



OFFICE OF CONSUMER ADVOCATE

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January 12, 2007

James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: Performance Measures Remedies - Notice of
Changes to the Verizon Performance
Assurance Plan New York
Docket No. M-00011468F0011

Dear Secretary McNulty:

Enclosed please find for filing an original and ten (10) copies of the Office of Consumer Advocate's Comments in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

A handwritten signature in cursive script that reads "Christy M. Appleby".

Christy M. Appleby
Assistant Consumer Advocate
Attorney I.D. # 85824

Enclosures

cc: All parties of record

*92254

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RE: Performance Measures Remedies - :
Notice of Changes to the Verizon : Docket No. M-00011468F0011
Performance Assurance Plan :
New York :

COMMENTS OF THE OFFICE OF CONSUMER ADVOCATE

Christy M. Appleby
Assistant Consumer Advocate
Attorney I.D. # 85824
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Attorney I.D. # 23165

For:
Irwin A. Popowsky
Consumer Advocate

Office of Attorney General
Office of Consumer Advocate
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DATED: January 12, 2007

I. Introduction

On November 21, 2006, Verizon filed its Revised Pennsylvania Performance Assurance Plan (PAP) with the Pennsylvania Public Utility Commission. On December 20, 2006, the Commission issued a Secretarial letter establishing dates for Comments and Reply Comments. Among other proposals, Verizon seeks to modify the current process for PAP revisions. The Office of Consumer Advocate (OCA) does not support this change in process. The OCA submits that a process has already been developed through the Performance Metrics Order (PMO II Order). Performance Measures Remedies, Final Opinion and Order on Performance Measures and Remedies For Wholesale Performance For Verizon Pennsylvania Inc. (PMO II Order), Docket No. M-00011468 (Order entered December 20, 2002).¹ The PA Carrier to Carrier Working Group (PA CWG) has adapted the process to the needs of the group. The OCA submits that this process has worked well for the last four years, and the OCA believes that it should be maintained.

II. Discussion

Verizon has proposed to modify the PMO II Order procedures through its PAP revision update. While the PMO II Order detailed the participation of the PA CWG in the process of development of revisions to the metrics and the PAP, Verizon's proposal appears to eliminate the PA Carrier to Carrier Working Group from the PAP review process. Verizon's description of the Pennsylvania process would mirror the New York process revisions which separate PA Carrier to Carrier guidelines and PAP discussions.

Verizon's proposal creates an annual review of the PAP; changes to the New York Plan and their implementation in Pennsylvania; other changes to the PAP (including

¹ Relevant pages of PMO II Order attached as Appendix A.

Pennsylvania-specific changes); and data and quality of service data requirements. Verizon proposes that each year, the Commission and Verizon will review the PAP to determine whether any modifications or additions should be made. “Interested parties” will be given an opportunity to comment on proposed modifications prior to formal action. Verizon states that the annual review will “not be subject to limitation” and permits “any topic *legitimately* related to the Plan” for review. Verizon avers that the PAP procedure changes will not diminish Commission jurisdiction or the interests of others to comment on proposed modifications. Revised PA PAP, App. F at 66. The current PMO II Order, however, created the PA CWG as a forum to discuss changes to the metrics and PAP. Verizon’s proposal does not include this step in its revised proposal, and the lack of participation of the PA CWG in this process eliminates an important consumer and CLEC forum.

In its Revised PAP, Verizon proposed that revisions to the NY PAP, as adopted by the New York PSC, will be submitted to the Pennsylvania Commission within thirty days after the NY PAP compliance filing is submitted to the NY PSC. Revised PA PAP at 5. *See also*, Revised PA PAP, App. F at 66-68. Verizon’s proposal would allow for a comment period on whether the changes to the New York Plan should be included in the Pennsylvania Plan. The Pennsylvania Commission would still review the New York Plan changes. Revised PA PAP, App. F at 67-68.

