

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 15, 2008

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.

CASE 08-V-0835 - In the Matter of Verizon New York Inc.'s Network
Review Plan

ORDER APPROVING FIOS REMEDIATION PLAN WITH MODIFICATIONS

(Issued and Effective November 3, 2008)

BY THE COMMISSION:

INTRODUCTION

In response to concerns identified by staff regarding grounding and bonding of its fiber-to-the-premises service (FiOS), Verizon New York Inc. (Verizon) submitted a Network Review Plan (the Plan) to remediate past installations and better manage its installations prospectively. Several parties encourage the Commission to approve the Plan as submitted, while others argue that modifications to the Plan need to be made before the Commission approves it.

We conclude that the Plan, with proper modification, will address the remediation of non-conforming past installations and also improve the quality of future installations. The Plan has a number of provisions that will address the grounding and bonding issues associated with the company's deployment of FiOS. To strengthen the Plan, we will require that it be modified as discussed below and summarized in the Conclusion. We will require more stringent adherence to

safety requirements, a shorter remediation period for certain types of faulty installations, and enforceable milestones for remediation of faulty installations. The revised Plan will allow the company to continue to market and install FiOS, improve the safety of customer installations, better inform consumers, and remedy nonconforming extant installations.

BACKGROUND

In 2004 Verizon began deploying FiOS in various communities across New York State. FiOS has the ability to offer customers high speed internet access, telephone, and video services. For the past several years, staff conducted field inspections of Verizon's FiOS installations. Staff's inspections in 2006, 2007, and 2008 identified a high degree of non-compliance with the applicable standards for grounding and bonding under the National Electric Code (NEC). Staff communicated these concerns to Verizon after each of its audits and Verizon accepted staff's findings and committed to improvements.

On July 15, 2008, in response to staff's concerns, Verizon submitted its Plan¹ designed to remediate deficient past installations, require detailed inspections of new FiOS installations and provide additional training for its technicians.

The Commission sought public comments on the Plan on July 16 and a technical conference was held on September 9 to assist parties in formulating their comments. Nineteen comments

¹ The Plan was supplemented on August 15, 2008. References to Verizon's Plan herein include the August 15, 2008 supplement. The Plan and the Supplement can be viewed at [cite DPS web].

on the Plan were submitted on September 22; reply comments from six parties were submitted on September 26.²

VERIZON'S PLAN

Verizon's Plan distinguishes between new installations (those made after August 1, 2008) and past installations.

New Installations

Verizon proposes to establish an Optical Network Quality Assurance Team (ONQAT) that would inspect, each month, a statistically valid sample of installations performed in that month. Verizon would remediate installations found to be noncompliant with its grounding methods and procedures in any material respect in, on average, no more than 60 days. Verizon commits to using its best efforts to ensure that 95% or more of its installations comply. The Supplement provides that if the percentage of new installations in any month falls below certain thresholds, Verizon will issue a credit to each customer account in each relevant area for which an ONT was installed in that month. In the event Verizon does not meet the Plan thresholds, it would discuss the matter with staff, increase the sample size, and provide staff with a root cause analysis of the failure. Verizon also states that if it fails to meet the standard for four of the first six months, it would establish a review team to report to staff. The Supplement also provides that Verizon's actions will be subject to independent third party review.

² Appendix 1 contains a list of parties who submitted comments and replies and a summary of those comments.

Remediation of Existing Installations

The Plan provides that Verizon would inspect and remediate all past installations, maintain a database listing past installations that were inspected and that within 45 days of the completion of inspections in a given area the ONQAT would inspect a statistically valid sample of installations. Non-conforming installations would be remediated within, on average, 60 days. The Plan provides monthly inspection targets.

Other Aspects of the Plan

The Plan would terminate when all past installations have been inspected and remediated and when Verizon has consistently met the target for new installations to the satisfaction of the Commission. The Plan could be suspended by force majeure events, as determined by the Director of the Office of Telecommunications.

The Supplement notes a disagreement with staff over the use of a grounding module for inside installations. Verizon states that it will attempt to obtain confirmation from an independent forum or organization that such use of the grounding module is safe and appropriate and if the confirmation is not obtained it will expeditiously remediate such installations to replace them with a staff-approved method.

DISCUSSION

The discussion below reviews comments on specific Plan provisions and more general issues with the Plan.

New Installations

Verizon proposes to inspect a statistically valid sample of new installations each month and to use its best efforts to ensure that 95% of the installations conform to its grounding

methods and procedures in all material respects. If it fails to "achieve compliance that is within a reasonable statistical confidence interval of 95% for two of the first three months of the Plan" Verizon says it will increase the sample size and provide staff with a root cause and targeted remediation plan. It will establish an independent quality inspection team for a similar failure for four of the first six months of the plan. The company also commits to providing customer credits if its compliance performance falls below established thresholds.

