

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on November 20, 2002

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman  
Thomas J. Dunleavy  
James D. Bennett  
Leonard A. Weiss  
Neal N. Galvin

CASE 00-C-0188 - Proceeding on Motion of the Commission to  
Examine the Migration of Customers Between Local  
Carriers.

ORDER ADOPTING REVISED MASS MIGRATION GUIDELINES

(Issued and Effective January 2, 2003)

BY THE COMMISSION:

BACKGROUND

On January 26, 2000, we instituted this proceeding to address the migration of local telecommunications customers from one carrier to another. In the course of the proceeding, we have now adopted Guidelines developed by an industry/consumer/government collaborative for the migration of individual customers from one CLEC to another CLEC or from a CLEC to Verizon.<sup>1</sup> Thereafter, CLEC business decisions to exit all or a portion of the New York market showed the need for different protocols to migrate large numbers of customers in a short time

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<sup>1</sup> Case 00-C-0188, Order Adopting Guidelines (issued January 8, 2001); Order Adopting Phase II Guidelines (issued June 14, 2002).

period. Consequently, we issued Mass Migration Guidelines, again developed collaboratively.<sup>2</sup>

Since the issuance of the Mass Migration Guidelines, experience with mass migrations of telephone customers has shown that the flexible project management approach of the original Mass Migration Guidelines is effective. Nevertheless, some changes to the original Guidelines and some additional guidance to carriers were needed. We also became aware of the need to articulate the criteria by which we will evaluate a carrier's request for authority to terminate service to customers in New York. The revised Mass Migration Guidelines adopted herein accomplish those goals.

#### Procedural History

A Notice reconvening the collaborative was issued on May 10, 2002. The collaborative group reconvened and developed revisions to the Mass Migration Guidelines. The proposed Revised Guidelines developed by the parties address and resolve many of the issues posed in the Notice. Upon receipt of the Revised Guidelines proposed by the collaborative, the Commission issued a Notice Inviting Comments on July 26, 2002. Notice of the proposed Revised Guidelines was also published in the New York State Register, pursuant to the State Administrative Procedure Act, on August 7, 2002.

Comments were submitted by Verizon New York Inc. (Verizon); the New York State Telecommunications Association, Inc. (NYSTA); WorldCom, Inc. (WorldCom); AT&T Communications of New York, Inc. (AT&T); and Choice One Communications of New

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<sup>2</sup> Case 00-C-0188, Order Adopting Mass Migration Guidelines (issued December 4, 2001).

York, Inc. (Choice One). The Attorney General of the State of New York (OAG) and Verizon submitted replies.

Summary of Proposed Revisions

The principal revisions to the original Mass Migration Guidelines that are proposed are:

- Amplification of the requirements for a departing carrier's Exit Plan;
- Amplification of customer list requirements; and
- The addition of criteria for Commission approval of a carrier's request to exit the local exchange market.

Specifically, the proposed Revised Guidelines require a carrier to include more information in its Exit Plan filed with the Commission. Also, customer notification requirements have been made more stringent. Although the exiting carrier's requirement to notify customers 60 days in advance of its projected termination date remains unchanged, that carrier is required to provide at least one additional follow-up notice to customers that have not migrated. Also, an acquiring carrier must notify its potential new customers 60 days in advance, rather than the 30 days required under the current Guidelines. Another proposed change is that, as part of the project management process for mass migrations, exiting carriers are now explicitly required to submit customer lists to Staff and to provide progress reports on the status of a migration as it occurs.

Another change reflected in the proposed Revised Guidelines is a substantial relaxation in the current requirement that carriers impose "soft dial tone" on customer lines during the last 10 days prior to termination of service. Due to the inability of many carriers to provide an intercept message and to other misunderstandings about the intent of the

soft dial tone requirement, it has been reduced to a recommendation of action to be worked out in consultation with Department Staff where appropriate. The proposed Revised Guidelines also address more specifically the transfer of central office (NXX) codes and the need to "unlock" the E-911 database. Finally, the proposed Revised Guidelines include a new section setting forth the criteria that should be considered by the Commission in deciding upon a carrier's request to terminate service in the New York market.

#### COMMENTS & DISCUSSION

All of those submitting comments generally support the proposed revisions. Nevertheless, most of the commenting parties made specific suggestions that warrant some minor modifications or clarification of the Guidelines.<sup>3</sup> The parties' comments and replies are discussed below in the context of each issue, rather than summarized by party.

#### Exit Plan Requirements

AT&T comments that the Exit Plan should include procedures to identify and prioritize customers for reconnections. The concept has merit. However, it is an issue that is more practically worked out between Staff and the

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<sup>3</sup> The Office of the Attorney General comments that it supports the proposed Revised Guidelines and encourages the adoption of these rules and practices of conduct where a local service provider exits the market. It further urges the Public Service Commission to continue working with the parties in this proceeding to ensure an orderly transition in future mass migrations with a minimum of customer confusion. The OAG did not propose any changes or modifications to the proposed Revised Guidelines.

exiting carrier without requiring the burden of a formal plan that may or may not fit the uniqueness of each migration.

AT&T also states that the Exit Plan should be posted on the DPS website. Currently, Staff posts notice that a carrier has announced its exit from the market and lists contact information for the exiting carrier and for the Department's Office of Communications staff member assigned to the migration. Much of the more specific information from the Exit Plan is of limited value to other CLECs. Therefore, we will decline to require that the entire Exit Plan be posted. We believe that what should be posted is the information that will be of value to other CLECs. In this regard, we concur with AT&T's specific suggestion of posting the identity of the primary acquiring carrier, if one exists. Additionally, as AT&T recommends, if the exiting carrier has separate contacts who are responsible for cutover coordination, Customer Service Records, and/or provisioning, these contacts should be posted.

