awards by Municipality, Awarded Census Blocks."

[80] EEC Jefferson County Report, p. 9.
[81] Ibid, p. 46.
[82] New York State, New York Broadband Program, Phase 3 Awardees.

38. Thus, a product market definition for voice services that includes alternative broadband providers is already reflected in New York State's Broadband Program for underserved or unserved areas. As Table 7 shows, based on the FCC Form 477 data,[83] the beneficiaries of the NY Broadband Fund reside in the service areas of the NSICs. Of particular interest is the presence of satellite provider HughesNet, which received funding for 8.7 percent of the CBs passed by the NSICs. Satellite providers also pass CBs that are not part of the NY Broadband Fund.

[83] The Form 477 includes the following names: Armstrong Telephone Company-NY for Armstrong Telephone Co., Chazy & Westport Telephone Corporation for Chazy & Westport Telephone Corp., Crown Point Network Technologies, Inc. for Crown Point Telephone Corp., Delhi Telephone Company for Delhi Telephone Co., Fishers Island Telephone Corp. for Fishers Island Telephone Corp., Germantown Telephone Company and Valstar, Inc. for Germantown Telephone Co., Midtel Cable TV, Inc. for Middleburgh Telephone Co., Newport Telephone Company, Inc. for Newport Telephone Co., Nicholville Telco LLC for Nicholville Telephone Co., Oneida County Rural Telephone Co. for Oneida County Rural Telephone Co., Pattersonville Telephone Company for Pattersonville Telephone Co., State Telephone Company, Inc. for State Telephone Co., and TDS TELECOMMUNICATIONS CORPORATION for Telephone & Data Systems, Inc. (pertaining to TDS Telecom - Deposit Telephone Company, Inc.; TDS Telecom - Edwards Telephone Company, Inc.; TDS Telecom – Port Byron Telephone Company; TDS Telecom - Township Telephone Company, Inc.; and TDS Telecom - Vernon Telephone Company.)

Table 7: Overlap Between NSICs and NY Broadband Fund Recipients

Company Name	Form 477	HughesNet Only	HughesNet and Other	HughesNet and Other as a % of Form 477
Armstrong Telephone Co.	263	14	14	5.3%
Chazy & Westport Telephone Corp.	619	52	66	10.7%
Crown Point Telephone Corp.	260	106	106	40.8%
Delhi Telephone Co.	654	4	75	11.5%
Fishers Island Telephone Corp.	53	53	53	100.0%
Germantown Telephone Co.	512	-	9	1.8%
Middleburgh Telephone Co.	1,193	135	143	12.0%
Newport Telephone Co.	582	87	87	14.9%
Nicholville Telephone Co.	308	41	180	58.4%
Oneida County Rural Telephone Co.	552	31	33	6.0%
Pattersonville Telephone Co.	170	-	4	2.4%
State Telephone Co.	871	112	179	20.6%
Telephone & Data Systems, Inc.	2,425	103	141	5.8%
Total/Average	**8,462**	**738**	**1,090**	**12.9%**

Source: FCC, "Form 477 Broadband Deployment Data - December 2020 (version 1)," updated November 10, 2021; New York State Broadband Program Office, "All Awards by Municipality, Awarded Census Blocks."

39. Based on FCC Form 477 data, Nicholville Telephone passes homes in 308 CBs. Satellite broadband provider HughesNet received NY Broadband Fund moneys for 41 of these CBs. Other alternative broadband providers received funding for another 180 CBs, bringing the percentage overlap between Nicholville Telephone and subsidized alternative broadband providers to 58.4 percent. Similarly, the analysis reveals that in the service area covered by Fishers Island Telephone, where there are no wireline alternatives to that company's own wireline broadband offering, a subsidized HughesNet offering covers the entire area.

40. Likewise, and again based on the FCC Form 477 data, Table 8 shows the beneficiaries of the FCC's RDOF in the NSICs' service areas where SpaceX received funding for some of the CBs passed by the NSIC. Although at 0.6 percent overlap, the funded overlap percentage is small, in fact satellite service from SpaceX is available in all service areas,

even those without funding. The fact that only a limited number of CBs are recipients of the FCC's RDOF funding is explained by the fact that the FCC limits RDOF funding to CBs in which no provider offering broadband service at 25 Mbps down and 3 Mbps up was present.

Table 8: Overlap Between NSICs and FCC RDOF Recipients

Company Name	Form 477	SpaceX Only	SpaceX and Other	SpaceX and Other as a % of Form 477
Armstrong Telephone Co.	263	1	1	0.4%
Chazy & Westport Telephone Corp.	619	-	-	0.0%
Crown Point Telephone Corp.	260	5	5	1.9%
Delhi Telephone Co.	654	-	-	0.0%
Fishers Island Telephone Corp.	53	-	-	0.0%
Germantown Telephone Co.	512	3	3	0.6%
Middleburgh Telephone Co.	1,193	1	1	0.1%
Newport Telephone Co.	582	5	5	0.9%
Nicholville Telephone Co.	308	7	7	2.3%
Oneida County Rural Telephone Co.	552	9	9	1.6%
Pattersonville Telephone Co.	170	-	-	0.0%
State Telephone Co.	871	-	-	0.0%
Telephone & Data Systems, Inc.	2,425	20	20	0.8%
Total/Average	**8,462**	**51**	**51**	**0.6%**

Source: FCC, "Form 477 Broadband Deployment Data - December 2020 (version 1)," updated November 10, 2021; FCC Public Reporting System, "Auction 904, All Assigned Census Blocks."

F. NSIC Data Confirm Platform Competition

41. Marketplace evidence confirms a market definition that includes alternative broadband, mobile wireless, fixed wireless, and satellite providers. The availability of new technologies has led to a large and continuing shift away from ILEC access lines. In its 2015 report, NYPSC Staff noted that since the year 2000 ILEC access line counts had dropped from over 13 million to approximately 4 million, *a drop of almost 70 percent*,[84] which has continued since then. As shown in Table 9, over the 2016–2020 period, all but

[84] See NYPSC 2015 Staff Report, p. 2.

one of the 17 NSICs had a decline in access lines, on average by 18 percent. Drops in access lines occur because of competition from substitute products although the effects may be accentuated by local population shifts. Thus, although New York State's population increased modestly between 2010 and 2020 (and that of the United States grew by 7.4 percent over this period), wireline access lines have dropped significantly.[85]

Table 9: Number of NSIC Access Lines by Company (2016–2020)

Company Name	2016	2020	% Change 2016-2020
Armstrong Telephone Co.	2,299	1,724	-25%
Chazy & Westport Telephone Corp.	2,373	1,749	-26%
Crown Point Telephone Corp.	652	552	-15%
Delhi Telephone Co.	2,834	2,403	-15%
Fishers Island Telephone Corp.	880	853	-3%
Germantown Telephone Co.	2,071	2,075	0%
Middleburgh Telephone Co.	4,416	3,587	-19%
Newport Telephone Co.	2,272	2,001	-12%
Nicholville Telephone Co.	1,014	639	-37%
Oneida County Rural Telephone Co.	1,524	1,250	-18%
Pattersonville Telephone Co.	617	433	-30%
State Telephone Co.	4,731	3,728	-21%
TDS Telecom - Deposit Telephone Co.	4,996	4,428	-11%
TDS Telecom - Edwards Telephone Co.	1,383	1,319	-5%
TDS Telecom - Port Byron Telephone Co.	1,652	1,342	-19%
TDS Telecom - Township Telephone Co.	1,761	1,022	-42%
TDS Telecom - Vernon Telephone Co.	1,515	1,268	-16%
Total	**36,990**	**30,373**	**-18%**

Source: Case 15-M-0742, "Petition for the Extension of the State Universal Service Fund," December 15, 2021, Attachment B Access Lines of the New York Smaller ILEC Companies (2016 to 2020).

42. For six of these companies, I also have 2010 data. As shown in Table 10, on average the number of access lines dropped by nearly half over the 2010–2020 period.

[85] New York State's population went from 19,378,102 in 2010 to 20,201,249 in 2020 (before dropping a bit in 2021 to 19,835,913). The population in the counties in which the NSICs operate stayed essentially flat during the 2010 to 2020 period (down by 0.1 percent) or down modestly if Suffolk County is excluded (down 1.8 percent). See U.S. Census Bureau, QuickFacts, United States, https://www.census.gov/quickfacts/fact/table/US/PST045221. See also U.S. Census Bureau, QuickFacts, New York, https://www.census.gov/quickfacts/NY; Response to VZ-NSIC-7; Central NY News, "2020 Census: See how much population changed in every county, city, town, village in NY state (search)," updated August 13, 2021, https://www.syracuse.com/news/2021/08/2020-census-see-how-much-population-changed-in-every-county-city-town-village-in-ny-state-search.html.

Table 10: Number of NSIC Access Lines by Company (2010, 2020)

Company Name	2010	2020	% Change 2010-2020
Crown Point Telephone Corp.	819	552	-33%
Newport Telephone Co.	2,987	2,001	-33%
Oneida County Rural Telephone Co.	2,327	1,250	-46%
TDS Telecom - Port Byron Telephone Co.	2,349	1,342	-43%
TDS Telecom - Township Telephone Co.	3,304	1,022	-69%
TDS Telecom - Vernon Telephone Co.	1,939	1,268	-35%
Sum	**13,725**	**7,435**	**-46%**

Source: NYPSC 2015 Staff Report, Table 7; Case 15-M-0742, "Petition for the Extension of the State Universal Service Fund," December 15, 2021, Attachment B – Access Lines of the New York Smaller ILEC Companies (2016 to 2020).

43. According to the NYPSC Staff:

> [A]ccess line losses have been [driven by] customer migrations of their primary phone lines to VoIP phone and wireless voice service, as well as secondary line migrations from dial-up Internet services, to faster, more advanced cable modem, digital subscriber line (DSL) and optical carrier broadband now offered by most companies providing broadband service in New York State.[86]

Similarly, the competitive effect of mobile wireless phone service is already incorporated into "a regulatory framework authorizing differing degrees of pricing flexibility for small independent telephone companies, based upon an analysis of company earnings, as measured by Return on Equity, and an examination of the level of competition in their service territories."[87] As part of the Annual Survey of Competitive Presence, the NYPSC asks:

- What percentage of customers in your telephone service territory have non-affiliated wireless telephone service available to them?

[86] NYPSC 2015 Staff Report, p. 2.

[87] See, for example, Letter of Debra LaBelle (Director, Office of Telecommunications) to Jeff McGrath (Nicholville Telephone Company), re: Framework for Regulatory Relief – 2020 Annual Survey of Competitive Presence, February 24, 2020.

- How would you characterize, in terms of percentage, the availability of wireless phone service coverage across your telephone service territory?[88]

44. In fact, the NYPSC has long recognized that wireline voice service provided by the ILECs faces competition from alternative providers. As early as 2006, the NYPSC concluded that the residential market for non-basic service was effectively competitive, thereby rejecting claims that mobile wireless service was not a total substitution, VoIP was not generally available, and incumbent telephone companies still had market power.[89] Over time, each of these voice options has become an even more significant competitive option.

45. The NYPSC Staff report confirms that subscribers use all connection methods to receive voice services. As shown in Table 11, even as far back as September 2014, voice subscribers were adopting all connection methods. Moreover, since that period, alternative providers have improved their capabilities and expanded their availability.

Table 11: Voice Service Availability and Adoption (September 2014)

Voice Services	Availability	Adoption
LEC	>98%	>40%
Satellite	>95%	<1%
Wireless	>95%	>95%
Cable	>95%	>40%
Over-The-Top	>95%	>3%
Fiber	50%	>20%

Source: NYPSC 2015 Staff Report, p. 8, Table 1.

[88] Ibid.

[89] 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, p. 6.

IV. NSIC DATA REVEAL A [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] PERCENT WIRELINE OVERBUILD ALONE

[BEGIN CONFIDENTIAL]

46. [redacted]

[redacted]

47. [redacted]

[redacted]

48. [redacted]

49. [redacted]

[redacted]

50. [redacted]

51. [redacted]

[90] See, for example, Armstrong's 2021 Competitive Presence Survey submission.

[redacted]

52. [redacted]

[END CONFIDENTIAL]

V. PUBLIC FCC DATA REVEAL 100 PERCENT COMPETITIVE OVERBUILD

53. As I explain in Section III, the proper product market definition for voice services also includes mobile wireless, fixed wireless, and satellite voice providers. Because the NSIC submissions limit location data to wireline alternatives, I queried data available from the

[91] While the survey asks only about competitive cable options, **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

FCC to calculate a more accurate percentage of competitive overbuild. This analysis reveals that all households in the NSICs' service areas have competitive options.

54. Specifically, the FCC collects and makes available for analysis data that provide "snapshots of the extent of broadband deployment and local telephone competition throughout the United States."[92] As part of the FCC's Form 477 requirements, all broadband providers, including the NSICs, must provide information regarding the availability of certain telecommunications services in their service areas. Form 477 data is at the CB level. CBs are, "Statistical areas bounded by visible features such as roads, streams, and railroad tracks, and by nonvisible boundaries such as property lines, city, township, school district, county limits and short line-of-sight extensions of roads."[93] New York State had 288,819 CBs in 2020.[94] With a 2020 population of 20,201,249, the average is approximately 70 people per CB with urban locations averaging much higher and rural locations much lower.[95] New York State covers 54,555 square miles, which averages approximately 0.19 square miles per CB—obviously with substantial differences between urban and rural locations.[96]

55. I downloaded and analyzed the data from the FCC's December 2020 Form 477. The FCC has not yet finalized aggregating the data that resulted from the June 2021 and December

[92] Federal Communications Commission, "Frequently Asked Questions (FAQs) about FCC Form 477," updated January 18, 2006, Question 1.

[93] Katy Rossiter, "What are census blocks?" United States Census, July 11, 2011, https://www.census.gov/newsroom/blogs/random-samplings/2011/07/what-are-census-blocks.html

[94] In 2010, New York State had 350,169 census blocks. See US Census Bureau, "Census Block Tallies by State or State Equivalent," https://www.census.gov/geographies/reference-files/time-series/geo/tallies.html.

[95] See US Census Bureau, QuickFacts, New York, https://www.census.gov/quickfacts/NY.

[96] See Britannica, The Information Architects of Encyclopedia. "New York," *Encyclopedia Britannica*, https://www.britannica.com/facts/New-York-state (accessed March 25, 2022).

2021 reporting periods. Thus, the most recent data for which coverage percentages can be calculated is the December 2020 data.

56. I filtered the data down to the CBs served by the NSICs and added the household count for each CB using the Bureau of Census' 2010 household count. I then calculated the cumulative percentages of households in the NSICs' service areas that have competitive options. Specifically, I first examined the number of wireline options available to each household. Second, I expanded the product market definition to also include mobile wireless services. Third, I further expanded the market definition to include fixed wireless and satellite.

57. The analysis of the Form 477 data indicates a wide availability of alternative providers. Consider, for instance, Armstrong Telephone Company. As shown in Table 15, this NSIC's Form 477 data reveal that 869 households of the 3,294 households (26.4 percent) in Armstrong Telephone Company's service area have only one wireline broadband provider. Another 1,298 households (39.4 percent) have a choice of two wireline providers, whereas 1,127 households (34.2 percent) had three or more wireline options. The second column shows the number of competitive options available to households in Armstrong Telephone Company's service area after expanding the product market definition to include mobile wireless services. As the table shows, this analysis reveals that only 22 households (0.7 percent) have only one choice of a voice services provider. Conversely, 3,272 households (99.3 percent) have competitive options for voice services. As shown in the third column, adding only fixed wireless and satellite services to wireline reveals that there are no households in Armstrong Telephone Company's service

area that do not have at least five competitive options for voice services. The fourth column includes all these options in the product market definition and indicates that there are numerous alternative providers.

Table 15: Competitive Options in Census Blocks Passed by Armstrong Telephone Co.

Number of Providers	Wireline Only	Wireline and Mobile	Wireline, Fixed Wireless and Satellite	Wireline, Mobile, Fixed Wireless and Satellite
1	26.4%	0.7%	0.0%	0.0%
2	39.4%	4.3%	0.0%	0.0%
3	10.6%	12.6%	0.0%	0.0%
4	23.6%	17.1%	0.0%	0.0%
5	0.0%	20.3%	21.8%	0.7%
6	0.0%	18.0%	19.6%	4.3%
7	0.0%	4.7%	28.4%	11.2%
8	0.0%	22.3%	7.0%	13.4%
9	0.0%	0.0%	23.3%	14.9%
10	0.0%	0.0%	0.0%	13.4%
11	0.0%	0.0%	0.0%	15.1%
12	0.0%	0.0%	0.0%	4.7%
13	0.0%	0.0%	0.0%	22.3%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Note: Percentages are based on 2010 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.
Source: FCC, "Form 477 Broadband Deployment Data - December 2020 (version 1)," updated November 10, 2021; FCC, "Mobile Deployment Form 477 Data," December 2020; Steven Manson et al., IPUMS National Historical Geographic Information System.

Appendix D presents the same analysis for all 17 NSICs individually.

A. Alternative Wireline Providers Are Available to 83 Percent of Households

58. Table 16 summarizes the *wireline* alternatives available in the 17 NSIC service areas according to Form 477 data. (Note that FCC data combine all five TDS NSICs into one.) This aggregation reveals that on average 83.3 percent of households in the NSIC service areas have *wireline* alternative for voice services.

Table 16: Percentage of NSIC Households with Competitive Wireline Options

Provider	Wireline Only
Armstrong Telephone Co.	73.6%
Chazy & Westport Telephone Corp.	85.3%
Crown Point Telephone Corp.	91.7%
Delhi Telephone Co.	69.4%
Fishers Island Telephone Corp.	0.0%
Germantown Telephone Co.	63.7%
Middleburgh Telephone Co.	82.9%
Newport Telephone Co.	63.2%
Nicholville Telephone Co.	82.6%
Oneida County Rural Telephone Co.	85.1%
Pattersonville Telephone Co.	97.7%
State Telephone Co.	98.1%
Telephone & Data Systems, Inc.	85.4%
Weighted Average	**83.3%**

Note: Percentages are based on 2010 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.
Source: FCC, "Form 477 Broadband Deployment Data - December 2020 (version 1)," updated November 10, 2021; FCC, "Mobile Deployment Form 477 Data," December 2020; Steven Manson et al., IPUMS National Historical Geographic Information System.

B. Adding Mobile Wireless Services Increases Alternative Coverage to over 99 Percent

59. As summarized in Table 17, including mobile wireless services in the product market definition for voice services increases the households that the NSICs cover with an alternative to almost 100 percent.

Table 17: Percentage of NSIC Households with Competitive Wireline and Mobile Wireless Options

Provider	Wireline and Mobile
Armstrong Telephone Co.	99.3%
Chazy & Westport Telephone Corp.	100.0%
Crown Point Telephone Corp.	100.0%
Delhi Telephone Co.	99.1%
Fishers Island Telephone Corp.	100.0%
Germantown Telephone Co.	100.0%
Middleburgh Telephone Co.	99.1%
Newport Telephone Co.	98.5%
Nicholville Telephone Co.	99.8%
Oneida County Rural Telephone Co.	100.0%
Pattersonville Telephone Co.	100.0%
State Telephone Co.	100.0%
Telephone & Data Systems, Inc.	100.0%
Weighted Average	**99.7%**

Note: Percentages are based on 2010 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.
Source: FCC, "Form 477 Broadband Deployment Data - December 2020 (version 1)," updated November 10, 2021; FCC, "Mobile Deployment Form 477 Data," December 2020; Steven Manson et al., IPUMS National Historical Geographic Information System.

60. **[BEGIN CONFIDENTIAL]** [redacted]

[redacted]

[END CONFIDENTIAL]

C. Adding Fixed Wireless and Satellite Services Reveals 100 Percent Alternative Coverage

61. Including fixed wireless and satellite services as an alternative provider increases the households that the NSICs cover to 100 percent. Fixed wireless and satellite services in combination with mobile wireless services provide virtually universal population coverage.

Table 19: NSIC Households with Wireline, Mobile Wireless, Fixed Wireless and Satellite Options

Provider	Wireline, Mobile, Fixed Wireless and Satellite
Armstrong Telephone Co.	100.0%
Chazy & Westport Telephone Corp.	100.0%
Crown Point Telephone Corp.	100.0%
Delhi Telephone Co.	100.0%
Fishers Island Telephone Corp.	100.0%
Germantown Telephone Co.	100.0%
Middleburgh Telephone Co.	100.0%
Newport Telephone Co.	100.0%
Nicholville Telephone Co.	100.0%
Oneida County Rural Telephone Co.	100.0%
Pattersonville Telephone Co.	100.0%
State Telephone Co.	100.0%
Telephone & Data Systems, Inc.	100.0%
Weighted Average	**100.0%**

Note: Percentages are based on 2010 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.
Source: FCC, "Form 477 Broadband Deployment Data - December 2020 (version 1)," updated November 10, 2021; FCC, "Mobile Deployment Form 477 Data," December 2020; Steven Manson et al., IPUMS National Historical Geographic Information System.

VI. CONCLUSION

62. Based on the findings herein, it is my expert opinion that a proper analysis of the competitive options for voice services includes not only alternative wireline broadband providers but also mobile wireless, fixed wireless, and satellite providers. Examining the available data using this proper market definition finds that all households in the NSIC service areas have choices for their voice services.

APPENDIX A: CURRICULUM VITAE OF CHRISTIAN M. DIPPON, PH.D.

Christian M. Dippon, Ph.D.

CHAIR, NERA'S GLOBAL ENERGY, ENVIRONMENT, COMMUNICATIONS & INFRASTRUCTURE PRACTICE

Dr. Dippon is a Managing Director at NERA and a leading authority in complex litigation disputes and competition matters in the communications, Internet, and high-tech sectors. He is also the Chair of NERA's Global Energy, Environment, Communications & Infrastructure (EECI) Practice, where he leads over 100 experts in the areas of energy, communications, media, Internet, environment, auctions, transport, and water. Global Arbitration Review (2019, 2020) and Financier Worldwide (2021) rank Dr. Dippon among the world's leading commercial arbitration experts.

Dr. Dippon advises his clients in economic damages assessments, class certifications and damages, false advertising, antitrust matters, and regulatory and competition issues. He has extensive testimonial and litigation experience, including depositions, jury and bench trials in state and federal courts, domestic (AAA) and international arbitrations (UNCITRAL, ICC, ICSID), and submissions before international courts. He assists clients with a broad range of litigation disputes related to wireline, wireless, cable, media, Internet, Internet of Things (IoT), consumer electronics, and the high-tech sector. Dr. Dippon also routinely testifies before US and international regulatory authorities, including the Federal Communications Commission, the Federal Aviation Administration, the International Trade Commission, the Canadian Radio-television and Telecommunications Commission, and the Competition Bureau Canada.

Dr. Dippon has authored and edited several books as well as book chapters in anthologies and has written numerous articles on telecommunications competition and strategies. He also lectures in these areas at industry conferences, continuing education programs for lawyers, and at universities. National and international newspapers and magazines, including the *Financial Times*, *Business Week*, *Forbes*, the *Chicago Tribune*, and the *Financial Post*, have cited his work.

Dr. Dippon serves on NERA's Board of Directors, the Board of Directors of the International Telecommunications Society (ITS), and on the Editorial Board of *Telecommunications Policy*. He is a member of the Economic Club of Washington, DC, the American Economic Association (AEA), the American Bar Association (ABA), and the Federal Communications Bar Association (FCBA).

Education

Curtin University, Perth, Australia
PhD in Economics, 2011

University of California, Santa Barbara, CA, USA
MA in Economics, 1995

California State University, Hayward, CA, USA
BS *cum laude* in Business Administration, 1993

Thesis

"Consumer Preferences for Mobile Phone Service in the U.S.: An Application of Efficient Design on Conjoint Analysis," Curtin University, 2011.

Committee: Dr. Gary Madden, Curtin University; Dr. Kenneth Train, University of California at Berkeley; Dr. Ruhul Salim; Curtin University.

Reviewers: Dr. Jerry Hausman, Massachusetts Institute of Technology; Dr. Glenn Woroch, University of California at Berkeley.

Professional Experience

NERA Economic Consulting

2017–present	Chair, NERA's Global Energy, Environment, Communications & Infrastructure (EECI) Practice
2017–present	Member, Board of Directors, NERA Economic Consulting
2014–present	Senior Vice President / Managing Director
2014–2017	Co-Chair, Communications, Media & Internet Practice
2015–2017	Head, NERA Washington, DC
2014–2015	Co-Head, NERA Washington, DC
2012–2014	Chair, Communications, Media & Internet Practice
2004–2014	Vice President
2000–2004	Senior Consultant
1998–2000	Consultant
1997–1998	Senior Analyst
1996–1997	Analyst

BMW Thailand

1993–1994	Business Analyst

Honors and Professional Activities

Member, International Bar Association (IBA)
Member, The Economic Club, Washington, DC
Editorial Board, Telecommunications Policy
Board of Directors, International Telecommunications Society (ITS)
Treasurer, International Telecommunications Society (ITS)
Member, American Economic Association (AEA)
Member, Federal Communications Bar Association (FCBA)
Associate, American Bar Association (ABA)
Who's Who Legal Arbitration 2019, Expert Witness

Testimonial Experience

Testimony Formats

Bench trials
Depositions
Domestic arbitrations
International arbitrations (UNCITRAL, ICSID, ICC, LCIA)
Jury trials
Regulatory hearings

Appearances Before

American Arbitration Association
Arbitration of the International Centre for Settlement of Investment Disputes (ICSID)
Arbitration of the International Chamber of Commerce (ICC)
Arbitration Under the North American Free Trade Agreement (NAFTA)
Arbitration Under the Rules of the United Nations Commission on International Trade Law (UNCITRAL)
Arbitration Under the Rules of the London Court of International Arbitrations (LCIA)
Canadian Radio-Television and Telecommunications Commission (CRTC)
Central Jakarta District Court, Indonesia
Circuit Court of Cook County, Illinois County Department, Chancery Division
Commerce Commission New Zealand
Competition Bureau Canada
Court of Chancery of the State of Delaware
District Court for the Eastern District of Pennsylvania
District Court Northern District of California San Francisco Division
District Court of Tangerang, Indonesia
Federal Aviation Administration
Federal Communication Commission
Federal Court of Canada

Info-communications Development Authority of Singapore (IDA)
Innovation, Science and Economic Development Canada (ISED)
International Trade Commission (ITC)
Israel Ministry of Communications
Ontario Superior Court of Justice
Superior Court of California, County of Santa Clara
Superior Court of the State of California, County of Alameda
Superior Court, Province of Quebec, District of Montreal
Supreme Court of British Columbia
United States Bankruptcy Court Southern District of New York

TESTIMONY IN REGULATORY AND JUDICIAL PROCEEDINGS

ON BEHALF OF [CONFIDENTIAL STATE]

In the Matter of an Arbitration und the Rules of Arbitration of the International Centre for Settlement of Investment Disputes, ICSID Case No. [Confidential], [Confidential], Claimant against [Confidential], Respondent against [Confidential], Expert Report on Behalf of [Respondent], November 22, 2019, Second Report on Behalf of [Respondent], December 18, 2020 (Economic Damages / Liability / Industry expertise).

ON BEHALF OF [CONFIDENTIAL CONSUMER ELECTRONICS]

In the Matter of an Arbitration under the Rules of Arbitration of the International Chamber of Commerce, ICC Case No. [Confidential], [Confidential], Claimant against [Confidential], Respondent against [Confidential], Counterclaim-Respondent, July 6, 2018 (Expert Report on Behalf of Respondent], November 16, 2018 [Second Expert Report on Behalf of Respondent], December 20 – 21, 2018 [Oral Testimony on Behalf of Respondent] (Economic Damages / Industry expertise).

ON BEHALF OF [CONFIDENTIAL TELECOMMUNICATIONS INDUSTRY]

In the Matter of an Arbitration under the Rules of Arbitration of the International Chamber of Commerce, ICC Case No. [Confidential], [Confidential], First Claimant and [Confidential], Second Claimant against [Confidential], First Respondent and [Confidential], Second Respondent, December 20, 2004 (Joint Expert Report with Dr. Agustin Ros and Dr. Timothy Tardiff on Behalf of Claimants, opining on the economic and strategic importance of the mobile business for an integrated telecommunications provider (Industry expertise).

ON BEHALF OF A1 TELEKOM AUSTRIA

"The Impact of Mobile Virtual Network Operators on Competition in the Austrian Mobile Communications Market," Expert Report of Dr. Christian Dippon (NERA Economic Consulting) and Dr. Georg Serentschy (Serentschy Advisory Services GmbH), 22 March 2021.

ON BEHALF OF ALCATEL-LUCENT USA INC.

