

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

Proceeding to Examine Issues Related to a  
Universal Service Fund

Case 09-M-0527

**REBUTTAL TESTIMONY OF DAVID R. CONN  
ON BEHALF OF T-MOBILE**

1   **I.    INTRODUCTION**

2   **Q    Please identify yourself.**

3   A    My name is David R. Conn. I submitted written direct testimony on behalf of T-Mobile  
4        Northeast LLC (“T-Mobile”) in this proceeding on December 31, 2010.

5   **Q    What is the purpose of this testimony?**

6   A    The purpose of this testimony is to provide T-Mobile’s response to certain statements and  
7        unwise policy prescriptions contained in the following testimonies filed on behalf of the  
8        Commission Staff, the NYSTA Smaller ILECs, and AT&T:<sup>1</sup>

- 9           • Direct Testimony of: Policy Panel Wayne Brindley, Debra LaBelle, Gregory C.  
10           Pattenaude and Leonard Silverstein (together, the “Staff Policy Panel”), filed  
11           December 31, 2010 on behalf of the Commission Staff (“Staff Policy Direct”);
- 12           • Direct Testimony of: Substitutability Panel Robert J. Lorenzo, Michael Rowley,  
13           Richard E. Schuler, Jr. and Leonard Silverstein (together, the “Staff  
14           Substitutability Panel”), filed December 31, 2010 on behalf of the Commission  
15           Staff (“Staff Substitutability Direct”);
- 16           • Direct Testimony of: White Spots Panel Richard E. Schuler, Jr., and Joseph P.  
17           Yakel (together, “Staff White Spots Panel”), filed December 31, 2010 (“Staff  
18           White Spots Direct”);
- 19           • Direct testimony of Steven E. Watkins & Kevin F. Schenzfeier (together, the  
20           “NYSTA Panel”), filed December 31, 2010 on behalf of the NYSTA Smaller  
21           ILECs (“NYSTA Direct”); and
- 22           • Direct Testimony of E. Christopher Nurse filed on behalf of AT&T  
23           Communications of New York, Inc. and Its Regulated Affiliates, filed December  
24           31, 2010 (“AT&T Direct”).

25   **II.   RESPONSE TO NYSTA DIRECT**

26   **Q    The NYSTA Panel asserts that wireless carriers “depend” on the NYSTA Smaller**  
27        **ILECs’ wireline networks to provide wireless services in the rural areas that the**  
28        **wireless carriers serve because “wireless carriers are customers of the NYSTA Smaller**  
29        **ILECs and obtain ‘backhaul’ circuits that allow connections between their tower site**  
30        **locations and switches” (NYSTA Direct at 11). They go on to argue that wireless**

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<sup>1</sup> In the interests of efficiency, this rebuttal testimony does not respond to matters that are either adequately addressed by the direct testimony previously filed by myself and others or immaterial to the issues before the Commission.

1 **carriers should contribute to a state universal service fund in order to support the**  
2 **NYSTA Smaller ILECs.**

3 **Does the fact that they may utilize the NYSTA Smaller ILECs' networks to provide**  
4 **service justify forcing wireless providers and their customers to contribute to a state**  
5 **universal service fund for the benefit of the NYSTA Smaller ILECs?**

6 A No. To the extent wireless carriers use the NYSTA Smaller ILECs' networks for backhaul,  
7 they already pay for that use, typically in the form of rates for interstate special access. I  
8 know of no evidence, and none has been presented, that those special access rates are not  
9 fully compensatory for the ILEC providers. If the NYSTA Smaller ILECs do not believe  
10 those rates provide just and reasonable compensation for their "backhaul" services, they  
11 should seek rate increases through proper means.

12 Furthermore, wireless carriers and their customers already contribute substantial  
13 amounts to the maintenance of universal service in the NYSTA Small ILECs' service areas  
14 and elsewhere through payments to the federal universal service fund.

15 **Q Does the fact that wireless carriers may use the NYSTA Small ILECs' facilities for**  
16 **backhaul today mean that the wireless carriers' ability to provide services depends on**  
17 **the small ILECs' financial health?**

18 A The answer depends on the availability of alternative facilities in particular locations, and  
19 also on the ease of market entry if there are no existing alternative facilities. While I have  
20 not analyzed either factor, according to the NYSTA Small ILECs themselves, "the largest  
21 New York State fiber optic backbone network" is provided by not by ILECs but by a  
22 company called ION HoldCo, LLC ("ION").<sup>2</sup>

23 **Q What is ION?**

24 A ION is the owner and operator of "an Albany, New York based, statewide, redundant  
25 SONET fiber network connecting over 60 rural New York State communities."<sup>3</sup> The

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<sup>2</sup> See, e.g., Letter dated July 6, 2009, from S. Tourje, President, Crown Point Tel. Corp., to NTIA. This letter is part of ION's application for a federal Recovery Act grant to extend its network in New York and other states, which I discuss below. The complete application, which is voluminous, is available at [http://www2.ntia.doc.gov/files/grantees/ion\\_application\\_part1.pdf](http://www2.ntia.doc.gov/files/grantees/ion_application_part1.pdf). Pages of the application discussed herein, including the letter, are reproduced in Exhibit Conn 2.

<sup>3</sup> See <http://www.i-o-n.com/aboutus.html>. Relevant pages from ION's web site are reproduced in Exhibit Conn 3.

1 network was originally owned by Empire State Independent Network, LLC (“Empire”), a  
2 consortium of fifteen NYSTA Smaller ILECs’ affiliates.<sup>4</sup> Empire filed for bankruptcy in  
3 2007, and as part of its restructuring efforts its assets were sold to ION. ION is owned  
4 jointly by Sovernet Holding Corporation, a facilities-based provider of voice and data  
5 services, and RLEC Holding Company, LLC, which is owned by affiliates of the NYSTA  
6 Smaller ILECs that owned Empire.<sup>5</sup>

7 ION describes its network as follows:

8 [T]his advanced telecommunications network . . . contains over 2,200  
9 route miles of fiber, and is comprised of four diverse SONET rings  
10 stretching from Buffalo to Albany and south to New York City. In  
11 addition, the ION Network is connected to a network, owned by the  
12 Development Authority of the North Country, a New York State  
13 Authority, which operates the Open Access Telecom Network (OATN),  
14 adding an additional 500 miles of fiber network via two SONET rings  
15 with access from Syracuse to the Canadian Border along the western side  
16 of the North Country.<sup>6</sup>

17 The ION network has a physical presence in “many of the upstate Verizon Access  
18 Tandems” as well as “a number of the major carrier hotels in the state.”<sup>7</sup> However, the rural  
19 reach of the network is its defining characteristic:

20 What truly sets ION apart from all the carriers operating networks in New  
21 York State is the rural reach of the Network. The network’s rural emphasis  
22 is based on the fact that ION was founded on the vision and investment of  
23 the affiliates of fifteen (15) Independent Telephone service providers

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<sup>4</sup> The fifteen members of the Empire State consortium, which invested in the company through various intervening affiliates, were Armstrong Telephone Co., Empire Telephone Co., Crown Point Telephone Co., Delhi Telephone Co., Dunkirk & Fredonia Telephone Co., Ontario & Trumansburg Telephone Co., Germantown Telephone Co., Hancock Telephone Co., Margaretville Telephone Co., Newport Telephone Co., Oneida County Rural Telephone Co., Middleburgh Telephone Co., State Telephone Co., Warwick Valley Telephone Co., and Chazy & Westport Telephone Co. See CASE 08-C-0724 – Joint Petition of Empire State Independent Network, LLC and ION HoldCo, LLC for Authorization to Transfer the Assets of Empire State Independent Network, LLC to ION HoldCo, LLC (order issued July 16, 2008).

