

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105**

**Verizon Pennsylvania, Inc.
Petition and Plan for Alternative
Form of Regulation under Chapter
30; 2000 Biennial Update to
Network Modernization Plan
(Amendment to NMP)**

**Public Meeting held July 17, 2003
JUL-2003-OSA-0120*
Docket Nos. P-00930715F0002**

**Verizon Pennsylvania Inc. Petition
and Plan for Alternative Form of
Regulation under Chapter 30;
2000 Biennial Update to Network
Modernization Plan (Petition For
Reconsideration of May 15, 2002
Order)**

P-00930715

**DISSENTING STATEMENT OF
CHAIRMAN TERRANCE J. FITZPATRICK**

This matter involves a Petition filed by Verizon Pennsylvania, Inc. ("Verizon") to amend its Network Modernization Plan ("NMP"). In its Petition, Verizon seeks to be released from its obligation to construct a broadband network capable of providing service at 45 megabits per second ("mbps"), both upstream and downstream, within five days of a customer's request. Instead, Verizon seeks permission to provide broadband service at 1.5 mbps downstream,¹ and at slower speeds upstream, within five days of a customer's request. Verizon also proposes to (1) provide 45 mbps within "a commercially reasonable" timeframe, estimated at 45 to 60 days; (2) meet certain interim targets prior to ubiquitous deployment by 2015; (3) construct fiber optic cable to all remote terminals by 2015; and (4) construct additional remote terminals so that no loop is longer than 12,000 feet by 2015.

The majority adopts Verizon's Petition, with the modification that Verizon be required to provide broadband service at 1.5 mbps to 80% of its customers by 2010, as opposed to 70% as proposed by Verizon. I do not believe this decision is equitable to customers in light of the value to Verizon of being released from its prior obligation to build a network capable of providing 45 mbps upstream and downstream within five days of a request. Accordingly, I respectfully dissent.

¹ The exact speed is 1.544 mbps. This is the minimum speed that qualifies as "broadband" under Chapter 30. See, 66 Pa. C.S. §3002 (definition of "broadband").

As explained below, I do not believe Verizon has demonstrated that it is impractical or contrary to public interest for it to build a network—probably consisting of a “fiber to the premises” (“FTTP”) distribution system—capable of providing 45 mbps within five days. However, I would have compromised on this point if all customers would get a meaningful benefit from Verizon in return. Specifically, I could have agreed to the proposals of the Office of Small Business Advocate (“OSBA”) and, in part, the Office of Consumer Advocate (“OCA”) that Verizon provide broadband DSL service ubiquitously by 2010, and that it equip all central offices with DSL equipment by 2005.² While these proposals do not require Verizon to invest nearly as much in its network as FTTP, they at least would assure some benefit to all customers compared to what Verizon is actually doing at present. Unfortunately, the majority is content to release Verizon from its commitment without requiring benefits for all customers.

I disagree with Verizon’s assertion that it would be impractical to construct a network capable of 45 mbps within five days—probably consisting of FTTP. Verizon has made different statements in different contexts on the merits of FTTP. In its Petition for Reconsideration dated May 30, 2002 in this proceeding, Verizon argued:

Requiring Verizon PA to provide 45 mbps broadband service to all customers within five days is tantamount to mandating the use of prohibitively expensive ‘fiber to the doorstep’ technology to provide services that customers do not want, cannot use and will not pay for, and which may never be used.

Petition for Reconsideration, page 2. However, on May 29, 2003, Verizon issued a joint press release along with BellSouth Corporation and SBC Communications, Inc., announcing that these companies have adopted a set of common technical requirements for FTTP, and that they would seek equipment proposals from vendors for potential network deployment. The press release links this action by the companies to the FCC’s tentative determination in its “Triennial Review” proceeding (the decision has been announced, but an order has not been released) that such broadband networks need not be shared with competitors. This news release, which can be viewed on Verizon’s website at www.Verizon.com, stated:

² Verizon cites the “difficulty, if not impossibility” of accelerating DSL deployment as proposed by OCA and OSBA (Verizon’s Exceptions page 15). However, while Verizon’s evidence disputed that remote terminals could be constructed and equipped to provide ubiquitous DSL service by 2005—as advocated by OCA—this evidence did not specifically dispute the OSBA testimony that Verizon should be required to provide ubiquitous broadband service by 2010. (See, Verizon Statement 1.1 Rebuttal Testimony of Dunsey and Kramer). The record also clearly supports the OCA proposal to require Verizon to equip all of its central offices to provide broadband service by the end of 2005. In addition to OCA’s evidence, Verizon’s rebuttal testimony itself stated that it increased DSL deployment in rural central offices from 20% to 43% in 2002 alone (*Id.*, p. 21). By continuing that rate of deployment, all of the central offices would be equipped to provide broadband by the end of 2005.

Today's announcement is a major step in paving the way for deployment of next-generation broadband networks that offer nearly limitless bandwidth for home and business internet, voice and innovative new video services. FTTP, whether to the curb or to the building, will provide an ideal platform to support a number of emerging and evolving applications such as interactive gaming, photo sharing, pc backup and telecommuting, along with video conferencing, premises surveillance and other novel video services, which could be delivered on demand and in high definition.

* * * *

'Fiber to the premises could be the most fundamental and important enhancement in telecom communication services since wireless networks were built,' said Matt Davis, Director of Broadband Access Technologies at the Yankee Group. 'With these common technology requirements, and the expected resulting manufacturing economies, wide-spread FTTP deployment has the potential to spur new telecom investment, stimulate competition across the spectrum of communications and network and entertainment services, and enable innovative, bandwidth—hungry applications for consumers.'

* * * *

Mark A. Wegleitner, Verizon's Chief Technology Officer said, 'As we deploy it, fiber to the premises will be a watershed advancement for Verizon and our consumer and business customers. This technology is not only capable of providing the services we are familiar with today, but it also opens the door for communications, information and entertainment services previously unimagined.'

(Emphasis added.)

In a nutshell, the fiber network that Verizon criticized in this proceeding as prohibitively expensive, unwanted and unusable, it now refers to (for other purposes) as a "watershed advancement" for Verizon and its customers. Verizon's more

recent statement undermines its position that building a fiber distribution network would be contrary to the interest of its customers.³

Conflicting statements about FTTP aside, Verizon has already made a legally binding commitment in Pennsylvania to build a state-of-the-art broadband network, as the Commission found in its Order of May 15, 2002, in this proceeding. Verizon has not argued that this state commitment is preempted even if the FCC requires it to share the network with competitors.

The modifications to its NMP proposed by Verizon, and the minor modifications added by the majority, do not come close to making customers whole for the commitment from which Verizon is being released. At the outset, it is important to recognize the vast difference in investment required for a network capable of delivering 45 mbps within five days and 1.5 mbps within five days. OCA introduced evidence indicating that the cost of a 1.5 mbps capable network is \$1.2 billion, while the costs of a network capable of providing 45 mbps within five days is \$14.4 billion (OCA Exceptions, page 25). Even recognizing the difficulty of quantifying these numbers precisely, it is clear that if Verizon were required to honor its original commitment, it would have to invest billions of dollars more than it will be required to invest to build a 1.5 mbps capable network.⁴

Moreover, it must be kept in mind that, as the Commission itself recognized in its Order entered on December 12, 2002 in this case (at p. 6), the economic and network modernization aspects of Verizon's original Chapter 30 Plan were intertwined. When it approved Verizon's Chapter 30 Plan, the Commission rejected OCA's earnings sharing proposal in light of the "increased risk" and "financial burden" associated with Verizon's network modernization plan. Bell Atlantic Pennsylvania, Inc.'s Petition and Plan for Alternative Form of Regulation Under Chapter 30, 1994 Pa. Lexis 142, p. 44. Accordingly, it would be inequitable to allow Verizon to escape its earlier commitment without requiring it to provide comparable benefits to all customers.

With the above principles in mind, I will examine the alleged benefits proposed in Verizon's Petition and in the Motion adopted by the Commission.