In the Superior Court of California, County of Santa Clara, *In re: Alcatel-Lucent USA Inc. v. Brilliant Telecommunications, Inc., Juniper Networks, Inc., et al.*, December 7, 2012, December 13, 2012, February 21 and 25, 2013. (Economic Damages / Industry expertise)

ON BEHALF OF AT&T ALABAMA

Before the Federal Communications Commission, Washington, DC 20554, BellSouth Telecommunications, LLC d/b/a AT&T Alabama, Complainant v. Alabama Power Company, Defendant, Proceeding No. 19 - 119, Bureau ID No. EB-19-MD-002, Affidavit of Christian M. Dippon, Ph.D., In Support of Pole Attachment Complaint, April 16, 2019, Reply Declaration of Christian M. Dippon, Ph.D., In Support of Pole Attachment Complaint, July 19, 2019 (Regulatory Rate Dispute / Industry Expertise)

ON BEHALF OF AT&T FLORIDA

Before the Federal Communications Commission, Washington, DC 20554, BellSouth Telecommunications, LLC d/b/a AT&T Florida, Complainant v. Florida Power and Light Company, Defendant, Proceeding No. 19 - __, Bureau ID No. EB-19-MD-___, Affidavit of Christian M. Dippon, Ph.D., In Support of Pole Attachment Complaint, June 28, 2019, Reply Affidavit, November 6, 2019. (Regulatory Rate Dispute / Industry Expertise)

Before the Federal Communications Commission, Washington, DC 20554, BellSouth Telecommunications, LLC d/b/a AT&T Florida, Complainant v. Duke Energy Florida, LLC, Defendant, Proceeding No. 20-, Bureau ID No. EB-20-MD-, Affidavit of Christian M. Dippon, Ph.D., In Support of Pole Attachment Complaint, August 24, 2020, Reply Affidavit, November 23, 2020. (Regulatory Rate Dispute / Industry Expertise)

ON BEHALF OF AT&T NORTH CAROLINA AND AT&T SOUTH CAROLINA

Before the Federal Communications Commission, Washington, DC 20554, BellSouth Telecommunications, LLC d/b/a AT&T North Carolina and d/b/a AT&T South Carolina, Complainant v. Duke Energy Progress, LLC, Defendant, Proceeding No. 20 -, Bureau ID No. EB-20-MD-, Affidavit of Christian M. Dippon, Ph.D., In Support of Pole Attachment Complaint, August 31, 2020, Reply Affidavit, December 18, 2020. (Regulatory Rate Dispute / Industry Expertise)

ON BEHALF OF BELL MOBILITY

Before the Superior Court, Province of Quebec, District of Montreal, In the Matter of *Gagnon vs. Bell Mobility*, No: 500-06-000496-105, October 25, 2013, March 14, 2014 (updated version from October 25, 2013, and April 2–3, 2014. (Economic damages)

ON BEHALF OF CALINNOVATES

Before the Federal Communications Commission, Washington, DC, In the Matter of Expanding Consumers' Video Navigation Choices, MB Docket No. 16-42, Commercial Availability of Navigation Devices, CS Docket No. 97-80, April 22, 2016 (Public policy), October 11, 2016. (Economic damages)

Before the Federal Communications Commission, Washington, DC, In the Matter of Protecting and Promoting the Open Internet, GN Docket 14-28, "Economic Repercussions of Applying Title II to Internet Services," White Paper, by Christian Dippon, PhD and Jonathan Falk, filed as attachment to the Reply Comments of CALinnovates, September 11, 2014. (Public policy)

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ON BEHALF OF COMCAST CORPORATION

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ON BEHALF OF DJI TECHNOLOGY INC

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ON BEHALF OF FPL GROUP INC.

In reference to *Adelphia Communications Corp., et al., Adelphia Recovery Trust, v. FPL Group Inc.*, United States Bankruptcy Court Southern District of New York, July 8, 2011, July 26, 2011, April 17, 2012, and May 2–3, 2012. (Competition analysis)

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ON BEHALF OF MICROSOFT MOBILE OY AND NOKIA INC.

Before the United States International Trade Commission, In the Matter of Certain 3G Mobile Handsets and Components, Investigation No. 337-TA-613, September 12, 2014, October 3, 2014, October 15, 2014, November 21, 2014, December 12, 2014, and January 28, 2015. (Competition analysis)

Before the United States International Trade Commission, In the Matter of Certain Wireless Devices including Mobile Phones and Tablets II, Investigation No. 337-TA-905, June 26, 2014. (Competition analysis)

ON BEHALF OF MONSTER, INC.

Circuit Court of Cook County, Illinois County Department, Chancery Division, *Amy Joseph, individually and on behalf of all others similarly situated, Plaintiff, Benjamin Perez, individually and on behalf of all others similarly situated, Intervening Plaintiff vs. Monster, Inc., a Delaware*

Corporation and Best Buy Co, Inc., a Minnesota Corporation, Defendants, Case No. 2015 CH 13991, September 9, 2016 and February 8, 2018. (Economic damages)

ON BEHALF OF NETLINK TRUST

Before the Info-communications Development Authority of Singapore (IDA), "The Appropriate Cost Methodology for Price Regulation of Interconnection Wholesale Fiber Services," Christian Dippon with Dr. Bruno Soria, December 15, 2015. (Regulatory policy)

ON BEHALF OF NOKIA CORPORATION AND NOKIA INC.

Before the United States International Trade Commission, In the Matter of Certain Wireless Devices with 3G and/or 4G Capabilities and Components Thereof, Investigation No. 337-TA-868, August 23, 2013, September 5, 2013, September 20, 2013, October 8, 2013, November 19, 2013, December 6, 2013, January 6, 2014, and February 18, 2014. (Competition analysis)

Before the United States International Trade Commission, In the Matter of Certain Integrated Circuit Devices and Products Containing the Same, Investigation No. 337-TA-873, August 30, 2013, September 16, 2013, and March 6, 2014. (Competition analysis)

ON BEHALF OF NOKIA SOLUTIONS AND NETWORKS US LLC

In the Matter of the Arbitration between *MTPCS, LLC d/b/a Cellular One vs. Nokia Solutions and Networks US LLC d/b/a Nokia Networks*, Before the American Arbitration Association, RE: 01-15-0003-5349, December 5–6, 2016 (Economic damages and competition analysis) and May 4, 2016. (Economic damages)

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ON BEHALF OF QATAR TELECOM (QTEL)

In Connection with *Vodafone Qatar Q.S.C v. Qatar Telecom (Qtel) Q.S.C*, Pursuant to Dispute Resolution Agreement Dated 11 November 2010, January 20, 2011 and February 21, 2011. (Economic damages)

ON BEHALF OF SINGAPORE TELECOMMUNICATIONS LIMITED AND SINGAPORE TELECOM MOBILE PTE. LTD.

Before the District Court of Tangerang, "Economic Assessment and Examination of Alleged Anticompetitive Behavior in the Indonesian Mobile Market," Expert Report by Christian Dippon, Nigel Attenborough, and William Taylor, April 21, 2010. (Economic damages)

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Before the United States District Court Northern District of California San Francisco Division, In Re Sony PS3 "Other OS" Litigation, Case No. CV-10-1811 SC, April 4, 2017 and June 7, 2017. (Economic damages)

ON BEHALF OF SPRINT COMMUNICATION COMPANY L.P., SPRINT SPECTRUM L.P., AND NEXTEL OPERATIONS, INC.

Before the United States District Court for the Eastern District of Pennsylvania, *Comcast Cable Communications, LLC; TVWorks, LLC, and Comcast Mo Group Inc. v. of Sprint Communication Company L.P., Sprint Spectrum L.P., and Nextel Operations, Inc.*, Civil Action No. 2:12-cv-00859-JD, July 15, 2015. (Economic damages), March 18, 2016 (Economic damages), February 14, 2017 (Economic damages and incremental cost modeling)

ON BEHALF OF SPRINT SPECTRUM LP AND WIRELESS CO. LP, NEXTEL COMMUNICATIONS INC., AND NEXTEL CALIFORNIA INC.

Superior Court of the State of California, County of Alameda, JCCP No. 4332, Case No. RG03114147, *Ayyad, et al. v. Sprint Spectrum Limited Partnership, et. al.*, Cellphone Termination Fee Cases, September 13, 2011, April 26, 2013, May 29, 2013, July 16, 2013, July 30, 2013, April 1, 2016, and January 29, 2016. (Economic damages)

ON BEHALF OF TELE FÁCIL MEXICO, S.A. DE C.V.

In the Matter of an Arbitration Under the North American Free Trade Agreement and The Arbitration Rules of the United Nations Commission on International Trade Law (1976) between *Joshua Dean Nelson, in His Own Right and On Behalf of Tele Fácil Mexico, S.A., De C.V., and Jorge Luis Blanco (the Claimants) and The United Mexican States (the Respondent),* ICSID Case No. UNCT/17/1, November 7, 2017, June 5, 2018, November 21, 2018, April 21, 2019 (hearings). (Economic damages)

ON BEHALF OF TELUS COMMUNICATIONS INC.

Before the Canadian Radio-Television and Telecommunications Commission, CRTC 2020-131, Designing an Economically Sound Approach to Rate Setting for Canada's Wholesale Telecommunications Services, Expert Report of Christian M. Dippon. Ph.D., On Behalf of TELUS Communications, Inc., August 13, 2020, Reply Expert Report November 27, 2020. (Competition policy / regulation / cost modeling / industry expertise)

Before the Canadian Radio-Television and Telecommunications Commission, CRTC 2019-57, Review of Mobile Wireless Services, A Reply to the Competition Bureau's Assessment of the State of Wireless Competition in Canada, Expert Report of Christian M. Dippon. Ph.D., On

Behalf of TELUS Communications, Inc., January 13, 2020; Oral testimony, February 20, 2020. (Competition policy / antitrust / industry expertise)

Before the Canadian Radio-Television and Telecommunications Commission, CRTC 2019-57, Review of Mobile Wireless Services, Assessing the Economic Impact of Mobile Virtual Network Operators and Regulated Wholesale Access Models, Expert Report of Christian M. Dippon. Ph.D., On Behalf of TELUS Communications, Inc., November 22, 2019. (Competition policy / antitrust / industry expertise)

Before the Canadian Radio-Television and Telecommunications Commission, CRTC 2019-57, Review of Mobile Wireless Services, An Examination of the Regulatory Framework for Mobile Virtual Network Operators and Other Wholesale Mobile Services, Expert Report of Christian M. Dippon. Ph.D., On Behalf of TELUS Communications, Inc., May 15, 2019. (Competition policy / antitrust / industry expertise)

Before the Competition Bureau Canada, Market Study Notice: Competition in Broadband Services, "Expert Report of Christian M. Dippon, Ph.D. On Behalf of TELUS Communications Inc., August 31, 2018 and November 26, 2018. (Competition Policy / industry expertise)

Before Innovation, Science and Economic Development Canada, SLPB-004-18, June 2018, Spectrum Management and Telecommunications, "Expert Report of Christian M. Dippon, PhD on Behalf of TELUS Communications Inc.," Consultation on Revisions to the 3500 MHz Band to Accommodate Flexible Use and Preliminary Consultation on Changes to the 3800 MHz Band, August 10, 2018. (Competition Policy / industry expertise)

Before Innovation, Science and Economic Development Canada, SLPB-005-17, August 2017, Spectrum Management and Telecommunications, "Expert Report of Christian M. Dippon, PhD on Behalf of TELUS Communications Inc.," Consultation on a Technical, Policy and Licensing Framework for Spectrum in the 600 MHz Band, October 2, 2017 and November 3, 2017. (Competition policy / industry expertise)

Before the Canadian Radio-television and Telecommunications Commission, CRTC 2017-259, Reconsideration of Telecom Decision 2017-56 regarding final terms and conditions for wholesale mobile wireless roaming services, September 8, 2017 and December 1, 2017. (Competition Policy / industry expertise)

Zedi Canada Inc. vs. TELUS Communications Company, Expert Report, May 27, 2016; Oral Testimony, June 23, 2016. (Economic damages / industry expertise)

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Before the Canadian Radio-Television and Telecommunications Commission, CRTC 2014-76, Review of Wholesale Mobile Services, August 20, 2014 (Competition analysis and regulatory policy) and September 30, 2014. (Regulatory policy)

In the Supreme Court of British Columbia between Michelle Seidel, Plaintiff, and TELUS Communications Inc., Defendant, Proceeding under the Class Proceeding Act, R.S.B.C. 1996, c.50, No. L050143, Vancouver Registry, March 3, 2014 and July 4, 2014. (Economic damages)

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Before Innovation, Science and Economic Development Canada, SLPB-002-19, June 2019, Consultation on a Policy and Licensing Framework for Spectrum in the 3500 MHz Band, Expert Report of Christian M. Dippon, Ph.D., On Behalf of TELUS Communications, Inc., August 2, 2019 and September 20, 2019. (Competition policy / industry expertise)

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ON BEHALF OF T-MOBILE US, INC.

In the Court of Chancery of the State of Delaware, C.A. No. 2021-0010-MTZ, Cox Communications, Inc., Plaintiff, v. T-Mobile US, Inc., as successor in interest to Sprint Corporation, Defendant, T-Mobile US, Inc., as successor in interest to Sprint Corporation, Counterclaim-Plaintiff, v. Cox Communications, Inc., Counterclaim-Defendant, Expert Report of Christian M. Dippon, Ph.D., On Behalf of T-Mobile US, Inc. June 4, 2021, amended June 19, 2021. Reply Expert Report of Christian M. Dippon, Ph.D., On Behalf of T-Mobile US, Inc., June 25, 2021. Deposition testimony, July 16, 2021. Trial testimony, August 19 – 20, 2021. (Economic damages and industry expertise)

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ON BEHALF OF VERIZON WIRELESS

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March 16, 2022

Before the State of New York Public Service Commission
Proceeding on Motion of the Commission to Review the State Universal Service Fund

APPENDIX B: VERIZON LTE HOME INTERNET ZIP CODE LIST (OCTOBER 2020)

ZIP Code	Zip Name	State	ZIP Code	Zip Name	State
10516	Cold Spring	NY	11968	Southampton	NY
10518	Cross River	NY	11971	Southold	NY
10597	Waccabuc	NY	11976	Water Mill	NY
10911	Bear Mountain	NY	11977	Westhampton	NY
10916	Campbell Hall	NY	11978	Westhampton B	NY
10918	Chester	NY	12015	Athens	NY
10921	Florida	NY	12018	Averill Park	NY
10924	Goshen	NY	12019	Ballston Lake	NY
10928	Highland Falls	NY	12025	Broadalbin	NY
10933	Johnson	NY	12033	Castle on Hudson	NY
10940	Middletown	NY	12037	Chatham	NY
10941	Middletown	NY	12043	Cobleskill	NY
10950	Monroe	NY	12046	Coeymans Hollo	NY
10958	New Hampton	NY	12051	Coxsackie	NY
10969	Pine Island	NY	12060	East Chatham	NY
10973	Slate Hill	NY	12061	East Greenbush	NY
10990	Warwick	NY	12062	East Nassau	NY
10996	West Point	NY	12063	East Schodack	NY
10998	Westtown	NY	12064	East Worcester	NY
11778	Rocky Point	NY	12068	Fonda	NY
11792	Wading River	NY	12070	Fort Johnson	NY
11901	Riverhead	NY	12074	Galway	NY
11930	Amagansett	NY	12075	Ghent	NY
11933	Calverton	NY	12083	Greenville	NY
11935	Cutchogue	NY	12086	Hagaman	NY
11937	East Hampton	NY	12087	Hannacroix	NY
11939	East Marion	NY	12092	Howes Cave	NY
11941	Eastport	NY	12120	Medusa	NY
11942	East Quogue	NY	12122	Middleburgh	NY
11944	Greenport	NY	12123	Nassau	NY
11946	Hampton Bays	NY	12138	Petersburg	NY
11948	Laurel	NY	12140	Poestenkill	NY
11949	Manorville	NY	12144	Rensselaer	NY
11950	Mastic	NY	12147	Rensselaerville	NY
11952	Mattituck	NY	12148	Rexford	NY
11954	Montauk	NY	12151	Round Lake	NY
11957	Orient	NY	12153	Sand Lake	NY
11958	Peconic	NY	12157	Schoharie	NY
11963	Sag Harbor	NY	12167	Stamford	NY
11964	Shelter Island	NY	12168	Stephentown	NY
11965	Shelter Island Heights	NY	12169	Stephentown	NY
11967	Shirley	NY	12175	Summit	NY
12198	Wynantskill	NY	12182	Troy	NY
12401	Kingston	NY	12184	Valatie	NY
12412	Boiceville	NY	12196	West Sand	NY
12414	Catskill	NY	12197	Worcester	NY
12424	East Jewett	NY	12726	Cochecton	NY
12427	Elka Park	NY	12729	Cuddebackville	NY
12431	Freehold	NY	12737	Glen Spey	NY
12439	Hensonville	NY	12741	Hankins	NY
12442	Hunter	NY	12745	Hortonville	NY
12444	Jewett	NY	12746	Huguenot	NY
12457	Mount Tremper	NY	12748	Jeffersonville	NY
12461	Olivebridge	NY	12752	Lake Huntington	NY
12468	Prattsville	NY	12754	Liberty	NY
12477	Saugerties	NY	12758	Livingston Mano	NY
12481	Shokan	NY	12764	Narrowsburg	NY
12484	Stone Ridge	NY	12766	North Branch	NY
12485	Tannersville	NY	12768	Parksville	NY
12487	Ulster Park	NY	12771	Port Jervis	NY
12491	West Hurley	NY	12775	Rock Hill	NY
12494	West Shokan	NY	12776	Roscoe	NY
12495	Willow	NY	12777	Forestburgh	NY
12498	Woodstock	NY	12780	Sparrow Bush	NY
12501	Amenia	NY	12783	Swan Lake	NY

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12514	Clinton Corners	NY
12516	Copake	NY
12517	Copake Falls	NY
12522	Dover Plains	NY
12526	Germantown	NY
12528	Highland	NY
12529	Hillsdale	NY
12534	Hudson	NY
12540	Lagrangeville	NY
12545	Millbrook	NY
12546	Millerton	NY
12547	Milton	NY
12549	Montgomery	NY
12564	Pawling	NY
12566	Pine Bush	NY
12567	Pine Plains	NY
12570	Poughquag	NY
12571	Red Hook	NY
12572	Rhinebeck	NY
12581	Stanfordville	NY
12583	Tivoli	NY
12585	Verbank	NY
12594	Wingdale	NY
12701	Monticello	NY
12720	Bethel	NY
12721	Bloomingburg	NY
12723	Callicoon	NY
13361	Jordanville	NY
13411	New Berlin	NY
13421	Oneida	NY
13439	Richfield Springs	NY
13461	Sherrill	NY
13468	Springfield Cente	NY
13485	West Edmeston	NY
13491	West Winfield	NY
13730	Afton	NY
13733	Bainbridge	NY
13786	Harpersfield	NY
13803	Marathon	NY
13815	Norwich	NY
13830	Oxford	NY
13843	South New Berlin	NY
14418	Branchport	NY
14456	Geneva	NY
14468	Hilton	NY
14478	Keuka Park	NY
14512	Naples	NY
14527	Penn Yan	NY
14541	Romulus	NY
14572	Wayland	NY
14805	Alpine	NY
14808	Atlanta	NY
14812	Beaver Dams	NY
14818	Burdett	NY
14824	Cayuta	NY
14826	Cohocton	NY
14837	Dundee	NY
14841	Hector	NY
14845	Horseheads	NY
14864	Millport	NY
14865	Montour Falls	NY
14869	Odessa	NY
14874	Pulteney	NY
14886	Trumansburg	NY
14891	Watkins Glen	NY
12786	White Lake	NY
12790	Wurtsboro	NY
12831	Gansevoort	NY
12833	Greenfield Cente	NY
12850	Middle Grove	NY
12863	Rock City Falls	NY
13026	Aurora	NY
13032	Canastota	NY
13035	Cazenovia	NY
13036	Central Square	NY
13037	Chittenango	NY
13053	Dryden	NY
13063	Fabius	NY
13068	Freeville	NY
13069	Fulton	NY
13084	La Fayette	NY
13108	Marcellus	NY
13126	Oswego	NY
13132	Pennellville	NY
13135	Phoenix	NY
13140	Port Byron	NY
13142	Pulaski	NY
13148	Seneca Falls	NY
13159	Tully	NY
13165	Waterloo	NY
13326	Cooperstown	NY
13333	East Springfield	NY
13335	Edmeston	NY

Note: Available only in parts of these zip codes.
Source: Verizon Home Internet Zip Code List, October 1, 2020,
https://www.verizon.com/about/sites/default/files/LTE-home-Internet-zip-code-list-09-2020.pdf.

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APPENDIX C: JOINT PROPOSAL ¶ 2(E) SUBMISSION RESPONSE COUNTS

[BEGIN CONFIDENTIAL]

[redacted]

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[redacted]

Before the State of New York Public Service Commission
Proceeding on Motion of the Commission to Review the State Universal Service Fund

[redacted]

REDACTED

Before the State of New York Public Service Commission
Proceeding on Motion of the Commission to Review the State Universal Service Fund

[redacted]

Before the State of New York Public Service Commission
Proceeding on Motion of the Commission to Review the State Universal Service Fund

[redacted]

[END CONFIDENTIAL]

APPENDIX D: HOUSEHOLDS OPTIONS IN CENSUS BLOCKS COVERED BY NSICS

Table D-1: Households Options in CBs Covered by Armstrong Telephone Co.

Number of Providers	Wireline Only	Wireline and Mobile	Wireline, Fixed Wireless and Satellite	Wireline, Mobile, Fixed Wireless and Satellite
1	26.4%	0.7%	0.0%	0.0%
2	39.4%	4.3%	0.0%	0.0%
3	10.6%	12.6%	0.0%	0.0%
4	23.6%	17.1%	0.0%	0.0%
5	0.0%	20.3%	21.8%	0.7%
6	0.0%	18.0%	19.6%	4.3%
7	0.0%	4.7%	28.4%	11.2%
8	0.0%	22.3%	7.0%	13.4%
9	0.0%	0.0%	23.3%	14.9%
10	0.0%	0.0%	0.0%	13.4%
11	0.0%	0.0%	0.0%	15.1%
12	0.0%	0.0%	0.0%	4.7%
13	0.0%	0.0%	0.0%	22.3%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Note: Percentages are based on 2010 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.

Table D-2: Households Options in CBs Covered by Chazy & Westport Telephone Corp.

Number of Providers	Wireline Only	Wireline and Mobile	Wireline, Fixed Wireless and Satellite	Wireline, Mobile, Fixed Wireless and Satellite
1	14.7%	0.0%	0.0%	0.0%
2	54.4%	0.3%	0.0%	0.0%
3	20.1%	6.7%	0.0%	0.0%
4	10.6%	16.7%	0.0%	0.0%
5	0.2%	49.7%	7.9%	0.0%
6	0.0%	18.2%	29.6%	0.3%
7	0.0%	8.1%	39.7%	3.7%
8	0.0%	0.2%	13.4%	13.6%
9	0.0%	0.0%	9.4%	26.3%
10	0.0%	0.0%	0.0%	36.4%
11	0.0%	0.0%	0.0%	10.4%
12	0.0%	0.0%	0.0%	9.4%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Note: Percentages are based on 2010 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.

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Table D-3: Households Options in CBs Covered by Crown Point Telephone Corp.

Number of Providers	Wireline Only	Wireline and Mobile	Wireline, Fixed Wireless and Satellite	Wireline, Mobile, Fixed Wireless and Satellite
1	8.3%	0.0%	0.0%	0.0%
2	31.2%	6.9%	0.0%	0.0%
3	48.5%	26.5%	0.0%	0.0%
4	7.6%	50.0%	0.0%	0.0%
5	2.3%	10.7%	6.8%	0.0%
6	2.1%	3.7%	32.7%	6.7%
7	0.0%	2.1%	48.5%	25.4%
8	0.0%	0.0%	7.6%	51.4%
9	0.0%	0.0%	2.3%	10.7%
10	0.0%	0.0%	2.1%	3.7%
11	0.0%	0.0%	0.0%	2.1%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Note: Percentages are based on 2010 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.

Table D-4: Households Options in CBs Covered by Delhi Telephone Co.

Number of Providers	Wireline Only	Wireline and Mobile	Wireline, Fixed Wireless and Satellite	Wireline, Mobile, Fixed Wireless and Satellite
1	30.6%	0.9%	0.0%	0.0%
2	57.8%	3.6%	0.0%	0.0%
3	11.6%	6.3%	0.0%	0.0%
4	0.0%	23.1%	0.0%	0.0%
5	0.0%	57.8%	22.0%	0.9%
6	0.0%	8.2%	42.5%	3.6%
7	0.0%	0.0%	31.9%	6.3%
8	0.0%	0.0%	3.6%	15.0%
9	0.0%	0.0%	0.0%	41.0%
10	0.0%	0.0%	0.0%	30.0%
11	0.0%	0.0%	0.0%	3.1%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Note: Percentages are based on 2010 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.

Table D-5: Households Options in CBs Covered by Fishers Island Telephone Corp.

Number of Providers	Wireline Only	Wireline and Mobile	Wireline, Fixed Wireless and Satellite	Wireline, Mobile, Fixed Wireless and Satellite
1	100.0%	0.0%	0.0%	0.0%
2	0.0%	21.7%	0.0%	0.0%
3	0.0%	54.2%	0.0%	0.0%
4	0.0%	24.2%	0.0%	0.0%
5	0.0%	0.0%	65.0%	0.0%
6	0.0%	0.0%	35.0%	0.0%
7	0.0%	0.0%	0.0%	62.5%
8	0.0%	0.0%	0.0%	37.5%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Note: Percentages are based on 2010 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.

Table D-6: Households Options in CBs Covered by Germantown Telephone Co.

Number of Providers	Wireline Only	Wireline and Mobile	Wireline, Fixed Wireless and Satellite	Wireline, Mobile, Fixed Wireless and Satellite
1	36.3%	0.0%	0.0%	0.0%
2	37.2%	0.0%	0.0%	0.0%
3	19.7%	5.6%	0.0%	0.0%
4	2.1%	43.9%	0.0%	0.0%
5	4.7%	28.3%	14.3%	0.0%
6	0.0%	15.7%	24.1%	0.0%
7	0.0%	1.7%	25.3%	4.3%
8	0.0%	4.7%	26.8%	11.9%
9	0.0%	0.0%	4.1%	35.3%
10	0.0%	0.0%	5.3%	16.3%
11	0.0%	0.0%	0.0%	23.1%
12	0.0%	0.0%	0.0%	3.9%
13	0.0%	0.0%	0.0%	5.2%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Note: Percentages are based on 2010 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.

Table D-7: Households Options in CBs Covered by Middleburgh Telephone Co.

Number of Providers	Wireline Only	Wireline and Mobile	Wireline, Fixed Wireless and Satellite	Wireline, Mobile, Fixed Wireless and Satellite
1	17.1%	0.9%	0.0%	0.0%
2	62.7%	4.1%	0.0%	0.0%
3	16.6%	5.3%	0.0%	0.0%
4	2.8%	12.0%	0.0%	0.0%
5	0.8%	25.5%	14.3%	0.9%
6	0.0%	35.0%	39.0%	3.5%
7	0.0%	15.2%	31.9%	5.3%
8	0.0%	1.1%	12.1%	10.1%
9	0.0%	0.8%	1.1%	19.7%
10	0.0%	0.0%	0.8%	24.2%
11	0.0%	0.0%	0.9%	23.0%
12	0.0%	0.0%	0.0%	10.6%
13	0.0%	0.0%	0.0%	1.8%
14	0.0%	0.0%	0.0%	0.8%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Note: Percentages are based on 2010 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.

Table D-8: Households Options in CBs Covered by Newport Telephone Co.

Number of Providers	Wireline Only	Wireline and Mobile	Wireline, Fixed Wireless and Satellite	Wireline, Mobile, Fixed Wireless and Satellite
1	36.8%	1.5%	0.0%	0.0%
2	56.6%	10.3%	0.0%	0.0%
3	5.8%	10.4%	0.0%	0.0%
4	0.9%	18.4%	0.0%	0.0%
5	0.0%	46.3%	34.2%	1.5%
6	0.0%	12.2%	54.3%	10.3%
7	0.0%	0.0%	9.7%	10.2%
8	0.0%	0.9%	1.2%	16.2%
9	0.0%	0.0%	0.6%	44.0%
10	0.0%	0.0%	0.0%	16.0%
11	0.0%	0.0%	0.0%	0.9%
12	0.0%	0.0%	0.0%	0.3%
13	0.0%	0.0%	0.0%	0.6%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Note: Percentages are based on 2010 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.

Table D-9: Households Options in CBs Covered by Nicholville Telephone Co.

Number of Providers	Wireline Only	Wireline and Mobile	Wireline, Fixed Wireless and Satellite	Wireline, Mobile, Fixed Wireless and Satellite
1	17.4%	0.2%	0.0%	0.0%
2	72.5%	16.0%	0.0%	0.0%
3	7.1%	58.7%	0.0%	0.0%
4	3.0%	19.9%	0.0%	0.0%
5	0.0%	4.1%	17.4%	0.2%
6	0.0%	1.1%	72.5%	16.0%
7	0.0%	0.0%	7.1%	58.7%
8	0.0%	0.0%	3.0%	19.9%
9	0.0%	0.0%	0.0%	4.1%
10	0.0%	0.0%	0.0%	1.1%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Note: Percentages are based on 2010 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.

Table D-10: Households Options in CBs Covered by Oneida County Rural Telephone Co.

