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November 20, 2009

Honorable Howard A. Jack
Administrative Law Judge
New York State Department of Public Service
Three Empire State Plaza
Albany, New York 12223

Re: Case 09-M-0527: Comments on Proposed Staff Study

Dear Judge Jack:

Your Honor's November 9, 2009 Procedural Ruling invited active parties to comment on Staff's list of the "specific subjects that [it] anticipates addressing" in its report "on the availability and extent of deployment of various platforms, technologies, and opportunities in the telecommunications industry." This letter provides the comments of Verizon New York Inc. ("Verizon") on Staff's November 16 letter.

Verizon believes that Staff's proposal to assess the number of New York State residences for which various competitive services are, or are not, available in ILEC service areas will provide valuable input into the critical threshold issue of Phase 1 — *i.e.*, "Should a fund be established to succeed the Transition Fund?" Although it is not the only basis on which Your Honor and the Commission may ultimately conclude that there is no need (or only very limited need) for a successor fund, the existence of competitive alternatives to ILEC service would certainly be an important factor militating against any need for funding to ensure universal service.

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That said, the value of such a study will depend on the reliability of its methodology. Because there are important — and disputed — questions concerning how such a study should be conducted, Verizon submits that the methodological issues should be addressed by the parties and by Your Honor *before* Staff begins its study. A failure to do so could leave Your Honor and the parties with the unsatisfactory choice between accepting a flawed study, rejecting the study altogether, or taking the time to repeat or substantially modify the study with an improved methodology. Nevertheless, the November 16 letter appears to assume that Staff itself will choose a study methodology unilaterally, without the input of the parties.

One issue that should be addressed is what should count as relevant competitive alternatives. Staff's letter suggests taking "wireless service" and "cable modem internet access" into account; however, in its *Competition III* proceeding, the Commission relied on a Staff study of two competitive platforms — wireless and broadband — as well as traditional landline service. The broadband platform assessed in that study was *not* limited to broadband provided over cable modems.¹ This is not to say that the parties or Staff should be bound by the *Competition III* methodology, but the divergence highlights the fact that there are a number of different ways of performing a competitive assessment and that the particular study approach chosen by Staff should be compared with available alternative approaches and justified. Indeed, Verizon submits that consideration should be given to competitive platforms beyond those considered in *Competition III* or in Staff's letter.

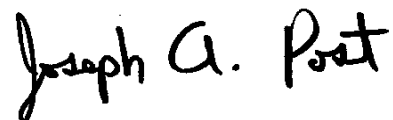
¹ See, e.g., Case 05-C-0616, Department of Public Service, "Telecommunications in New York: Competition and Consumer Protection" (September 21, 2005) ("*Competition III White Paper*"); *id.*, "Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings" (issued and effective April 11, 2006) ("*Competition III Order*"), at 32-42.

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Moreover, whatever services or platforms are chosen as relevant competitive indicators, the way in which their existence or availability is determined can produce significant differences in the results of the analysis. This includes questions such as what is the appropriate metric of “availability” of a platform or service, what data sources should be utilized in the analysis (and how up-to-date and reliable particular sources are), the appropriate level of geographic “granularity” of the analysis (*e.g.*, county, wire center, zip code, MSA, etc.), and how data generated at different geographic levels can be consistently collated and combined. Another important set of issues relates to the provision of data by parties concerning their own facilities and customers — to what extent should such data be utilized, how legitimate confidentiality interests can be protected, and how should the report address data “gaps” that may be created by the failure of some active parties (or non-party industry participants) to submit such data.

Verizon submits that the parties (including Staff) should be given an opportunity to submit comments on these issues, and that they should be the subject of collaborative discussion among the parties and, if no consensus can be achieved, of a ruling from Your Honor.

Respectfully submitted,

A handwritten signature in black ink that reads "Joseph A. Post". The signature is written in a cursive, slightly slanted style.

cc: Active Parties List — Case 09-M-0527
Honorable Eleanor Stein
Honorable Jaclyn A. Brillling