<sup>5</sup> See Joint Application of ION HoldCo, LLC and Empire State Independent Network, LLC for Authorization to Transfer the Assets of Empire State Independent Network, LLC to ION HoldCo, LLC, Case 08-C-0724 (petition filed June 24, 2008).

<sup>6</sup> *Id.*

<sup>7</sup> See <http://www.i-o-n.com/networkinfo.html> (Exhibit 3).

(ILEC's), who have been supporting customers in rural upstate for over 1300 years collectively.<sup>8</sup>

In 2009 ION was awarded \$39.7 million in federal Recovery Act funds for the "ION Upstate New York Rural Broadband Initiative" – a project to expand the fiber optic network serving rural areas located primarily in New York.<sup>9</sup> ION's grant application (the "ION Application") describes the project as follows:

ION will offer "middle mile" infrastructure at reduced costs which will create the needed financial situation whereby current and new "last mile" retail service providers can bring communities much needed broadband services. These communities currently are unserved and underserved with broadband. The introduction of this cost effective "middle mile" transport allows all service provider's access to new rural unserved and underserved markets. . . .

The ION application encompasses 10 sub-projects, with service in over 70 new communities, covering various geographic regions of the state. . . .

The ION network will provide and improve broadband service to the highest proportion of rural residents in New York who do not have adequate access to broadband service for unserved and underserved rural areas . . . . To do this, ION will be dropping interconnection points into each rural unserved and underserved area.

\* \* \*

ION will provide much needed "middle mile" broadband services, which will give access to new service providers, who will bring applications and content to these communities. . . .

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<sup>8</sup> *Id.* (listing 18 points of presence at locations associated with the fifteen NYSTA Smaller ILEC investors).

<sup>9</sup> See Report, "100 Recovery Acts Changing America," at 21 (The White House, Sept. 2010) (available online at <http://www.whitehouse.gov/sites/default/files/100-Recovery-Act-Projects-Changing-America-Report.pdf>):

ION HoldCo, LLC was awarded \$39.7 million in Recovery Act Funds to implement a rural broadband infrastructure project. ION will build 10 new segments of fiber optic middle mile broadband infrastructure serving more than 70 rural communities in upstate New York and parts of Pennsylvania and Vermont. The project will enable wired and wireless last mile service providers to make broadband more readily available to 250,000 households and 38,000 businesses, and extend middle mile infrastructure to low-income rural areas . . . .

1 The companies ION has existing connections with and/or will provide  
2 services to in the future are; PaeTec Communications, Cornerstone  
3 Telephone, RCN/NEON Communications, FiberTech Networks, Qwest  
4 Communications, Level 3 Communications, XO Communications, Tech  
5 Valley Communications, Charter Communications, iNetworks, Neutral  
6 Tandem, WBS Connect Communications, IntelliFiber Networks,  
7 Westelcom, DANC, TDS Telecom, Frontier Communications (Citizens),  
8 PrimeLink, FLTG, Northland Communications, Sprint NexTel, T Mobile,  
9 Verizon Wireless, AT&T Wireless/Cingular, TW Tel, and the twelve  
10 owner Rural Telephone member companies. The majority of these  
11 providers are customers currently.

12 \* \* \*

13 The objective of this design is to ensure that a complete middle mile fiber  
14 backbone solution is in place to enable development of new last-mile  
15 networks, whether wire-line, fiber to the premise, fiber to the curb, or any  
16 number of wireless technology solutions.<sup>10</sup>

17 **Q Is ION's network present in any of the NYSTA Smaller ILECs' rural service areas?**

18 A Yes. ION has rural points of presence at locations associated with the fifteen NYSTA  
19 Smaller ILECs that owned Empire State Independent Network and held ownership interests  
20 in ION: Armstrong Telephone, Chazy & Westport Telephone, Crown Point Telephone,  
21 Delhi Telephone, Dunkirk & Fredonia Telephone, Empire Telephone, Germantown  
22 Telephone, Hancock Telephone, Margaretville Telephone, Middleburgh Telephone,  
23 Newport Telephone, Oneida County Rural Telephone, Ontario & Trumansburg Telephone,  
24 State Telephone, and Warwick Valley Telephone.<sup>11</sup>

25 The ION Application contains several maps showing the location of ION's network  
26 as augmented by the Recovery Act project, each of the ten sub-projects, and projected  
27 broadband availability after the project is completed.<sup>12</sup> These maps show that ION's  
28 augmented network reaches areas served by many of the NYSTA Smaller ILECs.

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<sup>10</sup> ION Application (Exhibit Conn 2) at 18, 19, 25. The complete application, which is voluminous, is available at [http://www2.ntia.doc.gov/files/grantees/ion\\_application\\_part1.pdf](http://www2.ntia.doc.gov/files/grantees/ion_application_part1.pdf)

<sup>11</sup> See <http://www.i-o-n.com/networkinfo.html> (Exhibit Conn 3). ION's grant application states that "the twelve owner Rural Telephone member companies" are among the carriers "ION has existing connections with and/or will provide services to in the future." ION Application (Exhibit Conn 2) at 19. Presumably, the reduction in the number of owners from 15 to 12 is due to consolidation.

<sup>12</sup> ION Application (Exhibit Conn 2) at 218-231.

1 **Q How is the presence of ION and its ongoing network expansion relevant to the NYSTA**  
2 **Panel’s testimony regarding backhaul and the need for additional support (NYSTA**  
3 **Direct at 11)?**

4 A The presence of ION refutes the NYSTA Panel’s assertions that funding the NYSTA  
5 Smaller ILECs is necessary to ensure the availability of backhaul services for wireless  
6 carriers and other alternative providers. According to NYSTA itself in a letter submitted as  
7 part of the ION Application, ION was “created by the rural local exchange carrier NYSTA  
8 members and their ISP subsidiaries in New York to provide access to competitively priced,  
9 redundant backhaul services.”<sup>13</sup> As a result, according to letters submitted by the NYSTA  
10 Smaller ILECs with ownership interests in the network, “ION has become the principal  
11 carrier of rural Broadband traffic.”<sup>14</sup> The ION Application itself confirms that ION offers  
12 “middle mile” services not to rural ILECs but also to wireless carriers and other competitive  
13 providers:

14 ION currently and will continue to offer its middle-mile services to a  
15 variety of customers:

- 16 - Cable TV Companies
- 17 - Competitive Local Exchange Carriers (CLEC)
- 18 - Internet Service Providers (ISP)
- 19 - Rural Local Exchange Carriers (RLEC)
- 20 - Independent [*sic*] Local Exchange Carriers (ILEC)
- 21 - Inter Exchange Carriers (IXC)
- 22 - Wireless/Cellular Companies
- 23 - Power Line Communication Providers
- 24 - Private/Enterprise/Governmental/Educational Entities<sup>15</sup>

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<sup>13</sup> Letter dated Aug. 10, 2009 from R. Pucket, NYSTA, to NTIA Broadband Technology Opportunities Program, ION Application (Exhibit Conn 2) at 231.