1. Scope of Inspections

Some parties believe Verizon should inspect 100% of new installations until such time as it demonstrates 100% compliance with quality targets in that relevant area for, say, several consecutive months, or that Verizon adhere to the inspection and remediation program for new installations in each relevant area until the company has met the performance threshold set by the Commission for a specific period of time. The Attorney General (AG) argues that the Plan should be amended to require that Verizon adhere to the inspection and remediation program for new installations in each relevant area until the company has met the performance threshold set by the Commission for at least six consecutive months in that area. Other parties recommend that the Plan be amended to require that Verizon inspect 100% of its new installations to ensure a level of compliance in each market area within a range of 95% to 100%. Cablevision believes the current standard of 95% compliance should be raised instead to 99%.

Staff advises that should compliance with remediation targets fall below the 95% performance threshold in a market area, inspections should be conducted for 100% of the new installations in that area. Staff also suggests that we consider whether the company's right to do new installations in the New

York City franchise area should be suspended until it can achieve a 95% statewide compliance rate for three consecutive months.

The City and Verizon disagree with staff's recommendation that FiOS installations in the City should be singled out for suspension until Verizon meets the 95% compliance target as that recommendation could deny millions of New York City residents the benefits of cable competition. Verizon asserts the Public Service Law does not authorize the Commission to impose such a penalty. Verizon argues that perfection is unattainable in the real world, and while its goal is 100% compliance, 95% is a value which is representative of the 100% aspiration. Verizon points out that Commission service quality metrics do not establish 100% thresholds either.

Verizon also disagrees that 100% of new installations should be inspected, offering that traditional cable television companies are not held to such a standard.

We agree with the City and Verizon that suspension of installation activity either in New York City or any other franchise area in the state is an extreme measure that should not be considered without clear evidence that a service provider is failing in a material sense to meet or achieve reasonable safety objectives. Verizon's performance to date does not warrant such drastic action. Verizon reports an 83% compliance rate statewide for new installations in August 2008, and a 95% compliance rate for new installations in September. Of the sample of new installations inspected, Verizon reports 3% were found to be ungrounded in August, compared to only 0.8% ungrounded for September. Verizon acknowledges that although the August compliance rate was below the acceptable Plan performance rate in most market areas, a week-by-week analysis shows steady improvement over the first five weeks of the Plan,

an additional indication that the Plan is working. Given this performance, suspension of installations is unwarranted.

We will, however, strengthen the inspection program and require full inspection and remediation for new installations in any month and region that fail to meet performance thresholds (i.e., no less than 95% compliance and 100% should be bonded and grounded) discussed more in the next section. Moreover, we find the 95% compliance threshold in the Plan for credits is a reasonable and realistic target, especially in view of our requirement for full inspection and remediation in the event less than 100% of installs are bonded and grounded.

2. Whether "No Ground"
Situations Require Special Treatment.

Any inspection of new or past installations that uncovers the absence of grounding, as opposed to deviations from other requirements, raises greater safety concerns. Staff and NYC believe the Plan should include a provision to require the immediate, same day, remediation of a new installation when inspections show that the ONT is not grounded at all, followed by a repeat inspection within one week.

A ground and bond should be present in all installations to guard against potential electrical hazards. It is particularly reasonable to expect such compliance for new systems, such as FiOS, that have been only recently constructed. Verizon's deployment of its FiOS system, while a new network architecture that relies on non-conductive fiber cable, continues to use coaxial cable within the premises and in that regard is somewhat analogous to the cable television systems. At the time that system was being constructed the former New York State Cable Commission, since merged into this Commission, was faced with similar concerns as cable television service

providers overlooked existing grounding standards or failed to adequately ensure the quality of their craftsmen's workmanship at customer installations. The expectation of the New York State Cable Commission then³ is the same as ours should be today: that all customer installations should have a ground and bond.

We will direct Verizon to modify the Plan to achieve the following performance thresholds for determining whether full inspections should be performed for new installations: 100% of sampled new installations should have a ground and bond, and no less than 95% of those installations should be compliant with other aspects of our standards.⁴ If a sample indicates those performance thresholds are not achieved in any month, all new installations in that area shall be inspected and, if necessary, remediated consistent with the parameters and timeframes set forth in the plan as modified.

³ For example, see Docket No. 90363, Mid-Hudson Cablevision, Inc., Order to Show Cause and Notice of Apparent Liability, (issued July 7, 1987); Docket No. 90357, TKR Cable Company, Order to Show Cause and Notice of Apparent Liability, (issued December 31, 1987), and Docket Docket No. 90370, Adams-Russell Cable Service, Order to Show Cause and Notice of Apparent Liability, (issued October 24, 1988).