Number of Providers	Wireline Only	Wireline and Mobile	Wireline, Fixed Wireless and Satellite	Wireline, Mobile, Fixed Wireless and Satellite
1	14.9%	0.0%	0.0%	0.0%
2	55.8%	0.6%	0.0%	0.0%
3	16.4%	9.2%	0.0%	0.0%
4	12.8%	36.7%	0.0%	0.0%
5	0.0%	27.8%	11.8%	0.0%
6	0.0%	12.9%	56.9%	0.4%
7	0.0%	12.8%	16.0%	8.2%
8	0.0%	0.0%	7.6%	35.8%
9	0.0%	0.0%	7.8%	28.0%
10	0.0%	0.0%	0.0%	12.4%
11	0.0%	0.0%	0.0%	7.4%
12	0.0%	0.0%	0.0%	7.8%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Note: Percentages are based on 2010 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.

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Table D-11: Households Options in CBs Covered by Pattersonville Telephone Co.

Number of Providers	Wireline Only	Wireline and Mobile	Wireline, Fixed Wireless and Satellite	Wireline, Mobile, Fixed Wireless and Satellite
1	2.3%	0.0%	0.0%	0.0%
2	67.5%	0.0%	0.0%	0.0%
3	22.6%	0.1%	0.0%	0.0%
4	7.5%	1.9%	0.0%	0.0%
5	0.0%	57.5%	2.3%	0.0%
6	0.0%	27.9%	22.9%	0.0%
7	0.0%	12.6%	52.4%	0.1%
8	0.0%	0.0%	17.2%	1.0%
9	0.0%	0.0%	5.2%	22.4%
10	0.0%	0.0%	0.0%	41.2%
11	0.0%	0.0%	0.0%	30.2%
12	0.0%	0.0%	0.0%	5.1%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Note: Percentages are based on 2010 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.

Table D-12: Households Options in CBs Covered by State Telephone Co.

Number of Providers	Wireline Only	Wireline and Mobile	Wireline, Fixed Wireless and Satellite	Wireline, Mobile, Fixed Wireless and Satellite
1	1.9%	0.0%	0.0%	0.0%
2	48.3%	0.0%	0.0%	0.0%
3	35.1%	0.0%	0.0%	0.0%
4	12.6%	4.8%	0.0%	0.0%
5	2.1%	17.6%	0.9%	0.0%
6	0.0%	49.5%	5.9%	0.0%
7	0.0%	19.9%	27.1%	0.0%
8	0.0%	6.0%	29.3%	0.9%
9	0.0%	2.1%	25.3%	3.0%
10	0.0%	0.0%	6.5%	12.1%
11	0.0%	0.0%	5.1%	36.2%
12	0.0%	0.0%	0.0%	25.2%
13	0.0%	0.0%	0.0%	15.0%
14	0.0%	0.0%	0.0%	6.4%
15	0.0%	0.0%	0.0%	1.1%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Note: Percentages are based on 2010 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.

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Table D-13: Households Options in CBs Occupied by the 5 TDS NSICs (Combined)

Number of Providers	Wireline Only	Wireline and Mobile	Wireline, Fixed Wireless and Satellite	Wireline, Mobile, Fixed Wireless and Satellite
1	14.6%	0.0%	0.0%	0.0%
2	64.9%	3.1%	0.0%	0.0%
3	18.6%	8.4%	0.0%	0.0%
4	1.5%	23.5%	0.0%	0.0%
5	0.4%	32.9%	7.7%	0.0%
6	0.0%	26.2%	39.7%	3.1%
7	0.0%	5.1%	35.1%	7.2%
8	0.0%	0.7%	14.9%	16.6%
9	0.0%	0.0%	2.1%	22.4%
10	0.0%	0.0%	0.5%	21.4%
11	0.0%	0.0%	0.0%	23.5%
12	0.0%	0.0%	0.0%	5.1%
13	0.0%	0.0%	0.0%	0.7%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Note: Percentages are based on 2010 U.S. Census households compiled by IPUMS. Analysis includes CBs containing households.

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April 18, 2022

Honorable Michelle L. Phillips
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223

Re: Case 15-M-0742

Dear Secretary Phillips:

Enclosed please find the Reply Comments of Verizon New York Inc. on the Proposal of the New York Smaller ILEC Companies to Establish a Successor Funding Arrangement.

Exhibit A to these comments (but not the comments themselves) contains Protected Information within the meaning of the Protective Order issued in this proceeding. Each passage that constitutes Protected Information in Exhibit A is preceded by the notation "**[BEGIN CONFIDENTIAL]**" and followed by the notation "**[END CONFIDENTIAL]**." All Protected Information in Exhibit A has been redacted from this filing. Unredacted copies of the Exhibit are being provided to the Administrative Law Judge, Trial Staff, and parties who have agreed to be bound by the provisions of the Protective Order.

Respectfully submitted,

Joseph A. Post

Joseph A. Post

cc: Honorable Gregg A. Sayre, ALJ
Party List

NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Review the State Universal Service Fund	**Case 15-M-0742**

REPLY COMMENTS OF VERIZON NEW YORK INC.
ON THE PROPOSAL OF THE NEW YORK SMALLER ILEC COMPANIES
TO ESTABLISH A SUCCESSOR FUNDING ARRANGEMENT

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April 18, 2022

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REPLY COMMENTS OF VERIZON NEW YORK INC.
ON THE PROPOSAL OF THE NEW YORK SMALLER ILEC COMPANIES
TO ESTABLISH A SUCCESSOR FUNDING ARRANGEMENT

I. INTRODUCTION

The comments of the New York Smaller ILEC Companies ("NSICs") identify the central issue in this case as whether the Commission should adhere to its "long-time commitment to Universal Service."[1] But no party, including Verizon New York Inc. ("Verizon"), doubts that the Commission should do so. The true issue here is narrower — whether a State Universal Service Fund ("SUSF") is a necessary, or even a desirable, means of preserving universal service. Verizon respectfully submits that it is neither.

In its initial comments, Verizon proposed a framework for deciding whether a Successor Funding Arrangement ("SFA") should be put in place following the expiration of the current SUSF on December 31, 2022; and, if so, for determining the rules under which it should operate. That framework has two components:

- ***A competitive criterion for assessing the need for supporting the operations of the NSICs.*** Where there are adequate competitive alternatives to the services provided by the NSICs, there is no need to subsidize the NSICs to ensure the continued existence of universal service. The question of whether a competitive alternative to the NSICs' services is "adequate" should be based on its acceptance by the marketplace, and not by externally-imposed requirements such as regulatory status. Verizon submitted an expert report prepared by Dr. Christian

[1] NSIC Comments, Attachment E, at 1 (footnote omitted).

Dippon of NERA Economic Consulting[2] that showed that adequate and affordable competitive alternatives are ubiquitously available in the NSIC service areas and are accepted by consumers. Dr. Dippon's analysis took into account a variety of geographically-granular competitive data, including data filed with the FCC by the NSICs and their competitors, data previously submitted by the NSICs to the Commission or to Staff, and data provided by the NSICs pursuant to ¶ 2(e) of the *2020 Joint Proposal*.[3]

- ***A financial criterion for assessing the need of NSICs for SFA funding.*** Verizon proposed that the Commission reject the NSIC model under which a company's need for SFA funding would be determined on the basis of traditional rate-case criteria — that is, whether its regulated, intrastate revenues are sufficient to meet a "revenue requirement" equal to its reasonable expenses, plus depreciation and a reasonable rate of return on rate-base investment. [redacted]

Under Verizon's proposal, to warrant the creation of an SFA, or the grant of a funding award under an SFA, both criteria would have to be satisfied. In other words, the need for a fund to subsidize certain NSICs' operations would have to be demonstrated under the competitive criterion, and a particular company's need for funding would have to be established under the financial criterion. Verizon's positions were generally supported by the comments submitted by the Cable and Telecommunications Association of New York, Inc. ("CTANY").

Initial comments were also filed by the Utility Intervention Unit of the New York State Department of State ("UIU") and the NSICs.[5] UIU's comments focused on competitive issues

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[2] Verizon Initial Comments, Exhibit A ("*Dippon Report*").

[3] These reply comments use the same shorthand references to Commission orders, etc. (such as "*2020 Joint Proposal*" or the "*Competition III Order*") as were used in Verizon's initial comments.

[4] With respect to financial criteria for funding decisions, Verizon also recommended that the current imputed retail benchmark rate of $23/month be increased to $30, and that any company seeking subsidies under an SFA should be required to demonstrate that it has exhaustively reviewed, and implemented where appropriate, alternatives for improving its financial performance.

[5] NSIC did not file traditional comments in the form of a unified narrative with attachments appended as necessary to elaborate on particular points. Instead, they submitted thirteen separate alphabetically-labeled attachments that collectively constituted their comments. (Attachment H consists of four separate witness statements.) We refer to

and argued that more granular competitive data than had been available to the Commission in earlier proceedings would be necessary to assess whether effective competition exists in NSIC service areas. The NSICs' comments addressed both competitive and financial issues, as well as additional issues that are not material to Verizon's position and that thus do not need to be addressed in these reply comments.

With respect to competitive issues, the NSIC comments did not attempt to analyze any of the data that the companies had submitted pursuant to ¶ 2(e) of the *2020 Joint Proposal*, or indeed *any* competitive data at all. Instead, they argued, incorrectly, that such data is irrelevant, since it relates primarily to broadband or wireless services — services that are not regulated by the Commission and that the NSICs therefore claim are inherently inadequate as competitive alternatives to the NSICs' own services. With respect to financial issues, the NSICs repeated their claims that financing decisions under an SFA must be based on rate-case criteria, and indeed argued that approaches that go beyond those criteria would violate federal law.

In the reply comments that follow, we show that the competitive data now available, as summarized in the *Dippon Report*, amply satisfies UIU's "granularity" and "transparency" requirements. We also rebut the NSICs' position that only traditional, regulated voice service can satisfy the Commission's universal service policies. [redacted]s.

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the components of the NSIC filing by their alphabetical labels (and, in the case of Attachment H, additionally by witness name).

Finally, we have reviewed a preliminary version of a compromise counter-proposal included in CTANY's reply comments. Although there are strong reasons why an SFA should not be established at all, if the Commission chooses to establish one, the CTANY proposal offers a number of cogent suggestions for a fair and reasonable resolution of the issues in this case.

II. EFFECTIVE COMPETITION IN THE NSIC SERVICE AREAS OBVIATES ANY NEED FOR SUBSIDIZING THE NSIC COMPANIES TO ENSURE THE CONTINUED EXISTENCE OF UNIVERSAL SERVICE

A. The Standards of Effective Competition Proposed by UIU Are Satisfied by the Evidence Marshaled in the Dippon Report

UIU's comments recognize that a showing that effective competition exists in the NSIC service areas would eliminate the need for establishing an SFA: "[T]he public interest is not served if the fund is discontinued, *unless competitive markets actually exist.* UIU thus urges that the Commission only consider eliminating the fund *after an affirmative finding that effective competition does exist*."[6] UIU therefore focused on the standards — particularly geographic granularity — that should be applied in assessing the state of competition in the NSIC service areas. It noted that earlier studies by Staff, in 2005 and 2015, had "analyzed the availability of telecommunications services from primarily a statewide perspective," with "limited granular detail."[7] It recognized, however, that "[n]ow, for the very first time, the Commission will be receiving granular, address-level data for services provided by the NSICs, as well as the availability of alternative wireline-based voice service providers, such as telephone, VoIP, cable, and broadband services, that can be analyzed to determine whether effective competition exists in the area served by the NSICs. … Now that more granular data will become available, the

[6] UIU Comments at 7 (emphasis supplied).

[7] *Id.* at 4.

information can and should be developed and rigorously analyzed for the existence of effective competition."[8]

As Dr. Dippon explains in a further report accompanying these reply comments,[9] the analysis presented in his original report amply satisfies the requirements articulated by UIU — it carried out a rigorous analysis of the highly granular[10] and transparent competitive data that is now available, and based on that analysis concluded that ubiquitous competition indeed exists in the NSICs' service areas.[11] And Dr. Dippon demonstrates that the NSIC service areas satisfy the effective competition test that was set by the Commission in its *Competition III Order*, and that UIU relied on in its comments, under which "the existence of three platforms, one traditional landline plus wireless and broadband, in any market would indicate that the market is sufficiently competitive to constrain anti-competitive behavior of the market participants."[12]

B. Alternatives to Traditional Voice Service Must Be Considered in Assessing the Existence of Effective Competition

The NSICs' comments make no effort to summarize or analyze the wide range of data on competitive alternatives that is available to the parties in this case. Instead, their position is, in effect, "move on; there's nothing to see here." Or, as they put it in their comments, "The

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[8] *Id.* at 8-9 n.10 (footnotes omitted).

[9] The new report (the "*Dippon Reply Report*") is provided as Exhibit A to these reply comments.

[10] The analysis presented in the *Dippon Report* was based largely on data at either the address level or the Census Block level. CB-level data is far more granular than zip-code level data. Based on 2010 data, there are 2,543 zip codes in New York State as compared to 350,169 CBs. *See Dippon Reply Report* at ¶ 9 n.13.

[11] *Id.* at ¶¶ ES3, 3.

[12] UIU Comments at 8, quoting *Competition III Order* at 24, 41. *See Dippon Reply Report* at ¶¶ ES4, 9-13. Dr. Dippon also noted, "Moreover, platform convergence allows voice services to be provided by multiple platforms. In turn, in most instances, each platform has multiple competing providers. This market structure ensures a competitive market even if one of the platforms were to fall away." *Id.* ¶ 15.

[competitive] location data information gathered pursuant to Paragraph 2(e) of the Joint Proposal is not relevant to the issue of the existing need or continued need for SUSF disbursements."[13] Their entire case depends on the claim that services other than traditional wireline voice service — in other words, services other than what the NSICs themselves provide — simply do not count as relevant competitive alternatives. They seek to support this claim by arguing that consumers cannot be sure that such alternative services will continue to be available[14]; that alternative providers force consumers to buy non-voice services (such as broadband or cable television) in order to get access to voice service[15]; and that services that are not regulated by the Commission cannot be considered safe and adequate.[16]

Those claims are addressed and refuted in the *Dippon Reply Report*, in which Dr. Dippon shows that competitive forces ensure — without the need for regulatory intervention — that

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[13] NSIC Comments, Attachment K, at 1 (footnotes omitted).

[14] *See, e.g.*, NSIC Comments, Attachment E, at 3 ("Consumers in rural areas served by the NSIC Members should not be left questioning whether they will have reasonably affordable priced, reliable and quality basic exchange service."); *id.* (footnote omitted) ("[W]ithout the continuation of the SUSF, consumers risk losing essential services. 'If these companies fail, customers with no other access to an affordable and substitutable provider could be without dial tone altogether. Access to critical emergency services, such as 911, would be gone.'"); NSIC Comments, Attachment H, Reed Statement, at 16-17 ("The NSIC Member must also stand ready to provide service when unavailable from other carriers, for example, when a competitive carrier either decides not to serve because a customer is 'too costly' or ceases providing service due to bankruptcy, other financial issues, technical issues, or marketing reasons. It can also occur when a competitor's customer becomes dissatisfied with the quality of the competitor's service, its rates, or other practices such as required bundling. The NSIC members, with COLR obligations, are unlike their competitors, in that the NSIC Members are, effectively, not free to determine which customers they may choose to serve.").

[15] *See, e.g.*, NSIC Comments, Attachment E, at 4 ("There will be consumers that do not wish to purchase broadband but still want reliable and safe voice telephony services. These consumers should not be forced to purchase additional service (such as a cable television bundled service) to achieve the same level of voice service provided by the NSIC members.").

[16] *See, e.g.*, NSIC Comments, Attachment H, Reed Statement, at 25 ("[N]one of those competitors are required to, and have not sought to be, ETCs throughout the NSIC Members [*sic*] certificated service territory."); *id.* at 36-37 ("[T]he landline-based 'competition' that is being experienced by the NSIC Members is from entities that are not subject to the Commission's full regulatory jurisdiction, particularly when it comes to rate setting and related demonstrations."); *see also id.* at 38-39.

residents of the NSICs' service areas can receive and will continue to be able to receive high-quality and reliable voice service at competitive prices.[17] In making Commission regulation of alternative service providers a criterion for effective competition, the NSICs ignore the teachings of the *Competition III Order.* They also ignore the demonstrated preferences of consumers and thus reject the principle that underlies the Commission's pro-competitive policy — the primacy of customer choice.[18] The NSICs' policy preferences, as laid out clearly in their comments, are neither pro-consumer nor pro-competitive; indeed, they represent nothing more than the NSICs' desire to continue to exist in a cozy environment of regulatory protection *from* the rigors of competition, through the ongoing financial protection that would be provided by an SFA.

Further, Dr. Dippon showed that the adequacy of competitive alternatives is not undermined by the fact that some competitive providers offer voice service on a bundled basis with other services.[19] Most households subscribe to cable or broadband service anyway, so voice becomes an inexpensive — frequently free — add-on to a service that they already purchase.[20]

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[17] *Dippon Reply Report* at ¶¶ 19-27.

[18] For the same reason, and contrary to the suggestion of the NSICs (*see* NSIC Comments, Attachment H, Reed Statement, at 21-22), alternative service providers should not be required to conform their offerings to the list of services announced by the Commission in its 1996 *Framework Order*. Case 94-C-0095, "Opinion and Order Adopting Regulatory Framework" (Op. No. 96-13) (issued and effective May 22, 1996), at 10. That order put forward a list of the features and functionalities that were deemed to constitute the "basic service" whose ubiquitous availability was identified as the goal of the State's universal service policy. Intermodal services provide all of the features on the list except for directory listings and operator services, which should no longer be considered necessary components of universal service. Consumers no longer believe that a default White Pages listing is necessary or even a particularly useful aspect of their service. (If they did believe this, so many of them would not be "cord-cutting" and migrating to wireless service only.) The same is true of access to live-operator-based "assistance" services. Customers can place calls or obtain information in a wide variety of ways, and competing providers should be able to offer alternatives and compete for customers based (in part) on the convenience and quality of the alternatives that they provide.

[19] Indeed, as Dr. Dippon points out in the *Dippon Reply Report* at ¶ 31, this is not the case at all for mobile wireless service, or for some satellite services, which do offer voice as a standalone alternative.

[20] *Id.* at ¶¶ 32-33.

Finally, there is no reason to believe that reliance on competitive services creates a risk that competitors will exit the market, and that as a result some customers will no longer have access to service. As Dr. Dippon explains:[21]

> First, when a provider makes the decision to serve, it necessarily implies a certain degree of commitment as substantial resources need to be invested to back up that decision. Thus, the investment itself is a commitment to *stand ready to serve*.
>
> Second, competitive providers do not alter their investment decisions because an individual customer is too costly to serve. Rather, investment decisions often are *lumpy*. That is, they are not made on a household-by-household basis but rather with respect to *lumps* of facilities that are deployed to serve larger areas. They also are the result of an *overall* investment decision that aims to expand the reach of a provider's network. For instance, a satellite provider does not decide whether to pass a household or a group of households in New York State. Instead, it decides on whether to launch or purchase a satellite that serves several countries or perhaps even continents. Similarly, mobile wireless providers expand their networks based on cell sites that cover several miles depending on the territory involved. It is for these same reasons that competing networks that employ wireless technologies cannot simply opt not to pass certain households located in a network's coverage area.
>
> Third, the probability that the major providers that offer competing voice service to NSIC residents will "cease[] providing service due to bankruptcy, other financial issues, technical issues, or marketing reasons" is negligible. In any event, because the delivery platforms overlap to a great extent, there are multiple platform competitors available to any given household. Within each platform, there are generally also multiple competitors (e.g., Verizon, AT&T, and T-Mobile offer mobile wireless). Thus, the withdrawal of one platform or one provider, as unlikely as that might be, would still leave other competitors in place. Moreover, bankruptcy does not necessarily mean the cessation of service because the companies that compete with the NSICs are typically of a scale that indicates they would be taken over by another provider (e.g., Sprint) or would continue operating under bankruptcy protection (e.g., Frontier).

[21] *Id.* at ¶¶ 21-23 (footnotes omitted).

C. Requiring the NSICs to Resize Their Networks as a Condition of Obtaining Funding Is Both Feasible and Reasonable

The NSICs' comments take the position that each NSIC's network is a single, integrated entity, whole and indivisible, so that if even a single customer is deemed not to have a competitive alternative, the company would continue to need its entire current level of SUSF support to remain in business and be able to serve that customer. Thus, the NSICs state that "[p]ieces of the network cannot simply be switched off because there are fewer customers connected to the network."[22] This theme is repeated throughout their comments:

- "[A]ny concept regarding narrowing SUSF to 'white spots' cannot be defended or sustained."[23]

- "I again want to stress the focus of the inquiry — it is the entirety of the NSIC Member's respective service area — the Study Area — that should drive the considerations in this proceeding. … [T]he areas for which SUSF disbursements should be provided cannot be subdivided in discrete geographic areas of any given Study Area."[24]

- "[T]he SUSF amount an NSIC Member would be eligible for cannot rationally be reduced based on the percentage of its service area that is covered by one or more wireline alternatives because no such carrier has, to my knowledge, committed to provide local exchange service throughout the NSIC Members' respective service areas, and no standards exist, as explained by Mr. Schultheis, as to how one would determine the cost of the NSIC Member's network in areas where no alternative wireline provider is present."[25]

- "[T]he PSC Annual Reports' financial results cannot be broken down and assigned to specific geographic areas within a NSIC Member's network. The NSIC Members deploy one regulated network that provides a host of services to their end users. If one were to try to divide such network costs across specific

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[22] NSIC Comments, Attachment E, at 3 (footnotes and internal quotation marks omitted).

[23] NSIC Comments, Attachment H, Reed Statement, at 8. The NSICs' comments use the term "white spot" to refer to any portion of their service area where no adequate competitive alternatives exist. They provide no data showing that such white spots exist.

[24] *Id.* at 35.

[25] *Id.* at 48-49.

> geographic areas, one would need to have developed specific allocation requirements in order to ensure accurate, non-result-oriented determinations of what in ILEC's costs would be to serve a given area. Relying on the financial results of a carrier would be made even more difficult if it is based on the cost of providing service to a given customer."[26]

The NSICs' repeated invocation of a "Study Area" that cannot be subdivided or reduced misses the point. As Verizon explained in our initial comments, if competitive alternatives are available to some, but not all, of a company's customers, the company should be permitted to reduce the scope and scale of its operations to the minimum level necessary to: (a) maintain continuity of retail service to customers (if any) who lack competitive alternatives, and (b) maintain continuity of any carrier-to-carrier services (such as pole attachments) that are relied on by competitive providers of retail voice service. (Indeed, because of the ubiquitous availability of competitive services, as demonstrated by Dr. Dippon, the company might become substantially a wholesale-only company as a result of such a restructuring.) Funding should be available only to the extent necessary to support the company at its reduced scope and scale. If companies decline to resize their operations in this manner, the associated savings should nevertheless be imputed to them in proceedings related to SFA funding decisions.

By withdrawing from their retail operations where competitive alternatives are available, such companies should be able to avoid a significant portion of the costs associated with call centers, customer dispatches, and other retail functions, as the Commission recognized in developing an "avoided cost" discount for resold ILEC services.[27] Absent an actual rescaling of

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[26] NSIC Comments, Attachment H, Schultheis Statement, at 19 (¶ 55).

[27] *See, e.g.*, Case 95-C-0657, *et al.*, "Opinion and Order Determining Wholesale Discount" (Opinion No. 96-30) (issued and effective November 27, 1996).

operations, the avoided-cost discount developed by the Commission for that purpose could be used as the basis for calculating an imputed reduction in funding need.

The NSICs' opposition to this approach is conclusory and tautological. In essence, it amounts to an assertion that a NSIC's "study area" cannot be changed because … well, because it is the study area, and rate cases have always been done that way. As the NSICs' comments put it:

> [T]he SUSF is provided pursuant to a rate case determination based on the entirety of the franchise service area of the Eligible Recipient which is the "Study Area." The scope of the rate case — a review of the entirety of a company's Study Area based on the entirety of the Part 36-determined intrastate regulated costs — is the process that has been used since the existence of the Transition Fund and is the only set of governing standards available today. Thus, any consideration of so-called "white spots" purportedly established in the Section 2(e) data gathering process under the Joint Proposal is irrelevant to a rate case decision regarding SUSF need (both existing and future).[28]

There is no reason why the NSICs, in the face of irrefutable evidence of ubiquitous availability of competitive alternatives, should not be able to reduce their costs by limiting the scale and scope of their offerings, without compromising universal service. The burden should be on them to move towards such a rescaled network, and in the meantime the Commission could reasonably impute to the companies reduced costs based on the avoided-cost discount set for resold services.

D. Backup Power Issues Are Not Relevant to the Issues in this Proceeding

UIU argues that an increasing risk of commercial power outages "poses a reliability issue for customers relying on backup batteries for their fiber and telephony cable service," and that this should be taken into account "when the Commission considers whether effective

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[28] NSIC Comments, Attachment K, at 2.

competition exists."[29] But, as UIU concedes, "backup battery storage for non-line-powered services is not a central issue to this proceeding …."[30] Moreover, since a number of the NSICs have themselves deployed fiber loops, this is not an issue that distinguishes between NSIC services and alternative services. It thus sheds no light on the question of whether effective competition exists, whether an SFA should be established, or on how one should operate if it were established.[31]

[redacted]

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[29] UIU Comments at 6-7.

[30] *Id.* at 6.

[31] The issue of battery-backup requirements for customers served by fiber loops has in any event been thoroughly addressed by the FCC, after careful consideration of an extensive record. *See, e.g.*, *Ensuring Continuity of 911 Communications*, PS Docket 14-174, Report and Order, 30 FCC Rcd 8677 (rel. August 7, 2015); 47 C.F.R. §12.5(b)(1).

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IV. IF THE COMMISSION ESTABLISHES A SUCCESSOR FUNDING ARRANGEMENT, IT SHOULD REJECT THE TEMPLATE PROPOSED BY THE NSIC MEMBERS

In Attachment F of their comments, the NSICs describe the SFA that they are asking the Commission to adopt. Although they state that the proposal was based on the current SUSF, "[w]ith slight modification," in fact the proposed changes are substantial. Among other things, those changes would totally eliminate the funding caps that have been part of the SUSF since its inception, and would replace them with the statement that the size of the SFA would be "subject to adjustment to reflect any new rate case decisions or any Commission decision which authorizes new or additional SUSF during this same period."[42] By eliminating the caps, the NSICs are seeking to write themselves a blank check, drawn on the accounts of every other regulated company in the State.

In contrast to the two-year term of the current SUSF and the four-year terms of the 2012 and 2016 Joint Proposals, under ¶ 2(a) of the NSIC proposal, "[t]he SUSF will be extended for *at least* a four-year term beginning on January 1, 2023 … *and may be further extended* by the Commission." (Emphasis supplied)

Also, the NSIC proposal would eliminate ¶¶ 2(e), 2(f), and 8(e) from the *2020 Joint Proposal.* The importance of these provisions to the Commission, as set forth in its orders adopting the 2016 and 2020 Joint Proposals, is discussed at length in Verizon's initial comments. By eliminating these provisions, the NSICs are seeking to free themselves from any need to justify the continuation of an SFA on competitive or financial grounds.

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[42] *Compare* ¶ 3(d) of the NSIC proposal with the same paragraph of the *2020 Joint Proposal*.

These changes would eliminate the checks and balances that the parties proposed, and that the Commission adopted, in prior SUSF proceedings; and that provide important protections for the Fund's contributors. By reversing reforms that were implemented by the Commission in its orders adopting the 2016 and 2020 Joint Proposals, the NSIC proposal would not only fail to advance the Commission's original intention that the SUSF would be a temporary expedient only, but it would actually represent an affirmative retreat from that goal. The proposal should be rejected by the Commission.

V. CONCLUSION AND SUMMARY

Nothing in the comments submitted by UIU or the NSICs refutes the approach proposed in Verizon's initial comments for determining the need for an SFA, or for setting the rules governing such an arrangement if the Commission determines that one is necessary. For the reasons set forth above and in our initial comments, Verizon's recommendations should be adopted by the Commission.

Respectfully submitted,

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April 18, 2022

REDACTED

EXHIBIT A

MOTION TO STRIKE - ATTACHMENT A

REDACTED

BEFORE THE STATE OF NEW YORK PUBLIC SERVICE COMMISSION

CASE 15-M-0742
PROCEEDING ON MOTION OF THE COMMISSION TO REVIEW THE STATE UNIVERSAL SERVICE FUND

NERA
ECONOMIC CONSULTING

Examining the Availability of Alternative Voice Service Providers in the Service Areas of Certain Smaller ILECs in New York State

REPLY EXPERT REPORT OF CHRISTIAN M. DIPPON, Ph.D.
On Behalf of Verizon New York Inc.

April 18, 2022

Before the State of New York Public Service Commission
Proceeding on Motion of the Commission to Review the State Universal Service Fund

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Expert Report of Christian M. Dippon, Ph.D.

EXECUTIVE SUMMARY

ES1. I have reviewed the initial comments filed in this proceeding by the Utility Intervention Unit (UIU) of the New York State Department of State and the 17 New York Smaller ILEC Companies (NSICs). Their comments do not alter my prior assessment that households located in the NSICs' service areas have a choice of several competitive voice service providers that offer ubiquitous, high-quality, and reliable voice service to residents in these areas. My review also finds that competition in the NSICs' service areas protects consumers.

