

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6255

Investigation into the Establishment of)
Wholesale Service Quality Standards for)
Providers of Telecommunications Services)

Order entered: 4/15/2004

ORDER RE CHANGES TO VERIZON'S PERFORMANCE ASSURANCE PLAN

I. INTRODUCTION

The Public Service Board ("Board") initiated this investigation in 1999 to examine the quality of service that Verizon New England Inc., d/b/a/ Verizon Vermont ("Verizon" or "Company") must offer to its wholesale customers.¹ This investigation focused on two main elements of wholesale service quality: the standards of performance that govern Verizon's wholesale service offerings and the mechanisms for ensuring that Verizon will attain those standards.

In an Order dated December 12, 2001, the Board addressed the first of these elements, approving the standards that apply to the Carrier-to-Carrier relationship. That Order accepted a mechanism proposed by the parties that would have the Vermont standards essentially track similar standards developed, and periodically modified, in New York.

Verizon addressed the second element — the enforcement mechanisms — in a Performance Assurance Plan ("PAP") that the Company proposed as part of its application to the Federal Communications Commission ("FCC") under Section 271 of the federal

1. Initially, this investigation was not limited to Verizon, but applied as well to other incumbent local exchange carriers ("ILECs"). I previously determined that, because the ILECs other than Verizon were not under obligations to offer unbundled network elements to competitors or to resell their service, the investigation would focus on Verizon's service quality.

Telecommunications Act of 1996 (the "Act") for permission to offer interstate long-distance services. After investigation, the Board accepted Verizon's PAP (with some modifications).²

In this Proposal for Decision, I consider changes to the PAP proposed by Verizon. These changes are the result of the collaborative process in New York, although with some adjustments to reflect the modifications to the PAP the Board requested in Docket 6533. I recommend that the Board accept the proposed PAP revisions here, finding that they provide a reasonable mechanism at the present time for compensating competitors in the event of non-compliance with the Carrier-to-Carrier standards.

I also recommend that the Board close this docket. All parties agree that no issues remain requiring resolution at this time. Nonetheless, material filed by the parties demonstrates that concerns remain over Verizon's wholesale service quality — concerns that may adversely affect competitors' ability to offer high quality service using facilities and services provided by Verizon. To ensure that an open and fair competitive framework exists in Vermont, the Board should continue to monitor not only Verizon's performance under the PAP and the Carrier-to-Carrier standards, but also the overall provision of service to its competitors. I recommend that the Board consider these issues further in the context of the anticipated renewal of Verizon's Incentive Regulation Plan and in future reviews of the PAP.

II. PROCEDURAL HISTORY

Verizon filed its proposed PAP revisions on February 25, 2003. The proposed PAP revisions were based upon the modifications to a similar performance assurance plan ordered by the New York Public Service Commission ("NYPSC") in its January 23, 2003, Order in Case 99-C-0949. The Hearing Officer in this proceeding subsequently determined that it was appropriate to review the PAP revisions in this docket rather than open a separate docket.³

On October 8, 2003, I convened a workshop to review Verizon's February 24, 2003, revisions to the PAP. All parties had the opportunity to discuss and raise issues concerning Verizon's proposed revisions. No party requested evidentiary hearings on Verizon's proposed

2. Docket 6533, Comments on Federal Proceeding, 2/6/02.

3. Order of 9/12/03 at 1.

revisions. Instead, I provided all parties to this docket with an opportunity to comment on the proposed revisions to the PAP. Only the Vermont Department of Public Service ("Department") submitted comments, stating that it did not object to the proposed revisions.

At the same time this docket considered the PAP modifications, I asked parties whether other issues remained. The Department, in a letter dated November 19, 2003, identified several concerns. However, the Department recommended that the Board address these issues in the context of Verizon's alternative regulation plan, which will be reviewed within the next year.

Adelphia Business Solutions, Inc. d/b/a TelCove ("TelCove") filed comments on the same date. Telcove asserted that it has experienced service interruptions in procurement of network elements for which it is not adequately compensated under the PAP.

Verizon filed a letter on December 17, 2003, in which it responded to the comments of the Department and TelCove. Verizon asserted that there was no need to further investigate wholesale service quality issues.

Finally, on December 17, 2003, I convened a status conference to discuss further steps in this proceeding. At that time, all parties requested that I find that there is no need for further action in this docket (notwithstanding the concerns outlined in previous filings) and recommend to the Board that the docket be closed.