#### Customer Notification

Currently, the Mass Migration Guidelines require 60 days' notice to customers from an exiting carrier and, where there is an acquiring carrier, 30 days' notice from the acquiring carrier. The sample letter included in Appendix A for the 60-day notice from the exiting carrier includes an explanation of the transfer to the acquiring carrier and the date by which a customer must "opt out" if it desires an alternative provider (the "cut-off date"). This two-tiered notice requirement was designed to ensure that customers first heard from their current carrier, who would inform them of the identity of the acquiring carrier, such that customers would be more likely to open a subsequent letter from the acquiring carrier and not discard it as a "junk mail" solicitation.

Typically, the follow-up letter from the acquiring carrier has further spelled out the procedures for opting out as well as the details of service for those customers who choose to remain with the acquiring carrier.

In revising the Guidelines, the work group revised the timeline for the cut-off date, pushing it forward to 30 days prior to exit in order to give more time to both the acquiring carrier and alternative carriers to migrate customers to them. In so doing, the workgroup revised the dates for notices, so that both the exiting carrier and the acquiring carrier have an obligation to send notices to the customer 60 days prior to exit. The rationale was that federal regulations, e.g. 47 CFR §64.1120, put the responsibility on the acquiring carrier to give customers 30 days' notice before transfer. Under the scheme envisioned in the proposed Revised Guidelines, customers could begin to be moved on the 31st day after the initial notice, with such migrations continuing throughout the period of Day 31 through Day 60 from the initial notice. Therefore the acquiring carrier would have to give 60 days' notice to comply with the federal requirement.

Verizon comments that the Guidelines should require the notices from the exiting and acquiring carriers to be in the form of a single joint letter. WorldCom opposes Verizon's recommendation by noting that the proposal fails to take into account the inherent logistical problems with a joint letter. It maintains that, if carriers are forced to negotiate the details needed in a notification letter, the result could be a delay of notification to customers. Conversely, WorldCom contends that the benefits of a joint letter are minimal.

Currently, there is nothing in the Guidelines that would restrict a joint letter, so carriers are free to pursue that option. However, we agree that there is potential for

delay and contention associated with forcing carriers to negotiate the details. Therefore, we believe it best not to mandate a joint letter.

In the proposed Revised Guidelines, there is a new requirement that carriers provide their customers with "applicable information about long distance service." This addition reflects the need to alert customers that the exit of their local service provider may also mean the loss of long distance service if provided by that same carrier. AT&T comments that the customer notification letter should include information about long distance "features." Verizon replies that it is impractical and unnecessarily burdensome to require that these letters contain specific customer features information. We conclude that, since it could require that each customer receive an individualized letter, this is too burdensome a requirement. Moreover, the requirement as it is currently written is sufficient to alert a customer to discuss long distance service with its old and/or new carriers, which allows enough opportunity to discuss specific features as necessary.

The current Mass Migration Guidelines contain two sample customer notification letters to be sent by an exiting carrier. One letter is applicable where there is an acquiring carrier to which the customer will be transferred if he/she takes no action to go elsewhere, and another is applicable where there is no acquiring carrier and all customers must affirmatively obtain new service. The proposed Revised Guidelines have added a third sample customer notification letter that is applicable only where the exiting carrier provides service under Verizon's resale tariff. This arrangement is different because, if a customer fails to select

another provider, the customer is automatically defaulted to Verizon when the CLEC exits the market.

Verizon proposes to add a sentence to this third notification letter stating, "Verizon will make every effort to provide you with the same service you currently have with your existing vendor." We reject Verizon's proposal. The letter is not from Verizon. While it would be nice to tell customers that their current service will be transferred as is, such a transfer cannot be guaranteed, and a "maybe" sentence does not convey any meaningful information to the customer.

#### Rights of Wholesale Providers

NYSTA does not propose a change in the proposed Revised Guidelines themselves. It does, however, request that the Order approving them repeat the language contained in the Commission's Order approving the current Mass Migration Guidelines. There, we stated that the Guidelines:

should not be interpreted to impose any new obligations upon ILECs or other creditors to continue services to a defaulting CLEC, merely so that the CLEC's customers will have adequate notice during the transition period. Rather, the obligations impose a burden on all CLECs to arrange and conduct their business affairs in such a way that they can meet the notice and other obligations of these Guidelines at their own expense and risk.<sup>4</sup>

Verizon replies that it supports NYSTA's position. In a similar comment, Choice One notes for the record that these Guidelines are not envisioned to frustrate or void the validity of an existing contract or service agreement and its legal provisions.

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<sup>4</sup> Case 00-C-0188, Order Adopting Mass Migration Guidelines (issued December 4, 2001), at 7.



Neither the original Guidelines nor these Revised Guidelines are intended to expand or diminish wholesale carrier rights or obligations. We note, however, that the parties in this case are continuing to examine reforms that might be made to the structure of the CLEC market generally or to wholesale-CLEC relations specifically that might impact upon this issue.<sup>5</sup> The May 10, 2002 Notice reconvening the collaborative work group asked the parties to consider the issue of how to avoid an interruption in service to customers due to an abrupt termination of service by a distressed CLEC. The Notice referred to a CLEC's inability to provide the requisite notice to customers due to a general lack of funds to continue service, conflicting orders of a Bankruptcy Court, or termination of necessary wholesale services or supplies. Consideration of possible solutions, including provider of last resort or default provider policies, deposit requirements by wholesale carriers, and bonding requirements for all CLECs, among other alternatives, is ongoing.<sup>6</sup> In light of this on-going work, we decline to comment further on the issue.

#### Project Management Process

Like the current Mass Migration Guidelines, the proposed Revised Guidelines include an Appendix of specific project management steps. These were modified by the parties to clarify them and also to make them more generic and less Verizon-specific. Nevertheless, Verizon submitted several comments that are aimed to further clarify that the process is

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<sup>5</sup> Case 00-C-0188, Ruling Concerning Procedure and Scheduling Procedural Conference Via Telephone (issued December 27, 2002).

<sup>6</sup> Id.

really a generic process applicable to any network service provider, by removing references to "Verizon" and substituting "network service provider." We concur with this differentiation and will make the changes Verizon identified.

