|  |  |  |
| --- | --- | --- |
|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** |  |

|  |  |
| --- | --- |
|  | Public Meeting held December 17, 2015 |
| Commissioners Present: |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Gladys M. Brown, Chairman | | | |  | |
| John F. Coleman, Jr., Vice Chairman | | | |  | |
| Pamela A. Witmer | | | |  | |
| Robert F. Powelson |  | |
| Andrew G. Place | | ----- | | |
| PMO III – Administrative and Process Changes (Folder 19) | | M-2015-2464294 | | |
| PMO – Performance Metrics & Remedies (Folder 19) | | M-00011468 | | |

**ORDER**

**BY THE COMMISSION:**

On November 5, 2015, Verizon Pennsylvania LLC (Verizon PA) filed a Petition for Reconsideration (Petition) relative to the Commission’s Order entered on October 22, 2015, in the captioned Folder 19 proceedings. The Petition was electronically served on the members of the Pennsylvania Carrier Working Group (PA CWG). No protests or comments were received other than Verizon PA’s comments in support of the proposed changes. On November 19, 2015, in a Short Form Order, we granted reconsideration in order to retain jurisdiction pending our substantive review and consideration of the merits of the Petition.[[1]](#footnote-1) Upon review and consideration, we decline to eliminate the six-month parallel reporting requirement.

**Petition for Reconsideration**

Petitions for reconsideration are governed by 66 Pa. C.S. § 703(g), 52 Pa. Code § 5.572, and *Duick v. PGW*, 56 Pa. P.U.C. 553 (1982). “A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion . . . to rescind or amend a prior order in whole or in part.” A party may not raise the same questions in a petition for reconsideration that were raised in a prior pleading. Such questions raised ought to be those that “appear to have been overlooked or not addressed by the Commission.” If “new and novel” questions are not raised, a party will not succeed in persuading the Commission that the “initial decision on a matter or issue was either unwise or in error.” *Duick* at 558.

Verizon PA alleged in its Petition that parallel reporting after a change in the metrics that measure the service it provides to competitive local exchange carriers (CLECs) is a departure from precedent, was not discussed prior to the Order, will not serve a beneficial purpose, and will impose significant costs on Verizon PA.

For the reasons discussed below, we shall deny the Petition on the merits. Verizon PA has not raised any new or novel issues or matters that we have overlooked. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993); also see, generally, *U. of PA v. Pa. Public Utility Commission*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Accordingly, any argument or comments relative to this matter, which we may not have specifically delineated herein, shall be deemed to have been duly considered and denied without further discussion.

**History of Metrics and Remedies in Pennsylvania**

This brief history of metrics and remedies in Pennsylvania details the precedent relative to our having required parallel reporting dating back to the first set of proposed changes to the metrics and remedies used in Pennsylvania. Additionally, the parties have had express instructions from us to consider and discuss parallel reporting in formulating their recommendations to us regarding proposed changes. We have determined that parallel reporting does serve several beneficial purposes, not the least of which is to ensure that any difference in results before and after a change is due to performance changes and not to the changes in the measurement tool(s). Parallel reporting is neither costly nor overly burdensome in the context of service rendered to the CLECs when one considers that Verizon PA is already under an obligation to run the raw data through one set of algorithms and, as with any approved change, will have to create the new algorithms regardless of any requirement for parallel reporting.

In 1999, the Commission first adopted the Pennsylvania Carrier-to-Carrier Guidelines (PA Guidelines) and the Pennsylvania Performance Assurance Plan (PA PAP). While the initial Pennsylvania metrics and remedies bore some resemblance to metrics in use in other states, these 1999 metrics and remedies were unique to Pennsylvania. *See Joint Petition of Nextlink, et al., for Investigation of Performance Standards, Remedies and OSS Testing for BA-PA, Inc.*, Docket No. P-00991643 (December 31, 1999). Further, in addressing subsequent assertions that some of those then-existing metrics were “statistically invalid,” the Commission required that the raw data from the transactions measured by those metrics be run through both the existing and the proposed new metric to determine what remedies would be due. Thus, even though the term “parallel reporting” was not used, the same data was run through two sets of metrics, which is precisely what is now meant by “parallel reporting.” *See* P-00991643 for the order entered on June 27, 2002, and two orders entered on December 5, 2002. The proceedings affecting this version of the metrics in the PA Guidelines and remedies in the PA PAP are now referred to as *PMO I*.

