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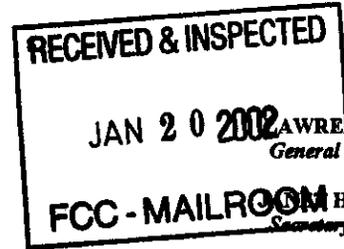
STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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January 18, 2002

Hon. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals II
445 Twelfth St., S.W.
Washington, D.C. 20554

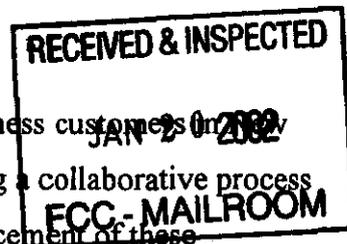
Re: Comments of the New York State Department of Public Service In the Matter of Performance Measurements and Standards for Interstate Special Access Services, et al., CC Docket No. 01-321, 00-51, 98-147, 96-98, 98-141, 96-149 and 00-229

Dear Secretary Salas:

On November 19, 2001, the Federal Communications Commission (Commission) released a Notice of Proposed Rulemaking (NPRM) seeking comments on whether the Commission should adopt a select group of measurements and standards for evaluating incumbent local exchange carriers' (ILECs) performance in the provisioning of interstate special access services and, what, if any, specific measurements and standards it should adopt. In addition, the Commission seeks comments on how such measurements and standards should be implemented and enforced. Finally, the Commission seeks comments on whether it should periodically review and/or sunset these measurements and standards.

The New York State Department of Public Service (NYDPS) supports the enforcement of federal measurements and standards for the provisioning of interstate special access services. A global economy is dependent upon high speed telecommunication circuits and special services

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are vitally important to the economic well being of competitors and business customers in New York. The NYDPS has spent considerable time and resources overseeing a collaborative process to establish special services guidelines in New York. With federal enforcement of these interstate services, the problems we have witnessed should be remedied. We will continue to collect information on the provisioning of special services in New York and make that information available to the Commission. We would, however, encourage the Commission to consider using New York's guidelines as a model and/or starting place for the federal standards. Finally, the NYDPS believes that any measurements and standards should remain in effect at least until service quality for special services is adequate.

Background

In New York, the provisioning of special services has received considerable attention.¹ Demand for such circuits has increased dramatically in recent years, as the economy has become more dependent on the Internet and other forms of data communications. Unfortunately, Verizon's provisioning of special services has been less than adequate. Consequently, the New York Commission on November 24, 2000 opened a proceeding to address this issue.² Over 13 parties met for approximately 3 months to discuss ways to improve Verizon's service quality performance. Subsequently, the New York Commission modified its special services guidelines by requiring additional performance reporting on the ordering, installation, and maintenance of these services.³ On June 15, 2001, the New York Commission issued an order that, among other things, adopted modified special service guidelines and directed that Verizon's special services

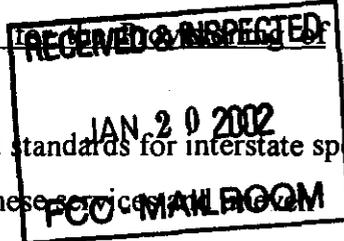
¹ Case No. 00-C-2051, Opinion No. 01-1, Proceeding on Motion of the Commission to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon New York, Inc.; Case No. 92-C-0665, Proceeding on Motion of the Commission to Investigate Performance-Based Incentive Regulatory 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, Order Denying Petitions for Rehearing and Clarifying Applicability of Special Services Guidelines, (issued June 15, 2001 and December 20, 2001 respectively).

² Id.

