

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 10-C-0202 - Proceeding on Motion
of the Commission to Consider the Adequacy
of Verizon New York Inc.'s Verizon Service
Quality Improvement Program

**Reply of Attorney General
Eric T. Schneiderman
to Verizon's Comments**

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On April 25, 2012, The Office of the Attorney General ("OAG") petitioned the Public Service Commission ("PSC" or "Commission") to modify Verizon New York's ("Verizon") Service Quality Improvement Plan ("SQIP") because it had failed to ensure adequate telephone service to all of the company's four million customers.¹ Comments supporting OAG's Petition were filed by the Communications Workers of America,² AARP New York, Align-New York, Center for Working Families, Citizen Action of New York, Common Cause/NY, Consumers Union, New York Public Interest Research Group, New York State Alliance for Retired Americans³ and five thousand individuals. Comments opposing OAG's Petition were filed by Verizon.⁴

In these Reply Comments, OAG addresses specific factual errors and misleading statements presented in Verizon's Comments. OAG will not restate the evidence and argument set forth in our initial April 25 Petition.

1. Verizon's Capital Program

VZ's claim of making over a "billion dollars" in 2011 capital investments to its landline network is misleading.⁵ In fact, roughly three-quarters of the money was

¹ See Petition of Attorney General Eric T. Schneiderman to Modify the Verizon Service Quality Improvement Plan, filed in case 10-C-0202.

² See Comments of Communications Workers of America, District 1, May 18, 2012.

³ See Joint Comments May 17, 2012.

⁴ Comments of Verizon New York Inc. in Opposition to the Petition of the Attorney General to Modify the Service Quality Improvement Plan, June 11, 2012.

⁵ See Verizon Comments at 3.

invested in providing transport facilities to serve wireless cell sites and its FiOS offering.⁶ Wireless carriers, including Verizon's affiliate Verizon Wireless, directly compete with landline telephone service and the company's FiOS is primarily a video and Internet broadband offering.⁷ Therefore, only a fraction of the company's capital program is dedicated to supporting and upgrading its landline telephone service. Moreover, this investment in sustaining wireline service has declined steadily even when compared to the number of telephone lines in service, such that the dollars per access line budgeted for 2012 is one-third less than the investment per line for the 2007 - 2009 period.⁸ Thus, even when one accounts for the reduced number of customer lines, Verizon has significantly cut its capital investment in its wireline business.

2. Misleading Repair Performance Data

Verizon's characterization of its repair timeliness performance under the SQIP⁹ is flawed in multiple respects. First, and most importantly, the 2011 figures Verizon reports are limited to its response to repair requests from Core customers only,¹⁰ who comprise approximately 8% of the company's total telephone lines. Thus, the chart on page 12 of Verizon's Comments which displays total customer data for 2009 and 2010 along side Core customer only data for 2011 is disingenuous, at best.

⁶ The specific amounts are listed in Verizon's confidential response to Information Request AG-14.

⁷ Although Verizon asserts that its FiOS telephone service is more reliable and less vulnerable to outages than its copper landline network, consumers cannot order FiOS telephone service as a stand alone product, without also paying for the video and Internet services.

⁸ Source: *NY Capital Program 2011 Review & 2012 Preview*, May 31, 2012, at slide 5.

⁹ See Verizon Comments at 9-13.

¹⁰ "The measurements discussed in [the paragraph on pages 11-12 of Verizon's Comments] relate to core customers." Verizon response to Information Request AG-16.

Furthermore, Verizon's assertions about how infrequently a customer's repair request exceeds the 24/48-hour intervals excludes all non-Core customers and selectively counts data from March 2011 through May 2012.¹¹ Even if one looks only at the first five months of 2012 (thereby removing all residual impact of the strike and storms in August and September 2011), the monthly data Verizon has reported to the PSC reveals that 349,874 out of service and affecting service customer trouble reports were received, but only 47,656 (13.6%) of these were from Core customers. Thus, Verizon's statistics ignore 86% of the repair requests that were made by non-Core customers. In this five-month period, 19.5% of the company's 4.3 million customer lines (both Core and non-Core) needed repair. Including non-Core customers, this translates to an average individual customer needing repair every fifth year.¹² Although Verizon does not compile or report its Out of Service Over 24 Hours ("OOS>24") and Service Affecting Over 48 Hours ("SA>48") statistics for all customers, one can approximate this data from the company's monthly recording of the Mean Time to Repair ("MTTR") data for each of its 28 Repair Service Bureaus ("RSBs"). During the 15 months from January 2011 through May 2012, excluding August and September, the elapsed time to restore dial tone to OOS repair requests for all 28 RSB's averaged well over 24 hours, with four Bureaus averaging over 97 hours (more than four days) and only one Bureau (JFK airport) averaging below 48 hours to repair SA requests. Even if one looks only at 2012 data, 20

¹¹ See Verizon Comments at 12 asserting that an "average customer would have even odds of not experiencing a single OOS>24 incident for a period of 11.7 years , or a single SA>48 incident for a period of 132.7 years."

