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ORIGINAL

October 31, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W. - Suite TW-A325
Washington, D.C. 20554

Re: CC Docket Nos. 96-98/96-262
Oral Ex Parte Presentation

Dear Ms. Salas:

On October 30, 2001, Louis Prestwood and Donna Sorgi, WorldCom, Inc., and Richard Metzger, Lawler, Metzger and Milkman, LLC, counsel to WorldCom, met with Commissioner Copps and Jordan Goldstein to discuss the above-referenced proceeding. On October 31, 2001, Mr. Prestwood, Ms. Sorgi and Mr. Metzger met with Commissioner Martin and Sam Feder, and with Commissioner Abernathy and Matthew Brill. The views expressed by WorldCom in these meetings are summarized in the enclosed slide deck. WorldCom also provided copies of the enclosed letter from Maureen Helmer, Chairman, New York Department of Public Service to Chairman Powell.

Pursuant to section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), an original and one copy of this letter and enclosures are being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,

Ruth Milkman

cc: Commissioner Copps (w/o enclosures)
Commissioner Abernathy (w/o enclosures)
Commissioner Martin (w/o enclosures)
Jordan Goldstein (w/o enclosures)
Sam Feder (w/o enclosures)
Matthew Brill (w/o enclosures)

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Enclosures

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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PUBLIC SERVICE COMMISSION

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Secretary

May 22, 2001

Honorable Michael K. Powell, Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

RE: Special Services Performance By Verizon-New York, Inc.

Dear Chairman Powell:

I am writing to ask your assistance regarding Verizon's special services performance. On November 24, 2000, the New York Public Service Commission initiated a proceeding to investigate ways to improve the service quality performance of Verizon for special services because of long delays in provisioning such services. We have determined, based on the record in the proceeding, that Verizon remains the dominant provider of facilities for special services, that Verizon's provisioning performance for special services is significantly below our service quality standards, and that Verizon may be treating other carriers less favorably than its end users.

At its May meeting, the Commission adopted a rebate plan for Verizon's intrastate special service circuits. We will continue to monitor and refine our reporting standards, but our ability to encourage Verizon is dependent on the Federal Communications Commission's scrutiny regarding interstate circuits.

Our agency would be willing to establish and enforce service standards on all special services, if this were a matter your agency believed should reasonably be delegated to New York State. I look forward to working with you on this important matter crucial to facilities-based competition in New York.

Sincerely,

Maureen O. Helmer

MAUREEN O. HELMER

cc: David Solomon
Dorothy Attwood
Suzanne Tetreault

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION NO. 01-1

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.

CASE 92-C-0665 - Proceeding on Motion of the Commission to Investigate Performance-Based Incentive Regulatory Plans for New York Telephone Company.

OPINION AND ORDER MODIFYING SPECIAL SERVICES GUIDELINES FOR VERIZON NEW YORK INC., CONFORMING TARIFF, AND REQUIRING ADDITIONAL PERFORMANCE REPORTING

Issued and Effective June 15, 2001

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION NO. 01-1

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.

CASE 92-C-0665 - Proceeding on Motion of the Commission to Investigate Performance-Based Incentive Regulatory Plans for New York Telephone Company.

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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Maureen O. Helmer, Chairman
Thomas J. Dunleavy
James D. Bennett
Neal Galvin

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.

CASE 92-C-0665 - Proceeding on Motion of the Commission to Investigate Performance-Based Incentive Regulatory Plans for New York Telephone Company.

OPINION NO. 01-1

OPINION AND ORDER CONCERNING METHODS TO IMPROVE AND MAINTAIN HIGH QUALITY SPECIAL SERVICES PERFORMANCE BY VERIZON NEW YORK, INC.

(Issued and Effective June 15, 2001)

BY THE COMMISSION:

INTRODUCTION

We instituted this proceeding to investigate ways to improve the service quality performance of Verizon for Special Services.[1] Special Services are non-basic services, most of which are non-switched, that require engineering design review before being installed. Special Services include alarm, video, foreign exchange and other services, but mostly high speed data circuits of 1.5 megabits and higher transmission rates. These services are known as "special access" when provided pursuant to federal tariffs.[2] Verizon New York Inc. (Verizon) files reports

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[1] Cases 00-C-2051 et al., Special Services Performance, Order Instituting Proceeding (issued November 24, 2000).

[2] Special access services are provided pursuant to federal tariff if the customer advises that more than 10% of the traffic will be interstate.

on both special and special access services pursuant to our Special Service Guidelines and its performance regulatory plan.[3] Demand for such circuits has increased dramatically in recent years, placing unprecedented strain on Verizon's ability to serve and meet expected performance levels. Performance deficiencies have characterized Verizon's service over the past four years despite efforts of Verizon, prior Commission directives and monitoring by our Staff.

On November 24, 2000 we initiated this proceeding and directed Verizon to submit plans to improve service quality, and to demonstrate nondiscriminatory treatment of Verizon's customers, affiliates and other carriers. Further, we sought comment on Verizon's proposed rebate tariff for missed commitments, and the need for revised or additional standards and metrics to monitor Special Services, incentives tied to performance targets, changes in Verizon's ordering practices to permit a single ordering interface, and the sharing by competitors of forecast information with Verizon to allow it to meet demand in a more timely fashion. Finally, we directed Staff and Verizon to work together to ensure that network capacity remains adequate to meet expected demand.

