STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Consider the Adequacy of Verizon New York's Retail Service Quality Processes and Programs.	:	Case 03-C-0971

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EXECUTIVE SUMMARY

Verizon New York Inc.'s ("Verizon") failure to repair its customers' telephone service in a timely manner has been a serious problem for many years. Verizon's monthly performance data, reported to the Public Service Commission ("Commission") shows that many of the company's 35 repair service bureaus ("RSBs") chronically fail to meet the Commission's service standard for repair of phone lines within 24 hours of a customer report. Verizon's response to the Commission's recent order that the company submit a report to address its performance failures is completely inadequate and should be rejected.

The data produced in this proceeding clearly demonstrates that increased competition has not, in itself, pushed Verizon to take the steps necessary to provide customers with adequate repair service. Verizon's seven worst-performing RSBs are located in places where Verizon faces the most competition. Moreover, even though the sheer volume of customer repair requests has declined (due to a combination of Verizon lines lost to competitors and various management efforts to reduce outages), Verizon's repair service trends have nevertheless worsened in recent years.

Verizon has diverted investment and work force from maintaining its copper-wire network, which is still relied upon by most customers for their telephone service, in favor of a strategic focus on deploying new fiber optic technology. As long as Verizon continues to divert repair technicians to perform fiber installation work and refuses to commit sufficient funds, it is unlikely that the company's repair performance will improve. Even if fiber proves more reliable, as Verizon asserts, the company has not committed itself to deploy fiber to all current customers. Many customers across Verizon's New York service territory are unlikely to have the opportunity to choose fiber for years to come, if ever.

Verizon's proposals are similar to prior proposals over the years that produced little meaningful improvement, nor do these proposals respond to the Commission's directive that the company identify why its previous plans failed and submit revised plans that demonstrate that that sufficient resources will be allocated to consistently meet service standard targets.

Verizon's proposals contain no commitment to improve its performance results, nor a target deadline for consistently meeting the service standards. As demonstrated by past experience, the only way the Commission can ensure that Verizon will take the necessary steps to improve its performance is for the Commission to set goals and deadlines for improvement. The Commission must also to order the company to provide significant refunds to customers who do not receive adequate service. Nothing less will succeed in meeting the Commission's statutory responsibility to require Verizon to deliver adequate telephone repair service to its customers.

BACKGROUND

Concerned about "the adequacy of the company's long-term service improvement plans and pockets of chronic, poor performance," the Commission initiated this proceeding in 2003 to examine Verizon New York Inc.'s ("Verizon") service performance.[1] The Commission directed an independent audit of Verizon's service practices, which was completed in November 2004 and which made numerous recommendations for improvement of Verizon's service performance. Verizon implemented some of the auditors' recommendations. Nevertheless, in

[1] Cases 03-C-0971 and -C-1945, *Order Initiating Verizon New York Service Quality Proceeding*, issued July 11, 2003.

October, 2006, the Staff of the Department of Public Service ("Staff") submitted a report to the Commission which stated that the company's service performance still frequently fails to meet the standard for the percentage of telephone lines that can remain unrepaired more than 24 hours after a customer reports a line out of service.[2] (This standard is referred to as "out-of-service over 24" or "OOS>24.")[3]

Thereafter, in an Order issued December 2006, the Commission found that Verizon's performance in seven of its 35 repair service bureaus ("RSBs") was "habitually poor" and concluded that previously filed "service improvement plans submitted by the company in these seven bureaus were apparently inadequate," [4] especially with regard to OOS>24. The seven RSBs identified by the Commission are: North Queens, South Queens, North Nassau, South Nassau, East Suffolk, North Westchester and South Westchester.

The Commission ordered Verizon to submit a report to "identify why its previous plans failed, and submit revised plans that show that sufficient resources will be allocated to

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[2] Case 06-C-0502, *In the Matter of Quality of Service Provided by Local Exchange Carriers in New York State, October 25, 2006, DPS Staff's Third Quarter 2006 Service Quality Report* (filed on November 8, 2006) at 14.

[3] The Commission standard provides that, on a monthly basis, no more than 20% of customer reports of a phone line out of service trouble reports per month should take more than 24 hours to be repaired. 16 NYCRR § 603.3(c). Every month Verizon submits a quantitative report of its service quality performance on a group of service standards. 16 *NYCRR* §§ 603.3 and 603.4. In addition, Verizon must submit Service Inquiry Reports ("SIRs") to Staff whenever an RSB fails to meet a service standard during the current month and during two of the four previous months. Each SIR must identify the cause of the chronic failure and detail specific efforts being taken to achieve threshold level service by a specific date. 16 *NYCRR* § 603.4(d).

[4] Case 03-C-0971, *supra*, *Order Directing Verizon New York Inc. To Demonstrate That Its Service Improvement Plans Are Sufficient*, at 5-6, issued December 19, 2006 ("December 2006 Order"). The service improvement plans referred to in the Order are SIRs Verizon was required to file for having provided chronically poor service in these RSBs.

consistently achieve the thresholds established in our service standards."[5]

In addition, the Commission ordered Verizon to provide a company-wide plan to ensure that no other RSB's performance suffers as a result of increased emphasis on the seven poor-performing bureaus identified. The Commission ordered Verizon to "demonstrate why the Commission should not take action such as ordering improvement plans, or directing incentive mechanisms like increased rebates for out of service conditions to ensure that Verizon improves its service performance."[6]

On February 2, 2007, Verizon submitted its Response to the December 2006 order. Verizon asserted that the Commission need take no further action to ensure that the company improves its service performance.[7] Verizon claimed that its new business strategy to connect its optical fiber network to residential premises ("fiber to the premises" or "FTTP") would resolve service quality issues over time, as customers chose to buy enhanced services enabled by the new fiber connections and thus move from the aging and less reliable copper wire telephone network.[8] In its Response, Verizon also promised to address poor repair performance by making limited new expenditures on copper cable maintenance, adhering to better work standards, increasing managerial incentives to improve service performance measurements, hiring some

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[5] *Id.* at 6.