The first significant change to the PA metrics and remedies occurred in 2002 when they were migrated to a version patterned on metrics and remedies used in New York. The Pennsylvania framework to accomplish this stemmed from Verizon PA’s Section 271 process[[2]](#footnote-2) and thereafter involved hearings at this Commission before an Administrative Law Judge (ALJ) who issued a Recommended Decision on October 2, 2001. Exceptions were filed, and we entered a Tentative Order on June 24, 2002. Thereafter, comments were filed, and included, *inter alia*, a Verizon PA objection to the parallel reporting as proposed in the June 24, 2002 Tentative Order. A Final Order was entered on December 10, 2002. *PMO II*, Docket No. M‑00011468 (December 10, 2002). The proceedings affecting this version of the PA Guidelines and PA PAP are referred to as *PMO II*.

In the December 10, 2002 Final Order, we expressly required parallel reporting which obligated “Verizon PA to provide the existing aggregate metrics and the existing remedies reports to the Commission until all new metrics and new remedies adopted [therein] have been reported for a three-month cycle.” *PMO II* (December 10, 2002) at 71-73. Further, the Commission concluded that Verizon PA’s comments that parallel reporting is burdensome were “a bald assertion unsupported by any quantification or substantiation.” We also held that parallel reporting would not require more of Verizon PA than what it was already doing, that the advantages of parallel reporting “far outweigh any suggested burdens,” and that parallel reporting may act as a “safety net” for Verizon PA. The primary goal was (and still is) to analyze performance. *PMO II* (December 10, 2002) at 71-72*.[[3]](#footnote-3)* The dynamics of performance would vary from month to month, and a period of parallel reporting would look at identical performance under both the former set of measurements and the newly adopted set of measurements, ensuring that any differences in reported results were due to actual performance changes and not to changes in the measurement tools.[[4]](#footnote-4) The *PMO II* metrics and remedies for use in Pennsylvania remained Pennsylvania-focused, and the Commission specifically rejected the recommendation that Pennsylvania adopt changes merely because they are adopted in New York. *PMO II*, (December 10, 2002) at 35-41, 83-88.[[5]](#footnote-5)

The next significant change was to work toward more uniformity among the metrics and remedies used in the various states throughout the Verizon Footprint (*i.e.*, the former Bell Atlantic and NYNEX territories, excluding the former GTE territories). *See* *PMO II* Folder 5, Docket No. M-00011468 (December 21, 2004). Pennsylvania expressly retained its focus and insistence that any changes applicable in Pennsylvania were to be supported by Pennsylvania-specific justifications. In particular, the Commission stated that “Pennsylvania has the absolute right to initiate state-specific provisions and to modify common provisions as the need arises.” *PMO II* Folder 5 at 9.

During the next 19 months there were various efforts to address issues and anomalies in metrics and remedies identified by third-party audits and reviews in several states in the Verizon Footprint, including the Doherty Pennsylvania Review at *PMO II*, Folder 2 and Docket No. D-03SPS007 (March 19, 2004). Additionally, adjustments to the Pennsylvania metrics based on the Federal Communications Commission (FCC) *TRO*

and *TRRO*[[6]](#footnote-6) rulings were agreed to, but implementation was deferred until changes to the Pennsylvania remedies could be implemented. Also, data related to transactions for the former MCI operations was rolled into the Verizon PA retail data.

Thereafter, Verizon PA proposed to reduce the number of Pennsylvania metrics by approximately one-third and to reduce the dollars at risk pursuant to Pennsylvania remedies by approximately two-thirds. In support of this proposal, Verizon PA presented as justification six months of performance data run through the then-existing *PMO II* metrics and remedies and through the proposed new metrics and remedies. The Commission’s June 27, 2008 order, entered as Folder 11 at Docket No. M‑00011468, adopted modified changes, directed reinstatement of the FSSO Fund[[7]](#footnote-7) (at 31-32), and ordered parallel reporting for 12 months following implementation of the changes (at 30). This version of the metrics and remedies used in Pennsylvania is referred to as *PMO III*. Verizon PA requested reconsideration of the FSSO Fund and the parallel reporting.

