

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 13-C-0197 – Tariff filing by Verizon New York, Inc. to introduce language under which Verizon could discontinue its current wireline service offerings in a specified area and instead offer a wireless service as its sole service offering in the area.

**COMMENTS OF ERIC T. SCHNEIDERMAN
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Summary

For over a century, the Commission has maintained a consistent policy promoting universal access to wireline telephone service. Approving Verizon's Voice Link tariff proposal would abandon this long-established commitment. Replacing wireline networks with a wireless Voice Link service would deprive customers the ability to continue using wireline-dependent services such as fax machines, alarm systems, medical alert devices, and Digital Subscriber Line Internet access that serve essential security and commercial needs as well as enable participation in 21st century digital communications on the Internet. Unlike wireline service, which continues to function even when customers lose electric power, Voice Link's backup battery only allows a brief period of use during blackouts, when customers' need to communicate is often greatest.

The Commission should not jettison wireline service merely because Verizon business strategy prefers a wireless business plan. Many incumbent local exchange providers continue to provide wireline telephone service to customers, both in New York and across the nation. The Commission should instead require that Verizon divest those portions of its New York franchise where it is no longer willing to continue providing wireline service and replace Verizon with another carrier that will provide wireline service.

Background

On May 3, 2013, Verizon New York, Inc. ("Verizon") filed a proposed amendment to Tariff PSC No. 1 "setting forth the circumstances under which Verizon could discontinue its current wireline service offerings in a specified area and instead offer a wireless service as its sole service offering in the area." Verizon specifically

seeks permission to offer this wireless service alternative, called Voice Link, in the western portion of Fire Island.¹ Verizon also asked to expedite approval sooner than the normal 30-day review period and to waive newspaper publication so it could “move forward to implement its plans to restore service on Fire Island as rapidly as possible.”

Verizon’s proposed tariff set out two different circumstances where Voice Link might be implemented as a substitute for traditional wireline service. These are where Verizon:

(a) certifies and demonstrates that a substantial portion of its facilities in the area is destroyed, rendered unusable, or beyond reasonable repair, or

(b) demonstrates that the use of wireless to serve specified customers, or groups of customers, is otherwise reasonable in light of the geographic location, the availability of competitive facilities to serve those customers or groups of customers, or in light of other criteria acceptable to the Commission.

Verizon is seeking to apply the first circumstance in western Fire Island where the old wireline network was heavily damaged by Superstorm Sandy. However, Verizon could seek to apply the second tariff provision anywhere in its New York service territory where the company wished to abandon its wireline network.

Comments opposing the immediate approval of Verizon’s Voice Link tariff proposal were filed by the Attorney General,² Public Utility Law Project,³

¹ May 3, 2013 tariff filing, cover letter to the Commission from Keefe B. Clemons, Verizon counsel.

² See Comments of the New York State Attorney General, filed May 15, 2013, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={6BA6CC48-2D06-4B1D-81BA-D1E1F88DE6A3}>.

³ See Comments of the Public Utility Law project, filed May 15, 2013, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D6DF343B-5054-4256-8977-68DB8B3F1393}>.

Communications Workers of America,⁴ Assemblyman James F. Brennan,⁵ Suffolk County Legislator Thomas F. Barraga,⁶ and others.

At its May 16, 2013 Session, the Commission conditionally approved the part of Verizon's tariff applicable to western Fire Island, but suspended the second tariff provision quoted above.⁷ Verizon thereafter filed a revised tariff provision suspending the paragraph (b) of its proposal quoted above⁸ and revised terms of service as directed by the Commission's May 16 Order.⁹ Nevertheless, Verizon has attempted to install Voice Link service in other portions of New York beyond western Fire Island, contrary to its tariff and the Commission's May 16 Order.¹⁰

On May 21, 2013, the Commission invited public comment on issues raised by Verizon's proposed tariff, including:¹¹

⁴ See Comments of Communications Workers of America, AFL-CIO, District 1, filed May 16, 2013, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={3F78D3C7-BED4-4317-8B5F-7B0ECA01EA7A}>.

⁵ See comments of Corporations, Authorities and Commissions Committee Chairman James F. Brennan, filed May 15, 2013.

⁶ See request to table agenda item from Suffolk County Legislator Thomas F. Barraga, filed May 16, 2013, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F1D6CCAD-ADDA-4141-AB5C-8F9F3860A9DA}>.

⁷ See ORDER CONDITIONALLY APPROVING TARIFF AMENDMENTS IN PART, REVISING IN PART, AND DIRECTING FURTHER COMMENTS, issued May 16, 2013, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C0F21317-B7CE-4AEE-9A38-3393D1DEB670}>;

⁸ See May 17, 2013 amended tariff, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={AC00BE4C-7FDB-47D4-8D10-7B1949236D08}>.

