EX PARTE OR LATE FILED **ORIGINAL**

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: http://www.dps.state.ny.us

PUBLIC SERVICE COMMISSION

MAUREEN O. HELMER
Chairman
THOMAS J. DUNLEAVY
JAMES D. BENNETT
LEONARD A. WEISS
NEAL N. GALVIN

RECEIVED & INSPECTED
JAN 2 0 2002
FCC - MAILROOM

LAWRENCE G. MALONE
General Counsel

JANET HAND DEIXLER
Secretary

January 18, 2002

Hon. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Room TW-A325
Washington, D.C. 20554

Re: Comments of the New York State Department of Public Service on Notice of Proposed Rulemaking in CC Docket Nos. 01-318, 98-56, 98-147, and 98-147, 96-98, 98-141.

Dear Secretary Salas:

The New York State Department of Public Service (NYDPS) submits these comments in response to the Federal Communication Commission's (Commission) Notice of Proposed Rulemaking in the above-mentioned proceedings (NPRM) released November 19, 2001. The Commission seeks comment on whether it should establish a monitoring and enforcement program for evaluating incumbent local exchange carrier (ILEC) provisioning of "wholesale" facilities in the local exchange market.[1] The NYDPS supports the establishment of a default federal monitoring program to be applied in the absence of a corresponding state monitoring and enforcement effort.

Ultimately, a performance monitoring program for "wholesale" services is intended to benefit end-users by establishing and maintaining conditions required for openly competitive markets. In successfully competitive telecommunications markets, competing carriers must exchange traffic through technically and economically viable interconnections. Furthermore, as long as competitive local exchange carriers (CLECs) require access to elements of the

---

[1] Broadly, the Commission suggests such a program would cover pre-ordering, ordering, provisioning, and maintenance of collocation, loop, transport, and interconnection trunk facilities. (NPRM, para. 1)

No. of Copies rec'd 0
List ABCDE

incumbents' ubiquitous networks to provide service, access to those elements must be provided in a technically and economically viable manner. All carriers have incentives to disadvantage their competitors, and where the ILECs retain market power by virtue of their monopoly legacy, they also have the opportunity to do so through inadequate, even discriminatory, provisioning and maintenance of services and facilities required by their competitors. The purpose of a performance monitoring program is to keep the local market open to competition by ensuring that the ILECs continue to provide these necessary inputs in a commercially-viable manner.

As the Commission is aware, a number of states, including New York, have already implemented performance monitoring programs (and penalties) to ensure the openness of their local markets. The program in place in New York was developed through extensive collaboration among interested industry and government participants. This collaborative process continues to improve the program in light of actual experience. As such, the program in effect in New York reflects the parties' best collective judgment of what is necessary to ensure adequate service in New York's local markets. Other states' programs likely are similar to New York's, but it should be presumed that any differences among state monitoring efforts reflect actual differences among the carriers, facilities, and markets in those states. Simply replacing such state programs with a uniform national plan would eliminate measures found to be necessary in some areas and/or add measures deemed to be unnecessary in others. While development of a federal default (or minimum) program would be useful to ensure market openness in areas where state monitoring programs do not exist, such a federal program should not supersede state-developed programs, which represent best efforts to properly monitor and reward/penalize performance based on local market conditions.

Variations in monitoring efforts from state to state should not be presumed to be inefficient or to create unnecessary regulatory overheads. By providing multiple "testbeds" for evaluating metrics and standards, the various state monitoring programs will enhance the probability of identifying and implementing the most effective and efficient elements of a successful monitoring program. Furthermore, the actions of some states in adopting all or parts of existing state monitoring programs, as well as the efforts of states, such as New York, to improve the efficiency of their programs based on experience, suggest that, to the extent it is consistent with achieving effective performance, various state and federal monitoring programs will converge naturally over time. Differences among them will likely remain only where such differences are truly relevant.

If the Commission nonetheless decides to implement a national monitoring/penalty program, it should not impose "least-common-denominator" standards but should allow state-specific standards to ensure performance in each area meets consumers' expectations. Thus, the Commission might consider adopting national (or regionwide or corporate-wide) metrics and definitions (the items to be measured) but allow or establish state-specific standards (the required level of performance) to reflect prevailing market conditions. For example, while it may be reasonable to measure the time to restore loops in all areas, the appropriate standard to be achieved reasonably might vary among areas based on type of plant, nature of its placement (aerial/underground), average length, nature of terrain or other factors.

The Commission also asks whether measures and standards should be developed collaboratively with the industry. Having successfully developed retail and wholesale performance standards and metrics using consensus and consultation models[2], the NYDPS would recommend the use of such processes to develop national metrics and/or standards. We anticipate that such processes would start from and build on the extensive work in this area already completed by a number of states.

As the market is evolving, what is important today is not likely to have the same degree of importance tomorrow. Thus, any national set of metrics and/or standards should be accompanied by a process that allows for adjusting them to the current market reality. The wholesale, inter-carrier metrics and standards developed in New York were assembled into a Guidelines document that is amended as needed and as recommended by the Carrier Working Group. The Carrier Working Group is comprised of industry and government participants who meet regularly and use a consensus process to develop and amend metrics and standards applied to Verizon New York and Frontier Telephone of Rochester. If national metrics an/or standards are adopted, we suggest the Commission adopt a process for refining federal inter-carrier performance metrics and standards on an on-going basis. We further suggest that the Commission include states in these development and refinement efforts and would be pleased to participate if given the opportunity.

Respectfully submitted,

Lawrence G. Malone

Lawrence G. Malone
General Counsel
Brian Ossias
Assistant Counsel
Public Service Commission
Of The State Of New York
Three Empire State Plaza
Albany, New York 12223-1352

---

2 Case 97-C-0139 - Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies.