

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION NO. 96-13

CASE 94-C-0095 - Proceeding on Motion of the Commission to Examine Issues 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 and Effective: May 22, 1996

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COMMISSIONERS:

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Eugene W. Zeltmann

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BY THE COMMISSION:

INTRODUCTION

The Commission, by this Opinion, continues to put into place the framework for a robust, dynamic competitive telecommunications market in New York. We establish parameters for a competitively neutral approach for maintaining affordable service for all New Yorkers in this new market driven environment -- a key challenge in moving to an open competitive local telecommunications market. We also consolidate here the level competitive playing field and consumer protection regime that the Commission has mapped out in various specific cases. And we maintain our commitment to a high quality telecommunications infrastructure and encourage the development of more streamlined and flexible approaches to measuring service quality in this new market driven environment. Finally, we outline a transition

monitoring plan that will enable the Commission to follow the evolution of competition and its impact on consumers.

This Commission has long promoted the emergence of competition.^{1/} The Telecommunications Act of 1996 and recent changes in technical, economic, legal, and regulatory conditions are enhancing opportunities for local exchange competition.^{2/} During the past few years, we have authorized a number of companies to provide local exchange services on a competitive basis. As more companies expressed interest in competing in this market, we determined that a more systematic examination of the fundamental issues concerning local exchange competition was necessary. By an order issued on February 10, 1994, we instituted this proceeding to develop a framework for an orderly transition to a competitive local exchange market structure and to examine issues related to continued universal provision of basic telephone services in such an environment.

We are embarking on the transition to that market environment. In most areas of the state, local exchange competition is negligible with only one local service provider. While limited competitive alternatives exist in a few locales, how fast it will spread remains uncertain. The regulatory framework described herein is intended to facilitate competitive choice and protect captive consumers during the transition to fully competitive markets. Should genuine customer choice emerge, the framework contemplates our re-examining the continuing need for regulatory protections and the elimination of those that become unnecessary.

^{1/} Case 29469, Regulatory Policies for Segments of the Telecommunications Industry Subject to Competition, Opinion No. 89-12 (issued May 16, 1989).

^{2/} On February 8, 1996, the Telecommunications Act of 1996 became law. The 1996 Act supports New York's policies of opening the market to competition while preserving Universal Service. The federal law reflects to a large extent New York policies and this order appears to be consistent with the relevant statutory provisions. The interrelationship between the 1996 Act and New York policies is being explored further in other proceedings.

Ultimately, we envision fully competitive local exchange markets throughout New York State. Multiple carriers will provide a full and expanding range of services to meet the needs and desires of all types of telecommunications users. Consumers will shop among local service providers to find the package of capabilities, price, and quality that best meets their individual needs. They will be able to switch easily to a different service provider if dissatisfied with their current provider or tempted by a better deal. Should such an environment develop most, if not all, regulation of the local exchange market would be eliminated.

OVERARCHING PRINCIPLES

Of necessity, developing a viable regulatory framework for a transitional environment requires a balancing of the sometimes competing interests of the affected constituencies -- consumers, incumbent local exchange companies, and new entrants. In striking these balances, we are guided by several overarching principles:

1. The goal of ensuring the provision of quality telecommunications services at reasonable rates is primary.

The primacy of this particular goal is of fundamental importance. While other goals in this proceeding may be important, even critical, to various parties, their attainment must not come at the expense of this primary goal.

2. Where feasible, competition is the most efficient way by which the primary goal may be achieved.

We have a long and successful history of enabling the development of competitive markets and seek here to establish a framework for further competitive development.

3. Regulation should reflect market conditions.

Our regulatory framework must be designed for the present transitional market, not for yesterday's monopoly nor for the fully competitive market that may ultimately develop. As such, rules should not be imposed which perpetuate or assume monopoly conditions; neither should regulatory protections be abandoned merely on the promise that the market may eventually provide them.

4. Providers in like circumstances should be subject to like regulation.

Similar regulation should be expected for providers with similar market power. Differential regulation may be appropriate and necessary where significant market power differentials exist.

The comprehensive regulatory structure adopted here provides extensive opportunities for local exchange competition to develop in all areas in the state. This transitional framework builds on our prior actions (e.g., interconnection, unbundling, and incentive regulatory plans) and recognizes an ongoing need to reevaluate and reduce regulation as competition develops. The framework, broadly viewed, comprises three elements: provisions for competitive entry, opportunities for competitive response, and consumer protections.

Local exchange service is fundamentally about providing a communications path from the customer's location^{1/} to a point connecting to networks serving the rest of the world. Effective local exchange competition can develop only if new providers have the ability to provide these paths.

On one hand, this requires that all local carriers can interconnect with other carriers' networks and cooperatively

^{1/} Historically, this location was fixed (e.g., a home or business). With the development of various wireless technologies, this "static" concept may give way to one that recognizes the growing use of mobile telecommunications services.

deliver calls from one customer to any other. Thus, building on previously adopted policies, the framework requires all local carriers to provide each other comparably efficient interconnections for the exchange of traffic. And our prior determinations on intercarrier compensation place competing local carriers on economically comparable footing with respect to terminating each others' traffic.

On the other hand, recognizing that few, if any, potential competitors will be able to deploy ubiquitous local facilities of their own quickly, requirements for unbundling and resale will enable any carrier to serve any customer through its own facilities, through resale (rebranding) of another carrier's local services, or through purchase of network functions and elements. These provisions make it possible for all local carriers to serve any willing customer in their chosen service territories, bringing all customers the benefits of competitive choice and reducing the need to impose a "universal service" obligation on any one carrier in a given territory.

To the greatest extent possible, the framework is designed to leave the market free to define itself. Carriers, new entrants and incumbents alike, are given wide latitude to choose where they wish to offer service, subject to a common carrier obligation within any service territory they elect to define and universal service obligations. They will also be free to offer any service package they deem appropriate, subject only to requirements that residence packages include, at a minimum, some very basic elements (the basic service list) and that they provide an acceptable quality of service overall. Consistent with past policy, non-dominant providers are generally afforded pricing flexibility, and pricing constraints on dominant providers are relaxed where they face competition.

Seeking to ensure the broadest benefit for all customer classes, the framework is designed to encourage and ensure the continued provision of affordable service to all customers. Our prior determination in this case to provide all "full-service, facilities-based" local carriers comparable access charge

arrangements, coupled with proposals here to initiate processes to establish appropriate universal service funding should preserve all consumers' current access to affordable service, while encouraging new entrants to offer competitive alternatives. In addition, we are adopting exit requirements, discussed below, which preclude any carrier from simply abandoning service to its existing customers in order to provide us the opportunity to take action to ensure the availability of basic service in all areas of the state.

