140 West Street
27th Floor
New York, NY 10007-2109
Tel (212) 321-8126
joseph.a.post@verizon.com

Joseph A. Post
Deputy General Counsel — New York

February 25, 2013

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

Re: Case 10-C-0202

Dear Secretary Cohen:

Enclosed please find the Comments of Verizon New York Inc. on Proposed Changes in the Regulation of the Quality of Service Provided to Core and Small Business Customers.

Respectfully submitted,

Joseph A. Post

Joseph A. Post

cc: Gregg Collar, Esq. (DOS/UIU)
Keith Gordon, AAG
Mr. Pete Sikora (CWA District 1)
Mr. Michael Corso
Mr. Chad Hume
Peter McGowan, Esq.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Consider the Adequacy of Verizon New York Inc.'s Service Quality Improvement Plan	**Case 10-C-0202**

COMMENTS OF VERIZON NEW YORK INC. ON PROPOSED CHANGES IN THE REGULATION OF THE QUALITY OF SERVICE PROVIDED TO CORE AND SMALL BUSINESS CUSTOMERS

JOSEPH A. POST
140 West Street — 27th Floor
New York, NY 10007-2109
(212) 321-8126

Counsel for Verizon New York Inc.

February 25, 2013

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. THE COMMISSION SHOULD NOT ADOPT THE PROPOSAL TO INCREASE OUT-OF-SERVICE ALLOWANCES FOR CORE CUSTOMERS 3

- **A. THERE IS NO NEED FOR THE PROPOSAL 3**
- **B. THE PROPOSAL IS TANTAMOUNT TO THE IMPOSITION OF AN UNAUTHORIZED PENALTY OR CONSEQUENTIAL DAMAGE AWARD 5**
- **C. THE PROPOSAL IS CONTRARY TO SOUND PUBLIC POLICY 7**
- **D. IT IS UNNECESSARY TO CHANGE THE MANNER IN WHICH THE CURRENT TARIFF IS IMPLEMENTED 7**

III. ADDITIONAL REGULATION IS UNNECESSARY TO IMPROVE THE QUALITY OF SERVICE PROVIDED TO SMALL BUSINESS CUSTOMERS 8

- **A. ANALYSIS OF THE QUALITY OF SERVICE PROVIDED TO SMALLER BUSINESS CUSTOMERS 8**
- **B. ROOT CAUSE ANALYSIS 11**
- **C. THE COMPETITIVE LANDSCAPE FOR SMALL BUSINESS CUSTOMERS 13**
- **D. REMEDIAL OPTIONS FOR SMALL BUSINESS CUSTOMERS 18**

IV. SUMMARY AND CONCLUSIONS 20

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Consider the Adequacy of Verizon New York Inc.'s Service Quality Improvement Plan	**Case 10-C-0202**

COMMENTS OF VERIZON NEW YORK INC. ON PROPOSED CHANGES IN THE REGULATION OF THE QUALITY OF SERVICE PROVIDED TO CORE AND SMALL BUSINESS CUSTOMERS

The regulatory changes proposed in the Commission's January 18, 2013 *Notice*[1] should be rejected. No modification of the Commission's current regulatory framework is necessary to ensure the continuing provision of high quality service by Verizon New York Inc. ("Verizon") to its customers, including core and small-business customers. Moreover, requiring Verizon to implement those changes would be both unlawful and bad public policy.

I. INTRODUCTION

In the order that accompanied the January 18 *Notice,*[2] the Commission declined to eviscerate its Service Quality Improvement Plan ("SQIP") for Verizon by adopting the changes the Attorney General had proposed in his 2012 petition. In doing so, it correctly recognized that "the underlying premise in support of the SQIP . . . is as compelling today as when we adopted the Plan."[3] However, the Commission also expressed concern about certain aspects of the

[1] Case 10-C-0202, "Notice Requesting Comments on Tariff Modifications and Business Lines" (issued January 18, 2013) (the "*Notice*").

[2] Case 10-C-0202, "Order Resolving Petition and Requiring Further Investigation" (issued and effective January 18, 2013) (the "*Order*").

[3] *Order* at 2.

service being provided by Verizon to core customers[4] and to small (or "basic") business customers. In response to this concern, the Commission solicited comments on a proposal to amend Verizon's credit-allowance tariff[5] to provide core and small business customers with "triple credits" — equal to three times the pro rata daily share of recurring monthly charges — when out-of-service conditions persist for more than 72 hours.[6] The Commission also proposed that the tariff "be implemented, and if necessary modified, so that the out-of-service rebates are more automatic (i.e., upon reporting a trouble no further customer request for a rebate is necessary)."[7] Finally, the Commission directed Verizon "to perform and file with the Commission a root cause analysis of, and remedy plan for, out-of-service conditions associated with basic business services."[8]

---

[4] "Core" customers are defined under the SQIP as Lifeline subscribers; blind, elderly, or handicapped customers; and those customers — business and residence — that live in the few remaining areas of the State that lack wireline competitive alternatives to Verizon's service.

[5] *See* Verizon Tariff PSC No. 1, § D(2).

[6] *Notice* at 6-7, 9. More specifically, a single day's credit would be issued for the first 24 hours of the outage, a double credit would be issued for the second day, and a triple credit would be issued for each day thereafter. Currently, the tariff provides only for double credits after the first 24 hours of an outage.

There are certain exceptions to and exclusions from the current double-credit assessment, and it is our understanding that those would continue to apply if the triple-credit proposal were adopted. *See Notice* at 6 (proposing to apply revised credit provisions to "other" service interruptions — *i.e.*, those not due to storm, fire, flood, etc., which are also excluded from the existing double-credit provisions). Moreover, the Commission noted that the company may propose to exclude situations in which the customer consents to an extended repair window; consistent with the current application of the OOS>24 standard under the SQIP. *Notice* at 7. Although as noted below we do not support the Commission's triple-credit proposal, it is clear that if the proposal is adopted, the exceptions and limitations of the existing regime should apply, as the Commission has proposed. In particular, although the *Notice* is not clear on this point, the customer-consent exception should apply where the appointment deferral is requested *or accepted* by the customer, consistent with the SQIP reporting guidelines. The policy rationale for giving effect to *accepted* deferrals of repair appointments is as compelling in the credit-allowance context as it is in the context of Verizon's reporting obligations under the SQIP. And it would be unreasonable for the Commission to require Verizon to track acceptances and requests separately.

