



Christopher B. Fisher
914-761-1300
President@nyswa.org

October 23, 2015

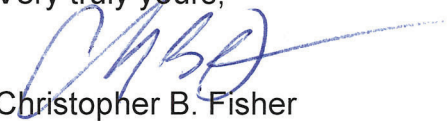
VIA ELECTRONIC POST

Hon. Kathleen Burgess, Secretary
New York State Public Service Commission
3 Empire State Plaza
Albany, New York 12223

Re: Case No. 14-C-0370

On behalf of the New York State Wireless Association, Inc. ("NYSWA"), enclosed for filing are its comments in Case No. 14-C-0370.

Very truly yours,



Christopher B. Fisher
President

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of a Study on the State of

CASE NO. 14-C-0370

Telecommunications in New York State

COMMENTS OF THE NEW YORK STATE WIRELESS ASSOCIATION

Christopher B. Fisher, President
David E. Bronston, Secretary
New York State Wireless Association, Inc.
445 Hamilton Avenue, 14th Floor
White Plains, New York 10601

Dated: October 23, 2015

White Plains, New York

Introduction

The New York State Wireless Association (“NYSWA”) is pleased to submit these comments in furtherance of the New York State Public Service Commission’s Notice Seeking Comments issued June 23, 2015 (“Notice”). NYSWA thanks the Commission for inviting comments in Case No. 14-C-0370 and on the accompanying Staff Assessment of Telecommunications Services report (the “Report”). NYSWA appreciates the opportunity to present further information to the Commission and comment on policies that benefit consumers, providers of wireless communications services and our member companies large and small.

NYSWA

NYSWA is an all-volunteer New York State wireless industry trade association. NYSWA was founded in part to “provide an official forum for the cultivation of relationships and exchange of ideas between wireless telecommunications professionals, government officials and the public.” Our members include wireless carriers, tower and other wireless infrastructure companies, distributed antenna system and small cell integrators, fiber providers, architect and engineering firms, radio frequency technicians, construction firms, surveyors, real estate acquisition companies and other wireless infrastructure service firms.

Commission Initiated Study of the Telecommunications Sector in New York

In May of 2014, the Commission initiated a review of the state of the telecommunications industry in New York noting the rapid pace of change. The Commission’s current proceeding seeks to assess the marketplace, nature of telecommunications services being provided and regulatory environment in the State including any potential change in the Commission’s approach to meet evolving consumer needs. Included in its review, the Commission referenced

the growth of wireless and mobile broadband services and high consumer adoption rates, an area of particular interest to NYSWA and its members.

New York State Regulatory Approach to Commercial Mobile Services

As noted in the Report, the Commission has “long supported competitive markets as the most effective approach”¹ to ensure the core goals of the Commission are met and consumers’ evolving needs are satisfied. The Commission’s regulatory model has been a major driver of growth in the wireless industry and mobile broadband deployment throughout the State. The Report accurately demonstrates that competition and reinvestment of capital by the private sector yields consumer choice and reliable wireless services for New Yorkers. NYSWA submits that additional regulation of the commercial wireless industry is not necessary and would, in fact, inhibit the Commission’s goals. Our specific comments on the role of commercial mobile services in New York State’s telecommunications sector, further information relative to the Notice and potential areas for further Commission policy and regulatory consideration are set forth below.

Telecommunications Competition

NYSWA agrees with the Report’s assessment that competition in New York for voice services is robust. “Customers in New York generally have the choice for phone service between an incumbent telephone carrier, a cable carrier, over-the-top VoIP and four primary wireless carriers.”² Additionally, the Report notes that most all residents of New York have access to multiple wireless providers.³

¹ Case 14-C-0370 - In the Matter of a Study on the State of Telecommunications in New York State, Staff Assessment of Telecommunications Services (“Report”), at 3.

² Id. at 14.

³ Id. at 10.

State and Local Economic Benefits - Commercial Mobile Services

In 2013 NYSWA commissioned an independent economic impact study prepared by New York State based CGR, Inc. and its Chief Economist, Mr. Kent Gardner, Ph.D. ("NYSWA Economic Study" or "Study"). The NYSWA Economic Study was published a year ago in June of 2014. A copy of the NYSWA Economic Study is attached and we respectfully request that it be added to the record in Case No. 14-C-0370.

NYSWA's Economic Study was the first known effort to quantify the contributions of the commercial mobile sector's contributions to New York's state and local economies. The results of the Study clearly demonstrate that New York's wireless industry is competitive, a key economic driver (both direct and indirect) of the State's economy and provides high quality jobs to New Yorkers. The following positive effects from commercial mobile services in New York were noted in the Study:

- The adoption of wireless voice services, as measured by subscriber growth, for the period of 2000 to 2012 grew from 5.4 million to almost 21 million. An almost four fold increase over twelve years.
- The commercial mobile industry in New York directly and indirectly employs approximately 60,000 people with an estimated total payroll of approximately \$5.1 billion dollars.
- Public and private investment in wireless communications infrastructure in New York for the four-year period of 2008-2012 exceeded \$2 billion.
- The wireless industry in New York generates almost \$2.4 billion dollars in tax revenue to state and local governments.