<sup>14</sup> Letter dated July 6, 2009 from S. Knapp-Macey, President, Crown Point Tel. Co., to NTIA, ION Application at 297-98 (Exhibit Conn 2). This statement is repeated in supporting letters from Germantown Telephone Company, Inc., Margaretville Telephone Company, Newport Telephone Company, Middleburgh Telephone Company, Armstrong Telephone Company, Chazy Westport Communications, Empire Telephone Company, DFT Communications, and Oneida County Rural Telephone Company, ION Application (Exhibit Conn 2) at 299-314.

<sup>15</sup> ION Application (Exhibit Conn 2) at 21.

1 In fact, the ION Application represents that “Sprint NexTel, T Mobile, Verizon  
2 Wireless, AT&T Wireless/Cingular” are among “[t]he companies ION has existing  
3 connections with and/or will provide services to in the future.”<sup>16</sup>

4 **Q Does ION need state universal service funding to deploy or maintain its rural “middle**  
5 **mile” network?**

6 A No. ION just received nearly \$40 million from the federal government. In order to secure  
7 that grant, ION represented that, upon award of the federal money, its Upstate New York  
8 Rural Broadband Initiative would be financially viable and sustainable.<sup>17</sup>

9 Even if this were not the case, ION’s own history refutes the notion that preservation  
10 of a carrier’s revenue streams is necessary to maintain its network functionality or service  
11 continuity. ION acquired its network when Empire, the rural ILEC consortium, declared  
12 bankruptcy. Neither Empire’s bankruptcy, nor the transfer of its assets to ION, appears to  
13 have had any discernable negative effect on Empire or its customers.<sup>18</sup>

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<sup>16</sup> ION Application (Exhibit Conn 2) at 19. The application further states that in the case of “Project 4a/4b” of the stimulus project, “[t]he wireless providers AT&T (f/n/a [*sic*]Cingular) and Verizon Wireless are seeking access to this infrastructure to connect existing cell towers and newly created cell towers to Mobile Switching Centers across the three states of New York, Vermont and New Hampshire.” *Id.* at 234.

<sup>17</sup> See ION Application (Exhibit Conn 2) at 40:

As is clearly demonstrated in the financial attachments of this application, the project is viable and sustainable with the federal grant assistance. Net Income goes from negative amounts in Year 1 and Year 2, which are expected due to network construction and turn-up, to positive amounts of \$986K in Year 3, \$2.06M in Year 4, and \$2.71M in Year 5. The project has a positive cash balance for the 5 year period, and is financially stable going forward.

The referenced financial statements are not included in the public version of the ION Application. However, ION represented that it received no state funding. *Id.* at 41.

<sup>18</sup> See Case 08-C-0724 – Joint Petition of Empire State Independent Network, LLC and ION HoldCo, LLC for Authorization to Transfer the Assets of Empire State Independent Network, LLC to ION HoldCo, LLC (order issued July 16, 2008); Joint Application of ION HoldCo, LLC and Empire State Independent Network, LLC for Authorization to Transfer the Assets of Empire State Independent Network, LLC to ION HoldCo, LLC, Case 08-C-0724 (petition filed June 24, 2008).

1 **Q The NYSTA Panel asserts that wireless and VoIP services should not be viewed as**  
2 **alternatives for universal service purposes because “the telephone service offerings of**  
3 **these providers do not meet the Commission’s definition of universal service” (NYSTA**  
4 **Direct at 49). Do you agree that wireless and VoIP services should not be viewed as**  
5 **alternatives for universal service purposes for this reason?**

6 A No, for the reasons stated below in response to similar assertions by the Staff  
7 Substitutability Panel.<sup>19</sup> The fact that more than one out of four adults in the United States  
8 live in wireless-only households shows that wireless service meets consumer expectations  
9 and requirements for basic telephone service.

10 **Q The NYSTA Panel asserts that wireless services should not be viewed as alternatives**  
11 **for universal service purposes because “there really has been no measure of the true**  
12 **signal strength of the coverage that the wireless providers claim is reflected in their**  
13 **system contours. Put another way, the wireless providers have provided no fact to**  
14 **show that telephone call quality availability [sic] can be achieved by their respective**  
15 **systems such as within homes or buildings located in the entire service areas of the**  
16 **NYSTA Smaller ILECs, a fact that is solely within their control to provide” (NYSTA**  
17 **Direct at 49). What is your response?**

18 A It is true that in some cases wireless signal strength may vary depending upon a customer’s  
19 location in his or her home or on its doorstep. However, it is equally true that wireline  
20 phone service is similarly constrained by the length of the cord or, in the case of cordless  
21 phones, signal strength that varies with location. Using NYSTA’s logic, a smaller ILEC’s  
22 service is not a suitable option for universal service purposes if there’s only one telephone  
23 jack in the house.<sup>20</sup> Again, the fact that more than one out of four adults in the United States  
24 live in wireless-only households proves that wireless is an adequate substitute for wireline  
25 service.

26 **Q The NYSTA Panel asserts that competitive providers’ services and prices do not**  
27 **constitute universal service offerings because “neither the wireless nor cable operators**

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<sup>19</sup> See *infra* pp. 16-23.

<sup>20</sup> Just as wireline carriers offer additional jacks and inside wiring to extend their service both inside customers’ homes, wireless service providers use technologies such as distributed antenna systems and femtocells to improve indoor coverage. *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Fourteenth Report, WT Docket No. 09-66, FCC 10-81 at ¶ 110 (May 20, 2010) (hereinafter “*Fourteenth CMRS Report*”), available on-line at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-10-81A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-81A1.pdf).

1 offer stand-alone basic local exchange service in the areas served by the NYSTA  
2 Smaller ILECs” (NYSTA Direct at 51). The NYSTA Panel also asserts that “in order  
3 to be authorized by the Commission as a ‘substitutable’ universal service provider,  
4 that provider should be required to advertise and offer affordable local exchange  
5 service, on a stand-alone basis, consistent with the Commission’s established universal  
6 service policies and subject to the Benchmark Rate proposed herein” (NYSTA Direct  
7 at 52).

8  
9 **Do you agree?**

10 A No. The need for access to “stand-alone” local exchange service was conceived at a time  
11 before customers had alternatives for local service and competition drove prices for toll  
12 service and calling features closer to cost. Today, most wireless carriers, VoIP providers,  
13 CLECs and even some ILECs include such services in their offerings because customers  
14 want them and, if one carrier does not provide them as part of an affordable service package,  
15 its competitor will. The fact that alternative providers’ service offerings include long  
16 distance usage, calling features and data services along with local service does not make  
17 them less suitable “universal service offerings,” provided they are available at affordable  
18 rates. As shown in my direct testimony, the affordability of wireless service plans is  
19 demonstrated and confirmed by consumer demand.

20 **Q What about the condition that the alternative local service be “subject to the**  
21 **Benchmark Rate” proposed by the NYSTA Panel?**

22 A It should be discarded. The premise of the NYSTA Panel’s proposal—that local service is  
23 affordable only if offered on a “stand-alone” basis at the Benchmark Rate—is completely  
24 refuted by the consumer behavior described in my direct testimony.