³ I also note that in the Deloitte and Touche study that preceded enactment of Chapter 30, Verizon and other local exchange carriers projected that they would construct fiber distribution systems by 2030. The only exception was GTE (now Verizon North), which projected that it would construct fiber to within 4,000 feet of rural customers. Deloitte and Touche Consulting, "Pennsylvania Telecommunications Infrastructure Study", March 1993, Vol. IV, pp. X11-10, X11-27.

⁴ Verizon's argument on the relative cost of the two networks appears to be designed to avoid the issue rather than address it. First, it argues that the relative cost of the networks is irrelevant. Second, rather than specifically address the cost disparity issue, it quibbles with the conclusion of OCA's witness, arguing that it would be "speculation" to conclude that its original commitment would entail greater investment, based upon the candid (and obvious) statement of the OCA witness that the costs cannot be precisely quantified. (See, Verizon Reply Brief, pp. 5-6).

(1) Verizon’s commitment to provide service at 45 mbps within a “commercially reasonable” period estimated at 45-60 days

The public benefit of this “concession” by Verizon is dubious for several reasons. First, Verizon’s Petition for Reconsideration—filed before its Petition to amend its NMP—stated that Verizon “can today provide bandwidth of 45 mbps and much higher within a commercially reasonable time to the majority of its customers” (Petition for Reconsideration page 3). Thus, Verizon’s new commitment is simply a recitation of something Verizon is already doing for most of its customers.

In addition, the majority fails to grasp the significance of the difference between an obligation to provide 45 mbps within five days of a customer request, and an obligation to provide 45 mbps within a commercially reasonable timeframe. As OCA’s evidence pointed out, to provide 45 mbps within five days, Verizon must modernize its public network so that it stands ready to provide this service when a customer requests it. Since the expense of modernizing the network to be able to provide service within five days would fall upon Verizon, as Chapter 30 intended, Verizon would have an incentive to aggressively market its 45 mbps (and above) service to recover its sunk costs. On the other hand, if Verizon is only obligated to provide 45 mbps within a commercially reasonable period, it can meet this obligation by awaiting a customer request and then constructing a dedicated, high-capacity fiber optic line and charging the customer for the full expense of this line. Thus, in the latter scenario, the customer must wait longer and pay more.

In fact, constructing a dedicated high capacity line upon customer request does not even constitute “network modernization.” Such lines represent a bypassing of the publicly available distribution network that is necessitated by the fact that the network has not been modernized. Dedicated, high-capacity lines were available and were being used by business customers at the time of the Deloitte and Touche study that preceded the enactment of Chapter 30.⁵ It is a sham to argue that constructing such facilities, for the sole use of a particular customer and at that customer’s expense, qualifies as network modernization under Chapter 30. If the public network was modernized so that it was capable of providing speeds of 45 mbps and above, customers would not have to pay for private lines to provide this same capability. I note that the very purpose of Chapter 30 was to encourage “accelerated deployment of a universally available, state-of-the-art, interactive public-switched broadband network in rural, suburban, and urban areas....” 66 Pa. C. S. §3001(1). (Emphasis added.)

⁵ Deloitte and Touche Consulting, “Pennsylvania Telecommunications Infrastructure Study,” March 1993, Volume IV, pp. IX 190-192, The Report points out that, at that time, the “public switched network” supported only voice and narrowband services on a “ubiquitous” basis, while wideband and “broadband” services were available only on a “dedicated nonswitched basis.” *Id.* The Report also stated that wideband and broadband services were being provided over “private network” applications, but that “broadband service cannot be provided on a widely available basis in today’s telecommunications infrastructure.” Vol. IV, pp. IX-28-29.

(2) Verizon's commitment to construct fiber to all remote terminals by 2015.

Verizon's witness testified that Verizon has been installing fiber to remote terminals since the late 1980s (Tr., 173). Even assuming, however, that this modification proposed by Verizon will cause Verizon to place more fiber in its distribution network than it would do otherwise, there is no evidence that this additional fiber will translate into additional bandwidth for customers. Verizon is not committing to install any type of technology to provide speeds in excess of 1.5 mbps. In addition, Verizon is not offering to open its remote terminals to competitors so that the competitors can install technology to provide greater bandwidth than 1.5 mbps. Accordingly, the record does not support a conclusion that this commitment by Verizon provides any tangible benefit to customers.