PROCEDURAL HISTORY

In accord with the Commission's order, Administrative Law Judge Jaclyn A. Brilling convened technical conferences, in part on-the-record, to review and discuss all filings and assist

[3] Case 92-C-0665, Opinion No. 95-13 (issued August 16, 1995), p. 51.

the parties with these issues.[4] Conferences were held on December 21, 2000 and February 6-8 and 28, 2001. In addition to these technical conferences at which Verizon, Staff and others made presentations to educate the parties, Staff and Verizon met to discuss forecasting methods and network capacity monitoring. Pursuant to the Order, Verizon filed a rebate tariff on December 4, 2000, and a performance improvement plan on December 15. Other parties commented on Verizon's filing on January 15, and Verizon responded at that time to comments made at the December 21 technical conference. Comments on the rebate tariff were filed on December 26, 2000.

Although consensus was achieved on some issues, parties did not agree on certain fundamental issues, and the proceeding was converted from a consensus to a consultative process, to allow parties a full opportunity to present their positions, with evidentiary support, for our consideration. Accordingly, parties submitted written statements of position concerning the guidelines on March 15, 2001. On March 23 and March 30, parties submitted initial and reply statements, respectively, on the need for incentives to insure Verizon's performance at established targets.[5]

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[4] Active participants besides Staff and Verizon include the following: the Office of the Attorney General (OAG), Independent Wireless One Corporation (IWO), Allegiance Telecom of New York, Inc. (Allegiance), e.spire Communications, Inc. (e.spire), Focal Communications Corporation of New York (Focal), Time Warner Telecom-NY, L.P.,(Time Warner), WorldCom, Inc. (WorldCom), the Communications Workers of America (CWA), the New York State Telecommunications Association, Inc. (NYSTA), and AT&T Communications of New York, Inc., TC Systems, Inc., and ACC Corporation (collectively, AT&T).

[5] WorldCom, Verizon, Focal, Allegiance and Time Warner, also submitted unsolicited letters concerning the extent of competition in the New York market for Special Services. Unsolicited comments on jurisdictional issues were submitted by AT&T, IWO and Verizon.

No party requested formal evidentiary proceedings;[6] no such proceedings were necessary in light of the parties' submissions. The uncontested data filed by parties, and Verizon's own submissions constitute a record sufficient to support our findings.

BACKGROUND

Verizon's provision of Special Services, previously of excellent quality, began to deteriorate during 1995, and continued to decline in 1996. As a result, Verizon was directed, by an Order dated August 30, 1996, to submit a plan within 30 days to restore service quality for Special Services to previous, acceptable levels within six months, and to sustain that level of performance thereafter. One full year after that Order, service results were mixed, at best. Consequently, on August 29, 1997, Verizon was again directed to improve the service quality of Special Services to acceptable levels, and to maintain or improve upon those levels thereafter. We cautioned that failure to comply could lead to the institution of a penalty action under Section 25 of the Public Service Law. On July 15, 1998, we were informed that Verizon had finally improved its performance results. At the time, the company had achieved acceptable performance on most metrics, and was showing significant improvement on the remainder. Unfortunately, this improvement was not sustained.

Staff met with company representatives to better understand the problems affecting Special Services. During these discussions, Verizon enumerated process steps it had taken to improve service quality and pointed to forecast shortfalls that resulted in a failure to address increased demand. At these discussions, the company projected improved results by October 1999; however, it did not realize these improvements. In February 2000, the company offered further service improvement commitments; however, Staff considered these

[6] Many carriers asked for technical conferences to explore appropriate incentives.

inadequate, as the provisioning of Special Services continued to be unacceptable despite informal discussion with the company, Staff efforts to revise targets, and the company's efforts to improve practices and provision additional facilities.

CURRENT STATUS OF SPECIAL SERVICES

Service Quality and Nondiscriminatory Performance

Service quality data[7] through March 2001 indicate that Verizon continues to fall below our targets for provisioning.[8] Verizon's two exchange access (wholesale) bureaus are averaging 74% appointments met during the first quarter 2001, and delays on missed appointments are over 14 days in the same period. The company's 14 intraLATA (retail) bureaus are averaging 94% appointments met during the same period, but delays on missed appointments are also averaging over 14 days. We find that these delays indicate Verizon's provision of Special Services is below the threshold of acceptable quality.

The data also suggest that Verizon treats other carriers less favorably than its retail customers. On average, it meets only 74% of its appointments on carrier service requests, but meets 94% of its retail customer appointments.[9] Verizon's explanation for this disparity is that it attempts to renegotiate appointments when necessary, and is more successful in changing appointments with retail customers. Verizon asserts it does not count renegotiated appointments as missed

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[7] The CWA raises concerns about inaccurate reporting of service quality data. We addressed these concerns recently in the monitoring of Verizon's compliance with the terms of its Performance Regulatory Plan, and found Verizon's reporting procedures and controls generally adequate. Case No. 01-C-0040, *CWA Allegations of Improper Practices*, Order Adopting Report (issued May 17, 2001).

[8] Maintenance service, however, continues to meet the established objectives.

[9] This is based on an average of the three months ending March 2001.

appointments and thus its retail performance appears better than its carrier performance. Verizon denies discrimination, but provides no data to explain the 20% difference in performance or to refute the prima facie indicia of discrimination. The November 24, 2000, Order required Verizon to substantiate nondiscriminatory treatment of its affiliates in comparison to other carriers. Substantiation was to be filed in a fashion similar to monthly service reports made for carrier-to-carrier performance in Case 97-C-0139. Verizon's compliance filings, however, did not refute the presumption of discrimination indicated by this difference in provisioning performance.

Accordingly, we find that Verizon has failed to refute this prima facie evidence indicating it provides special wholesale services in a discriminatory manner.