[7] *Id.* at 7.

[8] *Id.* at 9 (footnote omitted).

For the reasons explained below, the Commission should not adopt these proposals.

II. THE COMMISSION SHOULD NOT ADOPT THE PROPOSAL TO INCREASE OUT-OF-SERVICE ALLOWANCES FOR CORE CUSTOMERS

A. THERE IS NO NEED FOR THE PROPOSAL

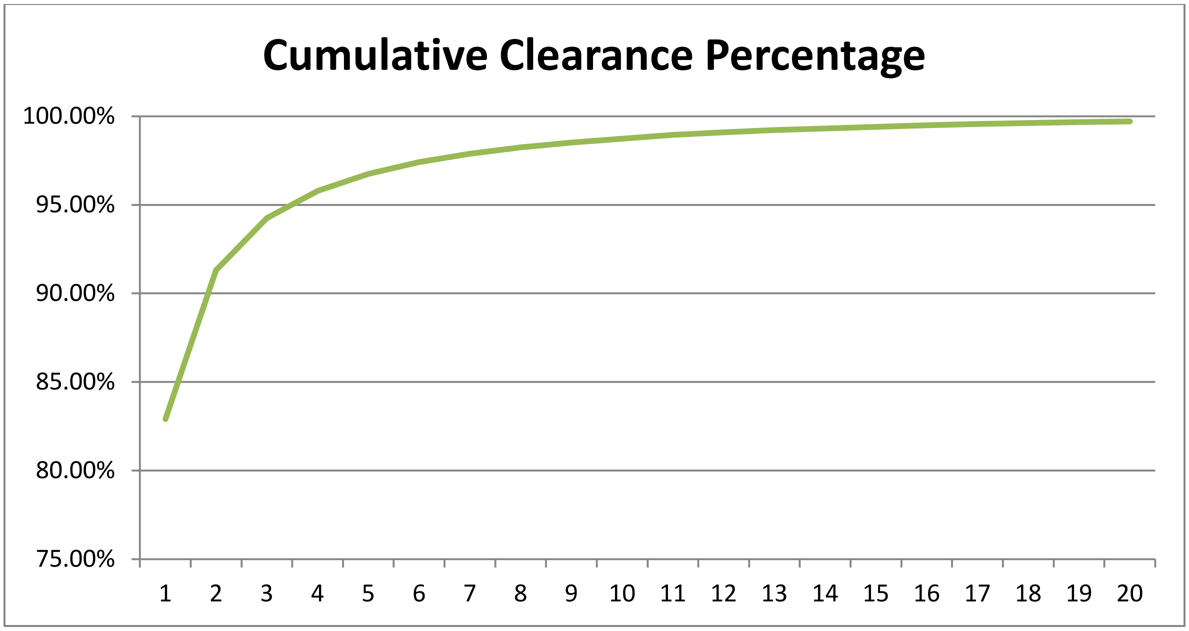
The premise of the Commission's triple-credit proposal is that:

> There have been instances where the Company has missed the OOS>24 metric [*i.e.*, the trouble was not cleared within 24 hours] and, presently, there is insufficient incentive to restore service as quickly as possible within that month because a failure is already recorded.[9]

However, the evidence refutes the contention that Verizon is ignoring OOS conditions that miss the 24-hour threshold. The graph below shows, for a database of 2012 core out-of-service troubles, the cumulative percentage of troubles cleared as a function of the number of days from the date of the initial report.[10]

[9] *Id.* at 5.

[10] Clearance times are measured and recorded in minutes, but for purpose of this graph the data were converted to days and fractional days were rounded up. Applicable "stop-clocks" and exclusions, as set forth in Staff's service-quality measurement guidelines, were taken into account in compiling this data. It should be borne in mind that 2012 clearance times reflect the impact of Hurricane Sandy in November and December, which will be the subject of a waiver petition that Verizon will be filing shortly.



The graph shows that there is a steady increase in clearances, even after the 24-hour period has passed. Thus, starting with the 82.9% of troubles cleared within 24 hours, an additional 8.4% (or about half of the remaining troubles) are closed on the second day, and an additional 3% on the third day, by which time the cumulative clearance level is 94.3%. The increase continues thereafter, with a significant percentage of the remaining troubles cleared on each day as the curve approaches 100%. This is *not* the pattern that one would expect if Verizon's practice were simply to shrug its shoulders at the end of 24 hours and to move all remaining OOS troubles to the back burner, to be dealt with at an indefinite future date. Rather, the data shows that Verizon makes continuing efforts to close out troubles even after the 24-hour period under the Commission's guidelines has passed.[11]

[11] The *Notice* also states in this context that "[d]ata provided by the Company indicated a deteriorating upward trend in the mean-time it takes to repair troubles for Core customers and a rise in associated complaints." *Notice* at 5-6. However, this trend is driven in part by the relatively high clearance times resulting from Hurricane Sandy. Moreover, the overall mean time to repair for core customers in 2012 was reasonable, amounting to only 0.8 days. In any event, mean time to repair is not the best measure of timely performance in this case because it can be significantly affected by a relatively small number of "outlier" repairs. *Median* time to repair is a more

(continued …)

This pattern of performance reflects the fact that Verizon *already* has sufficient incentives for prompt repair after 24 hours. These incentives derive from at least four different sources: (a) the desire to provide high quality services to all of its customers; (b) the desire to retain the business of core customers, including the three-quarters who have wireline competitive alternatives;[12] (c) the clear prospect of a higher level of PSC complaints and unfavorable publicity that would be caused by long-term service outages; and (d) the out-of-service allowance provisions of the *current* tariff, which already provide for double credits in many cases after the first 24 hours of an outage.

