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

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| --- | --- |
|  | Public Meeting held May 4, 2017 |
| Commissioners Present: |  |

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| --- | --- | --- | --- | --- | --- |
| Gladys M. Brown, Chairman | | | |  | |
| Andrew G. Place, Vice Chairman | | | |  | |
| John F. Coleman, Jr., concurring in result only | |  |
| Robert F. Powelson, concurring in result only | |  |
| David W. Sweet | |  |
| PMO III – Petition of Verizon Pennsylvania LLC for Waiver of Certain Service Quality Results Measured Under the Pennsylvania Performance Assurance Plan for April, May, and June 2016 (Folder 20) | P-2016-2551053 | | | |
| PMO III – Performance Metrics and Remedies – April, May, and June 2016 – Petition for Benchmark Remedy Waiver (Folder 20) | M-00011468 (F0020) | | | |

**ORDER**

**BY THE COMMISSION:**

Presently before the Commission is a request[[1]](#footnote-1) from Verizon Pennsylvania LLC. (Verizon PA[[2]](#footnote-2)) requesting a waiver of certain service quality results measured under the Pennsylvania Performance Assurance Plan (PA PAP) for wholesale interconnection services that it provided to Pennsylvania competitive local exchange carriers (CLECs) in April, May, and June 2016. Active members of the Pennsylvania Carrier Working Group (PA CWG) have not objected to Verizon PA’s request.

This Order considers whether the PA PAP “requires” that Verizon PA be excused from paying remedies for wholesale performance that does not meet standards of performance established in the PA Guidelines due to a work stoppage by unionized employees, as Verizon PA alleges. This request will also be granted, consistent with this Order.

A similar waiver request from Verizon NY was granted by the New York Public Service Commission (NY PSC) on January 26, 2017.[[3]](#footnote-3)

**Background**

**Pennsylvania:** The PA Carrier-to-Carrier (C2C) Guidelines (PA Guidelines) contains the metrics that measure operational aspects of the wholesale interconnection services that Verizon PA renders to PA CLECs.[[4]](#footnote-4) The PA PAP contains self-executing remedies that are designed to recompense CLECs if Verizon PA’s wholesale service fails to meet performance standards specified in the metrics.

The first PA Guidelines and PA PAP, adopted in *Joint Petition of Nextlink, et al., [re] Performance Standards, Remedies . . . and Operations Support Systems Testing for Bell Atlantic-PA, Inc.*, Docket No. P‑00991643 (Order entered December 31, 1999) (*PMO I*), were Pennsylvania-generated and Pennsylvania-specific. Thereafter, in conjunction with agreements reached during Verizon PA’s Section 271 proceeding at Docket No. M‑00001435, Pennsylvania migrated to metrics and remedies patterned after the New York (NY) Guidelines and the NY PAP. *See* *PMO II*, Docket No. M‑00011468 (Order entered December 10, 2002). The most significant change resulting from that migration was the manner in which performance was measured. That change resulted in lower remedies for the missed metrics as demonstrated by parallel reporting under both systems. Each significant change in the PA Guidelines or the PA PAP since then has been implemented using parallel reporting to ensure that any differences in measured or calculated results or remedies are due to a change in the measurement tools or calculation formulae and not to a change in actual performance.

Subsequently, various states in the original Verizon footprint including Pennsylvania have each independently agreed to try to use common, footprint-wide metrics and remedies (based more closely on the NY models) with the *proviso* that each state could customize the Footprint Guidelines and the Footprint PAP. *See* *PMO II*, Docket No. M‑00011468F0005 (Order entered December 16, 2004), wherein Pennsylvania migrated to a system predicated on Footprint-based metrics and remedies. State-specific distinctions are noted in Footprint Guidelines and Footprint PAP posted on the Verizon website.[[5]](#footnote-5)

The PA Guidelines and PA PAP have been further modified several times since the F0005 migration with the most significant modification being the revisions at *PMO III*, Docket No. M-00011468F0011 (Order entered June 27, 2008).[[6]](#footnote-6) This again resulted in significant changes in metrics subject to remedies and in the remedies calculations. The *PMO III* metrics and remedies presently in effect in Pennsylvania were last modified by Commission order entered on December 17, 2015, at Docket Nos. M‑00011468 and M‑2015-2464294, with the designation F0019 or Folder 19.

**PA CWG:** The PA Carrier Working Group (CWG) was formed in 2003 pursuant to *PMO II* to provide a mechanism for Verizon PA and PA CLECs to resolve metrics and remedies issues and to coordinate with similar groups in other jurisdictions.[[7]](#footnote-7) Primary participation in the PA CWG is open to Pennsylvania ILECs, CLECs, statutory advocates, and Commission staff, as well as consultants sponsored by these entities. Secondary participation is open to such entities from other jurisdictions. While encouraging consistency across the traditional Verizon footprint,[[8]](#footnote-8) the Commission has recognized that PA CLECs do not operate in every Verizon footprint state, that all products are not available in all states, that market participants have different operational issues and timelines in their respective competitive environments, and that regulatory agencies in the various jurisdictions throughout the traditional Verizon footprint have differing enabling legislation, missions, and approaches to market regulation.

**Metrics and Remedies Change Process:** By custom, proposed Footprint-wide metrics and Guidelines changes are typically initially discussed in the NY CWG by Verizon, NY CLECs, and other interested parties.[[9]](#footnote-9) When the NY entities reach a consensus and/or impasse,[[10]](#footnote-10) the matters are presented to the NY PSC, which, after notice and opportunity for hearing in New York, generally adopts consensus items and resolves non-consensus items for use in New York.[[11]](#footnote-11)

The NY CWG, however, has no role in addressing remedies or PAP matters.[[12]](#footnote-12) In New York, proposed remedies and PAP changes are initially a matter of negotiation between the NY PSC staff and Verizon NY. Proposals and recommendations for changes to the NY remedies and NY PAP go directly to the NY PSC without collaborative input from NY CLECs (or other entities) or recommendation of the NY CWG. The NY PSC, after notice and an opportunity for hearing in New York, generally adopts uncontested proposed remedies changes and resolves on-the-record disputed remedies proposals for use in New York.

