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April 2, 2013

Honorable Jeffrey C. Cohen
Acting Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Case 13-C-_____

Dear Secretary Cohen:

Enclosed please find the Petition of Verizon New York Inc. (“Verizon”) for Clarification or Waiver of Commission Requirements Related to the Provision of Customer Information to Credit Reporting Agencies. A draft notice pursuant to the State Administrative Procedure Act is included as Appendix A to the Petition. Verizon respectfully requests that this notice be submitted to the State Register at the earliest opportunity, in order to avoid any unnecessary delay in the resolution of the Petition.

Respectfully submitted,

A handwritten signature in black ink that reads "Joseph A. Post".

Joseph A. Post

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**Petition of Verizon New York Inc. for
Clarification or Waiver of Commission
Requirements Relating to the Provision
of Customer Information to Credit
Reporting Agencies**

Case 13-C-_____

**PETITION OF VERIZON NEW YORK INC.
FOR CLARIFICATION OR WAIVER OF COMMISSION REQUIREMENTS
RELATING TO THE PROVISION OF CUSTOMER INFORMATION
TO CREDIT REPORTING AGENCIES**

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Verizon New York Inc. (“Verizon”) respectfully submits this Petition seeking clarification or waiver of Commission requirements relating to the disclosure to credit reporting agencies of information on customer payments for local exchange services.¹ Granting the Petition would clarify Verizon’s right to report such information in compliance with the procedures and consumer safeguards applicable to businesses generally.²

I. INTRODUCTION

In 1996 — at a time when local competition in New York was still in its infancy — the Commission began the process of amending its rules to permit local exchange carriers (“LECs”) to share with each other limited information on the credit histories of their customers. In the

¹ Only the reporting of credit information is at issue in this Petition. Verizon does not seek to change any rules related to the circumstances under which regulated companies may refuse applications for service or require deposits.

² The Commission has in the past asserted that when it waives a provision of one of its rules, it is in effect undertaking a new rulemaking within the meaning of § 102(2) of the State Administrative Procedure Act (“SAPA”). Under that interpretation, a waiver could not be granted until 45 days after publication of a notice of proposed rulemaking in the STATE REGISTER. *See* SAPA § 202. Although Verizon disagrees with this interpretation of SAPA, and submits that it is in any event not applicable where the arguable requirements are imposed in an order rather than a rule, we do not seek to raise that issue here. Accordingly, pursuant to 16 NYCRR § 3.5(i), Verizon has provided a draft SAPA notice as Appendix A to this Petition. Verizon respectfully requests that the notice be submitted to the STATE REGISTER at the earliest opportunity, in order to avoid any unnecessary delay in Commission action on this Petition.

Resale Terms Order,³ the Commission noted that its regulations had been “developed to protect consumers in a monopoly local exchange market,” and did not adequately address “new opportunities for fraud” that would exist in a multi-provider environment.⁴ At the time, the Commission’s regulations permitted a telephone corporation to deny service to a residential applicant who owed the corporation money for previously-provided basic local exchange service, but prohibited the company from denying service to an applicant who merely owed money to a different telephone corporation. This created an opportunity for customers simply to jump from one competing LEC to another as unpaid balances accumulated. Accordingly, the Commission initiated rule changes that ultimately authorized telephone corporations, in processing applications for residential local service, to take into account certain limited aspects of a customer’s credit history with other telephone corporations. That authorization is now set forth in § 609.3(a)(3) of the Commission’s rules.

At the same time, the Commission determined that it would be “reasonable for [LECs] to exchange limited information” in order to implement the new regulation.⁵ Despite this clarification of the circumstances under which LECs could disclose customer credit information to each other, significant restrictions remained. The *Resale Terms Order* directed LECs to ensure that such exchanges would be limited to information relevant to the application of Rule

³ Cases 94-C-0095, *et al.*, “Order Declaring Resale Prohibitions Void and Establishing Tariff Terms” (issued and effective June 25, 1996) (“*Resale Terms Order*”).

⁴ *Id.* at 15, 16.