B. THE PROPOSAL IS TANTAMOUNT TO THE IMPOSITION OF AN UNAUTHORIZED PENALTY OR CONSEQUENTIAL DAMAGE AWARD

A Commission requirement that Verizon provide triple credits for persistent out-of-service situations cannot be justified as a refund of charges paid for service that was not provided. If that were the rationale, the credit allowance would have to be limited to reasonably reflect the amount of service that Verizon failed to provide during the month. In the case of an outage, that amount would be a pro-rata share of the monthly recurring charge, based on the length of the outage as a fraction of the length of the month. Under the Commission's proposal, however, the credit could be up to three times that amount.[13] Clearly, there can only be two

---

(…continued)

meaningful measure. Verizon's median time to repair OOS conditions for core customers in 2012 was only 0.16 days.

[12] *See* Department of Public Service Staff, *Verizon Service Quality: Fourth Quarter 2012* (filed Commission Session of February 13, 2013), at 2 (pie chart showing that only about one-quarter of core customers are located in "white spaces" — *i.e.*, areas without wireline competitive alternatives).

[13] *See Notice* at 6 ("Under these revised parameters, the affected Core customer would receive a full month's credit by the 12th day of the interruption provided service has not yet been restored.").

explanations for such an allowance — it either represents an award of presumed consequential damages, or a penalty.

However, neither of those remedies is authorized by the Public Service Law. The courts have consistently held that the Commission has only those powers that have either been explicitly delegated to it by the Legislature, or which can be said to be necessarily implied by an explicit statutory grant.[14] Although § 118(3)(a) of the Public Service Law grants the Commission power to require a regulated company to "provide a refund or credit to a customer when a payment has been made in excess of the correct charge for actual service rendered to the customer," nothing in the Law expressly or by implication grants the Commission power to award consequential damages or any kind of refund, credit, or damage remedy in any other circumstances. The Commission itself has recognized that damage awards are beyond its authority.[15]

Although the Commission does have penalty authority under §§ 24 and 25 of the Public Service Law, the availability of penalties is strictly limited — they must be based on knowing violations of specific statutory provisions or orders, and they must be granted by a court. Obviously, the scheme at issue here would satisfy neither of those requirements. Indeed, the existence of such highly specific and limited penalty provisions refutes any possible argument that the Commission could implement the proposed triple-credit provision either under more

---

[14] *Niagara Mohawk Power Corp. v. Publ. Serv. Comm'n*, 69 N.Y.2d 365, 368-69, 514 N.Y.S.2d 694, 696, 507 N.E.2d 287, 289 (1987).

[15] *See, e.g.*, Cases 93-C-0451 and 91-C-1249, "Opinion and Order Concerning Complaints" (Op. No. 97-7) (issued and effective May 29, 1997), at 111. In its decision in the Article 78 proceeding that resulted from the Commission's decision in Opinion No. 97-7, the Supreme Court, Albany County, noted that all of the parties to the litigation had "concede[d] the PSC's lack of power to award monetary damages or even refunds in this case." *New York Telephone Co. v. Publ. Serv. Comm'n*, 179 Misc.2d 301, 308, 684 N.Y.S.2d 829, 834 (Sup. Ct. Albany Co. 1998), *aff'd*, 271 A.D.2d 35, 707 N.Y.S.2d 534 (3d Dep't 2000).

general provisions of the Public Service Law, or by "necessary implication" from such provisions.[16]

C. The Proposal Is Contrary to Sound Public Policy

Finally, it would be contrary to sound public policy to impose such indeterminate and potentially significant financial liabilities and system modification costs upon Verizon, in view of the significant financial challenges that the company already faces in New York even as it makes substantial capital investments in order to modernize its network and thus to enhance its ability to provide reliable service.[17] Increasing the magnitude of those challenges would hinder, not advance, the central purposes of the SQIP of improving service for core customers.

D. It Is Unnecessary to Change the Manner in Which the Current Tariff Is Implemented

Finally, as noted above, the Commission proposed to make "out-of-service rebates . . . more automatic (i.e., upon reporting a trouble no further customer request for a rebate is necessary)." However, this is already consistent with Verizon's current practice and with the current tariff language, which requires only "notice by the subscriber to the Company of an interruption of service,"[18] and not a specific request for a credit.

---

[16] Although the current tariff already provides for an enhanced remedy (double credits for certain outages lasting longer than 24 hours), that provision dates back at least thirty years — *i.e.*, into the era of rate-of-return regulation — and it is not clear that Verizon ever objected to it. Its presence therefore should not be taken as tantamount to a concession by Verizon that the Commission has authority to *impose* such a remedy. For similar reasons, penalty measures agreed to as part of a voluntarily-adopted alternative-regulation plan do not provide support for the Commission's current proposal.

[17] Verizon reported a net operating income of *negative* $1.74 billion in 2011. *Annual Report to the Commission for 2011*, Schedules 12 and 13. Nevertheless, its net capital investments (measured by net cash flow from investment activities in that year) amounted to $1.11 billion. *See also* discussion in *Order* at 19-20. In view of Verizon's overall financial condition in the State, imposition of these unwarranted penalties would also violate the constitutional prohibition against takings without just compensation.

[18] Verizon Tariff PSC No. 1, § 2(a) (first paragraph).

* * *

For these reasons, there is no need for a triple-credit provision in the tariff, and requiring Verizon to amend its tariff to include such a provision would be counterproductive and unlawful. The Commission should reject the proposal.

