

ORDER NO. 77988

IN THE MATTER OF THE COMMISSION'S CONSIDERATION OF THE MARYLAND CARRIER-TO- CARRIER GUIDELINES, PERFORMANCE STANDARDS AND REPORTS; AND THE PERFORMANCE ASSURANCE PLAN OF VERIZON MARYLAND, INC.	* * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND <hr style="width: 100%;"/> CASE NO. 8916
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By Order No. 77654, dated March 26, 2002, the Public Service Commission of Maryland (“Commission”) adopted the consensus portion of the Maryland Carrier-to-Carrier Guidelines, Performance Standards and Reports (“MD Guidelines”) filed on behalf of the Maryland Carrier-to-Carrier Collaborative (“Maryland Carrier Collaborative” or “MCC”) and a proposed implementation scheduled. By Order No. 77654, the Commission also docketed this proceeding to address the remaining 10 disputed issues pertaining to the MD Guidelines and Verizon Maryland, Inc.’s (“Verizon’s”) Performance Assurance Plan (“PAP”).¹

On April 19, 2002, Staff filed a Status Report for the Maryland Carrier Collaborative pertaining to the PAP. Staff noted several major areas of dispute remaining among the MCC participants. The Status Report requested that the Commission set a pre-hearing conference date to establish a procedural schedule for resolution of all outstanding PAP issues. On May 1, 2002, the Commission issued a Notice of Procedural Schedule setting a pre-hearing conference for May 9, 2002. On May 8, 2002, Verizon

¹ The PAP is a plan determining the penalties/remedies pertaining to Verizon’s failure to meet the standards contained in the MD Guidelines.

filed a Petition for the Adoption of a Performance Assurance Plan. By its Petition Verizon broadly identified the areas of dispute that existed with respect to the PAP.

Thereafter, on May 9, 2002, the Commission convened the pre-hearing conference. After ruling on Petitions for Intervention, the Commission received comments from the parties regarding the scope of the proceeding, the disputed issues and proposals for a procedural schedule. The Commission adopted the procedural schedule proposed by Staff, which permitted the filing of initial comments on May 24, 2002, reply comments on June 7, 2002 and a hearing on the PAP on June 13, 2002. The parties were also afforded the opportunity to refresh their previous comments on the 10 disputed issues pertaining to the MD Guidelines.

On May 24, 2002, comments were filed by: Allegiance Telecom of Maryland, Inc. (“Allegiance”); AT&T Communications of Maryland, Inc. (“AT&T”); WorldCom, Inc.; Verizon; the Office of People’s Counsel (“OPC”) and Staff. Reply Comments were filed on June 7, 2002 by: AT&T; Verizon; WorldCom; ZTel Communications, Inc. (“Z-Tel”); and Staff. Additionally, on June 7, 2002, Verizon filed a letter advising the Commission of an understanding that it had reached with AT&T purporting to resolve most of the PAP issues.

A. MD Guidelines

As was identified in Order No. 77654, 10 disputed issues remained with respect to the MD Guidelines. The Commission received written comments on these issues on October 5, 2001; November 2, 2001; May 24, 2002 and June 7, 2002. By their latest

comments the parties have indicated movement with respect to a number of issues previously in dispute. The Commission will address each of the issues below.

Issue No. 1. Metrics OR-1 and OR-2

The dispute pertaining to Metrics OR-1 and OR-2 is with respect to the scheduled downtime hours that are to be incorporated into the metrics. Metric OR-1 measures Verizon's timeliness in confirming orders that flow electronically from the CLEC through Verizon's Operations Support Systems ("OSS") interface to Verizon's service order processor ("SOP"). Metric OR-2 measures the timeliness of Verizon's reject notices for flow-through orders. However, because Verizon cannot process orders when its SOP and related systems are not operating, the hours for the SOP's scheduled unavailability are excluded from the measured interval hours. Verizon indicates that the SOPs and their related systems will be unavailable for processing new orders for scheduled intervals or downtime on nights and week-ends to permit the SOPs to perform processing functions and Verizon to perform maintenance and other systems related activities.