25 **Q The NYSTA Panel asserts that, due to bundling of services, “the lowest prices for a**  
26 **consumer seeking only basic local telephone service” from a wireless or cable/VoIP**  
27 **provider in the NYSTA Smaller ILEC service areas “range[] from \$49.95 to \$84.90”**  
28 **(NYSTA Direct at 51). Is that correct?**

29 A No. T-Mobile offers prepaid plans for \$30 per month (1500 minutes or text messages and  
30 30 MB data) and \$15 per month (plus 10 cents per voice minute with unlimited text). T-  
31 Mobile’s “pay as you go” plans allow customers to “refill” their phones for as little as \$10  
32 (for 30 minutes; \$25 for 130 minutes). In addition, T-Mobile offers “pay by the day” plans  
33 pursuant to which customers pay \$1 for each day they use their phones, plus 10 cents per

1 minute for daytime calls to non-T-Mobile numbers (there is no charge for calls from 7PM to  
2 6:59AM or for calls to other T-Mobile wireless numbers).

3 **Q The NYSTA Panel asserts that universal service funding should be based upon an**  
4 **incumbent ILEC's "entire service area" in light of the traditional manner in which the**  
5 **incumbent ILECs' local exchange networks have been deployed (NYSTA Direct at 45-**  
6 **46).**

7 **The Panel then asserts that in order to be considered a "substitutable" universal**  
8 **service provider, a competitor must offer services "to all customers within a service**  
9 **area designated by the Commission, which should be the entirety of the NYSTA**  
10 **Smaller ILEC's service area" (NYSTA Direct at 52).**

11 **Do you agree?**

12 A No. First, the relevant question is whether an alternative service is available at actual  
13 customer locations, not every inch of an ILEC's service area. Many of the "White Spots" in  
14 NY – the areas where there is no wireless coverage – appear to be sparsely populated state  
15 forest preserves and other land that is unlikely to be inhabited. No ILEC actually provides  
16 service to every wilderness area, forest, islet, or mountaintop within its service territory. If  
17 there are no residential customers in part of the ILEC's service area, then it is irrelevant  
18 whether alternative service is available there.

19 Second, wireless service can be deployed quickly when needed, as demonstrated by  
20 the Staff's finding that wireless carriers expanded wireless coverage in New York by 4.7%  
21 in 2010.<sup>21</sup> The backhaul facilities made available by the ION Upstate New York Rural  
22 Broadband Initiative discussed above will enhance this capability. Therefore, the absence of  
23 coverage today does not mean that there would not be a timely substitute available (or made  
24 available) before the Commission approves a rural ILEC's request for permission to  
25 abandon service.

26 **Q The NYSTA Panel asserts: "Universal service policy and the establishment of concrete**  
27 **plans to advance it require service commitments that are enforceable and can be relied**  
28 **upon. In order to be enforceable and thus relied upon, the entities that are the**  
29 **'universal service' providers must be subject to Commission jurisdiction and**  
30 **oversight. Any entity that seeks to be a universal service provider or any analysis that**  
31 **suggests that such universal service policy need not be applied in a given area based on**  
32 **the existence of other providers must be premised on the ability of the Commission to**

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<sup>21</sup> Staff White Spots Direct at 18-19.

1 **exercise jurisdiction over that other service provider in order to ensure that any**  
2 **universal service policy objective is achieved.” (NYSTA Direct at 55.) Do you agree?**

3 A No, for the reasons stated below in response to the Staff Substitutability Panel’s testimony.<sup>22</sup>

4 **Q The NYSTA Panel asserts that “the responses of the wireless carriers to discovery” in**  
5 **this proceeding “demonstrate” that the Commission cannot rely on wireless carriers**  
6 **“to voluntarily provide any necessary information (on a proprietary basis if necessary)**  
7 **to ensure that the health, safety and welfare of the citizens of New York are adequately**  
8 **protected” (NYSTA Direct at 57). Do you agree?**

9 A No. Providing readily-accessible, publicly-available information to help create an  
10 entitlement program for private companies at the expense of competitors and their  
11 customers is very different from providing information necessary to ensure the health, safety  
12 and welfare of the citizens of New York. T-Mobile routinely provides the latter information  
13 to the Commission on request.

14 **Q The NYSTA Panel asserts that “all telecommunications service providers that have**  
15 **been authorized by the Commission to serve as a universal service provider should be**  
16 **required to adhere to the same service quality reporting requirements and standards,**  
17 **to the extent possible recognizing the different underlying technologies, irrespective of**  
18 **whether that provider is a NYSTA Smaller ILEC, a cable digital phone provider or a**  
19 **wireless provider” (NYSTA Direct at 58). Do you agree?**

20 A Yes, provided that such regulatory parity is achieved by reducing the regulatory burdens  
21 (and benefits such as rate of return regulation) applicable to the rural LECs. However, any  
22 proposal to subject competitive carriers to traditional public utility-type regulation should be  
23 rejected. Such is inefficient and ultimately paid-for by consumers, and it should be imposed  
24 only where found to be necessary due to the absence of effective competition. As shown in  
25 my direct testimony and below in response to the Staff Substitutability Panel’s similar  
26 assertions,<sup>23</sup> the record does not support such a finding in the case of wireless services.

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<sup>22</sup> See *infra* pp. 16-23.

<sup>23</sup> See *infra* pp. 16-23.

1 **Q The NYSTA Panel asserts that “the NYSTA Smaller ILECs have been designated**  
2 **ETCs for FUSF purposes. As such, they are generally the only carriers which comply**  
3 **with the federal requirements to provide universal service” (NYSTA Direct at 66). Is**  
4 **that correct?**

5 A No. As of the third quarter of 2010, there were 456 competitive eligible  
6 telecommunications carriers (“CETCs”) receiving support from the federal high cost  
7 universal service fund, of which 336 were wireless service providers.<sup>24</sup> CETCs currently  
8 serving New York customers include Sprint, TracFone, and Virgin Mobile. These carriers  
9 by definition comply with federal carrier eligibility requirements for receiving universal  
10 service support.<sup>25</sup>

11 **Q Section 5(6)(a) of the New York Public Service Law states that the application of the**  
12 **Public Service Law to cellular telephone services is suspended unless the Commission**  
13 **makes a determination, after notice and hearing, that the suspension shall cease “to the**  
14 **extent found necessary to protect the public interest.” The NYSTA Panel asserts that**  
15 **the Commission may make the determinations required by Section 5(6)(a) in this**  
16 **proceeding because adequate notice has been provided to wireless carriers (NYSTA**  
17 **Direct at 77). Is that correct?**

18 A Certainly not. I am unaware of any Commission order or notice in this proceeding that  
19 proposes termination of the suspension provided by Section 5(6)(a) of the Public Service  
20 Law. The NYSTA Panel cites the participation of T-Mobile, AT&T and Verizon Wireless  
21 in this proceeding as evidence that notice has been given. However, eleven facilities-based  
22 wireless carriers provide service in New York.<sup>26</sup> Even if participation in this proceeding  
23 were evidence of “notice” (it is not), the fact that four of the eleven facilities-based wireless  
24 carriers providing service in New York have participated would be outweighed by the fact  
25 that the remaining seven, and all wireless resellers, have not.

