

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 17, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman, concurring

CASE 16-C-0122 - Proceeding on Motion of the Commission to
Consider the Adequacy of Verizon New York
Inc.'s Retail Service Quality Processes and
Programs.

ORDER INITIATING PROCEEDING TO REVIEW
VERIZON NEW YORK INC.'S SERVICE QUALITY

(Issued and Effective March 21, 2016)

BY THE COMMISSION:

INTRODUCTION

In 2014, the Department of Public Service (Department) initiated Case 14-C-0370, In the Matter of a Study of the State of Telecommunications in New York State, to examine the availability and adoption of voice, video, and broadband services offered across all platforms. This review included the Department Staff's Assessment of Telecommunications Service (Assessment),¹ as well as Public Statement Hearings, Technical Conferences, and comments from interested stakeholders and the public at-large, which have ultimately formed a record upon which the Commission can begin to take actions designed to

¹ Case 14-C-0370, In the Matter of a Study of the State of Telecommunications in New York State, Staff Assessment of Telecommunications Services (issued June 23, 2015).

ensure continued access to state of the art telecommunications services, for all New York consumers.

This Order initiates one such proceeding to examine whether changes to Verizon New York Inc.'s (Verizon or the Company) service quality oversight are necessary. This proceeding will explore whether competition is providing a sufficient incentive for Verizon to maintain its non-Core customer service quality, why certain non-Core customers are not exercising choice, what efforts Verizon is making to retain those customers, and what efforts the Company is making to ensure the continued viability of the copper network. Moreover, this investigation will inherently include an examination as to the state of the copper system and whether Verizon's investment in its network has been sufficient to provide adequate levels of service to consumers on regulated services.

BACKGROUND

Staff's Assessment, and the rest of the record in Case 14-C-0370 shows that the technical, competitive and regulatory landscape covering Verizon's retail service quality performance has undergone dramatic changes over the last several decades. In response to these changing circumstances, the Commission has adopted various service quality-related regulatory plans intended to ensure safe, adequate, and reliable telephone service under Public Service Law (PSL) §§91 and 94 and Title 16 of the New York Codes, Rules and Regulations (NYCRR).

The Department has acknowledged that Verizon and other incumbent local exchange carriers (ILECs) have lost market share, dominance and associated revenue in the voice service market.² But, as competitive pressures increased, it was

² Id., p. 12.

anticipated that companies like Verizon would compete on the basis of satisfying customer needs and expectations.³ The incentive to maintain appropriate levels of service for many of their customers was, in the Commission's view at the time, no longer driven by specific regulatory oversight because the consequence of failing to maintain or improve service was a direct loss of customers and associated revenue.⁴ As explained in the Commission's Competition III Order, and numerous other subsequent Orders, however, the Commission did not abandon its service quality oversight altogether and the Commission made it clear that it would take the necessary action under the PSL to address shortcomings if the market failed to provide an appropriate incentive.⁵ The Commission has recognized an expectation that the Company will continue to invest in its New York regulated operations as the Public Service Law unequivocally requires Verizon to provide adequate service.

For years, Verizon, by a wide margin, has been the largest ILEC in New York. The Company was under a cost-of-service rate-of-return regulatory regime where the Commission set its rates and allowed the Company to recover its costs and

³ See, Case 05-C-0616, Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services, Transition to Intermodal Competition, Statement of Policy on Further Steps Towards Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings (issued April 11, 2006) (Competition III Order), p. 89.

⁴ Id.

⁵ Id., p. 91.

earn a reasonable return. Verizon's service quality was measured relative to the Commission's standards.⁶

As the telecommunications technology evolved and more wireline telephone providers entered the market, competition produced additional wireline choices. The emergence of a competitive telephone market in New York led the Commission to determine that a new incentive-based regulatory regime should be implemented. Starting with the Company's Performance Regulatory Plan (PRP) and its subsequent Verizon Incentive Plan (VIP), the Commission sought, through a structure of rate flexibility and customer credits tied to minimum State-wide service quality requirements, to maintain adequate service quality.⁷ But, as the VIP ended in 2005, the Company experienced poor service quality performance in many of its repair service areas. In an effort to address service quality improvement, the Commission implemented a Service Improvement Plan (SIP) that, among other things, targeted Verizon's maintenance, repair and investment at areas of Queens, Nassau, Suffolk, and Westchester Counties.⁸ For several years Verizon's service quality in these underperforming areas did improve under the SIP. During the summer of 2008, however, the Company experienced additional problems in

⁶ Pursuant to 16 NYCRR §603 Verizon is required to maintain and report certain service standard metrics, including repair, installation and answer time performance, among others.

