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January 12, 2007

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pa. 17120

Re: Verizon's Proposed Revisions to the "Performance Assurance Plan -
Verizon Pennsylvania Inc.," Docket No. M-00011468F0007

Dear Secretary McNulty:

On behalf of Cavalier Telephone Mid-Atlantic, LLC. ("Cavalier"), I am writing to provide comments about Verizon's proposed changes to the "Performance Assurance Plan - Verizon Pennsylvania Inc." ("Current PA PAP").

Cavalier requests the Pennsylvania Public Utility Commission ("Commission") take the following actions: (1) Evaluate the Current PA PAP and Verizon's Proposed PAP ("Verizon's Proposed PAP") to determine if either has any utility; (2) conduct a study of the current competitive landscape similar to that ordered by the New Jersey Board of Public Utilities on its own motion on December 21, 2006; (3) based on that evaluation and study, establish a simple performance plan with a limited number of critical measures, evaluated by benchmark measurements only; and (4) retain the Current PA PAP while the Commission establishes the new streamlined PA PAP proposed by Cavalier.

Cavalier believes the Commission should not simply abdicate its responsibilities by relying on the decisions of the New York Commission. The Commission should, instead, go back to the basics and simply ask: What is it trying to accomplish and how can it best achieve that goal? The clear mandate of the Pennsylvania performance measures is to insure that its telecommunications customers receive excellent telephone service from all providers, including

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Competitive Local Exchange Carriers, who must rely upon Verizon, the incumbent carrier for necessary network facilities. To that end the PAP should encourage Verizon's compliance with its obligations as set forth under the 1996 Telecommunications Act as well as current federal and state laws, rules, and regulations. The framework for a competitive telecommunications model benefits all consumers. Where Verizon fails in its obligations, the performance measures should hold Verizon accountable and thereby discourage failures that affect the public. How to accomplish that purpose must be evaluated in the context of the current competitive market in Pennsylvania. The resulting plan should be simple, streamlined and easily audited. What is arcane should be eliminated. What is convoluted should be simplified.

1. Evaluation of Current PA PAP and Verizon's Proposed PAP.

Verizon asks the Commission to adopt the Verizon Proposed PAP without actually evaluating whether the Current PA PAP functions as it should. Verizon claims that the NY Guidelines and NY PAP (the "New York Plan") provide a good model for the Pennsylvania PAP because the NY PAP is the product of extensive regulatory review in New York and because by simply adopting the New York Plan, the Commission can reduce the burden of regulatory litigation. Such an argument is enticing for an inactive public utility commission content to let other state commissions do their work. However, the Pennsylvania Commission has historically led at the vanguard of change and competition, and has not simply followed disconsolately in the tepid wake of other Commissions.

Cavalier believes that the Current PA PAP is severely flawed and Verizon's Proposed PAP fails to address these flaws. The purpose of the Pennsylvania PAP is to provide a performance measure plan that discourages bad behavior and compensates competitive local exchange carriers ("CLECs") for Verizon's failures to abide by its obligations under the 1996 Telecommunication Act as well as current federal and state laws, rules, and regulations. No evaluation of the effectiveness of the Current PA PAP has been done nor has any recent evaluation of the current competitive landscape in Pennsylvania been undertaken. What services are Pennsylvania consumers buying? How does Verizon's performance affect these consumers? Should the performance penalties be increased or decreased to affect the current level of competition and consumer harm? This predicate evaluation is a necessary precondition to changing the Current PA PAP.

(a) Flaws in Current PA PAP.

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The Current PA PAP is complicated. It is self-administered by the subject company, Verizon, which brings the metaphor of the fox watching the hen house to mind. In that scenario it is not just CLECs who symbolize the easily victimized denizens of the hen house, but consumers who trust their telecommunications carriers to offer high quality of service or pay performance penalties. Compounding the self-serving nature of the Current PA PAP paradigm, CLECs are given only limited access to the underlying data under the guise of confidentiality. As such, carriers such as Cavalier, cannot determine the merits of either the Current PA PAP or Verizon's Proposed PAP, not to mention how the Proposed PAP would effect Cavalier's future payments or how to audit current or future performance. Trying to evaluate the Current PA PAP is akin to using the looking glass in Alice and Wonderland—the only certainty is that it makes no sense and never will under its current framework.