Verizon's Market Dominance

Verizon asserts it is a nondominant provider of Special Services and that the existence of competitive alternatives lessens the need for regulation. Verizon offered evidence of its market position including data on the number of competitors, their switches, and fiber network development as well as overall comparative market penetration data.[10]

Verizon claims that its percentage of total in-service high speed data circuits is less than the sum of its competitors' circuits in Southern/Midtown Manhattan. In support, Verizon submitted statewide data compiled by its consultant, Quality Strategies.[11] Verizon showed that in March 1999 it enjoyed a 76% share of the retail Special Services High

[10] Data filed by Verizon on October 3, 2000 in response to a Staff request, and Verizon presentation on February 6, 2001 during the technical conferences (subsequently filed with the Secretary on February 16, 2001).

[11] WorldCom asserts the FCC determined that Quality Strategies, Inc. presented flawed findings and unsubstantiated results in similar reports filed on behalf of Verizon and other incumbent carriers. However, the Quality Strategies. Inc. data offered here are construed against Verizon.

Speed Data Circuit Market outside of New York City, 51% in greater Metro, and 43% in the most contested area, Southern/Midtown Manhattan.

To better reflect the circuits Verizon actually provides in the marketplace, it is necessary to combine Verizon's retail circuits with circuits it resells to other carriers. Verizon's combined market share data demonstrate its continued dominance in all geographic areas.

In March 1999, Verizon served 88% of the market for all Special Services, high speed data circuits, and special access outside New York City. In Greater Metro, 67% of the Market was served by Verizon, and in Southern/Midtown Manhattan, 51%. On March 22, 2001, Verizon also provided a more complete picture of its fiber optic network in comparison to competing carriers. Its data demonstrate that Verizon dwarfs its competitors. In the 132 LATA, for example, Verizon has 8,311 miles of fiber compared to a few hundred for most competing carriers; Verizon has 7,364 buildings on a fiber network compared to less than 1,000 for most competing carriers. In Southern and Midtown Manhattan, where it is relatively easy for competitors to bring their own local loop facilities to large buildings, competition is concentrated. In other areas of New York City and throughout the rest of the state it becomes increasingly difficult for competitors to serve end users through the use of their own facilities because customers are more dispersed. As Verizon acknowledged, cost considerations force competitors to rely on Verizon's ubiquitous local loop facilities to reach most end users.[12]

Verizon supplied other data on the number of buildings served by competitors in New York City, which show a maximum of 900 buildings served by individual competitors' fiber facilities. However, according to the New York City Department of City Planning, there are 775,000 buildings in the entire city, over 220,000 of which are mixed use, commercial,

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[12] Verizon's Initial Comments, p. 12.

industrial, or public institutions.[13] Verizon, the incumbent historical monopoly provider, has fiber or copper facilities present in virtually all of these buildings.

There is other evidence of Verizon's dominance. We continue to receive consumer complaints concerning installation delays for high speed data circuits where Verizon is acting either as a retailer or as a wholesaler to another carrier wishing to serve end users.[14] Competitors rely on Verizon's network. They express a need for intraLATA interoffice facilities as well as local loops, and are willing to routinely share forecast data with Verizon in order to be sure that facilities are available in a timely manner. In addition, under FCC pricing flexibility rules, Verizon must demonstrate the level of competition according to specific pre-defined measures for special access services in order to gain flexibility. There are separate tests for interoffice and local loop. While Verizon has been granted interoffice flexibility in some New York areas, it has neither petitioned the FCC for local loop flexibility anywhere in New York, nor demonstrated it would meet the necessary criteria.[15] In addition, Data Verizon supplied showing its FCC (interstate) and New York (intrastate) tariffs

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[13] Land Use Facts, Department of City Planning, www.nyc.gov/html/dcp/html/lufacts.html.

[14] See, for example, Case 00-C-1390, Verified Complaint of Focal Communications Corporation of New York Against New York Telephone Company d/b/a Bell Atlantic-New York, dated September 5, 2000; Letters (dated February 22, 2001), from Adelphia Business Solutions, Tilcon New York Inc. (dated January 23, 2001); New York City Health and Hospitals Corporation (dated January 2, 2001); and Wilber National Bank dated December 28, 2000. (AT&T and WorldCom have indicated similar problems).

[15] We note that Verizon recently filed with the FCC for permission to remove dedicated transport and high capacity loops from its list of unbundled network element pricing. In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996, Joint Petition of Bellsouth SBC and Verizon for Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport, CC Docket No. 96-98.

demonstrates, prices, especially for intrastate services, significantly exceed TELRIC cost, a result inconsistent with expectations for a competitive market.

Finally, Verizon asserts competition is healthy because competitors' fiber optic facilities pass a high percentage of metropolitan businesses: 89% in New York, 69% in Syracuse, 48% in Buffalo and 20% in Albany. WorldCom notes that Verizon has not defined "buildings passed", or whether these competitors' facilities provide Special Services. While competitor fiber cables may actually pass these buildings, the data do not reflect how often fiber actually enters these buildings. Gaining facility access to a building, especially an established building in which Verizon is already present, can be difficult. Spare cable conduits are often not available, and building owners may be unwilling to pay the cost of placing additional conduits. Therefore, this data appear of limited use in estimating the percentage of establishments where end users actually have competitive alternatives available.

Verizon's data, as well as the advantages attendant upon its historical incumbent position, indicate it continues to occupy the dominant position in the Special Services market, and by its dominance is a controlling factor in the market. Because competitors rely on Verizon's facilities, particularly its local loops, Verizon represents a bottleneck to the development of a healthy, competitive market for Special Services. In this situation, regulation is needed to assure the development of competitive choices, and good service quality when choices are not available.

Accordingly, we find that a competitive facilities-based market for Special Services has yet to emerge and that Verizon continues to dominate the market overall.