⁹ See Verizon Voice Link Terms of Service, filed May 20, 2013, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={68732310-4349-4762-9801-D3B6688A2BC2}>.

¹⁰ See Emergency Petition of New York Attorney General Eric T. Schneiderman for an Order Preventing Verizon from Illegally Installing Voice Link Service in Violation of its Tariff and the Commission's May 16, 2013 Order, filed June 26, 2013.

¹¹ Case 13-C-0197 – Notice Inviting Comments, issued May 21, 2013. <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={6FF2EF26-F8D2-4ECF-B58C-4EE68AB5B971}>.

use of Voice Link in western Fire Island, its use in other geographic areas with destroyed wireline facilities, and its use in areas based upon geographic location, availability of alternative telecommunications providers, or other Commission designated criteria.

These comments are submitted pursuant to the Commission's May 21 Notice.

COMMENTS

1. Approving Voice Link Would Abandon a Century of Commission Policy Promoting Universal Wireline Telephone Service

Verizon is asking the Commission to depart from a century of telephone service regulation, which had as one of its fundamental principles, universal wireline telephone service for all customers. Until now, all incumbent local exchange carriers ("ILECs") in New York and across the country have been required to provide traditional wireline telephone service to all customers within its territory. This was an essential part of the bargain justifying granting their franchises, which until recently were exclusive monopolies.¹² New York and federal regulators adopted a variety of measures to bring about universal service, ensuring for more than a hundred years that basic service was available to all who wanted it. State and federal universal service rules provide subsidies enabling telephone ILECs to serve customers in high-cost rural areas at affordable retail rates, as well as providing reduced rates to Lifeline customers unable to afford standard telephone rates.¹³ The Commission's Universal Service policy was intended to ensure that to the extent possible, every resident could have home telephone service, enabling

¹² Today, local wireline competition is very limited and is essentially a reselling of the ILEC's facilities leased to other companies. Where it is available, wireline competition exists only in dense urban markets. Customers seeking telephone service from other than their ILEC must either subscribe to a cable company, which requires buying other services such as video and cable modem service that is far more expensive than standard wireline service, or rely on cellular service that the Commission has repeatedly found is not a substitute for wireline service.

¹³ "The FCC, as directed by Congress developed the Federal Universal Service Fund (USF) which provides funding for low income services, schools and libraries, and high cost rural service."
<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/72BA9EC4CC879AFA85257687006F3AB8?OpenDocument>.

them to communicate with their doctors, families, schools, friends and businesses, as well as to summon police, fire and ambulance assistance in an emergency.

So fundamental has been this requirement for basic service that the industry term for such service is “Plain Old Telephone Service,” commonly abbreviated to POTS. The characteristics of POTS service include a copper network connection to each customer that is self-powered, meaning that if the customer loses electricity, telephone service will continue to work so long as the telephone lines are not damaged. Many customers rely on a number of additional services, not offered by Verizon, that can only be carried by wireline networks, including fax machines, medical alert services, and burglar/fire alarm services. At the end of the 20th century, with the widespread use of the Internet, wireline networks also enabled millions of customers to receive Internet access over the same POTS network that carried voice calls, using Digital Subscriber Line (“DSL”) service. Though such dial-up Internet access is not as speedy as later technology offerings (*e.g.*, cable modem service and FiOS service), for many customers located where these alternatives do not exist, DSL is the only means they have to participate in the digital age. Commission policy has also long strived to make Internet access available to as many New York customers as possible, and even forced Verizon to open its wireline network to “linesharing” by other DSL providers when the company had delayed rolling out its own DSL offerings.¹⁴

¹⁴ See CASE 00-C-0127 - Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services, *Order Instituting Proceeding to Examine Digital Subscriber Line Issues*, January 21, 2000.

2. Voice Link Is Significantly Different From, and In Many Respects Inferior to Traditional Wireline Service

Verizon's proposal to substitute Voice Link service for POTS wireline service will deprive thousands of customers of essential features and services they have come to depend on. Verizon's ten-page legalistic Terms of Service for Voice Link identifies numerous features that differ significantly from POTS service and that leave consumers without services they previously received or that impose significant new burdens and obligations on consumers. For example, unlike traditional wireline service:

- Voice Link Service “is not compatible with fax machines, DVR services, credit card machines, medical alert or other monitoring services or some High Speed or DSL Internet services.”¹⁵ Customers in western Fire Island and other rural parts of New York have no FiOS or cable modem Internet providers to switch to, so those who rely on these services have no alternatives if switched to Voice Link.¹⁶
- Because Voice Link “may not be compatible with certain monitored home security systems,”¹⁷ customers' homes and businesses will be at greater risk from flooding by burst plumbing, fire or burglars.
- Although wireline customers whose service is suspended for nonpayment can still reach a 911 operator in emergencies, suspension of Voice Link “will prevent ALL Service, including any 911 dialing and associated emergency response services.”¹⁸ Customers may also lose the ability to receive or place calls, even to 911, if they fail to “promptly notify Verizon” of a change in their address, email, or credit card expiration date.¹⁹

¹⁵ *Verizon Voice Link Terms of Service*, revised June 12, 2013 at ¶ 1.b.