Cavalier's experience makes the flaws with the Current PA PAP painfully obvious. Each month, Verizon's data fails to match Cavalier's internal data. By way of example, for the Philadelphia market Cavalier's internal data measures three months of results as follows:

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New Loops- Philadelphia Market

<u>Ordered</u>	<u>On-Time</u> (completed within 10 calendar days of order)	<u>Late</u>	<u>Percentage Late</u>
Sept- 2,375	686	1689	71%
Oct- 2702	2114	588	21%
Nov- 2060	1553	507	24%

Hot Cuts- Philadelphia Market

<u>Ordered</u>	<u>On-Time</u> (completed within 10 calendar days of order)	<u>Late</u>	<u>Percentage Late</u>
Sept-1596	1190	306	25%
Oct- 1359	1285	74	5%
Nov-1070	825	245	22%

Repairs on New Orders and Hot Cuts

Repair Needed Within 24 hours
Sept- 1118

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Oct -1539

Nov-1125

Cavalier's own data suggests that it should be entitled to much higher bill credits than it currently receives under the Current PA PAP. Because the Current PA PAP is self-administered, however, Verizon has every incentive to under-report. Moreover, the failure of the Current PA PAP to provide a transparent, readily auditable evaluation of how Verizon is really doing, allows Verizon to continue to provide poor performance. In September, did Verizon itself install over 70% of its own loops late? Was Verizon singling Cavalier out for poor performance, as Cavalier is its only CLEC competition for POTS residential service in some areas, or is there an innocent explanation for this horrendous result? If Verizon's results for one carrier are off the chart, should Verizon be subject to stepped-up penalties? Did Verizon explain such a deficiency to the Commission? Cavalier's internal data makes clear that the Current PA PAP masks true problems, forcing CLECs to accept on face value the Current PA PAP because it is mired in complex data filters, mathematical formulae, and statistical calculations making it impossible to understand, not to mention audit. Un-auditable and unintelligible, the PA PAP should be fixed.

(b) The Proposed PAP.

Verizon's Proposed PAP does not solve any of the problems of the Current PA PAP. Verizon's Proposed PAP appears designed to address Verizon's pet peeves rather than the central issues. Cavalier does not dispute that UNE-P has vanished as a legal method of entry or that Verizon abhors the very memory of it and dollars at risk for it. However, it is unclear why the Commission should simply accept Verizon's proposal that dollars formerly at risk for UNE-P metrics should not be shifted to loop and repair metrics. Verizon believes it should have lower performance measure dollars at risk, but its own performance as measured by Cavalier's internal data suggest the reverse is true. Should residential customers who are provisioned now using UNE-L not continue to reap the deterrence benefits of purportedly stringent performance measures backed by the same dollars at risk? Are stiff penalties not even more important in the post-UNE-P world because the provisioning of UNE-L and hot cuts is much more technically difficult and manually intensive than UNE-P was, even in the heyday of UNE-P?

With respect to the number of metrics, Cavalier commends Verizon's effort to reduce the overall number of measures. However, deleting measures that are critical to residential customers would be an abdication of Pennsylvania's commitment to Pennsylvania residential consumers.

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Why should residential customers who have no dial tone be guaranteed that Verizon will have no performance incentive to remedy the problem within 24 hours because Verizon's own service is terrible (making parity meaningless) and Verizon has unilaterally decided the metric is too hard, it just cannot do it? Is the message to residential consumers by such a position: we can abandon the copper plant, just switch to our fiber FIOS product and life will be grand? Cavalier believes that metric should be retained based on a benchmark, rather than parity, with the bill credit dollars increased significantly. Only then will Pennsylvania consumers who still rely on the copper plant see better results.

Consumers would be far better served if Verizon simply agreed to start over on its plan. Significantly limit the number of measures, increase the penalties for each, and provide a transparent, auditable path towards good service; such should be the mission of the revised PAP. Instead, Verizon's Proposed PAP is just the poor stepchild of that which came before. Verizon's Proposed PAP remains self-administered, leaving CLECs scratching their heads about numbers that do not correlate or harmonize with CLECs' internal numbers. Verizon's Proposed PAP retains the convoluted mathematical formulas and reliance on parity measures leaving Pennsylvania consumers stuck in a race to the bottom. While these problems are shared with the Current PA PAP, it is time to fix them. It is time to stop repeating the historic paradigm of a PAP that fails to function in a transparent, auditable way and replace it with one that gives the CLECs and the Commission visibility to Verizon's flaws and encourages better performance for Pennsylvania consumers.

