

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 17, 2013

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Garry A. Brown
Gregg C. Sayre
Diane X. Burman

CASE 13-C-0193 - Petition of Time Warner Cable Information Services (New York), LLC for Waivers of Certain Commission Regulations Pertaining to Partial Payments, Directory Distribution, Timing for Suspension or Termination of Service, and a Partial Waiver of Service Quality Reporting Requirements.

ORDER GRANTING IN PART AND DENYING IN PART
REQUESTS FOR WAIVERS OF RULES

(Issued and Effective October 21, 2013)

BY THE COMMISSION:

INTRODUCTION

On May 1, 2013, Time Warner Cable Information Services (New York), LLC (TWCIS) filed a petition requesting waivers of the Commission's rules relating to allocation of partial payments, distribution of print directories, authorized hours for suspension and termination of service for nonpayment of bills, and restriction of service quality reporting requirements to certain out-of-service metrics for core customers. TWCIS requests the waivers because the level of competition in the telecommunications market warrants relaxation of these legacy rules as they apply to competitive carriers and the Commission granted similar waivers to other telecommunications carriers. In this Order, we grant the requests relating to partial payments and distribution of directories, subject to certain

conditions, and deny the request relating to expansion of hours permitted for service suspensions and terminations. To establish a baseline for reporting of service quality metrics, we require TWCIS to report metrics consistent with our rules for six months and authorize TWCIS to limit its reporting in compliance with our rules to its core customers, provided the Director of the Office of Telecommunications is satisfied that the initial six months of TWCIS reporting complies with the reporting guidelines (16 NYCRR §603.4(a)).

PUBLIC NOTICE

In accordance with the State Administrative Procedure Act §201(1), a notice of TWCIS' petition was published in the State Register on June 19, 2013. The comment period expired on August 3, 2013. The Public Utility Law Project of New York, Inc. (PULP) filed initial comments on August 2, 2013 and supplemental comments on August 26, 2013. TWCIS filed a response to PULP's comments on August 20, 2013 and a letter regarding its termination policy as stated on its bills on August 28, 2013.

BACKGROUND

On March 18, 2013,¹ the Commission granted a TWCIS request to modify its Eligible Telecommunications Carrier (ETC) designation. The modification permits TWCIS to receive Lifeline support from the Federal Universal Service Fund (USF) and the New York Targeted Accessibility Fund (TAF) for the benefit of serving low-income customers. TWCIS serves approximately 1.2

¹ Case 12-C-0510, Time Warner Cable Information Services (New York), LLC - Eligible Telecommunications Carrier Designation, Order Approving Designation as a Lifeline-only Eligible Telecommunications Carrier (issued March 18, 2013).

million residential customers, including low income customers. As a result of the modification to its ETC designation, the Commission's regulations now apply to TWCIS's provision of voice service.

DISCUSSION

TWCIS requests waivers of certain Commission rules. The rules relate to allocation of partial payments, distribution of print directories, authorized hours for service suspensions and terminations, and reporting of service quality standards.

PARTIAL PAYMENTS

The Commission's rules, (16 NYCRR §606.5(a) through (c) and §606.4(c)), as modified,² require allocation of partial bill payments as the customer directs, or, in the absence of directions and provided no billing dispute is associated with the account, in a specified order of priority. A partial, or subsequent, payment is first applied to basic local service; second, to charges for intraLATA toll and interregional calling provided by a local exchange carrier; third, to charges for non-basic, regulated services; and, fourth, to any other charges (order of priority). If past due charges are extant, under our rules, payment is applied to outstanding and current charges in the order of priority.

In 2011,³ the Commission waived the specific partial payment provisions in these rules, as modified; and, it

² Case 90-C-1148, Telephone and Telegraph Corporations - billing and Collection services, Order Approving Settlement Agreement (issued August 7, 1992).

³ Case 10-C-0609, Verizon New York Inc. - Billing Categories and Partial Payments, Order Directing Tariff Amendment (issued May 19, 2011) (Partial Payment Order), p. 8.

authorized Verizon New York Inc. (Verizon) to: (1) establish two categories in the order of priority, basic, including tone signaling and non-published listings, and non-basic, including other features and long distance calls; and, (2) apply partial payments to all past due charges before allocation to current charges. It reasoned that the revision would promote continuation of basic local service to customers and assurance that disconnection of basic local service does not occur due to nonpayment of charges for other services. Other provisions in the rules, as modified, remain in effect, including the requirement for a plan for assignment of partial payments, an outreach and education program, and, separate listing of charges for each service on a customer's bill.