Summary of Findings

Based on this record, we find, that Verizon remains the dominant provider of facilities for Special Services, that Verizon's provisioning performance for Special Services is significantly below Commission targets, and that the record

suggests Verizon treats other carriers less favorably than its own end users. Because Verizon's facilities are used by carriers as they are entering the market, including the local market, on a facilities basis, Verizon's Special Services offerings are crucial for the development of facilities-based competition in the local market, and for the New York economy.

SERVICE IMPROVEMENT MEASURES

We directed Verizon to file a service improvement plan and a warranty tariff, and to work with Staff in identifying capacity shortages. As discussed below, we find the plan has not yet produced the necessary improvement, the warranty tariff should be expanded, and Verizon has not yet provided reports needed to identify capacity problems.

Verizon's Service Improvement Plan and Capacity Concerns

On December 15, 2000, Verizon submitted, as directed, its Special Services Performance Improvement Plan. Verizon contended that performance concerns center only on the timeliness of provisioning new circuits, not maintenance service performance. The parties generally agree with Verizon. Verizon also states that recent unprecedented and unpredictable demand for new Special Services, both from retail customers and carriers, is an endemic, nationwide problem. Verizon indicates that carriers with which it competes have fallen short in their provisioning performance as well.

Verizon's plan for improving its provisioning performance contains five aspects: increased capital spending; deployment of new technologies; revised capacity relief strategies; increased provisioning workforce; and improved ordering processes for interexchange carriers. In 1997 and 1998, Verizon's capital expenditures for new interoffice facilities, many of which are used to provide Special Services, were $205 million and $260 million, respectively. In 1999, the level of capital spending increased about 2.5 times to $605 million, although the amount initially budgeted for that year

was only $430 million. In 2000, although the initial budget was set at $560 million, the actual capital spending level increased to $780 million, nearly 4 times the amount spent just 3 years earlier. In 2001, Verizon currently projects interoffice capital spending will be $805 million, much of it as a result of projected Special Services demand. Verizon argues that these figures demonstrate that it has been trying in earnest for the past three years to meet Special Services demand, but that exponentially increasing demand during that period has made the task very difficult. Verizon believes that the capital spending levels it has now reached are fully adequate to accomplish the task.

In addition to significantly increasing its capital spending over the past 3 to 4 years, Verizon indicates that it is aggressively utilizing the latest technologies available. Advancements in digital signal transmission and switching technologies are similar to those in computer technology. While prices decrease, capacities increase per unit purchased. The technologies being used include increasingly higher speed SONET[16] systems, and DWM[17] electronics. DWM significantly increases the signal carrying capacity of installed interoffice optic fiber facilities, and Verizon claims this may be done at a lower capital cost per circuit in comparison to deploying new interoffice facilities.

Traditionally, Verizon planned capital additions to insure more capacity would be added to interoffice SONET

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[16] SONET stands for Synchronous Optical Network. It is an interoffice signal transport design approach that uses optic fiber cables and various levels of high speed digital signaling. SONET system optic fiber cables are configured in rings that pass through multiple central office buildings. They have the capability, in the event of a failure in any interoffice segment, to reroute the signals between offices in the opposite direction around the ring, thus protecting customers from many service outages.

[17] DWM stands for Dense Wave Multiplexing. DWM allows several high speed digital signals to be transmitted over an optic fiber simultaneously in different spectrum ranges, thereby increasing the capacity of the fiber by orders of magnitude.

routes where existing capacity was projected to be 90% utilized. Verizon claims this strategy worked well when growth was slower and more predictable. In light of the recent explosive growth in demand, and increased market volatility, however, Verizon now supplements its interoffice capacity when existing facilities are only 65% to 75% utilized (depending on the particular growth characteristics of specific interoffice routes). Verizon will continue this planning strategy.

Over the past few years, Verizon increased the size of its workforce involved in engineering, interfacing with customers, and installing new Special Service circuits, both on the end-user (retail) and the carrier (wholesale) sides of the business. In total, the count of employees involved in these activities has increased by 50%, from 1300 to 1950. Verizon points to this increase as demonstrating its commitment to addressing provisioning problems.

Verizon has taken steps to improve its installation processes associated with interexchange carrier orders. These include: deploying two new "Build Request Control Centers," which endeavor to minimize delays when facilities are congested or exhausted; maintaining closer contacts with customers to reduce delays caused by "customer not ready" situations; standardizing the ordering process for high speed access services; improving the on-site management of its Wholesale Carrier Centers; and, deploying a new Special Services test system called REACT.

In addition to the above, Verizon believes exchanging forecasts with other carriers would improve performance.

These measures appear substantial; however, in 1996 and 1997 Verizon provided improvement plans for Special Services in response to Commission directives. The Staff continued to address performance directly with Verizon over the last several years and Verizon has repeatedly offered steps to improve provisioning performance. Those steps have not resulted in sustained service quality improvements. During the technical conference in December, Verizon estimated that improvements

should occur after the first quarter of 2001.[18] Results through April 2001 are only slightly improved over the first quarter 2001 results.

We directed Verizon to work with Staff to ensure adequate network capacity.[19] There is a concern, based on poor Special Service installation results, that overall network capacity may not be adequate to meet telephone demand.

Because basic telephone and Special Services ride on common facilities an unpredicted spike in Special Service demand could negatively impact basic telephone service provisioning. Verizon has yet to provide information relating to local loop and interoffice capacity shortages. Accordingly, we direct Verizon to provide monthly reports of held orders for services including basic and special services, showing, as to each held order, the type of service requested, its geographic location (exchange and customer), the length of time the order has been held, the reason it was held (lack of interoffice versus local loop facilities as well as other pertinent facts relating to the service requested and the delay), and the expected service date. Such reporting should continue until service improves to the thresholds defined in the revised guidelines.