¹² Because Verizon ignores the repair request made by the 92% non-Core customers, the frequency of service calls exceeding the 24 and 48 hour intervals cited in Verizon's Comments is not what the typical customer experiences. Unfortunately, because the company is not required to report its total customer out of service over 24 hours and service affecting over 48 hours performance, the company's frequency of missing the repair intervals for non-Core customers cannot be evaluated.

RSB's exceeded 24 hours on average to repair OOS requests and nine RSBs exceeded 48 hours to repair SA requests. If the average repair time exceeds the 24/48 hour intervals, then it is certain that were Verizon to report its OOS>24 and SA>48 performance counting all of its customers, the company would fail to meet the PSC's 80% standard by a wide margin.

Thirdly, Verizon cites 17-month average state-wide measurements of its OOS>24 and SA>48 performance despite the fact that its repair performance is measured under the PSC rules on a monthly basis and broken down by regions, not aggregated state-wide over a year and a half period.¹³ By lumping all of its results together, Verizon is able to mask poorly performing results. Considering that the 2012 Winter weather was unusually mild, and that Verizon's repair performance is usually at it worst during the Summer months (when a combination of employee vacations and thunder storms increases the number of delayed repairs), the full year 2012 repair performance measurements are likely to be worse than the January to May data indicates.

Finally, despite Verizon's assertions that its repair performance under the SQIP has improved,¹⁴ the company's first quarter 2012 performance is worse than the same period in 2011. From January through March 2012, the aggregate repair time for all Core customers' OOS and SA trouble reports was 14 percent longer than over the first quarter of 2012.¹⁵ Moreover, the average repair time for all repair requests (of both Core and non-Core customers) for the first quarter in 2012 increased by 12 percent of that of 2011.

¹³ OAG recommends that the Commission resume measurement of repair service performance by individual RSB instead of lumping them together in five regions. *See* OAG Petition at 33.

¹⁴ *See* Verizon Comments at 9-11.

¹⁵ Source: Verizon confidential response to Information Request AG-11.

Verizon's deficient repair response to non-Core customers under the SQIP is made evident by the fact that all customers' repair wait time is 3.6 times longer than that of Core customers during both quarters.

3. Priority Repairs Required for Core Customers

Although Verizon is required by the SQIP to give Core customers requesting repair service priority over all others and restore dial tone within 24 hours 80% of the time, Verizon's claim that "Core customers have seen vast improvements in timeliness-of-repair performance under the SQIP"¹⁶ is contradicted by the experience of an ailing elderly couple in Rockaway that was reported in the New York Daily News.¹⁷ A 90-year old man in the hospital was unable to reach his 85-year old wife suffering at home with dementia because Verizon failed to repair the telephone line for three weeks. Despite the fact that this customer qualified for repair priority because they met two categories of Core customers (being both elderly and with medical conditions), Verizon explained its deplorable service response on the fact that they could not reach the customer on the nonworking line. This is what happens when regulatory policies assume that every customer has wireless telephone service to use as a backup. Moreover, the article reports that a family member made thirteen unsuccessful attempts to get Verizon to restore service, but finally had to switch her parents' service to Time Warner Cable to get working telephone service. If Verizon neglects its Core customers this badly, the plight of non-Core customers seeking repair service can only be worse.

¹⁶ Verizon Comments at 5.

¹⁷ *Ailing elderly couple in Rockaway without phone service for three weeks*, NY Daily News, June 19, 2012.

4. OAG's Petition Is Not About Verizon's August-September 2011 Service

Despite the fact that the inadequate service described in OAG's Petition explicitly excluded the impact of the August-September 2011 strike and storms, Verizon tries in its Comments to blame its repair service shortcomings on these events.¹⁸ For example, OAG's Petition pointed to the fact that in the ten months of 2011 excluding August and September, 328 central offices experienced greater than 5.5 trouble reports per hundred lines, compared with a yearly average of 185 central offices with excessive repair requests from 2009 to 2010.¹⁹ Similarly, the company's volume of customer complaints to the PSC rose continuously from January through July 2011, when it reached four complaints per hundred thousand lines, more than five times the 0.75 threshold set by the Commission.²⁰ Moreover, Verizon's PSC Complaint rate has exceeded the Commission's limit for good service every single month since June 2010, with the most recent score in May 2012 at 1.69 (more than double the threshold). Fully 66% of the customer complaints to the PSC in May 2012 concerned service quality.²¹ Clearly, customers' serious dissatisfaction with Verizon's service is not a result of the events that occurred in August and September 2011. Also, the number of Verizon's major network outages increased during the first two quarters of 2011 (as well as the fourth quarter of that year) to levels not experienced since 2008, a network unreliability measurement that was not related to the third quarter strike and storms.

¹⁸ See Verizon Comments at 7-9.