III. ADDITIONAL REGULATION IS UNNECESSARY TO IMPROVE THE QUALITY OF SERVICE PROVIDED TO SMALL BUSINESS CUSTOMERS

A. ANALYSIS OF THE QUALITY OF SERVICE PROVIDED TO SMALLER BUSINESS CUSTOMERS

The *Notice* expresses concern that "[f]or certain non-Core business customers, Verizon's service quality remains low," and directed "Verizon to perform and file with the Commission a root cause analysis of, and remedy plan for, out-of-service conditions associated with basic business services."[19] Accordingly, Verizon analyzed the complete set of out-of-service troubles experienced by smaller business customers during 2012.[20]

The first conclusion that can be drawn from this analysis is that smaller business customers generally experience *fewer*, not more, out-of-service troubles than core customers. Initially, it should be noted that comparing performance for core customers and business customers is difficult because under the Department of Public Service measurement guidelines, out-of-service periods for core customers do not include delays due to deferred repair appointments requested or accepted by the customer (the "request/accept exclusion"). This exclusion is *not* recorded by Verizon for non-core business customers (or for non-core customers

[19] *Notice* at 8, 9.

[20] More precisely, the data set included all accounts within Verizon's Class of Service ("COS") 5 — Business, except those served by Verizon's "Enterprise" line of business. The accounts included in this analysis had an average of 3.7 lines each. COS 5 excludes some of the more specialized types of business service, such as PBX, Centrex, and coin lines. However, as noted below, we also carried out a separate analysis of Centrex/coin lines for purposes of this filing. (Contrary to the Commission's assumption in footnote 16 of the *Notice*, PBX trunks are covered under the Commission's special services guidelines, not the metrics at issue in this proceeding.)

generally), since it is irrelevant to Verizon's reporting obligations under the SQIP, and as a result it is not reflected in the Verizon's service-quality data for such customers.[21] For this reason, our analysis considered both unadjusted ("raw") repair times and repair times that were adjusted to reflect all authorized and measured time exclusions and "stop clocks," including the request/accept exclusion ("PSC" repair time). Because the PSC clearance times for non-core business customers (unlike those for core customers) do *not* include the request/accept exclusion, the only true apples-to-apples comparison is between the raw clearance times for the two customer groups.

For customers in the smaller-business data set, "OOS>24" troubles (*i.e.*, OOS troubles not cleared within 24 hours) occurred on average on 0.39% of lines per month based on raw clearance times, and 0.35% of lines per month based on PSC clearance times. Thus, business customers experienced fewer troubles than core customers. Indeed, the *Notice* recognized that generally, "the percentage of troubles experienced on these [business] customer lines is better than that of total Core and non-Core customers state-wide . . . ."[22] Thus, the basis for any concern about business customers, if there is one, must lie elsewhere than in the overall level of service outages experienced by those customers.

The *Notice* observes that "Verizon's performance in repairing troubles within 24 hours [for business customers] is poorer than its repair performance for its Core performance."[23] However, in examining clearance-time data it is important to make sure that consistently-

---

[21] The accept/request exclusion is relevant to Verizon's current reporting obligations only for business customers that are also core customers — *i.e.*, those in "white space" areas deemed to lack landline competitive alternatives.

[22] *Notice* at 8.

[23] *Id.*

calculated numbers are being compared. Although the OOS>24 metric (*i.e.*, percentage of out-of-service troubles not cleared within 24 hours) is higher for smaller business customers than for core customers, that is due in significant part to the request/accept exclusion adopted by the Commission, which as noted above applies only to core customers. The discrepancy between the OOS>24 metrics for business and core customers based on *raw* clearance times is much smaller. Moreover, the median raw OOS clearance time is 1.85 days for the smaller-business data set, 1.78 days for customers overall, and 1.24 days for core customers. The 1.85 day median for business customers is reduced to 1.19 days (and the 1.78 days for customers overall is reduced to 1.17 days) when applicable stop-clocks reflected in Verizon's records (which, for non-core customers do *not* include the request/accept exclusion) are taken into account. The median repair time is even less for the smallest business customers (by line size).[24]

These data are summarized in the table below, which shows that: (a) per line trouble rates are better for smaller business customers than for core customers or all customers; and (b) repair times for smaller business customers are reasonable, on a par with the times for non-core customers in general, and reasonably comparable to the times for core customers (when like is compared with like — *i.e.*, raw repair times are compared).[25]

---

[24] Although stratifying the smaller business data set by line count would have required a special study that proved infeasible within the time available to Verizon for preparing this filing, we were able to identify the lines within the data set that were served by Verizon's small business (*i.e.*, "mass market") line of business. (This subset of lines is referred to below as the "smallest" — as opposed to "smaller" — business customers.) Among those lines, the median raw OOS clearance time was 1.4 days — much closer to the 1.2-day figure for core customers. When applicable stop-clocks were taken into account, this was reduced to 1.1 days.

[25] Four points should be noted concerning these statistics. (a) Verizon treats customers who report medical emergencies as core customers for purposes of those single trouble reports only ("temporary" core customers). For purposes of this filing, temporary core customers have been included in the core customer line counts, to ensure consistent treatment of the numerator and denominator in core-customer per-line statistics. (b) There is some double-counting of core-customer lines due to the fact that some customers are in multiple core categories (*i.e.*, Lifeline and handicapped). The impact on per-line service-quality measures is small (approximately 10%), and it does not affect the conclusion that the trouble rate is smaller for business customers than for core customers

(continued …)

	CUSTOMER TYPE			
	Smaller Business	Smallest Business	Core	All
OOS>24 Troubles/Line/Month (Raw Clear Times)	0.39%	0.29%	1.94%	1.12%
OOS>24 Troubles/Line/Month (PSC Clear Times)	0.35%	0.26%	0.55%	0.96%
Median TTR OOS Troubles (Raw)	1.85	1.39	1.24	1.78
Median TTR OOS Troubles (PSC)	1.19	1.11	0.16	1.17

Note: "TTR" = "Time to Repair". "PSC" trouble clearance times take accept/request exclusion into account only for core customers.