Metrics/Guidelines and remedies/PAP changes that have been approved by the NY PSC are then presented by the Verizon entity operating in a given state to each state that uses the Footprint Guidelines and Footprint PAP for that state’s respective consideration and potential adoption as Footprint-wide changes for use in the respective states. In some cases, a metrics or remedies change may originate in a state other than New York.

For changes intended to be considered for use in Pennsylvania, Verizon PA notifies this Commission, the PA CLECs, and the PA statutory advocates of proposed Footprint-wide changes after NY PSC adoption by way of a proposed “update” to the PA Guidelines or the PA PAP.[[13]](#footnote-13) This process affords PA CLECs, PA statutory advocates, and Commission staff with the opportunity for collaborative analysis in the PA CWG of any proposed metrics or remedies changes and the ways in which the proposed changes may relate to Pennsylvania operations. After discussion in the PA CWG, interested parties are given notice and an opportunity for hearing and/or filed comments in Pennsylvania prior to any Commission action on the metrics or the remedies used in Pennsylvania. If the parties so desire or staff considers that it would be productive, the matter can be further discussed in the PA CWG. Upon the conclusion of the comment period and after the PA CWG has reached consensus or impasse, staff prepares a recommendation for Commission consideration at Public Meeting.

Pennsylvania is under no obligation to adopt either NY or Footprint metrics/Guidelines or remedies/PAP changes.[[14]](#footnote-14) Pennsylvania retains complete autonomy to develop, adopt, modify, or reject any NY-adopted or Footprint-wide changes to the Footprint Guidelines and Footprint PAP for Pennsylvania operations, as well as to develop, adopt, modify, or reject any specific or alternative metrics and remedies proposed or designed specifically for operations and market conditions in Pennsylvania.

**2011 Waiver Request**

**Docket No. M-2011- 2269052 & M-00011468 (Folder 18) (January 30, 2012)[[15]](#footnote-15)**

Verizon PA predicated its 2011 request for waiver of remedies for benchmark misses on two factors: (1) a strike by its unionized workers from August 7, 2011, through August 22, 2011, and (2) Hurricane Irene[[16]](#footnote-16) that came through Pennsylvania on August 27, 2011. The PA PAP list “periods of emergency, catastrophe, natural disaster, severe storms, or other events beyond Verizon’s control” as “generic grounds” for Verizon PA “seeking to have the monthly service quality results modified” for benchmark metrics. The PA PAP did not then (and does not now) mention strikes or work stoppages as an enumerated basis for waiver of remedies for benchmark metrics that are not satisfied. PA PAP Appendix C at 38-39.

The possibility of a work stoppage in 2011 had been anticipated for several months prior to its actual occurrence, and it was projected that a work stoppage of longer than a few days would negatively affect wholesale (and retail) service and, therefore, impact metrics results. In fact, Verizon PA’s August 2011 performance results were somewhat worse than its other results for 2011; this was attributed in part to both the work stoppage and Hurricane Irene.

In its 2011 petition for waiver, Verizon PA alleged that the work stoppage and Hurricane Irene were extraordinary events that affected its ability to meet the standards in the PA PAP for certain metrics in August 2011. Verizon PA estimated that the combination of the work stoppage and the storm caused the remedies to be inflated by nearly 500% and sought a waiver of the remedies due for missing four benchmark metrics. Appendix B details the Pennsylvania metrics missed in August 2011.

There was no opposition from active PA CWG participants to the 2011 waiver request, but Comcast Phone of Pennsylvania, LLC, (Comcast Phone) challenged Verizon PA’s proposal to submit a “revised monthly report” for August 2011. Comcast Phone asserted that there was no need to “normalize” the data or to replace the August 2011 data with July 2011 data and that the reports and raw data files should reflect the actual August 2011 results. Comcast Phone and Verizon PA ultimately resolved Comcast Phone’s issues. Verizon PA agreed that it would not adjust or normalize any August 2011 data. Further, none of the metrics subject to doubling were missed in September 2011.

The consensus of the PA CWG was that aspects of the August 2011 results were not typical results but rather appeared to be “extraordinary” under the terms of the PA PAP. No one objected to the waiver of the remedies for the four benchmark metrics, alleged to have been missed due to the work stoppage and the weather situation. By order entered on January 30, 2012, we granted waiver relief relative to the remedies triggered by the four benchmark metric misses.[[17]](#footnote-17)

**2016 Waiver**

**History of P-2016-2551053 F0020 & M-00011468 F0020**

Verizon PA filed the initial Petition and filed two supplemental updates indicating that it had failed to satisfy certain benchmark standards for wholesale and resale services sold to CLECs in April, May, and June 2016. Verizon PA is requesting that the remedies for these missed benchmark metrics be waived.[[18]](#footnote-18) As noted, this is Verizon PA’s second request for waiver of remedies due to a work stoppage or strike. Verizon PA cites to no other predicate for the 2016 waiver request.

Verizon PA served the Filings on the members of the PA CWG and affected CLECs which do not have representatives on the PA CWG,[[19]](#footnote-19) consistent with Section 5.41(b) of Commission regulations, relating to petitions in general, which requires that the petition shall be served on all persons directly affected and on other parties whom the petitioner believes will be affected by the petition. 52 Pa. Code § 5.41(b).

Verizon PA’s June 14, 2016 and July 14, 2016 Filings each asserted that there could be additional metrics missed due to the work stoppage that would trigger remedies. Secretarial Letters dated June 22, 2016, and July 20, 2016, informed the parties that the Commission would consider all waiver requests together after all the metrics data and remedies results relative to the work stoppage were filed. Thereafter, the matter was discussed in PA CWG, and parties were given the opportunity to file comments. This adjustment to the timeline specified in the PA PAP and noted by Verizon PA in its Filings afforded Verizon PA, the Pennsylvania CLECs, the Pennsylvania statutory advocates, and Commission staff with the opportunity for collaborative analysis in the PA CWG.