By order entered at Folder 11 in M-00011468 on September 11, 2008, upon reconsideration, the Commission eliminated reinstitution of the FSSO Fund (at 6) and reduced the requirement for parallel reporting to six months (at 4-5). The Commission determined that it could rely on the historical parallel reporting that Verizon PA had already placed on the record to support its proposal and couple that with a prospective six months of parallel reporting after the change was fully implemented. The Commission also required the parties (Verizon PA and the CLEC stakeholders/ PA CWG) to:

[A]ddress parallel reporting in future changes to the Pennsylvania metrics and remedies. In that regard, the parties should indicate how parallel reporting will be accomplished or establish why parallel reporting will not be necessary for any given change.

*PMO III* Folder 11 at 5. The FSSO Fund provisions were eliminated in response to Verizon PA’s agreement to cover the cost of “annual audits” at the aggregate and CLEC level.[[8]](#footnote-8) *PMO III* Folder 11 at 6.

The next significant changes were adopted by the Commission by order entered on March 30, 2010. See *PMO III* Folder 15.[[9]](#footnote-9) Verizon PA proposed the elimination of 103 submetrics and some statistical adjustments. The changes were justified by representations that the underlying performance data would be retained and available for analysis if questions arose, that alternate metrics provided the same information, and that certain products were clearly no longer being ordered by the CLECs. While parallel reporting was not expressly required, the retained data would provide a basis for analysis should questions arise.[[10]](#footnote-10)

**History of M-00011468 Folder19**[[11]](#footnote-11)

On July 7, 2015, Verizon PA filed a proposal to revise the PA Guidelines to conform the Pennsylvania metrics to the June 2015 NY Guidelines. The proposed revisions were designated *PMO III F0019*. Verizon PA stated that the proposed revisions stemmed from consensus changes adopted by the NY PSC on May 14, 2015. Verizon PA attached a copy of the NY PSC Order as well as the proposed revised PA Guidelines. Verizon PA asserted that the majority of the proposed revisions were process changes involving the deletion of metrics that it deemed unnecessary due to low or no activity. There were 93 process changes and a number of administrative changes. Staff requested supplemental Pennsylvania-specific information from Verizon PA, which was ultimately shared with the PA CWG and placed on the record.

On October 22, 2015, the Commission entered an Order, now under reconsideration, approving the proposed revisions and requiring a six-month parallel reporting period in which Verizon PA must report performance under the existing version of the PA Guidelines and the F0019 version. We stated that the purpose of the parallel reporting requirement is to confirm that the deletion of metrics with low or no activity does not affect service rendered. In addition, we reminded stakeholders that proposals for changes in the Pennsylvania metrics and remedies must be justified and structured specifically for Pennsylvania operations. The Commission emphasized that it is not sufficient to refer to an order from another jurisdiction or to argue that the Commission ought to adopt a proposal merely because one or more other jurisdictions have made similar changes. *PMO III Folder 10* at 9-11.

On November 5, 2015, Verizon PA filed its Petition requesting reconsideration of the parallel reporting requirement set out in our October 22, 2015 *PMO III* Folder 19 Order. Verizon PA’s Petition states that the six-month parallel reporting requirement is a departure from precedent that was not discussed prior to the October 22, 2015 Order and will serve no beneficial purpose while imposing significant programming costs on Verizon PA. Therefore, Verizon PA requests that the Commission grant its Petition and eliminate the six-month parallel reporting requirement.

**Discussion**

Pennsylvania does not automatically adopt metrics or remedies changes that have been adopted in New York or other jurisdictions. We require Pennsylvania-specific data to support the proposed changes to metrics and remedies. Pennsylvania entities[[12]](#footnote-12) are to be afforded notice and opportunity for hearing on proposed changes. PA CWG members typically have the opportunity to discuss collaboratively any proposed changes when the changes are proposed and again after all parties including Verizon PA have filed their comments. Further, we have previously required that Verizon PA engage periods of parallel reporting to ensure that changes in metrics reports (or remedies reports) accurately reflect a change in performance rather than merely a change in the tools and standards used to measure performance and remedy non-conforming performance. Folder 19 is not the first time, nor do we anticipate that it will it be the last time, that we have required parallel reporting. Verizon PA cannot claim to have been surprised by the requirement of parallel reporting.

