

**ORDER NO. 89086**

IN THE MATTER OF THE PETITION OF THE MARYLAND OFFICE OF PEOPLE'S COUNSEL FOR AN INVESTIGATION INTO VERIZON MARYLAND'S PROVISION OF BASIC LOCAL PHONE SERVICE OVER COPPER OR FIBER NETWORKS <hr/>	* * * * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND <hr/> ML# 210061 <hr/>
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**Issue Date: April 5, 2019**

On December 12, 2018, the Maryland Public Service Commission's ("Commission") Technical Staff ("Staff") submitted a report to the Commission, entitled "An Update on Verizon Maryland, LLC's Service Quality Performance" ("2018 Staff Report").<sup>1</sup> On January 9, 2019, the Commission issued a Notice of Opportunity to Respond.<sup>2</sup> Verizon Maryland, LLC ("Verizon")<sup>3</sup> and the Maryland Office of People's Counsel ("OPC") filed Comments in response.<sup>4</sup>

Upon review of the 2018 Staff Report, and the Comments filed by Verizon and OPC, the Commission now directs Verizon to continue providing monthly service quality reports to Staff and OPC. Additionally, Verizon is directed to file a report describing the action it is taking to prevent moisture from affecting its outside plant. The Commission further orders that Verizon show cause (1) why it should not be required to produce service reliability data at the level of granularity requested by OPC in its response and (2) why the

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<sup>1</sup> ML# 223225 (2018 Staff Report).

<sup>2</sup> The Commission directed interested persons to respond to Staff's Report by February 9, 2019.

<sup>3</sup> ML# 223912 (Verizon Comments).

<sup>4</sup> ML# 223920 (OPC Comments).

service reliability data produced by Verizon should not be made publicly available on a prospective basis.

### **1. Background**

On January 13, 2017, OPC filed a “Petition for an Investigation into Verizon Maryland LLC’s Provision of Basic Local Phone Service Over Copper or Fiber Networks” (“the Petition”).<sup>5</sup> The Petition, supported by an affidavit by economist Susan M. Baldwin, argued that “consumer complaints indicate that Verizon has engaged in a pattern of failing, whether by neglect or with intention, to repair and maintain facilities used to provide basic telephone service to households in Maryland.”<sup>6</sup> The Petition further argued Verizon’s service quality for customers receiving phone service over copper wire was therefore inconsistent with Public Utilities Article, *Ann. Code of Md.*, §5-303, which requires Verizon to “furnish equipment, services, and facilities that are safe, adequate, just, reasonable, economical, and efficient,” and related Commission regulations and orders. The Petition suggested that Verizon’s actions amounted to *de facto* retirement of Verizon’s copper physical plant outside of the approved regulatory process and, in some cases, resulted in customers being involuntarily forced to transition to Verizon’s fiber telephone service.

The Petition requested a “docketed Commission investigation, with full discovery ... to ensure that satisfactory basic telephone service is provided to Verizon’s residential telephone customers, and that they are protected from unreliable service, wrongful migration to unregulated services, and ... unnecessary and premature migration to

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<sup>5</sup> ML# 210061 (OPC Petition).

<sup>6</sup> Petition at 5. Unless noted otherwise, all page references are to internal pagination.

regulated fiber service.”<sup>7</sup> Letters in support of the Petition were filed by the Communications Workers of America, AFL-CIO (“CWA”), and the American Association of Retired Persons (“AARP”).<sup>8</sup>

Verizon opposed the Petition.<sup>9</sup> It urged the Commission to deny the Petition because Verizon’s monthly reports demonstrate that it is meeting all applicable COMAR service quality standards, and that the yearly complaints to the Commission about its service have been declining since 2011.<sup>10</sup> Verizon argued that the number of complaints is now *de minimus* compared to the number of regulated voice lines served by Verizon in Maryland.<sup>11</sup>

In response to the Petition, Staff requested and reviewed monthly service quality reports covering the period from January 2012 through January 2017.<sup>12</sup> Consistent with a Commission-approved 2015 Letter of Understanding between Staff and Verizon, the reports contained statewide aggregated data on repair appointments missed; network troubles; repeated trouble reports;<sup>13</sup> and residential installation appointments met as well as residential out-of-service data aggregated by four geographic zones: BMET (Baltimore Metropolitan Area), Eastern Shore, Patuxent, and Western Maryland.<sup>14</sup> Also consistent

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<sup>7</sup> Petition at 2-3.

<sup>8</sup> ML# 215446, # 216100.

<sup>9</sup> ML# 215504.

<sup>10</sup> Verizon Comments at 2-4, 6.

<sup>11</sup> Verizon Comments at 1-2.

<sup>12</sup> ML# 215507.

<sup>13</sup> The 2017 and 2018 Staff Reports use interchangeably the terms “repair repeats” and “repeat troubles” to refer to the metric included in Verizon’s AFOR pursuant to COMAR 20.45.04.08E, entitled “Repeated Trouble Reports” and which states that “The rate of repeated reports may not be greater than 25 percent of total trouble reports registered per month within a district service center.” *See, e.g.*, 2017 Staff Report at 9, 11-12, 18, 23, 26-28; 2018 Staff Report at 11, 13, 15-16, 19-20, 24. This Order will follow the convention established in COMAR and use the term repeated trouble reports.

<sup>14</sup> Order No. 87185.

with the Letter of Understanding, the service quality reports were treated as confidential and not made public, though they were shared with OPC. OPC, via supplemental responses, objected to the reports being treated as confidential and also objected to the above-described aggregation of the data, arguing that the aggregation of data at the level of the entire state, or across large regions of the state, masked poor service in specific areas of concern.<sup>15</sup>

Based on its review of Verizon’s service quality reports, Staff found no violation of Commission regulations and recommended against instituting an investigation. However, Staff recommended, among other things, that Verizon continue to provide service quality reports (to be shared with OPC) for a further 12 months and that the Commission set a time for follow-up comments.<sup>16</sup>

On October 25, 2017, in Order No. 88437, the Commission denied OPC’s Petition—without prejudice—but approved Staff’s recommendations requiring Verizon to continue to provide monthly service quality reports and for Staff to file follow-up comments after a review of 12 months of data.<sup>17</sup> At that time, the Commission denied OPC’s request that Verizon be required to make its service quality reports public, and denied OPC’s request that the level of data aggregation be changed. The 2018 Staff Report is a follow up to the 2017 report filed by Staff in response to OPC’s Petition, and Commission Order No. 88437.

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<sup>15</sup> ML# 215639 (2017.6.12 OPC Request to make Public Certain Responses by Verizon, Maryland, LLC Designated as Confidential/Proprietary); ML# 215637 (2017.6.12 OPC Response to the Comments of Staff and Verizon Maryland on OPC’s Petition for Investigation into Verizon Maryland’s Provision of Basic Local Phone Service).

<sup>16</sup> ML# 216124 (Staff’s 2017.7.17 Response to OPC Comments “Regarding Whether it is Appropriate for the Commission to Open an Investigation into Verizon Maryland, LLC’s Service Quality”).

<sup>17</sup> Order No. 88437.

The 2018 Staff Report and Verizon’s and OPC’s Comments in response to the report raise three questions: (1) Does Verizon’s copper wire voice service quality require further Commission review at this time? (2) If so, should the Commission revise the geographic aggregation in the service quality reports collected from Verizon? (3) Are Verizon’s service quality reports protected from public disclosure under the Maryland Public Information Act?