Verizon NY filed a similar request for waiver of remedies due for April 2016 and May 2016 performance predicated on the 2016 strike. The NY PSC granted that waiver on January 26, 2017. Pennsylvania is under no obligation to grant a waiver of remedies based on the waiver granted by the NY PCS.

**The 2016 Work Stoppage:** In support of its Petition, Verizon PA notes that Verizon and the unions[[20]](#footnote-20) representing certain employees in Pennsylvania and throughout the Verizon Footprint began contract negotiations in June 2015. Absent an agreement, the contracts between Verizon and the unions expired on August 1, 2015. Initially, the union employees continued to work without a contract. On April 11, 2016, the unions announced plans to strike on April 13, 2016. The Federal Mediation and Conciliation Service offered to mediate negotiations, and Verizon agreed, but the union rejected the offer. The strike began on April 13, 2016.

On May 17, 2016, the United States Secretary of Labor announced that discussions would be conducted under the auspices of the Department of Labor. On May 27, 2016, the parties reached an agreement in principle on new contracts. Tentative agreements were signed overnight on May 29-30, 2016. Workers returned to work on June 1, 2016. August 15, 2016 Filing at 3-4.

Verizon PA asserts that “[p]lanning for the work stoppage had begun well over a year before the contracts expired” and ‘that it “executed [an] emergency work stoppage plan” as soon as the strike began. Managers from various Verizon business units outside the Footprint[[21]](#footnote-21) were given retail and wholesale assignments in the Footprint during the work stoppage. According to Verizon PA, “[o]f necessity, the work force on duty during the work stoppage was dedicated to assuring that existing customers continued to receive the best service possible, which meant that maintenance and repair tasks took precedence over any installation work.” August 15, 2016 Filing at 4-5.

Verizon PA further asserts that it “significantly scal[ed] up its contingency workforce, with the addition of contractors, expand[ed] outsourced call center resources, add[ed emergency work assignments], and [hired] new temporary workers.” Verizon PA “mobilize[d] a force of approximately 1,858 managers . . . and 463 contractors . . . to perform work usually handled by approximately 4,328 striking workers in Pennsylvania[, not including] people working remotely for Pennsylvania customers in states like Florida, North Carolina, Oklahoma, and Texas.” August 15, 2016 Filing at 5.

Verizon PA alleges that during the strike there were “44 reported incidents of sabotage that caused a loss of service in Pennsylvania, contributing to the already heavy maintenance workload that the management employees had to address during the work stoppage.” August 15, 2016 Filing at 5-6. Verizon PA further asserts that “even after the striking workers began returning to their normal jobs it was still necessary for them to handle a backlog of open issues generated during the strike and normal operations therefore continued to be disrupted into the month of June.” August 15, 2016 Filing at 6.

Verizon PA characterizes the 2016 work stoppage as a “situation beyond Verizon’s control that negatively affect[ed] its ability to satisfy only those measures with Benchmark standards.” Verizon PA claims that the failure to reach a contract agreement before the strike was beyond its control. Verizon PA also claims that the disruption to work flow by the strike was beyond its control even though it attempted “to provide the best possible service to as many customers as possible under the circumstances.” August 15, 2016 Filing at 7.

**Benchmark Metrics:** Having failed certain benchmark metrics[[22]](#footnote-22) in April, May, and June 2016, Verizon PA asserts that “[a]ccordingly, the [PA] PAP requires a waiver of the benchmark service standards for the metrics that Verizon PA could not satisfy as a result of the work stoppage.” August 15, 2016 Filing at 7. The missed benchmark metrics subject to the waiver request are further detailed in Appendix A to this Order.

Verizon PA acknowledges that it was “unable to satisfy the benchmark standards for [the missed metrics] because it simply did not have enough personnel to provide the resources necessary to handle the volume of orders that were being received in the manner that it handles them under normal conditions.” August 15, 2016 Filing at 8. The “management work force [available during the strike] represented only a modest fraction of its usual work force . . . [and the managers] could not perform their jobs as quickly as the workers who ordinarily would perform these jobs.” August 15, 2016 Filing at 9. Verizon PA claims that it “took all reasonable, precautionary steps to mitigate the impact of the work stoppage on its service quality and to assure that its wholesale and retail customers received the best service quality possible.” August 15, 2016 Filing at 9.

**Parity Metrics:** Verizon PA also missed some parity metrics but is not asserting that the strike would justify a waiver for the missed parity metrics. Verizon PA claims that the missed parity metrics during the strike are on a par with its “normal performance” even though the disruption due to the strike “could have resulted in Verizon [PA] achieving failing scores” on these parity metrics. August 15, 2016 Filing at 10 and 11. Verizon PA claims that parity performance during the strike was consistent with parity performance under normal conditions and indicates that the benchmark metrics missed during the strike were due to the strike and not because of any intentional discrimination against its CLEC customers. August 15, 2016 Filing at 11.

**Discussion**

The PA PAP provides that if carrier-to-carrier service is influenced by factors beyond Verizon PA’s control then:

Verizon [PA] may file Exception or Waiver petitions with the Commission seeking to have the monthly service quality results modified on three generic grounds.

The third ground . . . relates to situations beyond Verizon [PA]’s control that negatively affect its ability to satisfy only those measures with Benchmark standards. The performance requirements dictated by Benchmark standards establish the quality of service under normal operating conditions, and do not necessarily establish the level of performance to be achieved during periods of emergency, catastrophe, natural disaster, severe storms, or other events beyond Verizon[ PA]’s control.

PA PAP, Appendix C at 38-39.

As an indicator of whether the circumstances underlying a request for a benchmark waiver were truly out of Verizon PA’s control, the PA PAP also requires an analysis of the impact of the circumstances on the parity metrics. PA PAP, Appendix C at 40. In this case, the parity metrics showed substantial consistency between Verizon PA’s retail performance and its wholesale/resale performance during the work stoppage and during the recovery period when the backlogs were cleared after the strike. This arguably tends to support Verizon PA’s assertion that there was no intentional discrimination in service rendered to the CLECs during and immediately after the strike.