TWCIS Petition

TWCIS requests waiver of the partial payment provisions in the Commission's rules and authority to establish two categories for the order of priority in allocating partial payments: (1) charges relating to telephone services; and (2) charges relating to all other services. It asserts that, given, all inclusive (local and long distance) telephone packages, the change will ease its administration of the requirements, and that the change achieves the objective of avoiding termination of telephone service for non-payment. According to TWCIS, the original four category rule was established at a time when local exchange companies billed for separate long distance service; now, most telephone customers subscribe to unlimited local,

intrastate, and interstate calling plans; and, competition for voice service has increased substantially.⁴

PULP Comments

PULP proposes that the Commission deny TWCIS' request, and establish three service categories for allocation of partial payments: telephone service, unregulated broadband, and regulated cable TV. It argues that cable television services are regulated services; and, it is the Commission's policy to prevent shutoff of all regulated local services due to non-payment of charges for other services. PULP contends that TWCIS' reference to the Partial Payment Order is inapt because the typical Verizon customer does not receive regulated cable television service. PULP recommends that TWCIS redesign its payment forms to provide clear notice that the customer has an opportunity to designate allocation of partial payments and that, if charges for a service are in arrears, the company will block access to the service.

PULP requests an investigation of whether TWCIS shuts off telephone service for nonpayment of other charges for broadband or cable TV service in violation of 16 NYCRR §606.4. It relies upon a statement from a customer bill dated May 2013: "nonpayment of any portion of your cable television, high-speed

⁴ TWCIS requests an exemption from the requirement in the Partial Payment Order that companies file a letter within 30 days of the Commission's order to obtain the waivers granted in the order. Because TWCIS is not listed among the companies subject to the Order, it is not limited to the 30 day requirement; and, no exemption is needed.

data, and/or digital phone service could result in disconnection of your telephone service.”⁵

TWCIS Response

TWCIS states its two category allocation is a default method, absent customer direction, and that the customer may state a preference at any time for a specific allocation. The company emphasizes that its two categories would ensure continued provision of basic telephone service, to advance the clear and long-standing federal and state universal service policies. It notes that no comparable policy exists for cable services.

PULP Supplemental Comments

PULP recommends affirmative outreach and education of customers regarding the application of partial payments and selective blocking options. It reiterates its concern that the shut-off notice contains no information on customer allocation of partial payments. It suggests that TWCIS provide notice to customers of the option to allocate partial payments, the method to exercise that option, and a simple means to do so.

Discussion

We grant TWCIS a waiver of our partial payment rules and allow it to establish two payment categories for allocating partial payments, with a modification. TWCIS is authorized to include in the first category, only charges for basic local telephone service; charges for non-basic services, consistent with our Partial Payment Order, would include long distance charges. Thus, non-basic service is any service other than

⁵ In a letter dated September 20, 2013, TWCIS explains that, after modification of its ETC designation, it removed this bill message from customer bills in June 2013. Although PULP raises a serious concern, the issue appears moot, given the TWCIS policy change and removal of the notice from its bills.

basic monthly local telephone service, including broadband, inter- and intra-LATA long distance, cable television service, and calling features, such as, call waiting, caller ID, and three-way calling. In its response to Department of Public Service Staff's (Staff) interrogatories, TWCIS stated that it has the ability to disable long distance service so that only local telephone service is available and that customers may subscribe to local-only calling plans. This change will enable customers subscribing to bundled services to unbundle their services for partial payment allocations, so that they may pay for and continue basic local service and obtain a deferred payment plan for basic local telephone service.

Our rules do not require telephone corporations to encourage and recommend that customers submit specific partial payment allocation plans. They leave the initiative to the customer, who is in the best position to understand the specific needs that may drive preferences for continuation of services other than basic local service. The requirement to allocate partial payments to basic local service advances the important public policy in favor of maintaining basic local service and access to emergency assistance. If a customer prefers another allocation, the preference may undermine this policy, and is the responsibility of the customer to request.