While providing significant opportunities to new entrants in the local service market, the framework also enables incumbent providers to ensure their own success by responding efficiently and competitively. The two largest incumbents, New York Telephone Company and Rochester Telephone Corp., have already entered regulatory arrangements that provide them opportunities to recover their investments, and even enhance their earnings, by improving efficiency, offering new services, and pricing competitively. The remaining incumbents are encouraged to enter similar regulatory agreements.

Ultimately, all aspects of this framework are intended to protect and benefit consumers. As competition for most local services and in most areas has yet to develop, market forces may not immediately protect most individual consumer's and the public's interests. Thus, during the transition to full competition, we will enforce and monitor some basic service quality standards for all local carriers and retain necessary regulatory protections aimed primarily at residential consumers and the general public interest.

PROCESS

Our instituting order designated four major areas of inquiry in this proceeding. Issues affecting the interests of consumers and competing carriers were divided into these four separate modules:

MOD 1 - Universal Service:

Issues surrounding universally affordable basic services and funding therefor.

MOD 2 - Level Play:

Publication of directories, provision of directory assistance, network interconnection requirements, number portability, and intercarrier compensation.

MOD 3 - Transition Regulation:

Reporting requirements, treatment of stranded investment, pricing policies, and other regulatory requirements.

MOD 4 - Service Quality and Monitoring:

The degree to which existing service quality standards should apply to local service providers in a competitive environment, monitoring the development and effectiveness of competitive local markets and of the state's network infrastructure.

These four modules comprehensively addressed issues necessary to establish a fair and open competitive market. In addition to written comments, several collaborative meetings were held, primarily in the universal service and level play modules, to develop the issues and appropriate solutions, and to explore areas where interdependence existed.

Public involvement initiatives were also held across the state during October and November 1994. Several different formats were used to inform customers of and elicit their views on all of the issues raised in this proceeding, including consumer roundtable discussions, cable TV call-in programs, and video conferences. Overall, nearly one hundred consumers participated directly in these events and an estimated 1,000 consumers viewed the cable TV call-in program.

Over the course of the proceeding, staff produced draft reports in each module detailing the issues raised, analyzing the parties' positions thereon, considering options, and recommending appropriate resolutions. In August 1995, final drafts of each module's report were provided to the parties, who were then given an opportunity to comment on the coordination and consistency of all of staff's recommendations. Based on those comments and further examination of the many interrelated issues in the four modules, staff modified a number of its prior recommendations to produce the integrated framework adopted here.

Several issues have arisen during the course of this proceeding that require further refinement and input from interested parties. These issues, which are discussed later in this Opinion and Order, are listed here for ease of reference. We will issue separate orders to initiate further processes in this proceeding for each of the following issue areas in order to:

1. Develop appropriate Universal Service funding mechanisms consistent with the parameters in this Opinion and further examination of appropriate interexchange access charge levels that will be conducted in Case 28425;
2. Explore the benefits and potential terms, conditions, and pricing of the sale by all local exchange carriers of directory listings, directory assistance services, and associated database access to third parties;
3. Comprehensively review, and as appropriate, revise our service quality standards and implement the streamlined three-level reporting plan described in this Opinion; and
4. Revise our rules to implement the market monitoring plan described in this Opinion.

UNIVERSAL SERVICE

The goal of ensuring that all residents of the State have access to affordable basic telephone service is referred to

as universal service. Universal service enhances the ability of all persons to communicate with one another; to access public safety, health, education, and assistance services; and to participate more fully in society. As telecommunications services evolve and the industry becomes more competitive, the effectiveness of current public policies designed to foster universal service bears reexamination.

The following principles form the foundation for our universal service policy for residential consumers:

1. Basic services should be evaluated and revised as necessary to meet evolving needs.
2. Basic services should be available to all residential customers who wish to use them.
3. Basic services should be accessible.
4. Basic services should be affordable and reasonably priced.
5. Funding mechanisms to support universal service must be fair, equitable and competitively neutral.

Basic Service

As the competitive transition evolves, we will continue to ensure the provision of basic telephone service, at an affordable rate, to New York's customers. Basic service is a dynamic term that refers to those telephone services deemed essential to minimally acceptable access to, and use of, the public telecommunications network. Those services deemed to be basic should be made universally available. As technology and markets change, the list of basic services may require revision to meet evolving customer needs. Determinations regarding which services should be included in a basic service list should be based on established criteria. Consistent with this principle, we intend that the basic service list be re-examined every three years pending the development of a fully competitive market. Factors to be used to guide decisions concerning changes to the

basic service list include the level of customer demand for the service, the public benefit it provides, the extent to which it is required to access other essential services, and the cost of providing it.

Based on these criteria, we find that the list of basic services currently should include:^{1/}

- Single Party Access Line
- Access to Local/Toll Calling
- Local Usage
- Tone Dialing
- Access To Emergency Services
- Access To Assistance Services
- Access to Telecommunications Relay Services
- Directory Listing
- Privacy Protections

Availability

Basic services should be available to all residents who wish to use them. Residential services should include, at a minimum, the basic service elements listed above and, consistent with existing rules, these services must be available to all residential customers in the provider's service territory. There are virtually no areas in New York where the telephone service is not now available. And all carriers will be subject to common carriage obligations. Thus, we believe it is unnecessary to designate a "carrier of last resort" to guarantee continued service availability. Carriers desiring to withdraw basic service offerings in any service territory will be subject to

^{1/} This list includes all of the basic service elements recently proposed by the FCC. Notice of Proposed Rulemaking and Order Establishing Joint Board CC Docket No. 96-45 (Released March 8, 1996), pp. 13-15.

exit requirements (essentially notice requirements) to ensure that basic service is not interrupted. These exit requirements will be formalized in the next phase of this proceeding.

Accessibility

The value to New Yorkers of our telephone network is enhanced by virtue of the ability to reach other New Yorkers. Although the public network is physically available to all New Yorkers, barriers to universal service remain for certain segments of society. These barriers include socioeconomic conditions as well as the inability to obtain special telephone equipment. Potential users may require some assistance, if income eligible, as well as appropriate information about the availability of telephone services, assistance programs, or special equipment and services to enhance their opportunity to utilize the public telephone network. We support the automatic enrollment/removal programs for Lifeline service being implemented by New York Telephone Company and Rochester Telephone, and we will direct staff to pursue their expansion to other companies. This program provides assistance to eligible consumers in an efficient manner and ensures that only those who are eligible continue to receive assistance. Our goals for expansion of automatic enrollment/removal programs are competitive neutrality (i.e., the program be available to all providers) and efficiency, while maintaining privacy protection. Staff has identified legitimate concerns about low phone penetration among certain consumer categories. Staff should continue to study the reasons for this low telephone penetration to determine whether actions can be taken to facilitate access to the network.