**2. Does Verizon’s copper voice service quality require further Commission review at this time?**

**A. The 2018 Staff Report**

In its 2018 Staff Report, Staff found that the additional 12 months of service quality data indicated a statistically significant deteriorating trend in performance.<sup>18</sup> Staff noted, however, that one of the primary causes of copper line failure is water damage, that 2018 saw a historically unusual amount of precipitation, and that the unusual increase in copper line troubles may therefore have been the result of increased precipitation rather than a failure by Verizon to maintain its physical plant.<sup>19</sup> In order to account for the small sample size and the possibility of an outlier period due to precipitation, Staff also ran the same analysis on expanded datasets reaching back three years and five years. Within those larger datasets, Staff did not detect a statistically significant deterioration.<sup>20</sup>

Staff also compared Verizon’s performance on its copper network versus its fiber network in terms of installation appointments met and repeated trouble reports.<sup>21</sup> For the 12 months of additional data, it found a statistically significant difference between the two

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<sup>18</sup> 2018 Staff Report at 13.

<sup>19</sup> 2018 Staff Report at 7.

<sup>20</sup> 2018 Staff Report at 13-15.

<sup>21</sup> 2018 Staff Report at 20.

in number of repeated trouble reports, which Staff attributed to increased precipitation. This result disappeared when repeated trouble reports were examined over a larger 36-month period.

Staff ultimately concluded that the additional 12 months of data did not change its earlier conclusion from its 2017 report that Verizon has continued to meet its service quality obligations under its Alternative Form of Regulation (“AFOR”) and the Code of Maryland Regulations (“COMAR”). Staff further concluded that the evidence did not support a need for a special investigation or proceeding regarding Verizon’s service quality.<sup>22</sup> Staff recommended that Verizon should continue to provide Staff with monthly service quality data for monitoring going forward. Staff further recommended that, if this Commission wished to extend its review another year given the effects of high precipitation during the previous 12-month review period, it should establish a date certain for Staff to file a new report no earlier than April 1, 2020, so that the dataset encompasses the entirety of the 2019 calendar year.<sup>23</sup>

## **B. OPC Comments**

In its Comments in response to the 2018 Staff Report, OPC again relied on a report of economist Susan M. Baldwin<sup>24</sup> in disagreeing with Staff’s interpretations of the data from the 12-month period at issue.<sup>25</sup> Ms. Baldwin identified the same data patterns as Staff but did not dispute Staff’s statistical analysis. Ms. Baldwin nonetheless made two arguments against Staff’s ultimate conclusions.

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<sup>22</sup> 2018 Staff Report at 3.

<sup>23</sup> 2018 Staff Report at 20.

<sup>24</sup> “Baldwin 2018 Affidavit,” included with OPC Comments at ML# 223920.

<sup>25</sup> OPC Comments at 1-2.

First, Ms. Baldwin argued that the data analyzed is likely to understate customers' actual experiences "because some customers may give up on getting resolution and so may stop calling to report troubles with their dial tone lines."<sup>26</sup>

Second, Ms. Baldwin disagreed with Staff's interpretation of the fact that copper service reliability worsened in the presence of increased precipitation. Contrary to Staff's position that increased precipitation excuses worsened copper reliability, Ms. Baldwin stated that increasing unreliability during periods of increased precipitation is evidence of poor maintenance because "copper networks, when maintained, function in rain and sun."<sup>27</sup> Ms. Baldwin further stated that Verizon should be able to detect whether moisture is entering its copper cables by using transducers that trigger alarms when air flow and pressure within the cables change.<sup>28</sup>

Based on Ms. Baldwin's report, OPC made three recommendations: (1) that Verizon continue to file monthly reports with Staff and OPC; (2) that Verizon file a report describing the action it is taking to prevent moisture from affecting its outside plant, including identifying the timing and location of any remediation projects; and (3) that Verizon hold public hearings in communities that are "copper only."<sup>29</sup>

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<sup>26</sup> Baldwin 2018 Affidavit at 3.

<sup>27</sup> Baldwin 2018 Affidavit at 3-4.

<sup>28</sup> Baldwin 2018 Affidavit at 3.

<sup>29</sup> OPC Comments at 2.