For other changes proposed to the Pennsylvania Plan, Verizon or other interested parties may submit proposed changes to the Plan to the Pennsylvania Commission. A comment period would allow for review of whether the changes should be included in the PAP and the Pennsylvania Commission would approve those changes. Revised PA PAP,

App. F at 68. Verizon's Plan also proposes to change the PMO II Order method of reviewing the reporting of CLEC and Verizon service quality data. Revised PA PAP, App. F at 68.

The OCA submits that the PMO II Order already established procedures that meet the needs of all parties. Elimination of the participation of the PA CWG from this process would further remove the PAP from Pennsylvania review. PAPs are already developed at the New York PSC level, with modifications submitted to Pennsylvania.² The OCA submits that while New York CLECs and advocates have the opportunity to review the process as a whole, the Pennsylvania CLECs and advocates would not have this same opportunity. Bringing these issues before the Pennsylvania CWG promotes greater understanding of the process by which Verizon has developed the Performance Assurance Plan changes. Verizon's proposal moves the process another further step away from Pennsylvania parties' review.

The PMO II Order blended expediency with maintaining the due process rights of Pennsylvania advocates and CLECs. The PMO II Order states:

We agree that participation in the NY CWG or a Verizon footprint CWG would serve a useful purpose, and we shall endeavor not to duplicate the valuable work completed therein. However, we still see the need for a similar process in Pennsylvania to manage changes issues and implementation issues when there are metrics and/or remedies issues to be resolved in Pennsylvania, especially if such issues can be resolved by consensus. Accordingly, we shall address this aspect in three parts: our participation in the NY and/or other CWGs; the process of changes in PA Guidelines and PAP; and creation of a PA CWG.

² The PMO II Order also allows the Pennsylvania CWG to make recommendations for changes to the Pennsylvania PAP, including Pennsylvania-specific changes.

PMO II Order at 86. Verizon's proposal appears to eliminate the PA CWG discussion of changes because it is not included in the discussion of the revised process.

The PMO II Order stated that the process for proposing changes should be the same for both the PA Guidelines and the PA PAP. The PMO II Order provided that the process for changes to the PAP or metrics could either be initiated through an informal process, such as the CWG, or through the Commission's formal Comment or Joint Petition Process. These changes would be effective only after official Commission action. The Commission also established formal notice procedures:

Because we want to ensure that interested Parties, as well as the Commission, are aware of changes that may be needed in Pennsylvania but are proposed in New York, we shall affirm the following notice requirements established in the Tentative Order. First, any party doing business in Pennsylvania proposing to the NY CWG a change to the NY Guidelines and/or PAP shall be required to submit notice to the Commission and the PA CWG within ten days after submitting that proposal to the NY CWG. The Commission will post on its website notice of the proposed change. At that point, the PA CWG, any interested party and/or the Commission may decide to pursue a similar change here in Pennsylvania. Any party can utilize the Commission's complaint and/or alternative dispute resolution process to change the PA Guidelines and/or the PA PAP. Second, once the NY PSC has adopted a formal change to its Guidelines and/or PAP, Verizon will be required to file formal notice with the Commission and the PA CWG within ten days after the NY PSC takes action. After a 15-day comment period, the Commission will decide whether to adopt the change, to send it the Office of Administrative Law Judge, or refer it to the PA CWG.

PMO II Order at 86-87.³

³ Footnote 29, referencing the fact that NY CWG does not address remedies issues and the PA CWG does, is omitted.

The PMO II Order recognized the importance of the involvement of the PA CWG in the process:

We agree with the CLECs and the OCA that the parties should not have to take matters first to the NY CWG. We believe that a functional PA CWG, which is intended to be an informal way for the Parties to recommend to the Commission that changes be made to the PA Guidelines and/or PA PAP, is crucial to the process...Any consensus reached through this group would need final Commission approval before changes are made to then-current PA Guidelines and the PA PAP.

PMO II Order at 87-88. An informal process within the PA CWG has developed that has been helpful. The parties in the PA CWG discuss changes to the Carrier to Carrier Guidelines and the PAP prior to the Comment period. Verizon generally presents these changes to the Carrier to Carrier Working Group for discussion in the form of a PowerPoint presentation. Verizon responds to questions about the proposals at this informal Working Group meeting. The parties develop a proposed Comment and Reply Comment schedule. The recommendation of the Working Group is presented to the Commission by the Law Bureau, and the Commission issues a Secretarial Letter establishing a procedural schedule.

