

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on May 19, 2011

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman  
Patricia L. Acampora  
Robert E. Curry, Jr.  
James L. Larocca

CASE 10-C-0609 - In the Matter of the Petition In the Matter of  
the Petition of Verizon New York Inc. for Waiver  
of New York Code of Rules and Regulations, Title  
16, §§ 606.4 and 606.5, as Modified by July 1,  
1992 Settlement Agreement, as Amended,  
Pertaining to Billing Categories and Partial  
Payments.

ORDER DIRECTING TARIFF AMENDMENT

(Issued and Effective May 19, 2011)

BY THE COMMISSION:

INTRODUCTION

On November 1, 2010, Verizon New York, Inc. (Verizon or  
company) submitted a petition requesting authority to change the  
manner in which it allocates partial bill payments, through waiver of  
the Commission's partial payment rules established in 16 NYCRR  
§606.4(c) and §606.5(a) through (c) as modified by two subsequent  
orders, issued August 7, 1992<sup>1</sup> and December 30, 1993.<sup>2</sup> Verizon

---

<sup>1</sup> Case 90-C-1148, Telephone and Telegraph Corporations - Billing and  
Collection Services, Order Approving Settlement Agreement (issued  
August 7, 1992) (Settlement Agreement).

proposes two changes. First, it would apply the partial payment to two categories, or buckets, of services, specifically basic local exchange service and non-basic services, instead of four categories of services (first rule). Basic monthly telephone service would mean message rate or flat rate service; non-basic services would refer to all other services provided by Verizon, including broadband, Fiber Optic Service (FIOS), inter and intra-Local Access and Transport Area (LATA) long distance, and special features, such as, call waiting, caller ID, and three-way calling. Second, it would apply partial payments to all past due charges before applying any payments to other current charges (second rule).

The first partial payment allocation rule sets forth four payment allocation categories: (1) basic local service; (2) local exchange carrier (LEC) intra-LATA toll and interregional calling; (3) non-basic LEC services; and (4) all other. The second partial payment rule sets forth requirements, depending upon the date that the payment is received. For partial payments received less than 15 calendar days following the bill date or preparation date, application of payments are made to outstanding charges in the order of priority established in each the four partial payment categories. For partial payments received on or after 15 calendar days following the bill date or bill preparation date, application of payments are made to all charges (outstanding and current) according to the priority established in the four partial payment categories.

In this Order, we approve Verizon's requests and revise the categories for allocation of partial payments to include basic and non-basic services and direct application of partial payments to past due charges before applying any payments to other current charges.

---

<sup>2</sup> Case 90-C-1148, supra, Order Approving Modification of Settlement Agreement (issued December 30, 1993) (Modification of the Settlement Agreement).

These procedures would apply in the absence of directions from the customer or a pending bill dispute. The revisions would recognize the practice in the telecommunications markets of providing bundles of service to customers, including calling features, broadband, intrastate toll and long distance, and the choice of multiple providers of basic service, including wireline and Voice over Internet Protocol (VoIP) provided by cable television companies. The revised rules would continue to promote the objective of the partial payment requirements, specifically, the continuation of basic local service to customers and assurance that disconnection of this service does not occur due to nonpayment of charges for other services.

#### PUBLIC NOTICE

In accordance with the requirement of State Administrative Procedure Act §201(1), the Department of Public Service Staff (Staff) provided for publication of a notice of proposed rulemaking State Register on December 22, 2010. The public comment period expired on February 10, 2011. No public comments were received.