Under "Day 2" (counting backwards, such that Day 2 is two days before the target exit date) of the current migration process documented in Appendix B, the network service provider notifies the acquiring CLEC of any discrepancies and the acquiring CLEC takes appropriate actions required to correct discrepancies. This step is unchanged in the proposed Revised Guidelines. Choice One recommends that this Migration Process chart be changed to move these tasks to Day 3 instead of Day 2. Verizon replies that it cannot endorse this proposal, as the timeline provided in the Guidelines was the result of active negotiations among the parties and changing the time will weaken the process. We agree that the process timelines were agreed upon by all parties and any changes should be discussed by all of the parties. Therefore we will not change these timelines at this juncture, based on the comments of one party that it will provide time insurance.

#### Customer List Issues

Under Section VI, "Mass Migration Process," the parties have included a new section relating to "Customer Lists." This section adds a new requirement that an exiting CLEC submit its customer list to Department Staff at least 60 days prior to the projected date for market exit and/or transfer of customers to another carrier. The proposed Revised Guidelines note that Staff will use the list to assess the nature of the customers being cut over and to track the progress of the cutover. Also, Staff can determine the size of the customer base and identify health and safety-related customers.

Staff may also use the list to contact individual customers as necessary to resolve problems.

WorldCom comments that the exiting carrier should not be required to provide customer list information to Staff when there is a primary acquiring carrier or if the exiting CLEC provides service through Verizon resale, where customers automatically default to Verizon. WorldCom asserts that there is no need for Department Staff to have access to customer lists under either of these scenarios. Verizon disagrees in the resale scenario, maintaining that Verizon wholesale does not necessarily have accurate billing information for an exiting CLEC's end users. Therefore, Verizon urges that it is necessary for the exiting CLEC to provide the Commission with up-to-date billing information.

The requirement that customer lists be submitted to Staff is not intended to provide the means to transfer the information to other carriers, such as Verizon. Rather, the exiting CLEC's obligation to provide necessary customer information to other carriers picking up those customers is separate and distinct from the requirement to submit a customer list to be used by Staff. This obligation is set forth in the End User Migration Guidelines - CLEC to CLEC and referenced in these Revised Mass Migration Guidelines in the Exit Plan requirements and the Mass Migration Process section.

Nevertheless, we will not adopt the change advocated by Worldcom. This same issue was thoroughly aired and discussed during the collaborative sessions, and the work group determined that the customer list requirement was valuable in all scenarios. Our experience has shown that there have been significant problems of customer migrations even in the scenarios identified by WorldCom, and the customer lists have been a valuable tool to Staff in ensuring that customers are not

left without service. However, we sympathize with WorldCom's view that there may be situations where the list is unnecessary and therefore an undue burden upon an exiting carrier.

Therefore, we will allow Staff to waive this requirement where it appears that possession of the list will not be helpful to Staff in overseeing the migration process.

Several comments refer to privacy or competitive concerns regarding Staff's use or disclosure of the customer list information. The Revised Guidelines, as proposed, state:

Recognizing the privacy concerns associated with submitting a customer list, Staff will treat the customer list as confidential. This list will not be shared with any other CLEC without the exiting CLEC's permission.

Several carriers have proposed revisions to this language as part of their comments. For example, Choice One proposes that Staff be precluded from sharing the list with any other "party" rather than limiting the restriction to sharing the list with any other "CLEC." Choice One also proposes to restrict Staff's use of the list by adding the following language:

For purposes of these Guidelines, Staff's custody and use of the confidential customer list and information is to be only used to ensure minimal or no disruption, where possible, during a mass migration period. No other purpose or use is permitted.

In its comments, WorldCom notes that, although the Guidelines refer to privacy and confidentiality, they should be strengthened by adding a reference to 16 NYCRR 6-1.3, which contains the Commission's regulations relating to trade secret status for information. In addition, WorldCom asserts that the Guidelines should spell out what facts or events might trigger Staff to contact particular customers during a given migration.

These comments all address Staff's use of and ability to disclose a customer list once the list is submitted to Staff under the Guidelines. These issues are best resolved through reference to existing law and regulations relating to agency disclosure of documents. These include our trade secret regulations at 16 NYCRR Subpart 6-1, our personal privacy protection regulations at 16 NYCRR Subpart 6-2, Public Officers Law §§ 87 and 89, and pertinent case law. Existing law and regulations have proved to be effective in balancing various public interests in competition, privacy, and open government with the legitimate regulatory needs of the Department. It is not necessary or desirable to modify existing law through language in these Mass Migration Guidelines, and we do not believe the collaborative group intended to do so.

Consequently, we will delete the language in the proposed Guidelines quoted above and substitute the following language:

Carriers' submission of customer lists and Staff use of or disclosure of customer list information will be subject to applicable laws and regulations relating to public disclosure of records, confidential trade secret status, and privacy protections, including Public Officers Law §§ 87 and 89 and Commission regulations at 16 NYCRR Part 6.

Under the proposed Revised Guidelines, carriers are also asked to identify, to the extent possible, "priority" or "essential" customers in the customer lists submitted to the Department. The proposed Revised Guidelines go on to define "priority/essential" customers as "hospital, ambulance, police, fire, national security, civil defense, or any customer who has obtained Telecommunications Service Priority (TSP) authorization from the government."

Verizon recommends changing the term "priority" to "telecommunications service priority." We will reject this

suggestion. "Priority" as defined in the proposed Revised Guidelines is a larger universe than just Telecommunications Service Priority, which applies only to those customers who have applied for the designation pursuant to federal guidelines.

The new customer list obligation in the proposed Revised Guidelines also requires carriers to identify, to the extent possible, "at risk" customers whose particular serving arrangements may create cutover problems. Choice One comments that an "at risk" customer should be defined as any customer who has unique arrangements and is served by facilities other than the serving ILEC facilities in that particular location. We prefer not to limit the definition of "at risk." Rather, we will leave the definition open to accommodate the numerous possible customer serving arrangements that could create difficult migrations.

#### Progress Reports

The proposed Revised Guidelines contain a new requirement that "The exiting CLEC must track the progress of the migrations and provide Staff with progress reports." Choice One comments that the progress report should be a coordinated report between the exiting carrier and the acquiring carrier, when applicable. To avoid delays, confusion, and finger pointing, we will require that the progress report be the responsibility of one party, the exiting CLEC.