⁴ The Plan commits Verizon to "achieve a compliance rate that is, at a minimum, within a reasonable statistical confidence interval of 95%" July 15 letter, p. 4. We interpret Verizon's statement on page 2 of its reply comments that "the average compliance level for New Installations for the second week of September was 95% - precisely the target called for by the Plan" as indicating that the new installation threshold requires 95% of the sampled items to be in compliance since the 95% for the second week of September was calculated as being 95% of the sampled installations inspected for the second week of September. We agree that a 95% threshold for the sampled installations provides a reasonable confidence interval.

We will also require a more aggressive remediation effort in these instances. We will require a shorter remediation time frame of ten business days for instances where an inspection reveals no grounding present. (For other remediations, we will allow Verizon's proposal to effectuate remediation within an average of sixty days as it proposed.) Thus, under the Plan all existing installations will be inspected and remediated within ten months, or by May 31, 2009. Monthly sampling and inspection of new installations should continue in each relevant market area as long as the Plan is in effect.

3. Sampling Issues

The company plans to inspect just 10% of new installations. A number of questions were raised regarding how the sample of new installations would be selected. In a letter filed on September 18, 2008 Verizon explains that its "sampling program" process mirrors the approach for previous service quality audits. Verizon later clarifies that "a randomized 10% sample of New Installations will be generated in each area and in each month". Staff and NYC are concerned that Verizon's sampling procedures do not have a stopping rule.⁵ Staff noted that Verizon sampled 16% of new installation during the first three weeks of August when the Plan called for a sample amounting to 10% of new installations. Staff contends that this apparent lack of a precise sampling target could produce inconsistent monthly results and could appear to skew the results toward a

⁵ A "stopping rule" is a mechanism to determine where to cease sampling. It is used to insure that samples are valid by not allowing the 10% sampling targets to be surpassed in a subjective manner.

desired outcome. In reply comments, Verizon responds that via its 10% sampling practice, it does have a stopping rule, and that while there have been some minor deviations from that practice as the Plan was rolled out it will not be an issue in the future.

Staff also raised the concern that inside ONT installations might be under-represented in the sample because those installations are more prone to no access problems which would limit their rate of inspection. Verizon responds that this issue can be investigated as the administration of the Plan proceeds and as more data become available. The AG notes that Verizon's 10% sampling program may produce statistically invalid samples in areas where relatively few new installations are performed. The AG argues that the Plan should not be approved until such details are addressed.

There needs to be more specificity regarding Verizon's statistical sampling and evaluation procedures. In its compliance filing, Verizon shall include a revised sampling program and evaluation document as described in its clarifying letter of September 18. The sampling program should be also expanded to discuss the process by which its auditors (or ONQAT auditors) follow the sampling program.⁶ This discussion shall clarify the methods that the ONQAT auditors will follow to ensure that there will be no significant deviations from the proposed 10% sampling practice including when multiple ONTs are encountered and inspected at a single inspection visit.

⁶ The discussion should be like that contained in paragraph 26 of the September 22, 2008 Declaration of Thomas Maguire.

4. Credits

For new installations, Verizon would issue a credit to each FiOS customer account installed in a given month in the Relevant Market Area if it fails the following performance threshold in that area:

<i>Performance Threshold</i>	<i>Credit</i>
<95%	\$10
<85%	\$15
<75%	\$20

Verizon believes that this level of disaggregation will drive personal accountability for performance to the managers in charge of the relevant regions. According to Verizon, the purpose of the credits is to compensate such customers for the inconvenience of the inspection and possible remediation process. Verizon states that the total amount of credits required may be millions of dollars, depending upon the level of compliance achieved. Verizon's obligations to issue credits would cease when the Plan terminates upon Verizon completing the inspection of all past installations, including remediation, and consistently meeting the 95% target for new installations to the satisfaction of the Commission. Under Verizon's proposal, credits do not apply to past installations.

Common Cause supports tangible penalties in the event that Verizon does not comply with its commitments. Penalties also should be applied if Verizon reports a repair, but the Commission or another entity independently finds that the repair was not performed as described, according to Common Cause. It says franchise agreements often include a performance bond, with the franchising authority able to draw liquidated damages to penalize the operator if it fails to comply. The franchising

authority may impose financial penalties under the agreement in the event that the cable operator fails to cure physical plant violations within a specified interval—or inaccurately reports that a violation has been corrected.

Staff recommends that the Commission take additional action to expand the credits to include remediation efforts.