#### BACKGROUND

The Commission's partial payment rules, contained in 16 NYCRR §606.4 and §606.5 and effective in 1992,<sup>3</sup> established requirements for allocation of partial payments, in the absence of instructions from the customer and a pending billing dispute (16 NYCRR §606.5). Under the rules, the full amount of the partial payment is applied to basic local service, including tone signaling and non-published listings and excluding charges for other features and long distance calls; upon satisfaction of basic local service charges, any residual or subsequent payment received during the same billing period

---

<sup>3</sup> Case 90-C-1148, supra, Memorandum, Order and Resolution (issued January 17, 1992) (Order Adopting Rules).

is applied to intra-LATA long distance services billed by the LEC, and then to charges for other regulated services of the LEC. The rule made no provision for the application of any partial payments to long distance service provided by interexchange carriers or other third parties; its primary purpose was to ensure that customers' local service is not denied or blocked for the nonpayment of non-local services.

Section 606.4 permits disconnection of service for nonpayment of charges for basic local service; it prohibits disconnection of basic local service for nonpayment of charges for other services, including long distance services and allows blocking of service (except 911) from providers of these services (16 NYCRR §606.4(a) through (d)). Additional provisions in §606.4 require every telephone corporation to develop a partial payment allocation plan, list charges for each service separately, and develop outreach and education programs relating to partial payment allocation plan (16 NYCRR §606.4(e)).

Following the adoption of the billing and collection services rules, several parties and participants filed a lawsuit. The lawsuit resulted in a Settlement Agreement that revised the categories of service for application of partial payments. With respect to Verizon, after several steps, the Settlement Agreement established four payment allocation categories: (1) basic local service; (2) LEC intra-LATA toll and interregional calling; (3) non-basic LEC services; and (4) all other.<sup>4</sup> It required application: of partial payments, including Deferred Payment Agreement (DPA) payments, first to category one; and of any remainder next to category two, next to category three, and last to category four (paragraph 8). It prohibited

---

<sup>4</sup> The Agreement provided that other LECs are permitted, at their option, to establish three payment allocation categories: (1) basic local service; (2) LEC intra-LATA toll and non-basic LEC; and (3) all other, or establish the four payment allocation categories.

amendment, modification, cancellation, extension, or waiver, except by a written instrument, after prior written notice and an opportunity for comment, executed by the parties listed in the initial Order Adopting Rules that were subject of the lawsuit.

In 1993, the Commission approved a modification of paragraph 8 of the Settlement Agreement. For partial payments received less than 15 calendar days following the bill date or preparation date, it required application in the order of priority established for outstanding charges in each the four categories of partial payment allocation. For partial payments received on or after the 15<sup>th</sup> calendar day following the bill date or bill preparation date, it required satisfaction of all charges (outstanding and current) according to the priority established in the four partial payment allocation categories. The Modification of the Settlement Agreement provided that it would take effect only upon Commission approval and remain in effect thereafter unless and until superseded by Commission order.

In 2006,<sup>5</sup> the Commission stated its intention to eliminate its partial payment allocation rules for all wireline service providers, and replace it with a requirement for allocation of any partial payment, without instructions from the customer, so as to provide basic service for that customer, even though the customer takes another service, such as a package bundling basic service with other services. The Commission's stated objective in adopting the proposal was to foster access to the network and allocate payments in a manner that is most favorable to the customer retaining such access. It determined that it would establish the specifics regarding the implementation of the proposed rule change in a proceeding initiating

---

<sup>5</sup> Case 05-C-0616, Transition to Intermodal Competition, Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings (issued April 11, 2006) (Competition III Order).

to amend its telephone service billing and collection rules. Although the Commission adopted amendments to many of its rules establishing requirements for residential telephone service, these amendments did not include a revision to its partial payment allocation rules (16 NYCRR §606.5).<sup>6</sup>

#### PETITION

The first request for waiver of our amended rule would establish two instead of four payment allocation categories; and, the second would apply partial payments to all past due charges before application to other charges, thus eliminating the process based upon the date that the partial payment is received.

#### Two Instead of Four Categories

Verizon supports its request for waiver of the amended rule establishing four categories for allocation of partial payments by stating that it is consistent with the Commission's proposal, as stated in the Competition III Order, removes unnecessary regulatory cost and eliminates potential customer confusion. The company asserts that the requested waiver would recognize that a highly competitive market removes the justification for a regulatory requirement that was implemented at a time when customers had no meaningful choices for basic service.