ES2. The comments on the availability of alternative voice service providers in the NSICs' service areas primarily focus on two topics. First, the UIU proposes an analytical framework that would allow the State Universal Service Fund (SUSF) to be discontinued in the presence of effective competition. Second, and contrary to the UIU, the NSICs argue that competition from alternative voice service providers is not a sufficient reason to sunset the current SUSF on December 31, 2022. The NSICs claim that competition will not guarantee the ubiquitous availability of high-quality voice service throughout their service areas. They further claim that standalone voice service is a separate product market and that removal of the SUSF would eliminate regulatory oversight. However, the comments filed by the UIU and the NSICs are not accompanied by any empirical evidence. Therefore, my review finds that the NSICs' comments are contradicted by the evidence and refuted by economic principles.

ES3. The UIU's proposed competitive market test offers a testable framework to solve the question of whether the New York Public Service Commission (NYPSC) should extend the SUSF. The analysis I presented in my first report is consistent with the UIU's proposed analytical framework. My analysis demonstrates that alternative voice service providers are available to 100 percent of the households in the NSICs' service areas. Moreover, my analysis also satisfies the UIU's *granularity* requirement in that it examines competitive alternatives at the address and Census Block (CB) level. It meets the UIU's *transparency* requirement in that it relies on data that the NSICs submitted to the NYPSC and the Federal Communications Commission (FCC). Subject to the NYPSC's confidentiality requirements, my analyses and worksheets are available for inspection to third parties.

ES4. The specific competitive indicator proffered by the UIU confirms my findings. The UIU proposes that a platform competitive indicator adopted by the NYPSC as part of its 2006 *Competition III* Order should continue to apply. Using CB data, I calculated the three elements of the UIU's proposed indicator. The results show that per this indicator over 99 percent of the households in the NSICs' service areas have effective competition. As I detailed in my first report, there are generally several providers within a platform giving consumers additional competitive choices. Thus, the competition is not hinging on the presence of any individual competitor.

ES5. The NSICs incorrectly argue that competition jeopardizes the ubiquitous availability of high-quality and reliable voice service and that mobile wireless service does not compete with wireline service. The NSICs also proclaim that the SUSF is necessary in case of force majeure and that alternative standalone voice service is unavailable. The NSICs do not provide any support for their arguments. Moreover, they are wrong.

ES6. First, as my analyses show, competition is ubiquitous throughout the NSICs' service areas. Second, competitive forces ensure that New York State residents receive high-quality, reliable voice service. Third, as I explained in detail in my first report, there is ample evidence that mobile wireless service competes with wireline voice service. Fourth, force majeure does not limit the competitive impact of alternative voice providers because it is not likely that that all these service providers would *simultaneously* experience blackouts due to natural disasters. Further, the NSICs fail to explain how extending the SUSF would provide a measurable reduction of the probability of network outages. Fifth, competition does not require that standalone voice service be offered by all alternative providers because not all broadband competitors require a broadband subscription for voice service and numerous households purchase a broadband subscription regardless of voice service.

ES7. I also find Mr. Reed's argument that competition is not sufficient to protect consumers incorrect. There is widespread agreement among economists and regulators that the process of competition in effectively competitive retail markets leads to the best outcome for consumers. There is also ample evidence that imposing regulation would harm New York State consumers.

ES8. Thus, I remain with my prior assessment. I have conducted the analysis proposed by the UIU, and economic principles and marketplace evidence both refute the various arguments proffered by the NSICs. My analysis demonstrates that residents in the NSICs' service areas have competitive options for voice service. Further, market forces protect these residents, ensuring high-quality service and reliability.

I. Introduction and Purpose of Report

1. I am the same Christian M. Dippon who filed an expert report in this matter on March 28, 2022.[1] Appendix A of my first report sets forth my qualifications. I prepared this report at the request of Verizon New York Inc. (Verizon) in connection with the above-captioned proceeding. Verizon requested that I review and respond to the comments related to competitive alternatives filed by the Utility Intervention Unit (UIU) and the New York Smaller ILEC Companies (NSICs). Hence, I respond accordingly.

2. I structured this reply report as follows. Section II responds to the analytical framework proposed by the UIU. Section III demonstrates that competitive voice service options are available to all households in the NSICs' service areas. Section IV affirms that alternative service providers offer high-quality voice service. Section V explains why competition does not require that voice service be offered by alternative providers as a standalone service. Section VI discusses the consumer impact of regulatory oversight in the presence of competition. Section VII concludes.

II. The UIU Analytical Framework Confirms Competitive Options in All NSIC Service Areas

A. The UIU's Proposed Competitive Market Test Is Consistent with My Analysis

3. The UIU proposes an analytical framework that recognizes that the State Universal Service Fund (SUSF) can be discontinued if granular and transparent evidence of effective competition is available. The analytical approach I presented in my first report meets the

[1] My report was submitted by Verizon as Exhibit A to its March 28, 2022 comments.

UIU's proposed framework. Consequently, per the UIU's proposed competition test, effective competition exists throughout the NSICs' service areas.

4. The UIU opines that a competitive market test solves the question of whether the New York Public Service Commission (NYPSC) should extend the SUSF.[2] As such, it offers a testable framework by which to analyze this question. Specifically, the UIU explains that the question of renewing the SUSF "necessarily rests on the question of whether effective competition exists in the areas served by the NSIC companies that rely on the SUSF."[3] The UIU defines effective competition as a market environment where "competition is sufficient to discipline the market and ensure service availability, promote customer choice, and assure the availability of reliable and ubiquitous telecommunications for all citizens."[4] I concur, and the analysis I presented in my first report is consistent with the UIU's proposed analytical framework.

5. The UIU correctly recognizes that competitive market conditions eliminate the need for regulatory intervention in the form of an SUSF. Market forces produce the best market outcome for consumers by ensuring service availability, service choices, and high levels of service quality. As I explain in Section III and Section IV, the UIU's finding (and my concurrence) is in stark contrast to the NSICs' comments that incorrectly postulate that regulating the ubiquitous availability of reliable voice service is necessary to protect the public interest *even in the presence of effective competition for that service*.

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[2] UIU Comments, p. 3.
[3] Ibid.
[4] Ibid, note 5.

B. The Evidence Passes the UIU's Proposed Rural Competition Test

6. The evidence I submitted as part of my first report also satisfies the UIU's proposed focus on rural competition. The UIU "asserts that effective competition in rural areas requires further definition."[5] Although the UIU applies its proposed effective competition test to rural areas, it opines that the test must be particularly stringent considering, "The stakes [in rural New York] are inordinately high."[6] Practically, the proposed rural test calls for evidence of effective competition that with high probability correctly rejects the null hypothesis of noncompetitive markets when in actuality market forces work properly.

7. The evidence I provided in my first report passes the high stringency standard advocated by the UIU for rural competition. First, the evidence I provided shows that large and established telecommunications providers offer competitive voice service in rural New York State. The providers include: Charter's Spectrum for coaxial broadband; AT&T, T-Mobile, and Verizon for mobile wireless; T-Mobile and Verizon for fixed wireless; and SpaceX Starlink and HughesNet for satellite. The probability that the voice service offered by all these providers "could gradually diminish and disappear over time," as suggested by the UIU, approaches zero.[7]

8. The UIU also "urges that the Commission only consider eliminating the fund after an affirmative finding that effective competition does exist."[8] My first report examined several evidentiary sources and found that effective competition for voice service does exist. My analysis meets the test requirements set forth by the UIU and supports an

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[5] Ibid, p. 4.
[6] Ibid, p. 6.
[7] Ibid.
[8] Ibid, p. 7.

affirmative Commission finding of effective competition. Further, New York State and federal regulators agree with my assessment and thus provide funding to competitive voice service providers, including satellite providers HughesNet and Starlink.[9]

C. Granular and Transparent Analysis of the Level of Competition Is Available

9. My analysis is also responsive to the UIU's request to execute the proposed competition test based on "more granular data" that is "rigorously analyzed for the existence of effective competition."[10] The UIU proposes that a competitive indicator adopted by the NYPSC as part of its 2006 *Competition III* Order should continue to apply.[11] This indicator prescribes, "[T]he existence of three platforms, one traditional landline plus wireless and broadband, in any market would indicate that the market is sufficiently competitive to constrain anti-competitive behavior of the market participants."[12] The UIU argues that previous determinations of this competitive indicator relied on an overly broad definition of the geographic boundaries of the market in which the indicator was assessed. In particular, the UIU questions a competitive indicator that relies on data "compiled by zip code, only."[13] Rather, the UIU advocates for more granular data and proposes that the indicator rely on "granular, address-level data for services provided by the NSICs, as well as the availability of alternative wireline-based voice service providers, such as telephone, VoIP, cable, and

[9] See Dippon First Report, ¶¶ 35, 37.

[10] UIU Comments, p. 10.

[11] 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*).

[12] Ibid, note 19 (citing the *Competition III Order*).

[13] Ibid, p. 9. CB-level data are far more granular than zip-code level data. There are 2,543 zip codes in New York State as compared to 350,169 CBs (measured as of 2010). (See New York State, Data.NY.Gov, New York State ZIP Codes-County FIPS Cross-Reference, https://data.ny.gov/Government-Finance/New-York-State-ZIP-Codes-County-FIPS-Cross-Referen/juva-r6g2/data, April 14, 2022; see also United States Census, "2020 Census Tallies," https://www.census.gov/geographies/reference-files/time-series/geo/tallies.html.)

broadband services."[14] The UIU specifically requests that the competitive indicator use NSIC location data.[15] The UIU also proposes to review "census block-level data on the availability of broadband."[16]

10. I have already conducted the analysis proposed by the UIU as part of my first report. Specifically, I analyzed the NSICs' location data and found, **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** Further, I reviewed information that the NSICs provided as part of a 2021 Annual Survey of Competitive Presence. This survey disclosed, **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

11. Although the NSICs do not provide address-level data for wireless and other services included in UIU's competitive indicator, I supplemented my analysis of the NSICs' address-level data with the NSICs' CB-level data obtained from the Federal Communications Commission (FCC). I note that the UIU also considers the use of CB-level data.[20] As I discussed in my first report, these data reveal that "on average 83.3 percent

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[14] Ibid, pp. 8–9.
[15] Ibid, p. 10.
[16] Ibid. The New York State Department of Public Service will release census block-level data on broadband availability in May 2022. New York State will also "[p]roduce and publish on its website, a detailed internet access map of the state, indicating access to internet service by address." ("Governor Hochul Announces Launch of Mapping Survey to Examine Quality and Availability of Broadband Across the State," September 27, 2021, https://www.governor.ny.gov/news/governor-hochul-announces-launch-mapping-survey-examine-quality-and-availability-broadband).
[17] Dippon First Report, ¶ 46.
[18] Ibid, ¶ 50.
[19] Ibid, Table 14.
[20] UIU Comments, p. 10.

of households in the NSIC service areas have *wireline* alternative[s] for voice services."[21] Adding the required wireless option to the indicator "increases the households that the NSICs cover with an alternative to almost 100 percent,"[22] and [i]ncluding fixed wireless and satellite services as an alternative provider increases the households that the NSICs cover to 100 percent."[23]

12. Based on these data, I can calculate the three elements of the UIU's proposed indicator. The first element is access to one traditional wireline provider, which assumes the NSICs pass all households in their respective service areas. This implies that 100 percent of households have access to at least one traditional wireline provider. This is shown in the first column of Table 1. Second, as shown in the third column in Table 1, evaluating the FCC's CB data on the availability of standalone mobile wireless service shows that on average 99.5 percent of households in the NSICs' service areas have access to at least one mobile wireless provider.

Table 1: Percentage of NSIC Households with Competitive Options

Provider Service Area	NSIC Available	Alternative Wireline Available	Mobile Wireless Available	Fixed Wireless Available	Satellite Available	Competitive in at least 3 Categories
Armstrong Telephone Co.	100.0%	73.6%	99.3%	59.0%	100.0%	99.3%
Chazy & Westport Telephone Corp.	100.0%	85.3%	100.0%	56.5%	100.0%	100.0%
Crown Point Telephone Corp.	100.0%	91.7%	100.0%	1.5%	100.0%	100.0%
Delhi Telephone Co.	100.0%	69.4%	99.1%	36.2%	100.0%	99.1%
Fishers Island Telephone Corp.	100.0%	0.0%	100.0%	35.0%	100.0%	100.0%
Germantown Telephone Co.	100.0%	63.7%	100.0%	80.9%	100.0%	100.0%
Middleburgh Telephone Co.	100.0%	82.9%	97.9%	38.6%	100.0%	99.1%
Newport Telephone Co.	100.0%	63.2%	98.5%	8.8%	100.0%	98.5%
Nicholville Telephone Co.	100.0%	82.6%	99.0%	0.0%	100.0%	99.8%
Oneida County Rural Telephone Co.	100.0%	85.1%	100.0%	15.5%	100.0%	100.0%
Pattersonville Telephone Co.	100.0%	97.7%	100.0%	64.4%	100.0%	100.0%
State Telephone Co.	100.0%	98.1%	100.0%	91.3%	100.0%	100.0%
Telephone & Data Systems, Inc.	100.0%	85.4%	99.8%	53.3%	100.0%	100.0%
Weighted Average	**100.0%**	**83.3%**	**99.5%**	**48.5%**	**100.0%**	**99.7%**

Notes: Percentages are based on 2010 U.S. Census households compiled by IPUMS (formerly Integrated Public Use Microdata Series). Analysis includes only census blocks containing households.

[21] Dippon First Report, ¶ 58.
[22] Ibid, ¶ 59.
[23] Ibid, ¶ 61.

Source: FCC, "Form 477 Broadband Deployment Data - December 2020 (version 1)," updated November 10, 2021; FCC, "Mobile Deployment Form 477 Data," December 2020; Steven Manson et al., IPUMS National Historical Geographic Information System.

13. Third, the same data show that 100 percent of households have access to at least one broadband service provider (i.e., coaxial cable, fixed wireless, or satellite). This implies that the UIU competitive indicator for the NSICs is over 99 percent of households on average for the 17 NSIC service areas, ranging from 98.5 percent to 100 percent.

14. Based on my experience studying the telecommunications sector in the United States, the providers within the competitive platforms considered in my analysis generally offer uniform pricing across their respective footprints. Thus, even a household with less than three alternatives likely will receive market-based prices.

15. Moreover, platform convergence allows voice services to be provided by multiple platforms. In turn, in most instances, each platform has multiple competing providers. This market structure ensures a competitive market even if one of the platforms were to fall away.

III. Competitive Services Are Ubiquitous in the NSICs' Services Areas

16. The NSICs incorrectly claim that competitive services are not ubiquitously available throughout their service areas. They do admit, "[T]here may be some competition in some parts of an NSIC territory,"[24] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** However, they claim that competition has not developed sufficiently, arguing that competition from mobile wireless

[24] NSIC Comments, Attachment M, p. 1.

is limited because the service "would not be ubiquitous" because of the "limitations on wireless reception, particularly in the topography of rural areas."[25] The NSICs' claim is wrong for at least two reasons.

17. First, the FCC Form 477 data that I presented in my first report demonstrates that nearly all New York State residents have mobile wireless coverage at their homes. As shown in Table 1, mobile wireless is available to 99.5 percent of households in the NSICs' service areas. The NSICs offer no data or analysis to the contrary. Moreover, for competition to exist, it is not necessary that mobile wireless be present throughout the entire geographic area. Rather, the service needs to be available at the *physical location* of the households served by the NSICs (because that is where the NSICs' service is available). Thus, merely claiming non-ubiquitous geographic coverage provides no insight as to the competitive impact of mobile wireless service.

18. Second, the NSICs fail to address other competitive options. As I explained in my first report and demonstrate in Table 1, all the NSICs' passed households benefit from competition from satellite providers. The same table shows that almost half of the households also have access to fixed wireless voice service.

IV. Competition Guarantees Reliable and High-Quality Voice Service

19. The NSICs similarly attempt to dismiss the reliability and quality of competing services and argue that but-for the SUSF there would be no guaranteed voice service in their territories. The market evidence refutes both claims.

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[25] Ibid.

A. Competitive Providers Offer Reliable Voice Service

20. The NSICs incorrectly claim that absent the SUSF the population living in the NSICs' service areas might not have voice service. For instance, the NSICs' witness Mr. Michael Reed repeatedly argues that the NSICs serve the public interest because they are the carriers of last resort and "stand ready to serve," whereas their competitors are not.[26] Mr. Reed also postulates a risk that "a competitive carrier either decides not to serve because a customer is 'too costly' or ceases providing service due to bankruptcy, other financial issues, technical issues, or marketing reasons."[27] These and similar other arguments are wrong as a matter of economics.

21. First, when a provider makes the decision to serve, it necessarily implies a certain degree of commitment as substantial resources need to be invested to back up that decision. Thus, the investment itself is a commitment to *stand ready to serve*.

22. Second, competitive providers do not alter their investment decisions because an individual customer is too costly to serve. Rather, investment decisions often are *lumpy*. That is, they are not made on a household-by-household basis but rather with respect to *lumps* of facilities that are deployed to serve larger areas. They also are the result of an *overall* investment decision that aims to expand the reach of a provider's network. For instance, a satellite provider does not decide whether to pass a household or a group of households in New York State. Instead, it decides on whether to launch or purchase a satellite that serves several countries or perhaps even continents. Similarly, mobile wireless providers expand

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[26] NSIC Comments, Attachment H (Reed Statement), ¶ 4. "A carrier (or provider) of last resort is a telecommunications company that commits (or is required by law) to provide service to any customer in a service area that requests it, even if serving that customer would not be economically viable at prevailing rates." (See Sherry Lichtenberg, Ph.D., "Carrier of Last Resort: Anachronism or Necessity?" NRRI Report No. 16-06, July 2016.)

[27] NSIC Comments, Attachment H (Reed Statement), ¶ 20.

their networks based on cell sites that cover several miles depending on the territory involved. It is for these same reasons that competing networks that employ wireless technologies cannot simply opt not to pass certain households located in a network's coverage area.

23. Third, the probability that the major providers that offer competing voice service to NSIC residents will "cease[] providing service due to bankruptcy, other financial issues, technical issues, or marketing reasons" is negligible.[28] In any event, because the delivery platforms overlap to a great extent, there are multiple platform competitors available to any given household. Within each platform, there are generally also multiple competitors (e.g., Verizon, AT&T, and T-Mobile offer mobile wireless). Thus, the withdrawal of one platform or one provider, as unlikely as that might be, would still leave other competitors in place. Moreover, bankruptcy does not necessarily mean the cessation of service because the companies that compete with the NSICs are typically of a scale that indicates they would be taken over by another provider (e.g., Sprint) or would continue operating under bankruptcy protection (e.g., Frontier).[29]

B. Competitive Providers Offer High-Quality Services

24. The NSICs also claim that the SUSF is necessary "to assure the provision of high-quality, reasonably priced basic local exchange service throughout the entirety of the NSIC

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[28] Ibid.

[29] See Monica Alleven, "It's official: T-Mobile closes Sprint merger, Sievert takes over," *Fierce Wireless*, April 1, 2020, https://www.fiercewireless.com/wireless/it-s-official-t-mobile-closes-sprint-merger-sievert-takes-over; see also Nicholas Jasinski, "Frontier Communications Is Emerging from Bankruptcy. Goodbye Copper. Hello Fiber.," *Barron's*, April 30, 2021, https://www.barrons.com/articles/frontier-communications-is-emerging-from-bankruptcy-goodbye-copper-hello-fiber-51619798425.

Member service territory."[30] Again, there is no evidence that supports this theory. However, there is evidence that refutes it.

25. First, a competitive market ensures high-quality service. As I explained in my first report, the product market for voice service includes fixed wireline, coaxial broadband, mobile wireless, fixed wireless, and satellite.[31] Most of these providers are present in all the NSICs' service areas, thus creating a competitive market. Hence, to attract and retain subscribers and network traffic, these providers must provide high-quality service. The NSICs offer no data to the contrary.

26. Second, there is ample evidence documenting the high quality of the mobile wireless networks serving New York and other states. For instance, the US mobile market has been described as "intensely competitive" and as a consequence "most U.S. wireless postpaid customers are pretty satisfied with their current wireless provider."[32] The Cellular Telecommunications and Internet Association (CTIA) reports a similar finding.[33]

27. Third, Verizon (Frontline) and AT&T (FirstNet) offer state-of-the-art mobile wireless networks that meet even the requirements of New York State first responders. AT&T FirstNet's primary function is to give first responders primary access to a robust high-speed mobile broadband network that is also employed for regular commercial use. FirstNet committed to build additional cell sites as well as to install 250 generators for exiting sites that only had battery backup and to install generators at all new sites in New York State.

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[30] NSIC Comments, Attachment K, p. 1.

[31] Dippon First Report, ¶ 41.

[32] Sue Marek, "USA, Mobile Network Experience Report," *Opensignal*, July 2020; see also Mike Dano, "Wireless customer satisfaction rates at 2-year high," July 27, 2018, *Fierce Wireless*, https://www.fiercewireless.com/wireless/wireless-customer-satisfaction-rates-near-2-year-high.

[33] CTIA reports that 73 percent of customers "are satisfied with their wireless service provider." (CTIA, "The Wireless Industry, Customer Satisfaction," https://www.ctia.org/the-wireless-industry/infographics-library (accessed April 11, 2022).)

The additional sites were to be placed to fill so-called *white spaces*, improve transportation corridor coverage, and improve coverage for critical infrastructure.[34] Verizon announced Frontline in 2021, and it includes battery backup at all its macro cell sites,[35] backup generators and prearranged fuel deliveries in case of a storm, and redundant fiber rings for cell sites and switching centers. Verizon's Frontline even has "drones that can deliver wireless service to a designated area from the sky."[36] The network is also employed for regular commercial use.

C. High-Quality Mobile Wireless Services Compete with Wireline Services

28. Mr. Reed also questions the availability of mobile wireless service as an economic substitute for wireline voice service. Mr. Reed believes that it is difficult to prove that "wireless providers are also competitors."[37] As I explained in detail in my first report, there is ample evidence that mobile wireless service competes with wireline voice service.[38] For example, as of June 2021 only 1.9 percent of US households were wireline only, 29.3 percent had both wireline and mobile wireless, and 68 percent were mobile wireless only.[39] The switch to mobile wireless and other alternatives is reflected in the rapidly declining number of the NSICs' access lines. Over the 2016–2020 period, access lines dropped by

[34] New York State, Division of Homeland Security and Emergency Services, "Public Safety Broadband," April 5, 2022, https://www.dhses.ny.gov/public-safety-broadband.

[35] Deanna Parenti, "*AT&T Firstnet vs Verizon's Frontline*," *Mission Critical Communications Review*, October 27, 2021, https://www.mccr.info/blog/att-firstnet-vs-verizons-frontline.

[36] Verizon News Center, "Verizon response: Severe weather in the South," March 17, 2021, https://www.verizon.com/about/news/verizon-response-severe-weather-south.

[37] NSIC Comments, Attachment H (Reed Statement), ¶ 57.

[38] See Dippon First Report, ¶¶ 17–22.

[39] Ibid, Table 1.

18 percent across the 17 NSICs that filed information.[40] In 2020, the number of the NSICs' access lines stood at 30,373.[41]

D. Force Majeure Does Not Limit the Competitive Impact of Alternative Voice Providers

29. In addition, the NSICs and the UIU have raised concerns about force majeure events such as weather or flooding that destroy or require the upgrading of plant.[42] The probability that all these service providers would *simultaneously* experience blackouts due to natural disasters is low. It is the very "reliability, substitutability, and access to intermodal telecommunications services" sought by the UIU that protects rural New York State residents.[43] It is also unclear how extending the SUSF would provide a measurable reduction of the probability of network outages. Further, satellite services are not affected by some disruptions. For instance, as recent international conflicts demonstrate, satellite provides a readily available substitute in case of terrestrial disasters, including storms and floods.[44]

V. Standalone Voice Service Is Available and Is Not a Prerequisite to Competition

30. Competition does not require that voice services be offered by alternative providers as a standalone service. The NSICs incorrectly argue that the presence of broadband service does not create competitive pressure for voice service because on these platforms a

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[40] Ibid, Table 9.

[41] Ibid.

[42] See NSIC Comments, Attachment H (Reed Statement), ¶ 37; see also UIU Comments, p. 6.

[43] UIU Comments, pp. 6–7.

[44] See Megan Cerullo, "Elon Musk Activates Free SpaceX Starlink Satellite Internet Service in Ukraine," *CBS News*, Updated Feb. 28, 2022, https://www.Cbsnews.Com/News/Elon-Musk-Ukraine-Spacex-Starlink-Satellite-Internet-Service/; See also Telecompaper Europe, "Vodafone Ukraine restores services in Irpin, Romanivka using Starlink," April 4, 2022.

broadband subscription is a prerequisite to a voice subscription. This argument is wrong as a matter of facts and economics.

31. First, not all broadband competitors require a broadband subscription for voice service. The NSICs claim that cable companies provide voice service as a "secondary offering, [that] can only be available where the cable television plant capable of providing telephony has been deployed."[45] By limiting this claim to cable companies, the NSICs omit the fact that mobile wireless providers offer standalone voice service. Further, satellite providers can and will provide standalone voice service. Specifically, SpaceX's Starlink has committed to offering standalone voice service as part of its Lifeline eligible telecommunications carrier (ETC) designation. Starlink also committed to offer the service "at rates that are reasonably comparable to urban rates."[46]

32. Second, standalone voice service is not necessary to exert competitive pressure. Because numerous households purchase a broadband subscription regardless of voice service, there effectively is no prerequisite to adding voice service. In fact, **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** percent of the NSICs' households bundle voice with internet.[47] Consider the case of the cable provider Charter that offers voice service to its broadband subscribers in the NSICs' service areas for $14.99 per month.[48] The service includes up to 28 calling features and unlimited calling in the United States, Canada, Mexico, and other countries.[49] As I explained in my first report:

[45] NSIC Comments, Attachment M, p. 2.
[46] Dippon First Report, ¶ 34.
[47] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**
[48] Spectrum, "Spectrum Packages, Bundle for Best Deals on TV, Internet and Phone," https://www.spectrum.com/packages.
[49] Ibid.

> Wireline broadband uptake is widespread. An estimated 83.4 percent of occupied US households subscribe to wireline broadband, representing over 117 million households.[50]

33. Thus, for those Charter households subscribing to wireline broadband, the incremental cost for voice service is $14.99 per month.[51] This price point is below the $23 per month regulated retail *benchmark rate* for the NSICs. In fact, only two of 15 reporting NSICs charge less than $23.[52] It also exerts competitive pressure on standalone voice service as most households already have broadband internet access and thus can, and have purchased, voice service for a fraction of the regulated price.

34. Although the demand for fixed-line voice service is declining sharply, those subscribers who retain their fixed-line phone often obtain voice service from their broadband provider. To illustrate this point, consider that only approximately 31.3 percent of US households still have a fixed-line telephone.[53] Spectrum reports that 30.4 percent of its residential broadband subscribers also purchased fixed-line voice service from the company.[54] With an estimated 69 percent not interested in voice service, this implies that over 97 percent of Charter subscribers that desire fixed-line voice service bundle it with their broadband subscription.[55]

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[50] Dippon First Report, ¶ 16.

[51] Spectrum, "Spectrum Voice, Reliable Home Phone Services," https://www.spectrum.com/home-phone.

[52] Middleburgh Telephone charges $19.00 and State Telephone charges $17.59. Armstrong Telephone and Nicholville Telephone did not report their prices. (See NSIC, Case 15-M-0742, "Petition for the Extension of State Universal Service Fund," December 15, 2021, Attachment H (redacted).)

[53] See CDC, "Wireless Substitution: Early Release of Estimates from the National Health Interview Survey," January–June 2021, Table 1 (adults).

[54] Includes those with a video connection. (See Charter Communications, Customer Metrics, 2019–2021.)

[55] 30.4/31.3 = 0.971. Measured as of June 2021.

VI. PRICE AND SERVICE REGULATION IN THE PRESENCE OF COMPETITION HARMS CONSUMERS

35. The NSICs present an incorrect line of argumentation that competition is not sufficient to protect consumers. This is wrong as a matter of economics.

36. First, Mr. Reed proclaims that regulatory oversight serves the public interest because it "obligates the NSIC Member to respond to Commission policies and requirements, and to continue its commitment to serve that NSIC Member's entire franchise area."[56] There is widespread agreement among economists and regulators that the process of competition in effectively competitive retail markets leads to the best outcome for consumers. Thus, a regulator's role is to protect the public interest by ensuring competitive markets. Such markets, in turn, offer consumers innovative, high-quality services at competitive prices. Conversely, to justify the regulatory oversight requested by Mr. Reed that benefits the NSICs requires a showing of market failure. However, Mr. Reed does not present any evidence of market failure, whereas ample evidence exists that market forces are effective throughout all the NSICs' service areas. This leaves Mr. Reed with no economic support for his contention.

37. I also highlight that imposing regulation would harm New York State consumers. Regulatory intervention only promises consumer benefits if the relevant market is not competitive. In a competitive market, regulatory intervention often is harmful because it skews the competitive outcome. As Professor Alfred E. Kahn (former chair of the New York Public Service Commission) eloquently describes:

> … the decision to regulate … can only be done on the basis of full consideration of the special characteristics of the industry in question – its technology and other conditions of supply, the nature of its market – and of

[56] NSIC Comments, Attachment H (Reed Statement), ¶ 7.