[6] *Id*. at 2.

[7] *Response of Verizon New York Inc. To the Commission's Order Directing Verizon New York Inc. To Demonstrate That Its Service Improvement Plans Are Sufficient*, filed February 2, 2007 ("Verizon Response").

[8] Verizon seeks to market FTTP-based services to customers to deliver broadband Internet access and video programs as well as voice telephony. Verizon's brand name for these fiber-based services is FiOS.

temporary repair staff to assist during the summer of 2007, and reassigning some repair crews to the seven worst bureaus from other locations.

After receiving Verizon's Response, the Commission permitted interested parties to submit written interrogatories to Verizon. The Office of the Attorney General and other parties served numerous interrogatories and document requests and received written responses from Verizon. On March 26, 2007, the Staff held a technical conference where parties were able to question a Verizon witness about the company's Response and improvement plans.[9] Thereafter, the Commission invited interested parties to submit comments on Verizon's performance and improvement plans .[10] The Office of the Attorney General submits these comments.

INTEREST OF THE OFFICE OF THE ATTORNEY GENERAL

The Office of the Attorney General is charged with enforcing state and federal consumer protection and antitrust laws. The Office advocates in Commission proceedings on behalf of New York State, consumer and small business interests, and the public interest generally. The Office of the Attorney General has long emphasized the importance of reliable high quality telephone service as vital to the safety and well being of individual consumers as well as the economic health of New York's businesses and the state's economy. The Office of the Attorney General has participated actively in past Commission proceedings which modified the telephone

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[9] Verizon produced Lawrence Rath, Executive Director of Verizon New York Operations as its witness. Staff advised the parties for the first time at the technical conference that it would be conducted "informally" and that there would no record made of the witness' statements. The lack of a reporter as well as the lack of a presiding Administrative Law Judge to compel the witness to answer relevant questions affected the parties' ability to obtain meaningful information from Verizon at this conference.

[10] *See* December 2006 Order at 9.

service quality standards and designed a series of service improvement plans for Verizon and its predecessor entities.[11]

DISCUSSION

I. Verizon's Deficient Repair Service Is A Continuing Problem That Goes Beyond The Seven Bureaus Identified By The Commission.

Verizon's service quality is governed by regulations that set service standards for performance measurement and reporting, but contain no penalties.[12] These regulations are in furtherance of the Commission's statutory mandate to determine whether "the service of any . . . telephone corporation is inadequate . . . [and to] determine the just, reasonable, adequate, efficient and proper regulations, practices, equipment and service."[13] In addition, Verizon's Commission-approved rate plans over the last number of years have contained service quality requirements.[14]

Poor service performance by Verizon and its predecessor entities has been the subject of Commission concern for at least two decades. The company's OOS>24 performance has

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[11] *See, e.g.,* Case 00-C-1945, Proceeding on Motion of the Commission to Consider Cost Recovery by Verizon New York Inc. fka New York Telephone Company and Modification of Performance Regulatory plan Under Merger Standards and to Investigate the Future Regulatory Framework, *Order Instituting Verizon Incentive Plan*, issued February 27, 2002 ("VIP"); Case 98-C-0063 - Proceeding on Motion of the Commission to Reconcile Service Quality Reporting in the Various Jurisdictions Served by Bell Atlantic and to Adopt a Customer Trouble Report Rate Gap Closing Plan for New York Telephone Company, *Order Adopting Customer Trouble Report Rate Gap Closing Plan* (issued August 6, 1998); and Case 92-C-0665, Performance-Based Incentive Regulatory Plans for new York Telephone Company - Track II, Opinion 95-13, *Opinion and Order Concerning Performance Regulatory Plan*, issued August 16, 1995 ("PRP").

[12] *See* 16 *NYCRR* Part 603, Service Standards Applicable To Telephone Corporations.

[13] Public Service Law § 97(2). *See also* PSL §§ 4(1) and 94(2).

[14] *See, e.g.,* the PRP, Case 92-C-0665, *supra*; and the VIP, Case 00-C-1945, *supra.*

consistently been the worst departure from Commission service standards.[15]

The Commission's focus in the December 2006 Order on the seven worst performing RSBs over the 2005-2006 period understates both the breadth and longevity of Verizon's deplorable repair performance record. It creates the erroneous impression that Verizon's OOS>24 performance failures are isolated to these seven bureaus and that the company's repair deficiencies have only occurred recently.

However, this Office's analysis of the data provides a different picture of the problem. Table 1 below sets forth the number of months over the five years from 2002-2006 in which each of Verizon's 35 RSBs missed the OOS>24 repair standard. It also calculates the percentage of months out of the total number of months in the five years (sixty) in which each RSB missed the 20% standard.[16]

Table 1 shows that the seven RSBs that the Commission focuses on in the December 2006 Order did not meet the OOS>24 service standard over the last five years in a range from

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[15] For example, the performance of Verizon's predecessor New York Telephone Company on a company-wide basis for OOS>24 averaged between 25% and 30% from January 1984 through July 1989, declining to a 12-month moving average of 45% as of May 1990. From 1984 through 1988, the company met less than half of its monthly OOS>24 measurements at the 20% service standard, and only barely broke the 50% mark in 1989. *See* Staff witness Ruvain Kudan testimony and exhibits in Case 90-C-0191, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of the New York Telephone Company*. During the term of the PRP from 1995-2002, Verizon's OOS>24 performance made the least improvement among the various performance standard categories. Since the end of the PRP, Verizon's OOS>24 service performance has not improved by much.

