

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of

COMMISSIONERS PRESENT:

CASE 00-C-0188 - Proceeding on Motion of the Commission to  
Examine the Migration of Customers Between  
Local Carriers.

ORDER ADOPTING MASS MIGRATION GUIDELINES

(Issued and Effective )

BY THE COMMISSION:

BACKGROUND

On January 8, 2001, the Commission issued an order adopting guidelines governing the migration of customers between competitive local exchange carriers (CLECs) and from CLECs to Verizon New York Inc. (Verizon). Those End User Migration Guidelines - CLEC-to-CLEC consist of a statement of general principles, a delineation of customer migration responsibilities of carriers, and methods for exchanging customer service information.

However, these carrier-to-carrier migration procedures address normal service ordering situations, but not those where telecommunications providers go out of business, file for bankruptcy, or otherwise terminate service in some or all markets in New York State. Therefore, Administrative Law Judge Eleanor Stein requested the parties to turn their attention to developing guidelines to ensure, as far as possible, adequate notice to customers and an orderly transition in these

situations, otherwise known as mass migrations. Thereafter, with the facilitation of Department Staff, parties developed Mass Migration Guidelines.

The objective of the Guidelines is to provide customers of a carrier discontinuing local exchange services the opportunity to migrate to another local exchange carrier without interruption of service. The Guidelines provide for notification to regulators, the industry, and customers and detail project management processes for the network provider and the local exchange carriers shedding or acquiring customers. They include procedures in the event customers fail to choose a new carrier; sample customer notification letters; and definitions of project management roles and responsibilities.

#### COMMENTS

By Notice issued August 27, 2001, the Commission invited comments from the public and all interested parties on the proposed Mass Migration Guidelines. Comments were due on or before October 1, 2001.

Comments were submitted by Verizon New York, Inc. (Verizon); the Office of the Attorney General of the State of New York (OAG); Frontier Telephone of Rochester, Inc. and its affiliated local exchange carriers, Citizens Telecommunications Company of New York, Inc., Frontier Communications of New York, Inc., Frontier Communications of Sylvan Lake, Inc., Frontier Communications of Ausable Valley, Inc. and Frontier Communications of Seneca-Gorham, Inc. (collectively, Frontier); the New York State Telecommunications Association, Inc., (NYSTA); WorldCom, Inc. (WorldCom) and XO New York, Inc. (XO). All of those submitting comments generally support the guidelines. Several parties made specific suggestions for

modification or clarification of the guidelines. We discuss each of these issues below.

#### DISCUSSION

##### Mandatory vs. Advisory Guidelines

In its comments, the OAG states that the greatest shortcoming of the proposed Guidelines is that they are largely advisory. The OAG points out that, throughout the proposed guidelines, CLECs are told what steps they "should" take in various situations, rather than what they "must" do. The OAG urges the Commission to revise the text to replace "should" with "shall" and to adopt the Guidelines' requirements as formal regulations or otherwise order all carriers doing business in New York to comply.

Balanced against the OAG's desire for mandatory rules are WorldCom's comments, which hail the flexibility of the Guidelines and their recognition that "there will be circumstances where the framework outlined in these guidelines will need to be modified to accommodate unique circumstances." WorldCom notes that a carrier exiting the local exchange services market is often in dire circumstances. Therefore, flexibility is critical to give carriers the ability to handle the complexities of a mass migration in a way that best meets their business needs and capabilities. WorldCom asserts that the Guidelines reflect a delicate balance between the need for procedural certainty and this business flexibility.

We believe that the Guidelines can and should be made mandatory, as the OAG proposes, without sacrificing the flexibility contained in them. We agree with the OAG that our consideration of the Guidelines and formal adoption of them by Commission order is an important means of facilitating migrations and thereby benefiting the competitive market and

consumers. Consequently, by this order, we require all carriers to comply with their provisions. We have revised the Guidelines as proposed to replace the word "should" with a clearer directive that carriers "must" follow the particular provision.

Most of the provisions that were worded as "should" and about which the OAG complains relate to notice requirements. The collaborative group that devised the Guidelines based the notice provisions -- the 90-day notice to this Commission, the subsequent notice to the industry, the 60-day notice to end-use customers by the exiting CLEC, and the 30-day notice to customers by an acquiring CLEC -- on the technical requirements of CLEC-to-CLEC migration in New York. The Guidelines reflect the industry judgment that such notice periods are essential if all affected customers are to be migrated seamlessly with no loss of service.