⁵ *Id.* at 20-21. Originally, this exchange was to be conducted through a separate entity called the New York Data Exchange, Inc. (“NYDE”). However, because NYDE was rarely if ever used by CLECs, and because of the burdens created by Verizon’s continuing participation, the Commission authorized the company to withdraw from NYDE in December 2011. Case 11-C-0427, Memorandum to the Commission from the Office of Telecommunications (November 30, 2011), approved as recommended and so ordered by the Commission (issued and effective December 19, 2011).

609.3 (*i.e.*, the information could be used only for “approved purposes”),⁶ and that the information would not be “co-mingled” with other data or made available to any business other than another regulated LEC.⁷ These requirements are very restrictive compared to those applicable to customer-credit reporting by businesses generally — and in particular by the VoIP and wireless providers that compete with Verizon.

Although the restrictions set forth in the *Resale Terms Order* could reasonably be interpreted to apply only to the newly-authorized exchange of information between LECs, rather than to the long-existing and stringently-regulated process of reporting information to established credit reporting agencies, out of an abundance of caution Verizon now asks the Commission to clarify that the company may report certain information concerning its local exchange customers to credit reporting agencies, as described more particularly below, or alternatively to grant a waiver of any requirements that prevent such reporting. Such reporting would be consistent with the practices of Verizon’s ILEC affiliates in other states.

Specifically, Verizon seeks such clarification or waiver with respect to the submission of certain information, as described more particularly below, to the three main consumer reporting agencies — Equifax, Experian and TransUnion — and to the “NCTUE+” database maintained by the National Consumer Telecom & Utilities Exchange, Inc. (“NCTUE”).⁸ All of these agencies, and their users, are subject to the generally-applicable state and federal laws and regulations related to fair credit reporting, such as the federal Fair Credit Reporting Act

⁶ *Resale Terms Order* at 22. Information relevant to the application of Rule 609.3 generally relates to whether the applicant “has reportable charges” with another company, or “has been terminated for nonpayment within the past 6 months.” 16 NYCRR § 609.3(a)(3). In general, “reportable charges” are “any charges for local service which are unpaid 45 days from the date of the bill for the charges” *Id.* § 609.2(d).

⁷ *Resale Terms Order* at 22.

⁸ On NCTUE, *see generally* <http://www.nctue.com/home>.

(“FCRA”),⁹ the Equal Credit Opportunity Act,¹⁰ the Accuracy and Integrity of Credit Reporting Rule under the FCRA,¹¹ and Article 25 of New York’s General Business Law. The requested clarification or waiver would address Verizon’s right: (a) to report final unpaid undisputed accounts of its local exchange customers to credit reporting agencies, (b) to engage in full file reporting with the NCTUE (*i.e.*, reporting monthly on all payment history for all customers), and (c) to engage in full file reporting with Equifax, Experian and TransUnion should Verizon choose to do so in the future.

Equifax, Experian and TransUnion are cornerstones of the consumer reporting business, and it is extremely common for utilities to report final unpaid undisputed accounts to those agencies. NCTUE is a more specialized, member-owned consumer reporting agency. Its members (currently numbering over sixty) are telecommunications companies, cable companies, and other utilities. Members submit “*industry specific information* to enable members of the exchange to better identify and manage financial risks and to better monitor customer relationships during the life of the service affiliation.”¹² Participants in NCTUE+ provide information on a monthly basis on all customers, and obtain a score from NCTUE when making an inquiry. The score is premised on all data contained in NCTUE+, and is not identified to a particular participant’s data. NCTUE specifically prohibits accessing data for marketing purposes. Consumers can request a copy of their files, and a process is available for correcting inaccurate information in those files.

⁹ 15 U.S.C. § 1681 *et seq.*

¹⁰ 15 U.S.C. § 1691 *et seq.*

¹¹ 16 CFR Part 660.

¹² NCTUE website, *supra* (emphasis supplied).

The concept of “industry specific information” is central to NCTUE+’s value to the utility industry and its customers. Consumers may have different credit behavior with respect to their telecom, cable, gas, and electric bills than with respect to payments and debts generally. Thus, from the service-provider perspective, NCTUE+’s more focused database enables member companies to make more reliable decisions based on more relevant customer information. From the consumers’ perspective, such a database ensures that decisions would be made by member companies based on potentially more-favorable data than that provided by the customer’s generic credit history.

