

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**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.**

Case No. 13-C-0197

COMMENTS OF THE PUBLIC UTILITY LAW PROJECT

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Introduction.

Verizon initiated this proceeding on May 3, 2013 seeking New York Public Service Commission (“Commission” or “PSC”) approval of a tariff amendment that would allow substitution of "VoiceLink" wireless service for wireline service on Western Fire Island following storm damage to facilities. The tariff as initially filed would also have allowed Verizon to deploy VoiceLink as the sole substitute for wireline service elsewhere in the state when that is deemed “reasonable,” by Verizon, under broadly worded circumstances.¹

In its Petition, Verizon assured that customer protections would be continued in any transition from wireline to wireless service:

12. Verizon has committed to adhere to the requirements of the New York Public Service Commission relating to customer protection, customer complaints, service quality, safety and reliability with respect to the Voice Link service offered as the

¹ In addition to substituting wireless for wireline service when “a substantial portion of its facilities in the area is destroyed, rendered unusable, or beyond reasonable repair,” Verizon also would have substituted wireless when “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 May 3, 2013 Petition.

sole service option on the western part of Fire Island.

Verizon made no reference, however, to the provision of Lifeline service to eligible customers in the proposed transition away from traditional copper wireline service. The provision of Lifeline service to eligible customers is not simply a matter of reducing hardship to low-income telephone consumers and fulfillment of state and federal universal service and affordability requirements. In addition, the continued enrollment of eligible Lifeline customers has recently become an essential component of the Commission's service repair quality standards for Verizon. As discussed below, closer scrutiny is needed regarding Lifeline related issues in service maintenance and timely repair of outages on Fire Island and elsewhere, as well as in any transition to other service platforms such as wireless or fiber lines. Under the service quality regime now in place, reducing the number of Lifeline customers reduces the data points for assessment of service quality and thus discouraging Lifeline service may now reduce Verizon's risk of adverse financial consequences in situations where service quality and repair service may be substandard.

The Public Utility Law Project of New York, Inc. ("PULP") filed brief comments dated May 15, 2013, urging the Commission to grant only temporary, narrow permission for VoiceLink on Western Fire Island, and not to approve the tariff as filed, which would have allowed broader statewide substitution of wireless for wireline services at Verizon's discretion to avoid costs of wireline maintenance and repair.² The Commission issued an order May 16, 2013 limiting the tariff pending investigation and requested further public comment. The Commission also scrutinized terms and conditions of the proposed wireless service, stating

Staff advises that, over the past several weeks, Verizon provided Voice Link

² The tariff filed May 3, 2013 states that "The Telephone Company may offer service using wireless as its sole service offering in an area if the (C)(1) company certifies and demonstrates that a substantial portion of its facilities in the area is destroyed, rendered unusable, or beyond reasonable repair."

customers a Terms of Service Agreement (TOSA) that was not fully consistent with the tariff modifications we are approving today. The TOSA should remove provisions in conflict with the Commission's regulatory requirements and substitute information relating to customer protections, while retaining the information unique to the use of wireless transmission for the service. The TOSA should also provide adequate assurance to customers that they retain the protections provided to them as customers of traditional service.

The Commission directed Verizon to file by May 20, 2013 changes to its VoiceLink TOSA in order to incorporate certain additional customer. Neither the original May 3 tariff nor the May 20 changes to the service agreement, however, touch upon Lifeline service, other than to reference it fleetingly in the description of one service offering to Lifeline customers, discussed below.

Commission staff conducted discovery including requests for information from Verizon regarding its maintenance expense history and costs of replacing the damaged wireline service to Western Fire Island. Verizon has sought confidential treatment of that information, which is the subject of a FOIL request by other parties. PULP supports the public release of the Verizon responses to staff information requests.\

The September 11 Filing Withdrawing the VoiceLink Proposal.