We will make these notice periods mandatory, but we will allow for variation from them upon an adequate showing by a CLEC that it cannot meet the notice periods. In this way, we set a presumption that the notice periods must be met, and place a burden on the CLEC who cannot comply with them to demonstrate why it must deviate from the Guidelines. We will expect this showing to be made when a carrier files a notice that is not in compliance with the time periods required by these Guidelines. Where good cause is demonstrated, we will expect Staff to work with the migration project managers to facilitate the migration within the more limited period afforded in unique circumstances. In an egregious case, where it appears that a CLEC does not have a bona fide excuse for its failure to provide the full notice period as required by the Guidelines, Staff may refer the matter to the Commission for appropriate enforcement action.

We believe this modification to the Guidelines properly balances the need for a smooth transition of service with legitimate needs of an exiting CLEC in unique circumstances. CLECs must make every effort to anticipate their business circumstances and their ability to service their customers such that they can provide adequate notice when it becomes necessary to terminate that service. However, we recognize that there may be circumstances in which a CLEC can show good cause to provide less than the standard notice.

We recognize that these Guidelines require earlier notice to customers by a carrier exiting the market than the notice presumed by federal regulations, 47 C.F.R. section 63.71. The federal regulation provides that authority to discontinue service will be granted automatically 30 days after notice is given to end users, absent a showing that an affected customer will be unable to receive substitute service or the public convenience and necessity is otherwise adversely affected. There is no federal-state conflict here, since carriers can comply with both sets of obligations.

While we modify the notice requirements to make their mandatory nature clear, we will retain the flexibility language cited by WorldCom. That language refers specifically to the project management process, which can indeed be modified by the involved parties without running afoul of our order. The project management process reflected in the Guidelines is inherently flexible, and our adoption of it by order is not intended to impair that inherent flexibility.

We note also that it is important for this Commission to adopt these Guidelines as having the full force and effect of a Commission order to maintain consistency with the CLEC-to-CLEC End-User Migration Guidelines previously approved by us. We

have followed the same process -- development of draft Guidelines through a collaborative process, issuance for comment by all parties potentially affected by them, and formal adoption by Commission order -- in both cases. The Guidelines that govern migration in the ordinary course of business were clearly intended to have the force and effect of Commission order and so state. We see no reason to deviate from our prior precedent with respect to the Mass Migration Guidelines.

Right To Terminate Wholesale Service

Frontier requests that the guidelines be modified to clarify that, during the period of mass migration notification and transition, the Incumbent Local Exchange Carrier (ILEC) retains its right to deny service to a CLEC for nonpayment pursuant to the provisions of its tariff. Frontier urges that the Guidelines not be "interpreted to mean that during the entire notification and transition period, the ILEC providing underlying service to a CLEC exiting the market will be required to underwrite the CLEC's failed business plan wholly at the ILEC's expense." Often, a financially troubled CLEC exiting the market is at risk for denial of service from the underlying wholesale provider due to non-payment.<sup>1</sup> Verizon joins in supporting Frontier's request that the Guidelines be clarified as not imposing any new obligations upon ILECs to continue service in these circumstances. Similarly, NYSTA states its presumption that the Guidelines are "not meant to supercede the financial and/or business obligations between carriers."

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<sup>1</sup> Similarly, a CLEC may be at risk for termination of other services or repossession of equipment due to defaults in obligations to other creditors, such that its ability to provide service to its customers is impaired.

While we see no need to modify the Guidelines themselves, we will make the requested clarification here. The Guidelines should not be interpreted to impose any new obligations upon ILECs or other creditors to continue services to a defaulting CLEC, merely so that the CLEC's customers will have adequate notice during the transition period. Rather, the obligations impose a burden on all CLECs to arrange and conduct their business affairs in such a way that they can meet the notice and other obligations of these Guidelines at their own expense and risk. Carriers must ensure that, in negotiating or accepting default provisions in their business arrangements with other carriers and service providers, they receive adequate notice of default that will enable them, in turn, to provide adequate notice to their own customers, pursuant to these Guidelines.

Soft Dial Tone Period and Customer Duty to Notify

In a case where there is no acquiring carrier, customers must affirmatively arrange for new service. In all cases other than resale, a customer failing to select a new provider will likely lose all service at the termination date. To guarantee that customers fully appreciate the consequences of a failure to act, the Guidelines provide that the exiting carrier must place the customer on "soft dial tone." The soft dial tone does not permit the customer to receive or make calls other than those to 911 and the carrier's business office. The customer hears a recording notifying him that he must call the business office, which will then advise him of the need to arrange for new service.