As noted above, none of the interested parties have articulated an unresolved challenge to Verizon PA’s request for waiver of remedies for April, May, or June 2016 relative to the missed benchmark metrics. If the waiver is granted, the total of the PA CLECs’ remedies will be reduced from $404,118 to $24,748, an overall reduction of $379,370 or 93.876%, for the April, May, and June 2016 performance requirements.[[23]](#footnote-23)

Contrary to Verizon PA’s assertions noted above, we are not convinced, however, that a work stoppage or strike automatically constitutes an event or circumstance outside of Verizon PA’s control or that it requires that we grant a waiver for metrics that are missed during a strike or stoppage. We have analyzed the circumstances, see Appendix A for details, surrounding the missed benchmark metrics and find little reason to challenge Verizon PA’s assertions that it did all it could to render satisfactory wholesale performance under trying circumstances. Nevertheless, we do not find that we are “required” to grant a waiver request for missed metrics merely predicated upon a work stoppage. We shall not presume that a work stoppage is beyond Verizon PA’s control.

Relief from remedies is not a self-help option under the PA Guidelines or the PA PAP. Verizon PA is required to request a waiver if it is to be relieved of remedies under the PA PAP. Waivers are not considered unless Verizon PA requests one. In this case, however, there were no answers opposing Verizon PA’s Petition for waiver of remedies.

Further, Verizon PA quotes Appendix C of the PA PAP as giving the CLECs ten (10) days to respond to a petition for waiver of remedies and that Appendix F requires us to act on such a petition within fifteen (15) days after CLEC comments are submitted. Verizon PA Letter of June 14, 2016.

Such a timeline does not comport with the process of collaborative discussion of issues in the PA CWG. Accordingly, it was suspended in this proceeding by the Secretarial Letters to allow for notice and an opportunity for all parties potentially affected by the waiver request to respond and for the PA CWG to discuss the matter. The Commission may again suspend this timeline should the need to consider missed metrics arise again.

The July 20, 2016 Secretarial Letter also provided that Verizon PA could suspend the remedies that were the subject of the waiver requests during the pendency of this proceeding. Because Verizon PA suspended payment of remedies that would have been due for the missed benchmark metrics absent a waiver, there is no need to adjust any bill credits.

Accordingly, we find that Verizon PA’s request for waiver of the remedies for April, May, and June 2016 for the specified benchmark metrics is unopposed and not unreasonable. *See* Appendix A. Verizon PA is directed to maintain full availability of the original record of actual performance in the database containing the data and the results for these metrics during this period. Since there have been no further issues to date relative to misses regarding these benchmark metrics, we do not need to address any concerns relative to doubling.

**Future Expectations**

**Future Reporting of Data, Metrics, and Remedies Relative to Requests for Waiver:** Verizon PA is reminded that, should it request a waiver in the future, it will need to ensure that the affected CLECs in particular are fully informed as to what metrics were missed and what remedies they would receive but for a waiver. Additionally, staff is to be informed of which CLECs would be specifically affected and to what degree. We note that identifying which CLECs have been affected by which missed metrics and the extent to which they are affected could be market-sensitive and have an anti-competitive impact if disseminated publicly. Therefore, CLEC-specific information relative to missed metrics and potential remedies need only be provided on a CLEC-specific basis to the affected CLECs and to staff, consistent with the normal metric and remedy reporting protocols for CLEC-specific data. This is in addition to service of any waiver request on all PA CLECs and as well as stakeholders in the PA CWG.

**Future Inquiries:** While this is the second work stoppage in five (5) years for which Verizon PA has requested waiver of remedies, we have been working in Pennsylvania with metrics and remedies since the late 1990s. We find that it is time to consider establishing some criteria for evaluating the impacts of a work stoppage (or other events that interfere with Verizon PA’s ability to render service) as well as the efforts Verizon PA has undertaken to mitigate those impacts. To that end, Verizon PA should be prepared to address detailed questions regarding the event and any associated mitigation, either in its initial waiver request or in response to a subsequent staff inquiry or party discovery request.

In particular, we find that information of the following nature could prove informative in evaluating future waiver requests[[24]](#footnote-24):

* To what extent has any reduction in the availability of the overall work force resulted in the assignment of labor resources to CLEC services that does or does not proportionately mirror the work force assigned to retail services?
* How were any determinations made to give preference or prioritization during or after the “event beyond Verizon PA’s control” to one type/class of services or one set of customers/applicants over another set?
* To what extent are such determinations based on factors designed to preserve the integrity of overall network operations and maintain the provision of safe, adequate, and reliable retail and wholesale services?[[25]](#footnote-25)
* At what level of service would the deterioration in benchmark metrics during or after the “event beyond Verizon PA’s control” be so severe as to preclude a waiver of remedies?
* For how long after the conclusion of an “event beyond Verizon PA’s control” should the circumstances of such an event justify a waiver?
* Explain any disparity or differences between the metrics missed or waivers requested in Pennsylvania and the metrics missed or waivers requested in other jurisdictions in the Verizon Footprint.
* Explain why the disparity or differences in performance measured by the metrics might be longer in Pennsylvania than in other jurisdictions in the Verizon Footprint during and immediately after an event that has simultaneously and/or similarly affected operations in other Verizon Footprint geographic areas.
* Indicate whether any retail quality of service measures (*e.g.*, 52 Pa. Code Chapter 63) were breached during the period for which waivers are requested.

**PA CWG:** The PA CWG and its subgroups shall continue to address metrics/PA Guidelines and remedies/PA PAP issues and report findings and recommendations to this Commission as needed. We expect the PA CWG to continue to review performance so as to ensure openness of the local telecommunications market and to formulate recommendations for adjustments to the PA Guidelines and PA PAP as the need may arise. We expect staff to continue to work with the staffs of the other states in the Verizon Footprint to address matters that present similarities across jurisdictional lines.