Verizon uses two SOPs in Maryland, SOACS and expressTRAK. The two SOPs have different scheduled downtime hours, with expressTRAK downtime being shorter than the corresponding downtime for SOACS. Verizon is phasing out the use of SOACS, but until such time as the phase out is complete Verizon seeks to use the combined scheduled downtime hours for SOACS, expressTRAK and their associated systems. Initially, Verizon requested that the Commission permit it to utilize the combined downtimes in Metrics OR-1 and OR-2 until such time as SOACS is phased out. In the

alternative, Verizon proposed that should the Commission elect to adopt a date after which the scheduled downtime hours for only expressTRAK and its associated systems will be excluded from the measurement interval, such date should not be prior to September 1, 2002. In its most recent comments Verizon has modified its position and now requests that the Commission establish September 1, 2002, as the date by which the downtime intervals for expressTRAK and its related systems should be implemented as opposed to its previous recommendation to be allowed an open-ended use of the combined downtimes.

Opposition to Verizon's use of a longer combined downtime was raised by AT&T; WorldCom and Staff. In their comments these parties note that linking the use of the longer downtime to Verizon's transition to 100% expressTRAK, without limitation, is too open-ended. The parties also note that as the majority of Verizon's Maryland customers use expressTRAK, its downtime hours should be the only ones used in the metrics exclusions. In their initial comments, AT&T and WorldCom advocated that the Commission require Verizon to use the shorter expressTRAK downtimes beginning January 1, 2002.

More recently in refresher comments filed on May 24, 2002 and June 7, 2002, WorldCom and Staff advocate that Verizon be permitted to utilize its combined downtime hours until September 1, 2002, at which time the expressTRAK downtimes will be used. AT&T and Z-Tel request that the expressTRAK start date be July 1, 2002.

The Commission agrees that allowing the combined downtimes to be used for an indefinite period is inappropriate and that a date should be set for when the expressTRAK downtimes will become operative. The Commission finds that Verizon should be

afforded sufficient opportunity to conclude its phase out of SOACS. Verizon has indicated that an end date of September 1, 2002 would be an acceptable compromise. Additionally, Staff and WorldCom are in agreement with this date. Therefore, the Commission directs that the downtimes reflected in Metrics OR-1 and OR-2 shall be those times for expressTRAK and its related systems beginning on September 1, 2002.

Issue No. 2. Metrics OR-4-11 through OR-4-15

Metrics OR-4-11 through OR-4-15 measure the interval between the due date for an order and the date when the order provisioning completion notice (“PCN”) and billing completion notice (“BCN”) are issued. As with Issue No. 1, above, the dispute with respect to this issue involves the differences between the two SOPs that Verizon uses in Maryland.

In its initial comments, Verizon argued that the interaction of Verizon’s SOACS with its Customer Records Information System (“CRIS”) prevents SOACS processed orders from meeting the shorter performance interval that was adopted in New York and recommended by the MCC for the MD Guidelines, while expressTRAK processed orders can meet the recommended intervals. However, Verizon stated that it cannot distinguish between orders processed by SOACS and orders processed by expressTRAK, and until such time as SOACS is phased-out, Verizon requests that the intervals for Metrics OR-4-11 through OR-4-13 be increased by one additional business day and that the intervals for Metrics OR-4-14 through OR-4-15 be increased by two additional business days. In the alternative, Verizon argues that should the Commission elect to adopt a date after which

the expressTRAK intervals should be used that such date should not be prior to September 1, 2002.

AT&T, WorldCom, Z-Tel and Staff object to Verizon using a longer interval for Metrics OR-4-11 through OR-4-15. Similar to their positions with respect to Issue No. 1, AT&T and Z-Tel advocate Verizon's use of a longer interval until July 1, 2002. Verizon, WorldCom, and Staff recommend that the Commission permit the use of the longer interval until September 1, 2002. For the reasons noted above, the Commission directs that Verizon may continue to utilize the longer intervals for Metrics OR-4-11 through OR-4-15 until September 1, 2002. Thereafter, Verizon is directed to utilize the expressTRAK downtime intervals.

