

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

In the Matter of the Petition of Time Warner Cable Information Services (New York), LLC for Waivers of Certain Commission Regulations Pertaining to Partial Payments, Directory Distribution, Timing for Suspension or Termination of Service, and a Partial Waiver of Service Quality Reporting Requirements.

Case 13-C-0193

**COMMENTS OF
PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC.**

Time Warner Cable Information Services (New York), LLC (“Time Warner”) petitioned the Public Service Commission (“Commission”) on May 1, 2013 for waiver of regulations governing days and hours when termination of telephone service for nonpayment is allowed, allocation of undesignated partial payments from telephone customers to defray charges for various discrete Time Warner services, telephone service quality reporting requirements, and telephone directory distribution.¹ Specifically, Time Warner seeks a Commission order,

- waiving the Commission's regulation limiting the days and hours when service to residential customers can be terminated or suspended for nonpayment of bills, 16 NYCRR § 609(4)(d), and enlarging those days and times to include Friday afternoons, evenings until 9:00 PM, and Saturdays from 8:00 AM to 5:00 PM;
- waiving Commission regulation 16 NYCRR § 606.5 governing the allocation and prioritization of payments when customers pay part of a bill rendered for multiple services, eliminating the priority for local telephone service, and allowing charges for broadband service and television to be combined in the same category;
- waiving requirements of Commission regulations 16 NYCRR §§ 603.3 and 603.4 regarding certain residential Service Quality Improvement Plan standards and reporting

¹ The Time Warner Petition is available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={2FA239A6-0762-47BB-A91E-861B1DC3C028}>.

requirements, limiting their scope to apply only to a subset of “core” residential customers; and

- waiving Commission regulation 16 NYCRR 602.10(b) requiring distribution of directories to customers, and allowing them to be provided on an as requested basis.

In accordance with State Administrative Procedure Act (“SAPA”) §202(1), the Commission issued a SAPA Notice of Proposed Rulemaking inviting public comment.² The Public Utility Law Project of New York (“PULP”)³ submits these comments in response to the Commission’s Notice.

PULP welcomes the opportunity to submit these comments because the proposed rules affect the availability and quality of telephone service to low and fixed income New Yorkers, many of whom lack savings and live mainly on fixed incomes from check to check, often running out of funds before the end of the month. Many have difficulty affording bills for everyday needs such as food, shelter, health care, medication and utility services.⁴ Many households have members who lost employment during the Great Recession, placing heavy burdens on families struggling to cope with austerity and find new jobs. When they fall behind in making payments to Time Warner they are at risk of telephone service interruption for bill collection purposes. In this context, Time Warner’s recent qualification as an Eligible

² Notice of Proposed Rulemaking, N.Y. State Register, June 19, 2013.

³ PULP is a non profit organization whose mission includes advocacy on behalf of low-income New York utility consumers for universal, affordable telecommunications services and customer protections.

⁴ Service to approximately 300,000 New York electric or natural gas customers and their households is shut off annually as a bill collection measure. See AARP, *The Quiet Blackout: New York’s Utility Termination Storm*, 2011, available at <http://bit.ly/14jXqdR>.

Telecommunications Carrier⁵ and consequent provision of reduced price Lifeline rates for low-income customers is a very positive development. According to Time Warner, it “currently provides IP voice services to more than one million customers in New York.”⁶ Until recently, Time Warner did not provide Lifeline service to its low-income customers. Providing reduced cost Lifeline and Linkup service to all eligible Time Warner customers may ease access to Time Warner telephone service and make it more affordable for many households that would otherwise go without it, or who suffer hardship to pay full charges for telephone service, or who risk loss of service through termination or interruption of service due to charges they cannot afford.

