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Director
Office of Telecommunications



April 1, 2009

BY HAND

Mr. Chad Hume
Director, Office of Telecommunications
New York State Department of Public Service
Three Empire State Plaza
Albany, New York 12223

Re: Case 08-V-0835

Dear Mr. Hume:

Your March 6, 2009 letter to Richard Bozsik: (a) sets forth Staff's views as to steps that Verizon New York Inc. ("Verizon") should take in order to comply with the Optical Network Terminal ("ONT") reporting requirements imposed by the Commission's January 14, 2009 *Grounding Order*,¹ (b) asks Verizon to identify the steps that it would take to comply with those requirements, and (c) invites the company to

¹ Ordering Paragraph 3, at page 31 of the *Grounding Order* requires Verizon to report "any incidents of property damage resulting from an ONT, as well [as] returns to any manufacturer, each listed by manufacturer and model and any shock incidents reported by customers or Verizon employees." In general, the letter set forth Staff's expectation that, "through existing internal controls or by protocols that may need to be developed, Verizon will maintain practices to 1) ensure all ONTs and related devices (i.e., batteries/battery packs, power supply units, and grounding modules) removed from service pass through internal analysis and testing, 2) return removed devices to the manufacturer for additional analysis and testing, and 3) document thoroughly instances of property damage or shock related to FiOS installations," and that "the information collected as a result of those practices will then be used to complete the attached spreadsheet whenever an ONT or related device is removed from service at a FiOS installation, or returned to a manufacturer, or property damage or shocks related to a FiOS installation are reported." (Page 1)

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provide its “view on the information requested.” For the reasons set forth below, Verizon believes that Staff’s proposed compliance plan goes well beyond the terms of the *Grounding Order*, and would impose unnecessary and unduly burdensome reporting requirements on Verizon. This letter sets forth Verizon’s proposed modifications to that plan.

A. Types of Incidents That Should Trigger the Reporting Requirements

The process outlined in Staff’s letter would apparently apply to all “ONTs and related devices . . . removed from service.” However, ONTs may be removed from service for any of a number of reasons — customer-requested upgrades, loss of service, service impairment issues (such as reduced picture quality, noise on voice lines), damage due to vandalism, and so forth — virtually none of which are related to the concerns that are the subject of the *Grounding Order* — personal injury or property damage resulting from inadequate grounding.² The narrow focus of the order is demonstrated by its title — “Order Concerning the Grounding of FiOS Installations.” Moreover, Ordering Paragraph 3, which imposes the reporting requirement, refers specifically to “property damage” and “shock incidents” caused by ONTs. Because Staff’s compliance plan would apply to all ONTs removed from service, and not just to property damage or shock incidents reasonably related to grounding problems, it would impose an unnecessary burden upon Verizon that would go well beyond the clearly-defined scope of the *Grounding Order*. Large numbers of ONTs may be replaced in any given month for one

² Indeed, as a follow up to the Commission’s earlier orders on Verizon’s Network Review Plan, the *Grounding Order* focuses only on one narrow remaining aspect of the grounding issue — whether “the ONT is an appropriate path to ground.” (Page 1)

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reason or another, and the additional burden of testing all such ONTs, and submitting reports to the Commission, would be a significant one.

Verizon recognizes that it may not be possible to determine definitively, at the outset, whether a particular incident or claim is attributable to a grounding fault, and that the reporting obligation would therefore have to be broader than reporting only *proven* cases of damage resulting from such faults. Nevertheless, that does not mean that Verizon should be required to provide a haystack of reports in order to enable Staff to identify a needle's-worth of potentially relevant incidents. Accordingly, Verizon proposes to apply the reporting process to all cases in which both: (a) an ONT is removed from service, *and* (b) the customer claims (or the Verizon technician reports) that property damage, electrical shock, or other personal injury was caused by the FiOS service.³

Staff's letter also goes beyond the requirements of the *Grounding Order* in seeking to require Verizon to report on incidents concerning "ONTs *and related devices* (*i.e., batteries/battery packs, power supply units, and grounding modules*)." (Emphasis supplied.) Neither power supplies nor battery packs have anything to do with the grounding concerns that are the subject of the order. No issues relating to battery pack or power supply failures have been raised in this proceeding, and there is no basis for assuming that they pose electrical problems. Moreover, cable modems installed by traditional cable companies are powered by line current (like ONT power supplies), utilize AC-DC transformer/adaptors analogous to those used in conjunction with ONTs,

³ Obviously, because such a report would be based in most cases on a customer's *claim*, the mere filing of the report should not be taken as an admission by Verizon that the damage or injury in question actually occurred or was attributable to the FiOS service.