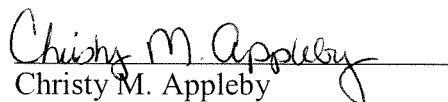
The OCA submits that this process has allowed parties not involved in the New York PSC process to better understand the reasons for the changes and has effectively streamlined the process, removing unnecessary litigation. Further, the OCA submits that an important distinction exists between the New York process and the Pennsylvania process. The New York Carrier to Carrier Working Group only address metrics, whereas the Pennsylvania Carrier to Carrier Working Group addresses both PAP and metrics. The OCA submits that this is an important distinction because Pennsylvania has specifically

created a forum by which PAP issues are to be discussed. The OCA submits that Pennsylvania specific issues should continue to be discussed through the Carrier to Carrier Working Group. There are specific issues, such as Directory Listings, which are not an issue for New York, but are still an issue for Pennsylvania consumers. As discussed at length in the PMO II proceeding, statutory advocates such as the OCA represent consumers in Pennsylvania only and do not have the ability to advocate before the New York Public Service Commission. Therefore, the OCA submits that the PA PAP should continue to be addressed through the PA Carrier to Carrier Working Group and that the procedures established in the PMO II Order should be maintained.

III. Conclusion

The Office of Consumer Advocate respectfully requests that Verizon's proposal to amend the Pennsylvania PAP revision procedures be denied.

Respectfully submitted,



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APPENDIX A

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held March 6, 2003

Commissioners Present:

Glen R. Thomas, Chairman
Robert K. Bloom, Vice Chairman
Aaron Wilson, Jr.
Terrance J. Fitzpatrick
Kim Pizzingrilli

Re: Performance Measures
Remedies

M-00011468

OPINION AND ORDER

BEFORE THE COMMISSION:

Before the Commission for consideration is the Petition for Reconsideration and Clarification (Petition), filed by Verizon Pennsylvania, Inc. (Verizon PA) on December 23, 2002, relative to the Commission's Final Opinion and Order entered December 10, 2002 (*PMO II*). Several Parties filed Answers in Opposition to Verizon PA's Petition.

History of the Proceeding

This proceeding was commenced as a result of our April 11, 2001 Order in *Re: Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations, (Functional/Structural Separation Order)* Docket No. M-00001353. Specifically, in Ordering Paragraph No. 16 of that Order, we ordered:

VIII. Future Changes to the PA Guidelines and PA PAP Adopted Herein

We shall identify the issues relating to future changes to the new PA Guidelines and the new PA PAP in *seriatim* and then resolve them jointly. We believe that the change process for metrics and remedies can follow the same procedure.

A. Guidelines

1. ALJ Recommendation

The ALJ recommended that all future metrics proposals first be presented to the NY CWG, and that if the matter is not resolved in the NY CWG within ninety days, the proponent could then raise the matter in Pennsylvania. (R.D., pp. 12-13).

2. Exceptions

XO/Yipes alleged that it is error to require that all future modifications go first through the NY CWG. (XO/Yipes Exc., pp. 4-8). They argued that the Commission “should not simply relinquish and yield its authority and legal obligation to monitor the completeness and sufficiency of the Pennsylvania” metrics. (XO/Yipes Exc., p. 8).

CTSI argued that it is wasteful to have to go to the NY CWG for everything first and then to Pennsylvania if unsuccessful. (CTSI Exc., p. 5).

The OCA argued that entities should not have to go first to the NY CWG, in that entities with complaints against Verizon PA cannot be forced to go first to another state for redress in that state’s collaborative process. (OCA Exc., pp. 7- 8). Further, there has been no proof that the competitive problems in New York are like the competitive problems in Pennsylvania. (OCA Exc., p. 8). Additionally, the OCA asserted that there

are practical problems with being forced to first proceed through the NY CWG, since not all Pennsylvania CLECs operate in New York. Furthermore, the OCA represents Pennsylvania consumers and has little reason to go to New York. (OCA Exc., p. 9).