³ This included reporting on the percent of on time service request, the percent of missed appointments due to the lack of facilities, the percent of missed appointments where the customer is provided advanced notice, the quality of installation, the reliability of service, and the promptness of repair.

be provided in a nondiscriminatory manner. On December 20, 2001, the New York Commission extended these guidelines to all local exchange carriers with 50,000 or more special circuits.⁴

The Commission Should Adopt Measurements and Standards for Interstate Special Services



The Commission should adopt federal measurements and standards for interstate special access services. The ILECs are still the dominant providers of these services and their performance threatens to undermine competition. For example, Verizon, on average, met only 74% of its appointments on carrier service requests, but met 94% of its retail customer appointments. Under these circumstances, the Commission should enforce interstate special services rules.⁵

Some parties will argue that requiring federal measurements and standards will create unnecessary regulatory costs and burdens. For small carriers that provide a smaller number of special service circuits (50,000 or less) the cost may outweigh the benefits. Verizon however, has reported on its provisioning of special services in New York for years and should be able to readily measure and report service quality under our recently modified guidelines.

The Commission Should Adopt the New York Commission's Guidelines as a Model and/or Starting Point for Federal Measurements and Standards

New York's special services guidelines were developed after consultation with the industry, including competing carriers, incumbents, and other interested parties. These guidelines represent a balance of all parties' concerns, and recognize the difficulty of setting measurements and standards for a multitude of services that are considered "special".⁶ It would

⁴ Case Nos. 00-C-2051 and 92-C-0665.

⁵ *Id.* at pp. 5-6. Verizon's two exchange access (wholesale) bureaus averaged 74% appointments met during first quarter 2001, and delays on missed appointments were over 14 days in the same time period. The company's 14 interLATA (retail) bureaus averaged 94% appointments met during the same period, but delays on missed appointments also averaged over 14 days.

⁶ Any measurement or standard adopted by the Commission should have parity. The NYDPS supports parity as a means of demonstrating nondiscrimination provided it means that all consumers of special services receive adequate provisioning. Parity may not be enough, however, if it means that all consumers of special services suffer poor installation performance. In addition any measurement or standard should apply to all end-users, affiliates and competitors. The New York guidelines ensure equality in performance among these groups as well as overall performance.

be an unnecessary use of the Commission's time and resources to initiate a rulemaking to consider measurements and standards that would likely repeat the work already done. New York's guidelines should be used as a model and/or federal standards.⁷

States Can Play a Vital Fact-Finding Role in Implementing and Enforcing Measurements and Standards

The NYDPS supports a cooperative state/federal approach to implementing and enforcing the Commission's measurements and standards. States, if they choose, can collect information on the provisioning of special services and make that information available to the Commission. In New York, the Public Service Law gives the New York Commission broad authority to gather data and other information.⁸ We will continue to exercise this authority to collect special services information and make it available to the Commission. Other states may wish to do this as well, and we urge the Commission to establish a process for the receipt of such information. This approach, however, will only work if the Commission acts aggressively to enforce its rules.

The Commission Should Sunset Measurements and Standards When Service Quality is Adequate in a Particular Market

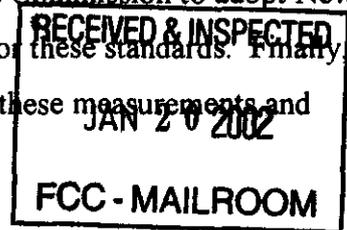
The NYDPS believes that reporting should continue at least until reliable service quality for special services is restored and continues. As long as the ILECs are the dominant providers of these services, fair competition requires vigilant oversight. Upon a showing that the ILECs are no longer the dominant providers, or that service quality is sufficient, these rules should remain in place.

⁷ The Commission has requested comment on whether New York's measurements and standards is an appropriate model, NPRM p. 10.

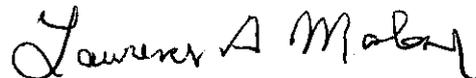
⁸ Public Service Law § 94(2); see also 16 NYCRR 644.1; Arkansas Louisiana Gas Co. v. Dept. of Public Utilities, 304 U.S. 61 (1938)(state order requiring provision of information does not interfere with interstate commerce).

Conclusion

The NYDPS supports the enforcement of federal measurements and standards for the provisioning of interstate special access services. We encourage the Commission to adopt New York's special services guidelines as a model and/or starting point for these standards. Finally, the NYDPS supports a federal/state approach to the enforcement of these measurements and standards.



Respectfully submitted,



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