⁷ See, e.g., Cases 00-C-1945 and 98-C-1357, Proceeding to Consider Cost Recovery by Verizon New York Inc. fka New York Telephone Company and Modification of the Performance Regulatory Plan under Merger Standards and to Investigate the Future Regulatory Framework, Order Instituting Verizon Incentive Plan (issued February 27, 2002).

⁸ Case 03-C-0971, Verizon New York Inc.'s Retail Service Quality Processes and Programs, Order Adopting Service Improvement Plan (issued March 31, 2008).

responding to requests for out-of-service troubles and its service quality performance worsened.

Verizon's current service quality program, the revised Service Quality Improvement Plan (SQIP), adopted in 2010,⁹ resulted from Verizon's poor timeliness-of-repair performance at the time. The SQIP focuses the Company's efforts on Core¹⁰ customers who have limited recourse available to them in the face of poor service quality, other than traditional regulatory oversight. For non-Core customers, the Commission anticipated that Verizon would seek to maintain adequate service quality for those residential customers who had a choice of wireline service providers and could otherwise "vote with their feet." The Commission also determined that Verizon had the added incentive of retaining market share, revenues and margins associated with customers on its copper network for investment in next generation facilities. For example, in response to Voice over Internet Protocol (VoIP) and wireless competition in New York, the Company made capital investments to deploy its advanced fiber-to-the-premises (FTTP) network.

It was against this competitive backdrop that the Commission reaffirmed that the focus of Verizon's regulatory measures would be on service quality for Core customers. This reaffirmation was made in response to a 2012 petition filed by the Attorney General of the State of New York (Attorney General)

⁹ Case 10-C-0202, Proceeding on Motion of the Commission to Consider the Adequacy of Verizon New York Inc.'s Service Quality Improvement Plan, Order Adopting Verizon New York Inc.'s Revised Service Quality Improvement Plan with Modifications (issued December 17, 2010).

¹⁰ "Core" customers are defined as those residential and business customers without wireline competitive choice (i.e., white spot areas), those on Lifeline and those customers who are characterized as having special needs (e.g., medical conditions, elderly, blind or disabled).

who claimed that the SQIP was ineffective and that competition from other providers did not provide an incentive for Verizon to maintain the service quality levels the Commission expected. The Commission rejected the Attorney General's request, stating that the underlying premise in support of the SQIP, "to protect Verizon's wireline residential customers most in need of protection in the face of declining resources and increasing competition" were still compelling, that "[c]hoice for residential customers has not diminished; the residential market has become more robust; and that Verizon continues to lose market share and revenues to both cable and wireless alternatives."¹¹ The Commission further noted, to that point, Verizon's response to these competitive pressures had included the deployment of fiber networks.¹² The Commission, therefore, continued to allow Verizon to streamline or eliminate many of its service quality reporting requirements for non-Core customers. This, at the time, struck the appropriate regulatory balance.

Unfortunately, Verizon has since publicly indicated that it no longer plans to expand its fiber network beyond areas where it currently serves.¹³ Moreover, the pace of the Company's access line losses has recently slowed down and fewer customers

¹¹ 10-C-0202, Supra, n. 9, Order resolving Petition and Requiring Further Investigation, p.2.

¹² Id., p. 22.

¹³ On January 7, 2014, Verizon Chairman and CEO Lowell McAdam, said, at the Citi Internet Media & Telecommunications Conference: "We're expanding not the footprint of FiOS, but the penetration of the buildings within FiOS." Available at: <https://www.verizon.com/about/investors/citi-2014-internet-media-telecommunications-conference>.

(both Core and non-Core) are leaving its network.¹⁴ Therefore, the Commission believes that its service quality oversight of Verizon has reached another inflection point and that the underlying premise for the continuation of Verizon's service quality focus on Core customers is now being called into question.¹⁵ The record in Case 14-C-0370 is replete with comments, both anecdotal and supported by statistics, stating that Verizon's copper service quality for non-Core customers does not meet Commission standards, and that Verizon's unwillingness to expand its FiOS service any further has created two classes of customers, those with access to an FTTP network and those without it.¹⁶ The same comments state that those without access to Verizon's modern fiber network lack the same competitive choices as those in areas where FiOS has been deployed.