#### Role of Network Service Provider

The proposed Revised Guidelines include virtually unchanged the "General Principles" set forth in the current Mass Migration Guidelines. AT&T proposes to add an eighth principle that reads:

Underlying carriers will make the best efforts to make these orders a provisioning priority and be flexible in areas such as setting port dates, provisioning intervals, re-use of loops, etc.

Verizon replies that AT&T's recommendation would jeopardize an underlying provider's ability to fulfill equally important functions, such as timely processing and completion of orders for its retail end users and wholesale customers in the normal course of business. Further, Verizon asserts that this proposed new principle would dramatically impact the underlying provider's ability to meet its service quality measurements.

We conclude that AT&T's proposal singles out the network service provider for a flexibility and priority requirement, when the focus should be on the entire migration process and all the players involved. Because the Guidelines adequately address the overall process, the eighth principle is not required and will not be added.

#### NXX Code Transfers and Number Porting

In its comments, Verizon addresses NXX code transfers and suggests language clarifying this section of the Guidelines by discussing the functions of NANPA. Verizon's comments identify a valid concern, which is shared by WorldCom. The concern is that the customers could lose their telephone numbers prematurely unless porting of the numbers and reassignment of the NXX codes are coordinated. As proposed, the last sentence of Section VII of the Revised Guidelines currently states,

In addition, care must [be] taken to ensure that all number porting is complete before a code is disconnected.

The concern raised by Verizon and WorldCom is best addressed by replacing this sentence with the following sentence:

In addition, neither NXX codes nor thousand number blocks can be disconnected if any number within the relevant range of numbers has not yet been completely ported.

WorldCom also submits comments designed to provide a more thorough treatment of number portability. Specifically, WorldCom notes that the exiting CLEC can determine the number of customers that have been ported away to another carrier by checking with the Number Portability Administration Center. We concur that this useful information should be part of the exiting CLEC's progress report.

#### Minor Clarifications

Finally, Verizon, Choice One, and AT&T submitted a number of recommendations to make minor changes to the text to clarify the Revised Guidelines. These comments are aimed at improving clarity, rather than promoting a particular carrier's perspective, and we will incorporate them into the Revised Guidelines.

#### Criteria for Approval of Termination of Service

A notable change proposed in the Revised Guidelines is the addition of a completely new section X, "Criteria for Commission Approval of a Carrier's Termination of Service." This new section incorporates both the procedural steps and the suggested criteria for decision that were previously set forth in the Notice Clarifying Exit Requirements and Reconvening Collaborative Sessions issued in this proceeding on May 10, 2002.

First, this section outlines the procedural requirements for exiting the local exchange market. In addition to filing an Exit Plan, a carrier must file a tariff



cancellation supplement, which serves as the vehicle for Commission consideration of the request to exit. For termination of basic local service, that supplement must be filed on at least 30 days' notice. The Commission will approve a request to exit the local exchange market by allowing such a cancellation supplement to go into effect. In contrast, if the Commission has concerns about a termination of service, it can suspend the cancellation supplement. Alternatively, where it is clear that the Commission will likely have concerns, a carrier may elect to voluntarily postpone its cancellation supplement.

The section then goes on to establish criteria for ruling on such a cancellation supplement. The proposed Revised Guidelines note that the Commission is unlikely to grant authority to terminate service to a carrier that has not filed an effective Exit Plan or has not executed its plan properly.

The proposed Revised Guidelines state generally that the Commission's decision will be guided by its view of what is in the public interest. The Revised Guidelines also propose four specific criteria that we should consider in ruling upon a carrier's request to terminate local service. These are:

1. Progress of Customer Migrations. Under this criterion, we would consider the number of customers who have not yet migrated and/or are in jeopardy of suffering an interruption in service. We might also take into account the carrier's attempts to notify customers of an impending loss of service.
2. Availability of Alternatives. Under this criterion, we would consider whether customers have easy access to other facilities and other carriers.
3. Nature of the Customer Base. Under this criterion, we would consider the nature of the customers in jeopardy of suffering a service interruption. This factor might include whether customers are business or residential or whether they are likely to have access to alternatives such as cell phones. This criterion in the Guidelines

also establishes a class of "priority/essential" customers that should never lose service:

In particular, the Commission will not ordinarily approve the exit from the market by any carrier where the result will be loss of local service to the following types of end users: a) national security or civil defense authorities, b) hospitals, c) police, d) fire departments, e) ambulance and rescue corps, and f) any customer who has obtained TSP [Telecommunications Service Priority] authorization under FCC Regulations from the federal government.

4. Ability to Continue Service. Under this criterion, we would consider the exiting carrier's ability to continue to provide local service in light of the carrier's resources. "Resources" would include a carrier's financial, personnel, equipment, or other tangible or intangible resources necessary to continue to provide service.

The standards proposed in this section closely track the language of the Notice reconvening the collaborative sessions, and they reflect little input by the industry group that met to discuss them. The one area where collaborative participants provided input is in the fairly narrow definition of "priority/essential" customers. Participants felt that it would be impracticable, if not impossible, to identify customers within such a heightened priority/essential category if it were defined more broadly to include institutions such as schools, day care centers, rehabilitation centers, nursing homes, doctors' offices, or other health or medical related institutions. Even customers within the narrowly defined categories of hospital, police and fire departments, etc. cannot be specifically identified or sorted by carriers, who do not maintain any special identifier for such customers. However, it was felt that a visual inspection of a customer list could

fairly easily identify such institutions. Moreover, many of these same institutions are eligible for the TSP designation under FCC regulations, which generally grants them a priority in restoration of service when there is an outage.

We will adopt this narrowly drawn "priority/essential" definition in the third criterion. We agree that it may often be impracticable or impossible to identify customers in a more broadly drawn category. In any event, we remain free to consider any characteristics of any particular customers we deem appropriate in determining the public interest in a given carrier exit situation.