**Conclusion**

The request for waiver of remedies relative to f benchmark metrics missed in April, May, and June 2016 is granted; **THEREFORE,**

**IT IS ORDERED:**

1. That the request of Verizon Pennsylvania LLC for a waiver of remedies relative to these three (3) benchmark metrics missed in April 2016 is granted, consistent with this Order:

* OR-1-04-2320 -- % On Time LSRC/ASRC – No facility check (Electronic No Flow-through) Resale POTS/Pre-qualified Complex
* OR-2-04-1200 -- % On Time LSRC/ASRC Rej – N facility check (Electronic No Flow-through) UNE/RES Specials
* OR-2-06-1200 -- % On Time LSRC/ASRC Rej – Facility check (Electronic No Flow-through) UNE/RES Specials.

2. That the request of Verizon Pennsylvania LLC for a waiver of remedies relative to these four (4) benchmark metrics missed in May 2016 is granted, consistent with this Order:

* OR-1-04-2320 -- % On Time LSRC/ASRC – No facility check (Electronic No Flow-through) Resale POTS/Pre-qualified Complex
* OR-1-06-3211 -- % On Time LSRC/ASRC – Facility check (Electronic No Flow-through) UNE Specials DS1
* OR-1-12-5020 -- % On time FOC – Interconnect Trunks (≤ 192 Forecast)
* OR-2-06-1200 -- % On Time LSRC/ASRC Rej – Facility check (Electronic No Flow-through) UNE/RES Specials.

3. That the request of Verizon Pennsylvania LLC for a waiver of remedies relative to these two (2) benchmark metrics missed in August 2016 is granted, consistent with this Order:

* OR-1-13-5000 -- Trunks % On Time Design Layout Record (DLR) Interconnection Trunks
* PR-4-15-5000 -- Trunks % On Time Provisioning – Interconnection Trunks.

4. That this Order be docketed at both captioned docket numbers.

5. That the waiver matter (Folder 0020) at Docket P-2016-2551053 be closed. Docket M-00011468 shall remain open as the reference docket for on-going metrics and remedies issues.

6. That the Pennsylvania Carrier Working Group may address the process related to waiver requests generically in advance of a potential future request for waiver from Verizon Pennsylvania LLC. The Pennsylvania Carrier Working Group may make consensus recommendations or document non-consensus in advance of a specific future request for waiver at the next available “folder number” or defer the matter until a waiver request is actually filed. If any stakeholder wishes to make a recommendation now to the Commission relative to the process for a prospective future waiver request, the recommendation shall be similarly docketed at the next available “folder number.”

7. That the Law Bureau shall electronically send a copy of this Order to all participants on the contact list for the Pennsylvania Carrier Working Group. A copy of this Order shall be posted on the Commission’s website at Docket No. M-00011468 and P‑2016-2551053.

BY THE COMMISSION



Rosemary Chiavetta,

Secretary

(SEAL)

ORDER ADOPTED: May 4, 2017

ORDER ENTERED: May 4, 2017

**Appendix A**

**2016 Metrics**

**Appendix A – 2016 Metrics**

**Pennsylvania Metrics Missed in 2016[[26]](#footnote-26)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Metric Number[[27]](#footnote-27)** | **Metric Name** | **April 2016** | **May 2016** | **June 2016** |
| OR-1-04-2320 | % On Time LSRC/ASRC – No facility check (Electronic No Flow-through) Resale POTS/Pre-qualified Complex | Missed | Missed |  |
| OR-1-06-3211 | % On Time LSRC/ASRC – Facility check (Electronic No Flow-through) UNE Specials DS1 |  | Missed |  |
| OR-1-12-5020 | % On time FOC – Interconnect Trunks (≤ 192 Forecast) |  | Missed |  |
| OR-1-13-5000 | Trunks % On Time Design Layout Record (DLR)  Interconnection Trunks |  |  | Missed |
| OR-2-04-1200 | % On Time LSRC/ASRC Rej – N facility check (Electronic No Flow-through) UNE/RES Specials | Missed |  |  |
| OR-2-06-1200 | % On Time LSRC/ASRC Rej – Facility check (Electronic No Flow-through) UNE/RES Specials | Missed | Missed |  |
| PR-4-15-5000 | Trunks % On Time Provisioning – Interconnection Trunks |  |  | Missed |

**New York Metrics Missed in 2016**

|  |  |  |  |
| --- | --- | --- | --- |
| **Metric Number** | **Metric Name** | **April 2016** | **May 2016** |
| OR-1-04-2320 | % On Time LSRC/ASRC – No facility check (Electronic No Flow-through) Resale POTS/Pre-qualified Complex | Missed | Missed |
| OR-1-04-3331 | % On time LSRC/ASRC – No Facility Check (electronic – No Flow-through) | Missed |  |
| OR-1-06-3211 | % On Time LSRC/ASRC – Facility check (Electronic No Flow-through) UNE Specials DS1 | Missed |  |
| OR-1-12-5020 | % On time FOC – Interconnect Trunks (≤ 192 Forecast) |  | Missed |
| OR-2-04-1200 | % On Time LSRC/ASRC Rej – N facility check (Electronic No Flow-through) UNE/RES Specials |  | Missed |
| OR-2-06-1200 | % On Time LSRC/ASRC Rej – Facility check (Electronic No Flow-through) UNE/RES Specials |  | Missed |