NYSWA's Economic Study goes on to note the dramatic reduction in consumer cost per minute of wireless voice use with an estimated consumer surplus for New Yorkers of \$46 billion. The Study further identifies productivity gains in

New York associated with thirty minutes of wireless usage while commuting at nearly \$8 billion, something only accomplished through access to wireless services provided by the smartphone. Clearly, the commercial wireless sector as of 2012 was a staple of New York's broader economy and based on published data and reports, continues to grow year over year.

Wireless Voice & Data Usage

The Commission's Report notes that "[t]he passage of time and changing industry trends, along with the near ubiquitous deployment of wireless and broadband technologies, has again brought the industry to an inflection point."⁴ As of "2004, the number of wireless phone connections reached the level of the incumbent phone service subscriptions and, from that time, wireless subscriptions escalated rapidly."⁵ Below is a chart that appeared in a Commission study regarding Voice Provider Connections in Service 2000-2013.

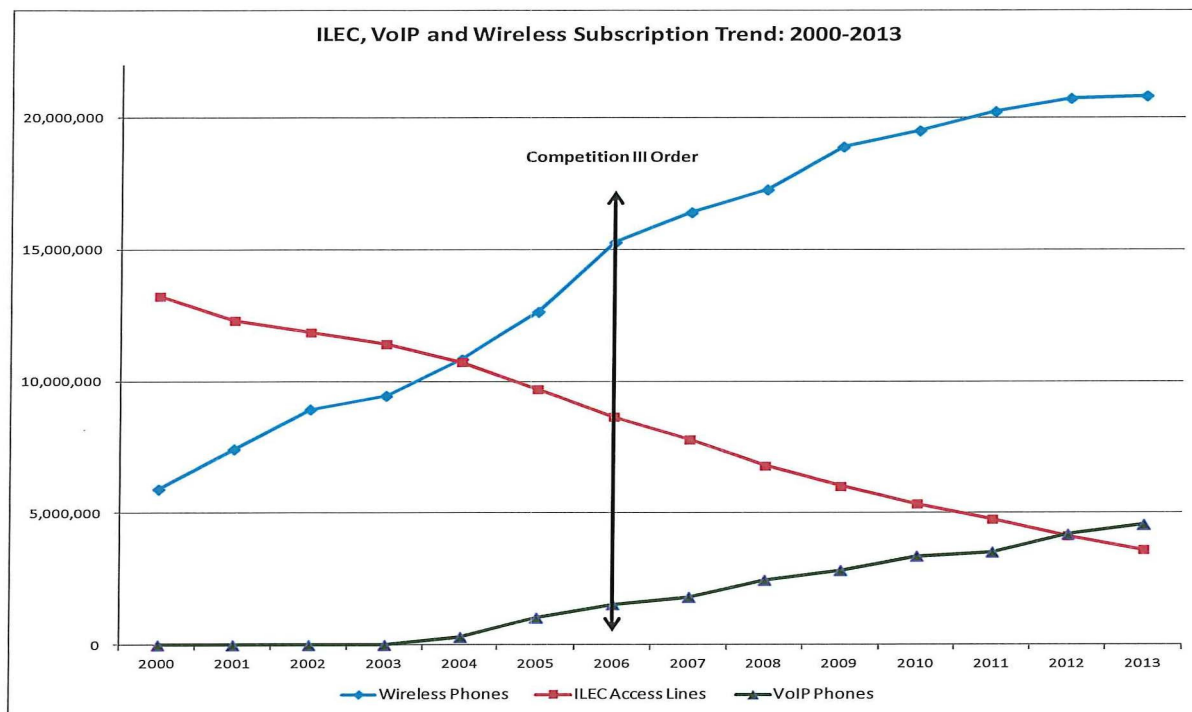


Figure 3: Voice Provider Connections in Service, 2000-2013

⁴ Id. at 5.

⁵ Id. at 12

In March of 2015, Sienna College Research Institute released the results of a poll, sponsored by AT&T, on wireless device use in New York (“Sienna Poll”). As further evidence of the rise in wireless device usage by New Yorkers the Sienna Poll found the following:

- Cell phones are used by 90% of New Yorkers, with 2/3 using smartphones.
- 90% of smartphone users in NY are satisfied (44% completely) with their provider company, and 81% say it’s important that their provider be innovative and a leader in technology.
- 21% of households are wireless-only, no landline (28% in upstate New York).⁶

The rise in smartphone use with access to the internet and mobile broadband applications is driving demand for continued investment in wireless networks in New York State.