> the varying mix of public purposes, economic and other, that regulation is supposed to serve. But the job is likely very badly done if it is not informed by a clear grasp of the common economic principles and considerations.[57]

38. Similarly, the 2006 *Competition III* Order concluded:

> …, we find that the telecommunications market in New York State is, in aggregate, adequately competitive. Perfect competition, which is the ideal, is not needed; the market need only be adequately competitive. Given the inefficiencies inherent in economic regulation, a market need not be perfect, or even near-perfect, to produce better outcomes for consumers than traditional regulation, given the well documented inefficiencies of the latter, and its shortcomings in an increasingly competitive market. Therefore, despite the lack of the ideal of a perfectly competitive telecommunications market in New York, we find that the forces of competition are sufficiently strong, both now and for the foreseeable future, to easily be considered an adequately competitive market.[58]

39. Second, Mr. Reed proclaims, "[O]ne must not overlook the fact that eleven NSIC Members have already shown, through the rate case process, that they require and continue to require external funding."[59] This also violates basic economic principles and a decades-long consensus regarding the role of regulation.[60] A regulator must focus on the competitive process and be agnostic to the competitive outcome, including who benefits from the competitive process, the distribution of market shares, and whether a market participant has a positive or negative business case. The regulatory process is not permitted to pick winners and losers. In a competitive environment, these are selected through consumer choice.

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[57] Alfred E. Kahn, *The Economics of Regulation, Principles and Institutions* (Cambridge, MA: MIT Press: 1988), pp. 13–14.

[58] *Competition III Order*, p. 42.

[59] NSIC Comments, Attachment H (Reed Statement), ¶ 6.

[60] See Alfred E. Kahn, *The Economics of Regulation, Principles and Institutions* (Cambridge, MA: MIT Press: 1988), pp. 13–14.

40. Third, Mr. Reed also argues that regulatory intervention is necessary because it ensures "affordable and reasonable rates."[61] Again, the competitive process ensures that consumers are protected from unreasonable prices. As explained by the Federal Trade Commission:

> The FTC supports free and open markets by protecting competition, so that consumers reap the benefits of a vigorous marketplace: lower prices, higher quality products and services, and greater innovation.[62]

41. Thus, as correctly explained by the UIU, competition ensures that New York State residents have a choice of reliable voice service that is ubiquitously available throughout all the NSICs' service areas.[63]

VII. CONCLUSION

42. Based on my review of the UIU's and the NSICs' comments, it remains my expert opinion that all households in the NSICs' service areas have choices for their voice service. My analytical approach to assessing the competitive overbuild in the NSICs' service areas mirrors that of the UIU. This analysis shows that competitive services are ubiquitous. Market forces also regulate service quality and reliability, and the NSICs offer no evidence to the contrary. I also find that voice service does not need to be available on a standalone basis for it to be a competitive alternative.

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[61] NSIC Comments, Attachment H (Reed Statement), ¶ 6.

[62] FTC, "Protecting consumers by promoting competition," March 6, 2017, https://www.ftc.gov/enforcement/competition-matters/2017/03/protecting-consumers-promoting-competition.

[63] UIU Comments, p. 3.

BEFORE THE
NEW YORK PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Review the State Universal Service Fund.	)	Case 15-M-0742

Cable Telecommunications Association of New York, Inc. Comments in Response to the Notice Soliciting Comments Regarding the Extension of the State Universal Service Fund

March 28, 2022

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BEFORE THE
NEW YORK PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Review the State Universal Service Fund.	)	Case 15-M-0742

Cable Telecommunications Association of New York, Inc.
Comments Regarding the Extension of the State
Universal Service Fund

The Cable Telecommunications Association of New York, Inc. (CTANY) respectfully submits these reply comments on behalf of its members Charter Communications Operating, LLC (Charter) and Altice USA, Inc. (Altice USA), in response to the Notice Soliciting Comments regarding the petition filed by the New York Smaller ILEC Companies (NSICs) requesting extension of the State Universal Service Fund (SUSF).[1]

CTANY opposes any further extension of the SUSF beyond the current expiration date of December 31, 2022. The SUSF was intended to be a temporary measure only, to ensure that customers in rural parts of the State that were served by the small ILECs would have access to local residential telephone service while the smaller ILECs adapted to a rapidly changing marketplace. The SUSF has instead veered from its original mission to subsidizing a greater number of companies at higher amounts than ever before, resulting in exponential growth of the fund that now supports the subsidiary of a Fortune 1000 Company (TDS Telecom).

[1] Case 15-M-0742, *Proceeding on Motion of the Commission to Review the State Universal Service Fund*, Notice Soliciting Comments (issued February 8, 2022).

In order to understand why the SUSF has departed from its original goal, consideration must be given to the manner in which SUSF need is determined. The underlying metrics used by the SUSF will *always* portray smaller ILECs as financially stressed because the SUSF relies on an obsolete, now effectively fictional, metric – "intrastate return" – that fails to measure how well these companies have strategically adapted to changing conditions given their transformational entry into the broadband and cable service market. Additionally, the SUSF metrics do not recognize that voice service offerings now represent only a small incremental activity on a broadband network. [redacted].

The manner in which interstate and intrastate costs are allocated, and the distorted financial picture created by the current SUSF methodology, is discussed further below and in the report provided by Joseph Gillan, CTANY's expert witness and an independent consulting economist.[2] If the SUSF is to continue, the Commission must use this opportunity to review and revise the SUSF to eliminate its circular reasoning and instead ground the fund in the contemporary realities and economics of voice service today, as a minor capacity application on a broader shared broadband network. We believe a comprehensive review will reveal that there is no need for the fund, at least not at the current levels. A review of the Gillan Report will also make it clear that even if the Commission were not to end the fund, there is a critical need to significantly reform the fund by recognizing that small ILECs are adapting to new technologies and market realities and that universal service is not threatened where such adaptations include the transition to new –

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[2] Herein "Gillan Report".

and profitable – business models. Moreover, the Commission should redefine "small" to eliminate large, multi-state, technology companies such as TDS that, for whatever reason, have chosen to provide service through separately *labeled* affiliates that are part of a much larger provider.

New York consumers ultimately bear the burden of subsidizing entities that allege and assert dire financial straits before the Commission. If the life of the fund is extended, CTANY urges the Commission to initiate concrete steps to ensure the amount of the fund is tailored to reflect actual economic realities and is appropriately sized to the actual and demonstrated need of the small ILECs in need of support.

In the decade since the SUSF was established, competitive options, both wired and wireless (and, most recently, a low-earth orbit satellite constellation), have become more available across the State. Customers who once had no option other than local, landline exchange service for voice communication now have a variety of choices among robust service options, from different cellular providers, broadband and cable options, and satellite internet. The competitive marketplace today has made clear that the technology platform most residential customers prefer is wireless or broadband platforms for voice service.

During the past decade, CTANY members' customers have been (along with the customers of non-recipient ILECs, such as Verizon) a primary source of subsidization for the small ILECs. A comprehensive review of the financial picture of these entities will reveal how, contrary to sound public policy, CTANY members' customers are shouldering the burden of providing millions of dollars annually in subsidies to companies that are financially sound. To that end, CTANY urges the Commission to allow the SUSF to expire at the end of this year.

BACKGROUND

During the telecommunications industry's transition to competition, the Commission initiated two successive proceedings aimed at addressing "the gradual transition of the monopoly heritage telephone system to a much more diverse, competitive, and continually evolving telecommunications environment."[3] In the Commission's words, it has "remained dedicated to ensuring that at least a minimum level of local residential telephone service remains universally available throughout New York."[4]

The clear, unambiguous purpose of the SUSF – repeated in the Phase II Order adopting the 2012 Joint Proposal, the 2016 Order adopting the 2016 Joint Proposal, and the most recent 2020 Order adopting the 2020 Joint Proposal – is to ensure the availability of basic telephone service to rural customers at affordable rates during a period of transition. The SUSF was established to support this goal and enable rural ILECs to adjust to a changing competitive landscape in the telecommunications industry, which was being transformed by advancements in innovation, technological change, network upgrades, and new developments in state and nationwide communications policies.

The SUSF was *always* intended to be a limited, temporary subsidy to support the offering of minimum, local basic telephone service by rural ILECs to serve their customers as they adapted. Upon reviewing the small ILECs' available financial data, the SUSF appears to have sustained the small ILECs through the early years of the changes to the telecommunications industry and provided an adaptation path to achieve profitability. Whether the SUSF was ever needed is not

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[3] Case 09-M-0527, *Proceeding to Examine Issues Related to a Universal Service Fund*, Order Adopting Phase II Joint Proposal (issued August 17, 2012), p. 1 (Phase II Order) (*citing* Case 09-M-0527, *Proceeding to Examine Issues Related to a Universal Service Fund*, Order Adopting Phase I Joint Proposal (issued July 16, 2010), pp. 1-3 (Phase I Order).

[4] *Id.*

the point of this proceeding. What is known, however, is that the SUSF is broken. It has increased in size exponentially, supports more companies than ever before, and, worst of all, the small ILECs now claim they are in worse financial shape than prior to the SUSF's establishment, with little hope of obtaining financial independence on the horizon. Analyzing the SUSF from either perspective leads to the inescapable conclusion that the fund must end – either because it has achieved its goals, or because it is doomed to fail under its existing parameters. In either case, absent significant reform, the SUSF should be allowed to sunset on December 31, 2022.

If, on the other hand, the Commission determines the continuation of the SUSF is warranted, CTANY urges the Commission to undertake a complete review of the fund's mechanics to ensure it is appropriately targeted towards achieving its original goals – ensuring the availability of basic residential local telephone service in rural areas served by *truly* small ILECs – while ensuring the customers of CTANY members are not required to indefinitely support a lost cause.

[redacted]

Presently before the Commission is the NSICs' Petition, which seeks another four (4) year extension to the "limited" fund, but offers no changes to the manner in which SUSF disbursements are determined nor acknowledges the myriad of existing competitive alternatives to wireline telephone service. Respectfully, the Petition of the NSICs should not be granted.

PROCEDURAL HISTORY

In 2009, the Commission initiated a proceeding to examine universal service generally, the future of the State's traditional wireline telephone providers, and the exhaustion of the Temporary Transition Fund Extension (TTFE).[5] The TTFE was originally established in 2003 "to ease upward pressure in local telephone service rates then expected to flow from phasing out the pooling of intrastate access charge revenues among local exchange telephone companies."[6] The TTFE, as its name indicates, was designed as a "temporary" mechanism to allow the Commission time to resolve whether or not a SUSF was warranted to further the State's policy of ensuring the provision of universal telephone service in New York, and how such a fund would look and operate.

The Phase II Joint Proposal

Following the exchange of direct and rebuttal testimony, an evidentiary hearing, the submittal of initial and reply trial briefs, the issuance of a recommended decision from the administrative law judge, and the submittal by the parties of a Joint Proposal, the Commission issued an Order adopting the operative terms of the Phase II Joint Proposal.[7] The Phase II Joint Proposal established a SUSF for a four-year term, beginning January 1, 2013, to be administered by the Targeted Accessibility Fund (TAF) Administrator. The proposal also set forth a Commission review proceeding to commence three years later to determine whether a successor fund would be necessary to allow the Commission time to complete the review proceeding.[8] In

[5] Case 09-M-0527, *Proceeding to Examine Issues Related to a Universal Service Fund*, Notice Establishing Universal Service Proceeding, (issued August 3, 2009), p. 1.
[6] Phase II Order, p. 3.
[7] Phase II Order, pp. 2-3.
[8] *Id.* at p. 9.

other words, the SUSF established in 2012 was supposed to be temporary in nature, consistent with its predecessor, the "limited" TTFE.

Under the Phase II Joint Proposal, SUSF contributors included all entities that contributed to the TAF in 2011; VoIP and wireless carriers were not required to contribute. Each SUSF contributor's share of annual funding amounts would be determined using the TAF contribution methodology in effect during 2011.[9] Contributors were permitted, but not required, to recover SUSF contributions "through new or increased charges or surcharges."[10]

Eligible recipients were limited to the smaller ILECs,[11] who were required to ensure their rates met (or would eventually meet) a certain benchmark for basic residential local exchange service that is set by the Commission. Total available funding at the fund's inception was set at $5 million – far below the anticipated annual amount necessary to support the small ILECs at the outset – and unused funds from the first year could be carried forward to be used in subsequent years.[12]

Importantly, the supporting parties to the Joint Proposal "agree[d] that the establishment of a *limited term* SUSF under the provisions of the Phase II Joint Proposal will provide secure, adequate support for those rural ILECs that can demonstrate specific need for it."[13]

The 2016 Joint Proposal

As required by the Phase II Order, the Commission initiated a proceeding in 2016 to review the SUSF and the issues generally raised regarding the viability of the State's wireline telephone

[9] *Id.* at p. 10.
[10] *Id.* at p. 12.
[11] *Id.* at p. 11. At the time, only three (3) companies were receiving funding under the TTFE.
[12] *Id.* at pp. 9-10.
[13] *Id.* at p. 15 (emphasis added).

providers.[14] By September 2016, the number of ILECs receiving SUSF funds to supplement shortfalls in revenue requirements increased from three to ten (10). A second Joint Proposal was presented by the parties in June 2016, and adopted by the Commission in September 2016.[15]

Under the terms of the 2016 Joint Proposal, the SUSF was extended for a further four years, through December 31, 2020. The annual maximum contribution level was set at $6.5 million per year, or a total of $26 million. The 2016 Joint Proposal did not modify the contributors to the SUSF or make changes to the manner in which a contributor's SUSF share was calculated – contributors were those who were required to contribute to the TAF as of 2015, and their contribution levels were based on the amount of their respective TAF-assessable revenue in 2015.[16] As was previously the case, any SUSF amounts not used in a given year would be rolled over for use in subsequent years.

The Commission, in adopting the 2016 Joint Proposal, noted that continuation of the SUSF ensured support for the rural ILECs that could demonstrate specific need, ensuring the continued availability of basic local residential service in the rural ILEC service territories. The Commission reiterated that "funding was intended to provide only a *limited* cushion against significant competitive revenue losses in the early years while requiring the ILECs to adjust to the rigors of a competitive market as time passes."[17]

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[14] Case 15-M-0742, *Proceeding on Motion of the Commission to Review the State Universal Service Fund*, Order Initiating Proceeding to Review State Universal Service Fund and Seeking Comments (issued January 22, 2016).
[15] *Id.*
[16] Case 15-M-0742, *Proceeding on Motion of the Commission to Review the State Universal Service Fund*, Order Adopting Joint Proposal, (issued September 16, 2016), pp. 8-9 (2016 Order).
[17] *Id.*, *citing* Case 94-C-0095, *Proceeding to Examine Issued 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 and Order Adopting Regulatory Framework, (issued May 22, 2013), p. 14 (emphasis added).

<u>The 2020 Joint Proposal</u>

In 2019, the New York State Telecommunications Association (NYSTA Smaller ILECs)[18] filed a petition seeking extension of the SUSF beyond the December 31, 2020 expiration date.[19] Following settlement discussions, the parties to the proceeding filed the 2020 Joint Proposal, which would extend the SUSF for two years, or until December 31, 2022.[20] The operative portions of the 2020 Joint Proposal were adopted by the Commission and continued the administrative framework of the previous SUSF Joint Proposals – same criteria for contributors and eligible recipients, excess contributions would roll over to future years, etc. – but made changes to the data reporting obligations of the small ILECs seeking SUSF support, including requirements to provide detailed information on competitive wireline alternatives in their service area, enhanced financial data, and detailed explanations on the steps taken by the eligible entity to improve its financial position. The 2020 Joint Proposal also decreased the annual SUSF maximum funding commitments to $6.25 million for 2021 and $6.0 million for 2022.[21] At the time of the adoption of the 2020 Joint Proposal, six (6) small ILECs received SUSF support, along with five (5) affiliates of TDS.[22]

The new reporting requirements require an eligible recipient to provide extensive location-specific information related to the availability of existing competitive providers in the eligible recipient's service territory, by December 31, 2021, under ¶ 2(e) of the 2020 Joint Proposal, and to update it monthly if necessary.[23] Eligible recipients receiving or requesting SUSF support are

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[18] The NYSTA Smaller ILECs were comprised of the eligible ILEC recipients, with the exception of Alteva of Warwick LLC (formerly Warwick Telephone Company).
[19] Case 15-M-0742, *Proceeding on Motion of the Commission to Review the State Universal Service Fund*, <u>Petition of NYSTA Smaller ILECs for Continuation of State Universal Service Fund</u>, filed August 2, 2019 (2019 Petition).
[20] Case 15-M-0742, *Proceeding on Motion of the Commission to Review the State Universal Service Fund*, <u>Order Adopting Joint Proposal</u>, (issued December 23, 2020), p. 2 (2020 Order).
[21] *Id.*
[22] *Id.* at p. 4.
[23] *Id.* at p. 10.

required to file financial data with the Commission by March 31, 2022, along with a showing of the steps taken by the eligible recipient to improve its financial position.[24]

The 2020 Joint Proposal also requires eligible recipients seeking SUSF support to submit a filing to the Commission demonstrating the steps taken by the eligible recipient to improve their financial position, including but not limited to entering into joint venture arrangements for operating functions, outsourcing operating functions, or pursuing mergers, acquisitions, or reorganization in bankruptcy. In the alternative, the eligible recipients could explain why they did not undertake any such steps to improve their financial position.[25] In its support for the 2020 Joint Proposal, DPS Staff asserted that the data collection requirements would allow the Commission to

> explore whether it would be less costly to provide funds via the SUSF to those Eligible Recipients to ensure service is provided to the "ever shrinking number of confirmed customers without a competitive alternative" than it would be to, for example, fund an alternative carrier to build out facilities to ensure voice service is available to those customers.[26]

DPS Staff also stressed the importance that future funding be the minimum amount needed to achieve the goal of statewide universal service.[27]

There were important reasons for requiring an eligible recipient to provide additional, enhanced competitive data, financial data, and explanations of the steps taken by the eligible entity to improve its financial position. First, as explained above, this information was intended to provide the Commission with a better understanding of the eligible recipient's financial status to determine the need to continue the SUSF and how eligible recipients are reducing their need for the SUSF. Second, the Commission wanted to discourage small ILEC reliance on the SUSF and

[24] *Id.*, 2020 Joint Proposal, ¶ 2(e) and ¶ 8(e).
[25] *Id.* at p. 11, 2020 Joint Proposal ¶ 8(e).
[26] *Id.* at pp. 15-16.
[27] *Id.* at p. 16.

encourage self-sustaining financial and operational viability.[28] In other words, the 2020 Order and 2020 Joint Proposal are deliberately aimed at *decreasing* participation in, and reliance on, the SUSF.

The NSIC Petition

The instant comments respond to a petition filed on December 15, 2021 by the New York Smaller ILEC Companies (NSICs), seeking a four-year extension of the SUSF at current funding amounts.[29] While the NSIC Petition was filed on behalf of 17 of the 30 small ILECs eligible for the SUSF, only six small ILECs and five TDS entities currently receive SUSF support.[30] The NSICs' Petition was ultimately filed in response to the obligation placed on the small ILECs in the 2020 Joint Proposal, which required an eligible recipient (any of the small ILECs) to file a petition seeking determination by the Commission that there is a continued need for the SUSF beyond the end of 2022.[31]

The NSICs' Petition hails the SUSF program and framework as a "success," and concludes that there is no sound "public policy, legal, or factual basis" that would support any conclusion other than an extension of the SUSF, under its current terms and conditions, beyond December 31, 2022.[32] The parties have exchanged voluminous discovery in this matter, with no end in sight. CTANY members and other parties are focused on determining the true financial picture of the

[28] *Id.* at p. 20.
[29] Case 15-M-0742, *Proceeding on Motion of the Commission to Review the State Universal Service Fund*, Petition for Extension of the State Universal Service Fund, (filed December 15, 2021), *passim*. (NSIC Petition).
[30] Some changes to the eligible recipients have occurred over the years, for example, Oriskany and Vernon previously received SUSF funding separately but as of April 1, 2018, Vernon's tariff reflects that Oriskany is now part of Vernon.
[31] 2020 Order, p. 9. The NSICs filed a "Motion for the Designation of a Presiding Officer and Prehearing Conference" on August 23, 2021, as well as an "Emergency Motion to Confirm Appointment and Authority of Administrative Law Judge," on October 8, 2021, ostensibly seeking procedural guidance before submitting their petition to the Commission.
[32] NSIC Petition, p. 8.

small ILECs, but have been met with limited success in obtaining responses. Rather than continuing with the never-ending exchange of discovery (and the motions that follow), CTANY recommends the Commission convene a technical conference [redacted] in the context of the expiration of the SUSF, and whether or not the fund needs to continue.

As CTANY demonstrates in these comments, the NSICs' conclusory arguments do not hold up against the Commission's stated assurances that the SUSF would be limited – both in duration and in amount – and instead support CTANY's conclusion that the SUSF should be eliminated.

Comments

I. The Commission Should Not Extend the SUSF Beyond December 31, 2022

The Commission should issue an Order denying the NSIC Petition and allowing the SUSF to expire on December 31, 2022. The original goals of the SUSF – the provision of a limited subsidy to rural ILECs caught in the rapid changes of a growing industry – have been subverted over the past decade into a perpetual fund that neither appropriately measures success nor reduces support. Establishment of a "limited term SUSF" was meant to "provide secure, adequate support for those rural ILECs that can demonstrate specific need for it."[33] At the time, only three entities were supported by the TTFE, and the initial $5 million allocated to the SUSF was not anticipated to exhaust in its first year. The fund – and the number of eligible recipients taking SUSF – has not decreased as expected from a limited fund intended to temporarily support a handful of small telephone companies over a four year period. Instead, it has increased both in terms of the number

[33] Phase II Order, p. 15.

of participants and amount of financial support provided to the small ILECs, and now demands more than $5 million in annual support payments to the small ILECs (and one comparatively larger ILEC, TDS). The SUSF is moving in the wrong direction.

Fundamental flaws exist with the current fund as applied to each of the NSIC members. [redacted]

A. The Small ILECs Cannot Demonstrate A Continued Need for SUSF Support

Ten years after the SUSF's establishment, the current realities have failed to meet the original expectations of an ever-shrinking SUSF with dwindling participation. The "smaller" ILECs in New York now seek a four-year extension of the SUSF, which has grown by 790% since 2012. In other words, despite the NSICs fundamentally altering their business plans to promote unregulated broadband and cable services, and while their historic role as voice providers continues to collapse to a relatively small part of their businesses as consumers have migrated to wireless and IP-based voice services, the NSICs continue to argue there is an ongoing and continued need for financial support to provide voice services to customers.

[redacted]

Under the terms and conditions of the 2020 Joint Proposal, the NSICs, as the petitioners, are charged with demonstrating to the Commission that there is a "need to establish a successor funding arrangement following the SUSF Renewal Period [ending December 31, 2022]."[35] Based on the NSIC Petition, the Commission may determine to extend the SUSF, and may further determine an appropriate funding level "should it be determined that a need still exists."[36] In other words, the 2020 Joint Proposal presupposes that the SUSF will end, absent a showing of need from the small ILECs. The smaller ILECs have not met their burden to demonstrate this need.

The Commission has reaffirmed in every order enabling and extending the SUSF its intent on the SUSF's "limited" and "temporary" nature.[37] Yet again, we are here to consider the need to continue this "temporary" and "limited" fund, long after the concern with pooling intrastate access charges has ended.[38]

A review of the SUSF's modest origins, as compared to its current size and number of participants, further support the notion that the NSICs cannot demonstrate that the SUSF should continue. When the SUSF was initially funded, in 2013, only $579,984 in SUSF was disbursed to three ILECs. In 2021, $5,159,527.08 was disbursed to eleven (11) recipients, one of which notably did not seek SUSF support until 2019.[39] Clearly, the goal of a limited fund that would encourage participants to move towards self-sustainability has not been met.

The SUSF has long since eclipsed its stated purpose and the mechanics of its operation are no longer relevant. The NSIC members cannot demonstrate that the SUSF should continue beyond December 31, 2022, and their petition should be denied.

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[35] 2020 Joint Proposal, ¶ 2(b).
[36] *Id*.
[37] 2012 Order, p. 14; 2016 Order, p. 16; 2020 Order, p. 19.
[38] *See* Phase II Order, p. 3.
[39] Source SUSF Administrator.

B. The NSICs Have Not Provided Any Reliable Evidence of Financial Need

The historical methodology for calculating need for purposes of receipt of SUSF by eligible recipients is based on decades old, flawed, outdated cost-allocation rules that ignore the majority of the revenues and revenue sources of the eligible recipients. As more fully explained in the Gillan Report, without a proper evaluation of the allocation of revenues and expenses by the NSIC members, any determination of need for SUSF support will be based on a distorted financial picture from a system that produces a misalignment of costs and revenues.

The requirements of Attachment D under the 2020 Joint Proposal are based solely on "intrastate" revenue and cost information, compiled under federal rules established long before the internet, which have not been updated in decades to reflect contemporary broadband networks. These separations rules required rate-of-return LECs to divide the cost of providing service between the interstate and intrastate jurisdictions in a manner reflecting each jurisdiction's use (or assumed use) of the LEC's network.[40] Importantly, the allocation rule for Category 1 outside plant was fixed at 75% allocated to the states, with only 25% allocated to interstate. These percentages may have been a reasonable political compromise when the interstate component was limited to interstate long distance voice service. This allocation no longer makes sense, however, in an environment where the vast majority of usage on an upgraded broadband network is Internet access and video service. And yet, today 75% of the cost remains attributed to intrastate voice service, even though voice service uses only a small fraction on broadband networks. These outdated FCC rules and the SUSF's reliance on these outdated metrics that, on their face, misallocate network costs, result in small ILECs being subsidized by CTANY members' customers. NARUC

[40] 47 C.F.R. Part 36.

explained exactly how the misinformation produced by these obsolete federal rules could be used to portray a distorted picture of unprofitability:

> The misallocation of those network costs are ultimately reflected in the higher rates that the States' consumers and businesses pay for voice services. **They skew State and federal universal service programs and provide the basis for arguments that intrastate telecommunications services are "not profitable."**"[41]

In the course of this proceeding, CTANY confirmed, through analysis of the responses to its discovery requests, that *all* of the NSICs uniformly utilize the same infrastructure (i.e., local loop) to provide voice service as they use to provide broadband or internet access service.[42] In other words, the NSICs are engaging in exactly the type of behavior that, when viewed through the prism of obsolete rules, distorts their financial status and makes it appear that SUSF support is needed.

Given the distorted financial picture presented by the underlying mechanics of the SUSF and the continued reliance on this outdated model, the NSICs cannot affirmatively demonstrate a financial need to justify continuing the SUSF beyond December 31, 2022 based purely on the information provided in Attachment D.[43]

C. Attachment D Perpetuates A Concerning Fiction

In order to continue to receive SUSF funds, the small ILECs have been essentially charged with demonstrating financial need based on an "intrastate revenue requirement." [redacted]

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[41] *Id.* at p. 6 (emphasis added).
[42] NSIC Response to CTANY 1, Data Request 4 (Attachment A).
[43] CTANY members wish to make clear that there is no accusation of any kind that the NSICs are engaging in behavior that is intentionally fraudulent; rather the tools used to calculate or demonstrate SUSF need create an inaccurate picture of the financial health of the NSICs.

[redacted]

TDS Telecom, which has five small ILEC affiliates receiving the majority of SUSF support annually (Vernon, Port Byron, Township, Deposit, and Edwards received $3,494,675.04 of the $5,159,527.08 in SUSF support disbursed in 2021), is a Fortune 1000 company that has transformed from a telephone to a broadband company.[44] Despite taking up over two-thirds of SUSF support annually, this company has increased its dividends annually over the past 47 years, and is actively moving away from the provision of wireline voice services to broadband and video services.[45] TDS Telecom's annual reports make clear that while voice revenues are declining, broadband and video connections are growing. Moreover, this declining voice telephone pricing and demand is just one source of revenue that determines whether shared investments in fiber and transmission are profitable.[46]

[redacted]

[44] Gillan Report ¶ 31, 33.
[45] *Id*. at ¶¶ 32, 34.
[46] *Id*. at ¶¶ 37-38.
[47] *Id*. at Table 4, ¶ 43.

[redacted]

[redacted]

The analysis under Attachment D is flawed – at least, if the SUSF is intended to be temporary and only provide support where there is not a viable business model to provide service. Attachment D creates a presumption of financial need, and this has required CTANY members' customers to subsidize, among others, a Fortune 1000 company that clearly does not need the money. The SUSF was not intended to create a bureaucratic piggy bank that could be exploited through a paper exercise. As it is clearly no longer meeting its goals, the SUSF should be allowed to sunset at the end of 2022.

D. The Proliferation of Competitive Alternatives to Wireline Voice Service Throughout New York State Obviates the Need for Continuation of the SUSF

As more thoroughly explained in Section I.C. above, as well as by the Gillan Report, the SUSF has served its purpose; the incomplete financial picture the NSICs use to seek support is misleading, and these companies are becoming wireline broadband (and video) providers to survive. The second main goal of the SUSF was to ensure that competitive alternatives would have time to develop so that customers of the small ILECs would have more telephone options than basic local exchange service. In the decade since the SUSF was established, a proliferation

[48] *Id.* at Table 5, ¶ 48.

of different provider and options have emerged, ensuring the SUSF has satisfied its goal of ensuring additional time to enable competitive providers to step into the spaces that were once solely occupied by the NSICs.