Issue No. 3. Metric OR-6-04

Metric OR-6-04 is a proposed measurement of the accuracy of Verizon's publication of listings for CLEC customers in its telephone directories. Initially, Verizon objected to the inclusion of this measurement. However, in its more recent May 24, 2002 and June 7, 2002 comments, Verizon indicates its agreement to accept a directory listing accuracy metric and a separate measure for the accuracy of stand-alone order listings.²

AT&T and Cavalier have proposed that the metrics adopted by the Commission require Verizon to compare CLEC-submitted orders to the listings that are actually published in Verizon's directories. Verizon responded that this requirement would be difficult and expensive to implement, as well as require manual comparisons of the

² Verizon's agreement to a separate measurement for the accuracy of stand-alone order listings was premised on the requirement that the measurement be in the form proposed by Verizon for Metric OR-6-04.

information. The only other issue of dispute remaining with the directory listing metrics is the percentage of accuracy that Verizon is to meet. Verizon advocates a 95% accuracy standard. Staff, while initially advocating a 95% accuracy standard, has modified its position and currently recommends a 98% accuracy standard as do AT&T and WorldCom. The parties have indicated that a similar metric has been adopted by both the Virginia State Corporation Commission (“VSCC”) and the District of Columbia Public Service Commission (“DCPSC”), with 98% and 95% accuracy standards, respectively.

The Commission adopts the directory assistance listing accuracy metrics as proposed by Verizon. The Commission does not find that it is necessary to require Verizon to compare the final, published listing with the CLEC Order. With regard to the accuracy standard, the Commission finds that the accuracy standard with respect to these measurements should initially be 95%, but gradually increase by 1% each year such that by year four the accuracy standard shall be 98%.

Issue No. 4. Metric PR-3-08

Issue No. 5. Metric PR-5-04

Metric PR-3-08 is intended to measure the percentage of POTS orders completed within five business days. This aspect of the measurement is not contested. However, some parties have proposed this metric also measure the percentage of UNE Hot Cut orders completed in five business days. Metric PR-5-04 is a new proposed metric designed to measure the percentage of orders that are cancelled due to a lack of facilities. The latter measurement was part of a recommendation of the New York Collaborative that was ultimately adopted by the New York Commission. Verizon argues that adoption

of the metrics would be premature. Verizon acknowledges that the metrics were adopted in New York, but argues that they were a part of a larger modification (additions, deletions and revisions) to the NY Guidelines, and will be incorporated in the MD Guidelines at a later date pursuant to the process established by the Commission. Furthermore, Verizon argues that while NY Metric PR-5-04 is intended to measure the number of orders that are cancelled for lack of facilities more than five days after the due date, Cavalier in its October 5, 2001 comments and WorldCom in its November 2, 2001 comments have proposed that the metric be modified to capture the total number of orders that are cancelled for lack of facilities. The remaining parties advocating adoption of Metric PR-5-04 seek the adoption of the Metric as adopted in New York.

The Commission notes that all parties have been afforded the opportunity to comment on this metric and have done so. Verizon's arguments against the adoption of the metrics are not persuasive. As Verizon noted there were many metrics that have been added by the NY Collaborative since the MD Guidelines were first drafted. Of the many modifications made by the NY Collaborative, the parties in this proceeding, citing areas of concern, are seeking to add a relative few. Because the matter has been fully commented on by all parties, the Commission finds that Metrics PR-3-08 and PR-5-04 shall be adopted and incorporated into the MD Guidelines. As noted above, Metrics PR-3-08 and PR-5-04 will address concerns that have been raised by a number of parties and there is no valid reason to delay implementation of these metrics until a later date. The Commission further finds that based upon the facts presented, the modification requested by Cavalier and WorldCom to Metric PR-5-04 is not warranted.

Issue No. 6. Metric PR-9-02

Metric PR-9-02 is intended to measure the percentage of UNE Hot Cut orders that are completed before either the frame due time (i.e., the beginning of the cut-over window) or cut before the mutually agreed upon time between Verizon and the CLEC. The early cut-over results in the customer's dial tone service being disconnected prematurely. Cavalier argues that the resulting loss of service has prompted many of its customers to lose confidence in the competitive process and allowed Verizon the opportunity to "win back" the customer. Allegiance and Staff also support the adoption of this metric noting the harm that a loss of dial tone causes to end-users. Cavalier advocates a standard for this metric of 99.5%. The other parties advocate a 98% standard.