Mobile Broadband

NYSWA agrees with the Report’s conclusion that broadband deployment, particularly wireless broadband, plays a pivotal role in the lives of citizens and small businesses across the State. The Report aptly recognizes that: “[m]uch as telephone was an essential service for consumers in the second half of the 20th Century, so today is broadband. Broadband service, whether provided by wire, such as hybrid coaxial/fiber cable, copper-based digital subscriber line, and/or fiber optic technologies, or wirelessly via Wi-Fi and LTE cellular technologies or fixed point-to-point wireless, or satellite, represents not only a communications platform (in the form of voice, text, e-mail, video conferencing,

⁶ See, Siena College, Cell Phones Used by 90 Percent of New Yorkers (issued March 4, 2015), <https://www.siena.edu/news-events/article/cell-phones-used-by-90-percent-of-new-yorkers>.

and other social media services), but a platform for social relationships, health information, news, entertainment, education, medical diagnosis, the payment of bills, navigation, shopping, government business, document storage and job applications.⁷ The very essence of world-class communications infrastructure in this State depends upon the strength of its evolving broadband networks.”⁸

The Report also found that the State’s wireless broadband system has “expanded tremendously in the last few years, and consumers are subscribing to wireless broadband faster than any other mode made available to them,” and that wireless companies have “raised the broadband bar.”⁹ As the Report notes, this trend is a clear indication that network providers are making significant capital investments to meet ever-increasing consumer demand.¹⁰ Below is a chart that appeared in the Commission’s Report regarding broadband availability and adoption rates in New York by technology type. Wireless broadband has the highest adoption rate (40%) in New York after cable broadband.

Broadband Services	Availability	Adoption
Satellite	>95%	<1%
Wireless	>95%	>40%
Cable	>95%	>55%
LEC	>90%	<10%
Fiber	50%	>25%

Table 10 b: Approximate Broadband Service Availability and Adoption Rates, By Technology in 2013 at ≥ 3 Mbps.¹¹

The Report observed that “...wireless broadband subscription levels in New York State continue to grow faster than any other broadband industry segment...”¹²

⁷ Id. at 47.

⁸ Id. at 48.

⁹ Id. at 56.

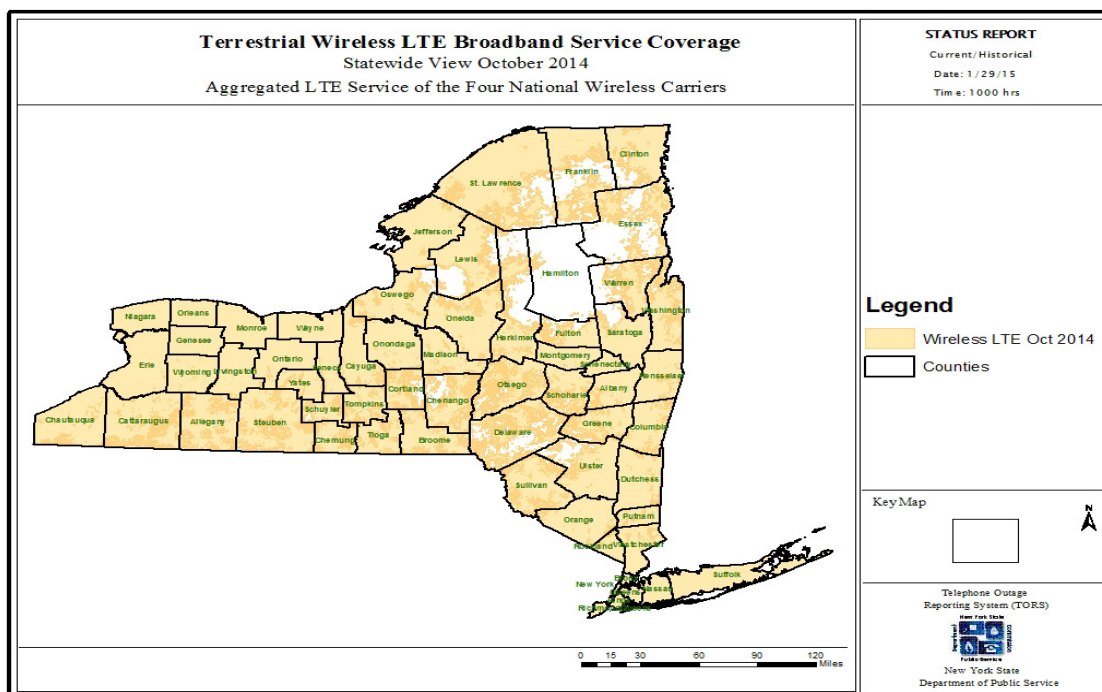
¹⁰ Id. at 63.