As PULP notes, customers would benefit from an affirmative outreach and education program regarding the application of partial payments and selective blocking options. The provisions in our rules, other than the partial payment provisions modified in our Orders, remain in effect. These include an outreach and education program and separate listing of charges for each service on a customer's bill.

DISTRIBUTION OF TELEPHONE DIRECTORIES

The Commission's rules (16 NYCRR §602.10(4)) require distribution of a local exchange directory at no charge and provision of an additional copy upon request, and submission of a copy to the Commission. The Commission waived this rule for residential white pages and for other carriers,⁶ upon the conditions that the companies allow residential customers to opt-in to delivery of print directories and provide adequate notification to customers of the changes in directory distribution.

TWCIS Petition

TWCIS requests a waiver of the requirement to distribute copies of a directory to its customers and the Commission. Rather, it proposes to distribute residential white page directory listings to customers who request one, in print or CD-ROM format; it states that online directories will contain its customers' list information. TWCIS submits that technological advances, such as widespread availability and use of Internet directories, personal directories available on wireless and wired devices, result in less customer reliance on, or interest in, printed white page residential directories. TWCIS notes that statistics indicate that households using these directories declined from 25% in 2005 to 11% in 2008.

PULP Comments

PULP proposes that the Commission require TWCIS to continue to file copies of directories with the Commission, post a directory on its website, and provide directory distribution

⁶ Cases 10-C-0215 and 12-C-0060, Verizon New York Inc. - Distribution of Telephone Directories, Order Granting Waiver with Conditions (issued October 15, 2010); Case 12-C-0060, Frontier Communications Local Exchange Carriers - Distribution of Telephone Directories, Order Granting Waiver (issued May 17, 2012).

information in ways calculated to reach customers who are not Internet users, such as, bill messages. PULP indicates that customers who use directories are likely persons who do not use Internet access, smart phones or wired devices with recorded contacts, most probably, the elderly and low income customers.

Discussion

Many options for easy access to listings of telephone numbers are available to customers of telephone corporations. These include electronic contact lists available on many telecommunications devices and directories published by independent organizations and distributed free of charge to residences. Telephone directories have become less valuable; and, a significant amount of natural resources is required to produce and distribute the printed versions to serve a limited need. TWCIS' request for a waiver of the requirement that it automatically distribute telephone directories to its customers and the Commission is granted, upon the condition that it provides directories to customers who opt-in to regular delivery of the directories in print or CD-Rom format.

As PULP proposes, TWCIS is required to provide information in calculated ways to reach customers who are not Internet users and undertake special efforts to notify core customers who do not have TWCIS broadband service. TWCIS is directed to effectively publicize its changes in directory distribution, including release of the information through a press release, posting of a notice on its website, and direct notification to each of its customers through a bill insert. Filing a copy of the directory with the Secretary to the Commission is no longer necessary; and, TWCIS is encouraged, although not required to provide a directory on its website.

EXTENTION OF HOURS FOR SUSPENSION OR TERMINATION OF SERVICE

The Commission's rules (16 NYCRR §609.4(d)) establish the times during which a telephone corporation may suspend or terminate service for nonpayment of bills, after compliance with conditions for such action: Monday through Thursday between the hours of 8:00 a.m. to 7:30 p.m. and Friday between the hours of 9:00 a.m. and 3:00 p.m., provided that, such day or the following day is not: a public holiday; a day on which the main business office of the telephone corporation is closed for business; or during the periods of December 23rd through December 26th and December 30th through January 2nd.

TWCIS Petition

TWCIS states that it disconnects or suspends service between the hours of 8 a.m. and 9 p.m., Monday through Friday, and between 8 a.m. and 5 p.m. on Saturday. TWCIS requests authorization to maintain these hours for its suspensions and terminations of telephone service, because they are consistent with TWCIS' local front counter hours of operation. TWCIS states that the majority of its customers receive a bundled service; and, to disconnect service for non-payment of the bundled services, it is required to access the customer's premises for a physical disconnect of the services, including voice service. TWCIS asserts that its customers often prefer that its personnel access a customer's premises after work hours or on the weekend. The company submits that, by extending the hours for premise visits, it will have the opportunity to meet with the customer in person, which provides an additional chance to reconcile the debt with the customer and avoid termination.