We do not base our decisions regarding the metrics and remedies used in Pennsylvania on Verizon PA’s “uniformity-in-the-Footprint” or “mirror-New York” arguments in support of the changes. Further, whether New York or any other state in the Verizon Footprint has adopted a particular change for its use does not control Pennsylvania’s decision to adopt or reject it for use in Pennsylvania. Nor is it justification for making such a change in Pennsylvania. Pennsylvania does not base its decision on what occurs in other jurisdictions.

As we have said in prior orders, we do not believe that one can automatically assume that no misses in a metric or infrequent orders for a product mean that it is safe or prudent to eliminate the metric from measurement. Parallel reporting provides, for a temporary time period, a “comparison of the current plan with the proposed plan” and measures the “relative effect of the substantial changes made.” This is a clear benefit from and purpose for parallel reporting. We see no reason to proceed without a parallel reporting period for the Folder 19 proposed changes.

As we provided in *PMO III* Folder 11, the parties have always been welcome to address parallel reporting in proposing changes to the PA metrics and remedies or in comments related to proposed changes. Their options included addressing how parallel reporting would be accomplished or why parallel reporting would not be necessary for any given change. September 11, 2008 *PMO III Folder 11* Order at 5*.* Prior to our October 22, 2015 Order in the current matter, the parties neither proposed an alternative to parallel reporting nor did they assert that it would not be necessary. Thus, consistent with the established precedent relative to metrics and remedies changes in Pennsylvania, we required a six-month parallel reporting period for this set of changes. It is within our discretion to require parallel reporting and to determine what constitutes parallel reporting.

The current requirement of six months of parallel reporting for the 93 proposed changes is no greater than we have required for any other change. We do not find it to be an onerous burden or unreasonably costly for Verizon PA to provide the parallel reports. It already is reporting under the existing algorithms, it will have to develop the new algorithms regardless, and it is required to maintain the underlying data.

**Conclusion**

With regard to the merits of Verizon PA’s Petition, the requirement of a parallel reporting period for six months is not a departure from precedent, but rather, is consistent with precedent. Accordingly, there is no need to reduce or eliminate the parallel reporting period in the instant case. While parallel reporting may not have been discussed in the PA CWG prior to this specific Order, neither was the elimination of the routine parallel reporting requirement. The process of using the old metrics to measure the effect of the new metrics is crucial. Parallel reporting for a temporary time period ensures that performance is not compromised by recently adopted changes to metrics (or remedies) in Pennsylvania. It cannot be assumed that the deletion of metrics will not affect performance. In that regard, parallel reporting for a temporary time period also serves as a safety-net for Verizon PA. Ensuring that performance is not compromised or that the measurement of performance is not skewed by a change in the measurement tool is a beneficial purpose that outweighs the perceived burdens. Parallel reporting does not require significantly more of Verizon PA than what it is already doing, *i.e.*, utilizing the old metrics. Additionally, the parallel reporting period is merely six months. The requirement is temporary and, assuming no discrepancies or other problems are revealed, will be lifted after a relatively short period of time. Any burdens of parallel reporting are minimal and temporary. As such, there remains no need to eliminate the parallel reporting period.

Further, in its Petition, Verizon PA discusses the “cumbersome process” in place for making changes to the PA Guidelines, noting that when the NY PSC adopts changes to the NY Guidelines, other states adopt the changes as well. Pennsylvania does not automatically adopt changes that have been adopted by other states in the Verizon Footprint. Pennsylvania has not and will not rely upon New York or other states in the Footprint to determine which changes are suitable for Pennsylvania. Pennsylvania retains the autonomy and discretion to adopt, reject, or modify, including the implementation of a parallel reporting period, any proposed changes to the metrics (and remedies) as used in Pennsylvania.

For the foregoing reasons, we conclude that Verizon PA has not shown good cause to eliminate the six-month parallel reporting requirement; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration filed by Verizon Pennsylvania LLC on November 5, 2015, is denied on its merits.

2. That Verizon Pennsylvania LLC shall file a Compliance Filing consistent with the October 22, 2015 Order at these dockets within fifteen (15) days of the date of the entry of this Order.

3. That Verizon Pennsylvania LLC shall file, serve, and post on its website an implementation schedule consistent with its quarterly implementation pattern within fifteen (15) days of the date of the entry of this Order.