B. PAP

1. Provisions of the Consensus PAP

Section K.2. of the Consensus PAP states that:

Changes to the New York Plan adopted by the New York PSC will be submitted to the [Pennsylvania] Commission by Verizon PA within 10 days of their filing with the New York PSC for consideration by the Commission for inclusion in the Pennsylvania PAP. Verizon PA and all other interested persons shall have an opportunity to submit comments to the Commission on whether the changes to the New York Plan should be included in the Pennsylvania PAP. Changes to the New York Plan will be included in the Pennsylvania PAP only upon the Commission's approval. (Consensus PAP, pp. 25-26).

2. Positions of the Parties – Comments to the Consensus PAP

CTSI commented that the Consensus PAP provides that Verizon PA submit notice to the Pennsylvania Commission of all changes adopted by the NY PSC within ten days of their filing. According to CTSI, this provision is unclear because it does not specify whether the notice should be provided within ten days of Verizon's filing for change to the NY PAP or if notice is required within ten days of the NY PSC's adoption of a change to the NY PAP. CTSI further stated that this provision should be clarified to indicate that notice should be provided within ten days of a requested change to the NY PAP. (CTSI Comments to PAP, pp. 3-4).

C. Tentative Order

As we said in the *Tentative Order*, guidelines and performance assurance plans are not static documents. In order to reflect accurately the experiences by the industry in the marketplace, they are subject to ever-evolving adjustments and amendments. We noted that Commission action will always be required to change either the Guidelines or the PAP in Pennsylvania on a going-forward basis. Further, we established that the Commission, on its own initiative, always has the authority to review the PA Guidelines and the PA PAP to decide whether changes are needed. In addition, all Parties may utilize the Commission's formal complaint/ADR process to request new metrics and/or remedies and/or changes to the Guidelines and/or the PAP. Because future changes will need to be implemented (and some changes may be negotiated on an amicable basis among the Parties), we also established an informal process using a PA CWG to accommodate such changes and encouraged Parties to reach consensus. We did not expressly request comments on this aspect of the *Tentative Order*.

D. Comments and Reply Comments

Verizon PA comments that we should affirm the Recommended Decision and automatically incorporate NY consensus metrics into the PA Guidelines. Any party proposing incorporation of non-consensus NY metrics would have the burden of proof. (Verizon PA Comments, p. 4). Verizon PA further asserts that the NY CWG does not address PAP changes and that it would be "burdensome" to require Parties to notify this Commission of proposed changes under discussion in the New York. As noted by Verizon PA, the deliberations of the NY CWG are confidential. (Verizon PA Comments, p. 21). Verizon PA suggests in the alternative that this Commission adopt the process that other jurisdictions have allegedly adopted for addressing changes to the metrics. After the NY PSC approves changes recommended by the NY CWG, the same proposals would be filed with this Commission for *de novo* review by Pennsylvania CLECs and

Commission action. Verizon PA asserts that there should be no concern that any party is precluded from addressing a change because it is not a participant in the NY CWG process since this Commission retains final discretion to adopt or reject any proposal. (Verizon PA Comments, p. 22).

MCIW comments that a party should only need to notify this Commission if the party formally requests a change in the NY CWG. (MCIW Comments, pp. 3-4).

E. Disposition

We agree that participation in the NY CWG or a Verizon footprint CWG would serve a useful purpose, and we shall endeavor not to duplicate the valuable work completed therein. However, we still see the need for a similar process in Pennsylvania to manage changes issues and implementation issues when there are metrics and/or remedies issues to be resolved in Pennsylvania, especially if such issues can be resolved by consensus. Accordingly, we shall address this aspect in three parts: our participation in the NY and/or other CWGs; the process of changes in PA Guidelines and PAP; and creation of a PA CWG.

1. Participation in the New York and/or other CWGs

Staff is hereby authorized to coordinate with the NY PSC and NY CWG and/or other state or federal commissions or CWGs to facilitate reciprocal participation among the states in the various CWG operation.