III. FINDINGS

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings of fact and conclusions of law to the Board.

1. Verizon's PAP is a comprehensive, self-executing, wholesale performance enforcement mechanism. Verizon modeled its PAP on a plan developed in New York; it is substantially the same as plans approved for Verizon's affiliates in New York, Massachusetts, and Connecticut. Docket 6533, Comments on Federal Proceeding of 2/6/02, at 6.

2. The Board concluded that the PAP, as revised to respond to issues raised by the Board and filed on January 28, 2002, "is consistent with the public interest, convenience, and necessity." The Board found that the revised PAP "will deter backsliding and the provision of substandard performance." *Id.* at 7.

3. The FCC approved Verizon's request to provide in-region interLATA services in Vermont (which included the PAP) on April 17, 2002. *Application by Verizon New England Inc. Application for Authorization to Provide In-Region, InterLATA Services in Vermont*, CC Docket No. 02-7, Memorandum Opinion and Order date April 17, 2002.

4. The PAP took effect on May 1, 2002. PAP, Section II, I.

5. The PAP requires that Verizon file changes to the New York PAP adopted by the NYPSC with the Board, within 30 days from the date of Verizon's New York compliance filing, for review and inclusion in the Vermont PAP upon the Board's approval. PAP, Section II, K, 2.

6. The revised PAP (based upon changes made in New York) reflects several structural revisions, including:

- the unbundled network elements metrics are split into "Platform" and "Loop" in the two categories of Mode of Entry and Critical Measures;
- Measures for special access circuits are added to Critical Measures and removed from Mode of Entry;
- a "Dispute Resolution" category is added to Critical Measures to measure Purchase Order Number-related trouble tickets and billing claims; and
- Electronic Data Interface Measures are removed from Special Provisions, with the dollars at risk shifted to Critical Measures.

Verizon PAP filing dated 2/24/03, generally; tr. 10/13/03, generally.

7. Based upon the experience of the past few years, the proposed PAP also modifies certain methodologies for calculating compliance, such as expanding the use of small sample tables to all absolute standards. Verizon PAP filing dated 2/24/03, generally; tr. 10/13/03 at 9–10.

8. The proposed revised Vermont PAP incorporates the allocations made in the New York PAP by applying the same rules and ratios; however, it leaves any Vermont-specific allocations adopted in 2002 intact. Verizon PAP filing dated 2/24/03, generally; tr. 10/13/03 at 28–29.

9. Similarly, the proposed Vermont PAP revisions retain specific measures added in Vermont (but not included in New York) as well as the statistical test for rate measures adopted in Vermont. Verizon PAP filing dated 2/24/03, generally; tr. 10/13/03 at 24–28.

10. Throughout the proposed PAP, Verizon disaggregated numerous measures into residence and business to be consistent with the approved and effective Carrier-to-Carrier

Guidelines and to reflect differences in the manner in which Verizon and its competitors serve the different classes. Verizon PAP filing dated 2/24/03, generally; tr. 10/13/03 at 17–18.

11. Since approval of the original PAP in 2002, Verizon also has updated its New England billing systems (as of April 20, 2002) to allow unique identification of billing credits on wholesale bills to enable it to provide competitive local exchange carriers ("CLECs") in New England with the same information regarding performance-related payments that it had been providing to CLECs in New York. Letter of 11/10/03 from Verizon counsel, Linda Ricci, to Susan M. Hudson, Clerk.

IV. DISCUSSION

After the Board's approval of Verizon's Carrier-to-Carrier performance standards in 2001, the primary focus of this docket has been the establishment of enforcement mechanisms. At that time, however, the Board was considering Verizon's request for approval from the FCC under Section 271 of the Act to offer interLATA toll service originating in Vermont. As a result, I deferred action on this docket, initially to await action on Verizon's filing and subsequently to allow a year of operation under the PAP before deciding how and whether to proceed with establishment of a different enforcement mechanism. At the present time, none of the parties to this proceeding request that the Board create such a mechanism; instead, they have accepted the PAP as a reasonable framework for ensuring that Verizon provides adequate service quality to its competitors.

Verizon has now requested that the Board approve a number of changes to the PAP. Verizon has filed these changes under Section II, K of the PAP, which requires Verizon to file in Vermont any changes that have been implement to the New York Plan within 30 days of Verizon New York's compliance filing in that state.