We have decided to omit the fourth criterion. Recent Department and Commission experience indicates that our decisions whether to allow or deny a carrier permission to terminate service have turned on the first three criteria. Therefore, the fourth criterion could be confusing, is unnecessary, and should be deleted. We can still exercise our discretion to consider a company's resources on a case-by-case basis.

#### CONCLUSION

With the modifications noted herein, these Revised Guidelines will provide a much-needed degree of certainty and predictability to the migration process, while affording the flexibility necessary to deal with a variety of business and technical constraints. The adoption of these Guidelines, pursuant to our authority under Public Service Law §§ 91(1), 92-e, 94(2), and 96(1), will enhance the functioning of the competitive market in New York State and protect New York consumers from service disruptions.

The Commission orders:

1. The attached revised Mass Migration Guidelines, modified to reflect the discussion in this order, are approved and adopted as if fully set forth in this order.

2. All certificated telecommunications carriers doing business in New York State are ordered to comply with these revised Mass Migration Guidelines.

3. This proceeding is continued.

By the Commission,

(SIGNED)

JANET HAND DEIXLER  
Secretary

**New York State Public Service Commission  
Case 00-C-0188**

**Mass Migration Guidelines**

**As revised, January 2, 2003**

These guidelines were developed through a collaborative process with representatives from the industry, government, consumer advocacy, and other interested parties. The guidelines are to be used when a CLEC is exiting the local exchange services market, or a portion of its market, and has a significant customer base to migrate to other carriers. Such a mass migration will require special cutover procedures to accommodate a large number of service orders over a short period of time. Specifically, carriers will need to suspend normal order processing for the customers involved in a mass migration and follow the processes outlined in these guidelines.

# Table of Contents

<b>Sections</b>	<b>Page No.</b>
I. Objective.....	1
II. General Principles.....	1
III. Regulatory Notification.....	1
IV. Industry Notification.....	3
V. Customer Notification.....	3
VI. Mass Migration Process.....	5
VII. NXX Code Transfers.....	8
VIII. E-911.....	8
IX. Default Carrier and Termination Actions.....	8
X. Criteria for Commission Approval of Termination of Service.....	9
 Appendices	
A. Sample Customer Letters	
B. Mass Migration Process	

## **I. Objective**

When a Competitive Local Exchange Carrier (CLEC) discontinues local exchange services, the customers of that CLEC must have the opportunity to migrate to another local exchange carrier without interruption of service.

## **II. General Principles**

The goals of these mass migration guidelines are to:

1. Ensure that customers do not lose service when their local service provider exits the market.
2. Maintain the ability of regulators to monitor events and assist parties if needed.
3. Avoid double migrations whenever possible. Double migrations are generally the product of timing constraints where the customer is migrated to the default or acquiring carrier, and then to the carrier of the customer's choice.
4. Ensure that customers are provided ample notification to allow the customer to select the carrier of their choice.
5. Comply with federal and state laws and regulations.
6. Coordinate information flow and activities through a project management team.
7. Ensure that the exiting CLEC provides sufficient network information for the acquiring CLEC(s) to migrate its customers seamlessly.

## **III. Regulatory Notification**

The New York Public Service Commission (PSC) requires that any company that will no longer be serving customers in a particular market must file an Exit Plan. In addition, the company must file supplements to either cancel or modify its tariffs. The Exit Plan should contain the information noted in the checklist below. Staff will review the Exit Plan and provide feedback to the exiting CLEC. Exit Plans will not be approved by Staff, but Staff will advise a CLEC whether the Exit Plan details are sufficient to put the CLEC in a position where the Commission is likely to approve the carrier's exit from the market and cancellation of its tariff.

The Exit Plan should be filed at the Commission at least 90 days in advance of discontinuing service or, upon a showing that 90 days' notice is not feasible, at the earliest possible date. Whatever the advance notification period is, it must be provided with sufficient time for the carrier to migrate its customers to other carriers. As a result, it is expected that complex migrations will require more advance notification than simple migrations.

The Exit Plan filed with the PSC must include:

1. A sample of the initial letter to be sent to the customers.
2. Plans for follow-up notification arrangements such as a second letter, phone calls, bill inserts, e-mails, etc.
3. A proposed final termination date.
4. A cut-off date when customers must select a carrier.
5. Contact names and telephone numbers for the cutover coordinator, the regulatory contact, and any other pertinent contacts such as CSR and and/or provisioning contacts, if separate.
6. Any arrangements made for an acquiring carrier.
7. Steps to be taken with the number code and/or pooling administrator to transfer NXX or thousand number blocks (if applicable) while preserving number portability for numbers within the code.
8. The current customer serving arrangements and the underlying service provider, e.g. UNE-P (x carrier), resale (y carrier), UNE-L (x carrier) or Full Facilities.
9. Identification of customers where the exiting carrier is the only provider of facilities to a customer or group of customers.
10. The number of customers impacted.
11. A summary of how (what format) the customer service records (CSRs) are being kept, a statement of what data elements are in these CSRs (note that the data elements are defined in the End User Migration Guidelines CLEC-to-CLEC), and a statement about how the CSRs will be made available to other carriers.
12. Any transfer of assets or control that requires Commission approval
13. Plans to modify/cancel tariff(s).
14. Plans for handling customer deposits, credits, and/or termination liabilities or penalties.
15. Plans for unlocking the E-911 database, including the letter detailed in Section VIII.



16. Capability and plans to implement “soft dial tone.”

#### **IV. Industry Notification**

This step is important, as it will help manage the migration process. Specifically, CLECs should be aware that there are special order processing procedures associated with mass migrations. In order to avoid duplicate orders and confusion, when a CLEC is notified of a mass migration, it should process any associated orders on a cutover coordination basis. To determine how to process orders, the CLEC should check the PSC website under CLEC migrations for contact information or special instructions. If the instructions are not available, the CLEC should check with the exiting or acquiring CLEC project manager.