PULP Comments

PULP recommends denial of TWCIS' request for an extension of the times for suspension and termination of service. It states that restrictions on the days and hours for

service suspensions and terminations promote the goal of continuous service by providing consumers opportunities to preserve their services by obtaining assistance through the Department of Public Service complaint process, including its hotline service, to avoid suspensions and terminations before weekends. PULP maintains that arrangements, other than physical entry for disconnections, are possible, including mailing or delivery of the modem or other device, with credit for the return. It opposes the expansion of hours requested, because assistance from the Department of Public Service complaint unit is not available during the later hours and on Saturdays. PULP asserts that disconnection rules are most likely to affect low income customers; and, many of TWCIS' residential customers eligible for Lifeline service may not yet be enrolled in the program.

TWCIS Response

In its reply, TWCIS suggests that a correlation between disconnection and the Commission's office hours is not necessary and questions whether that objective is the basis for these regulations. TWCIS contends that, by the time a final disconnection occurs, the customer has received numerous notices under the Commission's regulations and TWCIS' practices, with ample time available to contact TWCIS about a bill complaint or a medical or other situation that requires continued service notwithstanding nonpayment.

PULP Supplemental Comments

PULP requests that the Commission requires TWCIS, on its notices of suspension or termination, to inform the customer of the Department of Public Service complaint process and hotline with contact information and opportunity for deferred payment. It requests that the Staff conduct an audit of TWCIS procedures for deferred payment agreements because the company's

response to an interrogatory indicated that it does not maintain a standard written form and reaches deferred payment agreements orally on the phone with customers.⁷

Discussion

We deny TWCIS' request for a waiver of our rules and expansion of the hours authorized for suspensions and terminations. As PULP notes, the authorized hours and days are consistent with the hours of operation of the Department of Public Service Office of Consumer Services, specifically, the call center which receives consumer complaints and requests for assistance. It is important that telephone customers have the ability to contact our call center when their service is subject to potential suspension or termination.

Our rules require a telephone corporation to provide at the time service is initiated to a residential customer and, at least annually thereafter, a plain language summary of their rights and obligations, including a description of the complaint-handling procedures available at the Department of Public service (16 NYCRR §609.13). In the event that complaints filed with the Department of Public Service indicate a need for additional TWCIS notices relating to our complaint process and hotline, we will take action at that time.

SERVICE STANDARDS

The Commission's rules establish metrics and performance thresholds that a telephone corporation is expected

⁷ No specific circumstances or abuses relating to deferred payment agreements justify an investigation at this time. As part of the Staff's regular monitoring of complaints, it will identify any issues relating to TWCIS' administration of deferred payment agreements.

to meet or exceed relating to maintenance service, installations, network performance, and answer time (16 NYCRR §603.3) and reporting requirements for compliance with these metrics and performance thresholds (16 NYCRR §603.4). Specifically, telephone corporations are required to report the Customer Trouble Report Rates (CTRR), defined as the number of initial customer trouble reports per hundred access lines per month, percent of customer trouble reports that are out of service for more than 24 hours; percent service affecting customer trouble reports that exceed 48 hours; percent of initial installations completed within five days; percent installation commitments missed; percent final trunk group blockages; and, answer time performance, including operator assistance. Because it provides service to approximately 1.2 million customers, thus exceeding the 500,000 access line threshold (16 NYCRR §603.4(c)(2)), TWCIS is required to report on all of these service metrics within 30 days following the end of the report period (16 NYCRR §603.4(b)). The Director of the Office of Telecommunications issues guidelines prescribing format, content and reporting times for required service quality reporting.

TWCIS Petition

TWCIS proposes to limit its monthly service quality reporting to include reports on CTTR and timeliness of repair performance, to report the information only for core customers, and requests a waiver of all service quality reporting requirements until it serves a critical number of core customers, for example, 5,000. It recommends defining core customers as Lifeline service customers and customers with special needs, e.g., elderly, blind, or disabled customers and customers with medical conditions, and excluding customers who lack adequate access to competitive alternatives. It argues

that the exclusion is reasonable because TWCIS is a competitive local exchange carrier, and, by definition, provides competitive alternatives to residential customers served by other local exchange carriers. TWCIS states that the waivers are consistent with the Commission's policy to allow competition to set the level of service quality and to provide flexibility in the application of its legacy service quality standards, based upon the availability of competitive choice. It points out that the Commission's rationale for streamlining reporting requirements for Verizon⁸ applies equally to TWCIS' provision of service in a market where competition protects service quality and a higher level of protection is required for core customers.