For the reasons that follow, the Petition should be denied, except for the request for waiver of directory issuance rules, which, if granted, should include conditions to assure that all customers will know of their right to have a directory upon request. The Commission should continue the proceeding to examine more closely the proposed revision of the part payment allocation categories and to ascertain Time Warner’s compliance with other shutoff rules, and should require better information and means for customers to designate partial payments to defray charges for specific services in order to protect those valued most. Also, the proceeding should be continued regarding the service quality performance metrics, pending investigation of the impact of Time Warner’s proposed redefinition of the “core” customers considered for certain service quality purposes.

⁵ Case 12-C-0510, Petition of Time Warner Cable Information Services (New York), LLC for Modification of Its Existing Eligible Telecommunications Carrier Designation, *Order Approving Designation as a Lifeline-only Eligible Telecommunications Carrier* (Issued March 18, 2013). Available at <http://bit.ly/15rXCET>.

⁶ Time Warner Petition at 4.

PULP issued information requests to Time Warner on July 24, 2014, responses to which are pending. PULP requests an opportunity to supplement these comments with information received in discovery and to respond to other comments.

COMMENTS

1. Time Warner’s Request for Waiver of the Prohibition Against Late Evening, Friday Afternoon and Saturday Shutoffs of Telephone Service for Collection Purposes Should be Denied.

In the Home Energy Fair Practices Act (“HEFPA”), the legislature prohibited gas and electric service shutoffs on Fridays, Saturdays and Sundays, holidays or the day before holidays, and allowed them only between the hours of 8:00 AM and 4:00 PM on Mondays through Thursdays.⁷ The reach of the law was subsequently extended to water companies in PSL § 50. By restricting the days and hours of termination, HEFPA promotes the goal of continuous service by giving consumers a better chance to preserve service by obtaining assistance from the Commission complaint adjudication and Hotline services, and to take action needed to have service that was shut off restored before the weekend. Following the statutory reforms of HEFPA, which reformed prior Commission rules, the Commission by regulation adopted the Telephone Fair Practices regulations, known as “TEFPA” due to their resemblance to HEFPA. Originally, the Commission’s TEFPA rules mirrored the statutory HEFPA limits on permissible days and hours for shutoffs. But in the absence of a statute giving telephone customers rights parallel to HEFPA, the Commission, in a 1997 three-Commissioner Order, relaxed its rule

⁷ “The commission shall preclude terminations for nonpayment other than between the hours of eight a.m. and four p.m., Monday through Thursday, provided that such day or the following day is not a public holiday as defined in the general construction law.” PSL § 32.4. One of the purposes of HEFPA is to advance the goal of continuous utility service because of its importance to the public health and welfare. PSL § 30.

governing the days and hours for shutoffs to accommodate the interests of telephone companies, who sought to expand the days and hours for shutoffs.⁸ Time Warner now seeks further relaxation of the current TEFPA regulation, which now provides,

16 NYCRR § 609.4(d) Suspension or termination of service--time. A telephone corporation complying with the conditions set forth in this section [e.g., timely prior notice] may suspend or terminate service to a residential customer for nonpayment of bills only between the hours of 8 a.m. and 7:30 p.m., Monday through Thursday, and between 8:00 a.m. and 3:00 p.m. on Friday, provided such day or the following day is not: (1) a public holiday, as defined in the General Construction Law; (2) a day on which the main business office of the telephone corporation is closed for business; or (3) during the periods of December 23rd through December 26th and December 30th through January 2nd.

Time Warner seeks to extend the hours permitted for service termination to include Monday to Friday 8:00 AM to 9:00 PM and Saturdays 8:00 AM to 5:00 PM. Time Warner claims that shutting service off later in the evening (from 7:30 PM to 9:00 PM, on Friday afternoon and evening (from 3:00 PM to 9:00 PM), and on Saturdays would be “[f]or its customers’ convenience.”⁹ Time Warner submits no survey data showing people actually prefer losing their phone service after 7:30 at night, or on Friday afternoons and evenings, or on Saturdays.