[16] This analysis is in keeping with past Commission practice. In prior service incentive plans, the Commission has evaluated Verizon's service performance by counting the number of months that miss the service standard. The 2002-2006 five-year period is appropriate as it takes into consideration the company's performance since the PRP was replaced by the VIP, and is long enough to reveal long-term performance trends and eliminate short-term aberrations.

48% to 82% of the total months measured. However, other RSBs have similarly poor performance records, including West Bronx and East Hudson (each worse than the service standard 52% of months in the five-year period), Utica (50% of the months), Syracuse and Johnson City (each 48% of the months).

A total of 20 of Verizon's 35 RSBs have delivered repair service which failed to meet the Commission's OOS>24 service standard one-third of the months during the past five years, demonstrating chronically deficient performance in need of immediate corrective action. These 20 chronically deficient RSBs contain 62 percent of Verizon total New York lines.[17]

Table 1: Out Of Service Over 24 Hours Jan. 2002 - Dec. 2006[18]

Repair Service Bureau	Telephone-POTS Lines (Dec. 2006)	# Mos. Failing OOS>24 Standard	% Mos. Failing OOS>24 Standard
ADIRONDACK	167,030	23/60	38%
BROAD	93,590	10/60	17%
CAPITAL NORTH	168,077	23/60	38%
CAPITAL SOUTH	147,008	22/60	37%
EAST BRONX	209,353	26/60	43%
EAST HUDSON	267,027	31/60	52%
EAST SUFFOLK	244,747	30/60	50%
E30/E37	145,882	11/60	18%
E56	119,996	22/60	37%
ELMWOOD WEST	317,741	16/60	27%

[17] In December 2006, Verizon's 20 deficient RSB collectively served 4,786,220 access lines of 7,749,979 total Verizon lines statewide. The seven RSBs identified in the December 2006 Order contain 30% of Verizon's lines.

[18] Data in Table 1 was computed using Verizon's monthly OOS>24 performance and December 2006 access line counts per RSB reported to the Commission and supplied by Staff on January 24, 2007.

JFK	11,352	2/60	3%
JOHNSON CITY	218,717	29/60	48%
MANHATTAN EAST	194,609	15/60	25%
MANHATTAN WEST	277,641	16/60	27%
NORTH BROOKLYN	231,832	13/60	22%
NORTH SUFFOLK	204,521	23/60	38%
NORTH WESTCHESTER	325,901	30/60	50%
NORTH/CENTRAL QUEENS	410,249	29/60	48%
NORTH NASSAU	333,888	34/60	57%
SOUTH BROOKLYN	309,806	12/60	20%
SOUTH QUEENS	387,456	33/60	55%
SOUTH SUFFOLK	160,155	19/60	32%
SOUTH WESTCHESTER	329,191	33/60	55%
SOUTH NASSAU	306,107	49/60	82%
STATEN ISLAND	188,063	11/60	18%
SYRACUSE	188,810	29/60	48%
UTICA	111,676	30/60	50%
VARICK/W18/2ND	256,685	8/60	13%
WEST BRONX	193,559	31/60	52%
W36/W42	146,767	9/60	15%
W50	94,602	18/60	30%
WATERFRONT	287,639	22/90	37%
WATERTOWN NORTH	165,266	25/60	42%
WEST/WORLD TRADE CTR	130,719	14/60	23%
TOTAL Verizon-NY	7,749,979	743/2100	35%

Limiting improvement efforts to only the seven worst bureaus will not address the customers in the thirteen additional RSBs who also have been plagued by service that regularly fails to meet the service standard. In order to ensure that all its customers have adequate repair service, the Commission should expand the number of bureaus requiring Verizon remedial action to all 20 RSBs with OOS>24 performance that have failed to meet the service standard one-third or more months during the past five years.

II. Verizon's Proposed Service Improvement Plans Cannot Be Relied Upon To Ensure Adequate Repair Service Performance In The Future.

A. Verizon's Deployment Of Fiber Networks Will Not Ensure That All Customers Receive Adequate Service.

Verizon's assertions that deploying a new fiber network will improve customer service are unpersuasive.[19] Verizon's fiber network is only being rolled out in a limited part of its service territory, and to date the company has not committed to expanding this new network to cover all of its existing customers by any future date.[20] Even though fiber networks are less susceptible to moisture problems and thus may be more reliable than copper, the rate of Verizon's fiber service penetration is such that it cannot have a significant beneficial impact on customer repair service performance for many years to come, and then only if a majority of Verizon's voice customers choose to subscribe to fiber-based services.

Despite aggressive marketing of the FiOS voice/data/video offering packages, so far only a small portion of Verizon's customers with FiOS available to them have subscribed to these services.[21] Assuming that the company doubles or even triples its fiber subscribership by the end of 2007, and assuming these customers experience far fewer outages than customers served by

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[19] Verizon Response at 4-14.

[20] Compare Verizon's stated 7.7 million customer lines to Verizon's confidential data on the number of customers passed by fiber and open for video sales specified in its confidential Attachment J. (In order to avoid having to file these comments under seal, this Office's Comments will not set forth the confidential data.)

[21] *See* confidential FiOS subscription data provided by Verizon witness Lawrence Rath in the March 26, 2007 Technical Conference.

copper, this would still comprise such a small portion of the customer lines as to have a *de minimis* beneficial impact on Verizon's OOS>24 performance.[22]

B. Verizon Is Not Deploying Enough Repair Service Employees To Enable It To Consistently Meet Performance Standards And Its Proposal For Future Deployment Is Not Adequate.