Verizon, in its comments, addresses the failure of the Guidelines to indicate the timeframe for application of soft dial tone. Verizon recommends the soft dial tone be placed on

affected lines for 10 days prior to the exiting CLEC's final termination. We are advised that this 10-day period is consistent with the expectations of the collaborative group discussing the issue, although it is not specified in the Guidelines. We will accept Verizon's recommendation and insert the 10-day requirement into the soft dial tone provision.

Other than clarifying the period for soft dial tone, we do not see the need to make the further change recommended by the OAG, namely, that of requiring customers to notify their exiting carrier that they have obtained new service, to avoid being placed on soft dial tone. First, the window of time for a customer to select a new carrier is not as narrow as the OAG asserts. The carrier is required to give 60 days' notice of its exit, and the recommended cut-off date for selecting a new carrier is 30 days later. With the 10-day soft dial tone period we adopt here, there remain 20 days for the new carrier to submit its order.

More importantly, the scheme represented by the Guidelines represents an effort by the industry to manage migrations between carriers with a minimal burden upon customers. If the process outlined in the Guidelines is followed, carriers will be on notice that a given carrier is exiting the market and will take pains to notify the exiting carrier that they have acquired one of its former customers. Certainly there is no harm in a customer passing along the information, and carriers may include in their notices a request to customers to follow up with direct notification. However, we will not require that carriers include such directives in their notices.

Additional Customer Obligation to Notify

OAG makes the same recommendation with respect to customers who "opt out" of a migration to an acquiring carrier. The OAG suggests that we require carriers to advise their customers to inform their new carrier that they are part of a mass migration and to identify their former carrier. Again, the carrier should already be on notice of these facts pursuant to the regulatory and industry notice required by the Guidelines. Customers should not be burdened with providing information that carriers have a duty to monitor themselves. Therefore, we will decline to make the changes proposed by the OAG in this regard.

Service Quality Waivers

The Guidelines currently provide that, where a CLEC agrees to acquire all of an exiting CLEC's New York customers, the acquiring CLEC should sign a waiver letter absolving Verizon from performance measurements relating to these customer migrations. The OAG asserts that Verizon's service quality performance should not be waived automatically when Verizon is involved in a mass migration. The OAG asserts that the waiver should not apply to small migrations and recommends that the Commission establish a minimum threshold of lines being cut over, below which the waiver would not apply. Alternatively, the OAG suggests that the waiver be granted by Commission Staff on a case-by-case basis.

The OAG's comments highlight the fact that this provision in the Guidelines may not be necessary in each instance. While a process in which Commission Staff grants a waiver on a case-by-case basis might tailor such waivers more narrowly to the facts in a particular instance, it adds another administrative step in a process where time is of the essence. In the alternative, establishing a minimum threshold for such a

waiver would be difficult, because different types of serving arrangements have different degrees of complexity. On balance, the waiver seems to be a workable means of managing a migration, and we will let the Guidelines stand for now. We rely additionally on the fact that many CLECs participated in the collaborative effort to devise this provision, and none has commented that the waiver is a problem. Nevertheless, as we gain experience with mass migrations, we may review this waiver provision in the future to ensure that it is not having an undue negative impact on wholesale provisioning.

Application To DSL Service

Covad addressed its comments to the application of the Guidelines to DSL service. We clarify here that these Guidelines apply only to migrations of voice service. A separate collaborative is addressing DSL migrations. Covad's comments will be submitted to the DSL collaborative for consideration in that proceeding.

CONCLUSION

We commend the parties who participated collaboratively to develop these Mass Migration Guidelines. We are confident that they will provide a much-needed degree of certainty and predictability to the process, while affording the flexibility necessary to deal with a variety of business and technical constraints. The adoption of these guidelines, pursuant to our authority under Public Service Law sections 91(1), 92-e, 94(2), and 96(1), will enhance the functioning of the competitive market in New York State and protect New York consumers from service disruptions. We will approve the Guidelines consistent with the discussion in this order and

adopt them so that they have the full force and effect of our order.

The Commission orders:

1. The attached Mass Migration Guidelines, modified to reflect the discussion in this order, are approved and adopted as if fully set forth in this order.

2. All certificated telecommunications carriers doing business in New York State are ordered to comply with these Mass Migration Guidelines.

3. This proceeding is continued.

By the Commission,

JANET HAND DEIXLER  
Secretary