

Attachment B to VZ-AG 1-9

Service Quality Remedies in Other States

Methods for Enforcing Service Quality Standards Through Financial Accountability

Rules enforcement: As a recent example, on January 5, 2009, the Florida Public Service Commission issued a show cause order directing Verizon to respond within 21 days with a filing showing why it should not be fined a total of \$10,000 per violation of its service quality rules, or a total fine of \$4.56 million.¹ The fine is in accordance with a Florida statute authorizing the PSC to impose a fine or penalty on any company willfully violating a rule (in this case the service quality rules).

In May, 2008 the Attorney General, Citizens for the State of Florida, and the American Association of Retired Persons petitioned the Florida Public Service Commission to issue a show cause order requiring Verizon to show cause why it should not pay a \$25,000 fine per violation of the service quality rules.² On January 5, 2009, the Florida Public Service Commission issued a show cause order directing Verizon to respond within 21 days with a filing showing why it should not be fined a total of \$10,000 per violation, or a total fine of \$4.56 million.³ In Florida, explicit service quality standards exist that telecommunications companies are required to meet.⁴ The specific rules do not specify a monetary penalty for failure to meet the standards. Verizon had argued that the service quality standards (codified in Rule 25.070, F.A.C.) do not grant the PSC the authority to impose fines upon Verizon for failure to meet the standards and, instead, were only designed for performance monitoring purposes.⁵ However, Section 364.285 of the

¹ / *In re: Joint petition for show cause proceedings against Verizon Florida LLC for apparent violation of Rule 25-4.070, F.A.C., Customer Trouble Reports, and impose fines, by the Office of the Attorney General, Citizens of the State of Florida, and AARP*, Florida Public Service Commission Docket No. 080278-TL, Order to Show Cause, Order No. PSC-09-0015-SC-TL, Issued January 5, 2009, at 17.

² / *In re: Joint petition for show cause proceedings against Verizon Florida LLC for apparent violation of Rule 25-4.070, F.A.C., Customer Trouble Reports, and impose fines, by the Office of the Attorney General, Citizens of the State of Florida, and AARP*, Florida Public Service Commission Docket No. 080278-TL, Joint Petition requesting the Florida Public Service Commission to issue a show cause order against Verizon Florida LLC for repeated willful violation of telephone service quality rule, filed May 15, 2008. Documents in Docket No. 080278-TL are available at <http://www.floridapsc.com/dockets/cms/docketFilings2.aspx?docket=080278>.

³ / *In re: Joint petition for show cause proceedings against Verizon Florida LLC for apparent violation of Rule 25-4.070, F.A.C., Customer Trouble Reports, and impose fines, by the Office of the Attorney General, Citizens of the State of Florida, and AARP*, Florida Public Service Commission Docket No. 080278-TL, Order to Show Cause, Order No. PSC-09-0015-SC-TL, Issued January 5, 2009, at 17.

⁴ / Commission Rule 25-4.070, Florida Administrative Code. See, generally, <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=25-4> for telephone company rules in the state of Florida.

⁵ / *In re: Joint petition for show cause proceedings against Verizon Florida LLC for apparent violation of Rule 25-4.070, F.A.C., Customer Trouble Reports, and impose fines, by the Office of the Attorney General, Citizens of the State of Florida, and AARP*, Florida Public Service Commission Docket No. 080278-TL, Order to Show Cause, Order No. PSC-09-0015-SC-TL, Issued January 5, 2009, at 3.

Florida Statutes gives the Florida Public Service Commission the authority to impose a penalty on any entity subject to its jurisdiction that is found to “refuse to comply with or to have willfully violated any lawful rules or order” of the PSC.⁶ The PSC concluded that Verizon’s failure to meet service quality standards in the rules “meets the standard” for a ‘refusal to comply’ and a ‘willful violation’ as contemplated by the Legislature when enacting Section 364.285, Florida Statutes” and stated that: “It is uncontroverted that Verizon has knowledge of both the service quality objectives and its continued failure to meet these objectives.”⁷ The PSC treated each time an exchange did not meet the standard (both service affecting trouble reports and out-of-service reports) in each month or quarter⁸ as a violation, for a total of 262 violations in 2007 and 194 violations in the first three quarters of 2008.⁹

Rulemaking:

- The Michigan Public Service Commission adopted service quality rules for telecommunications on August 1, 2005. Among other requirements, the comprehensive rules require providers to give customers a credit of \$25 for a missed repair commitment and either a 50 percent or 100 percent waiver of installation fees, depending on the tardiness of the installation.)¹⁰
- The Virginia State Corporation Commission, based on a finding that the current service quality rules lacked penalties¹¹ initiated a rulemaking in June 2008 to consider local exchange service quality standards and rules.¹² That case is ongoing.¹³

Settlement:

⁶ / *Id.*, at 16.

⁷ / *Id.*, at 17.

⁸ / Performance is measured on a quarterly basis for exchanges with less than 50,000 access lines.
Id., at 5.