Funding Universal Service

To begin, because there is broad agreement for funding programs such as Lifeline, emergency services (e.g., "911"), and the Telecommunications Relay Service on an explicit, competitively neutral basis, the details for implementing such a funding mechanism should now be developed. The three programs cited above may be augmented in the future. For example, the Telecommunications Act of 1996 (the Act) requires us to establish discount rates for schools, libraries, and perhaps certain health care providers. Based on the parties' collaborative efforts, staff has recommended a "Targeted Accessibility Fund" to which all regulated telecommunications carriers would contribute and from which funding would be disbursed to carriers based on their levels of subscription to the targeted services. Administration of the proposed fund would be handled by an independent entity, subject to our oversight. As previously indicated, we will ask interested parties to develop and recommend mechanics for such funding through a further collaborative phase in this proceeding.

Affordable Rates

Our long standing policy is to ensure basic services are affordably priced to all residents who wish to subscribe.^{1/} There may be upward pressure on basic service rates in the future as competition and other regulatory actions impact traditional rate designs.

For the two largest incumbents (New York Telephone and Rochester Telephone), the Commission has adopted long-term incentive plans that ensure basic rate affordability, at least for the next five to seven years. Both of these plans preserve affordability by capping basic service rates, while providing reasonable opportunities for cost recovery through pricing flexibility for new and competitive services. The companies gain

^{1/} Although all of the elements of "basic service" (as defined above) should be "affordable," the monthly subscription rate traditionally has been the focus of the "affordability" issue and is the "basic service rate" referred to in this section.

opportunities for greater earnings if they can improve efficiency and compete successfully in new markets, but also bear the risk of poor earnings and "stranded revenue requirement" if they do not.

Together, these two companies serve 95% of the local telephone customers in the state. While efforts are being made to encourage other incumbent local exchange companies to enter similar incentive plans,^{1/} those that do not must still be transitioned to a competitive environment.

There are several cost recovery issues, which are often confusingly intermingled. First, there is the question of recovery of the relevant cost of basic service. Second, there is the issue of competitive losses or stranded revenue requirement. Finally, there is the problem of overall revenue requirement recovery. The critical universal service questions are "to what extent must basic service be priced below its cost to maintain universal service" and "what is the relevant measure of cost?"

In defining the relevant measure of cost, we must recognize that for any business to remain financially sound, revenues must recover costs. In particular, for a regulated telephone company, pricing all services at incremental cost would, most likely, leave the company with an overall revenue deficiency.

As we move toward a more competitive environment, local telephone companies must be ready to compete effectively with entrants to their markets who are able to successfully price at or below the incumbents' costs. Thus, the incumbents must institute, now, revenue enhancing and cost-cutting measures. Incumbent carriers should also have the flexibility to meet their competition. We have substantially relaxed constraints on earnings and granted greater price flexibility to incumbents for those services that face competition. We intend to continue this policy during the transition to local exchange competition.

^{1/} An incentive plan for Taconic Telephone Corporation is currently being negotiated.

As an integral element of the broader regulatory scheme that includes increased pricing and earnings flexibility as local competition grows, we are examining the establishment of a funding mechanism to ensure affordable basic rates for high cost areas for companies that are not under long-term incentive plans. This mechanism should consider funding, on a competitively neutral basis, the long run incremental cost of providing basic service to the extent it exceeds an affordable rate. We are also considering whether some limited, transitional 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 guarantee any company perpetual recovery of its total costs, but instead would ensure that remaining captive customers continue to have affordable services available to them.

Rate design changes, including the possibility of further carrier access charge reductions, may create a universal service funding issue. In 1985, we began a process of reducing carrier access charges and allowing basic rates to increase if necessary to make up the revenue loss.^{1/} In this proceeding, the interexchange carriers have pressed for lower access charges and appear to contend that basic service revenues are not significantly less than long-run incremental costs and, therefore, require only a modest contribution from other services. The merits of further access charge reductions will be considered as part of and in connection with the development of a rate affordability fund for basic rates in high cost areas.

^{1/} In 1985, the Commission articulated a policy of phasing out the non-traffic sensitive costs included in carrier access charges. Case 28710, Bypass of Local Exchange or Toll Networks, Opinion No. 85-15 (issued October 3, 1985).

All of these funding issues need further development and input from the parties and will be examined in the next phase of this proceeding.^{1/} The parties should develop the mechanics of a Targeted Accessibility Fund to finance socially beneficial programs, including Lifeline, emergency services (e.g., "911"), and the Telecommunications Relay Service, as discussed above. Consideration must also be given to appropriate funding vehicles for federally mandated discounts for schools, libraries and perhaps certain health care providers. The scope and mechanics of a fund to ensure generally affordable basic rates warrant further consideration by the parties consistent with the parameters discussed above. We will initiate a further phase of this proceeding to allow parties to address these issues and to recommend specific mechanics for any funds proposed. Any funding mechanisms proposed must be competitively neutral, easily administered and auditable, so as to be accountable to the Commission and the public.

LEVEL PLAY

We have concluded that competition is in the public interest.^{2/} Technology is available (including cable television and wireless facilities) that may allow competition for local telephone services, but the existing market is highly concentrated and largely a monopoly.

Our objective is to remove barriers to competitive entry into the local markets and to establish a "level playing field" for competing providers of local exchange service. To

^{1/} We are mindful that our efforts to preserve and advance universal service must not burden Federal universal service support mechanisms.

^{2/} Case 29469, Opinion 89-12, Opinion and Order Concerning Regulatory Response to Competition (issued May 16, 1989). This finding is entirely consistent with the Telecommunications Act of 1996.

achieve that objective we developed a set of foundation principles:^{1/}

1. Customers must be able to call all valid telephone numbers.
2. Telephone numbers are a common resource to be shared among carriers.
3. Control of telephone numbers must shift from the incumbent carriers.
4. Customers and competitors must have access to the telephone numbers and directory listings of all other carriers.
5. Interconnection into networks of telephone corporations shall be provided for other public or private networks.
6. Segregable services and functions requested by users shall be provided to the extent technically and economically practicable.
7. A carrier's bottleneck facilities should serve the public interest.
8. Traffic and related data (e.g., billing and routing information) must be exchanged between local exchange carriers.
9. Local exchange carriers are entitled to compensation for the costs of the services provided to each other.
10. Compensation charges and rates should be cost-based, uniform, and encourage long-term efficiency.

^{1/} By Orders in this proceeding dated March 8, 1995 (Order Requiring Interim Number Portability Directing a Study of the Feasibility of a Trial of True Number Portability and Directing Further Collaboration) and September 27, 1995 (Order Instituting Framework for Directory Listings, Carrier Interconnection, and Intercarrier Compensation), we have endorsed the main body of these principles and most of the matters detailed here. While no further action is required on such matters, the findings related to these issues are repeated here to provide additional context and a complete summary of the decisions to date.