The Commission agrees with Cavalier, Allegiance and Staff that there is a need for this measurement. The scenario advanced by the parties resulting in end-user's unexpected loss of dial tone is not new to the Commission, which has received several communications from end-users detailing this exact situation. Premature Hot Cuts represent a real concern to the Commission and Maryland end users. Establishing this metric will enable the Commission to monitor Verizon's performance in this particular area. However, the Commission believes that a standard of 99.5% for this metric is excessive and that a more reasonable standard is 98%. Therefore, the Commission hereby adopts Metric PR-9-02 with a 98% standard and directs that it be incorporated into the MD Guidelines.

Issue No. 7. Appendix H

Appendix H identifies the types of orders that are designed to flow-through Verizon's OSS. Verizon proposed that rather than provide constant updates to the types of orders contained in Appendix H, it will list the types of orders that flow-through as of the date the MD Guidelines are adopted with a statement that the list is illustrative and subject to change. Verizon also proposed to state in Appendix H that an up-to-date list of the types of orders that flow-through can be found on its website: http://128.11.40.241/east/business_rules/master.htm. Verizon proposed this process because the list of types of orders that flow-through is constantly changing. According to Verizon, placing a static list of orders that flow-through in Appendix H will result in the appendix being out of date almost as soon as it is adopted and require frequent revisions to the appendix.

Objections to Verizon's proposal were noted by AT&T, Covad, WorldCom and Staff. Primarily, the parties noted a concern that Verizon would remove a flow-through order type from the list without providing the CLECs adequate notice and without Commission approval. Verizon replied to the arguments that while it was unlikely, it was possible that system changes could result in orders that cease to flow-through. In such a situation, Verizon indicated that the CLECs would be alerted to the change through Verizon's OSS Change Management Process well in advance of their implementation and would have the opportunity to seek relief from the Commission.

Both the VSCC and the DCPSC have recently considered this issue. The DCPSC found that it was appropriate for Verizon DC to include a list of order types that flow-through in Appendix H, with a statement indicating that the complete list can be found on

Verizon DC's website. Therefore, Verizon DC was required to provide an updated version of Appendix H that: 1) contained a list of order types that flow-through; 2) a statement that the list is subject to change; and 3) a reference to the website where up-to-date information could be found. The VSCC reached a similar conclusion, but additionally required that Verizon Virginia provide CLECs with at least 60 days notice of any deletions of order types that flow-through and noted that the CLEC was not precluded from pursuing regulatory action at the Commission if it opposes a change.

Upon consideration of this matter, the Commission is in agreement with the actions of both the VSCC and the DCPSC. The Commission notes that while Verizon has already provided an initial list of order types that flow-through, the list represents what appeared on Verizon's website as of July 30, 2001 and is dated June 19, 2001. Therefore, the Commission directs Verizon in its compliance filing to update its Appendix H to reflect the list of order types that flow-through on the date of this Order and include a statement that the list is subject to change and a reference to the website where up-to-date information can be found. Additionally, while the Commission agrees with the rationale behind the VSCC's notice requirement and wishes to incorporate a similar requirement in the MD Guidelines, the Commission finds that 60 days is too long. Instead, the Commission directs that Verizon is to provide CLECs with at least 30 days notice of any deletions of order types that flow-through. To the extent that a CLEC opposes a proposed deletion then the notice will provide the CLEC ample opportunity to pursue the matter with the Commission.

Issue No. 8. Exhibit 1

Verizon proposes to include in the MD Guidelines an Exhibit 1 addressing “Force Majeure” events; statistical invalidity of measurements; confidentiality and reciprocal CLEC obligations. Verizon states that the most important part of its Exhibit 1 is the “skewed data” section. In its May 24, 2002, Verizon acknowledges that both the VSCC and the DCPSC “declined” to adopt Verizon’s proposed Exhibit 1. Verizon further states that it continues to propose the provisions of its Exhibit 1 pertaining to Skewed Data and CLEC Obligations because this Commission has not yet adopted a Performance Assurance Plan.

The parties filing opposition to Verizon’s Exhibit 1 primarily argue that the provisions of Verizon’s Exhibit 1 were not included in the NY Guidelines upon which the MD Guidelines are based, and as such, should not be included in the MD Guidelines. Furthermore, the parties argue that the provisions of Verizon’s Exhibit 1, to the extent they are concerned with penalties or performance issues, should be addressed within the context of the PAP.