¹⁹ See OAG Petition, Table 1 at 10.

²⁰ See OAG Petition, Graph 1 at 11.

²¹ Verizon's May 2012 QRS Report lists 272 initial service complaints out of 412 total complaints.

5. Verizon's Shrinking Repair Work Force

Verizon falsely asserts that OAG's Petition asks the Commission to require Verizon "to maintain its work force at constant size, even as demand for services provided over the company's wireline network declines."²² OAG recognizes that Verizon is serving a decreasing number of customer telephone lines. OAG's petition seeks to compel the company to demonstrate first that it is able to "consistently meet all service standards" and second that it maintains adequate service while it downsizes service personnel.²³ Because the Commission found that Verizon's service was inadequate before the SQIP was approved,²⁴ the only sound policy is for the PSC to require the company to demonstrate that it has sufficient workers to meet customers' repair needs, in good weather and in bad, before making further staff reductions.

6. The SQIP Is Discriminatory

Verizon asserts that the PSC's decision in approving the SQIP to limit repair service standards and sanctions to only Core customers is not a violation of PSL § 91.3's prohibition of discriminatory treatment of some customers in favor of others.²⁵ However, the authority Verizon cites²⁶ as supporting differential treatment so long as the Commission's order has a rational basis is inapposite. In the *MCI* appeal, the court was asked to evaluate a wholesale customer ratemaking determination of what Verizon's

²² Verizon Comments at 6.

²³ OAG Petition at 34.

²⁴ See *Order Directing Verizon New York Inc. To File A Revised Service Quality Improvement Plan*, June 22, 2010, at 3-4.

²⁵ See Verizon Comments at 27.

²⁶ *MCI Communications Corp. v. PSC*, 488 N.Y.S.2d 840 (3d Dep't 1985).

predecessor could charge long distance customers for access to its local network. The Commission's ratemaking decisions routinely separate customers into sub-groups that are then required to pay separate rates.²⁷ What the Commission has done in the SQIP, however, is something different entirely. By setting repair service standards and sanctions that only apply to 8% of Verizon's customer lines, the SQIP boils down to a requirement that 80% of Core customers' repair requests be remedied by a specific time period, while Verizon is free to delay repairs for all other non-Core customers indefinitely without consequence. OAG asserts that two residential customers paying the same monthly charge for the same tariffed local telephone service must not be treated disparately with regard to the obligation to make repairs. Verizon must not give preference to Core customer repairs while affording non-Core customers second-class repair service.

7. Verizon's Focus Is On Wireless, Not Wireline Customers

Verizon disputes OAG's evidence that the company is neglecting its landline business and customers in favor of its wireless business as "economically irrational."²⁸ However, it is precisely because Verizon's wireless affiliate earns a far greater margin of return on investment and on a per customer basis that the company's economic incentive is precisely to cut wireline expenses to the bone. Indeed, one-third of the company's 2011 non-FiOS capital expenditure was for "providing fiber-based transport for wireless carriers,"²⁹ not for landline outside plant facilities upgrading. For this very reason, it is

²⁷ For example, residential telephone customers are charged differently from commercial customers. In regulating electricity distribution utilities, the PSC sets separate rates for residential, commercial, industrial and governmental customers, and further divides these customer classes into smaller groups.

²⁸ Verizon Comments at 22.

²⁹ Verizon response to Information Request AG-14.

incumbent on the Commission to take adequate steps to ensure that Verizon does not neglect the service needs of its wireline customers by committing the lion's share of its resources to expand its wireless business.

8. Regulatory Parity

VZ complains that it is required to report its service quality performance but not its competitors. OAG agrees with VZ's preference for a competitive market with equal regulatory standards "so that consumer choice among competing providers will be driven by considerations of price, innovation, service quality, and reputation, rather than by differential regulation."³⁰ However, rather than deregulate landline telephone service it would be far better if the PSC sought authority to apply similar standards to all competitors.


³⁰ June 11, 2012 Comments of Verizon New York, Inc. in Opposition to the Petition of the Attorney general to Modify the Service Quality Improvement Plan ("Verizon Comments"), at 3.

Conclusion

OAG submits that Verizon's arguments notwithstanding, the record establishes that the SQIP does not ensure that the company will provide adequate service to all of its New York customers. The Commission, therefore, should adopt the modifications proposed in OAG's Petition by setting meaningful service standards enforceable by sanctions that remove Verizon's incentive to sacrifice customers' needs in favor of the company's bottom line.

Dated: New York, New York
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Respectfully submitted,
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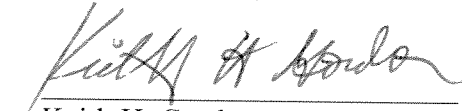
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Certificate of Service

The undersigned hereby certifies that the foregoing Reply Comments of Attorney General Eric T. Schneiderman in support of the Petition to Modify The Verizon Service Quality Improvement Plan was served on the following parties electronically and by first class mail this 6th day of July, 2012.


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