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and frequently include (or are provided together with) back-up battery packs, and it would therefore be competitively unreasonable to impose reporting requirements related to battery units or power supplies on Verizon, while not imposing such requirements on cable companies. Accordingly, Verizon's reporting proposal is appropriately limited to incidents that relate to ONTs.

B. Retroactivity

Your March 6 letter states that Verizon's first report "should include all pertinent information from June 2005 to date." However, nothing in the Order supports the imposition of a retroactive reporting requirement, particularly one that goes back as far as June 2005.

Verizon has already stated, in its response to the Attorney General's Interrogatory AG-VZ-11 in this proceeding, that Verizon is not aware of any instance in which it has been determined that injuries to persons or property have been caused due to a failure to properly ground a FiOS ONT. (*See also* Verizon's response to Common Cause interrogatory CC-VZ-10.) Moreover, in connection with this proceeding, Staff reviewed complaints filed with the Commission by FiOS customers, identified four situations in which property damage was claimed or which were otherwise deemed to warrant further investigation, and has obtained detailed information on those incidents from Verizon.⁴

Moreover, sifting through customer service records to identify potentially relevant incidents, and correlating that information with data obtained from other systems (such as follow-up reports from vendors following equipment returns) would be unduly burdensome given the level of detailed information that Staff has indicated it wants, the

⁴ Staff's review of these incidents is discussed at pages 13-14 of the *Grounding Order*.

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volume of the records that would have to be reviewed, and the age of those records.

There is no reason why the company should have had data management systems in place throughout this period in order to support a reporting requirement that had not yet been imposed in connection with an issue that had not yet been defined.

There is, of course, a general presumption against retroactive application of a requirement that does not specifically provide for such application, and nothing in the *Grounding Order* would overcome that presumption here.⁵ Although the Commission's January 29, 2009 "Order Requiring Changes to the Network Review Plan Submitted by Verizon New York Inc." upheld a limited retroactive application of the "100% re-inspection" requirement for new installations that had been imposed in an earlier (November 3, 2008) order, that decision was based on an interpretation of the wording of that earlier order in the context of the wording of the Network Review Plan.⁶ Moreover, the re-inspection requirement was imposed only back to the August 1, 2008 effective date of the Plan. Nothing in the January 29 retroactivity order, or in the wording of the *Grounding Order*, supports the contention that all grounding-related requirements imposed on Verizon should extend backwards for an indefinite period, or that the

⁵ See, e.g., Case 96-E-0577, "Order Denying Waiver" (issued and effective September 20, 1996), at 7 ("the intent to apply a regulation retroactively must be clearly stated at the time of adoption").

⁶ See Case 08-V-0835, "Order Requiring Changes to the Network Review Plan Submitted by Verizon New York Inc." (issued and effective January 29, 2009), at 3-4 ("Under the Plan, the term 'new installations' was defined as those installations done after August 1, 2008 and 'past installations' are those done before August 1, 2008. The November Order similarly defines 'new' installations as those made after August 1, 2008 and establishes that all new installations that fail our modified thresholds are to be inspected in any month and region. Having adopted the distinctions between 'new' and 'past' installations and the definition of 'new installations,' it is clear that we intended that our modifications for full inspections in any month and region were to apply as of the effective date of the Plan, August 1, 2008.").

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Commission intended to make this particular reporting requirement retroactive for a period of nearly four years.

C. *Testing by Verizon*

The March 6 letter sets forth Staff's expectation that Verizon will "maintain practices to . . . ensure all ONTs . . . removed from service pass through internal analysis and testing"

Verizon should not be required to conduct internal testing on ONTs removed from service. Verizon does not currently engage in such testing, nor does it have the expertise, facilities, or experience that has been acquired by its vendors (or, in some cases, by the laboratories with which those vendors have contracted) in analyzing defects in or damage to the vendors' own equipment. (Moreover, Ordering Paragraph 3 of the *Grounding Order* only imposes reporting requirements on Verizon, not new testing requirements.) Accordingly, any testing requirements should be limited to testing by vendors (or by the testing laboratories that they have designated), not by Verizon.⁷