Verizon's Response claims that its permanent work force is "adequately-sized to meet peak demand for repairs."[23] However, Verizon's emphasis on devoting the lion's share of resources to constructing the new fiber network and installing as many FiOS customer orders as possible has likely worsened repair timeliness for all customers, whether served by copper or fiber.[24] Due to the time required to connect a new fiber connection to the premises, as well as to attach batteries and optical terminating equipment in the customer's home and run new inside wiring to telephones, computers and televisions, technicians can only complete a single FiOS installation in a day. However, the same workers can complete multiple out-of-service repairs in a day.[25]

On Long Island, and in Queens, Westchester and other regions where Verizon has marketed FiOS services, the workforce assigned to "core" (copper installations and repair)

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[22] Compare 2.3 million customer lines served by the seven targeted RSBs to the confidential FiOS subscription data provided by Verizon witness Lawrence Rath in the Technical Conference.

[23] *See* Verizon Response at 18-19.

[24] Staff recently noted that Verizon has declined to increase spending on infrastructure improvement "and actually reduced it in favor of a major strategic program to invest in Fiber-to-the-Premises (FTTP) and FiOS to help it compete with inter-modal providers." *See* Case 06-C-0502, In the Matter of Quality of Service Provided by Local Exchange Companies in New York State, October 25, 2006 Staff 's *Third Quarter 2006 Service Quality Report* (filed at the Commission's November 8, 2006 session) at 14.

[25] *See* confidential Attachment F to Verizon's response.

functions has significantly diminished over the past two years while workforce devoted to FiOS has steadily and dramatically increased.[26] Since Verizon has chosen to reassign field technicians from their traditional repair duties to complete FiOS installations, rather than expand the workforce to handle FiOS installations while retaining repair crews adequate to meet customer repair needs, it is not surprising that OOS>24 performance has been deficient in 2005 and 2006 in these same repair bureaus.

Verizon's data shows that the absolute volume of repair dispatches has decreased substantially from 2005 to 2006.[27] Despite the sizeable reductions in total numbers of repair requests, OOS>24 performance continues to be inadequate.

Verizon proposes to address repair performance deficiencies by relocating up to 300 technicians from RSBs where they are not needed to those seven RSBs requiring additional repair service employees. Verizon also plans to hire 100 temporary employees to fill in for permanent staff during summer vacations.[28]

Verizon's proposal may actually have negative impacts on subsequent repair service performance in the RSBs where these employees now work. For example, Verizon witness Lawrence Rath stated at the technical conference that some of the 300 "surplus" positions to be transferred would come from the two Bronx RSBs. As shown in Table 1 above, in the East Bronx RSB, 43% of the monthly measurements were worse than the Commission service

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[26] *See* confidential Attachment D to Verizon Response.

[27] *See* confidential Verizon response to Staff interrogatories 3 and 8.

[28] See Verizon Response at 18-19. Verizon also plans to hire summer temporary employees to perform repairs in Upstate New York. *See* confidential Verizon response to Staff interrogatory 9 for specific numbers in various Upstate regions.

standard. The West Bronx RSB performance was even worse, with 52% of its monthly results missing the Commission service standard.[29] As discussed above, customers in these two Bronx RSBs receive repair service that is very nearly as poor as in the seven RSBs identified in the December 2006 Order.

Moving repair crews from these two RSBs is only likely to make service worse in 2007 and 2008 for customers in those bureaus. Such a result would violate the Commission's instruction that Verizon's service improvement plans ensure that "no other measured entities' performance will suffer as a result of increased emphasis on the few bureaus identified in this [December 2006] Order."[30] Since Verizon has not disclosed where the remainder of its "surplus" technicians are to be moved from, one cannot determine from the record if other poorly served RSBs might similarly suffer worse repair service as a result of this workforce reassignment proposal.

Verizon's plan to hire temporary staff during the summer when many permanent technicians are on vacation and thunderstorms often increase repair volume is nothing new. Verizon has long used temporary hires and overtime for permanent workers as a means of handling summertime repair volume peaks. However, this has not prevented Verizon's OOS>24 performance from declining sharply in past summers, and the small number of temporary hires slated for 2007 is unlikely to change this performance pattern.

C. Verizon Is Unlikely To Commit Sufficient Investment In Copper Network Facilities To Improve Service Performance.

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[29] During 2005 - 2006, the East Bronx missed 9 monthly OOS>24 metrics while the West Bronx missed 10.

[30] December 2006 Order at 9.

Although the Commission has stated in a series of previous decisions that it expects Verizon to use "a significant portion of funds from gains" produced by the sale of office buildings and other assets "to support its service quality and other obligations to upgrade and maintain its physical plant,"[31] the company has chosen to spend nowhere near this amount on replacing problematic portions of its copper network.

Instead, Verizon states in its Response that it is willing to commit only to limited investment in its copper plant infrastructure in 2007, as the company does not believe that network has sufficient long-range revenue productive value.[32] These 2007 expenditures for copper plant are less than what Verizon spent during 2005, and only minimally greater than the company's 2006 expenditures. The record demonstrates that such limited commitment of resources to copper plant maintenance failed to deliver adequate repair service in any of these seven RSBs during the past two years. The company is far less willing to invest in its copper network in 2007 and beyond, asserting, "it is imperative that the Commission not undermine the significant customer benefits of FTTP deployment by compelling Verizon to divert excessive capital and expense dollars to the legacy network."[33] Therefore, the Commission has no basis upon which it could conclude that the amount budgeted for 2007 will produce performance that consistently meets the OOS>24 service standard.

D. Verizon's Proposal To Address Service Quality By Moving A Limited

[31] December 2006 Order at 8, referring to Commission rulings in cases 05-C-0510, 05-C-1179, 05-C-1089, 05-C-0091 and 05-C-0092.

[32] Verizon Response, at 15-16. *See also* Verizon confidential response to Staff interrogatory 7 which identifies individual capital projects for each targeted RSB planned for this year.

[33] Verizon Response at 12.