By this Order, the Commission adopts a Performance Assurance Plan almost identical to the plans adopted in Virginia and the District of Columbia. The Commission finds that the “Skewed Data” and “CLEC Obligations” provisions that Verizon seeks to have appended to the MD Guidelines are inappropriate for inclusion in that document. As Verizon concedes that the provisions pertaining to “Skewed Data” and “CLEC Obligations” are adequately addressed by the PAP, there is no need to insert duplicative provisions in the MD Guidelines.

Verizon's Exhibit 1 also contains additional confidentiality provisions that are opposed by the various parties. In addition to reiterating a concern that the confidentiality provisions Verizon seeks to adopt in Maryland were not included in the NY Guidelines, the template for the MD Guidelines, the parties also note a concern with respect to the broadness of the provisions. As noted above neither the VSCC nor the DCPSC chose to adopt Exhibit 1 or its confidentiality provisions.

After considering this issue, the Commission also declines to adopt the confidentiality portion of Verizon's Exhibit 1. As with Virginia and the District of Columbia, this Commission already has well established rules pertaining to confidential information. The Commission finds that its confidentiality procedures are sufficient to address Verizon's concerns and provide adequate protection for information that Verizon believes is confidential. The Commission further agrees with the DCPSC that to the extent this matter is addressed and resolved globally by the New York Carrier-to-Carrier Working Group, it can be presented for incorporation into the MD Guidelines in accordance with the procedures established herein.

Finally, in Exhibit 1 Verizon proposes reporting CLEC Aggregate data on the 27th day of the month following the measured month and CLEC Specific data on the 29th day of the month following the measured month. Verizon has proposed these dates, which it acknowledges are a few days later than in other jurisdictions, in order to balance its workload and provide an orderly distribution of performance reports.

Almost every commenting participant has raised an objection to the proposed reporting dates. AT&T argues that the reporting date for the majority of Verizon jurisdictions is on the 25th day of the month following the measured month and there is

no reason to adopt different dates in Maryland. AT&T also argues that staggering the reporting dates makes it more cumbersome for a CLEC to compare its performance with that of its competitors. Finally, AT&T argues that the delay in reporting will result in a greater corresponding delay in payment of penalties. Staff notes problems with the date being so late in the month, especially with respect to the month of February.

The Commission does not find that a staggered reporting date or even a different reporting date than other Verizon jurisdictions utilized would be harmful to the CLECs. However, the Commission is concerned with the lateness of the reporting dates Verizon chose and believes that a couple of days earlier in the month would be more appropriate. Therefore, the Commission directs that Verizon report CLEC Aggregate data on the 25th day of the month following the measured month and CLEC Specific data on the 27th day of the month following the measured month.

Issue No. 9. Methodology for incorporating changes to the New York Guidelines into the Maryland Guidelines

In the refresher comments filed on May 24, 2002 and June 7 2002, the parties either agreed that Virginia's process for incorporating changes to the New York Guidelines into the MD Guidelines should be adopted or indicated that it did not object to the adoption of the Virginia process. The Commission has reviewed the Virginia process and finds that should be adopted. The process is clear, concise and provides for an orderly review of consensus and nonconsensus metric changes. Additionally, it reserves the parties' rights to comment on the proposed modifications. The Commission therefore, directs that the following process be included in the MD Guidelines:

Consensus Decision³ and Nonconsensus Decision⁴

1. Verizon Maryland shall file with the Commission the New York consensus and/or nonconsensus metric change(s) and proposed implementation interval(s), including an explanation of time required to implement, and description of the changes made to adapt to Maryland systems. Such filings shall be within 30 calendar days of submission date of the compliance filing in New York⁵ and shall be made in accordance with the Commission's Rules and Procedures.
2. With each such filing, Verizon Maryland may submit to the Commission any opposition to adoption of any metric change(s). Verizon Maryland shall set forth its reasons for opposition in any such filing.
3. Verizon Maryland shall make an electronic copy of its filing on the proposed consensus and/or nonconsensus change(s) available to the Maryland Carrier Collaborative ("MCC"), the Office of People's Counsel and the Commission Staff at the time of filing.
4. The Commission Staff, Office of People's Counsel, and interested parties shall have an opportunity to comment and/or request a hearing on the proposed metric change(s) submitted by Verizon Maryland. Such comments are not limited but should address whether the metric change(s) appropriately adapts the New York metric to Maryland; should discuss the proposed implementation interval(s) and should be filed within 20 days of Verizon Maryland's filing. Verizon Maryland and others that did not object to a metric change(s) or proposed implementation interval(s) shall be provided an opportunity to respond if anyone objects to the adoption of the change(s) or implementation intervals within 10 days of the filing of the objection, or 30 days following Verizon Maryland's initial filing.
5. If neither the Commission Staff, the Office of People's Counsel, nor any interested party, including Verizon Maryland, has objected to the adoption of a proposed consensus or nonconsensus metric change(s) after the Commission has provided an opportunity for comment, the change should be considered