2. Change Process in Pennsylvania

At the outset, as we stated in the *Tentative Order*, we believe that the process for proposing changes should be the same for both the PA Guidelines and the PA

PAP. While the process for change to the PA Guidelines or the PA PAP can be initiated either through an informal process, such as a CWG, or the Commission's formal process, such as complaint or joint petition, changes to either the PA Guidelines and the PA PAP will become effective only after official Commission action.

Because we want to ensure that interested Parties, as well as the Commission, are aware of changes that may be needed in Pennsylvania but are proposed in New York, we shall affirm the following notice requirements established in the *Tentative Order*. First, any party doing business in Pennsylvania proposing to the NY CWG a change to the NY Guidelines and/or PAP shall be required to submit notice to the Commission and the PA CWG within ten days after submitting that proposal to the NY CWG. The Commission will post on its website notice of the proposed change. At that point, the PA CWG, any interested party and/or the Commission may decide to pursue a similar change here in Pennsylvania. Any party can utilize the Commission's complaint and/or alternative dispute resolution process to change the PA Guidelines and/or the PA PAP. Second, once the NY PSC²⁹ has adopted a formal change to its Guidelines and/or PAP, Verizon PA will be required to file formal notice with the Commission and the PA CWG within ten days after the NY PSC takes action. After a 15-day comment period, the Commission will decide whether to adopt the change, to send it to the Office of Administrative Law Judge, or refer it to the PA CWG.

3. PA CWG

We agree with the CLECs and the OCA that the Parties should not have to take matters first to the NY CWG. We believe that a functional PA CWG, which is intended to be an informal way for the Parties to recommend to the Commission that changes be made to the PA Guidelines and/or PA PAP, is crucial to the process. This

²⁹ It is our understanding that the NY CWG does not address remedies issues. Our CWG will address both Guidelines/metrics and PAP/remedies issues.

group would be comprised of CLECs, Verizon PA, and Commission staff from the Bureau of Fixed Utility Services and the Law Bureau, and statutory advocates. FUS staff will facilitate the group, at least initially, with the support and assistance of Law Bureau staff. Eventually, the role of facilitator may be assumed by a carrier or rotated among the carriers. Any consensus reached through this group would need final Commission approval before changes are made to the then-current PA Guidelines and PA PAP.

IX. Additional Matters

A. Dissemination of PA Guidelines and PA PAP Provisions

We note that, in other states, the guidelines and the performance assurance plans, as well as supporting documentation, are available via the Internet, thereby making the information easily accessible to the public and all interested Parties. We believe that we too should ensure that this information is readily accessible.

In our *Tentative Order*, we directed staff from the Bureau of Fixed Utility Services and the Law Bureau, after consulting with other appropriate Bureaus, to develop and to submit a recommendation to this Commission on how this issue should be handled in Pennsylvania within twenty days after the entry date of the *Tentative Order*.

The Commission has received the staff report, which reflects that various non-Verizon RBOCs have posted their metrics and/or remedies plans on their websites. Additionally, we note that we require utilities to post tariffs to their websites.

Accordingly, based upon our finding that a number of RBOCs outside of the Verizon family are posting Guidelines and/or PAPs on their websites, and that documents such as utility tariffs are posted on utility websites, we shall provide that Verizon PA may post, or cause to be posted, on a state-specific webpage, the new PA Guidelines and the new PA PAP, and future changes thereto, in lieu of actual service of paper copies of the documents. If the items are posted, Verizon will need to merely serve notice of the postings to the requisite entities. Otherwise, paper copies of the documents shall be served on the entities. This provision does not change filing requirements.

CERTIFICATE OF SERVICE

Re: Performance Measures Remedies - Notice of Changes to the Verizon Performance Assurance Plan New York
Docket No. M-00011468F0011

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 12th day of January, 2007.

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

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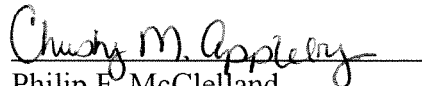
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