Number Of Customers To Voice-Only Fiber Is Insufficient To Ensure That Most Customers Will Receive Adequate Service.

Verizon's Response proposes to offer fiber-supported voice service, without the data or video service portions of the FiOS bundle, to customers with chronically poor service over their copper facilities primarily within the targeted RSBs.[34] Verizon would bill customers who accept such offers at the tariffed voice service rates applicable to copper-based voice service even though it will cost Verizon substantial amounts to install FiOS.[35] For those eligible individual customers plagued by repeated service outages, this plan could be a benefit.

However, the number of customers Verizon proposes to offer its voice-only fiber plan is too small to have any detectable impact on overall customer OOS>24 performance. In December 2006 alone, the seven targeted RSBs received a total of 36,961 customer requests for restoration of dial tone, plus 11,246 requests for other service repair problems.[36] But Verizon proposes to offer its plan to only 4,640 customers in the seven targeted RSBs and to 1,950 customers elsewhere in the state in 2007.[37] The tiny number of potential voice-only fiber offers promised by Verizon in 2007 is just a fraction of the customers in the seven targeted RSBs and

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[34] *See* Verizon Response, pp. 11-12. The specific criteria for eligibility have been designated by Verizon as confidential. *See* confidential Attachment A to Verizon Response.

[35] *See* confidential Attachment K to Verizon Response for the cost of performing these voice only migrations.

[36] *See* Verizon response to OAG Interrogatory 2 (monthly customer trouble reports identified as out of service for each RSB) and OAG Interrogatory 3 (monthly customer trouble reports identified as affecting service for each RSB).

[37] *See* Verizon response to PULP interrogatory 6.

elsewhere who would potentially meet the criteria.[38]

Those to be offered voice-only fiber are also far fewer than the number of customers with chronic service outages who are located across Verizon's service territory where fiber has not been deployed.[39] Other than a projected reduction in repair dispatches for 2007, Verizon has declined to quantify any impact its proposal would have on the company's OOS>24 performance.[40]

E. Verizon's Proposed Proactive Maintenance And Management Incentives Are Not Meaningfully Different From Past Plans Which Failed To Substantially Improve Repair Service.

In its Response, Verizon emphasizes its plans to reduce substantially the volume of repair dispatches with "Proactive Preventative Maintenance" and "Find and Fix" programs which would assign repair crews and managers to identify and repair potential service problems by inspection and testing in the seven targeted RSBs.[41] These programs are neither new nor likely to change Verizon's current and historically deficient repair service performance.

At the March 26, 2007 technical conference, Verizon witness Lawrence Rath conceded that all the company's service improvement plans had been planned or already implemented well before the Commission issued its December 2006 Order. Thus, Verizon's Response offers the

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[38] *See* Verizon confidential response to Record Request 8. Furthermore, any customer with chronic outages who also receives DSL would not be able to retain the broadband service if the fiber voice service is accepted. Instead, such customers would have to choose either to pay the higher than DSL cost for FiOS broadband, or resort to much slower dial-up Internet narrowband access if they take the voice only fiber offer.

[39] *See* Verizon confidential response to Record Request 9.

[40] *See* confidential Attachment B to Verizon Response.

[41] *See* Verizon Response at 16-17.

same “solutions” which the company has promised in it’s the Service Inquiry Reports filed with Staff,[42] and in prior Commission proceedings, and that thus far have been unavailing. Verizon’s proactive outside plant efforts did not make any improvement in the company’s 2006 repair service performance, and cannot be relied upon to have any greater impact in 2007.

Although Verizon predicts that these programs will reduce the absolute number of actual dispatches of workers making repairs by tens of thousands in 2007,[43] this does not necessarily translate to more timely repair dispatches for customers who do lose dial tone.

Historically, Verizon’s and its predecessors’ representations that proactive outside plant maintenance programs would address the Commission’s concerns about poor customer service have not proven adequate. In 1990 and 1991, Verizon’s predecessor put forth a preventative maintenance program it called “Inspect and Fix.” This program promised to hire contractors to identify deficient outside plant conditions and fix them before customers reported service outages. But in a 1992 audit, Staff concluded that “[t]he Inspect and Fix program was poorly planned and administered from the start . . . [and] corrective actions performed by these contractors often caused unnecessary service interruptions.”[44] The company terminated this program and began a new one in 1991 called “Analyze and Fix,” which used employees instead of contractors. In less than a year this program was also terminated by the company due to

inadequate results, which Staff found was “due directly to a lack of planning and

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[42] These “SIRs” are required whenever Verizon misses service standards chronically. *See* footnote 3.

[43] *See* confidential Verizon responses to Staff interrogatories 3 and 8.

[44] Case 91-C-0613 - *A Review of New York Telephone Company’s Outside Plant Management Practices And Procedures*, December 7, 1992 Staff report to the Commission at 34.

inadequate commitment of resources by [Verizon's predecessor]."[45]

Confronted with these findings, the company then proposed a "Quality Sampling Plan" ("QSP") in 1992, combining testing of cable for impairment and daily monitoring of outside plant conditions by employees and managers.[46] Although Staff accepted the company's new program, subsequent on-site reviews by Staff auditors documented that the QSP was not being carried out.[47] In 1994, Staff found that "critical issues of quality control of workmanship, preventive maintenance and engineering support on rehabilitated plant" were not implemented because, as the company acknowledged, "the corporate level monitoring effort was not performed due to other priorities within the company."[48]

This history demonstrates the inadequacy of input-oriented improvement plans such as these prior programs and Verizon's February 2, 2007 proposal. Whether the company titles its efforts "Find and Fix" as the latest program has been named, or "Inspect and Fix," "Analyze and Fix" or "QSP" as in the past, these proactive maintenance efforts are only worth what Verizon chooses to put into them in follow-through. In contrast, outcome-oriented performance goals, such as those empodied in the PRP from 1995-2002, and those recommended *infra* have been

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[45] *Ibid.*

[46] *Id*. at 36-37.