³ A consensus decision is a change to the NY Guidelines that has been agreed to (or not opposed) by the parties in the NY Carrier Working Group and has been approved by the New York Public Service Commission.

⁴ A nonconsensus decision is a change to the NY Guidelines that has been approved by the New York Public Service Commission but not agreed to by all parties in the NY Carrier Working Group.

⁵ The compliance filing in New York is the filing by Verizon New York with the New York Public Service Commission of revisions to the NY Guidelines that contain metric changes that have been approved by the New York Public Service Commission.

approved forty-five (45) days after submission of the filing, unless otherwise ordered by the Commission.

Issue No. 10. Methodology for initiating the adoption of new Maryland-specific metrics

At the conclusion of the comment process the Commission was presented with two positions. First, WorldCom recommends that the process adopted by the VSCC for Verizon Virginia be adopted by the Commission for inclusion in the MD Guidelines. Second, Verizon, AT&T and Staff recommend that the Commission adopt a process by which parties wishing to add new performance measures are encouraged or required to first present the proposal to the New York Working Group. Staff believes that the New York Working Group is a resource that the Commission should utilize in that it is available to all CLECs and its participants include a broad variety of represented interests. Verizon advocates that such a plan would ensure that the MD Guidelines remain consistent with the NY Guidelines. AT&T notes that there are relatively few issues that are unique to a particular state and believes that the New York Working Group has established rules to permit CLECs to propose metrics that do not apply in New York. AT&T agrees that the Virginia process does achieve the purpose of having proposed metrics vetted by the NY Working Group. Additionally, AT&T advocates for a strong presumption against the adoption of metrics that are not included in the NY Guidelines.

As Verizon indicated in its May 24, 2002 comments, “[p]arties that wish to propose additions or changes to the MD Guidelines that are not contained in the NY Guidelines should have the right to do so.” Verizon Comments at 40. The Commission does not want to diminish this right, nor does the Commission wish to downplay the

importance of the MCC. The MCC serves a very important function in Maryland and should not be disbanded simply because the NY Working Group exists. However, the Commission is mindful of the long existence and history of the NY Working Group and finds that the expansive membership of the NY Working Group would be able to thoroughly consider and review proposals for new performance metrics. The Commission believes that the two proposals presented for its review are not mutually exclusive and directs that the following process be incorporated into the MD Guidelines.

Other Changes

1. The Maryland Carrier-to-Carrier Collaborative shall remain as a forum for parties to discuss performance standards, metric change(s) and other issues relevant to the Maryland telecommunications industry.
2. The Commission encourages parties to continue participating in the Maryland Collaborative process and to consider the MCC as the most appropriate vehicle for the initial consideration of any proposed Maryland-specific metric change(s).
3. The MCC is encouraged to submit proposed metric change(s) to the New York Carrier Working Group for its consideration. Thereafter, the proposed changes should be presented to the Commission in accordance with the existing Consensus Decision and Nonconsensus Decision process contained in the MD Guidelines.
4. Any party shall be free to oppose, before the Commission, a proposal to which it has not agreed. While no party shall be prevented from proposing metric change(s) to the MD Guidelines in accordance with the Commission's Rules of Practice and Procedure, the Commission would expect that the Maryland Collaborative process would be by-passed only in extreme situations.