The Warranty Tariff

We directed Verizon to file a warranty tariff that would provide rebates to customers whose appointments are missed by Verizon. The intent of the warranty tariff is to provide recompense to those who receive poor service. In response, on December 4, 2000, Verizon filed a tariff introducing a High Capacity Service Provisioning Warranty Plan. The purpose of this tariff is to waive installation charges and the first month's recurring charges for selected Special Services should Verizon fail to meet the "confirmed due date" of the

[18] Tr. 73.

[19] Order Instituting Proceeding (issued November 24, 2000).

installation. The tariff became effective on a temporary basis and subject to refund, pending a Commission decision.

The significant aspects of the tariff are:

- The confirmed due date is the date provided by Verizon to the customer once the availability of facilities has been secured;
- The warranty applies only to Superpath 1.5 Mbp/s or Superpath Optical 45 Mbp/s Services, provided out of the company's PSC No. 900 intrastate tariff; and
- Failure to meet the installation due date must be attributable solely to Verizon, and not because of any end user action.

Verizon also proposes additional exceptions to the application of a warranty. The warranty would not be given when an end user requests an expedited appointment date; any other communications carrier or transport provider is involved in the installation; special construction is required; or, services are derived from a multiplexed[20] Superpath 1.5 Mbp/s service.

WorldCom, XO, e.spire, Focal, and Time Warner contend that the monetary penalties are inconsequential and that the tariff is discriminatory because it benefits only Verizon's retail customers, and not customers of other carriers.

The warranty was not envisioned to, and will not, by itself provide sufficient incentive for Verizon to improve its overall Special Services performance. However, it may satisfy customers when Verizon misses installation appointments. To ensure nondiscriminatory service, competitors ordering Special Services should qualify for the same waiver of charges as Verizon end use customers. Therefore, Verizon is directed to amend the tariff language such that rebates apply to carriers who place orders with Verizon for their own customers, or themselves. In addition, Verizon is directed to modify the

[20] Multiplexing is a technique of combining two or more signals onto a common signal path, such as a copper cable pair or an optical fiber, through use of electronic or opto-electronic equipment.

tariff to state that a rebate should be made whenever Verizon not only misses a confirmed date, but also proposes to change a confirmed due date. It is not necessary to extend the warranty plan to Verizon's resale tariff (No. 915), as those wholesale services are already protected by the Performance Assurance Plan.[21]

Incentives

We sought comment on whether it was necessary to provide incentives for Verizon to improve service. Comments and replies on incentives were filed on March 23, 2001, and March 30, 2001, respectively.

Parties, with the exception of Verizon, assert that Verizon would have no reason to improve its service, especially to competing carriers, without incentives.[22] Most support the use of the Performance Assurance Plan for this purpose because it is self-executing and the incentives are relatively large. Some parties call for a third party audit of performance, including root cause analysis, should Verizon fail to meet the proposed targets. Others urge holding a technical conference to explore incentive options. AT&T, in contrast, urges immediate Commission action to adopt an incentive mechanism.

Verizon responds that imposing incentives is inconsistent with sound rulemaking and violative of Public Service Law §25, which requires a finding by the Commission that a utility knowingly failed or neglected to obey a Commission Order. Verizon claims that the Warranty Plan will improve service quality but requires time to do so. Further, it believes that adding Special Services to the Performance Assurance Plan would inhibit its use for monitoring service

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[21] The only other carrier offerings provided on an intrastate basis are UNE and EEL. These are already subject to the Performance Assurance Plan. Thus, the special access service offering, taken under federal tariff, would be the only carrier offering not subject to an incentive.

[22] NYSTA did not comment on incentives.

quality on truly wholesale services (e.g., Unbundled Network Elements, resale and interconnection) because Special Services are retail services.[23]

The record demonstrates that Verizon provides inferior service to competitive carriers in the provisioning of special services. Based on the complaints of the parties and Staff's analysis, it appears that carriers rely heavily on Verizon to provide special access, and that these services are used by competitive carriers to offer local, as well as other telecommunications services. Thus, a failure by Verizon to adequately serve the needs of competitive carriers could undermine local competition.

We find that additional data should be gathered before we apply additional incentives to Verizon's performance. Verizon will be given 120 days from the date of this Opinion and Order to show, by filing with the Commission performance results under the modified Special Services Guidelines, improved overall service quality as well as nondiscriminatory performance. Incentives tied to retail Special Services performance, if appropriate, may be considered in Case 00-C-1945, Proceeding on Motion of the Commission to Consider Cost recovery by Verizon and to Investigate the Future Regulatory Framework.

Single Point of Ordering Interface

We sought comment on Verizon's ordering practices and the need for a single ordering method (or electronic interface) where competitors would be offered the best terms and conditions of service for substantially similar services.

Verizon opposes creation of a single ordering interface, claiming that customers do not necessarily want the same terms and conditions. It also indicates that many carriers do not use the electronic interface currently available to them,

[23] Verizon also asserts that the Public Service Commission has no jurisdiction to enforce regulations over access services ordered from the FCC tariff. Because we do not apply incentives to federally tariffed access services, we do not address this issue here.

instead preferring to use non-electronic means. Finally, Verizon states that its systems for ordering retail and wholesale services are different, and claims a significant cost to implement a single ordering interface for both retail and wholesale services.

Other carriers expressed interest in a consistent method for placing high capacity special access orders, but no interest in best terms and conditions of service across retail and wholesale tariffs. In fact, carriers agree that Verizon should be free to have differing retail and wholesale tariff conditions which would allow for differentiation of services provided to end users by all carriers, especially those that resell Verizon services.