B. ROOT CAUSE ANALYSIS

Thus, while there is some discrepancy in repair times for core and smaller business customers, it is not as significant as the Commission appears to assume. In considering the "root cause" of that discrepancy, it is important to keep in mind that the very purpose of the SQIP was to improve core-customer performance by prioritizing repair service for such customers.[26] Other things being equal, implementing such a priority scheme naturally results in improved service-

(…continued)

on a per-line basis. (c) As noted, the small-business figures exclude Centrex and coin customers. However, a separate analysis of median repair times for these two customer types combined yield numbers that are comparable to those shown in the table. Specifically, the median raw repair time for Centrex/coin customers was 1.83 days, and the median "PSC" repair time was 1.20 days. (d) Subsequent troubles experienced by a multi-line customer while a trouble ticket is open on any of its lines are not counted as additional troubles for purposes of these statistics. This is, however, a reasonable approach for comparing the OOS experience of core and business customers, given the fact that a single-line customer is rendered completely out of service when an OOS trouble exists on its only line. This is not the case for a multi-line customer with an OOS condition on less than all of its lines.

[26] The *Order* identified the "underlying premise" of the SQIP as "protect[ing] Verizon's wireline residential customers most in need of protection in the face of declining resources and increasing competition." *Order* at 2. *See also* Case 10-C-0202, "Order Directing Verizon New York Inc. to File a Revised Service Quality Improvement Plan" (issued and effective June 22, 2010) at 2 ("[T]he Commission needs to protect 'core customers' who cannot rely on competition to establish the appropriate level of service quality."); Case 10-C-0202, "Order Adopting Verizon New York Inc.'s Revised Service Quality Improvement Plan with Modifications" (issued and effective December 17, 2010), at 3 ("[R]egulatory consideration should be focused on so-called 'core' customers (i.e., those customers who have no competitive choices or who have other special needs)."); *id.* at 14 (identifies "underlying premise" that "Commission regulation of service quality should focus on the protection of customers who either lack competitive choice or who have other special needs that render them in need of government protection"; SQIP "complies with this overarching principle").

quality performance for core customers as compared to other customer groups, such as business customers generally. Thus, the SQIP itself is one clear “root cause” of any discrepancy between business-customer performance and core-customer performance. However, such a discrepancy merely implements an intended, fundamental policy determination underlying the SQIP.

While Verizon recognizes that the Commission did not intend that Verizon ignore non-core customer service troubles, the standard should be whether those customers are receiving reasonable and adequate service, not whether their repair times are as low as those for core customers (a standard that would be inconsistent with the fundamental purpose of the SQIP). In view of the quite reasonable median repair time data referred to above, there is no evidence that this standard is not being met. This is not surprising. Notwithstanding the priorities intentionally and explicitly created by the SQIP, it would be contrary to Verizon’s own interests to provide poor or inadequate service to non-core business customers, since such customers generate significant revenues per line.

Beyond what is inherent in the prioritization scheme established by the SQIP, service restoration times may be somewhat greater for business customers than for core customers for another reason as well. Clearing troubles that originate in the outside plant generally requires a dispatch-out. A successful dispatch-out in turn requires that Verizon obtain access to facilities at the customer’s premises or at the associated terminal. In both cases, Verizon’s experience is that obtaining access to the facilities is generally more difficult for business customers than for non-business customers.

There are at least two reasons for this. *First*, a disproportionate number of smaller-business troubles occur in Manhattan,[27] where dispatch and access problems are multiplied by traffic delays and Department of Transportation rules on facilities work in public rights-of-way. It is therefore not surprising that an average of 1.75 dispatches are required for each trouble ticket issued in Manhattan, and that this would affect trouble clearance times in that borough. *Second*, businesses are frequently closed on evenings and weekends. Thus, the ratio of dispatches to trouble tickets is even higher for smaller business customers in Manhattan (about 1.81) than for Manhattan customers in general, most likely reflecting an inability to obtain access on the first dispatch. Moreover, even where multiple dispatches are not required, *first* dispatches that could be handled on evenings or Saturdays for residential customers are necessarily delayed for business customers that are closed at those times.[28]

Unfortunately, neither of these two "root causes" points to a clear remedial plan for smaller business customers. The prioritization implicit in the SQIP *should not* be changed since it is inextricably tied to the very purposes of that Plan. And to the extent that delay is due to access issues, there is no easy solution since Verizon lacks the power to compel business customers to change their location or the hours in which they are available to Verizon's service representatives.

C. THE COMPETITIVE LANDSCAPE FOR SMALL BUSINESS CUSTOMERS

In suggesting that additional remedial measures might be necessary to ensure the provision of high-quality service to smaller business customers, the *Notice* expresses concern

[27] During 2012, 23.1% of 2012 smaller-business troubles occurred in Manhattan, as opposed to only 15.7% of troubles generally.

[28] Closure of many businesses on nights or weekends impairs not only Verizon's access to the specific customer's facilities, but also its access to terminals, which may be located in the basements of buildings.

that "[t]he Cable companies' market share of the commercial services market nation-wide appears to be small in relation to the total business market and it appears that Verizon's residential customers are choosing alternative providers at a far greater rate than business customers."[29] In fact, the data conclusively demonstrate the existence of robust competition for smaller business customers.[30]

As recognized by the Commission in its *Competition III Order*, the most important basis for determining whether a service is competitive (and thus for relaxing regulation of that service), is whether the market for the service is contestable, in the sense that there are available competitive alternatives.[31] This is the case regardless of current market share or the rate of market share loss. Customers may choose to remain with an existing service provider for a variety of reasons, including satisfaction with the provider's reputation and with the pricing, products, and service quality that it delivers, but as long as competitive alternatives remain waiting in the wings, the provider has a strong incentive for continuing to price competitively and for maintaining the quality of its service.