11. Policies, prices, and practices should be competitively neutral, and promote competitive equity.

Transitional Regulation

The monopoly history of local exchange markets, combined with the present market power of the incumbents, may at times require different treatment of "incumbents" and "new entrants" to achieve a fair playing field for successful competition. Incumbent providers are identified as the 40 traditional wireline telephone companies providing basic residential telephone services as of the date this proceeding was instituted (February 10, 1994), and new entrants are all other local carriers. Our principal findings are:

- Carriers under similar circumstances -- as determined by market power, control of bottleneck facilities or services, and the public interest -- should be regulated in a similar manner.
- Differential treatment should be limited to instances where market power derives from the monopoly history of local exchange markets.

We believe transitional regulatory approaches must be flexible enough to adapt to changing conditions and limited in duration depending on the conditions in the market. Specifically, we will establish a transition period for all decisions in this Competition II proceeding that could result in differential treatment of carriers.^{1/} It is our expectation that the transition period will extend no later than December 31, 2000, and by no later than July 1, 2000, we will seek comments on the need to extend differential treatment or transitional proposals beyond December 31, 2000. Parties may petition at any point for changes to these transition actions and

^{1/} Except to the extent required by state or federal law.

must provide a showing of a demonstrable change in the state of competition for local exchange services.

Number Portability,^{1/} Directory Services,^{2/}
and Directory Assistance

Number portability, defined as the ability to change service provider without a number change, is essential to a viable competitive market. Based upon this finding, we established a trial to examine the viability of service provider portability in a multi-carrier environment. The trial began on February 1, 1996. In the interim, we implemented a transitional approach similar to that established under the Rochester Open Market Plan^{3/} and modified to include reciprocal portability among all carriers.

Competitive access to directory information is also critical to the establishment of a competitive local market. We have issued orders requiring incumbent local exchange carriers to provide comprehensive directory information, including directory and directory assistance listings for all subscribers to new entrants, during the transition to competition. It is the responsibility of each service provider to ensure that its subscribers receive a White Page directory. New entrants will be required to provide essential consumer information, such as service repair numbers, billing information numbers, and trouble

^{1/} These matters are resolved and are the subject of a prior order in this proceeding (Order Requiring Interim Number Portability Directing a Study of the Feasibility of a Trial of True Number Portability and Directing Further Collaboration (issued March 8, 1995)).

^{2/} These matters are now resolved and are the subject of an order previously issued in this proceeding (Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation (issued September 27, 1995)).

^{3/} Cases 93-C-0103, et al, Rochester Telephone Corporation - Restructuring and Multi-Year Rate Stability, Opinion No. 94-25 (issued November 10, 1994).

shooting information, to their subscribers in a format they believe best for their customers.

Directory Assistance service, the provision of directory information over the telephone, is also essential to the provision of local telephone services. During the transition, incumbents should continue to provide directory assistance services to their customers as well as to new entrants or their customers. The rates for these services should be cost-based and negotiated between the local carriers. Arrangements regarding the sale or sharing of directory listings, directory assistance, and associated database information must adhere to the Commission's rules on privacy.

The public involvement process that complemented collaborative work with the parties disclosed difficulties experienced by non-regulated, competitive directory providers unaffiliated with the telephone industry. The potential benefits of competitive directory assistance services provision by third-parties were also considered. These benefits and the difficulties identified by such third-party directory providers merit further consideration. Therefore, we will shortly institute a further phase of this proceeding to explore the benefits of the sale of directory listings, directory assistance services, and associated database access to third parties by all local exchange carriers. This proceeding will consider the benefits and potential terms, conditions, and pricing of providing directory information to third-parties that might be appropriate during the transition to competition.

Cooperative Practices

While competition for the customer should be vigorous, the competitive carriers must still act cooperatively as joint service providers to assure that calls are completed and that customers receive accurate bills. Generally, the industry recognizes this need and has taken initial steps in the direction of improving cooperation between carriers in competitive circumstances, but to date limited progress has resulted, and we

have received complaints concerning the lack of intercarrier cooperation.^{1/}

We believe this area is critical to the success of a competitive market structure and to ensure customers receive good service and accurate bills. Thus, we support the initial steps taken by the industry and to accelerate that process will direct all local carriers, incumbents and entrants, that have been requested by another competing carrier to interconnect and deal reciprocally, to file reports that describe the specific steps they have taken to facilitate meaningful cooperation and to develop common forums to resolve mutual concerns.^{2/} The reports should detail actions taken to support mutual billing, billing data exchanges, other areas of joint cooperation, and the problems or successes resulting from those actions. These reports should be filed six months from the issuance of this order. Other parties will then be allowed 30 days to comment on the industry's submission. In this way, the industry will have the opportunity and incentive to resolve such issues directly, while providing us the opportunity for further action should it fail to do so.

Interconnection

Interconnection continues to be the linchpin of competition. The record in this proceeding underscored that New York remains a widely recognized leader in this area. Our Open Network Architecture rules and policies are generic and apply to all telephone companies, both incumbents and entrants, under our jurisdiction. After careful review, we conclude that our current Open Network Architecture rules and guidelines should continue

^{1/} For example, complaints have been received from AT&T Communications of New York, Inc. and Teleport Communications.

^{2/} This approach is fully consistent with the process required under the Telecommunication Act of 1996.

without modification. Staff should monitor their implementation carefully, and we must be prepared to "referee" disputes in this area.

A special interconnection issue involves access to telephone poles and rights-of-way. We have accelerated discussion of the pole attachment issues and established a new proceeding to address these matters.^{1/} In addition, telephone companies are expected to re-engineer their processes for provisioning, preparing, and maintaining collocation space in incumbent central offices to assure the terms are reasonable and costs are as low as possible.

Intercarrier Compensation^{2/}

Issues related to the rates charged for the exchange of local calls and related data between competitive, cooperative local carriers are referred to as matters of intercarrier compensation. This area was considered integral to a competitive market as well as to the New York Telephone incentive regulatory proceeding. We have already acted on many of the critical intercarrier compensation issues in prior orders in this proceeding.

We directed eligible local exchange carriers to provide incremental cost-based,^{3/} meet point tariffs for the termination of local traffic between facilities-based, full-service local exchange carriers. Tariffs are to provide for both minute-of-use or flat rate charging options, unless an incumbent carrier can show that the costs of implementing a minute-of-use charging

^{1/} Case 95-C-0341, In the Matter of Certain Pole Attachment Issues which arose in Case 94-C-0095, Order Instituting Proceeding (issued March 10, 1995).

^{2/} These matters are resolved and are the subject of an order previously issued in this proceeding. Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation (issued September 27, 1995).

^{3/} Incremental cost is determined by looking to the costs of the largest carrier serving a given LATA.

structure make that option administratively infeasible. Rates may be equal for traffic exchanged at the meet point, if appropriate interconnections are provided and the network access provided to each carrier is functionally equivalent. Carriers are free to negotiate mutually acceptable and non-discriminatory terms that vary from this baseline; such options must be tariffed.^{1/}

Facilities-Based, Full-Service Carriers

In prior rulings,^{2/} we sought to encourage local exchange carriers to provide the full range of residence, business, and Lifeline services, and to do so through their own facilities. Facilities-based, full-service carriers both bear the costs and risks of providing essential network facilities and discharge their public interest obligation by providing basic services directly to customers. We reasoned that traffic exchanged between such carriers should be priced at its incremental cost.