### **C. Verizon Comments**

Verizon agrees with Staff's conclusion that the evidence does not support the need for a special investigation or proceeding. Verizon again notes that it has met all applicable service quality standards "by a large margin" and claims "there is no basis for concern over Verizon's service quality or its commitment to continue to deliver excellent service to its Maryland customers in the future."<sup>30</sup> Verizon requests that the Commission leave it to Verizon and Staff to work out an agreement regarding any future reporting of data. Verizon does not believe it is necessary for the Commission to adopt Staff's optional proposal to establish a date certain for Staff to file a new report.<sup>31</sup> Because OPC's and Verizon's Comments were filed on the same day, Verizon's response did not address OPC's additional proposals.

### **Commission Decision**

The Commission finds that Verizon is in compliance with its AFOR and COMAR service metrics, and adopts Staff's recommendation that Verizon continue to file monthly service quality reports with Staff and OPC. The Commission declines at this time to set a date certain for a future Staff report, pending resolution of the matters discussed below.

The Commission also adopts OPC's suggestion that Verizon file a report describing the actions it is taking to prevent moisture from affecting its outside plant. Verizon's copper wire telephone service should be operational come rain or shine. Verizon is therefore directed to file a report addressing this issue within thirty (30) days of issuance of this Order.

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<sup>30</sup> Verizon Comments at 4. ML# 223912.

<sup>31</sup> Verizon Comments at 4-5.



With regard to OPC's suggestion that this Commission hold public hearings in communities that are "copper only," the Commission finds that the request is premature given the existing data.

**3. Should the Commission revise the geographic aggregation in the service quality reports collected from Verizon?**

**A. OPC's Position**

OPC again urges the Commission to require Verizon to produce its service quality report data at a greater level of granularity than the current practice of aggregating data at the statewide level or into four large regions.<sup>32</sup> OPC recommends that the data also be produced at the wire center and service district levels.

OPC argues that Verizon's current reporting practices—producing data at either a statewide level or across four large geographic regions—may mask problems in certain communities where copper voice reliability may fall below acceptable levels because data from those communities is averaged in with that from communities where reliability is better.<sup>33</sup> OPC stated that during the pendency of its 2017 Petition, it obtained, in response to data requests propounded upon Verizon, data disaggregated by wire center.<sup>34</sup> That data, OPC claimed, showed concentrations of repeat failures in certain counties, almost all of which were in the rural copper-only areas of the state.<sup>35</sup>

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<sup>32</sup> OPC Comments at 2. OPC previously raised this issue in its June 12, 2017 Response to the Comments of Staff and Verizon Maryland on OPC's Petition for Investigation into Verizon Maryland's Provision of Basic Local Phone Service. Then as now, OPC requested that Verizon report reliability data by wireline center and service district.

<sup>33</sup> See Baldwin 2018 Affidavit at 4.

<sup>34</sup> 2017.6.12 OPC Response at 4, note 7.

<sup>35</sup> 2017.6.12 OPC Response at 5.

## **B. Verizon's Position**

Verizon did not address this issue in its Comments in response to the 2018 Staff Report, because it filed its Comments simultaneously with OPC's Comments. It did, however, address this issue in its June 16, 2017 filing in opposition to OPC's June 12, 2017 Response.<sup>36</sup> There, Verizon argued that looking at data at the wire center level would lead to "skewed and unreliable results" because of the "small number of lines" and the impact of catastrophic outages.<sup>37</sup>

## **C. Staff's Position**

Staff also did not address this issue in its 2018 Report. Staff did, however, address it in its July 19, 2017 filing in response to OPC's above-noted June 12, 2017 Response.<sup>38</sup> There, Staff raised two concerns about OPC's original proposal. First, Staff observed that Verizon's AFOR and COMAR regulations set service quality standards that are measured statewide. Second, Staff observed that, as a result of the variation in sizes among Verizon's offices, outages in offices that serve fewer customers can be "disproportionately overstated on a percentage basis when compared to larger central offices."<sup>39</sup>

## **Commission Decision**

The Commission is concerned about the possibility, as OPC alleges, that there are geographic areas with measurably persistent poor service quality, but the Commission lacks sufficient data to make a finding on this issue. Accordingly, Verizon is hereby directed to show cause why the Commission should not require that future service

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<sup>36</sup> ML# 215733.