Verizon submits that the evolution of local exchange telecommunications to a fully competitive market over the last seventeen years warrants the elimination of any special restrictions on credit reporting that may be imposed by the *Resale Terms Order*. LECs should be governed in this area only by the state and federal fair-credit reporting laws and regulations that are applicable to businesses generally. Those laws are carefully thought out and provide substantial protections for consumers, while allowing businesses to take reasonable measures to protect their right to receive payment. Such a reform would permit companies to make more rational decisions concerning applications for service, and in the case of participation in NCTUE+, could potentially enable customers with absent or thin credit records to obtain credit at better terms from participating utilities. It would also help to level the competitive playing field between regulated telephone corporations and intermodal providers that are not subject to the Commission’s jurisdiction.

For these reasons, discussed in greater detail below, the waiver sought here is in the public interest, and should be granted.

II. THE COMMISSION HAS THE AUTHORITY TO GRANT THE WAIVER REQUESTED IN THE PETITION

The Commission has clear authority to waive any credit reporting restrictions that it may be deemed to have imposed in the *Resale Terms Order*.¹³ Any such requirements were imposed by the Commission itself, and are not mandated by the Public Service Law. To the extent the Commission had authority to impose these requirements, it has authority to rescind or waive them.

To the extent that the restrictions imposed by the *Resale Terms Order* were based on Part 609 of the Commission's rules, waiver authority is explicitly set forth in 16 NYCRR § 609.17, which provides that “[u]nless otherwise precluded by the Public Service Law or other applicable law, the commission may, for good cause shown or upon its own motion, waive any requirement of this Part [*i.e.*, Part 609].”

The Commission's waiver authority, however, is not limited to cases in which such authority is specifically recognized by a Commission rule, as it is in Rule 609.17. The general powers that the Legislature has granted to the Commission are clearly broad enough to encompass the power to waive its own rules. For example, Publ. Serv. L. § 4(1) states that the Commission possesses the powers and duties specifically conferred by the Public Service Law, along with “all powers necessary or proper to enable it to carry out the purposes of [such Law].” Thus, the Commission has general authority to waive the provisions of its own rules. Indeed, it has frequently exercised that power.¹⁴

¹³ *A fortiori*, the Commission has the authority to clarify the restrictions if its initial intent was not to prohibit disclosure to established credit reporting agencies.

¹⁴ *See, e.g.*, Case 95-C-0152, “Order Issuing Certificate of Public Convenience and Necessity” (issued and effective July 19, 1995) (waiving “parts 600, 601, 602, 603, 604, 631, 632, 640, 642 and Section 644.3 of 16 NYCRR”). The Commission's power to waive substantive rules in appropriate cases is recognized by 16 NYCRR § 3.3(c).

III. EXISTING RESTRICTIONS ON THE REPORTING OF CUSTOMER CREDIT INFORMATION BY TELEPHONE CORPORATIONS SHOULD BE ELIMINATED

Initially, two points should be emphasized. *First*, Verizon is not seeking to change the substantive standards set forth in the Commission's rules and orders that govern the acceptance or rejection of applications for regulated local exchange service. Verizon will continue to abide by those rules in making credit decisions concerning applicants for such service. *Second*, Verizon is not seeking any waiver of any state or federal law related to the reporting, disclosure, and use of consumer credit information, such as the Fair Credit Reporting Act, the applicable Federal Trade Commission regulations, or Article 25 of this State's General Business Law. Rather, we seek only the right to report credit information in accordance with such laws and regulations, to the same extent as businesses generally, and subject to the same limitations.

A. CREDIT REPORTING SERVES IMPORTANT AND BENEFICIAL FUNCTIONS

Consumer reporting agencies serve an important function by enabling businesses to avoid bad-debt costs and by preventing consumers, in a competitive market, from hopping with impunity from one company to another, accumulating unpaid debts at each step of the way. In that way, information obtained from consumer reporting agencies reduces bad-debt costs that would otherwise have to be passed on to consumers who do pay their bills. Further, consumers who know that their credit scores will be reported will be less likely to default on payments; conversely, consumers who feel secure that such data will *not* be reported will be more likely to believe that moving to another provider is an acceptable alternative to paying bills.