Carriers engaged in the provision of basic residential, Lifeline, and business services will be regarded as "full-service" local exchange carriers. Such carriers provide basic services in accordance with the public interest, thereby directly discharging their universal service responsibilities. A carrier will be identified as full-service upon review of its plans and with the filing and effectiveness^{3/} of its tariffs offering such local services. Routine, ongoing monitoring of full-service, new entrant carriers is appropriate initially as

^{1/} Case 94-C-0095, Order Clarifying March 8, 1995 Number Portability Order, pp. 11-12.

^{2/} Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation (issued September 27, 1995).

^{3/} A full service carrier must also offer residential customers a *bona fide* offering in terms of its rates, terms, conditions, and availability. It need not, however, replicate the incumbent's territory, service offerings, or customer mix.

these carriers develop approaches to serve these markets. We direct staff to undertake such monitoring and report its findings in conjunction with its annual Transition Monitoring Plan report. Upon complaint or our own motion, we may, at any point, engage in a focused analysis of any full-service carrier's offerings to assure its provision of basic services is consistent with the public interest.^{1/} This approach will be transitional and will be reviewed after five years.

We previously ruled that a local exchange carrier has a right to intercarrier compensation. Eligibility is to be determined by a demonstration that the carrier is authorized to provide local exchange service in the state; has been allocated an NXX^{2/} for that purpose; and is providing local dial tone to customers. We believe these criteria also satisfactorily distinguish "facilities-based" providers from other carriers. We emphasize that this could mean, but does not necessarily require, that such carriers operate stand-alone networks capable of providing switched, intra-network services to their customers. It is likely that such carriers will, based on current technology, have their own switching plant and that they will provide facilities that connect individual customers to that switch that are functionally similar to the exchange access loops used today. These facilities may be directly provisioned, wholly or jointly owned, or leased through tariffed or non-tariffed arrangements.^{3/} Thus, this does not necessarily exclude carriers that utilize facilities provided by other carriers,

^{1/} In making these analyses we must consider not only the carrier's own performance, but also market conditions over which the individual carrier has no control.

^{2/} The carrier need not have been allocated a full code, as an eligible carrier might control less than that through code sharing or other means.

^{3/} Where intraLATA calls are originated by a full-service, facilities-based local exchange carriers' customer and carried by the originating carrier or an affiliate of the originating carrier, terminating access charges shall be based on incremental costs.

although the conditions associated with such resale could impact that determination.^{1/}

Neither facilities-based carriage nor full-service carriage status need be an absolute for a company. Facilities-based local exchange carriers may utilize platforms such as "service resale" to augment or extend their services to new markets by rebranding and reselling another carrier's retail services. In such cases, a carrier may be eligible for compensation for the traffic carried on its facilities, while for the traffic carried on a service resale basis it may not.^{2/} Similarly, full-service carriers may be "full-service" in one portion of their operating territory while not in another.^{3/}

The industry has employed resale and joint-ownership arrangements in the past and compensation issues have been resolved without significant controversy as a matter of practice. These guidelines should be utilized by the industry to resolve such matters in the future, and disputes may be brought to the staff or the Commission, if necessary, for resolution.

^{1/} Factors to be considered would include whether "services" or "facilities" are being resold; Commission mandated rate designs that affect the rates or terms at which resold facilities are offered to competitors; whether or not the resold facilities form an integral part of the carrier's network; or whether the underlying wholesale carrier is already compensated for the traffic (as is currently the basis for service rebranding and resale). For example, a carrier that leases another carrier's "links" at cost-based rates and integrates them into its own local network will be considered to be "facilities-based," while a carrier that merely markets local service packages provided entirely by an underlying "wholesale" carrier on a rebranding basis will not.

^{2/} For example, a carrier might be facilities-based in Buffalo, but provide service only through rebranding in Rochester. All other things equal, it would be eligible for compensation on the former and not the latter.

^{3/} Case 94-C-0095, Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation (issued September 27, 1995) Appendix A.

Access to Databases and Information Providers

Prior actions have concentrated on the rates for the exchange of calls; however, it is equally important to establish rates for data exchanges commonly associated with local telephone service (emergency calls, intercepts, call identification, routing, and associated signaling). Access to such information must be facilitated. Therefore, we expect local exchange carriers to treat the control, design, operation, and administration of computerized data bases essential to the provision of local exchange services in a competitively neutral manner by all local exchange carriers. Such carriers should establish practices and terms to ensure safeguards and controls over the operation of these data bases and equal and non-discriminatory access by other local exchange competitors. Compensation for access to Service Control Point (or SCP) databases, such as the Line Information Database, Signaling System 7, "800," and intercept databases, should be cost-based. While per query (or data dip) charges appear reasonable in principle, the actual rate design is a matter that the local exchange carriers should address. Local exchange carriers should provide non-discriminatory access to their bottleneck Service Control Point databases, including Signaling System 7 and intercept databases, and any newly created Service Control Point databases should be offered under the same compensation and non-discriminatory terms.

With regard to access to information services (such as "976" numbers) provided by third-parties and billed by a local exchange carrier, our foundation principle requires customers to be able to access all valid telephone numbers.^{1/} Thus, calls to information services must be completed, and the originating carrier should charge the information service provider's carrier for the originating network charges as for any local call. Local

^{1/} This differs from our policy with respect to interexchange carriers, which have the choice to "bill or block" calls to information services. Case 93-C-0451 et al., Opinion No. 95-10 (issued August 2, 1995).

exchange carriers are encouraged to develop cooperative billing practices to ensure customers are appropriately charged for the information services they utilize but, in any event, local carriers may not block access to such calls without the customer's assent.

Imputation

We previously determined that fair competition requires local exchange carriers "to impute to themselves the cost of access borne by toll competitors, to the extent that involves the use of monopoly services the competitors cannot avoid."^{1/} Local competition will require continued attention to the relationship of wholesale intercarrier compensation charges with their retail counterparts to assure a fair and level field for interexchange and local exchange carriers in the markets where they compete. Thus, local exchange carriers are directed to charge prices for intraLATA usage that meet appropriate imputation standards during the transition in accordance with our prior rulings. Our staff will monitor the implementation of the imputation guidelines closely given the potential for anti-competitive pricing if they are not applied.