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<sup>24</sup> Universal Service Administrative Company (“USAC”), “High Cost Support Distribution by Wireless and Wireline ETCs – 1998-3Q2010,” available at <http://www.usac.org/about/universal-service/fund-facts/fund-facts-high-cost-quarterly-program-statistics.aspx>

<sup>25</sup> See 47 C.F.R. § 54.201-.202.

<sup>26</sup> FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service Report* (“2010 Trends in Telephone Service”), Table 11.2 (September 2010), available on-line at [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2010/db0930/DOC-301823A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0930/DOC-301823A1.pdf).

1 **Q The NYSTA Panel suggests that the record in this proceeding could support a finding**  
2 **that termination of the wireless carrier suspension is “necessary to protect the public**  
3 **interest” as provided in Section 5(6)(a) (NYSTA Direct at 76-78). Do you agree?**

4 A No. While termination of the wireless carrier suspension would be necessary to compel  
5 wireless carriers to contribute to a state universal service fund, the record does not support a  
6 finding that a fund on the scale proposed by the RLECs is necessary to preserve universal  
7 service. Since there is no need for such a fund, there is no need to compel wireless carriers  
8 to contribute, and therefore no need to disturb the wireless suspension.

9 **Q The NYSTA Panel asserts that in determining universal service policy the Commission**  
10 **should consider a June 2009 survey of 2000 households in which “80% [of the**  
11 **respondents] felt that it is important to have both a corded landline and a cell phone in**  
12 **their home in case of emergency because it provides options to dial 9-1-1 reliably and**  
13 **quickly” (NYSTA Direct at 101-102). Does the quoted response probative of consumer**  
14 **views of the substitutability of wireless service for landline service?**

15 A No. Expressing a preference for a service in response to a question – which has no  
16 economic consequences – differs from actually purchasing the service –which requires the  
17 purchaser to want it enough to pay for it. A person may agree that it is “important” to have  
18 a four-wheel-drive vehicle for inclement weather and a subcompact for fuel efficiency.  
19 However, when told the cost of each vehicle at the auto dealership and confronted with the  
20 decision of purchasing one, the other or both, the same person may decide that a single  
21 vehicle (and a single car payment) best suits her needs. The CDC report discussed in my  
22 direct testimony shows what consumers do when they decide whether to subscribe to  
23 wireline services, wireless services, or both. The fact that more than one out of four adults  
24 has actually “cut the cord” in favor of wireless is far more probative of how consumers view  
25 wireless services than the fact that, all things being equal, they might choose to keep the  
26 wired phone as well.

1    **III. RESPONSE TO DIRECT TESTIMONY FILED ON BEHALF OF STAFF**

2        **A. RESPONSE TO STAFF WHITE SPOTS DIRECT**

3    **Q    The Staff White Spots Panel Direct includes an exhibit, Exhibit WSP\_1, entitled**  
4        **“Preliminary Staff Report on Cable and Wireless Phone Coverage, Case 09-M-0527,**  
5        **December 22, 2009 (the “2009 Staff Report” or “Report”). What is the significance of**  
6        **the report?**

7    **A    The 2009 Staff Report is useful in that it shows that the vast majority of NY consumers have**  
8        **access to alternative sources of basic local telephone service. For example, it shows that**  
9        **wireless coverage is available at 100% of the customer locations located within the serving**  
10       **areas of a number of the NYSTA Smaller ILECs, including current Transition Fund**  
11       **recipient Oneida County Rural Telephone Co. However, the Report is flawed in several**  
12       **respects.**

13   **Q    How is the 2009 Staff Report flawed?**

14   **A    First, the original Report did not distinguish between commercial and residential property**  
15       **locations, and Staff’s responses to T-Mobile’s discovery requests confirmed that many**  
16       **nonresidential property locations were included.<sup>27</sup> This was inappropriate because the**  
17       **Commission’s universal service policy focuses on the availability of *residential* basic local**  
18       **telephone service. In its discovery responses, Staff has indicated that it has revised the**  
19       **Report by eliminating most of the nonresidential property locations.<sup>28</sup> The updated results**  
20       **show that 8,082 property locations in the “38 Smaller ILEC Territories” are without wireless**  
21       **service.<sup>29</sup>**

22        Second, although the Report properly focuses on smaller ILECs, it erroneously  
23        includes Frontier - Citizens as a “smaller” ILEC. However, with 225,321 “property  
24        locations,” Frontier - Citizens is more than six times as large the second-largest “smaller”  
25        ILEC in the Report and *ten* times larger than the rest. Frontier – Citizens is neither a  
26        “smaller” ILEC nor a member of the NYSTA Smaller ILEC Group. Therefore, it should not

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<sup>27</sup> NY DPS Staff Responses and Objections to the Discovery Requests of T-Mobile at 1-2 (responses to questions 3-4) The Staff’s responses are reproduced in Exhibit Conn 4.

<sup>28</sup> *Id.* at 3-5 (response to question 8).

<sup>29</sup> *Id.* at 5 (response to question 8).

1 be included when considering how many locations served by “smaller” ILECs are without  
2 wireless or cable modem alternatives for the provision of local service. If Frontier-Citizens  
3 is removed from the Report’s group of 38 smaller ILECs, the number of locations without  
4 cable modem or wireless alternatives for local service declines from 8658 to 1643 in the  
5 original Report and from 8082 to 1531 in the “update” provided in response to T-Mobile’s  
6 discovery requests.

7 Third, the 2009 Staff Report fails to reflect alternative providers’ recent deployment  
8 of facilities in former “White Spots.” This is confirmed by the Staff White Spot Panel’s  
9 testimony that in the year following the issuance of the Report several new cable franchises  
10 are either pending or approved, and wireless service in the state has increased by 4.7%. The  
11 growth in wireless coverage can be seen by comparing the October 2009 American Roamer  
12 map showing wireless coverage in New York state (Ex WSP-13A) with the maps for  
13 October 2010 (Ex WSP-13B) and December 2010 (Exhibit Conn 1).

14 Fourth, the Report attempts to measure the *current* availability of basic local service  
15 alternatives. However, Staff’s position in this proceeding is that although universal service  
16 is present today a mechanism has to be put in place to guard against the financial failure of a  
17 rural ILEC in the *future*. As demonstrated by the substantial increase in cable and wireless  
18 coverage in just the past year, the competitive landscape is not static. The Report therefore  
19 is of limited use in predicting what alternatives will be available if a rural ILEC has  
20 financial problems in the future. It does not account for the likelihood that the rapid  
21 expansion of cable and wireless coverage observed by the Panel will to continue in the  
22 coming months, particularly in rural areas.

23 Each of these flaws causes the Report to overstate the number of residential  
24 customer locations that would be affected should a rural ILEC exit the market.

