

are treated as interchangeable for purposes of gauging competition, the City recommends that the Commission treat these service providers on a par for network reliability purposes, and with regard to their obligations towards municipalities. The City encourages the Commission to require that cable and wireless networks maintain a reliable infrastructure, as robust as that supporting the incumbent LECs' wireline networks (which should also be the subject of continuing improvement). For instance, both cable and wireless operators should have sufficient back-up power to provide service in the event of an emergency. Likewise, wireless carriers should review antenna coverage, and cable providers their head-end operations, to guarantee that their networks are adequately resilient and not merely dependent on a few designated pathways. With regard to their obligations towards municipalities, all service providers, who use municipal rights-of-way, should pay fair and reasonable compensation for such use (as wireless providers with spectrum rights compensate the federal government for use of that public asset).

The City concurs with the Staff's assessment that, to ensure continued provision of universal basic service, regulators must ensure that the Public Switched Telephone Network ("PSTN") is preserved and made more reliable.² A robust wireline network underlies the City's economy and plays a significant role in promoting public health and safety. As the LECs' current fiber deployment will take several more years to complete, and even then may not be ubiquitous, the LECs should continue to maintain, and if necessary improve, the copper infrastructure to ensure that customers have reliable service. From a public safety perspective, a viable wireline network (be it copper or fiber) is necessary because it has (under current conditions) certain reliability, quality,

² *Id.* at 3.

and affordability advantages, for many users, over wireless alternatives. Likewise, a robust wireline network is also needed to support wireless services. In terms of broadband deployment, those customers who do not have access to the fiber network, or cable modem service, are largely dependent on copper facilities for high-speed services.

The City agrees with the Staff's view that, over time, it may be appropriate to streamline service quality regulation, so as not to unnecessarily burden carriers and potentially hinder competition.³ The City concurs with the Staff's statements that streamlining should not jeopardize public safety.⁴ In deciding how and when to modify service quality requirements, the Commission should also take note of ongoing service quality problems. While large enterprise customers are generally able to address service quality issues through service level agreements containing penalty provisions or other remedial measures, individual end users do not have the leverage to obtain such guarantees. Ubiquitous intermodal competition may ultimately address many of these concerns, but, as of now, appropriate regulatory checks may still be necessary.

While the City strongly supports the Staff's proposal to establish an annual network reliability plan, some form of the annual Capital Program should be retained and made available to the City at this time.⁵ As stated in *Telecommunications and Economic Development in New York City: A Plan for Action*, one of the City's primary telecommunications goals is broadband deployment to every part of the five boroughs.⁶ Without the construction plans that the LECs provide in their annual Capital Programs,

³ *Id.* at 71-72.

⁴ *Id.* at 71-74.

⁵ *Id.* at 72-73.

⁶ *Telecommunications and Economic Development in New York City: A Plan for Action*, prepared by the New York City Economic Development Corporation, the New York City Department of Information Technology and Telecommunications, and the New York City Department of Small Business Services (March 2005).

the City is greatly hindered in assessing the degree of network build out. The commitment to on-going wireline network infrastructure improvement remains an important element of state and local economic development and the ability to assess and encourage investment in such infrastructure remains a significant public resource. In order to decrease burdens on the LECs, the PSC might consider annual construction plans only for infrastructure relating to the delivery of broadband service.

The City wholeheartedly endorses the Staff's proposal to require *all* facilities-based providers to file an annual report addressing the existing levels of diversity and resiliency in their networks, as well as their short-term plans to improve reliability.⁷ As the White Paper states, without this vital information from those providing backbone facilities, we risk the possibility that one or more major networks may be vulnerable and, thus, could become unreliable under extreme conditions.⁸ Since September 11, 2001, the City has placed great emphasis on gauging the level of network reliability.⁹ Annual submissions of the type described by the Staff will greatly assist municipalities, the Commission, and carriers themselves in assessing the level of resiliency in the network. Smaller customers currently have no mechanism for obtaining such information. Although larger customers can demand network redundancy from their service providers,

⁷ The City is aware that the PSC is actively reviewing network reliability issues. *See, e.g.*, Case 03-C-0922, Proceeding on Motion of the Commission to Examine Network Reliability, Order Directing Filings Concerning Critical Facilities Administration and Telecommunications Service Priority Services and Requesting Public Comment on this National Security Program (June 15, 2005).