In reply, Verizon notes its improved performance, with a 95% compliance rate in the second week of September. The compliance rate for the five boroughs for the first two weeks of the month it goes on, was 90% for Brooklyn, 92% for Staten Island, 94% for Manhattan, and 96% for Queens and the Bronx. Verizon cautions the Commission in assuming that increasingly severe measures must be incorporated into the Plan, no matter how small their incremental contribution or how great the burden that they impose. Such an approach would be inconsistent with the rules by which Verizon's competitors operate it claims, and cannot be justified by the need to eliminate a public safety hazard. Verizon also notes that similar issues are raised by the more limited but equally unlawful proposals of Common Cause to include various involuntary penalty provisions in the Plan, and of both staff and Common Cause to expand the financial consequences provisions of the Plan to encompass extent installations. Verizon claims the Public Service Law does not authorize the Commission to impose such a penalty plan.

While we will not expand the credits to past installations as proposed by some parties, we will require the specific performance measures described below in connection with Past Installations to ensure remediation occurs promptly for past installations. We also decline to establish a more elaborate penalty scheme as suggested by Common Cause.

5. Other Remedies

Verizon states that it would use its best efforts to ensure that 95% or more of the new installations included in each sample inspected conform to its grounding methods and practices. In addition to customer credits, discussed above, several provisions of the Plan increase oversight if performance thresholds are not met. Should Verizon fail to achieve a compliance rate of 95% in any month, the results would be discussed with staff during monthly meetings. In addition, if Verizon fails to achieve 95% for two of the first three months of the Plan, Verizon will increase sample sizes from 10% to 12% and provide staff with both a root cause analysis and targeted remediation plan at the monthly meetings. Should Verizon fail to achieve 95% for four of the first six months of the Plan, Verizon will establish an independent external quality inspection team of three individuals who will report directly to staff and supplement staff's ongoing grounding inspection program. The external team will remain in place until the company achieves three consecutive months of 95% compliance. Cablevision argues that the time is now for hiring an outside inspection team, not the four in six month trigger Verizon proposes.

We agree with the AG that stronger provisions are needed to ensure that new installations are meeting quality thresholds. We think the most effective way to accomplish this is through a more aggressive inspection program. As discussed above, we will require full inspection and remediation for installations in any month and region that fail to meet the new performance thresholds. We will also require Verizon to supplement staff's inspection program with an independent team at any point during the Plan at the discretion of the Director of the Office of Telecommunications.

6. Targeted Remediation Plan

Verizon would submit a targeted remediation plan if the company fails to achieve a compliance rate that fails 95% compliance target in two of the first three months. The targeted remediation plan would be shared as part of the regularly scheduled monthly results meeting.

Staff asks that we consider suspension and/or revocation of all new FiOS installations in areas where Verizon has failed to achieve an acceptable level of compliance rate for three consecutive months. Staff further believes that incentive provisions, root cause analysis and external quality inspectors, should apply to both past installations and new installations. Staff also notes that Verizon's Plan fails to indicate what statistical model will be used to evaluate the rate of monthly failures and asserts that the Plan be modified to include such provisions.

Because performance below thresholds will require full inspection and remediation, we see no need to have these individual plans submitted for Commission approval. We are requiring a series of changes intended to strengthen Verizon's performance (e.g., full inspections, enforceable remediation milestones). These can be considered outputs to Verizon's performance. Targeted remediation plans will address how Verizon intends to correct shortfalls, and discussion at the staff level should be sufficient. Finally, if Verizon can identify a root cause factor (that is, a single technician whose inadequate work accounts for an entire market area failure) leading to a need to re-inspect and remediate an entire market area, and puts forth a focused plan judged appropriate by the Director of the Office of Telecommunications for addressing this root cause, it may not be

judged to have a market failure in that area at the discretion of the Director.⁷

Past Installations

Under the Plan, all "past" installations (i.e., installations as of August 1, 2008) would eventually be reviewed for compliance with safety requirements and if a "material deviation" is observed, the installation would be remediated within an average of sixty-days of its discovery. As mentioned above credits do not apply to inspection and remediation performance on past installations.

1. Timeframes

The AG believes the 60 days on average provided to remediate an installation is too long and that Verizon has not provided justification for why an average delay of up to 60 days between identification of faulty grounding/bonding conditions by the inspectors and remediation of these conditions should be permitted. The AG believes once identified, these should be remediated within 20 calendar days and that 80% should be remediated within 5 business days. For those with no grounds whatsoever, the AG recommends remediation should occur within 48 hours. Cablevision proposes remediation should be done within 5 days, and others agree sixty (60) days is far too long to allow Verizon to cause cable plant to be out of compliance. Staff recommends correction of non-conforming new ONT installations within 15 days of original ONQAT inspection. As with new installations, staff concludes that the 60 day average timeline

⁷ The standard for determining a suitable "root cause factor" is one which is isolated, can be readily tracked for re-inspection and remediation, and which upon remediation produces a passing grade relative to the thresholds.

for remediation of a deficient past inspection is too long. Staff recommends the Plan acknowledge a 30 day timeframe following inspection. Common Cause argues the 60 day term should be a limit, not an average. Verizon argues it needs a reasonable degree of flexibility to deal with peak loading problem and no access situations.