Interexchange Traffic

The intercarrier compensation structure for local calling is discussed above ("Intercarrier Compensation"). Local exchange carriers are also authorized to file tariffs to charge for access by interexchange carriers which provide toll services to their local customers. In their tariffs, new entrant local exchange carriers have been authorized to charge for such access, subject to the constraint that their rates not exceed those of the largest carrier in the LATA without a showing that such rates are cost-based and in the public interest. This practice is

^{1/} Case 28425, Opinion 92-13(A), Opinion and Order Granting In Part Petitions for Petitions for Rehearing or Clarification (issued September 4, 1992), p.37.

reasonable and will continue, for now.^{1/} We will initiate a further phase of this proceeding to consider the overall level of interexchange carrier access charges, in conjunction with our further examination of pooling arrangements, interexchange access charges in Case 28425 and universal service funding.

TRANSITION REGULATION

This proceeding also addressed our regulation of those firms entering the local exchange market and what changes, if any, need to be made in the regulatory framework for existing local exchange providers. Four main topics were addressed: recovery of stranded costs, regulatory reporting requirements, price regulation, and other distinctions between dominant and non-dominant carriers.

Stranded Plant/Stranded Revenue Requirement

Stranded revenue requirement consists of stranded investment, underutilized investment, and revenues lost to competition. Stranded investment refers to utility plant that a company has prematurely retired from service due to competitive losses. Underutilized investment includes plant still in service, but for which utilization drops due to migration of customers to a competitor. To be considered for recovery, stranded or underutilized investment, at a minimum, must have been prudent at the time of installation, installed to meet regulated customer demand, and must have been in service. The appropriate context for consideration of stranded revenue issues would be in a general rate proceeding.

In an incentive regulatory environment, the risks and rewards of the business are fundamentally shifted from the utility's ratepayers to its shareholders. Competition along with inflation, productivity, or the general state of the economy, are

^{1/} Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation (issued September 27, 1995).

all factors to be considered in developing an appropriate incentive regulatory plan. Companies that enter such plans accept the risks and rewards inherent therein. Companies that have not entered incentive regulatory plans should not expect a regulatory guarantee of full recovery of all stranded revenue requirements. The extent to which universal service funding will be made available to enable companies recovery of universal service obligations, will be among the matters to be discussed in further phases of this proceeding.

Reporting Requirements

Dominance is defined by the degree of market power wielded by a given firm and does not necessarily relate to its status as one of the pre-existing wireline telephone companies (or incumbents). Thus, whether a company is an incumbent or new entrant to the field of local competition is not critical to the determination of the degree of reporting or the constraints placed upon its pricing. Rather, it is the degree of market power or dominance that determines the regulatory requirements.

After examining current reporting requirements (existing rules and regulations, reporting frequency, and the uniform system of accounts), we conclude such requirements should be maintained for dominant local exchange companies, except as they may be modified through periodic reviews.^{1/} Because dominant carriers continue to be subject to some form of rate of return regulation they should continue to be subject to the uniform system of accounts (USOA). In order to avoid unnecessary regulatory burdens, non-dominant carriers may generally file financial data based on Generally Accepted Accounting Principles (GAAP). Only when a non-dominant seeks rates or compensation requiring a showing of cost, such as when proposing interexchange carrier access charges in excess of those of the largest local

^{1/} The Commission recently streamlined reporting requirements for telephone corporations. Case 95-M-0796, Order Revising Report Form and Requirements (issued February 2, 1996).

carrier in a LATA (see the Level Play section above), would it be required to submit cost data in accordance with an abbreviated USOA standard. Beyond this non-dominant companies need only be required to report information sufficient to ensure that overall service network quality will be maintained and the development of competition can be monitored.^{1/}

Pricing

The freedom to change rates rapidly to best reflect demand and costs is consistent with a competitive market. As the transition to competition continues, pricing flexibility must be accorded companies in competitive circumstances. Pricing flexibility, defined as the ability to change rates rapidly with the minimum of regulatory review, should be commensurate with the degree of competition.

After careful review, we find that our existing pricing flexibility policies (a ceiling of no more than a 25% increase per annum, and a floor of relevant incremental costs) and individual case basis pricing (rates based on costs to an individual customer) are appropriate for dominant providers for competitive services during the transition period.^{2/} Thus, our existing pricing flexibility policies will be maintained.

^{1/} The reporting requirements for service quality, infrastructure and competition monitoring are discussed infra.

^{2/} The Commission allows the tariff to define a range between relevant incremental costs and the 25% per annum cap as presumptively reasonable rates, rather than stating any rates whatsoever. The company's currently effective rate is disclosed in a separate administrative schedule and may be changed within the range on as little as one day's notice. Dominant carriers have been granted such rate flexibility for many services (e.g., business access lines). Although their rates are presumed to be reasonable upon filing, changes in the rates of bottleneck services must also be accompanied by appropriate cost support. (See Case 29469, Order Approving Compliance Filing (issued January 29, 1990) p. 46; and Opinion and Order Concerning Regulatory Response to Competition, Opinion 89-12 (issued May 16, 1989) p. 28.

Competitive services provided by dominant companies may continue to be priced flexibly, and the non-discriminatory offering of individual contract pricing to better reflect specific customers' needs and conditions, will be allowed to continue for competitive services. Direct price regulation, such as price caps, or residual rate of return regulation, may be used in pricing bottleneck services. Non-dominant companies should have pricing flexibility for most services, with the exception of those required by the public interest to protect consumers (e.g., operator surcharges), or to maintain affordable, basic rates (see the Universal Service section above).

Other Local Exchange Carrier Requirements

All local service providers will be required to define their service territories, provide access to emergency services, and comply with our consumer protection rules. New entrants, however, will not be required to provide any particular services, though the choice to provide basic services and Lifeline may affect a carrier's ability to receive funding assistance and the terms of its intercarrier compensation.

Our order instituting this proceeding identified "interim" requirements applicable to all local exchange carriers.^{1/} These requirements encompass consumer and public interest protections and make clear the characteristics that further distinguish local exchange carriers from other telephone corporations:

- a) A local exchange carrier must file tariffs to provide local exchange service (a subscriber's initial access to the "public switched network") within a geographic area or areas defined by the carrier and filed with the Commission.
- b) As a provider of local exchange service, a local exchange carrier must:

^{1/} Case 94-C-0095, Order Instituting Proceeding (issued February 10, 1994).

- i) provide, without undue discrimination or preference, service to any willing customer within the carrier's defined service territory;
 - ii) provide access to public safety/emergency telephone services (911, E-911, O-), support the statewide relay system, and offer, or otherwise support, Lifeline service;
 - iii) comply with the Telephone Fair Practices rules (16 NYCRR Part 633, et. seq.);
 - iv) comply with the Common Carrier rules (16 NYCRR Part 605);
 - v) comply with our Statement of Policy on Privacy in Telecommunications (Case 90-C-0075, issued March 22, 1991);
 - vi) comply with our Open Network Architecture (ONA) principles (Case 88-C-004, Opinion No. 89-28, issued September 11, 1989);
 - vii) provide reasonable interconnections for the joint provision of service to any certified carrier requesting such interconnection;
 - viii) comply with our service quality standards and infrastructure monitoring requirements (16 NYCRR, Parts 603 and 644.3).
- c) All providers of local exchange service will be entitled to:
- i) comparable access to number resources;
 - ii) comparable access to and inclusion in the local exchange routing guide;
 - iii) reasonable access to customer information of other carriers necessary for billing and for the provision of directory listing and assistance services;
 - iv) participation in intercarrier compensation agreements.