(3) Verizon's commitment to construct new remote terminals so that no loop is longer than 12,000 feet.

This is nothing more than a statement of what Verizon would already have found it necessary to do, under the DSL technology it currently uses, in order to provide all customers with broadband service at 1.5 mbps within five days of a customer request. The DSL service that Verizon currently provides can only achieve a speed of 1.5 mbps downstream if the loop is 12,000 feet or shorter (Verizon Statement 1.1, p. 23). Accordingly, the commitment by Verizon to construct new remote terminals so that all loops are less than 12,000 feet is simply a recitation of what Verizon would have to do to satisfy the minimum statutory requirements of Chapter 30.

(4) The requirement in the Motion that Verizon meet a target of 80% deployment by 2010, instead of the 70% proposed by Verizon.

In its Petition to Amend, Verizon proposed that, as an interim target, it would provide broadband service at 1.5 mbps within five days to 70% of all lines by 2010. The Motion adopted by the majority would require Verizon to provide such service to 80% of all lines by 2010. For the reasons set forth below, this increase in the interim target is an insufficient basis for releasing Verizon from its prior commitment.

First, it is not clear that the establishment of this interim target will accelerate the availability of broadband service. In its Order of June 11, 1995 that approved Verizon's NMP, the Commission required Verizon to provide broadband to 20% of all urban, suburban, and rural lines by 1998, 50% of all such lines by 2004, and 100% by 2015 (Order, p. 6). Unless Verizon intended to provide broadband to a disproportionate number of customers just before the statutory deadline of 2015, this would put broadband availability at over 75% by 2010. Viewed in this light, requiring Verizon to meet an interim target of 80% broadband availability by 2010 is not a significant acceleration in broadband availability. This is not to mention that "broadband" in the 1995 Order meant 45 mbps upstream and downstream, whereas

“broadband” under the amendment proposed by Verizon means 1.5 mbps downstream and even slower speeds upstream.

Second, the Motion adopted by the majority appears to conclude that the Commission lacks legal authority to require Verizon to provide 1.5 mbps to all customers by 2010. In doing so, the majority adopts the position of Verizon and rejects the position of OCA, OSBA, the ALJ, and the Office of Special Assistants. I disagree with the majority. Nothing in Chapter 30 prohibits the Commission from establishing a date earlier than 2015, and accelerating the date serves the purpose of Chapter 30 in light of the unique circumstances of this case. This is not a ruling on an initial Chapter 30 filing; it is a request to amend a Chapter 30 plan that was approved eight years ago. Verizon is seeking permission to build a network that is much less advanced and costly than the one to which it committed when its initial Chapter 30 plan was approved. Moreover, the economic and network modernization components of its initial Chapter 30 plan are interrelated, and Verizon has enjoyed the economic benefit of the plan for the past eight years. In this circumstance, it is both rational and legally permissible for the Commission to require Verizon to build the less-advanced and less-costly network more expeditiously to provide partial compensation to its customers for being released from its earlier commitment.

Finally, requiring Verizon to provide broadband to 80% of all lines by 2010—as opposed to 100% of all lines as advocated by OCA, OSBA, and the ALJ—is insufficient to achieve an equitable result for all of Verizon’s customers because customers in the most rural areas of Verizon’s territory are not assured that they will receive anything more than the minimum to which they are already entitled under Chapter 30—1.5 mbps broadband service by 2015. The rural customers who do not receive this service until 2015 are receiving nothing in return for the huge difference—in dollars and in bandwidth—between the broadband network Verizon committed to originally and the network it proposes now.

For the reasons stated above, the decision of the majority fails to give proper consideration to the rights of all of Verizon’s customers throughout the Commonwealth. Accordingly, I respectfully dissent.

Date: July 17, 2003

TERRANCE J. FITZPATRICK
CHAIRMAN