DISCUSSION

Under PSL §91(1), "[e]very...telephone corporation shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable." Pursuant to PSL §96(1), "[t]he

¹⁴ See, e.g., Case 14-C-0370, Supra, Staff Assessment of Telecommunications Services (filed June 23, 2015), p. 12.

¹⁵ Case 10-C-0202, Supra, n. 9, Order Directing Verizon New York Inc. to file a Revised Service Quality Improvement Plan (issued June 22, 2010).

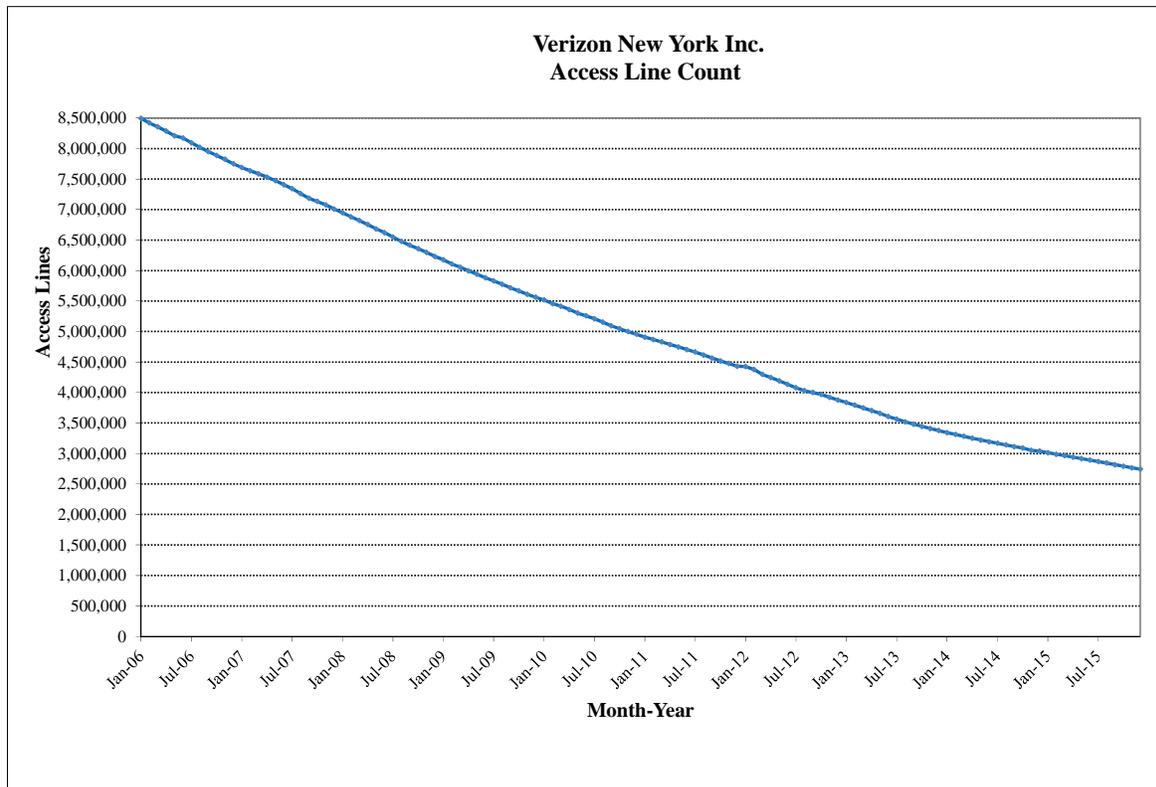
¹⁶ See, e.g., Case 14-C-0370, Supra, PULP Comments (filed October 26, 2015), Comments of Common Cause/NY (filed October 26, 2015), PSC Broadband Letter from Multiple Legislators (filed September 24, 2015); Public Statement Hearing Transcripts (filed August 4, 7, 20, 24 and 26, 2015); see also, 14-C-0306, Petition Seeking An Order Of The Public Service Commission Commencing A Proceeding To Consider Issues Pertaining To Telecommunication Services, Connect New York Coalition Petition (filed July 1, 2014).