We have determined that, at this early stage of the transition, the "interim" requirements continue to provide necessary consumer protections without imposing undue burdens on existing or potential market participants. Therefore, they shall continue to apply to all local exchange carriers. With the exception of the service quality and reporting requirements discussed elsewhere, we do not propose modification or general waiver of our rules for any group of carriers. As always, carriers may request waiver of specific rules, and we will be inclined to grant such waivers when accompanied by showings that the protections afforded by the rule will be provided in some other manner by the petitioner or are being provided effectively by the competitive market. In addition, if a carrier can establish with particularity that a specific requirement is, in fact, a barrier to entry we will grant specific waivers.

SERVICE QUALITY AND MONITORING

High service quality is essential to ensure New York's leadership in telecommunications. It must be maintained during the transition to competitive local exchange markets. Part of this proceeding addressed the service quality standards and the service quality, infrastructure, and competition monitoring required during the transition to local exchange competition.

Service Quality Regulation

Our approach regarding service quality balances our primary goal of ensuring quality service with a desire to minimize regulatory costs and apply standards uniformly to similarly situated companies. In basing service quality reporting on company size and performance, we have substantially limited the scope of reporting for new entrants and small incumbents alike.

All local exchange carriers will be subject to the same general administrative, operational, and performance standards to ensure consumer access to a reliable, seamless network-of-networks. However, performance measurement and

reporting requirements will vary depending on company size and performance history. In other words, carriers will be expected to provide service consistent with the performance standards even if they are required to report on only one or a few of the standards. If these limited measurements reveal problems, expanded reporting may be required. Where a local exchange carrier provides its services solely by repackaging and rebranding services provided by another carrier, and the underlying carrier's services are already subject to service quality monitoring, the former companies may be granted exemptions from particular service standards, measurement, and reporting requirements on a case-by-case basis. These carriers will be required to show that the service in question is provided solely through resale of an underlying carrier's tariffed services over which it lacks direct control. The granting or denial of such exemptions will be delegated to the Director of the Communications Division and such exemptions will be regularly reviewed.

Local exchange carriers will be expected to provide the same fundamental consumer protections, incorporate the same basic capabilities and safeguards into their operations and networks, and be judged in relation to the same performance thresholds (e.g., "Weakspot," "Surveillance Level Failure," and "Objective" level thresholds). This assures all local exchange carriers will be held to the same minimum performance standards.

To provide adequate information about each local exchange carrier's service quality, while minimizing regulatory burdens, local exchange carriers will first be classified by size as follows:

Small companies	- 50,000 access lines or less
Medium-size companies	- 50,001 to 500,000 access lines
Large companies	- Over 500,000 access lines

A small company will normally only report Customer Trouble Report Rate (CTRR) performance, as long as its complaint rate (as measured by complaints filed with the Commission or "PSC complaints") does not exceed 0.5 per thousand access lines per year on a twelve month rolling average basis. It will also be subject to Surveillance Level Failure and Service Inquiry reporting requirements, but only for CTRR. If a service problem is detected after analysis of CTRR or complaint activity, the Director of the Communications Division will be authorized to require additional reporting until the problem is resolved.

A medium-size company will normally report CTRR, % Missed Repair Appointments, and % Out-of-Service Over 24 Hours, as long as its complaint rate does not exceed 0.5 per thousand access lines per year on a twelve month rolling average basis. It will also be subject to Surveillance Level Failure and Service Inquiry reporting requirements, but only for these three measures of service quality. It may also be required by the Director of the Communications Division to report additional information if a service problem is detected, but the additional reporting should be eliminated once the problem is resolved. Conversely, the company may request the Director to waive some of the reporting requirements upon earning a PSC commendation for excellent service.

A large company will normally report all of the performance indicators specified in the service quality standards and be subject to Surveillance Level Failure and Service Inquiry reporting requirements for all items. A large company will also be subject to additional reporting in the event of a service problem (as they are currently) and may request the Director to waive some of the routine reporting requirements upon earning a PSC commendation.

Under this plan, thirty-five incumbents all small companies, three incumbents (ALLTEL, Highland, and Citizens Telecom) are medium-size companies, and two incumbents (Rochester Telephone and New York Telephone) are large companies. Thus, existing service quality measurement and reporting requirements

will be reduced for most of the incumbents. Since most new entrants will probably begin as small companies, this plan will impose minimal reporting requirements, as long as they maintain low complaint rates.

Annual PSC Commendations will continue to be awarded to local exchange companies judged to have provided excellent service. New entrants will now become eligible for such commendations. Currently, the qualifying criteria for a commendation are: (1) 95% Objective level performance for Customer Trouble Report Rate; (2) no Surveillance Level Failure in any measurement category; and (3) a complaint rate of not more than 1.0 per thousand access lines for the year. As most companies will only have to report CTRR, however, the Surveillance Level Failure test will be eliminated. To compensate, the PSC Complaint rate threshold will be tightened from 1.0 to 0.5.

In addition to implementing the foregoing service quality monitoring scheme, we will also consolidate and streamline the existing service quality standards (Parts 602 and 603 of the Rules and Regulations) to make them more concise and to better reflect the shift to a multi-provider market. Also, we have previously indicated our intent to review all our service quality standards to ensure that the rules remain useful and appropriate to current market conditions. This review will take into account the growth and effectiveness of competition that might warrant relaxation of regulatory oversight, advances in technology and capabilities, and consumer expectations that might warrant tightening of certain standards. We will initiate the necessary processes to undertake these revisions in the near future. We intend to review the service quality standards during the transition to a competitive market at least every five years.

Infrastructure Monitoring

In 1993, we investigated New York Telephone Company's network modernization plans and, based on infrastructure benchmarks and other information developed in that case,

concluded that New York Telephone compared favorably with other major companies and that there was no need for regulatory intervention. However, the effort required to assemble such information is resource intensive, and the comparisons are often subject to interpretation.

Despite these obstacles, we have a duty to know, as best as we can, how New York's telecommunications infrastructure varies across regions in the state, how it compares with the rest of the world, and how effective competition is in providing services demanded by consumers. This will only be accomplished by continuing the infrastructure monitoring efforts currently being undertaken by the Department.