¹¹ Id. at 51.

¹² Id. at 52.

Thus while wireless broadband is second in overall adoption rate, it is the fastest growing segment of broadband providers.

Geographically, the rise in availability of mobile broadband is evidenced by the below copy of a map that appeared in the Commission's Report showing Wireless LTE Broadband Coverage across the State as of 2014.



13

In the past few years, commercial mobile carriers have intensively deployed capital in New York to upgrade their networks to provide 4G LTE services. Indeed, those limited areas of the State without wireless broadband coverage are in counties that are typically located within the Adirondack Park and other mountainous or remote regions of New York where significant technical and economic challenges exist in providing wireless services. Coupled with unique State and local regulatory processes, there are barriers to deployment of new infrastructure in these areas of the state.

¹³ Id. at 57.

Current 4G and Future 5G Wireless Technologies & Spectrum Allocations

Wireless carriers continue to deploy, add capacity and expand their LTE coverage in New York. Future 5G technologies along with other advanced telecommunications services are also being developed by the private sector. As noted in the Report “[t]he State’s mobile (cellular) wireless broadband system has expanded tremendously in the last few years.” The deployment of LTE service throughout most of the State by companies like AT&T, Verizon Wireless, Sprint and T-Mobile has set new standards as stated in the Report: “Consumers can now subscribe to mobile (cellular) wireless data plans from a variety of providers with download speeds in excess of 50Mbps” all with the access and benefits only mobility can provide. NYSWA expects that the commercial mobile industry will continue to play a key role in making broadband connectivity even more widely available across the State.

As also noted in the Report, recently auctioned wireless spectrum by the FCC to winning bidders will also significantly add to network capacity and allow further expansion of wireless broadband services and enhanced competition in New York. “Nationally, the FCC’s AWS-3 Auction raised nearly \$45 billion, of which \$6.8 billion, or 15.1% of the total bid revenues, were for wireless spectrum licenses in New York State market areas.”¹⁴ To paraphrase the Report, the wireless trend over the past three years has shown a dramatic and incremental increase in wireless broadband speeds, “again indicating that network providers are making capital investments to enhance wireless infrastructure to meet growing consumer demand.”¹⁵ The Commission’s continued regulatory approach in New York which allows capital to be deployed efficiently and effectively is an important part of ensuring continued investment in and deployment of mobile broadband technologies now and in the future that benefit all New Yorkers.

¹⁴ Id. at 56.

¹⁵ Id. at 63.

NYSWA Supports Policies Accelerating Wireless Infrastructure Deployments

The Commission should assess potential barriers to wireless infrastructure deployments in municipal rights-of-way and consider regulatory action within its current statutory authority. In *Crown Castle NG East Inc. v. Town of Greenburgh*, 2014 U.S. App. Lexis 925 *6 (2d Cir. Jan. 17, 2014), the United States Second Circuit Court of Appeals affirmed a lower court ruling that zoning application denials for a distributed antenna system (“DAS”) in municipal rights-of-way violated Section 332(c)(7) of the Communications Act. While ultimately prevailing, in so ruling, the Court decided not to address the DAS company’s initial claim that local zoning rules could not be legally applied in municipal rights-of-way as a matter of federal and state law and such projects subject only to municipal consent and Town Code processes for agreements on use of the municipal right-of-way. See generally N.Y. Transp. Corp. Law § 27 and § 119-a of the Public Service Law. As such, despite being the holder of CPCNs from the PSC, DAS providers are encountering more and more barriers on a municipal level to the reasonable, safe and effective use of pole attachments in municipal rights-of-way for delivery of wireless services. NYSWA submits that municipal application of local zoning and wireless laws that were typically developed to regulate towers on private parcels of land to DAS deployments can be a legal, economic and practical barrier to accelerating wireless infrastructure deployments for the benefit of New York’s citizens as evaluated by the Commission previously. See Case 03-M-0432, Order Adopting Policy Statement on Pole Attachments, August 6, 2004.

Conclusion

Public statements at hearings held by the Commission for comments in response to the Notice and Report have not highlighted any significant regulatory gaps with respect to the wireless sector of the telecommunications

industry. As the Report notes, competition and reinvestment are strong within the wireless industry which in turn results in lower voice and data pricing for consumer access to high speed wireless network services. In order to facilitate the wireless industry's continued momentum in providing new and advanced services to New York's citizens and businesses, we urge the Commission to continue its current regulatory model which is working well for consumers. Further, we ask the Commission to consider areas where it might streamline and reduce barriers to the deployment of wireless infrastructure. By continuing its regulatory approach to wireless services and facilitating deployment of wireless infrastructure, the Commission will continue to foster investment in this competitive service that provides economic benefits and essential wireless broadband services to New York State.