25 **Q Why do you expect the rapid expansion of cable and wireless coverage to continue,**  
26 **particularly in rural areas?**

27 A As described above in response to the NYSTA Panel’s testimony, ION, the principal  
28 provider of backhaul and broadband backbone network facilities in New York’s rural areas,  
29 has been awarded 39.7 million in federal Recovery Act funds for the “ION Upstate New  
30 York Rural Broadband Initiative” – a project to expand the fiber optic network serving rural  
31 areas located primarily in New York. The grant was awarded in 2009, and ION has

1 committed to complete the project in approximately two years. As the White House has  
2 observed: “The project will enable wired and wireless last mile service providers to make  
3 broadband more readily available to 250,000 households and 38,000 businesses, and extend  
4 middle mile infrastructure to low-income rural areas . . . .”<sup>30</sup> The rapid growth of cable and  
5 wireless coverage observed by the White Spots Panel in 2010 occurred without the benefit  
6 of the new ION facilities. The addition of ION “middle mile” facilities and interconnection  
7 points “in every rural unserved and underserved area,”<sup>31</sup> including the service areas of the  
8 NYSTA Smaller ILECs currently receiving payments from the Transition Fund, will  
9 facilitate and further accelerate this growth. As ION’s grant application states, the network  
10 will be designed “to ensure that a complete middle mile fiber backbone solution is in place  
11 to enable development of new last-mile networks, whether wire-line, fiber to the premise,  
12 fiber to the curb, or any number of wireless technology solutions.”<sup>32</sup>

13 **Q Will the ION network, augmented by the Upstate New York Rural Broadband**  
14 **Initiative provide “middle mile” facilities and points of presence in areas that the**  
15 **updated 2009 Staff Report shows as being without cable modem or wireless services?**

16 **A** Yes. This can be seen by comparing the map of ION’s network showing the new additions  
17 included in the ION Application (Exhibit Conn 2) with Exhibit DPS-WSP – 13b, which  
18 reflects wireless coverage as of December 2010.

19 **B. RESPONSE TO STAFF SUBSTITUTABILITY PANEL DIRECT**

20 **Q The Staff Substitutability Panel asserts that the “substitutability” of an alternative**  
21 **service for basic local exchange services depends on whether the provider of the**  
22 **alternative service is subject to certain regulatory requirements. Do you agree?**

23 **A** No. In this proceeding, the question of “substitutability” is only relevant to the question of  
24 how many customers are “at risk” of losing access to basic local service because there is no  
25 alternative to the ILEC. The Staff insists on defining “substitutability” in terms of the  
26 applicability of regulatory requirements that are neither part of the Commission’s “basic

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<sup>30</sup> Report, “100 Recovery Acts Changing America,” at 21 (The White House, Sept. 2010) (available online at <http://www.whitehouse.gov/sites/default/files/100-Recovery-Act-Projects-Changing-America-Report.pdf>).

<sup>31</sup> ION Application (Exhibit Conn 2) at 18.

<sup>32</sup> ION Application (Exhibit Conn 2) at 25.

1 service” definition nor demanded by consumers. The effect is to artificially inflate the  
2 number of customers that are without a suitable “substitute” service and thus purportedly “at  
3 risk,” and thus overstate the “need” for a state universal service funding mechanism.

4 The best evidence of whether a service is an adequate substitute for basic residential  
5 local phone service is consumer behavior. As explained in my direct testimony, that  
6 evidence proves conclusively that wireless is an adequate substitute for wireline phone  
7 services.

8 **Q The Staff Substitutability Panel asserts that competition in an “unregulated**  
9 **telecommunications market” cannot “ensure that basic residential phone service is**  
10 **available, affordable and reliable” because the pricing and quality levels that “could**  
11 **come about” in an unregulated environment “might differ” from those produced by**  
12 **regulation, and that in a competitive telecommunications market, “[t]he general level**  
13 **of service quality, reliability and customer service could be much less than what could**  
14 **be realized under regulation” (Staff Substitutability Direct at 7).**

15 **How do you respond?**

16 A First, I am unsure of the basis for these assertions. The Panel cites no evidence to support  
17 the proposition that competition in telecommunications services produces a less desirable  
18 result than regulation. Indeed, the stated concern – that service and pricing levels that  
19 “could come about” in an unregulated environment “might differ” from or “could be” less  
20 than what “could be” realized under regulation – is purely hypothetical. Furthermore, it  
21 reflects a regulatory philosophy that is completely at odds with the Commission’s “long-  
22 standing belief that competition is the most efficient way to ensure quality  
23 telecommunications at reasonable rates,” that it “spurs innovation, promotes investment,  
24 encourages efficiency, and maximizes customer choice,” and that it “disciplines providers’  
25 behavior, reducing the need for governmental regulation.”<sup>33</sup>

26 In the rare event that competition fails to constrain price and service quality levels,  
27 government controls may be necessary to approximate the results that would have been  
28 produced by a competitive market. However, government regulation of prices and service

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<sup>33</sup> *Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services*, Case 05-C-0616, Statement of Policy on Further Steps Towards Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings, slip op. at 6 (N.Y.P.S.C. Apr. 11, 2006) (“*Competition III Order*”).

1 quality generally is inferior to direct reliance on the preferences of the consumer, as  
2 reflected in a competitive market. Therefore, the public interest requires that regulators  
3 intervene only upon a convincing demonstration that the market in question has failed to  
4 constrain pricing and service quality. No such demonstration has been made here. The  
5 Staff's unsupported statement of concern is too thin a reed to support the conclusion that the  
6 lack of traditional ILEC-style regulation disqualifies competitive provision of basic local  
7 service as an acceptable means of preserving universal service.

8 Second, none of the carriers in this proceeding operates in an "unregulated  
9 telecommunications market." Local exchange carriers are regulated at the state and federal  
10 level, cable television carriers are regulated at the federal and, generally, local level, and  
11 Wireless services are regulated at the federal level. In addition, all businesses operating in  
12 New York, including telecommunications providers, are subject to New York's state  
13 consumer protection laws of general applicability.

14 **Q What government regulations apply to wireless carriers?**

15 A Federal law requires wireless carriers' rates and practices to be just and reasonable and not  
16 unreasonably discriminatory,<sup>34</sup> and wireless carrier's rates and practices are subject to FCC  
17 oversight and complaint jurisdiction.<sup>35</sup> The FCC's jurisdiction over wireless rates and entry  
18 conditions and service quality is exclusive,<sup>36</sup> although states may petition the FCC for  
19 permission to regulate intrastate wireless rates in the event market conditions fail to protect  
20 consumers from unjust or unreasonable rates.<sup>37</sup> Federal law governs wireless carriers'  
21 obligations with respect to E911 access,<sup>38</sup> Telecommunications Relay Services,<sup>39</sup> law

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<sup>34</sup> 47 U.S.C. §§ 201(b), 202.

<sup>35</sup> 47 U.S.C. §§ 207-208.

<sup>36</sup> 47 U.S.C. § 332(c)(3)(A) ("no state or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service"). The prohibition against state regulation of wireless rates also prohibits state regulation of service quality. *Bastien v. AT&T Wireless Services, Inc.*, 205 F.3d 983, 988 (7th Cir. 2000); *In re Apple iPhone 3G Products Litigation*, 728 F. Supp. 2d 1065 (N.D. Cal. 2010).

<sup>37</sup> 47 U.S.C. § 332(c)(3). .

<sup>38</sup> 47 C.F.R. § 20.18.