The parties agreed to use Verizon's Access Service Request (ASR) form when ordering high capacity services. Carriers will use Verizon's electronic methods of placing an ASR, if available for placing high capacity service requests. During periods when electronic methods are unavailable, carriers may order by use of facsimile. Individual carriers will be expected to phase in use of electronic methods over a one year period, or as negotiated between that carrier and Verizon.

This ordering method will substantially lessen confusion associated with placing orders as it provides a consistent ordering method for special access services but will permit flexibility between ordering parties. Some interest was expressed by Verizon and others to keep an open dialog perhaps through Verizon's ongoing process control meetings associated with carrier-to-carrier issues. Such dialog is encouraged as it leads to better understanding among the carriers.

MODIFICATION OF SPECIAL SERVICES GUIDELINES

The Special Services Guidelines set forth standards for service quality and describe how data is to be reported to demonstrate compliance with the targets. Based upon the record and suggestions of the parties, we will continue to require Verizon's monthly reporting of metrics and standards as revised here.

Reporting Levels

The current guidelines require Verizon to report monthly maintenance and installation service results at the Installation/Maintenance Center (i.e., Special Service Bureau, or bureau) level.

Verizon believes reporting should be discontinued at the bureau level, and that monthly results should be reported, if at all, for two levels: the New York Metropolitan LATA (LATA 132) and the "Rest of New York State." Most parties opined that limited reporting on such an aggregate level could mask poor performance in areas that are currently being monitored and thus, Verizon should continue to report at the bureau level[24] and also report results for LATA 132 and the Remainder of the State.

In order to adequately monitor retail end-user service quality, most parties require disaggregation of data for LATA 132 and Remainder of State, and for Verizon's retail end users, other telephone carriers as a group (carrier aggregate data), and Verizon's affiliates as a group. In addition, parties recommend that performance provided to individual carriers (carrier specific data) should be available upon request from Verizon by a requesting carrier and/or Commission Staff on a confidential basis. These reporting requirements are similar to those in use for carrier-to-carrier metrics as established in Case 97-C-0139.

Further, most parties seek LATA 132 and Remainder of State monthly performance results disaggregated for special access services (those special services ordered from federal tariffs) to show separate results for specific data speed products such as DS0, DS1, DS3, OCX, and Other.[25] The parties

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[24] Staff opposes bureau level reporting with respect to one proposed metric, Percent On Time ASR Response. Staff's position on this metric is adopted.

[25] DS0, DS1, DS3 refer to a hierarchy of digital signal speeds used to classify electronic transmission capacity on a transport facility. Similarly, OC3, OC12, OCX refer to a hierarchy of optical signal speeds to classify optical transmission capacity on a transport facility.

believe that aggregation may mask poor service. Verizon considers this unnecessary, and indicates that maintenance data cannot be disaggregated because low speed data services often are transported in the network on higher speed facilities. Staff supports limited disaggregation of ordering and provisioning, but not maintenance metrics. It proposes two groups of "DS0" and "DS1 and above" for reporting to prevent masking poor installation performance for high capacity data services with more easily installed low capacity services.

We direct Verizon to report performance showing disaggregation of high capacity data services to "DS0" and "DS1 and Above" and to report by bureau (except for Percent On Time ASR Response), LATA 132, and Rest of State. Within these last two categories, reports must disaggregate the subgroups of retail, carriers other than Verizon and its affiliates, Verizon affiliates, and individual carriers. Performance data associated with LATA 132 and Rest of State will be provided in a manner that allows the recombination of any of the subgroups of retail, Verizon affiliates, or carriers other than Verizon in order that parity comparisons can easily be made. These reporting requirements will allow us to monitor the quality of service for Special Services at the bureau level and will also support, if necessary, parity comparisons where reasonable analogs are available, and absolute standards elsewhere for possible future incentive application.

Performance Levels

The current guidelines specify two levels of performance for each service quality metric: generally good service is termed Objective Level while generally poor service is termed Weakspot Level. To obtain more specificity, a total of four service quality performance ranges are derived from these two levels: Objective, Satisfactory, Mediocre and Weakspot.

Most parties support replacing the four levels with a single bright line, or "threshold" level of performance that Verizon would be expected to meet or exceed. This is consistent

with the recently adopted revisions to 16 NYCRR 603, Service Standards Applicable to Telephone Corporations. Verizon provided the only contrary opinion, arguing that the four performance ranges should be maintained.

Threshold levels are set for each metric. For existing metrics, most parties would set the threshold levels at, or better than, the current Objective Level. Staff would set thresholds at the current Objective levels while Verizon recommends the current Weakspot Level. Verizon believes that the bright line should be set where negative consequences are currently expected to occur.

The single threshold set at the current Objective levels is adopted as it accords with the approach for end user service standards. Verizon should strive for good performance rather than merely avoiding poor performance. Indeed, setting the threshold at the current Weakspot could allow Verizon's performance to backslide on metrics where the company is now performing well. There is no persuasive evidence that the current Objective levels are inappropriate.

Existing Metrics

The current guidelines contain five metrics; two associated with maintenance, and three associated with installation. We will not revise these metrics, except to change the reporting basis from links to circuits where applicable, and require reports to show performance for LATA 132 and the rest of the state. The guidelines currently require reporting for Installation Quality and Customer Trouble Report Rate on the basis of 100 links rather than circuits. A link is a portion of a circuit and there are on average 1.7 links per circuit according to Verizon. All parties advocate reporting by circuits rather than links.