D. *Reporting to Electric Utilities*

The letter sets forth your "expectation that safe and responsible practices already obligate Verizon and its employees to report any shock incident of any nature to the applicable electric utility immediately. This is my continuing expectation and serves as the foundation expectation." However, Verizon sees no need for electric-company

⁷ The ONT return/testing process that Verizon currently utilizes in the normal course of business would not provide information that would be sufficient to meet the needs of the Commission under the *Grounding Order*. The existing process is designed primarily to resolve refund/credit liability and equipment replacement issues as between Verizon and the manufacturer (*i.e.*, can the equipment be refurbished and returned to service). Accordingly, Verizon would have to utilize a separate testing process for ONTs that trigger the testing and reporting requirements under the *Grounding Order*; this process will generate more detailed "Failure Analysis Reports" for ONTs subject to the process.

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involvement where stray voltage is detected inside the customer's premises. In that case, Verizon's normal practice would be to advise the customer to call an electrician. The electric utility would be contacted only if there were concerns about stray voltage caused by the power-supply lines outside of the customer's home.

E. Staff's Reporting Form

Item 15 on Staff's proposed form asks for the "Results of Verizon Internal Analysis." For the reasons discussed in Section C, above, this item should be deleted from the form. The form also seeks information on "Related Devices." This should be eliminated from the form for the reasons discussed above in Section A.

Item 13 asks Verizon to describe "Electrical Problems Noticed." The company's service technicians are not licensed electricians and should not be asked to investigate potential problems in the customer's household electrical system. Their investigation should be limited to a review of Verizon's facilities.

Verizon will provide the remaining information requested on the sample form to the extent it is available and to the extent that it is applicable and relevant to the particular situation or claim. It should be noted that Verizon's ability to implement this reporting process with a reasonable level of effort is contingent upon the scope of the reporting obligation being limited as set forth in the preceding sections of this letter. Further, Verizon expects that a few weeks may be required for the vendor testing component to be completed for an incident and for a report to be available. Thus, Verizon intends to prepare a preliminary report on each incident based on data obtained from the technician and from company records, and to supplement that report when the vendor testing data becomes available.

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F. Implementation

Subject to the limitations discussed above, Verizon proposes to implement the following reporting process:

Field technicians will be asked during the close out on each ONT replacement if the customer made any claim of property damage or shock related to the FiOS service, or if the technician him- or herself experienced a shock. If the response is yes, a new cause code will be recorded. The ONT will be flagged for dispatch to the vendor for testing.

Dexter — the data base system currently used to administer the Network Review Plan — will be used utilized to store the required data. When the new cause code being established for this purpose is detected, an e-mail will automatically be sent to the team and the field manager identifying the occurrence. The field manager will be responsible for retrieving any additional information that may be needed to prepare the reporting form for the incident. The vendor's report will be added to the record for the incident when it is available.

Verizon anticipates having this process in place by June 1, 2009. Reports will be provided monthly thereafter, as requested in the March 6 letter, provided that there is anything to report in that month.

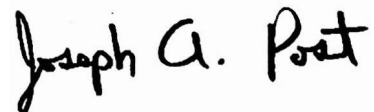
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As a final matter, we wish to note that this extraordinary level of data capture and reporting is *not* yet required for shock/damage incidents reported for cable-company installations, even though the existence of a significant level of grounding defects that could cause such incidents, and the use by the cable industry of an inherently more

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dangerous “last mile” distribution technology,⁸ are well documented. If the imposition of shock-and-damage reporting requirements is deemed vital to the public interest, there is thus no basis for exempting the cable industry from those requirements. In any event, the burden that would be imposed on Verizon should be narrowly directed to the issues addressed in the *Grounding Order*, and implemented in a reasonable manner that does not impose an undue burden on only one triple-play competitor.

Respectfully submitted,

Handwritten signature of Joseph A. Post in black ink.

cc: Peter McGowan, Esq.
Peter Catalano, Esq.
Brian Ossias, Esq.
Mr. John Stewart

⁸ See, e.g., *Grounding Methods Order* at 10 (recognizing that Verizon’s outside plant is non-conductive while cable’s plant does conduct electricity “and thus can provide a path into and within the customer’s premises for unwanted and potentially hazardous currents originating from outside the customer’s premises. Moreover, unlike FiOS, the coaxial cable drop used in a conventional cable company’s distribution plant is exposed to lightning strikes and to accidental contact with the power supply lines that are frequently located only a few feet above it.”).