(c) Payment Evaluation.

To assist devising a new PAP, the Commission should order Verizon to provide an analysis of the Current PA PAP on a carrier-specific basis. Interested carriers can be required to sign confidentiality agreements. In a workshop setting, the carriers would then be able to audit and understand the Current PA PAP and examine its flaws in a more significant way, rather than simply abdicating all responsibility to the New York Carrier Working Group. Without such evaluation, carriers are limited to reviewing their individual data and trying to apply a convoluted formula devised by Verizon. Simply put, without a PhD in mathematics and a Verizon-trained economist at one's side, a CLEC cannot make any sense of the Current PA PAP or whether Verizon's performance is being correctly assessed under the Current PA PAP. To a CLEC armed only with its own data and a set of the rules, the Current PA PAP, with its complex

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Z scores, could be a middling performance measures plan that is impossible to understand or it could be a coded blueprint for a cheese shop in Lancaster.

2. Current Competitive Landscape.

The Commission must evaluate the current competitive landscape to determine the appropriate PAP for today's world. While the largest CLEC of the last century, ATT, has been absorbed by the former SBC and is now married to BellSouth, the second largest CLEC, MCI, was absorbed by Verizon itself. Meanwhile, numerous other significant CLECs, such as Z-tel and ATX have left the scene, either through absorption into larger entities or dissolution. Where in 2002 a vibrant competitive market offered Pennsylvania residential consumers numerous competitive choices for "Plain Old Telephone Services" ("POTS"), in 2007 Cavalier is virtually the only competitive provider offering a competitive choice to Pennsylvania residential consumers who want POTS.

Verizon alludes to these changes in its Performance Assurance Plan 4.0 Review, which states: "*Verizon has experienced a reduction of over 70% covered by the Current PA PAP and 319,703 ports have reduced lines covered by the Current PA PAP are off Verizon's network since 2000.*" Such anecdotal statistics may mask the true story, as the competitive landscape is more than "ports leaving Verizon's network." Competition should be measured by numerous factors, including, without limitation, change in type of modes of entry, wholesale and retail revenues by modes of entry for Verizon and CLECs, repair by modes of entry, and ease and problems associated with switching from one carrier to another by mode of entry.

The Commission should require Verizon to reveal that the true story of its performance since 2000, rather than the piecemeal information it has provided under the Current PA PAP, to the New York CWG, or through various regulatory proceedings. That information should be tailored to the current competitive landscape but also reflect the trends that justify an increase or decrease in performance plan dollars. How many of the ports that left Verizon's network are ports on a CLEC network for which Verizon still provides the loop? To what extent has Verizon's revenue per CLEC leased loop increased or decreased? How many loops has Verizon won back since 2000? What are Verizon's repairs per CLEC UNE-L customer compared to its repair per UNE-P customer prior to the end of UNE-P? What are Verizon's repairs per customer won back to Verizon compared to repairs per CLEC customer subject to a hot cut?

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With an up-to-date evaluation of current competitive conditions, the Commission could evaluate the appropriate performance payments per mode of entry. For example, if all residential competition for POTS is either provided for broadband customers through a VOIP type offering (outside of the Commission's jurisdiction) or by UNE-L for which Cavalier is the only competitive provider, should all the dollars formerly allocated to UNE-P be moved into new loops and DSL loops on a dollar-for-dollar basis rather than only a portion of such dollars? Does that evaluation change if the Commission's analysis shows four times more repair for UNE-L residential customers than former UNE-P customers?

3. Cavalier Proposed PAP.

Cavalier proposes that following the evaluation set forth above, the Commission address the actual problem at hand: Verizon's performance. Rather than merely scaling down the Current PA PAP, Cavalier proposes jettisoning it and starting with something fresh that addresses the core critical measures with simple benchmarks. These core critical measures would be those stand-alone measures critical to CLECs. While parity is an enticing democratic ideal, it fails as a useful measurement for performance as it encourages a race to the bottom. Rather than pandering to the lowest common denominator, why not have performance measurements that actually set a standard and measures ability to meet it?