Time Warner also says that some customers may prefer late hours or weekends for disconnection, that they can make more field collections during expanded hours, and that the

⁸ Case 96-C-1114 - in the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR -- Proposed Amendments to Chapter VI, A, Service, Part 600, Subscriber Deposits; Subchapter C, Rates and Charges, Part 631, Discontinuance of Service and Complaint Procedures and Part 633, Rules Governing Provision of Telephone Service to Residential Customers, *Memorandum and Resolution Adopting Amendments to 16 NYCRR Part 600, 631 and 633* (Issued November 25, 1997).

⁹ Time Warner Petition at 9.

Commission's cable TV rules generally allow service interruption for collection purposes, but never on Sunday.¹⁰

Time Warner says that most of its telephone customers receive bundled services in addition to telephone, such as cable TV and broadband, and that "Company personnel must access the customer's premises for a physical disconnect of these services."¹¹ Time Warner does not divulge whether it has the capability of discontinuing telephone service remotely for collection purposes without removing any on-premises equipment. Time Warner provides no data on the number of customers who are reconnected after payment arrangements are made, or whether premises visits are necessary to restore service that has been interrupted for collection reasons.

If the service can be shut off remotely without physical entry, customers who are not at home during the normal hours for shutoff could be shut off anyway. If the shutoff is not temporary the customer could remove the modem or other device and place it in a shipping box left for pickup or return it to a Time Warner office to receive appropriate credit for the return. Time Warner does not propose, nor could it accomplish, an expansion of the Commission's hours, when customers aggrieved by a proposed shutoff or with a medical emergency or needing help in negotiating a payment plan can seek relief from the Office of Consumer Services in avoiding termination.

Time Warner's focus on making hours of termination congruent with hours when its offices are open or when payments can be received is not the sole purpose of the TEFPA day and

¹⁰ 16 NYCRR § 890.66(d).

¹¹ *Id.* at 10.

hour shutoff limitations. The hours are intended to be congruent with the hours when a customer may file billing complaints or receive Hotline service from the Commission, and were originally designed to avoid shutoffs when there is no recourse for customers to seek PSC assistance. A major consequence of Time Warner's proposal is that there will be an additional 20.5 hours every week when customers can be shut off without any possible recourse to the Commission Hotline services. The Commission advises customers of the times when its services are available,

Residential telephone customers have the benefit of comprehensive protections under Public Service Commission rules carrying out the Public Service Law. The information below can be found at 16 NYCRR Part 609.

You may contact our toll-free HELPLINE - 1-800-342-3377, Monday through Friday from 8:30 am to 4:00 pm if you have a telephone service or billing problem that you cannot resolve with your telephone company.¹²

A person shut off Friday before 3 PM, under the existing rule, might avoid a weekend without service by obtaining assistance through the PSC Hotline. Under Time Warner's proposal, however, that would not be possible.

Time Warner asserts that the proposed shutoff times are "consistent with" the hours when its business offices are open to receive payments:

These times are consistent with TWCIS(NY)'s local front counter operation hours. Customers have the opportunity to walk into the local TWCIS(NY) office and make a payment during these extended hours.

Time Warner appears to have overlooked that all its local front counter operations are not open during all the proposed extended hours for termination of telephone service. According to a

¹² PSC website, Telephone Rules, available at <http://www3.dps.ny.gov/W/PSCWeb.nsf/All/370AF01734DA199985257687006F3AA3?OpenDocument>.

recent Time Warner bill for June 2013, its Troy, NY office Front Counter Hours are 8:30 - 5:00 PM Monday, Tuesday, Thursday, and Friday, and 8:30 AM - 7:00 PM on Wednesday, and Saturday from 10:00 AM to 2:00 PM. These times are not “consistent with” its proposals for evening shutoffs in prime time, when their Troy office is actually closed. Also, the availability of Time Warner telephone lines customers can call to make credit card payments may not help those whose service has already been discontinued, or who lack credit cards.