#### Payment of All Past Due Outstanding Charges

Verizon states that the current partial-payment process confuses many customers; other industries allocate all partial payments to past due charges; and, customers are familiar with the

---

<sup>6</sup> See, Case 96-C-1114, Telephone and Telegraph Corporations - Residential Service Rules, "Untitled Order (issued May 13, 1997)" and Memorandum and Resolution Adopting Amendments to 16 NYCRR Parts 600, 631 and 633) (adopted November 25, 1997).

method of paying past due charges first. It asserts that the established system makes little sense, with an unfair result of requiring customers to pay charges, if payment is received on or after the 15<sup>th</sup> calendar day following the bill date or bill preparation date, that are not yet technically due and payable.

Verizon states that, under its proposal, it is possible for customers submitting partial payments received on or after the 15<sup>th</sup> calendar day, to maintain their basic local service. It states that the company does not interrupt basic local service if the customer pays basic local service charges, as stated on its suspension notices, and that the company specifically identifies the customer's basic service charge amount, as well as charges for other billing categories, on its bills.<sup>7</sup> It maintains that, by applying partial payments received on or after the 15<sup>th</sup> day following the bill date to all past due and current category one charges, the customer may lose or be blocked from using other services, such as broadband service, a non-regulated service that many customers value as much as or more than basic service. Verizon asserts that the rule often defeats a customer's intent and expectation, which, it surmises, is to apply a partial payment in its entirety to all past due amounts, irrespective of the date the partial payment is received.

Verizon states that continued imposition of the partial payment allocation rules makes no sense in the current competitive environment. According to Verizon, in the 17 years since the rule was put in place, a major transformation in the world of telecommunications has taken place. Verizon notes that multiple options for voice and data services from an array of alternative providers are available, that none of these alternative providers are constrained by a partial payment allocation rule, and that each of

---

<sup>7</sup> Commission rules require LECs to 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)).

them is free to allocate partial payments from customers to past due charges ahead of any current charges. In fact, Verizon notes, New York is the only state in Verizon's footprint that imposes the requirement.

#### DISCUSSION

Telecommunication companies typically market their products as a bundled package of services including local, intrastate toll, long distance and various features, such as call waiting and caller ID. Most packages are offered at a discount. It no longer appears necessary to unbundle calling packages beyond basic and non-basic for the purpose of allocating partial payments or to require specific allocations, based upon the date of payment, in order to achieve the objective of preventing disconnection of basic local service for nonpayment of other service charges.

#### Partial Payment Allocation Categories

As Verizon notes, because of the significant changes in service offerings, the four category regime established pursuant to the Order approving the Settlement Agreement is outdated, complicated and confusing. Reducing the number of partial payment billing categories from four to two would remove unnecessary regulatory burdens and costs, reduce potential customer confusion and modernize an antiquated process. Therefore, we authorize Verizon to reduce the number of billing categories from four to two and waive our amended rule ((16 NYCRR §606.5(b) and (c)))<sup>8</sup> as modified by the Settlement Agreement adopted in the Commission's Order Approving Settlement Agreement, issued August 7, 1992.

In place of the waived provisions, we establish two payment allocation categories: (1) basic local service; and (2) non-basic services. This change would not eliminate the right of customers to

---

<sup>8</sup> Residual or subsequent payments are applied to charges for LEC inter-LATA long distance services and then to charges for other LEC regulated services (16 NYCRR §606.5(b) and (c)).



designate an allocation method for their partial payments or exempt from the partial payment rules accounts with pending billing disputes (first paragraph of 16 NYCRR §606.5); and basic local service would continue, for this purpose, to include tone signaling and non-published listings (16 NYCRR §606.5(a)). The charges for other features and long distance calls excluded from basic local service are included, along with other services, in the non-basic service category.