<sup>39</sup> 47 U.S.C. § 255; 47 C.F.R. § 64.601

1 enforcement assistance,<sup>40</sup> customer proprietary network information protections,<sup>41</sup> outage  
2 reporting,<sup>42</sup> and truth-in-billing.<sup>43</sup> In addition, as noted above, all carriers operating in New  
3 York, including wireless carriers, are subject to New York’s state consumer protection laws  
4 of general applicability.

5 **Q The Staff Substitutability Panel asserts that it is “far too risky” to leave the price and**  
6 **service quality of basic residential telephone service to be determined by the**  
7 **competitive market place (Staff Substitutability Direct at 8). Is that correct?**

8 A No. Nothing in the record suggests that it is “risky” at all – let alone “much too risky” – to  
9 allow the competitive market place to determine the price and service quality of basic  
10 residential telephone service. To the contrary, the experience of the wireless industry  
11 provides overwhelming evidence that the “competitive market place” has “regulated” price  
12 and service quality quite well. With respect to price, the cellular component of the  
13 Consumer Price Index has declined 35.8 percent during the period from December 1997  
14 through December 2008.<sup>44</sup> Wireless carriers’ average revenue per minute has declined 85%  
15 during the period from December 1994 through December 2008.<sup>45</sup> The decline of revenues  
16 from voice services has been even steeper.<sup>46</sup> With respect to service quality, competition  
17 continues to drive wireless service providers to improve the coverage, capacity and  
18 capabilities of their networks,<sup>47</sup> which in turn has driven improvements in wireless call  
19 quality.<sup>48</sup>

20 **Q The Staff Substitutability Panel asserts that “for a service to be substitutable for what**  
21 **basic telephone subscribers are receiving from their ILECs today, that service has to**

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<sup>40</sup> 47 U.S.C. § 1001(8)(B)(i).

<sup>41</sup> 47 U.S.C. § 222; 47 C.F.R. § 64.2001.

<sup>42</sup> 47 C.F.R. Part 4

<sup>43</sup> 47 C.F.R. §§ 64.2400-.2401

<sup>44</sup> *Fourteenth CMRS Report* ¶ 186.

<sup>45</sup> *Id.* ¶ 188.

<sup>46</sup> *Id.* ¶¶ 189-90.

<sup>47</sup> *Id.* ¶ 105.

<sup>48</sup> *See Id.* ¶ 222 (discussing results of J.D. Power surveys).

1 **meet the same expectations of those customers regarding the prices and quality of their**  
2 **service” (Staff Substitutability Direct at 9). Is that correct?**

3 A No. Those who use a service – the customers – are in the best position to determine whether  
4 another service will meet their expectations. Furthermore, it is quite clear that wireless  
5 service is meeting New York customers’ expectations. As of December 2008, there were  
6 16.7 million wireless subscribers in New York, and 60% of the voice lines in service were  
7 wireless.<sup>49</sup>

8 **Q The Staff Substitutability Panel asserts that “basic consumers’ expectations have been**  
9 **formulated via service protections brought about by tariff filings and various rules and**  
10 **regulations” (Staff Substitutability Direct at 10). Are tariffs, rules or regulations**  
11 **required to provide service protections to wireless customers?**

12 A No. As the Commission observed in the Competition III proceeding, in a competitive  
13 telecommunications market providers will provide such protections voluntarily in order to  
14 attract and keep customers:

15 We realize that consumers will need to acclimate to an environment where  
16 the Commission is not the primary forum, in some instances, for  
17 establishing consumer protections and resolving complaints, but we expect  
18 providers to be more responsive as they vie to obtain and retain customers.  
19 We will rely on our continuing oversight of the more traditional wireline  
20 carriers as well as our monitoring of all providers, together with  
21 enforcement of consumer protections laws by other government agencies  
22 (such as the more generalized statutes enforced by the DOL), to minimize  
23 customer harm. Some of the parties have expressed skepticism regarding  
24 our call for voluntary efforts, suggesting either they will not work or  
25 cannot work. We are not persuaded and conclude that a voluntary,  
26 cooperative approach can be successful and should be pursued.<sup>50</sup>

27 The wireless industry’s experience confirms the effectiveness of the voluntary,  
28 cooperative approach advocated by the Commission. The principal service protections  
29 enjoyed by wireless subscribers – free trial periods, pro-rated early termination fees,  
30 disclosures of terms and conditions, etc., were adopted voluntarily by wireless carriers.  
31 Similarly, many wireless providers, including the four participating in this proceeding,

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<sup>49</sup> T-Mobile Direct at 5.

<sup>50</sup> *Competition III Order* at 103.

1 annually certify their voluntary compliance with the CTIA Consumer Code for Wireless  
2 Service.<sup>51</sup>

3 **Q Does the Staff Substitutability Panel Exhibit \_\_\_SP\_1 reflect the information made**  
4 **available to Staff regarding the “availability, affordability, reliability, consumer**  
5 **protection and service quality characteristics of the residential phone services provided**  
6 **by cable and wireless providers” (Staff Substitutability Direct at 10)?**

7 A Not with respect to wireless providers. The exhibit does not reflect the public-available  
8 information provided to Staff during the substitutability collaborative (or the substance of  
9 the publicly available documents incorporated by reference in the wireless carriers’  
10 discovery responses).

11 **Q The Staff Substitutability Panel asserts that for an alternative service to be deemed**  
12 **substitutable “it is necessary that the alternative service provider submit customer**  
13 **information to a directory listings database (unless the customer requests that its**  
14 **listing not be made publicly available)” (Staff Substitutability Direct at 12). Do you**  
15 **agree?**

16 A No. The wireless customer behavior that I have described in my direct testimony and above  
17 demonstrates that wireless service is fully substitutable for landline service without  
18 submission of customer information to a directory listings database.

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<sup>51</sup> The CTIA Consumer Code, which is reproduced in Exhibit Conn 5, consists of ten principles:

1. Disclose Rates and Terms of Service to Consumers
2. Make Available Maps Showing Where Service is Generally Available
3. Provide Contract Terms to Customers and Confirm Changes in Service
4. Allow a Trial Period for New Service
5. Provide Specific Disclosure in Advertising
6. Separately Identify Carrier Charges from Taxes on Billing Statements
7. Provide Customers the Right to Terminate Service for Changes to Contract Terms
8. Provide Ready Access to Customer Service
9. Promptly Respond to Consumer Inquiries and Complaints Received from Government Agencies
10. Abide by Policies for Protection of Customer Privacy

1 **Q The Staff Substitutability Panel asserts that “for an alternative telephone residential**  
2 **basic service to be deemed substitutable it should be priced no higher than the**  
3 **Commission’s benchmark rate level” for basic local exchange service ) Staff**  
4 **Substitutability Direct at 13). Do you agree with respect to wireless service?**

5 A No, I disagree for the reasons stated in my response to the NYSTA Panel’s similar assertion,  
6 above.

7 **Q The Staff Substitutability Panel asserts that in order for an alternative service to be**  
8 **deemed “substitutable” in an area where it is the only service option, “the provider will**  
9 **have to demonstrate to the Commission that these customers will be protected against**  
10 **unchecked rate increases. Options for keeping rates affordable include voluntary**  
11 **agreement to rate regulation for basic residential telephone services or other means of**  
12 **showing the Commission that these customers will be protected without direct**  
13 **Commission oversight of rates” (Staff Substitutability Direct at 15).**

14 **What protects customers against “unchecked rate increases” in areas where one**  
15 **wireless provider is the only service option?**

16 A The wireless carriers in this proceeding all offer services pursuant to national or multistate  
17 regional price plans. It would be difficult and very inefficient to attempt to raise rates in a  
18 small area such as the one described. Thus, the competitive pressure from other wireless  
19 providers in neighboring areas will constrain the pricing of the service plans offered both in  
20 the one-carrier location and the surrounding area. As the Commission has observed,  
21 “[g]iven the inefficiencies inherent in economic regulation, a market need not be perfect, or  
22 even near-perfect, to produce better outcomes for consumers than traditional regulation.”<sup>52</sup>

23 Furthermore, federal law prohibits wireless carriers from collecting unjust or  
24 unreasonable rates or unreasonably discriminating among customers in the provision of  
25 service.<sup>53</sup> A customer that feels that a wireless carrier has violated these requirements may  
26 seek enforcement by filing a formal complaint with the FCC.