Time Warner’s petition raises an important policy issue. Making it *easier* for customers to lose service and more convenient for telephone companies to shut off service, and adopting deregulatory “streamlining” of rules in ways that reduce customer protection should not be the priority objectives of the Commission. Under the Commission’s watch, telephone penetration in New York’s households has slipped, to 93.6%, and the penetration rate for lower income households is even worse. ***New York State now ranks 46th - fourth from the bottom among the 50 states - in the percentage of households with phone service.*** See *Universal Service Monitoring Report, Household Penetration by State and Income, 2012*.¹³

Low-income customers are likely to be most affected by the rules governing shutoffs or interruption of telephone service for bill collection purposes. Many of Time Warner’s residential customers eligible for Lifeline service rate reductions may not be enrolled in the program, and so they are at greater risk of hardship and service termination. The Commission should reject the petition for any further “streamlining” of the shutoff process that in the end will leave even more customers without telephone service. The Commission’s priorities for Time Warner as it comes

¹³ Federal-State Joint Board on Universal Service, CCDOCKET NO. 98-202, Table 3.8, Issued March 2013 (Data Received Through October 2012), *available at* <http://transition.fcc.gov/wcb/iatd/monitor.html>. Table 3.8 is attached to these comments.

into the regulatory regime should be focused on ways to achieve continuous, affordable and reliable telephone service for all New York households. The Commission needs to place more emphasis on these universal service goals.

2. The Commission Should Deny Time Warner's Request to Waive the Allocation Rule for Undesignated Partial Payments and Investigate Whether Time Warner Shuts Off Telephone Service for Nonpayment of Other Charges for Broadband or Cable TV Service, in Violation of 16 NYCRR § 606.4

Time Warner seeks a waiver of requirements of the Commission rule governing allocation of undesignated partial customer payments, which provides as follows:

16 NYCRR Part 606.5 Partial payments

Upon receipt of a partial payment from a telephone service customer, *the telephone corporation shall apply the payment as directed by the customer*. If the customer does not include directions on how to apply the partial payment to the bill, and there is no billing dispute pending on the account, telephone corporations will apply such a payment in the following order:

- (a) The full amount of the partial payment will be applied to basic local exchange services which, for the purpose of these rules, include tone signaling and nonpublished listings, and exclude charges for other features and long distance calls.
- (b) Upon satisfaction of the charges identified in subdivision (a) of this section, any residual or subsequent payment received during the same billing period will be applied to the charges for interLATA long distance services billed by the local exchange telephone corporation.
- (c) Upon satisfaction of the charges in subdivision (b) of this section, the residual or any subsequent payments received during the same billing period will be applied to the charges for other regulated services provided by the local exchange telephone corporation.
- (d) In the event a customer has a billing dispute pending regarding any of the foregoing charges, the amount in dispute will be deducted from the amount owing prior to the application of any payment.

(*Emphasis added*). Time Warner correctly states one of the sound principles underlying this rule:

“The objective of the partial payment requirements is the continuation of basic local service to customers and assurance that disconnection of basic local service does not occur due to nonpayment of charges for other services that are considered to be less vital to residential customers.”¹⁴ In practice, however, Time Warner notifies customers who receive telephone, broadband, and cable TV services that if they do not pay in full for the broadband and TV service, they may lose their phone service:

Nonpayment of any portion of your cable television, high-speed data, and/or Digital Phone service could result in disconnection of your telephone service.

The above statement is contained on Time Warner’s June 2013 bill to a customer, a copy of which is attached to these comments. The threatened or actual shutoff of telephone service for nonpayment of charges for television or broadband or other service, as described in Time Warner’s bill, is in violation of the Commission’s Rules, which say

16 NYCRR § 606.4 Service disconnections

(a) *Where a telephone corporation disconnects services for nonpayment of charges, basic local telephone service may be disconnected only for nonpayment of basic local telephone service charges.* Nonpayment of charges for other services (including long distance services provided by local exchange telephone corporations, interexchange telephone corporations, and resellers, and nonregulated services offered by information providers) will not be cause for disconnection of local exchange service if charges for local exchange services have been paid but may result in denial or blocking of the service from the individual provider for which payment has not been received where such blocking is technically feasible, or denial or blocking of the class of services from all providers where the selective blocking is not technically feasible. The technical capability to block service from an individual provider shall be attained as soon as practicable.