**Verizon PA Explanations regarding Each Missed Metric**[[28]](#footnote-28)

| **Metric Number** | **Measures** | **April 2016 Performance** | **May 2016 Performance** | **June 2016 Performance** | **Bench-mark** | **Performance History** |
| --- | --- | --- | --- | --- | --- | --- |
| OR-1-04-2320  June at 7-9 & July at 7-9 | Timeliness of order confirmations. | 85.59%  June Exh 2  86.59%  July Exh 2  Not enough personnel, complex manual entry  June at 7  Rem = $15,931 | 76.53%  July Exh 2  Complex, manual tasks; not enough personnel  July at 8  Rem = $15,931 | 98.59%  No remedy  June C2C rpt | 95% |  |
| OR-1-06-3211  July at 7-9 | Timeliness of order confirmations. | 75%[[29]](#footnote-29)  July exh 2 | 91.67%  July exh 2  Complex, manual tasks; not enough personnel  July at 8  Rem = $19,563 | 85.65%  $19,563  June C2C rpt | 95% | Also missed Sept 2015[[30]](#footnote-30) at 93.3%  & April 2016 at 92.86%  July Exh 2 |
| OR-1-12-5020  July at 7-9 | Timeliness of order confirmations. | 78.79%[[31]](#footnote-31)  July exh 2 | 92.59%  July exh 2  not enough personnel  July at 8  Rem = $24,762 | 100%  No remedy  June C2C rpt | 95% | Also missed Apr 2015[[32]](#footnote-32) at 93.33% & June 2015 at 93.75%  July Exh 2 |
| OR-1-13-5000  Aug at 7-8 | Number of trunk orders completed on or before due date | 100%  $0  Apr C2C rpt | 100%  $0  May C2C rpt | 3/10 (30%) were timely.  Missed 6/7 on April or May orders designed in June & 1/7 on June order missed in June.  Aug Exh 2 says 40%  June C2C rept says Rem = $61,907 | 95% | Aug Exh 2 says missed in June 2015 at 93.75% and in Aug 2015 at 90%[[33]](#footnote-33) and in June 2016 at 40% |
| OR-2-04-1200  June at 7-9 | Timeliness of order confirmations. | 50%  June Exh 2  Not enough personnel, complex manual entry  June at 7  Rem = $19,563 | 100%  $0  May C2C rpt | 100%  $0  June C2C rpt | 95% |  |
| OR-2-06-1200  June at 7-9  July a7-9 | Timeliness of order confirmations. | 78.79%  June Exh 2  July Exh 2  Not enough personnel, complex manual entry  June at 7  Rem = $19,563 | 92.59%  July exh 2  Complex, manual tasks; not enough personnel  July at 8  Rem = $13,694 | 100%  $0  June C2C rpt | 95% | Also missed June 2015 at 93.75% and April 2015 at 93.33%  May Exh 2  June Exh 2 |
| PR-4-15-5000  Aug at 7-8 | Number of completions on or before due date. | 100%  $0.  April C2C rpt | 100%  $0  May C2C rpt | 480/624 (76.92%) completed on time  144 trunks missed on three orders with DDs of April 15, May 12, & May 24  Rem = $123,731 | 95% | Aug Exh 2 says missed June 2016 at 80.77% |

**Verizon PA Parity Metrics Missed**

*April 2016 Parity Performance*

The June 14, 2016 Filing was silent as to parity metrics, but Exhibit 1 provided some references to parity metrics.

*May 2015 Parity Performance*

Verizon PA missed two (2) parity metrics out of 92 parity metrics:

* MR-5-01-3112 – % Repeat Reports within 30 Days UNE-L
* MR-5-01-3342 – % Repeat Preports within 30 Days UNE 2W xDSL Loops.

Verizon PA asserts that this small quantity of missed parity metrics is consistent with prior performance and not due to the work stoppage. June 14, 2016 Filing at 9-10.

*June 2016 Parity Performance*

Verizon PA missed two (2) parity metrics out of 92 parity metrics:

* MR-5-01-3112 – % Repeat Reports within 30 Days UNE-L
* MR-5-01-3342 – % Repeat Reports within 30 Days UNE 2W xDSL Loops.

Verizon PA asserts that this small quantity of missed parity metrics is consistent with prior performance and not due to the work stoppage. July 14, 2016 Filing at 10-11.

**Appendix B**

**Summarized from the 2011 Waiver Request Order (January 30, 2012) in**

**M-00011468 (F0018) & P-2011-2269052**

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**Summarized from the 2011 Waiver Request Order (January 30, 2012) in**

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**Metrics Missed in August 2011**

In August 2011, Verizon PA missed the following three benchmark metrics, which measure the timeliness of order confirmations handled manually by Verizon PA representatives, and requested waiver of remedies:

**OR-1-04-2320** – % On Time LSRC/ASRC – No Facility Check (Electronic No Flow-through) – Resale POTS/Pre-qualified Complex;

**OR-1-04-3331** – % On Time LSRC/ASRC – No Facility Check (Electronic No Flow-through) – UNE-Loop/Pre-qualified Complex/LNP; and

**OR-1-06-3331** – % On Time LSRC/ASRC – Facility Check (Electronic No Flow-through) – UNE-Loop/Pre-qualified Complex/LNP.

Verizon PA also missed a fourth benchmark metric which measures the timeliness of trunk installations and requested waiver of remedies:

**PR-4-15-5000** – % On Time Provisioning-Trunks-Interconnections Trunks (CLEC).

These four benchmark metrics (**OR-1-04-2320**, **OR-1-04-3331**, **OR-1-06-3331**, and **PR 4 15 5000**) are Critical Measures, the individual failure of which triggered remedies for August 2011. These four measures also are part of several Mode of Entry (MOE) categories. Their failure also triggered MOE remedies for August 2011. Verizon PA had not experienced a missed benchmark or failure for all of 2011 until August 2011. Therefore, we concluded that it was not unreasonable to presume that Verizon PA’s assertions were plausible that these four metrics failed as a result of the unusual circumstances (*i.e.*, the strike and the hurricane) coinciding in August 2011 and that they might not have failed under normal conditions. Waiver of the remedies associated with these four failed metrics reduced the August 2011 remedies in both the Critical Measures and MOE categories.