When the SUSF was originally established, the Commission made note of the Phase II Recommended Decision provided by ALJ Howard Jack which recommended finding that "platforms alternative to ILEC wireline service are unavailable for a significant number of residential locations within the 31 service territories of the Smaller ILECs."[49] A decade later, consumers have largely moved to wireless for their voice service needs. A recent CDC survey indicates that 68% of the households now rely *exclusively* on wireless service, with another 29.3% relying predominantly on wireless (even though they also have a landline) for voice service. Only 1.9% of the households rely exclusively on a landline phone.[50]

Broadband access has proliferated across the state. New York invested $500 million in the New NY Broadband Program to expand service to over 250,000 locations across the state. A number of affiliates of the NSICs – including NSICs currently receiving SUSF support – have been awarded significant funds under the Program to expand their broadband infrastructure.[51] When the Program launched in 2015, 70% of the State had broadband access – but only 35% of upstate New York was served.[52] By early 2020, New York State was the fourth-most connected state in the country, with 98% of the population able to access internet connections of at least 100 Mbps.[53] Currently, New York ranks second across all states in the percentage of the population

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[49] Phase II Order, at p. 6.
[50] Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2021 Stephen J. Blumberg, Ph.D., and Julian V. Luke Division of Health Interview Statistics, National Center for Health Statistics. Table 1. Percent distribution of household telephone status for adults and children: United States, 2019-2021.
[51] https://nysbroadband.ny.gov/all-awards-phase
[52] https://nysbroadband.ny.gov/program-highlights
[53] https://www.cityandstateny.com/sponsors/sponsor-content/2020/02/sticking-to-new-yorks-model-for-achieving-

with access to broadband at home, and at least one provider offering at least 250/25 Mbps speeds is available to more than 98% of New Yorkers.[54] In addition, in considering broadband coverage available across New York's 63 counties, 52 of those counties reportedly have more than 90% broadband coverage.[55]

As discussed in detail by the NERA Report filed in this proceeding Verizon, (a copy of the report is provided in Appendix A to Verizon's comments), all the evidence in this proceeding shows that (including but not limited to analyst reports, market data, the filings that have been made under ¶ 2(e) of the 2020 Joint Proposal, and Form 477 data filed with the FCC) affordable competitive alternatives are widely available in the NSIC service areas and are accepted by consumers.

In addition, Starlink offers another potential competitive alternative that is growing as Space-X continues to launch its satellites to provide satellite internet services. Over 1,700 Starlink satellites have been launched as of February 2022, with more satellites anticipated to continue to help cover the continental United States, Canada, and the United Kingdom (and other countries in the northern latitudes).[56] The Starlink satellites, when fully deployed, will provide a ubiquitous alternative to voice and broadband services capable of supporting VoIP quality comparable to terrestrial networks, and promise speeds up to 300 Mbps to anyone in the world. This constellation of low-earth satellites is fundamentally different from the geostationary satellite services of the past, because low-earth orbit eliminates the delay characterizing the geostationary approach.

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universal-broadband/176372/

[54] Availability, Access, and Affordability: Understanding Broadband Challenges in New York State, New York State Comptroller, September 2021, p. 1; available at https://www.osc.state.ny.us/files/reports/pdf/broadband-availability.pdf

[55] *See* https://broadbandnow.com/New-York (last accessed March 23, 2022), containing an interactive map and list of Metro and Rural County Coverage in New York.

[56] https://www.tomsguide.com/news/starlink-internet-coverage-speed-cost-satellites-ipo-and-latest-news

The prevailing concern regarding the availability of local telephone service reflects an outdated understanding of how New Yorkers communicate today. The variety of competitive alternatives – both wired and wireless – demonstrates that the SUSF has served its purpose in ensuring the small ILECs remained viable long enough for these competitive options to develop and flourish. Given the financial success of the small ILECs, as well as the abundance of competitive options, it is not clear that there is any real need to continue the SUSF beyond December 31, 2022.

II. If the Commission Extends the SUSF, it Must Adjust its Manner of Calculating Profitability

[redacted]

The 2020 Joint Proposal requires eligible recipients to provide, in part, nonregulated revenue and expense information as well as net income reported in order to potentially continue receiving SUSF support through or after December 31, 2022.[57] However, aside from traditionally relying upon this information in determining an eligible recipient's financial "need" for SUSF support, the Commission is under no obligation to continue to rely on this outdated methodology.

[redacted]

[redacted]

[57] 2020 Order, 2020 Joint Proposal, ¶ 8(f)(ii).

[redacted]

[redacted]

Given that each of the Petitioners jointly use fiber investment to provide voice and internet/broadband (and/or other cable services)[60] – [redacted] – a mechanism that accounts for this jointly used fiber, instead of treating it as disproportionally intrastate cost, would assist the Commission in determining the true need, if any, for SUSF support. The evidence currently provided by the eligible recipients is essentially meaningless, and any future SUSF support should acknowledge an eligible recipient's [redacted] as its intrastate revenues. A technical conference

[redacted]

[59] https://nysbroadband.ny.gov/all-awards-phase

[60] *See* Attachment A.

could further assist the parties in establishing the appropriate criteria and metrics to utilize in the event any future universal services support is needed.

III. The Small ILECs That Did Not Comply With the Requirements of the 2020 Joint Proposal Should Be Excluded from Receipt of Any Potential Future SUSF

Verizon's Motion to Exclude[61] certain NSICs from receipt of any extension or renewal of the SUSF was deemed by ALJ Sayre to be premature and an issue for resolution by the Commission. CTANY therefore urges that the Commission exclude the NSICs that did not file the information required by the 2020 Joint Proposal from receipt of future SUSF support. The substantive requirements of the 2020 Joint Proposal, in addition to being agreed to by the then-parties to the case (which included all of the current SUSF recipients), were also adopted by the Commission in its 2020 Order and therefore applies to all similarly-situated companies. In addition, if the SUSF is renewed, CTANY argues that the very nature and purpose of the SUSF requires the Commission to limit future recipients of SUSF support to those NSICs currently receiving support and in compliance with the current Joint Proposal, and to not allow this fund's continued growth beyond the current expiration date.

The 2020 Joint Proposal adopted by the Commission was clear in ¶ 2(e)(ii) that any eligible recipient "that is receiving or will request funding after the SUSF Renewal Period [December 31, 2022]" has to file detailed location related data on or before December 31, 2021.[62] Of the 30 potential eligible recipients of SUSF support, 15 made filings as required under this paragraph of

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[61] Case 15-M-0742, *Proceeding on Motion of the Commission to Review the State Universal Service Fund*, Motion to Exclude, filed February 1, 2022.
[62] 2020 Order, 2020 Joint Proposal, ¶ 2(e)(ii).

the Joint Proposal.[63] One NSIC, Nicholville, filed its ¶ 2(e)(ii) data on February 28, 2022;[64] another, Middleburgh, indicated in response to information requests that it "was not able to gather the extensive data required to make this [¶ 2(e)(ii)] filing, but reserves all rights, and may in the future make an appropriate filing and seek some form of SUSF from the Commission."[65] CTANY notes that neither Nicholville nor Middleburgh were or are recipients of SUSF support.

Nicolville and Middleburgh, as well as the remaining small ILECs identified as eligible recipients in the 2020 Joint Proposal but not currently seeking or receiving SUSF support,[66] should not be able to receive any future SUSF support after December 31, 2022 as no timely ¶ 2(e)(ii) data was filed as required by the 2020 Joint Proposal.

The 2020 Joint Proposal imposes additional deadlines, which are rapidly approaching. Days after these comments are filed, eligible recipients of the SUSF that are currently or in the future will be seeking SUSF support must file detailed financial information pursuant to ¶ 2(f), and must also provide a summary of the steps taken by the eligible recipient to improve its financial position, pursuant to ¶ 8(e). This information must be filed by March 31, 2022. It is obviously too soon to tell which entities will fully comply with the Commission's Order adopting the operative provisions of the Joint Proposal (including, but not limited to, ¶ 2(e)(ii), ¶ 2(f), and ¶

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[63] The entities that timely filed are Armstrong, Chazy & Westport, Crown Point, Delhi, Fishers Island, Germantown, Newport, Oneida, Pattersonville, State, TDS-Deposit, TDS-Edwards, TDS Port Byron, TDS Township, and TDS Vernon.

[64] Nicholville originally requested an extension to February 28, 2022 to file its ¶ 2(e)(ii) data; however the Secretary granted an extension to January 14, 2022 to file the required data. *See* Case 15-M-0742, *Proceeding on Motion of the Commission to Review the State Universal Service Fund*, Ruling on Extension Request, issued December 29, 2021. The January 14, 2021 extension date was consistent with extension requests granted to other NSICs in this proceeding.

[65] NSIC Response to Interrogatory VZ NSIC 9(c) (Fourth set of interrogatories).

[66] Berkshire, Cassadaga, Champlain, Chautauqua & Erie, Citizens of Hammond, Dunkirk and Fredonia, Empire, Hancock, Margaretville, Ontario, Taconic, Trumansburg, and Alteva of Warwick. In addition, these 13 companies are not signatories to the New York Smaller ILEC's group petition, and do not appear to be participating in this proceeding.

8(e)), but CTANY urges the Commission to exclude any otherwise eligible entity from participation in any future SUSF award if the additional information required by the 2020 Joint Proposal is not timely filed by the entity.

CTANY acknowledges that Verizon's Motion was denied, however, in his ruling, ALJ Sayre indicated that the

> ILECs that have not filed the December 31, 2021 data should be aware that the absence of the required data may, at the conclusion of this case, lead to a determination by the Commission that they have failed to provide a sufficient showing of need for post-2022 funding in their service territories, and that they will therefore not be eligible for funding.[67]

By extension, ILECs that fail to file the required March 31, 2022 data should be similarly aware that failure to comply with the 2020 Joint Proposal rightfully jeopardizes, and should completely exclude, any otherwise eligible entity from receipt of future SUSF support.

Beyond these obvious restrictions to future SUSF participation, CTANY argues that it would be consistent with the Commission's determinations in this matter to consider limiting the pool of eligible recipients from receipt of future SUSF awards. The 2016 Joint Proposal was supposed to give "security to contributing carriers (and, indirectly, to their customers) that the financial support they provide will be limited in amount and duration . . ."[68] The 2020 Order similarly provided that "the declining amount of the SUSF as a whole, the limited duration of the extension and the comprehensive review of the need for any successor support mechanism provides the contributing carriers some relief (and indirectly, to their customers) that the financial support they provide will be limited in amount and duration."[69] Respectfully, as evidenced by the

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[67] Case 15-M-0742, *Proceeding on Motion of the Commission to Review the State Universal Service Fund*, Ruling Denying Motion to Exclude, issued February 22, 2022, pp. 4-5.
[68] 2016 Order, p. 16.
[69] 2020 Order, p. 19.

purported "need" of the NSICs for continued support, CTANY is not convinced that the SUSF will be limited in amount and duration as long as an opportunity remains available for additional ILECs to seek SUSF support.

Inclusion of TDS Edwards, the most recent eligible entity to begin receiving SUSF support, has led to the disbursement of over $1 million in SUSF support to that ILEC alone since 2019. It is unclear why an entity would suddenly be faced with financial harm without subsidies for providing local telephone service, at a time when existing competitive alternatives are abundant and the ILEC otherwise was seemingly able to operate without pre-existing SUSF support.

There is no reason, ten years after the establishment of the fund, for any company to suddenly demonstrate such dire financial straits as to warrant the need to subsidize activities they could carry on without issue for over a decade. Based purely on the Commission's desire to ensure the SUSF fund was limited and intended to put those financially challenged smaller ILECs on a path towards financial solvency, the SUSF should not be allowed to expand to support any additional entities in any future SUSF period. In the most recent extension of the SUSF, the previously-adopted four year SUSF periods were abandoned for a truncated two year term, in acknowledgement of the fact that the SUSF should be finite, and is intended to end. It would behoove the Commission to consider excluding from receipt of future SUSF awards those entities that have never in the past requested, or qualified for, SUSF support. Such a move would signal that the SUSF truly is limited, and will wind down as eligible recipients are expected to improve their financial status – or perhaps, include their interstate revenues in their SUSF need calculations.

CONCLUSION

CTANY thanks the Commission for the opportunity to provide these comments in response to the Notice. As more fully explained herein, it is time for the SUSF to sunset on December 31, 2022, as there is no reliable proof of financial need that can be provided by the small ILECs based on the current methodology for calculating SUSF need, and as competitive alternatives to basic local telephone service abound and proliferate across the State. Rather than ensure a smooth transition to a competitive market for the small ILECs, the SUSF has been distorted over time, and no longer serves the goals it was intended to support.

In the event the Commission determines the SUSF should be extended, it is time for the Commission to end the analysis of need for SUSF support based on misleading pictures of financial distress. [redacted]. Reviewing the financial underpinnings of the SUSF and the true financial status of the small ILECs will allow the Commission the opportunity to appropriately decide the future of the SUSF and serve the public interest by ensuring that the fund is appropriately tailored in size and scope. The Commission should also take steps to limit the number of future SUSF recipients to those entities currently receiving support that comply with the requirements of the Joint Proposal, and should convene a technical conference so the parties can discuss the small ILECs and the best way(s) to ensure they can serve their customers without further subsidies.

As there is currently no demonstrable need for continuation of the SUSF, CTANY urges the Commission to deny the NSICs' Petition and allow the SUSF to end on December 31, 2022.

Dated: March 28, 2022

/s/ Ekin Senlet

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ATTACHMENT A

CTANY Request 4:

For each NSIC, identify what proportion of its voice service is capable of, or could be provided over the same access facilities that it uses to provide broadband or internet service (*i.e.*, it is on a shared physical facility to the customer premises).

RESPONSE:

The NSIC members object to this Request on the basis of the General Objections and specifically as relates to information that is based on efforts to seek information using an undefined and thus vague term "voice service."

Moreover, the NSIC members object to this request in that it seeks information using an undefined and thus vague term "access facilities." The NSIC members note that, for purposes of this response, the term "access facilities" is defined as the local loop, *i.e.*, that is the facility from the serving central office to the Network Interface Device located at the end user premises.

Subject to the forgoing and without waiver of the stated objections, 100%.

NSIC MEMBER RESPONSIBLE PARTY FOR RESPONSE:

Armstrong Telephone Company-New York – Kelly Chapman

Chazy & Westport Telephone Corporation – Jim Forcier

Crown Point Telephone Corporation – Shana Macey

Delhi Telephone Company – Jason Miller

Fishers Island Telephone Corporation – J. Chris Finan

Germantown Telephone Company, Inc. – Greg Andreas

Middleburgh Telephone Company – James Becker

Newport Telephone Company, Inc. – Joe Tomaino

Nicholville Telephone Company – Jeff McGrath

Oneida County Rural Telephone Company – Jim McCarthy

Pattersonville Telephone Company – Nicole Rodriguez

State Telephone Company, Inc. – Mark Evans

TDS Telecom - Deposit Telephone Company, Inc.
TDS Telecom - Edwards Telephone Company, Inc.
TDS Telecom - Port Byron Telephone Company
TDS Telecom - Township Telephone Company, Inc.; and
TDS Telecom - Vernon Telephone Company, Inc. – Richard Schoenberger

State of New York
Public Service Commission

Proceeding on Motion of the Commission to Review the State Universal Service Fund	)))	**Case 15-M-0742**

Assessing the Financial Status of Small ILECs in New York
Report of Joseph Gillan

Qualifications

1. My name is Joseph Gillan. I am a consulting economist with over 40 years of experience providing economic and policy analysis to businesses and government agencies in the telecommunications industry.

2. I began my professional career (1979) as an intern with the Mountain Bell Telephone Company developing statistical models estimating the consumer reaction to changes in the price for local telephone service. The work I performed for Mountain Bell became the basis of my thesis and later that year I was awarded an M.A. Degree in Economics from the University of Wyoming (as part of a program that focused on the economics of public utilities and regulated industries).

3. For five years I served on the staff of the Illinois Commerce Commission. I was ultimately named Policy Director - Market Structure with primary responsibility for the analysis of issues created by the emergence of competition in regulated markets. In addition, I represented the Commission in its national advocacy as a member of the National Association of Regulatory Utility Commissioners' ("NARUC") Staff Subcommittee on Communications.

4. In 1985, I left the staff of the Illinois Commerce Commission to become the Director of Regulatory Affairs with US Switch, a company working to construct long distance networks in partnership with independent (*i.e.*, non-AT&T) local telephone companies. My final title at US Switch was Vice President-Strategic Planning, where I had continuing responsibility for the company's regulatory compliance/advocacy, as well as responsibility for contract negotiations with independent telephone companies and project management for the company's pilot project in Indiana (which ultimately failed to attract the investment to become operational).

5. In 1987 I left US Switch to start my consulting practice. As a consultant, I have testified (or provided affidavits and/or reports) over 300 times before more than 40 state utility commissions, numerous state legislatures and the Federal Communications Commission ("FCC"). I have also provided testimony in federal and state civil courts, as well as filed expert reports with the Finance Ministry of the Cayman Islands and the Canadian Radio-Telecommunications Commission.

6. In addition to my consulting and business activity, I have volunteered as an instructor at the annual regulatory studies program at Michigan State University ("Camp NARUC") and have taught at similar programs sponsored by New Mexico State University and the University of Wyoming. I have also lectured on telecommunications issues at the Northwestern University Law School; the School of Laws, University of London (United Kingdom); and co-instructed *Telecom Policy and Regulation for Next Generation Networks* with Dr. Mark Jamison for the staff at the Office of the Communications Authority (Hong Kong, China).

7. I have been named a Senior Fellow at the Institute of Public Utilities at Michigan State University, I serve on the Advisory Council to the New Mexico State University Center for Regulation (and as its 2021/22 Chair), and I am on the Advisory Council to the Regulatory Training Initiative, an educational project of the National Regulatory Research Institute ("NRRI").

8. In 2008, I was nominated by the Chairman of the FCC to serve on the Board of Directors for the Universal Service Administrative Company ("USAC"), the not-for-profit corporation established at the direction of the FCC to administer federal universal service programs.[1] I was re-nominated to the USAC Board of Directors in 2009, 2013, 2017, and 2020. I currently serve as USAC's Chairman of the Board.[2]

Purpose of Report

9. The central purpose of this proceeding is to determine whether the New York State Universal Service Fund (SUSF) should be extended and, if so, what reforms are necessary for the fund to operate in the public interest. In the report below, I evaluate the financial metrics *presently* available to judge whether the Petitioning New York Small ILEC Companies ("NSIC") require continuing subsidy.[3]

10. Structurally, the SUSF is unambiguously broken. The fund was adopted to provide *time* for small Independent Local Exchange Companies ("ILECs") to adapt, but then completely *ignores* how well they are doing in that adaptation to a broadband-based future. Rather than look at the progress – and profitability – of these companies as they move to a revised business model focused on broadband,[4] the SUSF looks backwards and calculates the irrelevant metric of an "intrastate return," determined according to obsolete allocation rules that have never been updated to recognize the multi-service operation of a contemporary broadband network.

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[1] The USAC Board is comprised of representatives from different constituent groups. I hold the seat designated to represent the interests of competitive local exchange carriers.

[2] To be clear, the USAC role is purely administrative, and the views expressed herein are unrelated to my duties on the USAC Board.

[3] Discovery in this proceeding is ongoing and I expect/intend to conduct further analysis as data becomes available and in accordance with the procedural schedule.

[4] To be clear, broadband networks can and do provide voice service, but the offerings require trivial levels of capacity and, as such, are causally responsible for only trivial levels of cost.

11. In reaching this conclusion, the report below demonstrates:

> The SUSF fund was adopted as a transitional mechanism to enable traditional telephone companies the time needed to adapt to new technologies, consumer expectations, and competition. The common adaptation path for wireline providers – including the petitioning NSIC members – is to deploy broadband networks, offer Internet and video services, and thus become less reliant on voice service and its associated revenues.
>
> Consumer voice service has largely migrated to wireless technology. This is not to say that wireline voice has no role or importance, but rather that consumer preferences – preferences that *all* wireline providers must accept, including large ILECs, cable companies and small ILECs alike – have fundamentally changed.
>
> The financial metrics provided by the Petitioners (Attachment D to their Petition) are misleading because they necessarily overstate relevant costs and understate the relevant revenues. The cost allocation rules upon which the Petitioner's Attachment D rely are firmly grounded in the 1980s, well before the emergence of fiber technology, the Internet, and the dominance of broadband as the principal driver of network design and cost. Specifically, these rules allocate 75% of outside plant costs to intrastate, even though the vast majority of the capacity on such systems is used to provide interstate and deregulated services.[5] Obviously, such a mismatch of cost and revenues, if evaluated solely through the lens of a fictional "intrastate" income statement will *always* conclude that outside help is needed – but only because no carrier could hope to recover the cost of broadband networks solely through declining voice revenues.

[redacted]

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[5] Even ten years ago, when networks were less robust, it was estimated that less than 1% of the traffic on the wireline network is voice and the rest is Internet and other non-regulated services. *See* Statement of Dr. Robert Loube on Behalf of The Office of Consumer Advocate, Pennsylvania Public Utilities Commission Case No. R-2018-3004019 (et al), filed 4/13/2020, at 5 citing Anna-Maria Kovacs, *Telecommunications Competition: The Infrastructure-Investment Race,* October 8, 2013.

[redacted]

> Confidential Capital Projects Reports reveal that the NSIC members are firmly engaged in transitioning to broadband networks, although some are closer to 100% than others.
>
> There are 24 small ILECs eligible to draw from the SUSF and two much larger companies, Taconic Telephone (that has not petitioned for support) and TDS Telecom (that has). A comparison of key financial metrics do *not* explain why the 13 petitioners (12 small ILECs and TDS) need subsidy, while the remaining 12 small companies and Taconic do not. Most of the companies have the infrastructure to provide broadband and video services and are actively doing so.

12. The financial claims of the Petitioners inaccurately portray their true financial status by ignoring the very broadband services and revenues that lie at the core of their new business model. Attachment D proves only that a fictional income calculation that ignores contemporary reality – but which (presumably) complies with obsolete rules – will produce a negative return, no matter how profitable a company is that has shifted to broadband.

<u>The SUSF Was Adopted to Buy Time, Not Dependency</u>

13. The Commission has long recognized that it initiated the SUSF because it was in "…a period when the telecommunications marketplace in the State, and federal policies that may significantly affect it, remain in flux."[7] Critically, the Commission noted that the SUSF was transitional:

> … funding was intended to provide only a limited cushion against significant competitive revenue losses in the early years while requiring the ILECs <u>to adjust to the rigors of a competitive market as time passes</u>.[8]

14. Early on, the Commission could not be certain how companies might adapt to the rigors of a "competitive market" over time. Today, however, the shape of that market is reasonably clear. The fundamental nature of a competitive market is that consumers have choices and consumer preferences are revealed by how they vote with their dollars. As explained below, the consequences of those preferences are now clear. To survive, wireline providers must become broadband providers to attract and retain customers.

15. Fortunately, the small ILECs in New York *are* becoming broadband providers (although some use affiliate structures to do so), frequently with significant assistance from state and federal funding systems where the economics of broadband are less favorable. There is nothing in the SUSF – or the information provided in the Petition – that recognizes this goal, its path, the ILEC's progress along the path, or the ultimate financial parameters that result with its completion.

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[7] *Order Adopting Joint Proposal*, Proceeding on Motion of the Commission to Review the State Universal Service Fund, Case 15-M-0742, Issued and Effective September 16, 2016, at 19.

[8] *Ibid.* at 16.

<u>The Petitioners Negative Intrastate Returns are a Regulatory Fiction</u>

16. The financial calculations provided in Petitioners' Attachment D are, as the petitioners say, "time honored" – which is a polite way to say exceptionally old and, in this case, outdated to the point that such calculations are no longer fit for purpose.[9] As the Petitioners admit, the "intrastate return" shown in Attachment D was calculated in accordance with various federal cost allocation rules that have historically been used to determine the levels of interstate and intrastate costs.

17. The relevant issue, however, is not whether these rules were *followed*, but whether the rules are *useful* to the exercise before the Commission here, which is to determine whether the SUSF is necessary or in the public interest. The rules simply are no longer useful to the Commission and should be abandoned for SUSF calculations.

18. As explained throughout this report, there is a fundamental transition underway to move from narrowband voice networks (commonly copper) to broadband networks that support Internet access, video *and* voice (with that latter requiring relatively little incremental effort and a trivial level of capacity). The federal rules underlying the Attachment D calculation have never been updated to reflect the realities of this transition. Rather, the rules are known to produce distorted outcomes, most particularly by inflating intrastate costs and ignoring critically important revenue streams.

19. There are two problems. The first is the fixed allocator used to apportion outside plant (for simplicity, loop) costs between the states and FCC. In the early 1980s, the states and the FCC agreed to use a fixed allocator that assigned 75% of the loop cost to the states, with the FCC accepting responsibility for 25%, irrespective of the actual usage of the network.[10] Second, in 2001, the FCC froze the allocations applied to other cost categories, subject to limited opportunities to update these relationships.[11]

20. The problems caused by these actions are not unknown. The FCC periodically admits the problems caused by these obsolete rules but has chosen to avoid correction. For instance, in a recent order the FCC extended the separations freeze for a further six years and explained:[12]

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[9] *Petition* at p. 18.

[10] At a time when this allocation was a proxy for local calls compared to interstate long distance calls, these fixed factors may have been reasonable (although never perfect).

[11] *See*, for instance, *In the Matter of Jurisdictional Separations & Referral to the Fed.-State Joint Bd.*, No. CC 80-286, 2018 WL 6629368, at *6 (OHMSV Dec. 17, 2018) ("*Continuing Freeze Order*").

[12] This Order did allow rate-of-return carriers that elected to opt out of the freeze but did not correct for the distorting effect of the fixed allocator, which has a larger impact.

> The current rules focus on allocating between the interstate and intrastate jurisdictions the costs of circuit switched voice services provided over primarily copper networks. Those rules have largely been *in place since 1969* …[13]
>
> We [the FCC] agree with NARUC that the existing separations rules, which presume circuit-switched, primarily voice networks, require updating to reflect today's network configurations and mix of broadband, video, and voice services. We also share NARUC's … [and others'] concern that those rules *necessarily* misallocate network costs.[14]

21. Notably, the specific NARUC comments cited by the FCC provide, in pertinent part,

> The current Separations process necessarily misallocates network costs and revenues - attributing 75% of network costs to states based on the inaccurate presumption that networks are still used primarily for intrastate voice services.
>
> But voice is no longer the dominant use of telecommunications networks so even assuming the current split of voice traffic remains approximately 75% intrastate and 25% interstate, use of those percentages no longer makes sense. Why? Because voice service use of the common network has been dwarfed by internet and other broadband access services the FCC classifies as interstate.
>
> This means, at least with respect to rate-of–return carriers, States bear 75% of the cost of the network facilities, even though the revenues for broadband and other mixed-use services are allocated to interstate services. This apparent cross-subsidization of interstate services hurts consumers and rural America's ability to compete in a global economy.[15]

22. NARUC further explained how the misinformation produced by these obsolete federal rules could be used to portray a distorted picture of unprofitability:

> The misallocation of those network costs are ultimately reflected in the higher rates that the States' consumers and businesses pay for voice services. They skew State and federal universal service programs and provide the basis for arguments that intrastate telecommunications services are "not profitable."[16]

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13 *Continuing Freeze Order* at ¶ 26 (footnotes omitted) (emphasis added).

14 *Id*. at ¶ 43 (emphasis added).

15 NARUC Comments, Federal Communications Commission Docket CC 80-286, August 27, 2018, at p. 8 (emphasis added).

16 *Id.* at p. 6.

23. Attachment D is a regulatory fiction, for there no longer *is* a circuit-switched narrowband network operating in New York (except in isolated instances).[17] Each of the petitioning NSICs admit that they use the same access (i.e., local loop) to provide broadband or Internet access service as they use to provide voice, which necessarily means that the overall profitability of the enterprise can only be determined by looking at the revenues from *all* the services using this shared facility.[18] [redacted]

The Dominant Technology for Voice Service is Wireless

24. There was a time when *wireline* phone service and *phone* service were synonymous. That is no longer the case. The fact is that consumers have changed their minds – the favored technology for voice service today is the wireless phone, not the wireline network.

25. This is not to say that wireline phone service no longer has a role or that there is no public-policy interest in encouraging alternatives. Rather, the point is that the market has simply changed and, as a business proposition, wireline business plans cannot be voice-driven as they were in the past to be successful.

26. The following Table 1 proves the point. The Centers for Disease Control ("CDC") have been tracking the emergence of wireless technology and its substitution for wireline service since 2006.[19] These surveys document the nation's transition to wireless service over time, by age group, region and other factors.

27. There is little question that wireless technology is now the preferred method for voice service. Consider the following breakdown by age from the most recent survey (June 2021):

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17 *See* Confidential Exhibit JPG-1 for a summary demonstrating the transition to broadband networks by these ILECs, including the percentage of its customers that purchase voice service in a bundle with Internet access.