⁸ *White Paper* at 73.

⁹ For example, the City is involved in several organizations that are reviewing network reliability issues. The City has been involved with the New York Telecommunications Reliability Advisory Council ("NYTRAC"), which is an organization consisting of officials from the Commission, City, and private sector. NYTRAC provides a forum for various entities to exchange ideas about telecommunications interdependencies and explore mechanisms for resolving possible future problems. In addition, the City, through DoITT, is the first municipality to be invited to sit on the Federal Communications Commission's Network Reliability and Interoperability Council ("NRIC"), which is composed primarily of CEO- and COO-level representatives of the country's leading telecommunications carriers, network operators, and equipment manufacturers. The current Council, "NRIC VII," has been chartered to focus on such issues as enhanced 9-1-1 and wireline, wireless, and data network "best practices."

as part of a service level agreement, there is no process to ensure that subsequent internal network changes do not disturb the level of reliability.

With regard to pricing, the City concurs with the Staff's statement that the deviation between the price and cost of services in rural areas has resulted in the "rather anomalous situation where customers in urban, low cost, highly populated areas are not only subsidizing their high cost lowly populated rural counterparts, but are also paying higher rates."¹⁰ Any future statewide pricing plans should seek to reduce this disparity.

The City agrees with the Staff's conclusion that, even in areas determined to be competitive, there is still a need to ensure that carriers offer at regulated, tariffed rates a basic, "no frills" service.¹¹ Given the importance of maintaining a viable wireline network, as discussed above, the Commission should also consider proposals that create incentives for customers to sign up for wireline service. For instance, carriers should continue to offer a la carte pricing plans contingent on the number of calls made per month. In this way, low volume customers might pay a fee commensurate with their usage, rather than paying a higher fee for unlimited calling. Likewise, carriers could be encouraged to offer free or reduced installation charges to minimize initial barriers for those customers who might, with standard installation charges, choose or need to forego wireline service entirely. (Reduced or foregone installation charges to encourage service participation are long-standing practices in the cable television industry, while subsidization of initial phone purchases to encourage subscriptions is a near universal practice in the wireless phone industry). The City encourages the Commission to review how these various approaches would interact with Lifeline basic telephone programs to

¹⁰ *White Paper* at 13-14.

¹¹ *Id.* at 41-42.

assure the lowest possible price and maximum possible access to critical services (such as access to 911) for low-income consumers.

The City notes with enthusiasm the Staff's recommendation to review the extent of competition across New York on a wire center basis within a year of the Commission's release of its order in this proceeding.¹² The City would propose that part of this review also focus on the degree of broadband availability (i.e., homes and businesses passed) and penetration (i.e., actual numbers of residential and business customers) on a wire center basis and that this information be shared with the municipalities. The City's efforts at promoting economic growth (through an accurate inventory of available and planned public service infrastructure) have been hindered by insufficient access to such data.

Finally, the City concurs with the Staff's view that the Commission's complaint handling processes should not be streamlined at this time. Not only do the existing processes provide a mechanism for resolving consumer problems, the complaint data, as pointed out by the Staff, also enables regulators to identify problems.¹³

¹² *Id.* at 72.

¹³ *Id.* at 14.

CONCLUSION

The City appreciates the opportunity to comment on how increased intermodal competition might effect existing regulatory requirements. In responding to greater competition, the Commission should ensure that telecommunications providers maintain and widely deploy resilient, high quality infrastructure that is accessible at a reasonable rate.

Respectfully submitted,

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