In addition to the waiver of subdivisions (b) and (c) of §606.5, the specific provisions relating to partial payments in subdivision (e) of §606.4 are waived. These provisions require every telephone corporation to develop a plan for assignment of partial payments and outreach and education programs describing the assignment plan to customers. The provision relating to separate listing of charges for each service on a customer's bill and the balance due for each service remains in effect.

#### Past Due and Current Charges

Application of partial payments towards past due balances first would assist customers in preserving basic local service, and, as Verizon points out, is consistent with the customer's intent and likely to result in less confusion. These procedures would apply in the absence of customer direction or a pending bill dispute. Residential customers are entitled to all of the protections contained in the Telephone Fair Practices Act (TFPA at 16 NYCRR Part 609), which includes the ability to obtain DPAs to avoid loss of basic service. TFPA requires Verizon to offer DPAs to customers on all regulated services (16 NYCRR Part 609). Further, as required by TFPA, Verizon should include outreach and education materials advising customers of the modification to the application of partial payments and the protections against disconnection of services in its annual notification of rights (16 NYCRR §609.13). Accordingly, Verizon

should be permitted to apply all partial payments first towards past due balances, without regard to the date a partial payment is received, and our order approving the Agreement issued August 7, 1992, as revised in the Order Approving Modification of the Settlement Agreement, issued December 30, 1993, is superseded.

These rule revisions are equally justified for other LECs. If other LECs choose to implement these new rules, they are required to submit a letter to the Secretary to the Commission within 30 days after the date of this Order.

#### Procedural Issues

The Settlement Agreement prohibits amendment, modification, cancellation, extension, or waiver, except by a written instrument, after prior written notice and an opportunity for comment, executed by the parties listed in the initial Order Adopting Rules that were subject of the lawsuit. A written and signed agreement initiated the Modification of the Settlement Agreement approved in 1993.

Staff provided for the publication of a SAPA notice of proposed rulemaking in the State Register and an opportunity to submit comments on the proposed modification to our Order Approving Settlement. For the change requested, due to the significant changes in the market and the interests involved, the provision of a SAPA notice, in our judgment, satisfies the due process requirements to provide prior written notice and an opportunity for comment to parties listed in the initial Order Approving Settlement.

The fact that no parties involved in past disagreements and negotiations on the partial payment issues filed comments on the proposed rulemaking indicates a lack of interest in these issues. The Commission has the statutory authority to supersede or modify its previous orders approving settlements, without the written agreement of the parties. The Commission orders incorporate any joint proposal or settlement agreement; and, accordingly, the Commission may, in its

discretion, revise the past determinations in its orders. The requirement for a written executed agreement prior to Commission action conflicts with the Commission's general authority to make determinations relating to telephone service issues (Public Service Law §92).

Although in 1992, the strong interests of the parties in access to bill payments and the disconnection process may have justified a condition of their involvement in any further changes to the partial payment rules, the dynamic changes in the telecommunications markets have caused a major shift in the interest that gave rise to the past disagreements. Accordingly, we determine that a written consent of the parties to a 1992 case is unnecessary for waiver of partial payment rules amended in our past order and the SAPA notice satisfies the requirement for written notice and an opportunity to comment.

#### CONCLUSION

The Commission authorizes Verizon and other LECs, in the absence of instructions from the customer and a pending billing dispute, to apply the full amount of the partial payment to basic local exchange services, including tone signaling and non-published listings (basic local service); and, upon satisfaction of basic local service charges, any residual or subsequent payment received during the same billing period is applied to charges for non-basic service. Non-basic service is any service other than basic monthly local telephone service (message rate or flat rate service), including broadband, FIOS, inter and intra-LATA long distance, and calling features, such as, call waiting, caller ID and three-way calling.