18 NSIC Response to CTANY 1, Data Request 4.

19 The CDC may seem an odd agency to track wireless substitution. Certainly in 2006, when the survey started, most major surveys (including periodic health surveys) did not include wireless telephone numbers when conducting random-digit-dial telephone surveys. Therefore, an inability to reach households with only wireless telephones (or with no telephone service) could cause bias if there were substantive health differences between persons with and without landline telephones. As a result, the CDC was interested in understanding the transition to wireless service and its impact on the reliability of telephone surveys. *See* https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200705.pdf at 3.

Table 1: The Dominance of Wireless Technology in the Voice Market[20]

Age Group	Wireless-only adults	Wireless-mostly adults	Dual-users	Wireless-Oriented Adults[21]	Landline-mostly adults	Landline-only adults	Landline-Oriented Adults[22]
18–24	76%	16%	4%	96%	1%	1%	2%
25–29	85%	10%	2%	97%	1%	1%	2%
30–34	86%	10%	2%	98%	0%	1%	1%
35–44	79%	14%	4%	96%	1%	1%	2%
45–64	66%	19%	9%	94%	3%	2%	4%
65 and over	41%	16%	18%	74%	15%	9%	24%

28. This is not to suggest that *everyone* has shifted to wireless service for all their voice. But as a business proposition, if your business model is focused on a minority (24%) of only those that are of retirement age, unless you are AARP, you have a problem. This is one of the reasons why wireline business models are moving to broadband (which continue to provide voice service, but not as the principal design or revenue motivator).

29. To be complete, the data does also show that wireless adoption is somewhat less in the Northeast (that includes New York) and in non-metropolitan areas (Table 2 below). As with the conclusion above, however, the point is not that there aren't *some* customers that continue to rely on wireline technology for voice, but rather that is a relatively narrow (and declining) niche that is unlikely – *highly* unlikely – to justify a voice-oriented wireline business plan. Survival requires adaptation and that adaptation path for wireline providers is by deploying broadband networks that support, but are not defined by, voice service.

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20 Source: *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2021*, Stephen J. Blumberg, Ph.D., and Julian V. Luke Division of Health Interview Statistics, National Center for Health Statistics, Centers for Disease Control, Table 2.

21 Wireless-oriented adults (calculated by the author) is the sum of "wireless only," "wireless mostly" and "dual user" respondents. These are CDC-defined categories, with "wireless mostly" being all or almost all calls are on the cell phone and "dual users" are those that respond "some [are] on your cell phone and some on your home phone."

22 Landline-oriented adults is the sum of "landline only" and "landline mostly."

Table 2: Regional and Metropolitan Status Reinforce the Dominance of Wireless Voice

Feature	Wireless-only adults	Wireless-mostly adults	Dual-users	Wireless-Oriented Adults[23]	Landline-mostly adults	Landline-only adults	Landline-Oriented Adults[24]
Northeast	54%	20%	14%	88%	6%	5%	11%
Metro	68%	16%	8%	91%	4%	3%	7%
Non-Metro	65%	14%	8%	87%	7%	5%	12%

30. Given the data above, the Commission should not be surprised that the adaptation path chosen by the small (and not so small) ILECs is to expand their broadband portfolio. And, as explained below, when these additional services (and costs) are considered, the negative returns claimed by the petitioners can disappear.

<u>Case Study One: TDS Telecom</u>

31. To begin, TDS is hardly a small ILEC. TDS Telecom is a nationwide provider with 1.2 million connections.[25] In New York, 5 affiliates draw from the SUSF (Edwards, Deposit, Township, Port Byron and Vernon). By its own description, TDS (a Fortune1000 company) is a “rapidly growing technology company” that has largely transitioned from its historic local telephone company roots. This transition has been highly successful, as TDS explains:

> 2020 was transformational for TDS Telecom, resulting in one of the most successful years in our history. The seismic shift to remote working and learning highlighted the importance of high-speed broadband in the home. Demand for increased home broadband data speeds and continued popularity of bundled video products, led to higher average revenue per user.[26]

32. Having 2020 described as “one of the most successful years in [its] history” is particularly impressive as TDS has <u>increased its cash dividends every year for 47 years</u>.[27] Such results are far different than the claim in Attachment D that TDS is experiencing negative returns in New York.

[23] Wireless-oriented adults is the sum of “wireless only,” “wireless mostly” and “dual user” respondents. These are CDC-defined categories, with “wireless mostly” being all or almost all calls are on the cell phone and “dual users” are those that respond “some [are] on your cell phone and some on your home phone.”

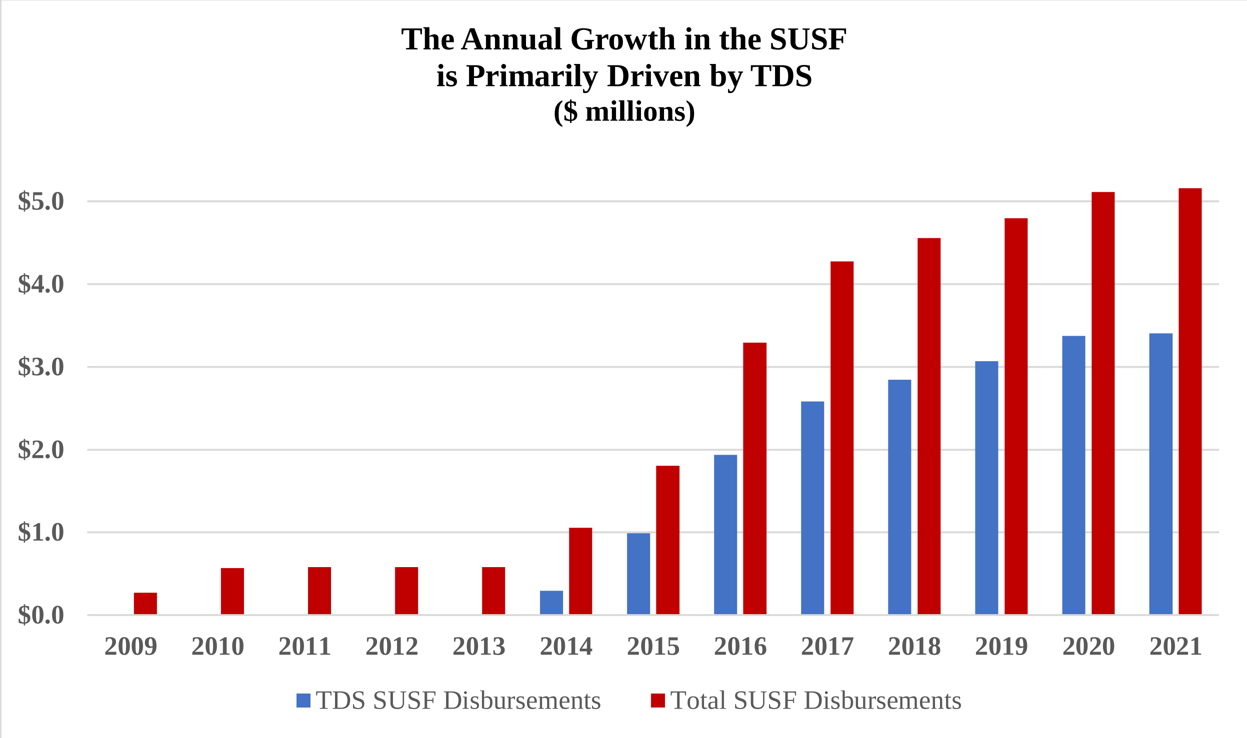
[24] Landline-oriented adults is the sum of “landline only” and “landline mostly.”

[25] https://tdstelecom.com/about/company-information/company-profile.html

[26] TDS 2020 Annual Report, Letter to Shareholders.

[27] *Id.*

33. TDS is important to evaluate for another reason than simply its size (and the inconsistency between its claims in this proceeding and its national performance). TDS is also largely responsible for the rapid growth of the SUSF. Although the SUSF remained a relatively small fund through 2014, once TDS tapped into its mechanics, the fund increased nearly nine-fold to nearly $5.2 million per year, with TDS responsible for nearly 75% of the growth during this period.



34. As the principal driver of the SUSF's growth, TDS is the poster-child of an ILEC that has aggressively pursued the diversification needed to survive in a changed marketplace. Even as far back as 2014 (the first year TDS drew from the SUSF), the corporation was touting its intent to shift to broadband:

> It is our strategic intent to transition our wireline business from one in secular decline into a growth business. We will execute on this strategy by providing superior broadband, video, and voice services in our wireline and cable markets and continuing to build our HMS [hosted and managed services] business.[28]

[28] TDS 2014 Annual Report at 7.

35. The TDS focus on broadband and video service was more than aspirational, because even in 2014 the vast majority of its residential customers were purchasing bundles with cable and internet service, which are the primary drivers of its financial performance:

> At year-end [2014], 77% of residential customers had a double- or triple-play bundle. Our monthly churn rate for triple play customers remains very low at approximately one-half percent.[29]

36. As the above citation clearly reveals, TDS has discovered the central flaw of the SUSF – *i.e.*, its intention to provide an opportunity to *adjust* to a new market, but its (current) reliance on calculations that completely *ignore* whether those steps were successful. One simply cannot determine the need for subsidy by looking at the fiction of an intrastate rate-of-return. Moreover, rate-of-return regulation for TDS is a choice of *convenience*, not *need*. TDS voluntarily chose to abandon rate-of-return regulation at the federal level by accepting federal USF support (and obligations) that are part of the Alternative Connect America Cost Model (A-CAM). As the FCC has explained:

> …the election of [A-CAM] model-based support places those carriers in a different regulatory paradigm. They no longer will be subject to rate-of-return regulation for [shared] common line offerings …. Effectively, the carriers that choose to take the voluntary path to the model are electing incentive regulation for [shared] common line offerings.[30]

37. Nevertheless, TDS continues to draw from the SUSF – indeed, as the single recipient of 2/3rds of the disbursements, TDS' draws from the fund now *define* the SUSF – as though it were a small, rate-of-return carrier still subject to federal cost allocation rules. But, as its 2021 Annual Report makes clear, voice telephony – much less its so-called intrastate voice telephone business – is no longer the core of its operations. Consider this comparison:

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[29] *Ibid*. at 4.

[30] *Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking*, In the Matter of Connect America Fund, ETC Annual Reports and Certifications and Developing a Unified Intercarrier Compensation Regime, Federal Communications Commission Dockets WC Docket No. 10-90, WC Docket No. 14-58 and CC Docket No. 01-92, Rel. March 30, 2016 at ¶ 21.

Table 3: TDS Business Model Continues to Evolve as it Draws from the SUSF

Metric	2014[31]	2021[32]	% Change
Residential Revenue Per Connection	$41.22	$50.67	23%
Residential Wireline Connections			
Broadband	229,200	262,900	15%
Voice	335,900	256,900	-24%
Video	23,400	63,000	169%
	588,500	582,800	

38. As the Table above shows, voice telephony is no longer the lead product in TDS' residential portfolio. Now, other higher-priced services that share the local network lead in sales and revenue per connection.[33] As the Commission can readily observe, voice telephone pricing and demand is only one source of revenue that determines whether the shared investment in fiber (and other transmission facilities) are profitable in their own right. The TDS management (as with the management of the other ILECs that are far smaller than TDS) recognize these trends and have adjusted their business models accordingly.

39. Unfortunately, the basic algebra of the SUSF is grounded in a world that predates these market trends and business decisions and fails to compare the cost of the local network to the full range of services that today use that network – indeed, use that network to a far greater degree than voice telephony. As shown in the cases studies below, the shift to broadband is providing a successful transition path for New York's small ILECs.

<u>Case Study 2: Margaretville Telephone Company</u>

40. Margaretville Telephone Company is not one of the petitioning NSIC members, but it is comparable in size to the petitioning small ILECs with 1,171 access lines. Like TDS, Margaretville has diversified and offers broadband and video services, in addition to its basic voice service. [redacted]

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31 2014 TDS Telecom Annual Report. Data is nationwide as TDS does not publicly release state-specific results. 2014 is the first year that TDS began drawing from the NY SUSF.

32 2021 TDS Telecom Annual Report.

33 As TDS explains to its investors (TDS 2020 Annual Report at 18):

> Residential revenue per connection increased 4% [2019 to 2020] due to growth in broadband and video connections, which are priced higher than declining voice services, and price increases. Video and broadband services also have tiered pricing depending on the packages and speeds the customer selects.

41. The analysis below uses Margaretville Telephone's Annual Report to compute its "intrastate operating income" in the same manner as the petitioning ILECs in the calculations that underlie Attachment D. Importantly, Margaretville has largely completed the transition to broadband, as it explains:

> The Margaretville Telephone Company was founded in 1916 and is proud to offer a "family of services" to regional customers throughout the Central Catskill region of New York. No longer known as just a "phone company", MTC has expanded services to keep everyone connected with: fiber-based high speed internet, cable television and telephone services.[34]

[redacted]

[34] Margaretville Telephone Company website at https://www.mtctelcom.com/about. Quotation marks in the original.

[redacted]

[redacted]

has transitioned to a business model grounded by a broadband network capable of providing Internet access, video service *as well* as voice service. [redacted].

[redacted] However, as each member obtains most of its inputs in the same market from the same vendors, and one would expect similar customer profiles, there is no obvious reason that each of the members *couldn't* adapt to the same business plan as Margaretville and enjoy similar success.

45. Indeed, as shown in Confidential Exhibit JPG-1, the network architectures of each of the NSIC members are similar, with differences representing (if anything) different points on the continuum between being providers of voice on a narrowband copper network, to broadband providers using fiber (with some residual DSL). The point is that small ILECs *can* adapt to changing conditions, each of the NSIC members is on a *path* to offering broadband (which means video, even if streaming) to most (if not all) of their subscribers, and the financial success of such enterprises *cannot* be measured using the 1980s rules that underlie the calculations in Attachment D.

[redacted]

[redacted]

[redacted]

[redacted]

network are considered. [redacted]

The Non-Petitioning and Petitioning ILECs are Similar in Operating Metrics

49. Not all potentially-eligible ILECs have chosen to request subsidy through the SUSF. Indeed, as noted earlier, the term "small ILEC" is somewhat misleading as two companies – one a petitioner and other not – are not similar in size to the other ILECs. Specifically, petitioner TDS and non-petitioner Taconic Telephone Company are significantly larger than the other carriers, as shown in Table 6 below.

Table 6: Comparing TDS/Taconic to the Average Small ILEC
(2020 access lines - NY)

Category	Small ILECs	Mid-Size ILECs
Petitioners	1,748	9,379 - TDS
Non-Petitioners	1,910	9,020 - Taconic

50. The analysis below compares key financial metrics among these groups of ILECs, some of which are operating without requesting subsidy (and which, therefore, are paying into the fund), while others have requested subsidy (and are thus net recipients). The focus of the analysis is on two key parameters of investment: total plant in service (TPIS) and cable and wire facilities investment (C&W). If there are meaningful differences in achievable scale economies (*i.e.*, the cost per line) as a consequence of these being small ILECs, then that circumstance would be reflected in the average cost of loop plant and/or total plant.[42] In addition, the analysis computes the average local revenue per line of each group.[43]

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[42] There are certainly other costs incurred by an ILEC, large or small (and every other company for that matter) related to corporate and customer operations, sales, general and administrative (SG&A) and taxes (to name a few). But there is no *a priori* reason to assume that these small companies cannot achieve sufficient scale in these areas to be financially viable, much less a compelling public-policy argument as to why larger companies must subsidize smaller companies that cannot achieve sufficient scale to justify their chosen corporate structure (independence). Scale in non-network activities could be achieved through mergers, or even using Business Process Organizations ("BPOs") under contract to gain efficiencies of scale through aggregation.

[43] Annual Report to PSC, Schedule 42, sum of lines 5001 (Basic Revenue) and 5071 (End-user Access Revenue).

Table 7: Comparing Petitioning ILECs to Non-Petitioner ILECs

	Petitioners	**Non-Petitioners[44]**
Small ILECs		
Average Access Lines	1,748	1,910
Investment in C&W Facilities/line	$4,532	$5,950
Undepreciated C&W Facilities/line	$1,214	$1,305
Total Plant in Service (TPIS)/line	$8,382	$11,941
Undepreciated TPIS/line	$2,253	$2,346
End-User Local Revenue/line/month - 2020	$34.12	$37.47
Mid-Size ILECs	**TDS**	**Taconic**
Access Lines	9,379	9,020
Investment in C&W Facilities/line	$6,304	$5,516
Undepreciated C&W Facilities/line	$1,550	$1,714
Total Plant in Service (TPIS)/line	$8,908	$10,264
Undepreciated TPIS/line	$2,418	$2,526
End-User Local Revenue/line/month - 2020	$27.76	$42.89

51. Overall, a comparison of those ILECs that are seeking subsidy to those small (and similarly mid-sized) ILECs that have not petitioned for support, simply cannot explain *why* petitioning ILECs cannot operate without the SUSF in the same manner as these other ILECs. Indeed, if anything, the companies that are not petitioning for support have *higher* overall investment costs in cable and wire facilities (and total plant in service) per line than the companies petitioning for support.[45]

52. The most notable difference observed above is that TDS' average local (and end-user access) revenue per line is not only significantly lower than Taconic Telephone, it is significantly lower than both the petitioning and non-petitioning small ILECs as well.

53. There are no observably important distinctions between the two groups. As noted, the negative financial returns shown in Attachment D to the Petition are more the product of obsolete allocation rules than the companies' actual financial performance. As shown above, actual measures of investment in total plant and cable and wire facilities per line do not explain

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[44] Alteva did not report its 2020 access lines in its annual report. Alteva is included in the analysis using an estimate of its 2020 access lines, calculated by applying the average decline for all small ILECs from 2019 to 2020 to the number of access lines filed by Alteva in 2019 (which it did report).

[45] Although TDS has a somewhat higher initial investment in cable and wire facilities than Taconic, its *remaining* (*i.e.*, undepreciated) investment per line is less, and it is this remaining investment that is more relevant to current and future financial performance.

why the petitioning ILECs companies cannot stand on their own (just as the non-petitioning ILECs are able to do).

<u>Conclusion</u>

54. The SUSF is broken. Adopted as a means to a specified end – *i.e.*, to provide small ILECs the *time* needed to adapt – the Fund today operates without any mechanism that measures successful transitions to broadband, with reductions in the fund as combined broadband/voice revenues stabilize ILEC operations.

55. Instead, as it is currently operating, the SUSF focuses on a fictional "intrastate return" that is hopelessly misleading as existing (and obsolete) federal cost allocation rules attribute most of the cost of local networks to the state jurisdiction, while the revenues from video and Internet access are excluded. Of course, such a calculation suggests financial distress – no provider could hope to pay for a broadband network solely through declining voice revenues (and no provider would make a business decision based on such a comparison).

56. As currently structured, the SUSF will increasingly diverge from reality over time, disguising success (in becoming a broadband provider) as need (because those broadband costs will be compared to declining regulated voice revenues). This situation will only grow worse until corrected.

57. It is this last feature of the SUSF that compels its immediate reform – the system is a subsidy box-canyon that offers, on its own, no way out. As its recipients transform their businesses to broadband, the fictional "intrastate return" measures only the extent to which regulated-voice revenues *might* help pay for the broadband network. Regulated-voice revenues, however, are no longer the object (much less heart) of their transformed business model and continuing a system that blindly focuses on that part of the business in decline, while ignoring all the replacement services that have supplanted it, simply makes no sense.

BEFORE THE
NEW YORK PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Review the State Universal Service Fund.	)	Case 15-M-0742

Cable Telecommunications Association of New York, Inc. Reply Comments in Response to the Notice Soliciting Comments Regarding the Extension of the State Universal Service Fund

April 18, 2022

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Proceeding on Motion of the Commission to Review the State Universal Service Fund	)))	**Case 15-M-0742**

Reply Comments of the Cable Telecommunications Association of New York, Inc. Regarding the Extension of the State Universal Service Fund

The Cable Telecommunications Association of New York, Inc. (CTANY) respectfully submits these reply comments on behalf of its members Charter Communications Operating, LLC (Charter) and Altice USA, Inc. (Altice) in response to the Notice Soliciting Comments issued on February 8, 2022. CTANY appreciates the opportunity to reply to the Initial Comments[1] submitted by the parties in this proceeding.

The New York Smaller ILEC Companies (NSIC) have failed to meet their burden to demonstrate a continuing need for the SUSF, and it is therefore appropriate to sunset the SUSF on December 31, 2022. Chief among CTANY's concerns, upon review of NSIC's Initial Comments, is NSIC's revised proposal for continuing the State Universal Service Fund (SUSF), as well as their assertions regarding the Commission's need to rely on federal regulations relevant only to ratemaking in order to assess and determine need for SUSF support. The NSIC proposal for an extended SUSF term drastically departs from the terms in the current and pre-existing Joint Proposals by seeking, in pertinent part, to: continue this once "temporary" fund for at least a further four years, eliminate the current cap on the fund, and reduce the amount of information NSIC members need to provide to the Commission to justify further receipt of SUSF support. Rather

[1] References to "Initial Comments" throughout this document refer to the respective Initial Comments filed by the parties in this matter on March 28, 2022.

than working to advance the eventual sunset of the fund as originally intended, NSIC instead seeks to continue (and potentially expand) this unnecessary, costly, and administratively-burdensome subsidy mechanism without offering a viable substantive framework to end the fund.

In response to the NSIC proposal to continue the program's existing complicated mechanism grounded in obsolete rules to determine SUSF support levels (as evidenced by NSIC's three-hundred-plus page submission), CTANY sets forth in these reply comments a proposal to streamline and update the existing mechanism for determining SUSF need and support—and urges the Commission to adopt this proposal in the event it determines to continue the program. This plan proposes to reduce and create a glide path to wind down the SUSF over the next three years by: 1) freezing current SUSF support levels; 2) providing support to small ILECs based on the number of voice lines without internet served; 3) eliminating SUSF support for ILECs that chose ACAM-based support and have more than 7,500 lines (in other words, "larger" ILECs); and 4) increasing the benchmark rate to $30. Importantly, this proposal includes a "safety net" that would allow a small ILEC to continue to receive SUSF support by making a two-part showing containing financial information and an explanation as to why further subsidies are needed to achieve profitability.

CTANY also disputes NSIC's argument that the Commission must rely on the federal separations rules in determining SUSF need. As explained below, the federal separations process applies to ratemaking, and the Commission is not required to—nor should it—apply these rules to mechanisms like the SUSF, where ratemaking is, in fact, not at issue.

Finally, CTANY responds to the small ILECs' comments regarding potential, unspecified service quality issues that could occur if the SUSF ends. Raising the potential of unspecified harm of service quality degradation resulting from ending the SUSF represents little more than a scare tactic. In addition, CTANY also addresses a new argument raised by the Utility Intervention Unit that storm and weather impacts should now, over a decade after the fund's creation, be factored into the Commission's calculation as to whether competition exists in a given small ILEC service territory. The State has an opportunity to examine the impacts of weather events on competition, if any, in the context of the new storm investigation it recently initiated.[2]

I. If the Commission Does Not Allow the SUSF to Sunset on December 31, 2022, it Should Adopt CTANY's Proposed Model for a Reformed SUSF

As more fully explained in CTANY's Initial Comments, the current SUSF does not align with its intended policy goal of serving as a temporary fund to support rural ILECs as the telecommunications industry evolved into a competitive marketplace. It has continued nearly unchanged for a decade, and the new proposal from the NSIC members buried in their Initial Comments demonstrates no intention, on the part of NSIC, to provide any pathway to the end of the fund.[3]

CTANY believes the simplest and most appropriate path to reform would be to allow the SUSF to sunset at the end of this year. As explained in the Gillan Report, the current SUSF is likely to increase over time precisely because it measures the wrong metric – a separations-based intrastate revenue requirement – that will likely *increase* as NSIC broadband networks are expanded and an ever-growing share of revenues are derived from broadband and video services. Any subsidy fund that expands precisely because its recipients are *successfully* transitioning to a modern broadband-based business plan is unambiguously broken.

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[2] *See* Case 22-M-0180, *In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, Chapter VU, Subchapter A, Part 604 and Chapter VIII, Subchapter B, Parts 890 and 896*, Notice Inviting Comments on Proposed Draft Rulemaking, issued April 5, 2022.

[3] *See* NSIC Initial Comments, Attachment F.

To the extent the Commission is reluctant to allow the SUSF to sunset, CTANY offers a transition plan that reduces reliance on SUSF subsidies while NSIC members continue their ongoing evolution into broadband providers. In this proposal, CTANY urges the Commission to significantly restructure the existing SUSF calculation methodology to create a rational framework to right-size the existing fund. By contrast, and as more fully addressed in Section II.A, *infra*, NSIC proposes a new SUSF regime in Attachment F to its Initial Comments that would drastically reduce Commission oversight and eliminate many of the factual showings currently required under the existing Joint Proposal regarding financial need and improvement of financial position. In response, CTANY proposes an alternative, administratively-simple framework to transition the fund to zero by January 1, 2026 (unless an NSIC member is able to qualify for "safety-net support" as described below). As the SUSF experience demonstrates, incorporating clearly-defined end-points into any transition mechanism is essential to achieve the Commission's goals and provide greater certainty for the future of the fund. We believe that CTANY's streamlined proposal advances that objective.

<u>Step 1 – Freeze Current Support Amounts and Convert to a Per-Line Amount</u>

Step one of CTANY's proposal aims to prevent the SUSF's expansion—by freezing current support levels as of December 31, 2021. As noted in CTANY's Initial Comments, no additional requests for SUSF support by new participants – or requests for higher levels of support by existing participants – should be considered. By freezing existing support levels, the Commission can tailor a reasonable transition for the existing recipients, recognizing differences in size, opportunity and each company's progress on the continuum from being a voice-only provider to also providing broadband service.

<u>Step 2 – Limit SUSF Support to Voice Lines Without Internet</u>

As NSIC correctly pointed out in its Initial Comments, voice customers are the intended beneficiaries of the SUSF:

> While it is true that network capabilities have changed for the NSIC members since 2010 via the deployment of broadband capabilities, the fact remains that the *only* Universal Service is "voice," now referred to by the Federal Communications Commission ("FCC") as "voice telephony."[4]

CTANY agrees. [redacted]

CTANY recognizes that a declining base of voice subscribers remain who may not be able to, or desire to, obtain other services from the NSIC member or its affiliates.[5] As such, a key element of CTANY's proposal is to retain transitional support – at existing per line levels[6] – for those customers that do not purchase these other services. For simplicity, CTANY's transition framework focuses solely on whether broadband is also provided to the customer, and does not factor in whether video service is provided to the customer as well. CTANY proposes this adjustment given that the data needed to determine the number of voice-without-Internet lines is

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[4] NSIC Initial Comments at p. 3 fn. 7. (emphasis in the original). *See also* NSIC Initial Comments Attachment E, p 4.

> There will be consumers that do not wish to purchase broadband but still want reliable and safe voice telephony services. These consumers should not be forced to purchase additional service (such as a cable television bundled service) to achieve the same level of voice service provided by the NSIC Members.

[redacted]

[6] Specifically, CTANY recommends that the 12/31/2021 support levels be converted to a per-line using 12/31/2021 line counts. Going forward, this per-line amount would be used to determine monthly disbursements from the SUSF as explained above.

readily discernable from existing and readily-available FCC Form 477 reporting data. While this concession by CTANY (*i.e.*, proposing to provide support to lines serving customers that subscribe to voice and video) may lead to greater levels of subsidy during the transition period than would otherwise occur (if voice-and-video customers were also excluded), CTANY believes this is a reasonable adjustment in furtherance of securing a transition plan with an established end-date.

Under CTANY's proposal, beginning with disbursements for the month of January 2023, SUSF support would no longer be provided to lines that subscribe to both voice and Internet access, as reported on the FCC Form 477. Frozen per-line support would be provided only for those lines calculated as "voice without internet" through the end of 2025 (3 years).

Disbursement amounts would be adjusted twice annually. Disbursements for the months of April through October would be based on the line-count information contained in the March 1st Form 477 filing. Disbursements for the months of November through March would be based on the line-count information contained in the September 1st Form 477 filing.

Beyond its simplicity, the CTANY plan offers the additional benefit of being self-adjusting. That is, SUSF support would decline during the transition as NSIC members become broadband providers given that the total amount of support declines as the voice-only portion of the NSIC's customer mix diminishes. This provision of CTANY's transition plan addresses a major deficiency in the existing system by ensuring that the subsidy declines as small ILEC succeed in advancing its broadband penetration.

<u>Step 3 – Accelerate Elimination of Support for Mid-Sized ILECs that Elected ACAM</u>

As noted in CTANY's Initial Comments, current SUSF funding has largely shifted toward comparatively larger ILECs and it has resulted in a 75% increase in the fund's size since 2014.

Today, this shift predominantly funds mid-size ILECs business models that differ significantly from the other smaller ILECs, and diverts funding from its original intended purpose.[7] There are two, similar mid-size ILECs in New York that are eligible for the fund – TDS Telecom and Consolidated Communication.[8] Only TDS Telecom, however, draws from the fund.