(b) When nonpayment of charges for basic local telephone service would result in

¹⁴ Time Warner Petition at 5.

the disconnection of the service, the local exchange corporation shall adhere to the procedures specified in Part 609 of this Title.

(c) When nonpayment of charges for regulated nonbasic or optional features or long distance calls warrants the denial or blocking of such services, the local exchange telephone corporation may implement such denial or blocking of the services and shall adhere to the procedures specified in Part 609 of this Title.

(d) The denial or blocking of regulated nonbasic or optional long distance and information features and services may not have the effect of restricting a customer's ability to access emergency services by dialing 911 or operator.

(e) Every telephone corporation shall develop a plan detailing how a customer's undesigned partial payments will be assigned among the services billed and how nonpayment of other charges on bills will affect the customer's services. A customer's monthly statement will list, separately, the charges for each service and show any balance due for the service. Further, each telephone corporation shall develop outreach and education programs to advise customers of the assignment plan and the protections against disconnection of services. The assignment plan, revised bill format and outreach and education program shall be submitted to the commission for approval. The outreach and education program shall be approved so long as it reasonably conveys to telephone customers the new information set out in this rule through bill inserts, presentations, advertisements, or other information programs.

(Emphasis added). Before entertaining the waiver petition regarding allocation of undesigned partial payments, the Commission should investigate, audit and review Time Warner's rules and practices regarding the shutoff of telephone service for nonpayment of charges for its other services, e.g., broadband and cable TV. While there is a separate listing of charges for each service on the sample Time Warner bill attached to these comments,¹⁵ the tear-off payment form gives no opportunity for the customer to designate the allocation of a partial payment to particular charges for particular services. Also there is no customer information required by the regulation regarding protections from disconnection of services or the ability to designate

¹⁵ Companies must list separately on a customer's monthly statement the charges for each service and show any balance due for the service (16 NYCRR §606.4(e)).

services to be covered by a partial payment when the customer cannot afford to make full payment.

The heart of the partial payment rule is, or should be, to promote customer sovereignty in designating what he or she intends to pay for if making a payment of less than the total demanded. When a customer has arrears and makes a partial payment, the rule provides that the customer may designate the service he or she wants to pay for. Then the service most important to the customer can be retained by paying for it. Yet, there is no information on the attached sample bill telling the customer of the right to designate partial payments for particular services and no simple way for the customer to effectuate that by, for example, checking the service to which a partial payment is to be allocated on the form submitted with payments. As a consequence, even if a customer sends in part payments intended for telephone service, they may be allocated instead to charges for non telephone service.¹⁶

The rule establishing multiple “buckets” for allocation of undesignated partial payments was adopted to prevent customers from losing phone service at a time when telephone companies were billing for many different charges, some regulated and some not, when incumbent Bell companies (e.g., Verizon) were limited in their offering of long distance services, when many competitive companies were vying to provide long distance and other services, and when VoIP telephone service from cable TV providers was unregulated. In the intervening years since the rule was adopted there have been many changes, including litigation resulting in a settlement

¹⁶ The Commission’s Order in the Verizon waiver case (Case 10-C-0609) is confusing, and seems to allow application of some partial payments intended for local telephone service only to be allocated instead to unpaid charges for other services.

agreement to modify the requirements,¹⁷ changes in industry structure, and changes in customer preferences. For example, the former Bell companies are now allowed to be providers of long distance service, and many customers have migrated to service packages or “bundles” that price a combination of local and long distance telephone service together with broadband (the “double play”) or telephone, broadband, and TV (the “triple play”). The number of Time Warner customers who receive identifiable “basic local service” as defined in Commission regulations is not known.

Time Warner points to relaxation of the rule for allocation of undesignated partial payments in the little noticed Verizon case allowing two billing categories,¹⁸ where there was no participation by any advocate for residential consumers, there were no parties other than telephone companies, and no public comments were received. Time Warner seeks similar permission, and waiver of the time limit the Commission established for other companies to seek similar relief.