Commission may on its own motion investigate or make inquiry in a manner to be determined by it as to any act done or omitted to be done by any ... telephone corporation..." In addition, the Commission can determine whether repairs or improvements are required. PSL §98 provides that "[w]henver the commission shall be of opinion, after a hearing...that repairs or improvements to...any telephone line ought reasonably to be made ... in order to promote the convenience of the public ... or in order to secure adequate service or facilities for...telephonic communications...the commission shall make and serve an order directing that such repairs [or] improvements ... be made within a reasonable time and in a manner to be specified therein and every ... telephone corporation is ... required and directed to make all repairs [or] improvements ... required..."¹⁷ Consistent with our authority under the PSL and, as explained in more detail below, the Commission is initiating this proceeding to investigate Verizon's service quality processes and programs pertaining to all the Company's regulated customers to determine if modification of Verizon's revised SQIP is warranted.

It has been over five years since the revised SQIP was implemented, where enforcement of service quality performance measurements was limited to Verizon's Core customers. In the interim, competition has only increased and as expected Verizon has lost additional access lines. In the past, Verizon's response to this competitive pressure included the deployment of its fiber optic based FiOS network to approximately 180

¹⁷ Under the PSL, the Commission may not only initiate an investigation, require the filing of testimony and convene hearings, as appropriate, to address disputed factual issues with respect to any direction to Verizon to make specific improvements, but may also, if necessary, institute an enforcement proceeding to compel such improvements. See, PSL §§96, 98, and 24.

franchise areas in its service territory (including New York City and large parts of Long Island).¹⁸ However, as stated above, Verizon has now publicly stated that it will no longer invest in further FiOS deployment. Consequently, approximately 2.7 million of Verizon's current customers are left relying on an aging copper network with what is alleged to be sub-par service quality.¹⁹ In addition, the pace of Verizon's loss of access lines has slowed indicating that, notwithstanding competition, millions of Verizon's customers, most of whom are non-Core customers, may very well opt to rely on the copper network for critical voice services. As indicated by the following chart Verizon's access line losses have held steady at 1% per month, with the actual number falling each month as a



total percentage of Verizon's subscriber base:

¹⁸ See, e.g., Case 14-C-0370, Supra, Staff Assessment of Telecommunications Services (filed June 23, 2015), p. 55.

¹⁹ See, Case 10-C-0202, Supra, n. 9; see also Case 14-C-0306, Supra.

As a result, whether these customers will or are able to exercise competitive options, and whether Verizon is actively taking measures to retain these customers and keep the copper network viable, have now become a focus for the Commission in the absence of further fiber deployment.

Verizon service quality performance, as it relates to Core customers, has generally improved and the Company meets those metrics most of the time.²⁰ For Non-Core customers, however, who make up 94% of Verizon's total, regulated access line customers, the presence of competition has apparently not prevented Verizon from allowing such aspects of its service quality for its non-Core customers to continue to fail the Commission's long-standing service quality standards despite the fact that competition has become more robust. This suggests that there may be an unwillingness on the part of Verizon to compete to retain and adequately serve its regulated wireline customer base and warrants further investigation into Verizon's service quality processes and programs.²¹ Data submitted on a

²⁰ Verizon met its OOS>24 standard for Core customers in each of its five regions 293 out of 305 times and met its SA>48 standard for Core customers 303 out of 305 times through January, 2016. These results include periods in August and September 2011 where 12 out of the 19 total metric misses were waived due to the combined impacts of a work-stoppage, Hurricane Irene and Tropical Storm Lee.

²¹ Case 13-C-0161, In the Matter of Quality of Service Provided by Local Exchange Carriers in New York State, Order Regarding Remediation Plan (issued June 13, 2014) (Wherein customers in a number of smaller central offices experienced a reduction in service quality in certain discrete areas of the State and the Commission required Verizon to submit a plan to address COEs with chronic underperformance pursuant to the CTRR metric. Verizon's response was a targeted CTRR remediation plan, which included dedicating \$4.4 million to correct service quality problems. The Commission continues to monitor the Company's efforts.)

semi-annual basis for all customers (Core and non-Core) suggests that non-Core customer service quality continues to miss the service objectives as it did prior to the revised SQIP despite robust competition.