We share the concerns of the parties commenting on Verizon's plan that a sixty day time frame is too long, but we recognize that the remediation effort will be substantial and that flexibility will promote a more efficient and ultimately a better quality operation. We will, however, hold Verizon accountable to making progress on its remediation efforts by ordering clear remediation milestones that are subject to enforcement. Forty five per cent of FiOS installations are to be inspected and remediated⁸ by December 31, 2008 and all FiOS installations shall be inspected and remediated by May 31, 2009. Those milestones reasonably parallel the schedule provided by Verizon and we adopt them.

2. No Access situations

The Plan allows Verizon to subtract instances in which it is unable to obtain access from the remediation targets.⁹ The Plan indicates the company will make a reasonable effort to contact non-responding customers to gain access, but we believe the process needs to be more specific than that.

⁸ Defined as either remediated, or within the ten day (for no ground) or sixty-day time frame allotted for remediation, or subject to the customer notification procedures for no access discussed below.

⁹ July 15 2008 letter, p. 7.

This is a potentially large loophole that could easily weaken the remediation targets in the plan. Therefore, if Verizon is unable to obtain access, we will require that Verizon follow up with two separate telephone calls to consumers over a 10-day period, during both day and evening hours, to try to set an appointment for inspection of their FiOS facilities.

If these attempts to gain access to customer premises fail, the safety issue then becomes paramount for what we believe will be a relatively small group of Verizon customers. At this point, the company will be required to contact the remaining customers again, in writing by certified letter, advising that, because of the potential for safety issues to arise, unless access for the purpose of inspecting the FiOS facilities is granted, FiOS cable television service may be suspended. We urge Verizon to develop creative means of obtaining consent for access, but we also recognize that the inconvenience of possible suspension of cable television service should motivate prompt customer response, if necessary, to cure any possible safety issue within the premise. The company should work with our Office of Consumer Services to help insure its outreach to customers is optimal. All proposed notices and letters that Verizon proposes to send to its FiOS customers are to be provided to staff for its review and approval.¹⁰

3. The "material deviation" standard

¹⁰ Draft letters should be forwarded to the Directors of the Office of Telecommunications and Consumer Services at least five days before they are to be sent to the customer. Scripts to be used for the telephone calls should be similarly forwarded to the Directors.

Various parties express concern that the concept of a "material deviation" is vague. Because our staff will be reviewing Verizon's installations and will have its own view of what constitutes a material deviation the concern should not be overstated. In its compliance filing Verizon should refine the standard in consultation with staff. We expect Verizon to apply the standard liberally, especially in light of the fact that these are safety requirements, requiring that the company err on the side of protecting consumers.

Parties Participation in Plan Review

Under the Plan, Verizon would prepare monthly reports on compliance with its Grounding M&Ps and its remediation efforts identifying the number of installations inspected and the number of those that deviated in any material respect from standard. Each report would be accompanied by detailed back-up data listing specific locations and the nature of the deviation.

Some parties recommend that Verizon make available its monthly reports and detailed back-up data as part of the Plan.

Because the issue regarding whether the information contained in the detailed back-up data is subject to confidentiality under FOIL is unresolved, it would be premature to require Verizon to provide the detailed back-up data as requested. However, Verizon should continue to provide its aggregate reports to the parties and, in the event the Records Access Officer makes a determination that the detailed back-up data is not subject to FOIL, Verizon would then be required to provide that information as well.

Customer and Municipal Notification

Verizon's original Plan did not detail the manner of, or timeframes for, notifying its customers that additional inspection of its FiOS facilities would be required. However,

the issue was raised at the September 9 technical conference, and in response to the concerns raised at the conference, Verizon filed supplemental information on September 18, including proposed written notification to its customers.

Common Cause commented in some detail regarding consumer protections and in particular argued for clear communication with customers regarding the serious nature of the need for these safety inspections. It also recommended that the Commission detail a customer friendly methodology and suggested two hour appointment windows among other items that would allow for a reasonable accommodation of consumer schedules. Common Cause also commented that Verizon should provide detailed information regarding their field findings and remediation status reporting regarding customers within their municipalities.

The AG is concerned that communications of the importance of the safety aspect of this activity needs to be coordinated with a process that will be manageable for the customers. The AG also argues that scheduling minimize impact on consumers through appropriate after normal business hours appointments within predictable time windows and a three hour appointment window to minimize disruption of customer home and work schedules.

Extended outreach does not seem warranted at this point. All existing FiOS installations will be inspected and remediated in the next ten months and new installations will be subject to improved performance thresholds.

However, there is likely to be a certain percentage of customers who will not respond to Verizon's initial contact attempts. These are referred to by Verizon as "no access" situations and are discussed above.