The market for small business services is manifestly contestable.[32] The type of services utilized by customers in this market are much more homogeneous than business services

[29] *Notice* at 8.

[30] The discussion here focuses on business customers that are not currently classified as core customers — *i.e.*, those located in areas of the State in which alternative landline service providers are available.

[31] *See* Case 05-C-0616, "Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings" (issued and effective April 11, 2006), at 33, 38-39, 40 n.93.

[32] As the Commission recognized in the *Notice*, medium-size business customers generally use special access services that are beyond the scope of this proceeding, and the enterprise market is clearly competitive. *Notice* at 9 n.16. Thus, neither category need be addressed here. Even if medium-size customers were to be included in this proceeding, Verizon showed in a previous filing that cable companies offer Ethernet and T1-emulation services that provide business customers with competitive alternatives to Verizon's special services. *See* Case 06-C-0897,

(continued …)

generally. The prototypical "small businesses" — dry cleaners, restaurants, contractors, lawn companies, and so forth — to the extent that they do not rely predominantly on wireless service (or simply use residential landline services, contrary to the requirements of Verizon's tariffs) — typically use single or multiple business access lines with calling features such as Caller ID, Call Waiting, Call Forwarding, etc. Cable-company competitors and other VoIP providers can offer such service using exactly the same technology that they use to provision services offered to residential customers.[33] Such technology is available in all of the non-white-spot areas of the State — indeed, the availability of wireline alternatives to Verizon's services was the basis for defining white spot areas in this proceeding.[34]

Indeed, both of the two largest incumbent cable providers in the State — Cablevision and Time Warner — widely advertise their small business offerings.[35] Statements by competitors

(…continued)

"Supplemental Filing of Verizon New York Inc. in Support of Increased Pricing Flexibility for Retail Business Services" (filed September 14, 2007), Attachment N ("*Nawrocki Affidavit*"), ¶¶ 11-17; *see also Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Letters from Glenn T. Reynolds, US Telecom, to Ms. Marlene H. Dortch, Secretary, FCC (November 29, 2012 and December 3, 2012) (available at http://apps.fcc.gov/ecfs/document/view?id=7022068989 and http://apps.fcc.gov/ecfs/document/view?id=7022071837, respectively).

[33] *Nawrocki Affidavit*, ¶¶ 8-9.

[34] *See* Case 10-C-0202, "Order Adopting Verizon New York Inc.'s Revised Service Quality Improvement Plan with Modifications" (issued and effective December 17, 2010), at 15, 20. Specifically, the white spot mapping was based on the availability of wireline broadband services, which can support competitive cable-modem offerings and other VoIP offerings.

[35] *See, e.g.*, http://www.cablevision.com/cc/business.jsp (Optimum Voice for Business — a Cablevision service); http://www.optimumbusiness.com/business-phone/; http://www.twcbc.com/ (Time Warner Cable Business Class service); http://www.twcbc.com/Corporate/BusinessSolutons/SmallBusiness.html; http://www.twcbc.com/Corporate/business-products-and-services/business-phone-service.html. Other cable companies also seek to gain share in this market. *See also* http://business.comcast.com/?INTCMP=ILC-DOTCOM-20100216-HMPGAD-001 (Comcast Business Class service); http://business.comcast.com/smb/services/phone/plans (same).

themselves[36] and in the financial press[37] confirm that the cable companies are actively addressing the small business market.

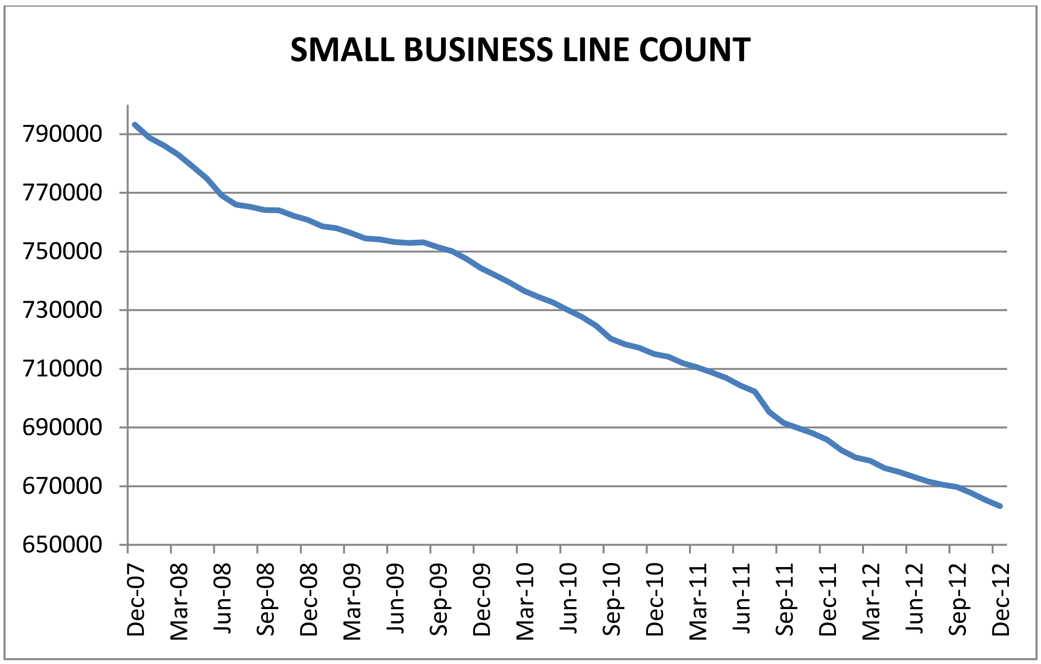
The contestability of the small business market is confirmed by line-count data. Although Verizon no longer reports business line counts to the FCC's ARMIS system, the reports filed from 2000 to 2006 showed a 53% decline in counts for single-line business