On September 11, 2013, Verizon filed a notice indicating an intention to withdraw the VoiceLink substitution tariff, stating that instead it will install fiber optic service in lieu of VoiceLink or repair of the wireline system.³ The Commission invited further public comments in a notice issued September 13, 2013, stating:

³ “Based on its own ongoing review, Verizon has decided to re-build a wireline network in western Fire Island. Verizon is targeting Memorial Day 2014 for the completion of construction, and the general availability of services over the new network. In the interim, it will continue to offer Voice Link pursuant to the approved terms of the tariff and the Commission's May 16 Order. Accordingly, this filing withdraws the suspended language in § 1.C.3.b, and adds new language explicitly stating that the remainder of the section will no longer be effective after Verizon's new wireline network is completed and the company is able to offer service over that network throughout western Fire Island.” Verizon Letter to Secretary Burgess, September 11, 2013.

Specifically, the issues presented include: construction of a fiber optic wireline network to provide phone and broadband service in western Fire Island, in place of Voice Link as the sole service offering, withdrawal of its authority to use Voice Link as the sole service offering in other geographic areas with destroyed wireline facilities and in areas based upon geographic location, availability of alternative telecommunications providers, or other Commission-designated criteria.

PULP is pleased to provide comments on these matters, which are certainly crucial for the residents of western Fire Island. But policy concerns are crucial also for customers in other areas where telephone service was affected by Superstorm Sandy, and for customers elsewhere who may be adversely affected by insufficient maintenance or future efforts to abandon of wireline service. Also, the substitution of fiber optic service for traditional copper wireline will require clarification of the impact of Verizon's practices regarding service to "core" low-income customers, the services available to "core" Lifeline customers over fiber optic lines, and billing and collection practices when phone service is bundled with internet and television services over fiber.

The breadth of the issues is extensively recounted in the Joint Comments of Common Cause, Consumers Union, CWA, and the Fire Island Association ("Common Cause, et al. Comments").⁴ PULP supports those comments and broadening of the inquiry. This case involves not only the evanescent business plans of a regulated entity – Verizon -- but also the law, the public interest, and Commission policies regarding universal service, basic service, repair service, and full enrollment of eligible Lifeline "core" customers, service to whom is used to measure service quality.

The latest Commission Public Notice was precipitated by the September 11, 2013

⁴ <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={637AEC91-C05A-45BD-8CEC-0F63F3C388DC}>.

announcement⁵ that Verizon would now install a fiber-optic network (Verizon’s “FiOS” product) on Fire Island, and thus Voice Link (a comparatively inferior service which, for example, does not support fax) would become an alternative customer option, rather than the only Verizon choice on the island. Verizon also filed that day, at the NYPSC and at the FCC, tariffs for the dual service.⁶ Verizon’s September 11 letter filed in this docket says it “has decided to re-build its wireline network in western Fire Island, and to offer Verizon Voice Link solely on an optional basis,” and asks the Commission to “suspend all deadlines and proceedings in the Case, with a view towards dismissing it once today’s tariff amendment is fully implemented.” Instead of acquiescing to Verizon’s request, the Commission correctly issued the Public Notice.

As Common Cause, et al. argue, the NYPSC proceeding is not moot. Crucially here, Verizon admits that it is a wireline monopolist on Fire Island (and, at the least, market dominant in the Fire Island wireless market).⁷ Also, issues attendant to the provision of voice service over fiber lines, particularly to Lifeline and other core customers, need to be considered, and Commission policy clarified.

The Commission Should Consider Eligible Telecommunications Carrier (“ETC”) Status when Lifeline and Link Up are provided over FiOS

The Commission’s May 16, 2013 Order in this proceeding made incidental reference to Verizon’s eligible telecommunications carrier (“ETC”) status when the substitution of wireless was proposed,⁸ but there has not been much discussion since. ETC status is an inescapable issue

⁵ See <http://www.schumer.senate.gov/record.cfm?id=345686&>.

⁶ See <http://apps.fcc.gov/ecfs/document/view?id=7520942981> (filed September 1, 2013). Verizon did so by withdrawing the tariff that had proposed Voice Link as the sole service on Fire Island.

⁷ Verizon ex parte at [3].

⁸ Order at 10.

for Verizon's proposals. Verizon's ETC responsibilities arise from 47 U.S.C. § 214(e).⁹ Section 214(e) requires that Verizon provide supported voice telephony service throughout its ETC service area, including access to e911 service. Additionally, Verizon must offer eligible low income consumers discounted Lifeline service. Neither Verizon's original proposal for "Voice Link exclusive" ("VLE") service nor its new proposal to provide phone service, possibly bundled with other services over FiOs, gives Verizon latitude to evade those ETC responsibilities.