**Failures for which a waiver was neither requested nor granted in 2011**

Verizon PA missed the following three Critical Measures with parity standards for August 2011 but did not request a waiver:

**PR-4-01-1211** – % Missed Appointment – Verizon – total (Resale & UNE Combined Specials DS1);

**MR-4-01-1217** – Mean Time to Repair – total – UNE/RES Specials (DS1/DS3); and

**MR-4-08-1217** – % Out of Service > 24 Hours (Resale & UNE combined Specials DS1 & DS3).

Each of these three parity measures had seen multiple failures over the course of 2011 prior to August 2011. The two MR metrics had failed nearly every month. We concluded that it was reasonable to assume that these metrics would have failed even under normal operating conditions.

Verizon PA also missed the following Critical Measure metric[[34]](#footnote-34) with a benchmark standard but did not request a waiver:

**OR-1-06-3211** – % On Time LSRC/ASRC – Facility Check (Electronic No Flow-through) – UNE Specials DS1.

Verizon PA had missed this metric previously.

Verizon PA also missed the following four MOE metrics[[35]](#footnote-35) with benchmark standards but did not request waiver:

**OR 2-04-2320** – % On Time LSR/ASR Request – No Facility Check (Electronic No Flow-through) – Resale POTS/Pre-qualified Complex;

**OR 2-04-3331** – % On Time LSR/ASR Request – No Facility Check (Electronic No Flow-through) – UNE-Loop Pre-qualified Complex LNP;

**OR 2-06-3331** – % On Time LSR/ASR Request – Facility Check (Electronic No Flow-through) – UNE-Loop Pre-qualified Complex LNP; and

**OR 5-03-2000** – % Flow-through Achieved – Resale.

Verizon PA had missed these metrics on occasion previously in 2011, but as MOE measures, their failure did not trigger remedies for August 2011. Individual metrics that only appear in the MOE categories, while failing individually, do not necessarily cause MOE remedies to be paid because the MOE remedies are triggered only by a combination of failures in that particular mode of entry.

1. Verizon PA filed its initial petition on June 14, 2016, and filed supplemental information on July 14, 2016, and August 15, 2016. [↑](#footnote-ref-1)
2. Verizon PA is an incumbent local exchange carrier (ILEC) in Pennsylvania. References herein to “Verizon PA” refer to Verizon PA and affiliate operations within Pennsylvania. References to “Verizon” in the context of metrics and remedies reflect Footprint-wide operations by various Verizon affiliates both within and outside Pennsylvania. “Verizon NY” refers to affiliate operations in New York. [↑](#footnote-ref-2)
3. *See Petition Filed by BA–NY for Approval of a PAP . . ., filed in 97-C-0271*, CASE 99-C-0949 (January 26, 2017). [Order Granting Waiver Requests](http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7b7B8EEB43-1B85-4BAE-86CD-822CB845C8A6%7d). On June 14, 2016, Verizon NY requested waivers for three (3) benchmark misses relative to April 2016 performance. On July 14, 2016, Verizon NY requested waivers for four (4) benchmark misses relative to May 2016 performance. Verizon NY did not request a waiver relative to June 2016 performance. Appendix A provides a comparison of the missed metrics in both states. [↑](#footnote-ref-3)
4. In the context of the PMO proceedings, the term “wholesale” includes retail services provided by Verizon PA for resale by the PA CLECs. The PA Guidelines and the PA PAP do not apply to Verizon North operations. [↑](#footnote-ref-4)
5. The PA C2C Guidelines are at: <http://www22.verizon.com/wholesale/cwgroup/Carrier-Working-Group.html>. A direct link to version 19 of the Guidelines is at: <http://www22.verizon.com/wholesale/attachments/Version19EastC2CGuidelines_Plaintext_Consensus_Final_06122015.pdf>

   The PA PAP is at: <http://www22.verizon.com/wholesale/clecsupport/content/performanceassuranceplans.html>. [↑](#footnote-ref-5)
6. Bp8 1203258. [↑](#footnote-ref-6)
7. For more information on the PA CWG, *see*: <http://www.puc.pa.gov/utility_industry/telecommunications/carrier_working_group.aspx>. The PA CWG meets by teleconference the second Tuesday at 10:30 AM in the third month of each calendar quarter. Call-in details are distributed by email to active PA CWG participants prior to each meeting. [↑](#footnote-ref-7)
8. The traditional “Verizon footprint” comprises the former Bell Atlantic and NYNEX states. [↑](#footnote-ref-8)
9. The NY CWG exists specifically to address metrics concerns in NY. The needs of the New York market take precedence in the NY CWG over the needs of any other markets in the Verizon footprint regardless of the fact that the New York market is not necessarily representative of markets in other states in the footprint. Pennsylvania staff, CLECs, and statutory advocates are among those invited to participate in the discussions in the NY CWG, but due to pragmatic considerations, the Pennsylvania CLECs and statutory advocates do not typically participate in the NY CWG. [↑](#footnote-ref-9)
10. Only NY entities may veto or block a consensus in matters under discussion at the NY CWG. [↑](#footnote-ref-10)
11. The complete NY PSC *Proceeding on Motion of NYPSC to Review Service Quality Standards for Telephone Companies*, 97-C-0139, may be viewed by accessing this link: <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=97-C-0139&submit=Search>. [↑](#footnote-ref-11)
12. This differs from mandate given the PA CWG, which has been tasked by this Commission with addressing remedies/PA PAP issues in addition to metrics/PA Guidelines issues. [↑](#footnote-ref-12)
13. Verizon PA’s obligation is to file proposed Pennsylvania updates consistent with any changes adopted by the NY PSC and/or proposed for the Footprint Guidelines or the Footprint PAP. Such initial filings do not constitute Verizon PA’s position statement. Verizon PA also posts the proposed changes at <http://www22.verizon.com/wholesale/cwgroup/Carrier-Working-Group.html>. The actual Pennsylvania filings contain the complete list and description of proposed changes for proposed use in Pennsylvania. The PA CWG then discusses the proposed changes. All parties including Verizon PA have an opportunity to file comments and reply comments on the merits of the proposed changes. [↑](#footnote-ref-13)
14. Several states in the Verizon footprint automatically adopt any changes approved by the NY PSC. [↑](#footnote-ref-14)
15. Discussion herein of the 2011 waiver proceeding is abridged from the January 30, 2012 order without further specific attribution. [↑](#footnote-ref-15)
16. Hurricane Irene caused service disruptions from severe weather and flooding in much of the Verizon PA service territory and in other areas of the Verizon Footprint. [↑](#footnote-ref-16)
17. The term “*force majeure*” as used in the 2011 Order was interjected by the Commission and is not part of the pleadings or the PA PAP. [↑](#footnote-ref-17)
18. Verizon PA estimates that total remedies (also referred to as “bill credits”) for April 2016 would be reduced from $55,910 to $853 if the waiver is granted. June 14, 2016 Filing at 2. Remedies for May 2016 would be reduced from $77,822 to $3,872. July 14, 2016 Filing at 2. Remedies for June 2016 would be reduced from $270,386 to $20,023. August 15, 2016 Filing at 3. Thus, the total reduction in remedies if the waiver is granted would be from $404,118 to $24,748, an overall reduction of $379,370 or 93.876%. The remedies subject to the waiver request have been held in abeyance by Verizon PA during the pendency of this proceeding. For the sake of brevity and because of the similarity of allegations in the three filing, we will generally draw our citations from the August 15, 2016 Filing. [↑](#footnote-ref-18)
19. The Certificate of Service for the August 15, 2016 Filing notes that company names of affected CLECs were not listed in order to preserve CLEC confidentiality. The names of affected CLECs were available to Staff. [↑](#footnote-ref-19)
20. The employees were represented by the Communications Workers of America and the International Brotherhood of Electrical Workers. [↑](#footnote-ref-20)
21. Verizon has additional, non-Footprint operations in California, Florida, Illinois, Oklahoma, and Texas, among other locations. August 15, 2016 Filing at 5, [↑](#footnote-ref-21)
22. The April 2016 missed metrics were:

    OR-1-04-2320 -- % On Time LSRC/ASRC – No facility check (Electronic No Flow-through) Resale POTS/Pre-qualified Complex;

    OR-2-04-1200 -- % On Time LSRC/ASRC Rej – N facility check (Electronic No Flow-through) UNE/RES Specials; and

    OR-2-06-1200 -- % On Time LSRC/ASRC Rej – Facility check (Electronic No Flow-through) UNE/RES Specials. The May 2016 misses were:

    OR-1-04-2320 -- % On Time LSRC/ASRC – No facility check (Electronic No Flow-through) Resale POTS/Pre-qualified Complex;

    OR-1-06-3211 -- % On Time LSRC/ASRC – Facility check (Electronic No Flow-through) UNE Specials DS1;

    OR-1-12-5020 -- % On time FOC – Interconnect Trunks (≤ 192 Forecast); and

    OR-2-06-1200 -- % On Time LSRC/ASRC Rej – Facility check (Electronic No Flow-through) UNE/RES Specials. The June 2016 misses were:

    OR-1-13-5000 -- Trunks % On Time Design Layout Record (DLR) Interconnection Trunks; and

    PR-4-15-5000 -- Trunks % On Time Provisioning – Interconnection Trunks. [↑](#footnote-ref-22)
23. PA PAP remedies totaled $515, 317 for 2016 prior to any reduction. The 2017 NY PSC waiver order reduced the remedies due from Verizon NY to NY CLECs for April 2016 from $133,648 to $1,829 and from $159,410 to $0 for May 2016. [↑](#footnote-ref-23)
24. The PA CWG may address this process generically in advance of a potential future request for waiver from Verizon PA. The PA CWG may make consensus recommendations or document non-consensus in advance of a specific future request for waiver at the next available “folder number” or defer the matter until a waiver request is actually filed. Individual stakeholders who wish to comment now relative to the process for a prospective future waiver request may do so, and their considerations shall be similarly docketed at the next available “folder number.” [↑](#footnote-ref-24)
25. We recognize that maintaining the overall integrity of network operations is crucial during abnormal events that also include work stoppages. For example, we may be faced with a combination of contingencies if there is a work stoppage that coincides with an extreme weather event. Critical service restoration will be the immediate priority. [↑](#footnote-ref-25)
26. June 14, 2016 Filing at 9; July 14, 2016 Filing at 9; August 15, 2016 Filing at 9. [↑](#footnote-ref-26)
27. “OR” refers to ordering metrics, and “PR” refers to provisioning metrics. The single-digit number refers to the function. The double-digit number identifies the sub-metric. The final 4-digit number relates to a specific product and is consistent across all metrics. [↑](#footnote-ref-27)
28. A citation to a month and page number (*e.g.*, “July at #”) refers to the specific filing at this docket in either June, July, or August 2016. A reference to a month and an exhibit (*e.g.*, “July Exh #”) refers to an exhibit attached to that month’s filing at this docket. A reference to a month and a C2C report (*e.g.*, “July C2C rpt#”) refers to Verizon PA’s periodic mandatory report of all performance for that month. [↑](#footnote-ref-28)
29. Verizon PA did not request waiver for April 2016 performance. [↑](#footnote-ref-29)
30. Verizon PA asserts these misses were not scored as misses because of a one-miss allowance per PA PAP, Appendix C at age 36 – small sample benchmark scoring procedures. [↑](#footnote-ref-30)
31. Verizon PA did not request waiver for April 2016 performance. [↑](#footnote-ref-31)
32. Verizon PA asserts these misses were not scored as misses because of a one - miss allowance per PA PAP, Appendix C at age 36 – small sample benchmark scoring procedures. [↑](#footnote-ref-32)
33. Verizon PA asserts this miss was not scored as miss because of a one - miss allowance per PA PAP, Appendix C at age 36 – small sample benchmark scoring procedures. [↑](#footnote-ref-33)
34. Verizon PA did not mention this metric in its 2011 petition but the data was gleaned from monthly reports that it is obligated to file. [↑](#footnote-ref-34)
35. Verizon PA did not mention these metrics in its 2011 petition but did list them in the exhibits attached to the petition. [↑](#footnote-ref-35)