Notification will involve three approaches:

1. When the PSC is notified, the Department of Public Service will immediately post this information on the CLEC migration location of the PSC web site under “Report of Telephone Companies Exiting the Local Exchange Market” at [www.dps.state.ny.us/report\\_CLECS\\_ex.htm](http://www.dps.state.ny.us/report_CLECS_ex.htm).
2. When the PSC is notified, the Department will immediately send out notification to a CLEC contact list with information regarding any CLECs exiting the market. Please note that this list is a service list that is located on the PSC website and should be self-maintained by each CLEC.
3. If necessary, an industry conference call may be established by Staff in order to address potential problem areas and procedures.

#### **V. Customer Notification**

##### **A. Timeline**

Companies involved in mass migrations must meet the following timeline in order to ensure enough time to migrate customers.

- Exiting CLEC and acquiring carrier (when applicable) must notify customers 60 days in advance of the final date. This letter must comply with FCC requirements including a listing of rates and terms of the acquiring carrier.
- In accordance with FCC requirements, the acquiring CLEC must provide its potential customers 30 days to make an informed decision before it begins migrating customers. Thus, the first 30-day segment after the initial notification will be the FCC-mandated 30-day decision period. The next 30 days after the 60-day notice will be used by the acquiring carrier to begin migrating customers.

If a carrier is unable to meet one or more of these deadlines, it must demonstrate to the Commission that meeting the deadline(s) is not feasible, and it must provide the appropriate notices as soon as feasible.

## **B. Contents**

Appendix A to these guidelines contains three sample letters that illustrate what information must be included in the letter to be sent by the exiting CLEC that is notifying the customer of discontinuing service. Letter 1 represents the information that the exiting CLEC must send to the customer when there is an acquiring carrier. Letter 2 represents the information that the exiting CLEC must send to the customer when there is not an acquiring carrier. Letter 3 represents the information that the exiting CLEC must send to the customer when the exiting CLEC serves its customers through Verizon resale and there is no acquiring carrier.

The appropriate customer notification letter should include the following elements at a minimum:

- Identify the new primary carrier, if applicable.
- State the customer's right to choose an alternative carrier in all types of mass migrations.
- State the customer's need to take prompt action when there is no acquiring carrier.

- Provide clear instructions to the customer regarding the choice of an alternative provider.
- Provide a toll-free number for the exiting provider and the new provider (if there is an acquiring carrier).
- Clearly state time deadlines for customer action in accordance with the Commission's Mass Migration Guidelines.
- Applicable information about long distance service and whether it may be impacted by the cutover.
- State the customer's responsibility for payment of telephone bills during the migration period.

A second notice must be given to each customer who has not taken action to select a carrier. The timeframe of the second notice will depend upon the circumstances of the migration. The form of the second notice will be left to the discretion of the exiting carrier and could include any, or all, of the following: a follow-up letter, a telephone call to the customer, a bill insert, or any other means of direct contact with the customer.

Mass migrations involving an acquiring provider must identify a cut-off date. The cut-off date is defined as the date after which customers will have to wait until the mass migration is completed before they can obtain local exchange service from a different provider. When the customer is notified 60 days in advance, the cut-off date is 30 days from the scheduled migration. This cut-off date will ensure that the customer has time to make a decision and that the acquiring CLEC has the time to send out notification information concerning the scheduled migration. Customers who have not selected an alternative provider by the cut-off date will then be transferred to the acquiring service provider. When the end user is not notified 60 days in advance, the cut-off date will depend upon the size of the migration and the notification timelines. Regardless, the notification process must allow the customer 30 days to select a local carrier.

## **VI. Mass Migration Process**

Each mass migration must have an overall program manager responsible for the coordinating the overall migration. In addition, each of the parties involved in the migration must have a project

manager who works with the overall program manager and is accountable to the overall program manager for the project manager's company's mass migration efforts. The overall program manager is accountable to each of the parties involved in the migration. The individual parties involved in the migration could be:

- The exiting CLEC
- If applicable, the Old Network Service Provider
- If applicable, the acquiring CLEC
- If applicable, the New Network Service Provider
- Department of Public Service Staff

The overall program manager will generally be selected from the acquiring carrier.

### **Customer Lists**

At least 60 days prior to the projected cutover date, the exiting carrier must submit a customer list to the PSC. This customer list is required so Staff can assess the nature of the customers being cut over and to track the progress of the cutover. Specifically, Staff needs to determine the size of the customer base and to identify health and safety related customers. Additionally, Staff will be using the list to contact customers to determine if problems are being encountered. Where the cutover is a simple resale serving arrangement with few customers, Staff may waive this requirement at the exiting carrier's request, if Staff determines that it will not need the customer list for these or any other purposes.

Carriers' submission of customer lists and Staff use of or disclosure of customer list information will be subject to applicable laws and regulations relating to public disclosure of records, confidential trade secret status, and privacy protections, including Public Officers Law §§ 87 and 89 and Commission regulations at 16 NYCRR Part 6.

The customer list should include: customer name, telephone number(s), address, class of service, and type of serving arrangements (UNE-P, resale etc.). To the extent possible, customer lists should also include an identification of "priority" or "essential" customers. For purposes of these Guidelines, "priority/essential" customers will

be defined as any: hospital, ambulance, police, fire, national security, civil defense, or any customer who has obtained Telecommunications Service Priority (TSP) authorization from the federal government. Also, to the extent possible, customer lists should also identify any “at risk” customers whose particular serving arrangements may create cutover problems.

Additionally, the exiting CLEC must have available the CSR information identified in the End User Migration Guidelines CLEC to CLEC to enable the acquiring CLEC(s) to migrate its customers seamlessly. Staff may request CSR information for “at risk” customers. Specifically, the information required to migrate a customer is:

1. Type of service (UNE-P, etc.)
2. Class of service
3. Customer billing name and address
4. Customer directory listings including stand-alone listings if applicable
5. Customer service address
6. Billing telephone number & associated telephone numbers
7. If applicable - circuit IDs

### **Progress Reports**

The exiting CLEC must track the progress of the migrations and provide Staff with progress reports. The frequency of the updates will vary with the magnitude of the mass migration cutover as well as customer risk factors.