Of course, credit reporting creates a potential for abuse, and it is precisely for that reason that detailed requirements relating to fair credit reporting practices are imposed by both federal and state law. These mandates and prohibitions reflect the views of Congress and of this State's Legislature as to the best way to achieve a balance between the benefits of credit reporting and

the harm caused by abusive practices. There is no reason why that carefully-crafted balance — already applicable to a broad range of industries — should not apply in the highly-competitive telecommunications markets.

B. THE PROPOSED WAIVER WOULD PROMOTE FAIR COMPETITION

The waiver would promote fair competition by eliminating a regulatory distinction between regulated telephone corporations and unregulated intermodal providers. First, to the extent that regulated providers in New York could not contribute information to NCTUE, they would not be eligible to *receive* information from that agency. Even if such information may not be relevant to a regulated company’s decisions on applications for regulated local exchange services, it might nevertheless be useful with respect to other competitive services provided by the company. Second, participation in NCTUE, as well as reporting final unpaid undisputed accounts to the traditional consumer reporting agencies, would prevent customers from regarding regulated utilities as a “safe haven” for non-payment as compared with other providers, thus disproportionately increasing the bad-debt costs of such companies. Verizon’s proposal would thus advance this Commission’s pro-competitive regulatory agenda.

C. REPORTING OF CUSTOMER CREDIT INFORMATION BY UTILITIES TO NCTUE WILL PROMOTE ACCESS TO CREDIT FOR CUSTOMERS WHO DO NOT HAVE TRADITIONAL CREDIT HISTORIES

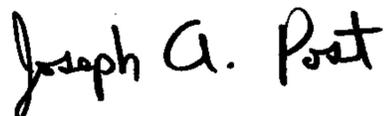
Tens of millions of individuals in the United States do not have any credit history (“no-scores,” in industry parlance), or else have only minimal or outdated information (“thin files”). Such under-served consumers are concentrated among minorities, the poor, low-income individuals, the elderly, recent widows, and new immigrants. Nevertheless, such individuals generally utilize utility services and pay utility bills, and thus have a basis for industry-specific

credit scoring. According to a study released in early 2007 in which some eight million credit files were examined,¹⁵ the use of non-traditional (*i.e.*, non-financial) credit data enables customers with a low risk of default to be identified, notwithstanding the lack of more traditional credit-history data. Utility data is particularly helpful in this respect.¹⁶

IV. SUMMARY AND CONCLUSIONS

For the reasons set forth above, removing existing restrictions on the reporting of credit information concerning customers for regulated local exchange services would create important benefits, while existing laws of general applicability would protect such customers from abusive practices. The relief sought by Verizon is in the public interest, and should be granted.

Respectfully submitted,



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April 2, 2013

¹⁵ Political and Economic Research Council and The Brookings Institution Urban Markets Initiative, “Give Credit Where Credit Is Due: Increasing Access to Affordable Mainstream Credit Using Alternative Data,” available at http://perc.net/files/downloads/alt_data.pdf. See also Information Policy Institute, “Giving Underserved Consumers Better Access to the Credit System: The Promise of Non-Traditional Data” (July 2005) (the “*IPI Report*”), available at <http://perc.net/pdf/nontrad.pdf>.

¹⁶ See *IPI Report* at 29.

APPENDIX A

Draft Notice Under State Administrative Procedure Act

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Clarification or Waiver of Certain Public Service Commission Requirements Related to the Disclosure of Information to Credit Reporting Agencies

I.D. No. PSC-_____

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition from Verizon New York Inc. (“Verizon”) to clarify or waive any Commission-imposed requirements that would prevent Verizon from providing information related to its customers’ payment histories for local exchange services to credit reporting agencies.

Statutory authority: Public Service Law § 4(1) and 16 NYCRR § 609.17.

Subject: Clarification or waiver of certain Commission requirements as requested by Verizon.

Purpose: To clarify or establish Verizon’s right to provide information to credit reporting agencies related to its customers’ payment histories for local exchange services, to the extent permitted by, and in accordance with, general laws such as the federal and state fair credit reporting acts.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition of Verizon asking the Commission to clarify or waive any Commission-imposed requirements that would prevent Verizon from providing information to credit reporting agencies related to its customers’ payment histories for local exchange services, to the extent permitted by, and in accordance with, general laws such as the federal and state fair credit reporting acts.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov.

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

[[ID NUMBER]]