Section 214(e) allows an ETC to request state commission approval to relinquish designation as an ETC, but only if the area is served by one or more other ETCs. Based on the available information, the Fire Island communities covered by Verizon's application do not appear to have a choice of affordable voice telephony service from other ETCs. Verizon certainly has not applied for relinquishment.

Verizon has not been forthcoming about whether it currently has Lifeline customers on western Fire Island, and how those customers were treated. How many "core" Lifeline customers were there before Sandy. Was wireline service to them timely restored? Did they retain Lifeline service under Voice Link service plans? Did their rates, terms and conditions of service change? Further, if the new Verizon choices are between the "FiOs-based basic service" and Voice Link, will Lifeline (and Link Up) be available for both? At equal rates? Verizon should be required to address these issues as it proceeds to substitute the fiber lines for traditional copper wireline.

What Is The New Fiber-Based Basic And Lifeline Phone Service Verizon Will Be Offering? The Commission Should Clarify Requirements For That Basic Service in its Order in this Case.

Verizon has represented to the FCC that it will be offering "traditional telephone service

⁹ This material borrows from FCC Docket WC 13-150, NASUCA ex parte (August 28, 2013)>

delivered over our fiber network.”¹⁰ Details are lacking, however.

The Code of Federal Regulations requires basic telephone service to

provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.¹¹

Verizon’s current FiOS Digital Voice telephone service is not basic (or “core”) service.¹² The implication of Verizon’s earlier position is that basic service cannot be provisioned over FiOS.

But now Verizon says it will provide basic service over FiOS. (And if basic service can be delivered over FiOS on western Fire Island, why can’t it be provided over FiOS elsewhere in New York State?)¹³

When Verizon was proposing VoiceLink as the substitute for wireline service, it said the following regarding prices and services to be provided:

14. Voice Link pricing will generally be aligned with the pricing of current landline service packages. Verizon will offer Voice Link residence plans that include features comparable to or more extensive than those included in the following service offerings: Regional Package, Verizon Local Package, Regional Essentials, Access Line Plus flat-Rated Local Usage, **and Access Line Plus Flat-Rated Local Usage at tariffed Lifeline pricing (Lifeline-eligible customers only)**. Verizon will also offer a business plan that includes features comparable to or more extensive than those included in the Solutions for Business offering. The net price of each such Voice Link plan (inclusive of available credits) will be at or below the price of the comparable tariffed plan (inclusive of the federal Subscriber Line Charge applicable to the tariffed plan), as such price may change

¹⁰ FCC Docket WC 13-150, Verizon *ex parte* (September 11, 2013) at [4].

¹¹ 47 C.F.R §54.101(a).

¹² Compare <http://www.verizon.com/home/phone/fiosdigitalvoice/> to <http://www.verizon.com/home/phone/>.

¹³ The Commission should also consider whether, if customer demand can drive fiber deployment on devastated Fire Island, why Verizon has apparently decided not to deploy FiOS elsewhere beyond its current footprint. <http://www.dslreports.com/shownews/Verizon-No-Plans-for-FiOS-Expansion-125985>.

from time to time.¹⁴ (*Emphasis added*).

The record does not contain an unequivocal delineation of the rates, terms and conditions of phone service now to be provisioned via fiber lines, particularly Lifeline. If Lifeline over fiber is to be what Verizon put forward in the VoiceLink petition, the Commission still needs to clarify or reiterate exactly what services over fiber are available to Lifeline customers. The language quoted above which identifies “Access Line Plus Flat-Rated Local Usage at tariffed Lifeline pricing (Lifeline-eligible customers only)” cries out for clarification. Does this mean that the only service that Lifeline-eligible customers can receive is access line plus flat rate local usage, or is that a service option, in addition to all the others, that Lifeline customers can receive, but not other customers? The correct interpretation of the tariff, of course, is that a Lifeline-eligible customer should be able to receive phone service in any service offering package available to other customers. Any other interpretation could result in a situation where Lifeline-eligible customers will not receive the Lifeline assistance if they prefer a service that Verizon does not make available to Lifeline customers.