When processing orders for migrations, it should be emphasized that all parties need to be flexible. In this regard, there will be circumstances where the framework outlined in this project management section will need to be modified to accommodate unique circumstances. This framework is not intended to preclude parties from negotiating special procedures aimed at facilitating customer service. A model of the mass migration process steps between the Network Service Provider and an acquiring CLEC is identified in Appendix B.

## **VII. NXX Code Transfers**

If the exiting CLEC has any NXX codes or thousand number blocks assigned, it must make transfer arrangements with the code administrator at least 66 days prior to the migration. If arrangements are not made, calls may not be completed. For specific information, refer to the Central Office Code (NXX) Assignment Guidelines and Thousands-Block (NXX-X) Pooling Administration Guidelines developed by the Industry Numbering Committee. In addition, neither NXX codes nor thousand number blocks can be disconnected if any number within the relevant range of numbers has not yet been completely ported.

## **VIII. E-911**

A CLEC discontinuing service must unlock all of its telephone numbers in the E-911 database. This will provide the new local service provider access to its end user's E-911 record. Unlocking the E-911 database is required by the National Emergency Numbering Association's (NENA) standards to which all carriers must adhere. In addition, the exiting CLEC must submit a letter to the appropriate E-911 service provider authorizing the E-911 service provider to unlock any remaining E-911 records after the CLEC has exited the market. This letter must be provided at least 30 days prior to the CLEC's exiting the market.

## **IX. Default Carrier and Termination Actions When Normal Migration Procedures Have Failed**

When an exiting CLEC serves its customers through Verizon resale, Verizon is the default carrier that is obligated to continue a customer's local service. Further, in those Verizon resale arrangements where there is no acquiring carrier, the exiting CLEC must indicate in its customer letter (sample letter #3) that Verizon will be the new local exchange carrier unless another carrier is selected by the deadline.

Where there is no acquiring carrier and customers have not selected a new carrier in a reasonable period of time, it may be appropriate for the exiting CLEC to provide "soft dial tone" or an intercept message to warn customers of the impending loss of service.

**X. Criteria for Commission Approval of a Carrier's Termination of Service**

A carrier's request to exit the local exchange market is approved by the Commission when it determines that a carrier's tariff cancellation supplement should be allowed to go into effect. Such supplements must be filed on at least 30 days' notice for termination of basic service.

Obviously, a carrier that has not filed an effective Exit Plan or has not executed its Plan properly is unlikely to receive Commission approval to leave the market. However, even in the best case scenario where an Exit Plan has been properly followed, there may be customers who will not be fully migrated, or migrated at all, at the time the exiting carrier would like to terminate service in New York. In deciding whether to approve a carrier's request to exit the local service market, the Commission will be guided by its view of what is in the public interest. Specifically, the Commission will consider the following factors when deciding upon a carrier's request for termination of local service:

1. Progress of Customer Migrations – The Commission will consider the number of local service customers that have not yet switched to an alternate local service carrier or have not made firm arrangements to switch to another local carrier. The greater the number of customers who are in jeopardy of losing their local service altogether, the higher the likelihood that the exiting carrier's request for termination on a specified date will be denied.
2. Availability of Alternatives – The Commission will consider the ease with which customers who have not switched to another local carrier will be able to obtain alternate local service based on facilities available in the absence of the exiting carrier.
3. Nature of the Customer Base – The Commission will consider the nature of the customer base that is in jeopardy of losing local service, despite the best efforts of the exiting carrier. In particular, the Commission will not ordinarily approve the exit from the market by any carrier where the result will be loss of local service to the following types of end users: a) national security or civil

defense authorities, b) hospitals, c) police, d) fire departments, e) ambulance and rescue corps, and f) any customer who has obtained Telecommunications Service Priority (TSP) authorization from the federal government.



**Letter #1 -- Sample Customer Notification Letter (with primary new carrier)**

**This letter should be coordinated with the primary new carrier for appropriate timeframes and rates and terms to be included in the letter.**

Date (60 days prior to exit)\_  
Customer Name  
Address  
City, NY zip

**YOUR SERVICE WILL BE TRANSFERRED TO (name of primary new carrier) UNLESS YOU CHOOSE A NEW LOCAL TELEPHONE SERVICE PROVIDER BY (30 days prior to exit Date)**

Dear Customer:

We regret to inform you that as of (exit date) XYZ Company will no longer be providing your local telephone service in New York. (explanation of specific company circumstances)

If you do not select a new local telephone service provider on or before (30 days prior to exit date), (name of primary new carrier) will automatically become your local telephone service provider effective (date). If you select an alternative provider after (30 days prior to exit date), your choice can only be put into effect after the change to (name of primary new carrier) and will therefore be delayed. You will not incur any charges for the change to (name of primary new carrier). If you select another provider of your choice, you may incur additional charges. In the transfer of service to (name of primary new carrier), all efforts will be made so your local telephone number will remain the same and your existing local service and calling features will be transferred to (name of primary new carrier). Please be aware that you are responsible for paying all bills rendered to you by XYZ Company during this transition. You may be subject to suspension or termination of your phone service in accordance with Public Service Commission rules if you fail to pay your telephone bill.

**If you do not want service from (name of new primary carrier), your action is required! You must select a new local telephone provider as quickly as possible but no later than (30 days prior to exit date). If you no longer want any local service please contact your current local carrier to disconnect service.**

After selecting a new local telephone provider, you should also contact your current long distance provider to ensure that your current long distance calling plan is not changed as the result of your change in local service. If you do not contact your long distance provider, you may be charged basic rates (non-calling plan rates) for long distance calls.

If you have any questions regarding the discontinuance of XYZ Company's local telephone service, please call (toll free number). Questions regarding (primary new carrier) should be directed to (toll free number of primary new carrier). XYZ Company regrets any inconvenience this change may cause you.