[47] Following up on the company's response to Staff's 1996 outside plant audit, staff conducted "holistic audits" of selected wire centers to determine whether the QSP was more effective than its predecessors. *See e.g.,* July 7, 1994 letter from DSP Senior System Planner Harry Clinton to Dick Jasinski at NYNEX (corporate parent of New York Telephone) (detailing how monthly Staff examinations had found numerous outside plant deficiencies in locations which the QSP was supposed to have addressed).

[48] Case 91-C-0613, *supra*, November 16, 1994, Staff report to the Commission on *Implementation of Corrective Actions.*

more successful in improving service quality performance.

F. The Commission Should Reject Verizon's Suggestions To Modify How Repair Service Is Measured.

Rather than present concrete plans to deliver improved repair service, Verizon's Response seeks three ways to change the rules of the Commission's service measurement procedures and practices. These suggestions would tamper with the company's measured performance without delivering any better service to customers. The Commission should reject these proposals.

First, Verizon brazenly attempts to blame its customers for the company's poor repair service performance by asserting that some customers affect the timeliness of repair by asking to schedule their repair appointments beyond the 24-hour window even though Verizon may have been able to dispatch a repair technician within OOS>24.[49] Verizon then proposes that such customer-deferred appointments be excluded from Commission measurements of OOS>24 hours repair performance.

However, when asked to provide data quantifying the incidence of customer-deferred repair appointments, Verizon produced no information, and was unprepared to propose details on how the Commission might adjust the OOS>24 measurement to account for deferred appointments or what impact this suggestion might have on the company's performance measures.[50] Nor did Verizon explain how Staff could verify the accuracy of such excluded customer appointment deferrals from the company's performance reports.

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[49] *See* Verizon Response at 22-23.

[50] *See* Verizon response to Staff Interrogatory 10.

Second, Verizon tries to put the blame for its inadequate repair performance on alleged difficulty in gaining access to necessary equipment once the technician arrives at the premises, especially in apartment buildings where access to telephone closets requires cooperation from the building owner.[51] Verizon proposes that such no-access instances be excluded from measurement of its OOS>24 performance. This concept was rejected by the Commission in 2000 when the service standards were last revised. The Commission stated:

> The calculation of OOS>24 Hours results has always included periods of no-access to customer premises. Indeed, we do not demand clearance of 100% of trouble reports within a certain time interval (either 24 or 48 hours) because we expect some trouble reports will last longer due to conditions beyond the service providers (*sic*) control such as no-access conditions. If we were to exclude the time of no-access to customer premises, we would also be inclined to raise the performance threshold.[52]

If Verizon's no-access proposal were applied to the 2006 monthly results for the seven targeted RSBs, the percentage of monthly failures to meet the service standard would still be deplorably high. For example, the South Nassau RSB's monthly failure total in 2006 for OOS>24 would only be reduced by one month if no-access dispatches were excluded from the measurement.[53] The lack of access to necessary facilities inside homes and apartment buildings is not the cause of Verizon's chronically poor repair service. Accordingly, the Commission should disregard Verizon's proposals to revise the service measurement rules on this basis.

Third, Verizon proposes that customers who accept voice-only fiber installation in lieu of

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[51] *See* Verizon Response at 23-24.

[52] *See* Case 97-C-0139, Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies, *Memorandum and Resolution Adopting Revision Of parts 602, 603 And Section 644.2 of 16 NYCRR*, issued October 6, 2000, at 14-15.

[53] *See* confidential Verizon response to OAG interrogatory 16.

repair of their copper-based service should be excluded from OOS>24 hours because of the additional time required to move their service to the fiber network.[54] This proposal fails to explain why these customers should be excluded while other customers who accept data or voice FiOS bundles with their fiber-based voice would be counted. Moreover, since Verizon's voice-only fiber migration program is limited to a maximum of 6,590 customers for the year (comprising 0.086% of the company's access lines), it is unlikely that the proposed modification to OOS>24 measurements would have any measurable impact on the company's performance results.

G. Verizon Has Offered Empty Promises Rather Than Measurable Standards and Goals.

There is no record basis upon which the Commission can be assured that any of Verizon's service improvement programs will, in fact, produce improved repair service for customers. Verizon has refused to offer any data quantifying the individual or aggregate improvement in OOS>24 performance in the seven targeted RSBs to be expected from any of its proposed improvement programs, stating instead:

> Verizon is confident that the service improvement plans described in the February 2, 2007 filing will improve Verizon's OOS>24 performance going forward. The effects of the various pieces of the company's service improvement efforts cannot, however, be quantified into a specific reduction in the number of OOS>24 reports or a specific decrease in the OOS>24 percentage for a given service bureau.[55]

Verizon similarly rebuffed Staff's request for time projections for meeting the service standard

[54] *See* Verizon Response at 12.

[55] *See* Verizon responses to interrogatories OAG-7, OAG-8,OAG-10, OAG-12, OAG-14, OAG-27 and OAG-28.

"on a consistent basis."[56] In effect, Verizon's Response asks that the Commission trust that this time, the company's service will improve, but offers no quantified information as to how much OOS>24 performance will improve nor when performance will consistently meet the service standard in the seven targeted RSBs or any of the other thirteen RSBs of concern.