We recommend the Commission adopt a faster transition path for mid-size ILECs that have elected to receive ACAM-based federal support and which have at least 7,500 lines in New York. This combined standard – reflecting the size of the recipient and evidence of having affirmatively abandoned legacy USF support at the federal level – appropriately identifies carriers that have demonstrated that they can more rapidly adapt in the marketplace to the elimination of support.[9] Under our proposed framework, mid-size ILECs would transition off the fund on January 1, 2024, after receiving an additional full year (2023) of support (adjusted as described in Steps 2 and 4 of the Plan).

As noted, the FCC created the ACAM and offered its recipients the opportunity to elect incentive regulation and forbearance from separations – as a path away from rate-of-return regulation.[10] Although the SUSF recipients in New York did not choose to benefit from the FCC's offer of incentive regulation (preferring to retain traditional regulation over business data services),

[7] *See* CTANY Initial Comments at p. 18.

[8] At the time CTANY's Initial Comments were filed, we were unaware that Taconic Telephone – along with Berkshire Telephone and Chautauqua & Erie – were subsidiaries of Consolidated Communications in the same way that TDS Telecom owns several subsidiaries in New York. For consistency, Mr. Gillan has redone the analyses in Table 7 of the Gillan Report to combine the Consolidated Communications companies in the same manner as TDS Telecom and the revised Table is attached here as Attachment A. Although the calculated values have changed, the core conclusion – *i.e.*, that there is no obvious explanation as to why the NSIC members require subsidy while similarly situated small (and mid-size) ILECs do not – has not changed.

[9] CTANY notes that any of the currently SUSF-eligible companies receiving support can request support under our Safety-Net provision should there be legitimate need.

[10] CTANY Initial Comments, Gillan Report (Gillan Report) at ¶ 36.

they had the opportunity to enjoy regulatory flexibility but chose instead to opt out of such flexibility.[11] This demonstrates that the small ILECs could adapt, when presented with the opportunity, to avail themselves of distinct regulatory structures to advance their business model. Moreover, this element of CTANY's proposed framework recognizes that multi-state, mid-size ILECs are better equipped to adapt to changing conditions in a single state than other smaller companies, thus justifying a distinct transition plan for mid-sized entities.

Step 4 – Recompute the Benchmark Rate

As Verizon's Initial Comments note, the SUSF's current support calculation is based on a benchmark rate of $23 per month that has not been adjusted for inflation or changing market conditions during the past 16 years.[12] Verizon recommends that this rate be increased to $30. CTANY supports this recommendation.

Specifically, CTANY recommends that support amounts (per line, as discussed in Step 1) be recalculated using a $27.50 benchmark in 2023 and a $30 benchmark for years 2024 and 2025 of CTANY's transition plan. To be clear, CTANY is not recommending that the Commission *mandate* that end-user rates increase to this level (although CTANY believes the ILECs should be *allowed* to do so). Rather, CTANY's view is that its proposed reasonable benchmark rate be used as part of a transition to a more economically rational framework (if needed).

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[11] Presumably, as rational actors, these companies concluded there was greater profit in rate-of-return regulation than the reduced regulation offered by the FCC. It is unknown what role the SUSF played in reaching such a conclusion.

[12] Verizon Initial Comments, p. 23-25.

Adopt a Safety-Net

As noted earlier, the record in this proceeding does not support the continued existence of the SUSF. However, CTANY recognizes that while there is currently no evidence supporting the need for the SUSF, future circumstances may arise where a small ILEC could require additional support after the expiration of the proposed three-year transition plan. As such, CTANY's proposed framework contains a safety-net should certain unexpected circumstances occur (that CTANY does not anticipate) that may require regulatory intervention.

Specifically, our proposed safety net provision would permit current participating small ILECs to petition the Commission for SUSF support that could extend beyond 2025 (for a specified period), but only if the small ILEC can make the following two-part showing:

[redacted]

(b) Demonstrate that there are no alternative strategies to profitability other than publicly-funded subsidy, including providing an explanation as to why they require subsidy when other similarly-situated ILECs in New York do not.

Subsidy should be the exception, not the rule. The safety-net provision in CTANY's proposed framework provides an opportunity to address legitimate need, [redacted]. While the current separations process fails to answer the relevant question (*i.e.*, is the multi-service broadband platform profitable?), the proposed safety-net can be applied directly without allocations that are (at least from an economics perspective) unavoidably arbitrary.

CTANY's proposal for a reformed SUSF fulfills the Commission's initial goals when it originally established the fund – it is a truly temporary, transitional mechanism to ensure that small ILECs can serve voice customers and receive support for actual, demonstrated financial need to serve their voice customers. It ensures closure of the fund, as originally intended, but creates a safety net for those small ILECs, if any, who cannot achieve financial stability in the next three years. Importantly, this proposal also allows the Commission a simple means to look at actual financial need that is not based on arbitrary, antiquated regulatory mechanisms divorced from financial realities.

II. The Commission Should Deny NSIC's Petition to Continue the State Universal Service Fund

A. The NSIC Proposal to Extend the SUSF Should be Rejected

The NSIC Initial Petition in this matter proposed to extend the current SUSF program for at least an additional four years at existing funding levels. However, NSIC reveals in its Initial Comments a new SUSF plan that, without explanation, departs from the current Joint Proposal in several key areas. The new NSIC proposal, contained in Attachment F to NSIC's Initial Comments, eliminates existing financial and reporting obligations for NSIC, extends the SUSF for at least an additional four year period, and creates the possibility that the existing funding level of $6 million could be increased, ultimately creating an unlimited fund with little oversight. Effectively, this proposal creates a new SUSF regime far worse than the status quo, and without any meaningful changes to incent the small ILECs towards financial independence. This proposal should be rejected.

Comparing the existing 2020 Joint Proposal to Attachment F reveals startling departures from the current SUSF system. Paragraph 2(a), for example, extends the SUSF for an additional four years, *and* allows the period to be extended by the Commission without exception. Inclusion of this provision makes clear NSIC's intent to extend the fund without a comprehensive review of the need for on-going funding support. Paragraph 2(b) also adds additional requirements addressing any potential future petition to extend the SUSF by requiring the designation of an ALJ to oversee an SUSF proceeding *a year and a half* before the SUSF is set to expire. At bottom, this proposal would increase the administrative burden on all parties – SUSF contributors (including CTANY and Verizon), DPS staff, the administrative law judges, and the Commission, and ensures the parties here will be back at square one again in less than three years.

Attachment F completely eliminates ¶ 2(e) of the 2020 Joint Proposal, which requires NSIC to provide detailed location data information. The purpose of this information was to assist the Commission in determining if there is a less costly means for providing SUSF support to the small ILECs.[13] The NSIC's proposal would leave the Commission with little information, if any, to assess the number of viable competitors in an NSIC's service territory. Moreover, production of this information in any future SUSF period would provide a useful metric for comparison against the data provided this year.

Of additional concern, NSIC also proposes to eliminate ¶ 2(f), which requires an NSIC member to produce financial data when requesting future SUSF support. This section requires disclosure not only of intrastate revenue information, but information on nonregulated revenues and expenses. It also requires the NSIC member to justify why their depreciation expense should remain part of the revenue requirements given "that the network is being used to provide broadband and other services and the expected continued loss of wireline customers to competitors."

[13] Order Adopting 2020 Joint Proposal, pp. 15-16.

Lastly, Attachment F eliminates the requirements of ¶ 8(e) to the Joint Proposal, which currently requires any new potential recipient of SUSF funds, as well as any existing recipient of SUSF funds, to provide to the Commission information that demonstrates that the small ILEC has taken steps to improve its financial condition such that it will no longer require SUSF support to serve voice customers in New York. The proposed elimination of this requirement is telling – the NSIC members appear disinterested in demonstrating that they no longer need SUSF support, or in allowing the temporary fund to dwindle and diminish as intended. This is a very clear showing of what the NSIC members seek – a continued extension of the receipt of millions of dollars in state subsidies, with cursory review by the Commission or the fund's contributors.

In comparing the existing 2020 Joint Proposal to Attachment F, the NSICs seek an SUSF regime that places fewer obstacles in the path of the small ILECs' receipt of millions of dollars annually in ratepayer-backed subsidies. Even if the Commission determines the SUSF should continue, Attachment F should not be considered as a basis for a meaningful extension of the SUSF program.

B. The Public Service Commission is Not Required to Compute SUSF Support Based on Federal Separations Rules

At first glance, the initial comments filed in this matter suggest little agreement between the petitioners seeking subsidy (the NSIC members) and those that fund it (chiefly, CTANY members and Verizon). The heart of this disagreement, however, is limited to a single question: is the calculation of an intrastate revenue requirement useful today, much less *required* by the FCC that previously described such calculations as "inadequate and outmoded vis-à-vis their intended purpose"?[14] Despite the NSIC's lengthy arguments to the contrary, the answer is simple: no.

NSIC's claim that the Commission is required to follow these arcane and obsolete rules is belied by the truth – there is no requirement that the Commission must rely on the federal jurisdictional separations regulations as part of a state universal service program. To begin, it is important to note that agreement exists that voice services are commonly provided as an application on the same network that provides broadband access and video services (streaming or cable packages). As NSIC affiant Barton explained:

> [To] avoid any misassumption, in my [local network] deployment examples above and those that I have been involved in, I still am describing the deployment and operation of only one network, and the delivery of services to customers via that one network. WCI, for example, has added multi-service platforms to make its offerings more attractive, but WCI has not deployed, maintained or operated multiple networks to provide those services. They are provided over one network."[15]

This conclusion is fully supported by the admitted facts on the record. **[BEGIN CONFIDENTIAL INFORMATION]** [16] **[END CONFIDENTIAL INFORMATION]** and each of the participating NSIC members has admitted that they can use the same loop facilities to provide broadband, Internet, and voice services.[17] Lacking in the NSIC's comments is the admission that the separations rules that they so adamantly assert should be used to determine subsidy, do not *seek* to determine profitability when a single network becomes a multi-service

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[14] Report and Order and Waiver*, In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, Federal Communications Commission CC Docket No. 80-286 rel. December 17, 2018 ("*2018 Freeze Extension*") at ¶ 2 (emphasis added).

[15] NSIC Initial Comments, Attachment H, Statement of Paul F. Barton (Barton Statement), at ¶ 17. *See also* NSIC Initial Comments, Attachment H, Statement of Michael C. Reed (Reed Statement) at ¶ 12, noting that the NSIC members recognize ". . . the continuing transition of traditional networks to multi-function broadband/voice networks. . .".

[16] **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]**

[17] NSIC Response to CTANY 1, Data Request 4 (Attachment A to CTANY Initial Comments).

platform that is used for more than simply the provision of voice service. In other words, application of the separations rules to the determination of SUSF need is an unreliable (and unnecessary) metric for actually measuring whether or not the small ILECs seeking subsidy actually require financial support in order to provide voice services to an ever-dwindling pool of customers.

NSIC claims that it would be unlawful for the Commission to "fail to adhere to 47 C.F.R. § 36, et seq. (Part 36) of the FCC's rules governing the separations process."[18] While CTANY agrees that the Commission cannot *change* FCC rules, CTANY notes that these rules only define areas of ratemaking authority – they do not determine *how* that authority is used.[19] Moreover, there is nothing in Part 36 of the FCC's rules that compels the Commission to establish a SUSF, much less constrain the factors the Commission will consider in how such a fund operates.

Even if this proceeding did address ratemaking, the FCC rules do not impose any particular methodology as to how the Commission might set rates. As the FCC has explained:

> After costs and revenues are divided between those that are regulated and nonregulated, interstate and intrastate costs and revenues are separated as provided in Part 36. Federal and state regulatory jurisdictions apply their own ratemaking processes to the amounts assigned to each jurisdiction.[20]
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> ***
>
> [T]he costs and revenues allocated to regulated activities are apportioned between the state and interstate jurisdictions in accordance with the part 36 jurisdictional separations rules. Each regulatory jurisdiction applies its own ratemaking processes to the amounts assigned to it by part 36. <u>States, however, may add back</u>

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[18] NSIC Initial Comments, Attachment G, p. 1.

[19] The NSIC members admit that the separations process is limited to ratemaking (NSIC Initial Comments, Attachment G, p. 3, fn. 11) but do not acknowledge that the SUSF is not a ratemaking exercise.

[20] Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, *In the Matter of Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers,* Federal Communications Commission WC Docket Nos. 17-144, 16-143 and 05-25, rel. October 28, 2018 (*"BDS Forbearance Order"*) at ¶ 127.

> costs that are identified as nonregulated under part 64, or remove additional costs that are identified as regulated under part 64.[21]

The FCC rules do not require the Commission to estimate an intrastate revenue requirement at all, much less require the Commission to use that revenue requirement in its ratemaking, which is at least one step removed from the design of the SUSF. Even the NSIC members admit that "ratemaking need" is different than "SUSF need,"[22] making clear that different standards can apply to each. **[BEGIN CONFIDENTIAL INFORMATION]** [23] [24] **[END CONFIDENTIAL INFORMATION]** The notion that the separations rules must be applied to determine SUSF need is unsupported.

Moreover, NSIC is simply incorrect in arguing that changes to the operation of one jurisdiction's universal service fund implicates another jurisdiction's authority.[25] In 2016, the FCC dramatically altered the operation of the federal USF program for rate-of-return carriers by offering model-based support (using the Alternative Connect America Cost Model or ACAM) in lieu of the legacy system relying on more traditional rate-of-return data.[26] Most of the NSIC members

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[21] *Report and Order and Notice of Proposed Rulemaking* (FCC 05-150, rel. September 23, 2005) at ¶ 129 (emphasis added) (footnotes omitted).

[22] NSIC Initial Comments, Attachment H, Statement of M. Scott Schultheis (Shultheis Statement) at ¶51 (emphasis added):

> But for the purposes of this phase of the proceeding, the use of annual regulated intrastate information is sufficient in my opinion to establish the need and continuing need for the SUSF after December 31, 2022 because we are not seeking rate case levels of need.

[23] *2018 Freeze Extension*, Fn. 47 attached to ¶16. Average schedule companies have been permitted by the FCC to estimate, among other things, universal service support through the use of average schedules in order to avoid company-specific cost studies. *See*, *e.g.*, *Alltel Corp. v. FCC*, 838 F.2d 551, 553 (D.C. Cir. 1988).

[24] **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]**.

[25] NSIC Initial Comments, Attachment G, p. 6.

[26] *See* NSIC Initial Comments, Attachment H at ¶ 8.

that draw on the SUSF today *chose* to move to ACAM-based federal USF support,[27] as shown below:

Comparing Federal USF Support: Before and After ACAM
(Annual Support - $ thousands)

NSIC Member	Legacy Approach[28]	ACAM[29]	Percent Increase
Chazy & Westport	$330.0	$471.8	43%
Newport	$360.1	$1,034.9	187%
Pattersonville	$121.3	$138.6	14%
TDS[30]	$2,166.1	$3,240.1	50%
TOTAL	$2,977.6	$4,885.4	64%

If the NSIC members were correct that changes in one jurisdiction's USF system impacted the other, the significant increase in federal USF support should have impacted New York's SUSF. But NSIC is not correct – these are independent systems with each jurisdiction having the authority to operate its fund independently and pursuant to the public interest.

We underscore that CTANY is not proposing to *change* Parts 36 or 64; CTANY only contends that the Commission should no longer *use* these regulations in determining need with respect to the SUSF process because they are fundamentally unreliable in determining anything meaningful. These regulations are disconnected from the modern drivers of network costs and revenues – the growth of the Internet, new technologies and local competition. The FCC initially

[27] Nationally, "[m]ore than 200 carriers opted to receive A-CAM support, which eliminated the need for those carriers to perform cost studies that required jurisdictional separations to quantify the amount of high-cost support for their common line offerings." *2018 Freeze Extension* at ¶ 17.

[28] Attachment HC01 to USAC 4Q2015 FCC Filing (HC01-High-Cost-Support-Projected-by-State-by-Study-Area-4Q2015.xlsx) (annualized) available at https://www.usac.org/about/reports-orders/fcc-filings/

[29] Attachment HC01 to USAC 4Q2021 FCC Filing (HC01-High-Cost-Support-Projected-by-State-by-Study-Area-4Q2021.xlsx) (annualized) available at https://www.usac.org/about/reports-orders/fcc-filings/

[30] Consolidated for Deposit, Edwards, Port Byron, Township, Vernon and Orinsky.

froze (25 years ago) the Part 36 category relationships and jurisdictional allocation factors precisely so that these market trends would *not* affect the separations process.[31] As a result, the process today "*necessarily* misallocate[s] network costs."[32] The separations process cannot be trusted.[33]

C. NSIC's Initial Comments Ignore the FCC's Offer of Separations Forbearance

The FCC is well aware that separations is outdated and broken. As such, the FCC is working to *minimize* the application of the separation rules by offering smaller ILECs alternative regulatory/USF options. Importantly, ". . . the relevance of the cost-separation rules has diminished, as the [Federal Communications] Commission has incrementally replaced burdensome rate-of-return regulation with the efficiencies of incentive regulation,"[34] such that "[o]ver the course of the last decade, the jurisdictional separations rules have become irrelevant to the carriers that provide most Americans with telecommunications services."[35]

Significantly, NSIC acknowledges that the separations rules no longer apply to price cap carriers (such as Verizon) a fact included in the NSIC Initial Comments.[36] What Mr. Shultheis did not include in his Attachment H Statement, however, was that the FCC extended an offer of

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[31] *2018 Freeze Extension* at ¶ 9.

[32] *Id*. at ¶ 43.

[33] As the responsibility for the separations rules lies with the Joint Board, the opinions of its constituent members (NARUC and the FCC) concerning the deficiencies of such rules should be given great weight. CTANY previously provided an explanation as to how both the FCC and NARUC recognize that these rules are no longer viable, given the changes in technology and customer demand. See Gillan Report at ¶¶ 20-23.

[34] *2018 Freeze Extension* at ¶ 2, *and see 2018 Freeze Extension* fn. 20.

[35] *Id.* at ¶ 16.

[36] Shultheis Statement at ¶ 49.

forbearance (in 2008) to rate-of-return carriers that voluntarily elected incentive regulation for their business data services:[37]

> In 2008, the Commission granted price cap carriers forbearance from the separations rules; and recently the Commission extended this forbearance to rate-of-return carriers that receive fixed or model-based high-cost universal service support (fixed support carriers) and that elect incentive regulation for their business data services.[38]
>
> ***
>
> We find that applying the Cost Assignment Rules to electing carriers is no longer necessary to ensure that charges and practices are just, reasonable, and not unjustly or unreasonably discriminatory; to protect consumers; or to protect the public interest.[39]
>
> ***
>
> We agree with Petitioners, TDS Telecom and other commenters that contend that forbearance [regarding business data services] will enhance competition.[40]

Although TDS (in particular) encouraged the FCC to offer forbearance,[41] neither it nor any of the other SUSF recipients elected to accept reduced regulation.[42] In New York, the Delhi

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[37] *See BDS Forbearance Order*.

[38] *2018 Freeze Extension* at ¶ 16 (footnotes omitted) (emphasis added).

[39] *BDS Forbearance Order* at ¶ 131 (footnotes omitted).

[40] *Id.* at ¶ 134.

[41] *See* Comments of TDS Telecommunications Corp., Federal Communications Commission WC Docket No. 17-144, June 18, 2018 at 1:

> In initiating this proceeding, the Commission has wisely recognized the profound changes in the marketplace for business data services ("BDS")—including, among other things, the dramatic increase in demand for Ethernet and other packet-switched services and decline in demand for TDM services. Against the backdrop of these changes, the regulatory burdens of rate-of-return regulation often outweigh the benefits. Removing unnecessary requirements and providing Alternative Connect America Cost Model ("A-CAM") carriers a pathway to incentive regulation will enable these carriers to more quickly upgrade their networks and better respond to customer demand in this competitive marketplace, ultimately benefitting the rural communities they serve.

[42] *See* Public Notices, *Wireline Competition Bureau Announces Rate-Of-Return Carriers Electing Incentive Regulation for Their Business Data Services*, Federal Communications Commission WC Docket No. 17-144, June 13, 2019 and July 15, 2020. Overall, a total of 136 rate-of-return carriers serving 227 study areas in 40 states (and one territory) elected incentive regulation.

Telephone Company and the Consolidated Communications affiliates (Taconic Telephone, Berkshire Telephone and the Chautauqua & Erie Telephone Company) took the opportunity to elect forbearance and are no longer subject to separations rules at the federal level. None of these companies receive subsidy from the SUSF. One of the reasons that the FCC offered rate-of-return carriers the opportunity to elect incentive regulation was to eliminate the incentive to shift costs between regulated and nonregulated services (which is possible under existing rules):

> Because the rates for regulated services and the determination of the level of universal service support are no longer tied to accounting costs, electing carriers will have no incentive to shift costs between regulated and nonregulated services, or to services receiving universal service support …[43]

As the FCC and NARUC have explained, the existing rules do not properly allocate costs, which is a key reason the separations rules are not useful.[44] **[BEGIN CONFIDENTIAL INFORMATION]** [45] **[END CONFIDENTIAL INFORMATION]**

Finally, NSIC asserts that the "Part 36 separations rules are binding on carriers, states, and the FCC," even though the FCC has granted forbearance from the rules to carriers that have chosen ACAM-based support and incentive regulation, and the rules do not apply to Average Schedule Companies at all. The Part 36 rules may be obsolete, outdated, inaccurate and arcane[46] – but they are "binding" only in that they appear impervious to change.[47] That is not to say they need be

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[43] *BDS Forbearance Order* at ¶ 132.

[44] As a practical matter, any allocation-based scheme will have flaws as economics provides little guidance as to how shared costs should be allocated. [redacted]

[45] **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]**.

[46] The FCC has described the effort to "jurisdictionally separate costs assigned to voice-related services as 'an arcane science.'" (Quotation marks in the original). *See 2018 Freeze Extension* at ¶ 22.

[47] Since 2001, the FCC has extended its separations-freeze eight times.

relied upon when they are no longer reliable – alternatives are available, and the Commission has the flexibility to design (and/or terminate) the SUSF however it sees fit.

Application of the federal separations rules to the SUSF is meaningless – but, fortunately, not required. If the Commission determines there is still a need to continue the SUSF beyond December 31, 2022, it should abandon its reliance on the arcane Part 36 system and adopt CTANY's streamlined, simplified SUSF proposed framework.

III. Elimination or Reduction of SUSF Support to the Small ILECs Will Not Impact Service Quality or Storm Performance

The NSIC Initial Comments include unsupported representations that, without continued SUSF support, the small ILECs "may" have to sacrifice service quality in order to build and maintain networks. This argument is a red herring intended to scare the Commission into continuing the SUSF for at least another four years while some future unknown changes in policy and broadband deployment take place. In addition, CTANY believes the issues raised by the Utility Intervention Unit (UIU) in their initial comments regarding end of line-powered equipment in networks introduces an issue that is not relevant to the continued provision of universal service support to the small ILECs. The SUSF was, and is, intended to assist small ILECs with the transition to a changing competitive telecommunications marketplace, and was not intended to create a scenario where the small ILECs delay responding to consumer demand for broadband by focusing on the maintenance of outdated and less reliable line-powered services.

A. There is No Demonstration that Service Quality in NSIC Service Territories Will Suffer if the SUSF Ends on December 31, 2022

The Reed Statement, one of the Attachment H documents included with the NSIC Initial Comments, provides a lengthy discussion on the potential for service quality limitations to customers in NSIC service territories if SUSF support ends. Notably, this potential for reduction in service quality is merely "possible,"[48] and nowhere does NSIC explain—much less demonstrate—specifically how reduction in SUSF support would directly impact the ability of the NSIC members to provide service in their respective territories. While the NSIC members identify the Commission's commitment to enforcing network reliability as a chief reason why SUSF support should continue, this does not explain, for each of the small ILECs receiving SUSF support, the nexus between SUSF support and small ILEC service quality.

Interestingly, NSIC also includes in its Initial Comments the Statement of Paul Barton, President of Westelcom Communications, Inc. Contrary to the ambiguous assertions of potential service quality issues if the SUSF ends, the Barton Statement explains that the deployment of fiber over facilities has "significantly reduced customer service issues" and caused "significant improvement with the amount of time required to deploy a drop to a home."[49] In fact, "the use of fiber typically improves voice service by eliminating cross talk that may occur between copper strands."[50] As the small ILECs have increasingly transitioned to become broadband providers, it is clear that the threatened service quality issues are belied by the truth – SUSF support is no longer needed for the ILECs to serve their customers or upgrade their facilities to broadband, and broadband upgrades provide better service quality support to customers than older facilities.

B. Storm Events Do Not Determine SUSF Need Or Assist In Determining Whether Competition Exists

The initial comments of UIU introduced the notion that the Commission should consider "the escalation of storm events" in future SUSF determinations since the Commission initiated the

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[48] Reed Statement at ¶ 42.

[49] Barton Statement at ¶ 14.

[50] *Id.*

transition to competitive markets some two decades ago.[51] Citing the recent Tropical Storm Isaias, UIU indicates that while "non line-powered service is not a central issue to this proceeding, UIU believes the issue of reliability, substitutability, and access to intermodal telecommunications services should be evaluated" when the Commission considers whether effective competition exists.[52] Respectfully, consideration of storm events should not be part and parcel of the determination for SUSF need. New York has been subject to more than one historical storm in the past twenty years – Superstorm Sandy comes to mind – and yet, storm response has not been part of the Commission's considerations as to whether or not effective competition exists in a given service territory.

It bears repeating that the nature of the competitive transition that was intended to be subsidized by the SUSF. Currently, wireline providers (including the NSIC members) are deploying fiber and other broadband networks because that is what consumers demand. If anything, the SUSF helped accelerate the transition to broadband by providing subsidies to companies (whether they are needed or not) that can be used to deploy broadband networks. The petitioners in this matter are well on their way to updating their narrowband networks with fiber that require powered equipment at the consumer's end to operate. The core issue in this proceeding is whether the NSIC members require SUSF support in order for their business model to be profitable, not whether SUSF recipients should delay their response to consumer demand for broadband and advanced services by trying to maintain antiquated line-powered services.

In addition to the above considerations, the Commission very recently initiated a separate proceeding that will consider the impact on Tropical Storm Isaias to telephone and cable television

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[51] Initial Comments of the Utility Intervention Unit, p. 6.

[52] *Id.* at pp. 6-7.

networks and services.[53] CTANY respectfully submits that this new proceeding is the appropriate venue to address recent storm response issues, not the SUSF.

Conclusion

There is a common expression that when one finds oneself in a hole, the best advice is to stop digging. The Initial Comments in this proceeding, as well as the long history of the SUSF, demonstrate that the SUSF is a proverbial hole, where antiquated rules yield meaningless claims of financial distress, resulting in a Fund that increases even as its recipients successfully transition to broadband. It is time to stop digging: CTANY urges the Commission to terminate the SUSF at the end of this year.

CTANY believes that the record is clear concerning the core problem at the heart of the current SUSF: how can the Commission judge need when a single network supports multiple services but only the least expensive of these services is considered? The answer is straightforward: [redacted] The record is also clear that the separations process cannot answer this basic question.

Although CTANY believes that the Commission should terminate the SUSF at the end of this year, we recognize that the Commission may prefer to follow a transition path, and CTANY has proposed a rational transition path coupled with an economically rational safety-net for continuing support. CTANY's proposal for an administratively-simple system that would scale back the SUSF over the next three years to an end-point where only those NSIC members with a

[53] Case 22-M-0180, *In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, Chapter VU, Subchapter A, Part 604 and Chapter VIII, Subchapter B, Parts 890 and 896*, Notice Inviting Comments on Proposed Draft Rulemaking, issued April 5, 2022.

legitimate and demonstrated need for subsidy remain should be adopted only if the Commission determines there is still a need to support the small ILECs. This proposal fulfills the Commission's original goals of a temporary, transitional, finite fund that will support the small ILECs who need additional financial backing to serve their voice customers.

CTANY thanks the Commission for the opportunity to provide these Reply Comments and participate in this proceeding.

Dated: April 18, 2022

/s/ Ekin Senlet

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ATTACHMENT A

Attachment A
Revised Table 7 to Gillan Report

Revised Table 7: Comparing Petitioning ILECs to Non-Petitioner ILECs

	Petitioners	**Non-Petitioners**
Small ILECs		
Average Access Lines	1,748	1,830
Investment in C&W Facilities/line	$4,532	$6,176
Undepreciated C&W Facilities/line	$1,214	$1,403
Total Plant in Service (TPIS)/line	$8,382	$12,148
Undepreciated TPIS/line	$2,253	$2,568
End-User Local Revenue/line/month - 2020	$34.12	$40.31
Mid-Size ILECs	**TDS**	**Consolidated**
Access Lines	9,379	13,648
Investment in C&W Facilities/line	$6,304	$5,359
Undepreciated C&W Facilities/line	$1,550	$1,444
Total Plant in Service (TPIS)/line	$8,908	$10,555
Undepreciated TPIS/line	$2,418	$2,167
End-User Local Revenue/line/month - 2020	$27.76	$37.24

Note: As explained in footnote 8, at the time our Comments were filed, we were unaware that Taconic Telephone – along with Berkshire Telephone and Chautauqua & Erie – were subsidiaries of Consolidated Communications in the same way that TDS Telecom owns several subsidiaries in New York. For consistency, Mr. Gillan has redone the analyses in Table 7 of the Gillan Report to combine the Consolidated Communications companies in the same manner as TDS Telecom and the revised Table 7 to the Gillan Report is presented above.

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ATTACHMENT B