Time Warner seeks a waiver to collapse the multiple payment categories required by the current rule into two:

TWCIS(NY) proposes that the first bucket consist of charges related to telephone

¹⁷ Case 90-C-1148, *In the Matter of the Rules and Regulations of the Public Service Commission Contained in 16, NYCRR, Chapter VI, Telephone and Telegraph Corporations - Amendments to Subchapter A, Service, by the Addition of a New Part 606 - Billing and Collection Services*, Order Approving Settlement Agreement, and Order Approving Modification of Settlement Agreement (issued and effective Aug. 7, 1992 and Dec. 30, 1993).

¹⁸ Case 10-C-0609, Petition of Verizon New York Inc. for Waiver of NYCRR, Title 16, Sections 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, May 19, 2011. The Commission dispensed with notification of parties to the Settlement Agreement regarding billing and collection procedures and buckets.

services and the second bucket consist of charges related to all other services.¹⁹

The Commission should not approve this request because it may frustrate the Commission's objectives to prevent the shutoff of regulated local services due to nonpayment of charges for other services. The proposed waiver, if granted, would frustrate the Commission policy favoring consumer choices in allocation of partial payments among the various regulated and unregulated services. In the common situation of a "triple play" customer who subscribes to telephone, broadband and cable TV services from Time Warner, a part payment would go first to telephone but the remainder would go to combined charges for cable and broadband. As a consequence, the second "bucket" would include charges for both regulated cable TV service²⁰ and unregulated broadband service, and the customer would lose both of them if the bill were not paid in full. The citation to the Verizon "two bucket" Order is inapt, because the Time Warner situation is different from the typical Verizon customer situation, who does not receive regulated cable TV service from Verizon. Accordingly, there should be a separation of the buckets for unregulated broadband and regulated cable TV. Also, in addition to effective information provided to customers in arrears of the opportunity to designate part payments according to the customer's choice, and notice that services not paid for will selectively be blocked, the payment forms should be redesigned to provide a clear opportunity for the customer to designate the partial payment to defray charges for a specific service.

¹⁹ Time Warner Petition at 7.

²⁰ The Commission's Cable TV regulations are at 16 NYCRR § 890, *et seq.*

3. Time Warner’s Petition for Waiver of the Service Quality Standards for Repair Timeliness and for Redefining “Core” Customers Should be Denied.

Time Warner seeks a waiver of the Commission Service Quality Regulations, 16 NYCRR § 603, citing the Commission’s controversial grant of a waiver to Verizon, which limited service quality obligations so that there are no monetary consequences for substandard timeliness of repair performance except as to “core” customers.²¹ Time Warner would define its “core” customers as “(1) customers subscribing to Lifeline service, and (2) customers who are characterized as having special needs (e.g., those with medical conditions and elderly, blind or disabled customers).”²² This definition is narrower than the Commission’s definition of “core” customers adopted in the Verizon decision, which in addition to Lifeline and special needs customers, includes customers who lack adequate access to competitive alternatives. Time Warner disingenuously reasons that it is a competitive alternative to Verizon and so there is no need for it.

PULP opposes the limitation of service quality standards for timeliness of repair to “core” customers only, and believe the Commission is misguided in relaxing service standards when there is no assurance that real competition exists or is an adequate substitute for minimum standards relating to reliable customer service which should be satisfied by every provider. Even if competition is believed to be an adequate substitute for enforcing basic minimum customer service standards for all residential customers, competition does not exist because in many places

²¹ Case 10-C-0202, Proceeding on Motion of the Commission to Consider the Adequacy of Verizon New York Inc.’s Service Quality Improvement Plan. *Order Resolving Petition And Requiring Further Investigation* (Issued January 18, 2013) (limiting applicability of standards to “core” customers).