PULP Comments

PULP opposes the limitation of service quality standards for timeliness of repair to core customers because effective competition may not exist due to a landline duopoly, or is an inadequate substitute for minimum service standards. PULP cautions that, if Verizon is allowed to substitute a wireless based service for its landline service in some areas, the cable company would become the monopoly provider of wired service, providing fax and broadband service.⁹ PULP asserts that that the TWCIS petition lacks statistical information, comparable to the data submitted by Verizon in support of its proposal for service quality reporting changes.

PULP's concern is that TWCIS, as a recent entry into the Lifeline service market, has not yet identified the core

⁸ Case 10-C-0202, Verizon New York Inc. - Service Quality Improvement Plan, Order Adopting Verizon New York Inc.'s Revised Service Quality Improvement Plan with Modifications (issued December 17, 2010).

⁹ If this development occurs, the Commission has the ability to revisit its service quality rules and act accordingly.

customers eligible for these benefits; and, thus, inadequate information is available to measure the timeliness of repair rate for these core customers. PULP recommends that TWCIS propose a plan to automatically enroll customers in the Lifeline program.

TWCIS Response

TWCIS states that PULP is attempting to re-litigate policy issues that the Commission determined in other proceedings and suggests that the instant case is not the appropriate forum to revisit these issues. It asserts that it requests no less streamlining than the level afforded to other carriers and provided the additional data PULP suggests in response to information requests from Staff and PULP. TWCIS maintains that automatic enrollment of Lifeline customers is an issue that PULP should have raised in the proceeding investigating its request for ETC designation. It states that it plans to advertise the availability of this program according to the outline provided in its Federal Communications Commission petition for ETC status.¹⁰

PULP Supplemental Comments

PULP proposes that the Commission should delay granting the service quality reporting waiver until TWCIS attains a substantial level of Lifeline customer enrollment, referring to TWCIS' response to an interrogatory that it serves 149 Lifeline customers. Otherwise, it claims, many customers eligible for and not enrolled in Lifeline service will not be identified as core customers and protected as intended by the Commission. PULP acknowledges that the level of Lifeline

¹⁰ In a letter filed with the Commission dated January 24, 2013, TWCIS included a copy of its Lifeline Compliance Plan which was filed with the Federal Communications Commission.

customers is due to TWCIS recent ETC designation and suggests that the number of TWCIS' terminations indicates that many of the customers who have trouble affording their TWCIS bills may qualify for Lifeline.

Discussion

To foster competition in the telecommunications industry, the Commission favors a policy of streamlining reporting requirements for competitive telecommunications providers. As TWCIS notes, the Commission allows competition to set acceptable levels of service quality where it exists, while continuing its service standard reporting requirements for core customers who require protection regardless of competition.

TWCIS serves approximately one million residential voice customers in New York State, which makes it the second largest provider of telephone service in the State. The Commission included customers lacking a competitive alternative in the definition of core customers in Verizon's Service Quality Improvement Plan, recognizing that cable service is not offered in some areas in competition with traditional landline telephone service. Because traditional landline telephone service is likely available to customers who choose TWCIS service, we determine that competitive, facilities-based telephone service is available to cable service customers. The inclusion of cable telephone customers who lack a competitive landline voice alternative in the definition of core customers as it applies to TWCIS is, thus, unnecessary. If TWCIS becomes the only wireline voice service provider in an area, as PULP portends, we may need to reconsider the core customer definition used for its service quality reporting.