Percent Installations Completed On Time (SS-PR-1)[26]

Most parties propose that those orders not completed on time due to "Customer Not Ready" (CNR) situations should first be verified with the customer before excluding them from data reported in this metric. They urge, further, that only customer-initiated changes to due dates should be included to prevent Verizon from modifying any due dates for its own reasons.

Verizon proposes to continue including CNR situations in both the numerator and denominator of this metric. Verizon believes that excluding them effectively raises the performance standard by lowering the overall volume of measured orders. Staff concurs, noting that in order to count an order as "CNR" means that Verizon must first attempt to install service and be blocked from doing so either because the customer's premises were closed, or the customer failed to make the necessary provisions to complete the order. Thus, Verizon should not exclude data if an attempt has been made to install the service and the carrier was prepared to met the agreed upon due date. This approach is consistent with NYCRR 603 and the Carrier-to-Carrier Guidelines.

The majority of the parties also allege unilateral, unannounced due date changes by Verizon, but offer no support for these claims. Verizon suggests the need for flexibility, and that customers often place orders for Special Services well in advance of required due dates such that Verizon-initiated changes are not harmful to customers. Inasmuch as the record lacks evidence of any unilateral due date changes, it appears unnecessary to modify the metric definition. So long as all due date changes are made known in advance, then carriers should be able to keep their customers informed.

[26] The coding in parenthesis identifies the specific metric as it appears in the guidelines.

New Metrics

Verizon objects to the addition of any new metrics. Other parties proposed adding 15 new measures, most of them disaggregated by product (an additional 79 metrics). Staff proposes adding three new metrics. Below we discuss the new metrics we adopt. A listing of those new metrics proposals we do not adopt, and the parties' positions, is attached as Appendix I.

Percent On Time ASR Response (Staff) (SS-OR-1)

All parties except Verizon agree on the need to establish a degree of certainty into the ordering process. Carriers want responses to the orders they submit in a consistent, timely manner. Verizon objects, stating that this metric would require it to accept all orders whether or not facilities are available, that it cannot provide the required responses in the proposed time periods and that setting unrealistic targets might give it an incentive to reject orders rather than miss the metric.

Most carriers suggest accurate Firm Order Confirmations (FOC) for all orders, within 72 hours for electronic submissions and 96 hours for faxed/mailed orders, regardless of whether the required facilities exist. Staff would apply commitments only to electronic orders and require one of two responses within 72 hours: either a FOC where facilities are available, or an estimated in-service date where facilities are not available and might need to be constructed followed by a FOC within three weeks. Staff does not support a metric on faxed orders as the carriers have agreed to place orders electronically within six months.

While the carriers' desire for a three-day response time in all cases is understandable, it may not be possible. Based on Verizon's descriptions of the work steps involved in its ordering process, it cannot provide a firm in-service date within three days if facilities do not exist. Staff's proposal allows for more certainty in the in-service date, and is adopted with a modification. In cases where facilities do not exist,

Verizon will provide a firm in-service date within the shorter of three weeks from provision of the estimated date, or (in cases where facilities may quickly be made available) ten days prior to the in-service date.

Most parties support disaggregated reporting by bureau on this metric as well as by geography and product. Verizon states that it has a single regional ordering center rendering disaggregation to bureau or geography (LATA 132, etc.) meaningless. Staff recommends reporting on New York State results through the regional bureau as this approach is used in Section 603 for basic service ordering. The Staff proposal is reasonable, consistent with existing practice, and is adopted.

Finally, parties unanimously agree that an electronic Access Service Request (ASR) is the desirable vehicle for carriers to order Special Services and have agreed to move towards use of ASRs. As an incentive for parties to do so, Verizon will not be required to report performance separately on faxed or mailed orders. Carriers who continue to fax or mail orders may monitor Verizon's performance on their own.

Percent Missed Appointments Due to Lack of Facilities (SS-PR-4)

Verizon notes that this measure is a subset of SS-PR-1, Percent Met Appointments, that the company does not measure today and could only begin to measure at some cost for no demonstrable benefit. All other parties agree that some measure of appointments missed due to facilities (either through this metric or jeopardy coding on SS-PR-2 Average Delay Days On Missed Installation Orders) would be valuable. No threshold is proposed for this metric as it is meant as a diagnostic tool.

Verizon does report SS-PR-5-01, Percent Missed Appointment-Verizon-Facilities, in Carrier-to-Carrier reports. Reporting for services covered by the Special Service Guidelines should not cause undue hardship. Given that Verizon attributes its past provisioning problems to its failure to anticipate an unprecedented increase in demand for facilities, it is desirable to monitor and analyze instances of facilities shortfalls.

Reporting this measure should serve to alert all parties to requirements for additional facilities. Verizon is directed to report performance for this adopted metric.

Percent Jeopardies (SS-PR-8)

This metric measures the percentage of missed appointments where advance notice (of a possible miss) was provided to the customer or carrier requesting service. Most parties proposed a standard that requires notice as soon as Verizon has knowledge of an impending miss for 100% of missed committed due dates. Some parties would also require this notice to be no later than five days prior to the committed due date. Verizon claims it cannot measure this metric and that jeopardy codes are an internal control mechanism used at the discretion of the employee.

Jeopardy notices keep customers informed of order status. This metric is adopted as a diagnostic tool without a threshold performance level. It is desirable for customers to receive advanced notice that an appointment will be missed, and establishing a metric will indicate how often Verizon actually does so. Because Verizon's internal use of jeopardy codes is apparently discretionary, it is permitted three months from the issuance of this opinion and order to organize its internal processes and to begin reporting on this metric such that it will properly indicate notification to customers of pending missed appointments.

Overall Targets

The current guidelines require Verizon to "strive to achieve" the objectives on each metric in each of 16 centers. We established additional targets specifying the percent of centers that must be in the objective range and we sought comment on modification of these service targets to reflect fewer centers.