---

[36] *See, e.g.*, Transcript of Cablevision's 4th Quarter 2011 Earnings Call (available at http://seekingalpha.com/article/398531-cablevision-systems-corporation-s-ceo-discusses-q4-2011-results-earnings-call-transcript) ("The SME [small and medium enterprise] business continues to withstand pressure from a tough economy as well as competition. The SME product bundle typically includes data and voice services and today's new SME customer is taking both products to pay more than $140 per month on average."); Cablevision Form 10-K Annual Report for 2011 (available at http://www.cablevision.com/investor/sec.jsp) ("Optimum Voice for Business provides for up to 24 voice lines for small and medium businesses. The service provides 14 important business calling features at no additional charge. Optimum Voice for Business also offers business trunking services with support for legacy telecom interfaces and newer internet protocol interfaces. Optimum Voice for Business has also been approved for use with commercial fire alarms. As an optional add-on service in our New York metropolitan service area, Optimum Voice for Business provides customers with toll free capability."); Time Warner Cable Form 10K Annual Report for 2011(available at http://ir.timewarnercable.com/investor-relations/financial-reports-and-filings/sec-filings/default.aspx) ("TWC offers its voice services, Business Class Phone and Business Class PRI, to a broad range of businesses. Business Class Phone is a multi-line voice service, which provides various calling plans, along with other key business features, such as call restrictions and three-way call transfer. TWC also offers Business Class PRI, which is designed for medium and enterprise-sized businesses and supports up to twenty-three simultaneous voice calls on each two-way trunk line. TWC provides voice services to business services subscribers at prices based on the services received. As of December 31, 2011, TWC served 163,000 business voice subscribers."); Transcript of Time Warner Cable 1st Quarter 2012 Earnings Call (available at http://seekingalpha.com/article/531451-time-warner-cable-management-discusses-q1-2012-results-earnings-call-transcript) ("We delivered another record quarter in Business Services growth, which accounted for 38% of our overall revenue growth." "Business voice revenue increased 50%, driven by subscriber growth." "When we reported fourth quarter results, we told you that we expected Business Services revenue growth to be in the 25% to 30% zone this year, and our first quarter performance is a great start. Including Insight, we now expect Business Services revenue growth at the upper end of that range."); Time Warner Cable Quarterly Report for 1st Quarter 2012 (available at http://ir.timewarnercable.com/investor-relations/financial-reports-and-filings/sec-filings/default.aspx) ("As of March 31, 2012, TWC had approximately . . . 184,000 business voice subscribers."); Time Warner Cable Quarterly Report for 3rd Quarter 2012 (available at http://ir.timewarnercable.com/investor-relations/financial-reports-and-filings/sec-filings/default.aspx) ("As of September 30, 2012, TWC had approximately . . . 212,000 business voice subscribers." [Note the 30% increase from the 163,000 figure reported for the fourth quarter of 2011.]).

[37] *See, e.g.*, Krause, Reinhardt, "Cable Gaining Vs. Telecom Rivals in Selling Small Business Services," Investor's Business Daily (February 27, 2012); "Cable Operators Boost Focus on Midsize Firms with New Services," Communications Daily (January 2, 2013) (available at http://www.xtar.com/pdfs/News_01-02-13.pdf?hq_e=el&hq_m=2584737&hq_l=19&hq_v=6cfd0dd31d) ("Further, Meeks said, Cox will keep focusing on its core market — firms with 19 or fewer employees. He said the cable operator aims to double its share of this market over the next few years, even as it competes against AT&T, Verizon and CenturyLink, by rolling out new products. He predicted half of Cox's revenue growth will come from this market segment.").

customers during that period.[38] As reported in Schedule 61 to Verizon's Annual Reports to the Commission, overall business line counts declined by a total of 30.7% from the year-end 2006 figure to the year-end 2011 figure.[39] Finally, the graph below shows the changes over time in the number of lines served by Verizon's small business (*i.e.*, "mass market") line of business between 2007 and 2012. All of this corroborates a steady decline from 2000 to the present — a decline that cannot plausibly be attributed to any decline in the size of the business telecommunications market overall.



Based on the number of business customers served by Verizon's "mass-market" line of business, and on Dun & Bradstreet data concerning the overall size of the small-business market in New York, the company's current share of the market can be calculated to be approximately 55%. The fact that the company *has* lost 45% of the market and continues to lose additional

[38] 316,428 lines in 2000; 150,306 lines in 2006. These figures were even higher than the line-count declines for multi-line business customers and total business customers during the same period (27% and 29%, respectively).

[39] Schedule 61 does not disaggregate business lines for single-line and multi-line customers.

lines consistently, month over month, corroborates the contestability of the market, regardless of the exact speed with which the company's line count and market share are declining relative to the residential market.

D. Remedial Options for Small Business Customers

Verizon believes that the best service-quality enhancement strategy for business customers is the strategy that Verizon is already implementing: the continuing deployment of weather-resilient fiber-optic facilities in New York City, where the most significant number of smaller business troubles and dispatches occur.[40] Indeed, post-Hurricane-Sandy, Verizon has been actively engaged in the replacement of destroyed or severely damaged copper distribution facilities with new fiber-optic facilities. This strategy will reduce trouble rates for all customers in the City, including smaller business customers, thus freeing up maintenance and repair resources and helping to reduce trouble clearance times.