Further anecdotal evidence was provided through the Department's Public Statement Hearings on Staff's Telephone Assessment, during which numerous commenters (both residential and business customers) stated that Verizon's service quality was poor and that they were often out-of-service for extended periods of time. They expressed dismay in Verizon's response to their service quality concerns and cited many examples of repair times taking far longer than 24 hours.²² People attending the Public Statement Hearings were also extremely critical of Verizon's decision to not deploy its much touted FTTP network in certain areas of the State and, in areas where Verizon committed to deploy fiber were skeptical of the Company's pace of deployment.²³

As a result of the foregoing, the Commission, through this Order, initiates this proceeding pursuant to PSL §§96 and 98 to investigate the state of Verizon's service quality and determine whether additional steps need to be taken to ensure that Verizon is providing its wireline telephone customers safe and adequate service. Section 96(1) of the PSL requires the Commission to investigate "any act done or omitted to be done" by a telephone corporation in New York State. Further, if,

²² See, e.g., Case 14-C-0370, Supra, Transcript of Public Statement Hearing in Buffalo New York on 8/5/15 at 3pm; Transcript of Public Statement Hearings on 7/8/15 in Smithtown, NY (filed July 21, 2015); Transcript of Public Statement Hearing on 6/15/15 in New York City (filed July 28, 2015); Transcripts of Public Statement Hearing on 8/5/15 in Buffalo, NY (filed August 26, 2015).

²³ Id.

through the course of the process laid out below, the Commission determines that any action should be taken regarding Verizon's service quality, it may exercise its authority under PSL §98 to order any improvements that are deemed necessary.

PROCESS

The seeming failure of Verizon's wireline telephone service to meet long-standing Commission service quality objectives, despite the existence of competition, as discussed above, necessitates this inquiry. The Commission is initiating this proceeding to address, among other, the following questions:

1. Whether the quality of the service delivered by Verizon to its regulated access line customers, both Core and non-Core, is meeting the Commission's service quality standards.
2. Whether the Commission should continue to distinguish between Core and non-Core customers for purposes of service quality regulation.
3. Whether the definition of Core or non-Core customers should be modified; and if so, how those definitions should be modified.

The Commission will require that Verizon supply the following information and/or data to address these questions:

1. Verizon shall provide all service quality data pursuant to 16 NYCRR Part 603 for both Core and non-Core customers from 2010 - Present company-wide and by each of its five regions.
2. Verizon shall detail what efforts it is making to retain customers still reliant on its copper network.
3. Verizon shall detail what efforts it is making to ensure the continued viability of the copper network, including the submission of detailed capital and operational expenditure budgets for its wireline network from 2004 - Present and forecasted capital and operational expenditure budgets for its wireline network for the next five (5) years.
4. In presenting answers to these questions, Verizon shall file information and data that includes, but

need not be limited to, what metrics, objectives, measures or other tools Verizon uses to measure, analyze or adjust its performance, service quality, reliability, and safety information for both Core and non-Core customers.

The Commission will require Verizon to provide a response to these information and/or data requests which shall include among other things, capital expenditure investments related to its regulated New York operations and service quality data, supported by testimony and exhibits within 60 days of the date of the issuance of this Order. An Administrative Law Judge from the Office of Hearings and Alternative Dispute Resolution should provide for a further process, including appropriate protection of confidential or trade secret information of the parties and a date for the filing of Replies to Verizon's submission (and an evidentiary hearing, if necessary) designed to bring the proceeding to the Commission for resolution. The Commission will decide what, if any, changes to our current policies are warranted or in need of further exploration. In conjunction with this Order, the Commission will also seek public input on our policy direction pursuant to the State Administrative Procedures Act.

CONCLUSION

The Commission finds that Verizon's service quality processes and programs warrant further investigation to determine if additional modification are necessary. Pursuant to the Commission authority under PSL §96(1), the Commission commences this review consistent with the foregoing discussion.

The Commission orders:

1. Pursuant to Public Service Law §96(1), a proceeding is initiated by the Commission on its own motion to investigate Verizon New York Inc.'s service quality processes and programs as they relate to its regulated telephone operations.

2. Verizon New York Inc. is directed to file with the Commission its response, supported by testimony and exhibits, to this investigation within 60 days of this Order. Anyone wishing to become an active party to this proceeding shall request party status within 30 days of this Order. An Administrative Law Judge from the Office of Hearings and Alternative Dispute Resolution will be assigned to provide for a further process (including an evidentiary hearing, if necessary) designed to bring the proceeding to the Commission for resolution.

3. In the Secretary's sole discretion the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include justification for the extension, and must be filed at least one day prior to the affected deadline.

4. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

CASE 16-C-0122

Commissioner Diane X. Burman, concurring:

As reflected in my comments made at the public session on March 17, 2016, I concur on this item.