We expect staff to access and utilize whatever pertinent information is available from the Federal Communications Commission information systems, case files, and reports; to survey the trade journals; to review Bellcore publications for relevant infrastructure information; and to request New York State's local exchange companies to file specific data along with their annual construction budget filings. Efforts during the past two years to obtain data directly from other state commissions, out-of-state telephone companies, and countries have produced limited useful information, so these avenues should continue to be pursued only as and when judged likely to be productive.

Staff will be expected to continue to gather as much information as possible about the deployment of network technologies, capabilities, and services across regions within New York State and in other states and nations and to synthesize and report this information to us. Staff should also attempt to improve upon its past infrastructure monitoring efforts by gathering service quality data for out-of-state companies and correlating this information with investment expenditures, technology deployment, and service availability.

Finally, pursuant to Section 644.3 of the rules, every local exchange company is required to file construction budget information, including infrastructure information, by March 31

each year. The rule authorizes the Director of the Communications Division to specify the data that each company should file, and the Director communicates this information via annual letters to companies every December. This is our primary source of infrastructure monitoring information.

To ensure that the monitoring information is as complete as possible for the whole state, new entrants also should be required to file similar infrastructure information, including some construction budget information. We understand that new entrants may consider some or all of such information to be competitively sensitive, and we will employ available procedures for protecting information that truly is.

Competition Monitoring

We must monitor the development of competition during this transition period. This information will provide valuable evidence of the success or failure of our policies and provide a guide as to those markets where regulatory attention is most likely required or where regulation can be relaxed. Specifically, our ongoing assessment of competitive developments should be designed to:

- 1) monitor the extent to which competition has developed in various markets in New York;
- 2) assess the competitive effectiveness of the markets in meeting our fundamental objectives;
- 3) evaluate the impact on consumers of changing market conditions; and
- 4) assist in the determination of future regulatory modifications or enhancements.

To meet the four goals outlined above, we will need to collect a variety of data, some from the market participants themselves and some from other sources, such as consumers. Other information that may be required to accomplish specific objectives identified in other parts of this proceeding (e.g.,

detailed cost data that may be needed for certain rate setting or revenue distribution purposes) are not included here.

To monitor competitive developments in various local exchange markets across the state, we will need to gather the following information: (1) data showing the extent to which competitive local services are offered and actually being used in each market area; (2) the availability and accessibility of desired capabilities, the technical quality of the services offered, and the nature of the provider's interaction with its customers; and (3) price levels and trends. While some of this information will be available from existing regulatory reports, some additional information gathering efforts will be required. Appendix 1 contains a more detailed specification of the information that we intend to use in connection with our competition monitoring effort.

We believe that the basic business activity information (e.g., customers, lines, usage, basic financial data) outlined in the Appendix, augmented by tariff information, service quality reports, complaint data, and infrastructure information will provide an adequate picture of the evolving status of local exchange competition without unduly burdening any market participant.^{1/} We will initiate the formal rulemaking process necessary to implement this monitoring program through a separate order.

CONCLUSION

The regulatory framework described herein is designed to balance the interests of new and incumbent local exchange

^{1/} The above-described monitoring effort should provide an on-going base of information by which to judge the effectiveness of evolving local exchange service competition in various parts of the state. We have not attempted to pre-define a quantitative competition benchmark (i.e., a standard of demarcation at which regulation should change in response to a measured "amount" of competition). Such determination ultimately will be highly subjective and interested parties will be entitled to offer whatever evidence they choose to support their views on the effectiveness of competition in any market under consideration at any time.

companies and ensure requisite customer protections during the transition to a fully competitive telecommunications marketplace. To implement this framework we will adopt the policies and practices described in this order and initiate further processes to examine the several issue areas that warrant additional refinement and input.

The Commission orders:

1. The policy framework described in the body of this order is adopted for our regulation of local exchange carriers during the transition to a competitive local exchange market.

2. A transition period for all policies in this order that result in differential treatment of carriers is established, except as required under state and federal law. No later than July 1, 2000, we will seek comments on the need to extend differential treatment or transitional proposals beyond December 31, 2000.

3. All local exchange carriers are directed to file, no later than November 20, 1996, reports describing the steps they have taken to support mutual billing, billing data exchanges, other areas of joint cooperation, and the problems or successes resulting from those actions. Five copies of such report should be submitted to the Secretary of the Commission, Three Empire State Plaza, Albany, New York 12223-1350. Parties wishing to receive copies of such reports shall notify the Secretary in writing by no later than July 31, 1996. A list of such parties will then be served by the Secretary, and anyone submitting reports will be required to serve a copy on all parties on the list. Parties interested in filing comments on the reports will have until December 24, 1996.

4. The responsibility to grant or deny exemptions from service quality reporting requirements or to waive or require additional reporting requirements, as described in this Opinion, shall be delegated to the Director of the Communications Division.

5. This proceeding is continued.

By the Commission,

(SIGNED)

JOHN C. CRARY
Secretary

COMPETITION MONITORINGPENETRATION

Each local exchange provider should be required to report:

1. NXXs it has in use;
2. counts of access lines in service by service classification (e.g., residence, business, and private line);
3. customers (business, residence, and Lifeline) in each area; and
4. basic usage statistics in each area, including numbers of calls and minutes-of-use, sub-divided among local usage and intraLATA, interLATA and interstate toll and carrier access.

These data should be reported for each LATA and filed annually, and, to the extent economically reasonable, quarterly. Finer disaggregation (i.e., sub-LATA) may prove desirable where "pockets" of intense competition could be masked by large areas of little or no competition. Staff reports that industry representatives have indicated a willingness to work to develop such sub-LATA data if it becomes necessary. Requiring LATA-by-LATA reporting on a routine basis, seeking sub-LATA data only when the need is obvious, strikes a reasonable balance between the Commission's need for information and the cost to the industry of supplying it.

CAPABILITIES and SERVICE QUALITY

In a broad sense, "competitive effectiveness" refers to the adequacy of service and prices. "Service adequacy" refers to the availability and accessibility of desired capabilities, the technical quality of the services offered, and to the nature of the provider's interactions with its customers. Insight into the availability and accessibility of desired capabilities should be obtainable from the Commission's infrastructure monitoring

efforts as described in the body of the Opinion and Order Adopting Regulatory Framework. Further information about service availability will be available through the tariffs that all carriers will continue to file. The Commission's service quality reporting and the Department's internal complaint statistics will provide an indication of the levels and trends of technical and customer service quality. These sources should provide a reasonable basis for assessing the adequacy of service during the transition to competitive local exchange markets.

PRICING

Tariffs (and associated effective price statements) will provide the primary source of information for evaluating price levels and trends. Although non-dominant local exchange carriers will not be subject to rate of return regulation, a company's rate of return is one indicator of the overall reasonableness of its prices. As discussed in the Opinion and Order Adopting Regulatory Framework, non-dominant local exchange providers will be required to file annual balance sheets and income statements for their New York State operations at the level of detail normally provided in shareholder reports or 10K filings.