The proposed PAP revisions largely incorporate changes made in New York after a collaborative effort by various stakeholders and review by the NYPSA. As stated by the NYPSA, "[T]he revised PAP for 2003 reflects the knowledge and experience gained from the current PAP

and is intended to ensure that local competition will be maintained and continue to develop."⁴ At the same time that Verizon has modified the PAP to reflect changes in New York, Verizon has maintained the Vermont-specific PAP modifications that the Board accepted in the Comments to the FCC. Thus, the PAP maintains the adjustments to allocations of dollars among the categories of Mode of Entry, Critical Measures, and Special Services that the Board adopted. In addition, the PAP retains other Vermont-specific measures, such as the billing metrics, rather than adopting the new measures established in New York.

I find the overall result to be reasonable, consistent with the Board's previous acceptance of the PAP, and consistent with the mechanism the Board adopted in Section II, K of the PAP for periodic updates based upon the experience in New York. Accordingly, I recommend that the Board approve the PAP revisions.

In a filing dated November 10, 2003, Verizon requests that implementation of the revised PAP take effect "two calendar months following approval by the Board."⁵ No party opposes this request. I recommend that the Board accept Verizon's proposal. This is consistent with Section II, K of the PAP, which states that any modifications to the PAP "will be implemented as soon as reasonably practical after Board approval of the modifications."

With the approval of the PAP revisions, I recommend that the Board close this docket. The primary focus of this second stage of the docket has been the development of appropriate mechanisms to ensure that Verizon will offer high quality and timely service to its competitors when it makes available unbundled network elements or resells its services. The PAP, although not a perfect mechanism, fulfills this function. Significantly, no party requests that the Board now consider a different or more comprehensive approach. In addition, all parties agree that no issues remain that require resolution in this docket. In the absence of a live controversy, closure is appropriate.

It appears, nonetheless, that Verizon's wholesale service quality may still create harm for competitors for which the payments under the PAP are not adequate. For example, the

4. NYPSC, Case No. 99-C-0949, Order of 1/23/03 at 20.

5. As explained by Verizon, implementation will begin with the second full month following approval by the Board.

Department has pointed out that many measures in the PAP are based upon parity (i.e., Verizon's wholesale service quality is deemed adequate if it matches the service that it provides to itself). This means that if Verizon's retail performance declines, a commensurate drop in the wholesale service quality does not trigger compensation payments. We have accepted the parity measures as a reasonable standard. However, it is important to recognize that if performance for both Verizon and its competitors decline, with the current state of competition such effects may cause greater harm to the competitors since they have a smaller customer base and may be held to a different standard by customers. Competitors have presented anecdotal evidence pointing to other ways in which the wholesale service quality is not adequate.

As suggested by the Department, I recommend that the Board examine these issues more fully in the context of its review of a successor to Verizon's Incentive Regulation Plan. That docket will provide a useful framework for a more thorough look at both retail and wholesale service quality standards, including their interrelationship.

Finally, I remind the parties that closure of this docket does not foreclose the opportunity to request that the Board investigate specific instances in which they believe Verizon's wholesale service quality is inadequate.

V. CONCLUSION

Based upon the above findings and analysis, I recommend that the Board adopt the revised Vermont PAP filed by Verizon on February 25, 2003, with implementation to occur two calendar months following Board approval. Verizon should be required to make its compliance filing within 30 days of this Order.

In addition, I recommend that the Board close this docket.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 1st day of March, 2004.

s/George E. Young

George E. Young
Hearing Officer

VI. BOARD DISCUSSION

Verizon and the Department of Public Service submitted comments on the Hearing Officer's Proposal for Decision. Neither party objected to the fundamental recommendations of the Hearing Officer, namely, that the Board approve Verizon's PAP revisions, to be implemented within two months of this Order, and that we close this docket. Instead, each party expressed concerns with additional statements made by the Hearing Officer concerning the adequacy of the PAP to ensure high wholesale service quality and future steps to address wholesale service quality issues.