Competitive Issues

Verizon's Plan as filed did not discuss issues related to the impact of its performance on its competitors.

In its comments on the Plan, Cablevision insists that Verizon provide cable operators with two days notice on a FiOS installation to allow incumbents to meet Verizon on site to ensure incumbent cable plant is left in a secure and compliant condition. Cablevision also notes that business-to-business channels have failed to rectify problems they perceive, including damage to Cablevision's plant.

The Communications Workers of America comment that Verizon's competitors are not meeting similar standards.

In its reply comments, Verizon argues that the underlying reason Cablevision wants two days notice is not so much so that it can oversee the cutover process, but more likely to get advance notice of customer transfers and use this information for retention marketing efforts. Verizon concludes that these business-to-business issues should be addressed through industry discussions rather than through the regulatory process. In its reply comments, Cablevision concludes it is much too late in the day for business-to-business discussions and that Cablevision's and staff's attempts at getting Verizon into leaving cable plant undistributed have proved unfruitful.

Two days advance notification of a Verizon FiOS installation would present an unfair opportunity for the cable operator to win-back its customer prior to Verizon's installation. This would be the analogous to a recent issue brought to the Federal Communications Commission ("FCC") where the cable companies alleged that Verizon used advanced information on number porting to win-back its telephone customers prior to the cable companies' installation. The FCC there agreed with the cable companies that the practice was unreasonable. Similar logic should prevail here. Further,

although this information is requested on all FiOS installations, it is hard to envision the cable companies dispatching a technician with every FiOS installation. In lieu of advance notification, it may be more reasonable to expect that the customer will contact the cable company to ensure billing ceases for a service no longer used, and that such contacts will be timely. This notice should be sufficient to allow the cable companies to secure their plant in a time frame commensurate with the FiOS installation.

Independent, Third Party Verification

Verizon proposes an "independent, third-party verification of the Plan for the entire period allowed for inspection of Past Installations under the revised schedule". The revised schedule reference provides that all Past Installations would be inspected by March 31, 2009. The scope of the review as proposed by Verizon would include four elements:

1) Accuracy of inspection of Verizon's inspection of New Installations and its remediation of Past Installations;

2) Accuracy of Verizon's reporting of the results of these inspections and of its remediation efforts;

3) Training of inspection personnel;
and

4) Maintenance of Verizon's database for inspection results.

Verizon agreed to pay for "all reasonable fees" for the cost of the review and proposed that the entity be selected by mutual agreement of staff and Verizon. Verizon also indicated the review would commence on September 2, 2008, and that the

results should be considered confidential by both Verizon and staff.

Comments on the Plan question the independence of the review if Verizon is involved in the selection. Further, while Verizon has set what it sees as the scope of the review, staff notes that the exact scope and oversight of the auditor should be under the direction of staff, not Verizon. Further, in addition to the aspects of the Plan proposed by Verizon, the AG recommends that the independent third-party verification team also be delegated with the responsibility to closely monitor Verizon's adherence to various remediation effort timelines proposed. Finally, staff notes the scope, procedures and reporting associated with the independent review need to be clarified.

In its reply comments, Verizon does not object to the selection of the auditor by staff, and raises no objection regarding staff's comments about staff controlling the fundamental aspects of the audit including the scope and oversight of the auditor.

We acknowledge Verizon's commitment to have an independent review of certain aspects of the management of FiOS installation and remediation efforts; however, we believe a decision on commencing an independent review should be deferred. Staff will be closely monitoring all aspects of the company's Plan and as the results of Verizon's efforts and staff oversight findings are developed we will be in a better position to respond to the need for such an independent review and, if warranted, be more informed on the required scope of such a review.

Grounding of Interior Installations

Verizon states that for interior installations¹¹ it will use one of the approved staff methods for grounding unless it would be impractical or unsafe to do so, in which case it will utilize - on an interim basis - the TII 442 grounding module with 10 gauge wire as presented by Verizon to staff on August 13, 2008.¹² It says that it will work with staff to secure confirmation from an appropriate forum or organization that use of the TII 442 is safe and appropriate for inside installations, that it will use the module as an option for all such installations if such confirmation is obtained and that if such confirmation is not obtained it will "expeditiously remediate the TII 442 installations to replace them with a grounding [method] approved by staff."¹³

We have not yet concluded our review of Verizon's inside grounding method. Our staff is still evaluating the issue, and we expect to revisit it when staff's work is complete. Accordingly, pending the completion of that review, we adopt Verizon's proposal for limited use of the TII 442 grounding module for inside installations.

CONCLUSION

The FiOS remediation Plan filed by Verizon has a number of provisions that, once successfully implemented, will

¹¹ Interior installations are defined as "installations in which any conductive elements attached to the ONT are located wholly inside the customers building." Verizon's August 15 letter to Secretary Brilling, p. 3.