¹⁶ In place of DSL, customers are being offered a wireless Internet access service called Jet pack, which is less reliable, more vulnerable to congestion, and costs far more than DSL.

¹⁷ *Id.*, ¶ 1.d.

¹⁸ *Id.*, ¶ 7.b.

¹⁹ *Id.*, ¶ 2.e.

- Customers must “defend, indemnify and hold harmless Verizon from and against all claims . . . for infringement of any intellectual property rights arising from use of” Voice Link or its software.²⁰
- Voice Link Service “does not allow the Customer to make 500, 700, 900, 950, 976, 0, 00, 01, 0+, calling card or dial-around calls (e.g., 10-10-XXXX),”²¹ so customers will be unable to use such pay-per-call information services. Voice Link Service “does not allow the Customer to accept collect calls or third number billed calls. The Company will not bill any charges on behalf of other carriers. [Customers] must have an International Calling Plan in order to make international calls.”²² Wireline customers are able to subscribe to toll and international calling plans provided by other carriers, and have these and other third-party service charges included on their Verizon bills.
- Voice Link Service “is subject to the availability of adequate wireless coverage throughout your home, and is not available in all locations.”²³
- Unlike wireline service, which supplies its own power over the copper wiring, Voice Link uses customers’ house current to operate.²⁴ Verizon has not disclosed how much customers’ electric utility bills will increase to power the Voice Link device. Also, if electric power is interrupted, Customers may have to “reset or reconfigure equipment prior to using” Voice Link. This may be difficult for some physically limited or technologically unsophisticated customers to perform.
- During power interruptions, the wireless Devices used in Voice Link are battery operated. Although the Devices include a rechargeable battery back-up that provides only 36 hours of standby power and up to 2.5 hours of talk time in the event of a commercial power outage, “[a]fter the battery is exhausted, the Service (including 911 dialing) will not function until power is restored.”²⁵
- After the expiration of a one year replacement warranty for the battery back-up included with customers’ wireless Device, customers “are

²⁰ *Id.*, ¶ 10..d

²¹ *Id.*, ¶ 1.g.

²² *Id.*

²³ *Id.*, ¶ 1.h.

²⁴ *Id.*, ¶ 2.b.

²⁵ *Id.*

responsible for replacing the back-up battery as needed,”²⁶ but Verizon has not disclosed the cost of such replacement batteries.

- Wireline customers purchase their own telephones from competitive manufacturers, but the Voice Link device is only supplied by Verizon, which continues to own it. Thus, customers will have to pay Verizon to repair the device if “such repair or maintenance is made necessary due to misuse, abuse or intentional damage to the Device.”²⁷ Verizon has not disclosed what repair or replacement might cost customers in such event.
- When wireline customers end their service with Verizon, they have no equipment to return to the company. However, Voice Link customers who cancel their service “are responsible for returning their Wireless Device to [Verizon] in an undamaged condition. Failure to return the Device within 30 days . . . may result in [Verizon] charging [customers] an unreturned equipment fee.”²⁸ Verizon has not disclosed the amount of this fee.

These differences in service stand to significantly disadvantage consumers.

While wireline service continues to work even during long power outages, Voice Link customers can only have basic voice service for a few hours after their home loses electric service. Thus, in a prolonged emergency, customers will not be able to dial 911 and reach emergency services when their need is greatest. Also, Fire Island customers who depend on alarm services at their vacation homes to protect their property while away will be more exposed to losses from fires, burglary, weather damage, etc. Business customers will also be unable to rely on alarm services to protect their stores after hours. Because neither FiOS nor cable modem service is available in western Fire Island, DSL, the only option for customers to obtain Internet access, will be unavailable to Voice Link customers. Before Sandy reached Fire Island, a substantial proportion of customers were

²⁶ *Id.*, ¶ 2.d.

²⁷ *Id.*, ¶ 2.f.

²⁸ *Id.*

using DSL service to access the Internet. Customers in the communities where Voice Link is being provided instead will lose their Internet access.²⁹ Without DSL service, Fire Island customers who have used fax machines will also lose their ability to transmit documents because the Voice Link service cannot support this function. Operator services such as collect calls and billing calls to a third-party's account will not be possible. For the first time, the cost of electricity required to operate Voice Link and the cost to replace its batteries will be customers' burden.