In 2003, when it considered Verizon's attempts, through SIR filings, to improve service shortcomings to the level required by Commission standards, Staff found that:

> the root cause analyses provided by the company [are] too general . . . [and] in terms of corrective action plans, . . . the plans are an overview and do not demonstrate that the planned steps will achieve the desired improvement. That is, no specific improvement in CTRR or out-of-service troubles, for example, is tied to the individual actions other than when the locale is expected to return to threshold performance. Nor does the company indicate that its actions are expected to provide sustained, month over month, threshold performance. Rather, the company provides general responses. Consequently, actual performance becomes the only indicator of the adequacy of these plans.[57]

Staff's critique of Verizon's past SIR filings could easily describe the shortcomings of Verizon's Response, which contains no assurance or even a representation that the company will "obtain consistent monthly performance meeting [the Commission's] Service Standards," as required by the December 2006 Order.[58] Because Verizon has refused to commit to any time period by

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[56] *See* Verizon response to interrogatory Staff-1.

[57] Case 03-C-0971, *Compliance Report Regarding the Status of Verizon New York Inc.'s Service Inquiry Reporting*, issued November 7, 2003 at 10. As noted earlier, each time one of these RSBs fails its OOS>24 measurement during three of five consecutive months, Verizon is required to file an SIR with Staff which is identifies the root cause of the poor service, specifies corrective action and sets a date by which the RSB will achieve the service standard. Verizon has filed numerous SIRs over the past few years pertaining to the same deficient RSBs identified in the December 2006 Order.

[58] December 2006 Order at 2.

which it will consistently deliver repair service meeting the regulatory standards,[59] it is incumbent upon the Commission to set specific improvement targets to be met by Verizon within a reasonable time period.

III. The Commission Should Order Verizon To Meet A Schedule For Specific Service Improvement Targets Backed Up With Substantial Monetary Sanctions If Customers Do Not Receive Improved Repair Service.

A. The Commission Should Set Specific Improvement Targets.

Verizon's regulatory status requires the Commission to provide service quality incentives for failure to perform. Both the PRP and the VIP price cap plans established monetary incentives for the company to improve and maintain service quality performance, through the use of penalties and customer rebates triggered by specific objective performance targets. These price cap plans granted the company substantial pricing flexibility and did not restrict earnings. Service quality requirements are deemed necessary in this type of regulatory regime to ensure that the telephone company does not cut facilities maintenance or investment costs, and does not neglect customer service.[60] Verizon continues to be subject to a price cap regime, but without any service performance incentives. This is unacceptable.

Public Service Law § 91(1) provides that the Commission is responsible for ensuring that

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[59] *See e.g.,* Verizon responses to Staff interrogatory 1 and OAG interrogatories 7, 8, 10, 12, 14, 27 and 28. In addition, Verizon technical conference witness Lawrence Rath refused multiple requests to state what the company believes constitutes "adequate" repair service performance.

[60] *See e.g.,* Ghosh, Sutapa, *The Future of FCC Dominant Carrier Rate Regulation: The Price Caps Scheme,* 41 Fed. Comm. L.J. 401, July 1989 (among the issues to be addressed in designing a price cap plan is the mechanism used to avoid profit-maximization through cost-cutting while monitoring and maintaining of quality of service). *See also* Lavey, Warren G., *Making and Keeping Regulatory Promises,* 55 Fed. Comm. L.J. 1, December 2002 (discussing service quality conditions of the Telmex privatization price cap plan).

Verizon provides service to its customers which is "adequate."[61] Moreover, the Commission has authority to order Verizon to improve its service performance whenever "the commission shall be of the opinion, . . . that the equipment or service of any . . . telephone corporation is inadequate, inefficient, improper or insufficient."[62] Therefore, the Commission is clearly authorized to require Verizon to provide its customers with repair service which consistently meets the service standards.

The Commission should meet this statutory duty by ordering Verizon to meet specific performance targets by a specific deadline. While it is necessary and appropriate that Staff closely monitor Verizon's business practices and service quality incentive plans, the Commission should not rely on these mechanisms alone.

The Office of the Attorney General recommends that the Commission set six-month stepped improvement targets for each of the 20 RSBs which are identified in Table 1 above as having failed to consistently meet the OOS>24 service standard. This incremental target approach would allow Verizon to phase in whatever resources it deems necessary to progress towards the improvement targets. The improvement targets should provide that by the end of 2008, all Verizon's RSBs should consistently meet the service standard for OOS>24.

Consistent performance that meets the threshold should be defined as follows: each individual RSB must have performed at or below 20% OOS>24 Hours during nine of twelve consecutive months, and a 12-month moving average percent OOS>24 no greater than 20%.

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[61] "[E]very telephone corporation shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate . . .." PSL § 91(1).

[62] PSL § 97(2).

This quantification of "consistent performance" takes into account the potential that extreme conditions may occur from time to time which prevent Verizon from meeting the service standard in an individual RSB during one month or another.[63]

This improvement target regime is similar in structure to several prior Commission orders which were successful in prodding Verizon's predecessor entities to make meaningful service performance improvements. In 1995, the PRP set performance improvement targets for OOS>24 Hours as well as several other service measurements over a seven-year period, with incremental improvement targets each year.[64] In 1996 the Commission conditioned its approval of the NYNEX-Bell Atlantic merger upon a plan to reduce the annual number of customer trouble reports in New York to levels existing in the Bell Atlantic region in annual incremental improvement targets.[65] In 1997, the Commission required Verizon to "improve the service quality of Special Services to acceptable levels, and to maintain or improve upon those levels thereafter."[66] The Commission should employ tools such as these which have been shown to

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[63] Therefore, there should be no allowance for waiver of the improvement targets based on weather events and the like.

[64] Case 92-C-0665-Track 2, Opinion 95-13, *supra.*

[65] *See* Case 96-C-0603, *et al.* - Proceding on Motion of the Commission as to the Joint Petition of New York Telephone Company, NYNEX Corporation and Bell Atlantic Corporation for a Declaratory Ruling That the Commission lacks Jurisdiction to Investigate and Approve a Proposed Merger Between NYNEX and a Subsidiary of bell Atlantic or, in the Alternative, for Approval of the merger, Op. 97-8, *Opinion Approving Proposed Merger Subject To Conditions,* issued May 30, 1997; *see also* Case 98-C-0063, *Order Adopting Customer Trouble Report Rate Gap Closing Plan, supra*.