<sup>37</sup> ML# 215733 at 3.

<sup>38</sup> ML# 216124.

<sup>39</sup> ML# 216124 at 16.

reliability reports contain data broken out at the wire center and service district levels, as requested by OPC.

**4. Are Verizon’s service quality reports protected from public disclosure?<sup>40</sup>**

**A. OPC’s Position**

Lastly, OPC has repeated its request that Verizon’s monthly service quality reports—currently shared confidentially with Staff and OPC—be made available to the public.<sup>41</sup>

**B. Verizon’s Response**

In its June 1, 2017 Comments in Opposition to OPC’s Petition, Verizon argued that the confidentiality of the records had been agreed upon by Staff and Verizon and ratified by the Commission’s approval of their 2015 Letter of Understanding.<sup>42</sup> It further argued that the data is protected from disclosure by the Maryland Public Information Act (“MPIA”).<sup>43</sup> In support of this argument, Verizon represented that “Verizon does not customarily release this data to the public or its competitors, and it provided the data to Staff on a proprietary basis, voluntarily, as part of its monthly reports and informal discovery in this matter.”<sup>44</sup> Verizon further represented that it “would be harmed competitively if these details about its retail performance were disclosed. Competitors could use that data against Verizon in the marketplace, for example by targeting customers

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<sup>40</sup> Staff has taken no official position on this issue. ML# 216124 at 18.

<sup>41</sup> OPC Comments at 2.

<sup>42</sup> ML# 215504 at 5.

<sup>43</sup> General Provisions Article (“GP”), *Md. Ann. Code*, § 4-335; ML# 215504 at 5.

<sup>44</sup> ML# 215504 at 6.

where they believe they could provide superior service levels to that Verizon provides to its retail customers.”<sup>45</sup>

### **Commission Decision**

The Commission in Order No. 88437 denied OPC’s previous request that Verizon be required to make its service quality reports public, ordering instead that “subject to a non-disclosure agreement duly executed by OPC, Verizon is directed henceforth to provide OPC any service quality data that is provided to Staff.”<sup>46</sup> OPC has nonetheless again raised the question of public access in concert with its above-discussed proposal that the Commission should expand the granularity of the data contained in the reports. Although as discussed above, Verizon has made general representations as to the non-public nature and commercial value of its reliability data, Verizon has not responded to OPC’s latest proposal or produced evidence substantiating its representations.<sup>47</sup> Accordingly, the Commission directs Verizon to show cause why the data in question—both as it has historically been produced and at the level of granularity proposed by OPC—should not be made public on a prospective basis.

#### **5. Conclusion**

**IT IS THEREFORE**, this 5<sup>th</sup> day of April, Two Thousand Nineteen, by the Public Service Commission of Maryland,

**ORDERED:** (1) That Verizon shall continue to provide monthly service quality data to Staff and OPC in the same form previously ordered by this Commission;

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<sup>45</sup> ML# 215504 at 7.

<sup>46</sup> Order No. 88437 at 16.

<sup>47</sup> Under the Maryland Public Information Act, General Provision (“GP”), *Md. Ann. Code*, § 4-101(h)(1)(i), reports filed with the Commission would constitute Public Records, but there is a mandatory denial for disclosure of “confidential commercial information.” GP § 4-335.

(2) That Verizon shall file a report describing the action it is taking to prevent moisture from affecting its outside plant within thirty (30) days of this order;

(3) That Verizon shall within thirty (30) days of this order show cause why it should not be required to produce monthly service reliability data at the level of granularity requested by OPC in its responsive Comments; and

(4) That Verizon shall within thirty (30) days of this order show cause why the service reliability data produced by Verizon should not be made publicly available on a prospective basis.

*/s/ Jason M. Stanek* \_\_\_\_\_

*/s/ Michael T. Richard* \_\_\_\_\_

*/s/ Anthony J. O'Donnell* \_\_\_\_\_

*/s/ Odogwu Obi Linton* \_\_\_\_\_

*/s/ Mindy L. Herman* \_\_\_\_\_  
Commissioners