This situation could be exacerbated if, with the advent of fiber as a substitute for copper wireline, phone service is marketed by bundling it with television and broadband services. The Commission should confirm that Linkup and Lifeline service will be provided to all eligible customers receiving phone service over fiber lines, and should clarify what the Link Up and Lifeline discounts will be for customers choosing a Verizon bundled service package. If the company will be providing phone service bundled with these services, the Commission should ascertain whether customers in arrears are fully advised regarding their opportunity to pay for and preserve voice service by designating partial payments to cover charges for preferred

¹⁴ Verizon VoiceLink Petition, May 3, 2013, at adobe p. 6.

services, while other unpaid services are blocked.¹⁵

IV. Will The Basic Service Fall Under New York Service Quality Rules?

The Commission should conduct further inquiry regarding the restoration of service to Verizon's core customers on Fire Island. Under the Commission's recent service quality orders, performance standards with financial sanctions have limited applicability to "core" customer service. In particular, the Commission should ascertain the number of core customers (principally Lifeline customers) over the past five years in western Fire Island, and should closely examine their experience after the storm. The Commission should determine how these "core" customers fared in getting service restored, specifically post-Sandy, as compared to non-core customers. If service quality under SQUIP is measured only with respect to "core" customers, was service restored to them first? The Commission should check whether there are enough "core" customers on Fire Island to assure meaningful financial sanctions to discourage Verizon from providing inadequate service in the future.¹⁶

Finally, the Commission should consider whether, in making service repair standards applicable only to "core" customers, it has unleashed powerful incentives for Verizon not to enroll all eligible Lifeline customers. Do subtle incentives now exist for Verizon to migrate customers away from Lifeline service, and to discourage application for and receipt of Lifeline service if, as a consequence, they can be kept out of the ranks of the 8% or so "core" customers who are the only ones whose service quality is measured subject to financial consequences under

¹⁵ A Commission order, issued without specific notice to consumer representatives who were parties to litigation that settled billing and collection protocols, allows Verizon to apply undesigned payments made by customers in arrears to telephone service first, with all non-telephone services combined in a second "bucket." Case 10-C-0609 – *In the Matter of the Petition of Verizon New York Inc. for Waiver of New York Code of Rules and Regulations, Title 16, §§ 606.4 and 606.5, as Modified by July 1, 1992 Settlement Agreement, as amended, Pertaining to Billing Categories and Partial Payments*, Order Directing Tariff Amendment (Issued and Effective May 19, 2011).

¹⁶ See footnote 13, *supra*.

SQUIP?

Conclusion

PULP provides these comments based on its perspective as an advocate for low and fixed income consumers. PULP again appreciates the opportunity to comment on these crucial issues, and also appreciates the Commission’s consideration of these comments. PULP supports “construction of a fiber optic wireline network to provide phone and broadband service in western Fire Island, in place of Voice Link as the sole service offering....”¹⁷ But this construction implicates public interest concerns that must be decided if Verizon’s plans are to be allowed.

PULP also supports “withdrawal of [Verizon’s] authority to use Voice Link as the sole service offering in other geographic areas with destroyed wireline facilities and in areas based upon geographic location, availability of alternative telecommunications providers, or other Commission-designated criteria...”¹⁸ But this is because this Commission should not allow ILECs or ETCs to allow their networks to deteriorate such that there is a possibility of a “sole service offering.” This is of crucial concern to consumers on Fire Island and the rest of Verizon’s service territory.

The Commission should examine whether sufficient “core” customers were enrolled on Fire Island to make service quality incentive sanctions meaningful deterrents to inadequate maintenance and restoration efforts, and whether sufficient “core” Lifeline customers will be enrolled there under the new proposal for fiber lines to monitor and enforce service standards.

The Commission should require reiteration and clarification of the service options to be

¹⁷ Order at 10.

¹⁸ Id.

provided Lifeline customers when phone service is provided over fiber along with bundled service options for broadband and television, and should take steps to enhance the ability of customers in arrears to designate partial payments to maintain preferred services.

Respectfully submitted,

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