We determine that it is reasonable to revise our legacy service quality reporting requirements, as TWCIS requests, after the company submits complete service quality

reports for all its customers and for its core customers to establish baseline information on its service quality. The need for regulatory action to ensure timely repairs for voice service has diminished due to the prevalence of competitive alternatives and the ability of residential and business customers to move to a different service provider. Before TWCIS is authorized to limit its monthly service quality reports to reports on CTTR and timeliness of repair performance, and provide these reports only for core customers, we will require the company to file service quality reports, without this limitation for a six-month period. Complete service quality reports will provide a known baseline of the level of service provided by the company; and, as PULP suggests, recording and reporting full service quality data for a limited time will satisfy the requirement that TWCIS is providing service in compliance with the Commission's service quality standards. Although limiting the reporting of timeliness to repair results to core customers only is reasonable in a competitive market, telephone corporations are still required to comply with other service standards, without regard to the relaxation of reporting requirements. When we limit service quality reporting, we require a company to maintain the relevant service data for all metrics and to provide it to Staff on request; and, TWCIS is required to properly record service quality performance data as required by the Commission's rules (16 NYCRR 603.2(a)). Submission of service quality reports, without limitation, will enable the Department of Public Service Staff to verify that TWCIS records and reports service quality data, consistent with the Staff's requirements for monitoring and analyzing the information.

Because of these requirements, the company's request to waive reporting until it identifies 5,000 core customers is denied. PULP advises that the level of suspensions and

terminations may indicate that many of TWICS customers are eligible for Lifeline service. We encourage TWCIS to identify and designate its Lifeline eligible customers through direct customer notifications, in addition to its planned advertisements.

Accordingly, TWCIS is directed to begin its recording and reporting of service quality data in compliance with our rules (16 NYCRR §603.3 and §603.4) and, separately, for its core customers only under the proposed limitation and waiver, within 30 days after the date of the issuance of this Order under the guidelines set forth by the Director of the Office of Telecommunications (16 NYCRR §603.4(a)) and continue its reporting for at least six months. After six months, if the Director of the Office of Telecommunications decides that TWCIS' recording and reporting of service quality data comports with the guidelines for format, content and reporting times, the Director may advise TWCIS by letter that it may begin reporting service quality data only for core customers and only for certain metrics (CTRR, out-of-service over 24 hours OOS>24 and service affecting over 48 hours (SA>48)) and that the waiver of the other reporting requirements in our rules (16 NYCRR §603.3 and §604.3) takes effect. The metrics indicating speed of service repair and restoration are crucial to maintaining service for access to emergency services for persons with special needs.

CONCLUSION

We authorize TWCIS, in the absence of instructions from the customer and a pending billing dispute, to apply the full amount of a partial payment to the basic local telephone service charges, and upon satisfaction of basic local service charges, to apply any residual, or subsequent payment received during the same billing period, to non-basic services. The

Commission grants TWCIS' request for a waiver relating to directory distribution, upon the condition that the company distributes residential white page directories to customers who opt-in to receipt of directories in print and/or CD-ROM format. In addition, TWCIS is required to provide consumer notices regarding directory distribution on its website, through a press release, and by means of bill messages to each customer. The Commission denies TWCIS' request for a waiver of rules governing suspension and termination of service to a residential customers for non-payment of bills.

We grant TWCIS' request for a waiver of our service quality reporting requirements, subject to certain conditions. TWCIS is required to record, retain and report the necessary data for all service quality metrics, in compliance with our rules, as well as data relating to its core customers under the limitation and waiver its requests, for at least six months, beginning with the first whole month occurring 30 days after the date of the issuance of this Order. After a decision by the Director of the Office of Telecommunications that TWCIS service quality reports are satisfactory, the company's request for a waiver of certain service quality reporting requirements may take effect.

The Commission orders:

1. Time Warner Cable Information Services (New York), LLC's request to waive the partial payment allocation and directory distribution rules is granted, in accordance with the discussion and conditions established in the body of this Order.

2. Time Warner Cable Information Services (New York), LLC's request to waive the rules governing suspension or termination of service to a residential customer for non-payment of bills is denied.

3. Time Warner Cable Information Services (New York), LLC's request to waive certain service quality requirements is granted in part and denied in part, in accordance with the discussion and conditions established in the body of this Order.

4. The Secretary may extend the deadlines set forth in this order upon good cause shown, provided the request for such extension is in writing and filed on a timely basis, which should be on at least one day's notice.

5. This proceeding is continued.

By the Commission,

KATHLEEN H. BURGESS
Secretary