[66] Case 92-C-0665, *supra* and Case 00-C-2051 - Proceeding on Motion of the Commission to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon New York Inc. Opinion 01-1, *Opinion and Order Modifying Special Services Guidelines For Verizon New York Inc., Conforming Tariff, And Requiring Additional*

produce positive results.

B. Substantial Monetary Consequences For Failing To Meet Service Improvement Goals Are Necessary And Appropriate.

It is not enough for the Commission merely to order Verizon to improve repair service performance so as to meet the improvement targets discussed above. The Commission should also adopt an enforcement mechanism that would be triggered upon Verizon's failure to meet the improvement targets. Without such a mechanism, any Commission Order will be of little value to customers who continue to receive poor repair service. The Commission must establish financial consequences for Verizon's failure to meet improvement targets which are significant enough to motivate the company to make the necessary efforts to meet the improvement targets.

The Commission should order Verizon to file a tariff that requires the company to refund monies to its customers whenever the company misses the OOS>24 improvement target. If an individual RSB should fail to achieve the OOS>24 Hours improvement target, customers served by that RSB who report an out of service condition should receive a full month's bill credit for each service outage reported during the six-month period.[67] In addition, should a Verizon RSB fail to make any progress towards achieving its improvement target, or actually perform worse

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Performance Reporting at 4, issued June 15, 2001. Special Services include high speed data circuits, alarm circuits, and video and are used primarily by large business customers, long distance carriers, wireless carriers and competing local exchange carriers.

[67] Currently, Verizon's tariff provides that if a customer's line is out of service more than 24 hours, a prorated portion of the monthly service charge is credited for the time period that the line was out of service. This rebate merely recognizes that customers ought not pay for days when they did not receive telephone service, and makes no amends for the company's failure to provide adequate service. In the last four months, Verizon's customer bill credits for such prolonged service outages ranged from 16,000 to 30,000 customers monthly. Verizon response to CWA interrogatory 2. Verizon was unable to determine the monetary amounts credited under the tariff.

than it did the previous six-month period, additional rebates should be required to be paid to all customers of the deficient RSB. Chronic poor service in an RSB arguably harms all customers whether or not their individual lines were out of service, especially when customers cannot call other subscribers in their community and those other subscribers in the community cannot reach the customer whose line is out of service. Furthermore, the Commission should apply similar incentives if Verizon allows repair service performance to decline in any of the remaining RSBs which do not have improvement goals.

The Commission is authorized to require Verizon to make such a tariff filing to fulfill the Commission's statutory mandate to ensure that Verizon provides its customers adequate service quality.[68] While several provisions of the Public Service Law specifically authorize certain refunds,[69] the Court of Appeals ruled in *Niagara Mohawk Power Corp.* that the power to order refunds may be implied in certain circumstances, even without a specific statutory provision.[70]

The Commission has previously held that "the Commission's inherent authority to require just and reasonable service provides a basis for a [customer refund] remedy."[71] For example, when Verizon failed to provide adequate service to its Special Services customers, the Commission ordered the company to file a "warranty tariff" which required refunds of

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[68] *See* PSL §§ 91(1) and 97(2) *supra*.

[69] *See e.g.*, PSL §§ 66(20), 113(1), 113(2), and 118(3).

[70] *Niagara Mohawk Power Corp. v. PSC,* 69 N.Y.2d 365,375 (1987) (approving a Commission refund of imprudent fuel expenditures).

[71] Case 29695, *Proceeding on Motion of the Commission as to the Practice of New York Telephone Company in Providing Foreign Exchange Service*, Op. 92-12, fn. 11 (issued May 21, 1992)(refunding overcharges caused by a utility's failure to comply with a Commission order to recalculate mileage rates for foreign exchange service).

installation charges and a month's service charge to retail and some wholesale customers when appointment commitments were not kept.[72] The Commission should use its power here to require refunds for inadequate service performance as an incentive to induce Verizon to improve its repair performance.

[72] *See* case 00-C-2051, *supra* at 14. The Commission has also required the company to pay refunds to competing local exchange carriers when wholesale service performance failed to meet specific carrier-to-carrier standards. *See* Case 99-C-0949, Petition Filed by Bell Atlantic-New York for Approval of a Performance Assurance Plan and Change Control Assurance Plan, filed in C 97-C-0271, *Order Adopting the Amended Performance Assurance Plan and Amended Change Control Plan*, issued November 3, 1999. The Commission has exercised its authority to order refunds in other situations involving poor service. *See* Case 28804, *Investigation of the Installation, Service and Billing for AUTOTAS Equipment Provided by New York Telephone Company*, Op. 86-3 (issued February 18, 1986) and Op. 86-3(B) (issued August 28, 1987) and *N.Y. Tel. v. PSC and Black Radio Network, Inc. v. PSC*, 179 Misc.2d 301 (Sup. Ct. Albany Co. 1998), *aff'd* 271 A.D.2d 35 (3rd Dep't 2000).

CONCLUSION

Verizon's failure to provide adequate repair service to large numbers of its customers in recent years requires strong and forceful Commission intervention to protect customers. Verizon must not be allowed to continue neglecting the vast majority of its customers who rely on the copper network. Verizon's Response to the December 2006 Order is totally inadequate to ensure that customers receive adequate repair service. For all of the reasons stated herein, the Commission should order Verizon to meet objective service performance targets, backed up by substantial refunds in the event of failure to meet the targets.

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Respectfully submitted,

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