An example of the flaws in the Verizon Proposed PAP is the loss of dial tone within 24 hours for residential POTs customers. Verizon blithely claims, "oh we cannot have such a benchmark since we do not do our own repairs within 24 hours, so we will just measure at parity." Such admission is astounding as Verizon is asking the Commission to eviscerate a standard not because it is superfluous, but because it is just too hard. Under the Cavalier Plan, the Commission would, instead, require Verizon to provide loss of dial tone repairs for residential POTS customers at a benchmark of 98% within 24 hours, with performance penalties for failure to meet such benchmark. Because the measurements for repair are indeed critical measures, the affected CLEC would be entitled to performance payments for every failure.

By way of example, the Cavalier Performance Measurements for repair and installation could be reduced to a five-by-five matrix as follows:

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<u>Category</u>	<u>On Time</u>	<u>Repair needed within 48 hours of Verizon's order completion order</u>	<u>Total Repair Percentage</u> (Number of CLEC orders in Queue during a 24 hr period)	<u>Repair Completed within 24 hours of CLEC order</u>	<u>Repair Repeat Troubles</u>
New Loops	5 days from CLEC order	98% no repair	Less than 5% of orders in queue have repair	98% completed within 24 hours of CLEC order	Less than 5% during any calendar month
Hot Cuts	5 days from CLEC order	98% no repair	Less than 5% of orders in queue have repair	98% completed within 24 hours of CLEC order	Less than 5% during any calendar month
DSL Loops	5 days from CLEC order	98% no repair	Less than 5% of orders in queue have repair	98% completed within 24 hours of CLEC order	Less than 5% during any calendar month
T1 Loops	20 days from CLEC order	98% no repair	Less than 5% of order in queue have repair	98% completed within 24 hours of CLEC order	Less than 5% during any calendar month
No Facilities	100% accuracy of CLEC				

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	orders showing “no repair”; i.e. no inaccurate reports during a calendar month				
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4. Conclusion.

Cavalier believes Pennsylvania consumers deserve a change in the Current PA PAP. While we share Verizon’s desire for a reduction in the number of performance measures, we do not believe the method for such reduction should be the elimination of those that Verizon cannot meet or does not like. Nor do we believe simply repeating the intrinsic flaws of the Current PA PAP makes any sense. What New York has done is informative, but not dispositive of what Pennsylvania could, or should, do. Verizon is comfortable with the Current PA PAP and thus seeks only incremental adjustments to it, and a substantial dilution of its potential financial impact. In this regard, Verizon is like a person who holds a hammer and thus sees a nail. The Commission has a broader purview, and it should look to all the potential tools at hand.

Accordingly, Cavalier urges the Commission to take on the hard job of creating a new PAP for Pennsylvania rather than letting Verizon woo us into believing its shoddy effort will serve Pennsylvania consumers in the years to come. Because the same core PAP framework is maintained, Verizon’s Proposed PAP fails to provide the simplicity, transparency, audit ability, and reliability that will make the Pennsylvania PAP meaningful. The addition of some metrics and the deletion of others fail to address the problematic paradigm of the Current PA PAP. Similarly, changing the effect of the “Z Score” misses the point—the Z Score should be deleted in favor of benchmarks. Cavalier proposes the plan set forth in Section 3 above with the addition of other critical measures advocated by the CLEC community, and recommends the Current PA PAP be maintained until completion of the proper evaluation of the Current PA PAP, Verizon Proposed PAP, Cavalier Proposed PAP, and competitive landscape. It is time for Pennsylvania to lead the region in a streamlined, effective, transparent performance measure plan that all carriers, not just Verizon, can understand, audit, and embrace.

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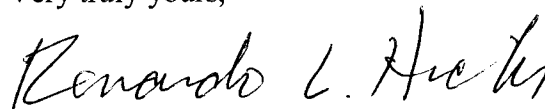
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If you have any questions about this matter, please call me.

Very truly yours,



Renardo L. Hicks, Esquire

Francie McComb, Esquire

Vice President Regulatory Affairs

FOR: Cavalier Telephone Mid-Atlantic, LLC

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