B. Performance Assurance Plan

By their pre-filed comments and at the June 13, 2002 hearing, the parties indicated that they have resolved all but three issues regarding the PAP. One issue previously in dispute pertained to the whether to use 2000 or 2001 ARMIS data to calculate the incentive amounts at risk. This issue was resolved by an agreement reached between Verizon and AT&T by which AT&T agreed to withdraw specific objections to the proposed PAP, and Verizon agreed to use 2000 ARMIS data in calculating the incentive amounts at risk. As such, the incentive amounts at risk contained in the PAP will equal 39% of Verizon's 2000 ARMIS net return, or \$160.67 million.

The three remaining issues identified include: the effective date of the PAP; the reporting date for the PAP and the nature and extent of assistance that Staff would require to replicate/audit Verizon's performance results.

1. Effective Date

The main thrust of this issue is when the PAP and the self-executing penalties established therein will become effective. Verizon advocates that the PAP, which is a tool intended to deter backsliding after Verizon gains entry into the long distance market, become effective on the first day of the first calendar month after the month in which Verizon is authorized to provide interLATA long distance service in Maryland. Verizon argues that the Commission lacks the statutory authority necessary to require Verizon to submit to the PAP without its consent, and Verizon is not willing to grant its consent. In essence, Verizon equates the PAP and its penalties with third party monetary damage awards that it claims the Commission lacks the authority to impose.

In contrast, the other parties to this proceeding advocate that the Commission make the PAP effective immediately upon its adoption. AT&T argues that the “remedies of the PAP are not ‘damages’ in the classic sense, but rather are in the nature of rate adjustments for inadequate service that the Commission can order pursuant to its unquestioned authority over Verizon’s rates and charges.” AT&T May 24, 2002 Comments at 8. AT&T further argues that Verizon’s obligation to provide non-discriminatory service to CLECs is not limited to §271 of the Telecommunications Act of 1996, but is a policy of the Commission and Congress.

WorldCom acknowledges that the PAP should be used to deter backsliding after Verizon is granted §271 entry. However, WorldCom also argues that the PAP should be used to encourage compliance with the “market opening” requirements of §251 of the Act, prior to Verizon obtaining §271 entry. WorldCom indicated that some state commissions have adopted and implemented performance assurance plans prior to the incumbent local exchange carrier receiving §271 entry. Therefore, because the PAP goes beyond ensuring that Verizon is in compliance with §271 requirements, WorldCom urges the Commission to make the PAP effective immediately upon issuance of its adopting order.

OPC, who did not provide written comments on this issue, briefly noted its position during the June 13, 2002 hearing. OPC supports making the PAP effective upon issuance of the Commission’s Order, prior to Verizon being granted §271 entry. OPC questions Verizon’s reluctance. OPC argues that, if Verizon’s performance is satisfactory and Verizon is providing service to competitive local exchange carriers in a nondiscriminatory manner, then the likelihood of PAP bill credits coming into play

should be virtually nonexistent. Therefore, little risk is posed to Verizon if the PAP is made effective immediately. However, OPC also acknowledges that making the PAP effective immediately would not affect Verizon's §271 application and would not provide the Commission with more information.

Z-Tel supports an immediate effective date upon adoption of the PAP by the Commission. Z-Tel indicates that it "has suffered at the hand of Verizon's woefully inadequate expressTRAK billing systems since entering the Maryland market. There is simply no justification for permitting Verizon to provide substandard wholesale service up until it obtains Section 271 authority." Z-Tel Reply Comments at 2-3.

Staff recommends that the PAP become effective on the first day of the month following Commission adoption of the PAP. Staff argues that Verizon, by making its §271 filing with the Commission has certified that it has opened the local market in Maryland to competition and is providing CLECs with non-discriminatory access to its network. Therefore, according to Staff, Verizon's performance should not result in the imposition of any penalties pursuant to the PAP and there is no reason to delay the effective date of the PAP beyond its approval by the Commission.

Upon consideration of the comments of the Parties, the Commission determines that the effective date for the Performance Assurance Plan shall be the day that Verizon files its §271 application with the Federal Communications Commission.