4. That this proceeding relative to Folder 19 shall be marked closed upon notice from Verizon Pennsylvania LLC that the changes have been implemented as approved herein and that the parallel monthly reports have been timely submitted for the six months of operations after the Folder 19 changes have been fully implemented in Pennsylvania.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 17, 2015

ORDER ENTERED: December 17, 2015

1. Under Pa. R.A.P. 1701(b)(3), the Commission must grant a timely filed petition for reconsideration within 30 days of the entry of the order for which reconsideration is sought in order to preserve jurisdiction. [↑](#footnote-ref-1)
2. *Consultative Report on Application of Verizon PA, Inc., for FCC Authority to Provide In-Region Intra-LATA Service in Pennsylvania*, Docket No. M-00001435. *See also* the PA PUC Consultative Report (June 25, 2001) in *Application of Verizon PA, Inc. for Section 271 Authority*, FCC Docket No. 01-38. [↑](#footnote-ref-2)
3. This order also set the dollars at risk for remedies at 39% of Verizon PA’s net local service revenues which becomes a relevant comparison later when Verizon Pennsylvania would propose to significantly reduce its risk. [↑](#footnote-ref-3)
4. The December 10, 2002 order was subsequently addressed by the Commission in response to a petition for reconsideration and/or clarification regarding directory listing/White Pages metrics, but no issues were raised on reconsideration regarding the requirement of parallel reporting. Docket No. M‑00011468 (March 10, 2003). [↑](#footnote-ref-4)
5. In a contemporaneous proceeding, the Commission said that it “shall not elevate uniformity [with a sister state] over our statutory responsibilities. Neither would we intentionally create a situation where our statutory advocates, whose enabling authority relegates them to Pennsylvania interests, are grossly inconvenienced in their ability to discharge their duties,” *UNE Rates Investigation*, Docket No. R‑00016683 (November 2, 2002), citing the June 24, 2002 *PMO II* Tentative Order in Docket No. M‑00011468 at 18. [↑](#footnote-ref-5)
6. Review of Section 251 Unbundled Obligations of ILECs, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, [18 FCC Rcd 16978 (2003)](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2003639891&pubNum=0004493&originatingDoc=I5c5fd42e9f4811dfa765bd122ea7dc89&refType=CA&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) (Triennial Review Order or *TRO*). [Unbundled Access to Network Elements, Order on Remand, 20 FCC Rcd 2533 (2005)](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2006193087&pubNum=0004493&originatingDoc=I5c5fd42e9f4811dfa765bd122ea7dc89&refType=CA&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) (Triennial Review Remand Order or *TRRO)*. [↑](#footnote-ref-6)
7. The FSSO Fund was initially established pursuant to our *Functional Structural Separation Order*, Docket No. M‑00001353 (April 11, 2001) (*FSSO*) at 38-39. The *FSSO* increased *PMO I* remedies by 50% and provided that the increased remedies would be remitted to the Commission for the purpose of engaging an independent consultant to train and assist staff in the analysis of metric reports to ensure Verizon PA’s compliance. Payments to the FSSO Fund ended with the implementation of the *PMO II* versions of the PA metrics and remedies. *See PMO III Folder 11* (June 27, 2008) at 31-32. [↑](#footnote-ref-7)
8. Despite Verizon PA’s obligation to fund annual audits, there has only been one independent “review” of the Pennsylvania metrics and remedies since 2008, *i.e.*, the Silverpoint Review. *See* *M-00011468* Folder 18 Order entered July 16, 2008. [↑](#footnote-ref-8)
9. Parallel citation: Docket No. M-2009-2133580. [↑](#footnote-ref-9)
10. Based on long-standing requirements in various orders, Verizon PA is required to provide the algorithms it uses to analyze the data (*i.e.*, to calculate the metrics and remedies) to the Commission. *See*, *e.g.*, *PMO III Folder 11* (June 27, 2008) at 31, which maintained the audit and review provisions of the *PMO II* PA PAP. The *PMO II* PA PAP required Verizon PA to retain the “flat files” and “any necessary data to allow audits” for rolling four-year retention periods, at a minimum. [↑](#footnote-ref-10)
11. Parallel citation: M-2015-2464294. [↑](#footnote-ref-11)
12. Such entities include all CLECs operating in Pennsylvania, some of whom participate in the PA CWG. Other stakeholders are the Office of Consumer Advocate, the Office of Small Business Advocate, and the Bureau of Investigation and Enforcement. [↑](#footnote-ref-12)