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<sup>52</sup> *Competition III Order* at 42.

<sup>53</sup> 47 U.S.C. § 201-202.

1 **Q The Staff Substitutability Panel asserts that there are a number of “consumer**  
2 **protections and services” that regulated telephone companies provide that should also**  
3 **be provided by an alternative telephone company (Staff Substitutability Direct at 15).**  
4 **Do you agree?**

5 A No. First, the market-required responsiveness of wireless carriers to consumer demands  
6 obviates the need for such regulation. As explained above, this has resulted in the voluntary  
7 adoption of a number of “consumer protections and services” by wireless carriers. Second,  
8 wireless providers are already subject to a number of consumer protection regulation.<sup>54</sup>

9 **Q The Staff Substitutability Panel asserts that in order for an alternative service to be**  
10 **considered a “substitute” for universal service purposes, the providers of the**  
11 **alternative service should “demonstrate their consistent adherence to outage reporting**  
12 **guidelines, comparable to the timeliness, accuracy and depth of reporting by existing**  
13 **telephone service providers” (Staff Substitutability Direct at 23). Do you agree?**

14 A No. Outage reporting is not part of any definition of basic phone service. Furthermore,  
15 wireless carriers are already subject to federal service outage and disruption reporting  
16 requirements.<sup>55</sup>

#### 17 C. RESPONSE TO STAFF POLICY PANEL DIRECT

18 **Q The Staff Policy Panel asserts that competition produces “losers” in the form of**  
19 **companies that lose customers and customers that are put at risk of losing basic service**  
20 **(Staff Policy Direct at 9), and then asserts that the focus of this proceeding should be**  
21 **on the “losers” (*id.* at 10). Do you agree that the focus of state universal service policy**  
22 **should be on preserving “loser” carriers in a competitive environment?**

23 A No. Competitors and consumers should not be forced to subsidize inefficient business plans  
24 or legacy technologies.

25 **Q The Staff Policy Panel asserts that competition has had a “negative impact to universal**  
26 **service” in New York (Staff Policy Direct at 11). Do you agree?**

27 A No. This notion is based on a fundamental misconception of universal service. The goal is  
28 not to insulate rural ILECs from competition. The goal of universal service is to ensure that  
29 that all residents have access to affordable basic telephone service, access to public safety,

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<sup>54</sup> See *supra* pp. 18-19.

<sup>55</sup> 47 C.F.R. Part 4.

1 health, education, and assistance services, and are able to participate in society.<sup>56</sup>

2 Competition is the reason why wireless carriers and other competitive providers already  
3 offer a widely-available, affordable alternative to traditional ILEC services.

4 **Q The Staff Policy Panel asserts that if “nothing is done” service quality or consumer**  
5 **protections in rural areas may decline, and, in a “worst case scenario” incumbent**  
6 **LECs may go out of business, leaving customers in certain areas without service**  
7 **entirely (Staff Policy Panel at 11-12). Does this mean that the Commission should**  
8 **establish a state high cost universal service fund?**

9 A No. The notion that “if” nothing is done service quality or customer protections in rural  
10 areas “may” decline or leave customers in certain areas “without service entirely” is entirely  
11 hypothetical. New York’s universal service policies must be based on facts, not speculation.  
12 As demonstrated above, the facts are as follows:

- 13 • Wireless and VoIP services provide an alternative source of basic telephone  
14 service at affordable rates for virtually all New York residents;
- 15 • Alternative providers are rapidly expanding coverage in New York’s rural areas;
- 16 • ION Upstate New York Rural Broadband Initiative is making “middle mile”  
17 facilities available to alternative “last mile” providers such as cable and wireless  
18 carriers throughout the rural ILECs’ service territories;
- 19 • There is no reason to believe that any rural LEC will “go out of business” any  
20 time soon;
- 21 • In the unlikely event a rural LEC does go out of business, local service will be  
22 provided to its customers by one or more of the following: (a) the rural LEC’s  
23 successor in interest; (b) an existing wireless or cable VoIP provider; or (c) a new  
24 alternative service provider taking advantage of ION’s backhaul network;
- 25 • Competition forces alternative providers to vie for and retain customers on the  
26 basis of price, service quality, and customer protections, thus rendering additional  
27 regulation unnecessary.

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<sup>56</sup> *Competition III Order* at 70.

1 **IV. RESPONSE TO DIRECT TESTIMONY FILED ON BEHALF OF AT&T**

2 **Q Christopher Nurse, on behalf of AT&T, asserts that wireless carriers should contribute**  
3 **to a limited state universal service fund. Do you agree?**

4 A No. First, as stated previously, there is no need for a state universal service fund in New  
5 York. Second, wireless carriers have already invested billions of dollars to provide a  
6 widely-available, affordable alternative to wireline local exchange service in New York and  
7 elsewhere. They have done so without extracting exorbitant access charges or state  
8 universal service support contributions from other carriers or their ratepayers. Forcing  
9 wireless carriers to support their competitors' "universal service" networks as well as their  
10 own is neither necessary to preserve universal service nor consistent with the public interest.

11 **Q Mr. Nurse also asserts that federal law permits states to require wireless providers to**  
12 **contribute to state universal service funding mechanisms so long as such contribution**  
13 **requirements do not burden federal universal service support mechanisms (AT&T**  
14 **Direct at 17). Do you agree?**

15 A I do not. T-Mobile will address this legal point in its briefs. However, I would point out  
16 that the federal Communications Act distinguishes between "States" and "State  
17 commissions,"<sup>57</sup> and that the provision cited by Mr. Nurse, 47 U.S.C. § 254(f), permits  
18 "States" to create universal service funding mechanisms, *not* "State commissions."

19 **Q Has the State of New York created a state universal funding mechanism or authorized**  
20 **the Commission to do so?**

21 A Again, this will be addressed in T-Mobile's briefs. However, it my understanding that the  
22 State of New York has not enacted legislation either creating a state universal service  
23 funding mechanism or authorizing the Commission to do so.

24 **Q Does that conclude your rebuttal testimony?**

25 A Yes.

26  
27 4821-9858-8936, v. 1

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<sup>57</sup> Compare 47 U.S.C. § 153(40) (defining "State") with *id.* § 153(41) (defining "State commission").