The Department objects to the Hearing Officer's statement that parties "have accepted the PAP as a reasonable framework for ensuring that Verizon provides adequate service quality to its competitors." According to the Department, the PAP is not adequate to ensure that CLECs can meet the retail service quality standards that we adopted in Docket 5903. In particular, the Department observes that, because the PAP relies in part upon "parity" measures (i.e., standards under which Verizon's performance is deemed adequate if the service it provides competitors matches or exceeds that which it provides itself), Verizon's performance may meet the PAP's performance measures, but may impair the CLEC's service quality or cause the CLEC to miss the retail service quality standards.

Verizon disagrees with the Hearing Officer's statements concerning possible future review of the PAP. Verizon asserts that the PAP adequately assures wholesale service quality and thus does not need to be reexamined during the anticipated proceeding to examine Verizon's incentive regulation plan. In addition, Verizon argues that "parity" measures are adequate in the PAP and that absolute measures are not needed. Verizon also asserts that there is no reason to examine Verizon's retail and wholesale service quality standards jointly during the review of the incentive regulation plan. Finally, Verizon states that the anecdotal evidence cited by the Hearing Officer do not form sufficient basis for revisiting wholesale service quality issues.

The issue raised by the comments of both parties is really a question of the adequacy of the PAP to assure that the service quality provided by Verizon to its competitors is adequate. We originally considered the PAP in 2002 as part of our consideration of Verizon's Petition to the FCC under Section 271 of the Act for authorization to offer interstate telecommunications

services. At that time, we concluded that "the revised PAP will provide a comprehensive, effective, self-executing enforcement mechanism that will deter backsliding and the provision of substandard performance. As modified, the PAP will enhance, to an adequate degree, the pragmatic likelihood that the measures and metrics will adequately deter anti-competitive behavior by Verizon."⁶

However, we have never considered the PAP to represent the sole mechanism for ensuring adequate wholesale service quality. At the time we accepted it, we noted that there was room for further improvement.⁷ We kept this docket open as one vehicle for considering such improvements to the PAP or for developing an alternative plan for protecting service quality for competitors.

The Department's comments on the Proposal for Decision, including its statement that the PAP may not be adequate to ensure retail service quality for CLECs that meets the standards that we previously established, are consistent with this understanding. Nonetheless, we do not see a need to modify the Proposal for Decision as suggested by the Department. The Hearing Officer did not conclude that PAP itself was adequate to ensure that CLECs could meet the retail service quality standards that we adopted; instead, he makes clear that the PAP provides a "reasonable framework" for providing adequate quality. As the rest of the Proposal for Decision makes clear, the existence of the PAP does not obviate the need for further adjustments when it proves inadequate or for other proceedings to address wholesale service quality issues.

For similar reasons, we also do not accept Verizon's recommended changes. These comments are grounded on the assumption that the PAP alone is sufficient to adequate wholesale service quality. We cannot reach this conclusion. For example, (as pointed out by the Hearing Officer) in the case of parity measures, Verizon can meet the standards in the PAP, while at the same time providing competitors with service that does not permit them to meet the standards we established for retail service. Even if we excuse the CLEC's failures because the cause was outside of their control, it still results in substandard service quality to retail customers. Moreover, poor retail service quality may have a greater impact upon newer market entrants than

6. Docket 6533, Comments to Federal Proceeding or 2/6/02 at 7.

7. *Id.*

it would if provided by Verizon. It may be (as Verizon suggests) that the parity measures now set out in the PAP are the best means to assess Verizon's performance, but because of these potential consequences, it is appropriate to investigate the question further in subsequent proceedings.

At this time, we do not need to decide when and how we will consider wholesale service quality issues in the future — all parties recommend deferring the issues and closing the docket and we accept that recommendation. It may be appropriate, as the Department suggests, to examine them in the context of our review of Verizon's next incentive regulation plan. To the extent that more limited issues arise, the Department and CLECs may request a Board investigation.

VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and recommendations of the Hearing Officer are approved.
2. The revised Performance Assurance Plan filed by Verizon New England Inc., d/b/a Verizon Vermont ("Verizon") on February 25, 2003, is approved and shall take effect as soon as reasonably practicable following issuance of this Order. Verizon shall submit a compliance filing within 30 days of this Order.
3. This docket is closed.

Dated at Montpelier, Vermont, this 15th day of April, 2004.

<u>s/Michael H. Dworkin</u>)	
)	
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<u>s/David C. Coen</u>)	
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<u>s/John D. Burke</u>)	

PUBLIC SERVICE
BOARD
OF VERMONT

OFFICE OF THE CLERK

FILED: April 15, 2004

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.