²² Time Warner Petition at 11.

of the state there is a landline duopoly at best. If Verizon is allowed to abandon its landline service in some areas, cable companies like Time Warner may be virtual monopolistic providers of wired service that can accommodate fax transmission or broadband service. To illustrate, there is no basis to assume Time Warner customers will have competitive landline service alternatives on Fire Island if Verizon is allowed to exit the market there and substitute an inferior wireless service.²³ Finally, the importance of continuous telephone service and timely repairs is a matter of public interest, health and safety, not one that can be left to the hope that customers would find more reliable new providers if there is a lapse by their current provider. Great loss and harm can occur when phone service is out which cannot be remedied by changing providers later on.

Time Warner's petition is also lacking in the information necessary to evaluate it. For example, in considering Verizon's situation when it relaxed service quality rules, the Commission took into account detailed information about Verizon's "core" customers that is lacking in Time Warner's petition, stating,

As of December 31, 2012, Verizon served approximately 298,346 core customers, or about 7.7% of Verizon's 3,877,247 total customers. The SQIP defines core customers as Lifeline customers; special needs customers, that is, elderly, blind, or the disabled; and business and residential customers living in areas lacking competitive wireline alternatives to Verizon service. Approximately 129,830 core customers are located in New York City, 15,824 in Long Island, and 15,653 in Midstate. The average percentage of core customers in Verizon's service territory has ranged between 7.7% and 8%, since the initiation of its SQIP in March 2011. Essentially, core customers are dropping off Verizon's system at the same rate as its other customers, so that the ratio of core to non-core customers remains stable

²³ See Case 13-C-0197, Tariff filing by Verizon New York Inc. to introduce language under which Verizon could discontinue its current wireline service offerings in a specified area and instead offer a wireless service as its sole service offering in the area, *Order Conditionally Approving Tariff Amendments in Part, Revising in Part, and Directing Further Comments* (Issued May 16, 2013).

over time.

There is no comparable data regarding Time Warner's "core" customers, their number, their distribution throughout the service areas, and their relative percentage in relation to all customers.

Time Warner should disclose the number of "core" customers it would have whose repair service timeliness would be measured, as it may not be a representative sample of all customers, or, for that matter, it may be only a very small portion of those intended to be protected, or geographically limited. The primary known component of the proposed "core" customer segments would be Lifeline customers, because they are known to the company.²⁴ Time Warner has only recently begun offering Lifeline service, while, in contrast, Verizon has had a significant number of Lifeline customers for decades. Many of Time Warner's more than one million customers who would be "core" customers because they are eligible for Lifeline are probably not actually receiving Lifeline benefits so they would not be identified as core customers and repair service to them would not be measured under the proposed limitation of service quality performance measures. Time Warner should also be required to come forward with a plan to enroll all its low income customers in the Lifeline program, using "automatic" enrollment mechanisms in addition to individual signups, in order to give them not only the intended benefits of the Lifeline program but also all the protection intended by the Commission for "core" customers.

²⁴ There may be many more elderly, blind and disabled Time Warner customers than Lifeline customers, and there may be some overlap, but there appears to be no ready way for Time Warner to know who is elderly, blind or disabled, and Time Warner does not propose to gather that information in connection with the service quality performance standard.

4. Time Warner’s Petition for Waiver of Directory Distribution Requirement and Provision of Directories By Request Only Should be Granted in Part with Respect to Customers who Have Broadband

Telephone directories increase the value of the telephone network by making it easier for customers to find and connect with others. Time Warner seeks a waiver of the Commission regulation requiring telephone companies to distribute directories to their customers,²⁵ and instead proposes to offer paper or CD-ROM format directories on an as-requested basis. Time Warner states, as reason for eliminating the requirement,

Technological advances, such as widespread availability and use of internet directories, as well as the personal directories contained in virtually all wireless and wireline handheld devices have made customers much less reliant on, or interested in receiving, printed white page directories. Moreover, statistics indicate that households using residential white page directories declined from 25% in 2005 to 11% in 2008.