¹² Id.

¹³ Id., p. 4.

appropriately address the grounding and bonding issues associated with the company's FiOS deployment. The Plan, as modified, will allow the company to continue to market and install FiOS, improve the safety of customer installations, better inform consumers, and remedy all non-conforming past installations. To strengthen the Plan, we will require that Verizon revise the Plan as discussed above. These modifications include:

1. All new installations are to be inspected in any month and region that fail to meet performance thresholds (95% compliance with safety regulations and 100% presence of a ground and bond).
2. For installations found to have no ground, the remediation period is shortened to 10 days.
3. Verizon is to file a revised sampling procedure for new installations.
4. We will require enforceable milestones for the remediation of past installations.
5. For no access situations more specific customer notification requirements are set forth.

By the Commission:

1. Verizon New York Inc. shall file with the Secretary to the Commission on or before November 21, 2008 a revised FiOS Remediation and Inspection Plan, modified in accordance with the discussion in the body of this Order, and shall serve the compliance filing on the active parties in this proceeding.

2. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

APPENDIX 1

Parties filing comments and a summary of comments

Initial Comments Filed By

New York State Office of the Attorney General (AG)
Verizon New York Inc. (Verizon)
City of New York, Department of Information Technology and
Telecommunications (DoITT)
New York State Department of Public Service (Staff)
Cablevision Systems Corporation (Cablevision)
Cable Television Association of New York (CTANY)
Fiber to the Home Council of North America (FTTH)
Communication Workers of America (CWA)
Common Cause/People's Production House (Common Cause)
Alcatel-Lucent (Alcatel)
Corning Incorporated (Corning)
New York Telephone Association (NYSTA)
New York Farm Bureau
Motorola, Inc. (Motorola)
City of Yonkers
Village of Lawrence
Tellabs
City of Rye
Mr. John Carey (Carey)
Consumers for Competitive Choice (C4CC)
United States Internet Industry Association (USIIA)
Town of Hempstead
The Town Of Huntington

Reply Comments Filed By

Verizon New York Inc. (Verizon)
New York City Department of Information Technology and
Telecommunications (DoITT)
New York State Department of Public Service (Staff)
Cablevision Systems Corporation (Cablevision)
Cable Television Association of New York (CTANY)

Mr. John Carey (Carey)

Communications Workers of America

SUMMARY OF COMMENTS

General

Verizon, the New York Telephone Association (NYSTA), the Communication Workers of America (CWA) and the New York State Farm Bureau recommend the Commission approve the Plan as submitted. In addition three vendors (Corning, Motorola and Tellabs) also urge the Commission to approve the Plan. A number of parties recommend that the Plan be amended to address various shortcomings they perceive, or to further clarify various aspects of the Plan.

Inspection/Remediation of Past Installations

Verizon's Plan provides for inspections of all past (prior to August 1, 2008) FiOS installations, and remediation of material" deviations¹ no later than 60 days on average. Verizon's rationale for the timeframe is that it needs a reasonable degree of flexibility to deal with peak loading problem and no access situations. The company targets a completion date of March 31, 2009 for their review of past inspections and where required, will notify customers of the need to gain access. The notification proposed by the company

¹ Staff and CTANY state that the Plan needs additional definition regarding what constitutes an installation that deviates "in any material respect from the grounding M&Ps" (Staff) and what constitutes "nonconformity" particularly when cable plant is involved (CTANY).

is not explicit with respect to the reason for the inspection/remediation.

A number of parties argue that the 60 day average remediation schedule is too long. Common Cause requests that the 60 day timeframe be a limit (within 60 days) as opposed to an average. Staff recommends remediation of past installations within 30 days. The AG believes once identified, these should be remediated within 20 calendar days and that 80% should be remediated within 5 business days. Further the AG recommends that where inspections that find there are no grounds whatsoever, the remediation should occur within 48 hours. Cablevision proposes five days.

Inspection/Remediation of New FiOS Installations

Unlike past inspections, Verizon's Plan does not require a 100% inspection of new (post August 1, 2008) installations, noting that 100% should not be the inspection strategy and that, for example, Cablevision does not even hold itself to that standard. Under the Plan, Verizon will select a statistically valid sample of new installations across 16 areas of the State. These installations will be inspected by an Optical Network Quality Assurance Team (ONQAT), and there will be monthly reporting to the Commission on the results of the inspections and the remediation. Remediations are subject to the same 60 day timeframe as with past installations. Verizon has also set goals for itself and performance thresholds. The failure to achieve performance thresholds will result in additional actions, including, but not limited to, customer rebates.

Inspect 100% of New Installations

Cablevision ²and John Carey recommend that, similar to the approach taken for past inspections, that all new installations be inspected. The Attorney General agrees with this approach, but would allow Verizon to move to a sample of new installations once they demonstrate compliance in each of the relevant areas for two consecutive months.