As an initial matter, the Commission is not persuaded by Verizon's arguments that it lacks the jurisdiction to require that Verizon meet certain performance standards with respect to its provision of services to CLECs. The Commission has limited standards in place in the Code of Maryland Regulations with respect to Verizon's

provision of service to end-users. See, COMAR 20.42.05 – Service Standards. Section 5-101 of the Public Utility Companies Article, Annotated Code of Maryland, addresses the Commission’s police powers. In particular, §5-101(a) grants the Commission the authority to adopt regulations that prescribe adequate, reasonable and proper service for any class of public service company, including Verizon. The adoption of a Performance Assurance Plan that determines standards for Verizon’s provision of service to CLECs is well within the Commission’s jurisdiction, as are the bill credits that the PAP contains. If Verizon’s service falls below that level identified within the PAP, then it is not in the public interest to permit Verizon to collect 100% contribution for less than 100% service. The bill credits are not civil penalties, but rather link Verizon’s performance with its rates. If Verizon does not provide adequate, reasonable and proper service to its CLEC customer in accordance with the standards adopted by the Commission and detailed in the PAP, then the CLEC customer is entitled to a rate adjustment such that the rate it paid for the service reflects the level of service Verizon provided.

That said, the Commission does not find that the PAP should become effective immediately. The Commission agrees with the comments of the FCC that the PAP is an assurance of future compliance with the §271 checklist and will foster continued compliance post-entry. *Rhode Island Order, 16 FCC Rcd 3300*. Indeed, the FCC has specifically indicated that:

although the Commission strongly encourages state performance monitoring and post-entry enforcement, we have never required BOC applicants to demonstrate that they are subject to such mechanism as a condition of §271 approval.

Texas Order, 13 FCC Rcd 20806, ¶420. The Commission finds that the PAP should be fully operational by the time Verizon is granted §271 entry. Making the PAP effective on the date Verizon files with the FCC will accomplish this goal, due to the lag time between the actual performance measurement and the issuance of the bill credit.

Of course, during the Commission's §271 proceeding, the parties may still note and comment on any performance deficiencies of Verizon utilizing the MD Guidelines and even quantify the bill credits they believe Verizon would have paid under the PAP.

2. Reporting Date

This issue is related to the reporting date issue in Issue No. 8. Verizon wishes to file the PAP report on the 29th day of the month following the measured month. AT&T and Staff advocate the 25th day of the month following the measured month. The Commission, for the reasons explained above, directs that the PAP reporting date shall be the 27th day of the month following the measured month. This date staggers Verizon's reporting dates for its jurisdictions and will permit it to balance its end-of-the-month performance report workload, but is a few days prior to the end of the month and avoids some of the problems noted by Staff with respect to a reporting date of the 29th.

3. Audit Procedures/Replication of Performance Metrics

The MD PAP allows for the Commission Staff to replicate Verizon's performance reports for at least six months after the MD PAP becomes effective. Staff notes that Virginia and New York are two states where third party testing has occurred and where the Commission Staff is replicating performance metrics reports. In both states, KPMG assisted the State Commission's Staff in developing the software that enabled them to

replicate the performance reports. Staff indicates that it would require similar assistance and requests that the Commission require Verizon to provide it with sufficient technical assistance to enable Staff to replicate the performance reports. Verizon indicates that it is unclear exactly what sort of assistance Staff needs. During the June 13, 2002 hearing, Staff acknowledged that it was still examining the issue and the types of assistance it would need. Staff and Verizon recommended that the Commission permit them to meet with respect to this issue and report back to the Commission on the status of their discussions. The Commission agrees and directs Staff and Verizon to meet on this issue and report back to the Commission on the status of their discussions within thirty days of this order.

IT IS, THEREFORE, this 30th day of August, in the year Two Thousand and Two, by the Public Service Commission of Maryland,

ORDERED: (1) That the Maryland Carrier-to-Carrier Guidelines, Performance Standards and Reports shall be modified as directed herein;

(2) That within ten days of the date of this Order Verizon is to notify the Commission of the date when performance data for the metrics adopted herein can be provided;

(3) That Verizon is directed to file in Case Nos. 8916 and 8921 a compliance filing of the MD Guidelines and the Performance Assurance Plan within thirty (30) days of the date of this Order; and

(4) That within ten days of the date of this Order Verizon and Staff are directed to file a joint status report regarding the Audit Procedures/Replications of Performance Metrics;

_____/s/ Catherine I. Riley

_____/s/ Claude M. Ligon

_____/s/ J. Joseph Curran, III

_____/s/ Gail C. McDonald

_____/s/ Ronald A. Guns
Commissioners