Sincerely,

**Letter # 2 -- Sample Customer Notification Letter (without a primary new carrier)**

Date (60 days prior to exit)\_  
Customer Name  
Address  
City, NY zip

**YOU MUST CHOOSE A NEW LOCAL TELEPHONE SERVICE PROVIDER BY (30 days prior to exit date)**

Dear Customer:

We regret to inform you that as of (exit date) XYZ Company will no longer be providing your local telephone service in New York. (explanation of specific company circumstances)

**Your action is required! You must select a new local telephone provider as quickly as possible but no later than (30 days prior to exit date) or you may lose your local telephone service.**

Please be aware that you are responsible for paying all bills rendered to you by XYZ Company during this transition. You may be subject to suspension or termination of your phone service in accordance with Public Service Commission rules if you fail to pay your telephone bill.

After selecting a new local telephone provider, you should also contact your current long distance provider to ensure that your current long distance calling plan is not changed as a result of your change in your local service. If you do not contact your long distance provider, you may be charged basic rates (non-calling plan rates) for long distance calls.

Generally, you can find a list of most local telephone service providers in your local telephone directory. If you require assistance, please contact XYZ Company (current company) at (toll free number). Finally, if you no longer want local service, please contact us to disconnect your service.

XYZ Company regrets any inconvenience this change may cause you.

Sincerely,

**Letter # 3 -- Sample Customer Notification Letter (without a primary new carrier and the underlying service is Verizon Resale)**

**Date (60 days prior to exit)**

**Customer Name**

**Address**

**City, NY zip**

**YOU MUST CHOOSE A NEW LOCAL TELEPHONE SERVICE PROVIDER BY (30 days prior to exit date)**

Dear Customer:

We regret to inform you that as of (exit date) XYZ Company will no longer be providing your local telephone service in New York. (explanation of specific company circumstances)

**Your action is required! You must select a new local telephone provider as quickly as possible but no later than (30 days prior to exit). If you do not select a new telephone provider, Verizon will become your new local service provider.**

Please be aware that you are responsible for paying all bills rendered to you by XYZ Company during this transition. You may be subject to suspension or termination of your phone service in accordance with Public Service Commission rules if you fail to pay your telephone bill.

After selecting a new local telephone provider, you should also contact your current long distance provider to ensure that your current long distance calling plan is not changed as a result of your change in local service. If you do not contact your long distance provider, you may be charged basic rates (non-calling plan rates) for long distance.

Generally, you can find a list of most local telephone service providers in your local telephone directory. If you require assistance, please contact XYZ Company (current company) at (toll free number).

XYZ Company regrets any inconvenience this change may cause you.

Sincerely,

### Mass Migration Process

Day	Milestone
90	<ul style="list-style-type: none"> <li>▪ Exiting CLEC files an exit plan with the NY PSC</li> <li>▪ PSC to post information regarding the CLEC exiting the market on its website. (<i>See Section IV</i>)</li> <li>▪ PSC to inform industry contacts regarding the CLEC exiting the market. (<i>See Section IV</i>)</li> <li>▪ Exiting CLEC to begin process to transfer its NXX codes in accordance with proper industry procedures. (<i>See Section VII</i>)</li> </ul>
60	<ul style="list-style-type: none"> <li>▪ Exiting CLEC notifies its customers that it is exiting the market. Informs them that if they do not select another carrier within 30 days,               <ol style="list-style-type: none"> <li>1. they will be transferred to the acquiring carrier (if there is one), or</li> <li>2. they may be without local phone service (if there is no acquiring carrier)</li> </ol> </li> <li>▪ Exiting CLEC provides customer information lists to PSC and acquiring CLEC.</li> </ul>
30	<ul style="list-style-type: none"> <li>▪ Acquiring carrier notifies customers of their status.</li> <li>▪ The acquiring CLEC notifies its Network Service Provider Account Manager of its need for a Mass Migration Project Manager. (This is the minimum allowable timeframe. Acquiring carriers should notify the Network Service Provider as early as possible regarding a Mass Migration.)</li> <li>▪ Acquiring CLEC notifies the Network Service Provider of the total number of lines and the Central Offices or collocations involved in the migration. (Note there is a maximum of lines that can be worked per night per geographical area).</li> </ul>
30	<ul style="list-style-type: none"> <li>▪ If there is an acquiring carrier any customers who have not selected a carrier will be migrated to the acquiring carrier.</li> </ul>
17	<ul style="list-style-type: none"> <li>▪ Project Manager advises acquiring CLEC of the Due Dates and the number of lines per Central Office per due date.</li> </ul>
15	<ul style="list-style-type: none"> <li>▪ Acquiring CLEC issues valid LSRs no later than 15 business days prior to Due Date, if required. (If reusing loop facilities, exiting CLEC must provide reusable circuit ID with the associated telephone number.)</li> <li>▪ Project Manager provides specifics to be included on LSRs, e.g., Frame Due Times. Due Dates on any LSRs sent after this interval must be negotiated with the Project Manager. Late LSRs may not be included in Project.</li> </ul>
12	<ul style="list-style-type: none"> <li>▪ Upon receipt of valid LSR, the Network Service Provider to provide Firm Order Confirmation (FOC) to acquiring CLEC.</li> </ul>

10	<ul style="list-style-type: none"><li>▪ If no acquiring carrier, cut-off date; soft dial tone may be placed on lines.</li><li>▪ Where appropriate (i.e. loop migrations), acquiring CLEC provides Project Manager with spreadsheet or other negotiated document for each CO. Spreadsheet will include CO, PON, BTN, WTN, CLEC Cable and Pair, Circuit ID, and Out and In order numbers (obtained from FOC).</li><li>▪ Network service provider performs all pre-work to ensure migration's smooth progress (e.g. rewiring, ANAC, etc.) consistent with provisioning requirements of specific type of service.</li></ul>
2	<ul style="list-style-type: none"><li>▪ Network service provider notifies acquiring CLEC of any discrepancies.</li><li>▪ Acquiring CLEC takes appropriate actions required to correct discrepancies.</li></ul>
1	<ul style="list-style-type: none"><li>▪ Unresolved service order discrepancies rescheduled for evaluation.</li></ul>
0	<ul style="list-style-type: none"><li>▪ Target exit date. All scheduled orders worked. When there is no acquiring carrier, exiting carriers must receive Commission approval to terminate local service. (<i>See Section X</i>)</li></ul>