During the proceeding Verizon opposed an incentive plan, or modifications of the guidelines that would replace the "strive to achieve" objective. Staff proposes requiring Verizon

to attain the specified performance thresholds in at least 90% of its opportunities to do so in a given calendar year, with no more than five Service Inquiry situations in the same calendar period.

Several of the parties oppose Staff's proposed overall targets, but offer no explanation or alternatives. Verizon provided a statistical analysis of the implications of Staff's proposal claiming that the overall targets, and even the thresholds of each of the individual metrics are unreasonable and unattainable.[27]

Verizon's statistical analysis purports to show a high probability of failure to avoid a Service Inquiry situation, or 90% threshold performance on all metric measurements in a given calendar year. It presumes that the sample size of service measurements is large enough to be described as a normal distribution. It also presumes that performance on a single metric (e.g., percent on time installation appointments) results in a normal distribution representative of all five existing metrics, and that the company chooses to perform at a level where 50% of the time the threshold is met, and the other 50% of the time it is not.

Verizon's objections to the proposed overall targets and the thresholds for individual metrics are not compelling. The statistical analysis is flawed. First, it assumes a normal distribution about the threshold level for each metric where it would fail to meet the threshold 50% of the time. This is an unacceptable performance expectation as failure should be much less infrequent. Verizon should be making the appropriate management decisions to routinely meet the standards of the

[27] "The Probability of Achieving Selected Proposed Special Service Standards: A Statistical Analysis of Their Reasonability," by Dr. Donald Pardew, President of Cybernetica Consulting, Inc., March 2001, appended to Verizon's March 15, 2001 comments filed in this proceeding.

guidelines,[28] indeed that is why a service improvement plan was required of the company. Second, it is not reasonable to assume all metrics have the same distribution about the threshold when it is already known that performance on some metrics is consistently above the thresholds month after month (e.g., reliability of service, and the quality of installation work). Staff's proposed overall targets are adopted.

Applicability

The revised guidelines and new standards and metrics we adopt apply to Verizon. We tentatively find that these standards and metrics should apply to all local exchange carriers providing these services to customers because these services are critically important to business and economic growth in New York. In a separate notice to be published in the State Register, we will seek comment on whether these standards and metrics should apply to all local exchange carriers. We will also seek comment on whether reporting of performance results should be limited to those carriers serving 500,001 or more access lines as defined in 16 NYCRR 603.

FORECAST SHARING

We directed the parties to address methods by which competitors who use Verizon's facilities to serve customers can assist in improving Verizon's forecasting. Verizon proposed that competing carriers be required to provide the following information: (1) Forecasts of demand for DS3 rates and above by type, e.g., DS3, OC3, OC12, etc.; (2) Forecasts for "A" to "Z" interoffice facilities, where "A" and "Z" represent a Verizon

[28] While the goal is for Verizon to comply with the guidelines 100% of the time, it is recognized that unusual events can occur that may prevent such performance. In fact, the guidelines recognize this in that metric thresholds are not set at 100% compliance, and allow for events negatively affecting service quality (Appendix I and NYCRR 603.1(c)).

office and/or another Verizon office and a competitor's Point of Presence (POP);[29] and, (3) Provision of quarterly forecasts.

Verizon also proposed use of a special access forecast template, similar to those used in the Carrier-to-Carrier Guidelines for trunks, collocation, network elements and resale products. Parties suggested some changes to the template, and agreed to work with Verizon. While parties recognized that a standardized format facilitates aggregation of the forecasts by Verizon, not all parties could commit to a common form at this time.

Consensus on several other forecasting issues was achieved. It was acknowledged that forecasts have value, they should be provided and aggregated on a consistent schedule, and that end-user specific information would not be required. Parties that currently perform Verizon end-office-to-POP planning agreed to provide such forecasts. This is included in the modified Special Service Guidelines (Appendix I) and is specific to sharing forecasts with Verizon until additional future needs for sharing between other carriers are demonstrated.

Carriers should continue to work with Verizon on this issue to the extent that they may need or rely on Verizon for facilities. Continued involvement of Staff is not necessary at this time. Verizon should take the lead in encouraging further discussions, so as to facilitate improvement in its provisioning service results.

CONCLUSION

Verizon is directed to modify its Warranty Tariff to ensure its availability in a nondiscriminatory manner consistent with this order. We adopt the modifications of the Special Services Guidelines as shown in Appendix I. Verizon is allowed 90 days from this order to develop the necessary processes and procedures to report in the manner defined in the modified

[29] A POP is a physical location within a LATA where a long distance carrier interfaces with the local exchange carrier.

Special Service Guidelines.[30] Staff should continue to work with federal authorities to ensure improvement in Verizon's special access service performance. These measures are necessary to improve Verizon's provisioning of services important to competition in the local telecommunications market and to the economy of New York.

The Commission orders:

1. Not later than 15 days of the release of this Order Verizon New York Inc. shall file revisions to its Warranty Tariff consistent with this Order.

2. The revisions to the warranty tariff will be effective upon filing with the Commission.

3. The requirement of Section 92(2)(b) of the Public Service Law as to newspaper publication of these further revisions is waived.

4. The Special Services Guidelines are modified in accordance with this Order, as contained in Appendix I.

5. Verizon New York Inc. shall file service results pursuant to the revised Special Service Guidelines we are adopting for performance beginning October 1, 2001.

6. These proceedings are continued.

By the Commission,

(SIGNED) JANET HAND DEIXLER
Secretary

[30] In addition, a separate notice will be issued, seeking comment on whether these metrics standards and reporting should apply to all local exchange carriers.