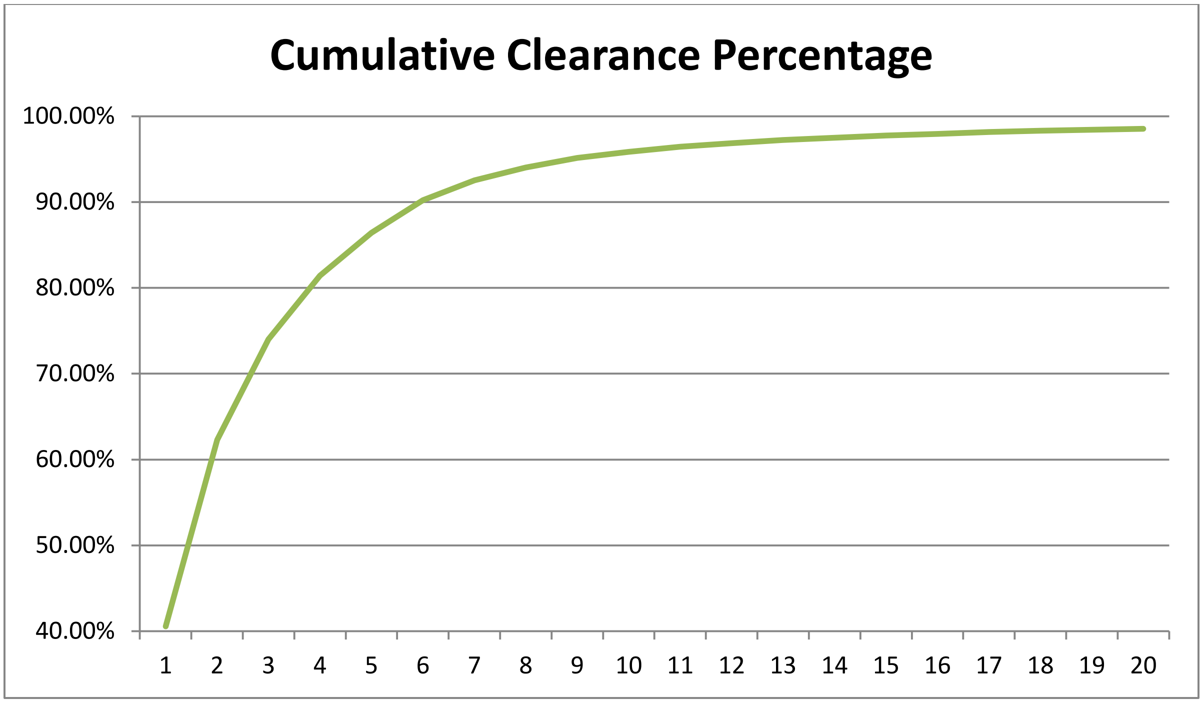
The *Notice*, however, proposed an alternative remedial measure — the same triple-credit scheme as it proposed for core customers.[41] The proposal should be rejected for the reasons that have already been discussed. In particular, the pattern of OOS trouble-closures for smaller business customers over time, like the pattern for core customers, reflects the company's continuing attempts to close out such troubles, rather than any practice of ignoring them once the 24-hour threshold has passed.[42]

---

[40] Within the data set of 2012 troubles for non-Enterprise business customers, 50.6% of the trouble tickets and 56.2% of the dispatches-out were in New York City.

[41] *Notice* at 9.

[42] The trouble closure times are longer for these customers than for core customers. As already noted, this is predominantly caused by the fact that the "request/accept" exclusion is not applied in Verizon's data for non-core customers.



The *Notice* also leaves the door open for going beyond the triple-credit proposal for smaller business customers, stating that the Commission was requesting a root cause analysis in order to "position [it] to identify and implement a more tailored regulatory response if business customers are indeed experiencing poor service quality because they too should be afforded protections if insufficient competitive alternatives exist."[43] However, as shown above, there is no basis for imposing new requirements in this area.

First, there is no evidence that the level of service currently provided to smaller business customers is in any way inadequate. Differences in trouble clearance times between smaller-business and core customers are readily explained by the intended prioritization of core customers under the SQIP, and by difference in access to business customers' premises and terminals.

[43] *Notice* at 9.

Second, the small business market is clearly competitive, a fact that supports a non-core classification under the Commission's SQIP orders.

Third, additional remedial measures cannot be justified on the spurious grounds that Verizon lacks incentives to repair small business troubles rapidly. Business voice lines generate significantly higher revenues than residential voice lines, and the existence of competition ensures that Verizon has a sound business motivation to retain those revenues. Moreover, tariffed out-of-service credits and the Commission's complaint process provide Verizon with ample incentives to restore OOS conditions promptly.

Last, although perhaps most important, any measures that have the effect of treating smaller business customers as core customers would dilute and thus undermine the incentives to provide prioritized repair to handicapped, disabled, blind, elderly, Lifeline, and white-spot customers — incentives that are at the heart of the Commission's rationale in adopting the SQIP.

For these reasons, the Commission should decline to adopt such measures.[44]

IV. SUMMARY AND CONCLUSIONS

As the Commission has recognized, the SQIP is based on a sound policy foundation, and is working well in its mission of ensuring the provision of high-quality service to core customers. There is no legal or policy justification for tinkering with the Plan, or for adopting new remedial

[44] Verizon's position that no additional regulatory measures are warranted for "small" business customers obviates any need to discuss where the line should be drawn for purposes of identifying such customers. We note, however, that the definitions of "small business" that are used for various purposes differ considerably. (*See,* for example, Wikipedia, *s.v.* "Small Business.") When the concept has been relevant to telecommunications, the tendency has been to rely on line counts, and to draw the boundary of the "small" or "mass" business market at a low line count. *See, e.g.*, Cases 05-C-0237 and 05-C-0242, "Department of Public Service Staff White Paper" (July 6, 2005), at 19 & n.48 (utilizing, in Staff's assessment of the proposed Verizon/MCI merger, data from the FCC's *Local Competition Report* that "defines the mass-market broadly to include residential/small business customers purchasing 1 to 3 lines").

measures for core or small business customers. Such measures would be unnecessary, counterproductive, and of questionable legality.

Respectfully submitted,

JOSEPH A. POST
140 West Street — 27th Floor
New York, New York 10007-2109
(212) 321-8126

Counsel for Verizon New York Inc.

February 25, 2013