3. Instead of Degrading Telephone Service, Verizon Should Either Maintain the Wireline Network or Sell its Franchise to Another Provider that Will.

Verizon's efforts to gain approval of Voice Link as a means of restoring service to Fire Island customers whose wireline network was damaged by Sandy does not justify abandoning POTS by ILECs in Fire Island. Superstorm Sandy is hardly the first time Verizon or other ILECs have experienced major destruction of their network facilities due to natural disasters, such as Irene and Lee damage in the Catskills in August-September, 2011 or ice storm damage to Upstate New York in December 2008. Until now, whenever such disasters occurred, Verizon prided itself on the efforts of its employees to accomplish the task.³⁰

In 2008, [Verizon employees] . . . responded with tremendous skill when ice storms, hurricanes and other emergencies threatened our customers' vital communications lines.

Where Verizon failed to meet its service restoration obligations, the Commission required Verizon to use its best effort to restore service to affected customers after such extreme

²⁹ Compare the number of "Working Lines" to "DSL" lines in Verizon's June 21, 2013 revised response to DPS Staff Information Request 1.b.

³⁰ 2008 Verizon Annual Report, President's Letter to Shareholders, http://www22.verizon.com/investor/app_resources/interactiveannual/2008/fea_02d.html.

weather events.³¹ Never before has the solution been to abandon its copper network and force customers to accept an experimental wireless service like Voice Link.

The only difference from these past weather events and Fire Island's present circumstances is that Verizon no longer is interested in continuing to serve customers on its copper wireline network. CEO Lowell McAdam announced this new Verizon corporate strategy a year ago:

[T]he vision that I have is we are going into the copper plant areas and every place we have FiOS, we are going to kill the copper. We are going to just take it out of service and we are going to move those services onto FiOS. We have got parallel networks in way too many places now, so that is a pot of gold in my view.

And then in other areas that are more rural and more sparsely populated, we have got LTE built that will handle all of those services and so we are going to cut the copper off there. We are going to do it over wireless.³²

It is clear that Verizon is leveraging the storm damage from Sandy as part of its long-term strategy to abandon its copper networks by substituting Voice Link for POTS service on western Fire Island and forcing customers to accept wireless Voice Link wherever it does not build FiOS. Verizon's failure to make prompt repairs to its Fire Island facilities during the seven months following Sandy left the Commission little choice but to provide temporary approval of Voice Link so that customers would have some form of telephone service during the 2013 summer beach season. However, this "temporary approval"³³ should not be expanded to allow Verizon to avoid its ILEC

³¹ See e.g., Case 10-C-0202 – Verizon Service Quality Improvement Plan, *Order to Chow Cause*, issued February 17, 2012 (The Commission penalized Verizon \$400,000 for failing to make sufficient efforts to restore service following the 2011 work stoppage and Irene and Lee storms).

³² See Thompson Reuters Street Events Edited Transcript of June 21, 2012 1:00 P.M. G.M.T interview of Verizon Chairman and CEO Lowell McAdam at Guggenheim Securities Symposium.

³³ May 21, 2013 *Notice Inviting Comments*, at 1.

obligations permanently, on Fire island or anywhere else in New York.

Over the past several years, Verizon has sold its unwanted ILEC franchise territories in nineteen states to other ILECs willing to continue maintaining wireline telephone service.³⁴ Rather than allow Verizon to provide inadequate Voice Link service to Fire Island and other New York customers, the Commission should compel the company to either maintain its wireline network throughout its franchise territory or sell those parts where it is unwilling to do so to another provider that will provide adequate service.

CONCLUSION


For more than one hundred years, the Commission has required ILECs like Verizon to serve all customers within their franchise territories with POTS service. Voice Link is different from, and in numerous respects inferior to, traditional POTS service. If Verizon is no longer willing to meet its service obligations on Fire Island or in other rural parts of New York, instead of permitting the ILEC to abandon its wireline network, the Commission should compel Verizon to transfer its obligations to another ILEC willing and able to meet customers' service expectations.

Furthermore, the Commission has granted Verizon only "conditional" permission to test Voice Link on Fire Island during the 2013 summer, and ordered the company to submit a report by November 1 "evaluating the provision of Voice Link service on Fire Island,"³⁵ OAG reserves its right to supplement these comments after customers have had experience using this untried Voice Link service, and Verizon's report is submitted.

³⁴ Between 2001 and 2007, Verizon sold its franchises in Vermont, New Hampshire, Maine, Hawaii, Arizona, Idaho, Illinois, Indiana, Michigan, Nevada, North Carolina, Ohio, South Carolina, Washington, West Virginia, Alabama, Missouri and Wisconsin, as well as parts of California.

³⁵ May 16, 2013 Order, *supra*, at 12.

Dated: July 2, 2013

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