The Commission authorizes Verizon and other LECs to apply all partial payments, in the order of priority established for outstanding charges in each the two categories of partial payment allocation; and, upon satisfaction of past due charges, to apply any

residual or subsequent payment received during the same billing period to current charges, in the order of the priority established in the two partial payment allocation categories.

These revisions supersede requirements established in the Commission's rules (16 NYCRR §606.5(b) and (c) and portions of 16 NYCRR §606.4(e), as described in this Order, as amended by the Commission's Order Approving Settlement Agreement, issued August 7, 1992, and Order Approving Modification of the Settlement Agreement, issued December 30, 1993.

The Commission orders:

1. Verizon of New York Inc.'s request to waive the billing categories and partial payment allocation rules in 16 NYCRR §606.4 and §606.5 as amended in the Commission's Order Approving Settlement Agreement, issued August 7, 1992, and Order Approving Modification of the Settlement Agreement, issued December 30, 1993, is granted, as discussed in the body of this Order.

2. Verizon of New York Inc. is authorized, in the absence of instructions from the customer and a pending billing dispute, to apply the full amount of a partial payment to basic local exchange services, including tone signaling and non-published listings and, upon satisfaction of basic local service charges, to apply any residual or subsequent payment received during the same billing period to charges for non-basic service.

3. Verizon of New York Inc. is authorized to apply all partial payments, in the order of priority established in the two categories of partial payment allocation and, upon satisfaction of past due charges, to apply any residual or subsequent payment received during the same billing period to current charges, according to the priority established in the two partial payment allocation categories.

4. Verizon of New York Inc. is authorized to discontinue development of a plan for assignment of partial payments and a

separate outreach and education program describing the assignment plan, in accordance with the discussion in the body of this Order.

5. Each local exchange carriers, listed in Appendix A appended to this order is authorized to establish the same requirements authorized for Verizon of New York Inc. in Ordering Clauses #2, #3 and #4, provided that the local exchange carrier submits a letter to the Secretary to the Commission no later than 30 days after the issuance of this Order stating its intent to modify its partial payment allocation practices. The Secretary to the Commission may, in her discretion, modify the deadline established in this Ordering Clause.

6. This case is closed, upon compliance with ordering clause #5.

By the Commission,

JACLYN A. BRILLING  
Secretary

Appendix A

Local Exchange Companies

1. Armstrong Telephone Company
2. Berkshire Telephone Corporation
3. Cassadaga Telephone Corporation
4. Champlain Telephone Company
5. Chautauqua and Erie Telephone Corporation
6. Chazy and Westport Telephone Corporation
7. Citizens Telecommunications Company of NY
8. Citizens Telecommunications Company of Hammond, NY, Inc.
9. Crown Point Telephone Corporation
10. Delhi Telephone Company
11. Deposit Telephone Company, Inc.
12. Dunkirk and Fredonia Telephone Company
13. Edwards Telephone Company
14. Empire Telephone Corporation
15. Fishers Island Telephone Corporation
16. Frontier Communications of Ausable Valley, Inc.
17. Frontier Communications of New York, Inc.
18. Frontier Communications of Seneca Gorham, Inc.
19. Frontier Communications of Sylvan Lake, Inc.
20. Frontier Communications of Rochester, Inc.
21. Germantown Telephone Company, Inc.
22. Hancock Telephone Company
23. Margaretville Telephone Company, Inc.
24. Middleburgh Telephone Company
25. Newport Telephone Company, Inc.
26. Nicholville Telephone Company, Inc.
27. Ogden Telephone Company
28. Oneida County Rural Telephone Corp.
29. Ontario Telephone Company, Inc.
30. Oriskany Falls Telephone Corporation
31. Pattersonville Telephone Company
32. Port Byron Telephone Company
33. State Telephone Company
34. Taconic Telephone Corporation
35. Township Telephone Company, Inc.
36. Trumansburg Telephone Company
37. Vernon Telephone Company, Inc.
38. Warwick Valley Telephone Company, Inc.
39. Windstream New York, Inc.