Remediation Timeframes

Staff and New York City believe the Plan should include a provision to require the immediate, same day, remediation of a new installation when inspections shows that the ONT is not grounded at all, followed by a repeat inspection within one week.

Suspending New FiOS Installations

NYC and Verizon strongly disagree with Staff's recommendation that FiOS installations in the City should be singled out for suspension until Verizon meets the 95% compliance. According to Verizon, Staff proposal (which Verizon terms "extraordinarily irresponsible from the public policy perspective") would deprive millions of NYC residents of the benefits of cable competition.

No Access and Appointment Windows

A number of parties also raised concern with the ability of consumers to schedule weekend and evening appointments. The AG suggests that the Plan be amended to offer

² Cablevision also argues that such inspections should be done by independent examination, not by Verizon retirees or consultants under Verizon's management.

weekend and evening appointments, while Common Cause believes Verizon should offer two hour appointment windows. In its reply comments Verizon notes that it will offer appointment in the early evening hours and Saturdays. However, Verizon argues that the need for narrow windows has not been demonstrated, and the issue should be deferred until Verizon has more experience implementing the Plan.

Customer/Municipal Notifications and Reporting Requirements

Customer Notifications

Verizon's initial Plan did not provide detailed information with respect to how customers would be notified and the process by which the company would coordinate gaining access. During the technical conference and in response to the technical conference, Verizon provided additional information (and draft scripts) regarding customer communications associated with FiOS inspections and remediation efforts. Verizon does not plan on notifying all FiOS customers, only those where they (Verizon) would need access to perform the inspection and/or remediation. Parties raised a number of concerns regarding customer and municipal notifications

Staff concludes that the Plan fails to delineate efforts VERIZON will take to ensure subsequent inspection when access is not obtained or how customers will be notified when inspectors and technicians are unable to obtain access. Verizon should immediately contact/notify those customers to facilitate entry and correct deficiencies.

The Attorney General argues that faulty grounding/bonding issues were not revealed to the general public until July 2008, even though Verizon was aware of these. The NRP does not require Verizon to notify all FIOS customers of the grounding issues. Verizon's draft notices fail to mention the

potential safety risks. The NRP should specify the form and content of the notice and before Verizon gives up on attempts to obtain access it should advise customers of the potential safety risks at issue. Common Cause believes notifications must be much more explicit in the communications with customers as to the reason for the inspection and should clearly state there is a potential risk of electrical shock if not grounded properly. Common Cause also recommends that Verizon or the Commission should immediately notify all municipalities and local franchising authorities where Verizon FiOS service is available of the matters of non-compliance. Common Cause proposes that all FiOS customers be notified using the standards of the National Highway Traffic Safety Administration as a model. Verizon responds that Common Cause's recommendation for Verizon to notify all FiOS customers is not justified and its comparison to the National Highway Traffic Safety Administration vehicle recalls is ridiculous.

Reporting Requirements

The Plan includes a number of provisions centering on reporting requirements. The City of Rye, CTANY, the Village of Lawrence and Common Cause believes the monthly reports submitted by Verizon should be shared with the public (and municipalities). Common Cause suggests that the Commission order Verizon to disclose details of the Network Plan and company's pattern of noncompliance with the NEC to all potential franchisors upon commencement of active negotiation for a franchise. Verizon responds that to the extent municipalities are seeking the detailed back up data under paragraphs 5 and 15 of the Plan, dissemination of that information to municipally would unfairly cause competitive harm to Verizon.

Business to Business Issues

Cablevision insists that Verizon provide cable operators with two days notice on a FiOS installation to allow

incumbents to meet Verizon on site to ensure incumbent cable plant is left in a secure and compliant condition. Cablevision also notes that business-to-business channels have failed to rectify problems they perceive including damage to Cablevision's plant. In reply, Verizon argues that the underlying reason Cablevision wants two days notice is not so much so that it can oversee the cutover process, but more likely to get advance notice of customer transfers and use this information for retention marketing efforts. Verizon concludes that these business to business issues should be addressed through industry discussions rather than allowing the regulatory process. In its reply comments, Cablevision concludes it is much too late in the day for that [business-to-business discussions] and that Cablevision's and Staff's attempts to cajole Verizon into leaving cable plant undistributed have proved unfruitful.

Independent, Third Party Verification

In its August Supplement, Verizon proposes that the Plan be subject to an independent, third-party review and sets for the scope of that review. Both Staff and the AG argue that Verizon should not be involved in the selection of the independent third-party reviewer. Staff goes on to clarify that Staff should control the fundamental aspects of that audit, including the scope, selection and oversight of the auditor. In its reply comments, Verizon indicates that it does not object to the unilateral selection of the auditor by Staff.