Time Warner also relies on Commission precedents approving similar waivers for Verizon and Frontier.²⁶ In the the Verizon waiver order the Commission stated “our approval is conditioned upon Verizon providing notification that reaches all customers,”²⁷ and the Commission established specific conditions requiring outreach and information. Subsequently, Frontier

²⁵ The regulation provides, “Each service provider shall distribute at no charge to its customers within a local exchange area, a copy of the local exchange directory for that area, and one additional copy shall be provided for each working telephone number upon request. A copy shall be filed with the Commission. 16 NYCRR § 602.10(b).

²⁶ Case 10-C-0215, Petition of Verizon New York Inc. for Waiver of NYCRR, Title 16, Section 602.10(b) Pertaining to the Distribution of Telephone Directories, *Order Granting Waiver with Conditions* (Issued October 15, 2010) and Case 12-C-0060, Petition of Frontier Communications Local Exchange Carriers for Waiver of the Requirements of 16 NYCRR Section 602.10(b) Regarding the Distribution of Telephone Directories, *Order Granting Waiver* (Issued May 17, 2012).

²⁷ *Id.*, *Order Granting Waiver With Conditions* at 12.

petitioned for similar relief, promising action similar to that required of Verizon, to put a directory on the Frontier website, and to engage in other outreach activities so that its customers would know how to obtain a current directory. In approving Frontier's request, the Commission required Frontier to continue to file directories with the Commission and imposed conditions, stating,

The Commission's approval should be conditioned upon certain notice and reporting requirements. Staff recommends that the Frontier Companies adhere to the notification procedures described in its petition and work with the Department's Office of Consumer Policy to ensure that the notifications are prominent and clear to all customers.

In contrast to Frontier's petition which spelled out steps that would be taken, Time Warner's petition only states that "customers' listing information will generally be available in online directories, thereby, eliminating the need for paper directories for the vast majority of directory users,"²⁸ and does not specify what it will do to provide information to customers regarding availability of directories, for example, bill messages.

The Commission should require Time Warner to continue to file directories, to put a free directory or directories of its customers on its website, and provide information in ways calculated to reach customers who are not internet users. The statistics above relied upon by Frontier, regarding the percentage of households using directories, refer to national polling data and are not New York specific. There is no indication of the demographic characteristics of those New Yorkers who use directories to look up numbers in their telephone books. Time Warner's assertion that internet directories and customer programmed contact lists in telephones have displaced reliance on printed directories also suggests that customers who still use

²⁸ Time Warner Petition at 9.

directories may be more likely to be those who do not use or have ready access to the internet or who do not have “smart” phones, or who do not program their “wireless and wireline handheld devices” with their contacts’ numbers. In turn, these customers still relying on directories may disproportionately be the elderly or those who cannot afford broadband or mobile phone service. PULP recommends that if the waiver is granted, Time Warner be required to engage in special efforts to notify its “core” customers and those who do not have Time Warner broadband service of the availability of directories upon request.

CONCLUSION

Time Warner has not met its burden of proof to show that the waivers and modifications should be granted. The request for expansion of the times when customers may be shut off for nonpayment of bills should be denied. The request to change the allocation of partial payments should be denied, and the Commission should continue the case to examine Time Warner’s disconnection practices and whether telephone service is shut off for nonpayment of charges for broadband or cable TV service. The request for waiver of service quality standards for timeliness of repairs should be denied and further information obtained about the number of “core” customers and the number of low-income customers who have not been enrolled in the Lifeline assistance program. The request for relief from the directory distribution requirement, to make it on customer request only, should not be granted without conditions, including clarification of how customers, particularly those who do not use the internet for directory services, will be notified of the opportunity to obtain a directory upon request.

The Commission should grant the opportunity to provide supplemental comments when

more information is provided by Time Warner in response to discovery requests from Staff and PULP, and reply comments in response to comments of others.

Dated: August 2, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald A. Norlander". The signature is written in a cursive style and is positioned above the typed name.

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