⁹ / *Id.*, at 17.

¹⁰ / *In the matter, on the Commission’s own motion, to promulgate rules governing the quality of telecommunications services*, Michigan Public Service Commission Case No. U-14435, *Order Adopting Telecommunications Service Rules*, August 1, 2005.

¹¹ / *Commonwealth of Virginia, ex rel., State Corporation Commission v. Verizon Virginia Inc. and Verizon South Inc., Defendants*, Virginia State Corporation Commission Case No. PUC-2007-00040, *Order*, February 29, 2008, at 3.

¹² / *Ex Parte: Revisions of Rules for Local Exchange Telecommunications Company Service Quality Standards*, Virginia State Corporation Commission Case No. PUC-2008-00047, *Order Prescribing Notice, Scheduling Hearing, and Inviting Comments*, June 17, 2008, at 1.

¹³ / Comments are due on revised proposed rules by February 5, 2009 and hearings are scheduled for March. *Ex Parte: Revisions of Rules for Local Exchange Telecommunications Company Service Quality Standards*, Virginia State Corporation Commission Case No. PUC-2008-00047, *Second Order for Notice and Hearing*, December 15, 2008.

- Maryland: A settlement in a price cap case is now pending review¹⁴ by the Maryland Public Service Commission, which includes credits for out-of-service conditions and for missed appointments.¹⁵
- Arkansas: In a rate case I worked on several years ago, as a result of a settlement, CenturyTel agreed that if it failed to meet the restoration of service requirements it would provide a customer credit in the amount of the entire monthly basic local exchange rate in some instances.
- New Hampshire: As a result of a settlement agreement approved in relation to the sale of local exchange operations to FairPoint, FairPoint will be subject to “self-enforcing penalties” refunded to retail customers through bill credits.¹⁶ The penalty structure is modeled on Maine’s penalty structure and includes a \$7,500 fine per percentage point missed for each benchmark for an overall limit of \$12.5 million per year.¹⁷

¹⁴ / The Maryland Public Service Commission approved a proposed schedule by which Verizon Maryland, the Office of People’s Counsel, and Commission Staff file testimony and reply testimony regarding the settlement on January 21, 2009 and January 30, 2009 respectively. Hearings regarding the settlement will be held February 12-13, 2009. Letter from Maryland Public Service Commission to parties of record in Case Nos. 9072, 9114, 9120, 9121, and 9133, Re: Joint Petition to Approve Settlement Agreement, Case Nos. 9071, 9114, 9120, 9121, and 9133, December 19, 2008.

¹⁵ / *In the Matters of Request of Verizon Maryland Inc. to Reclassify Certain Retail Bundled Services to the Competitive Service Basket as Provided by the Commission’s Price Cap Plan; Commission’s Investigation of Verizon Maryland Inc.’s Service Performance and Service Quality Standards; Commission’s Investigation Into Verizon Maryland Inc.’s Affiliate Relationships; Commission’s Investigations into Local Calling Area Boundaries and Related Issues; Appropriate Forms of Regulating Telephone Companies; Maryland Public Service Commission Case Nos. 9072; 9114; 9120; 9121; and 9133, Joint Petition for Approval of Settlement Agreement, December 8, 2008.*

¹⁶ / *Verizon New England, Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Co., Verizon Select Services, Inc. and FairPoint Communications, Inc. Petition for Authority to Transfer Assets and Franchise, Order Approving Settlement Agreement with Conditions, New Hampshire Public Utilities Commission Docket No. 07-011, Order No. 24,823, February 25, 2008 (“NH PUC Verizon – FairPoint Order”), at 32-33. Joint Petitioners (Verizon and FairPoint) and the NH PUC Staff filed a settlement agreement on January 24, 2008. NH PUC Verizon-FairPoint Order, at 16. Hearings and two technical sessions took place to examine the agreement. *Id.*, at 17. The credits are detailed in Exhibit 3 of the Settlement Agreement attached to the Order.*

¹⁷ / Settlement Agreement, at Exhibit 3, Section 4. Vermont and Maine use similar systems to assign penalties to Verizon Vermont and Verizon Maine, respectively, in the event of service quality shortfalls. In both states, calculation of the penalty is based on the percentage deviation from the benchmark, summed over all benchmarks. For example, if the benchmark for Metric Alpha is 16, and the actual performance is 18, then percentage deviation is $(18-16)/16$, or 12.5%.

In almost every case in both states, the performance areas are measured monthly and averaged over 12 months, resulting in the annual performance measure. One difference between Vermont and Maine is how the percentage deviations are translated into actual dollar-amount penalties. In Vermont, the percentage deviations are converted to “points,” with each point representing a specific dollar amount penalty. The penalty structure is such that as more points are accumulated (i.e. – service is worse), the points become more “expensive.” In Maine, each percentage deviation “costs” the same amount - \$7,500. In the Metric Alpha example above, the 12.5% deviation would result in a penalty of \$93,750. In both states, the total annual service quality refund is capped – at \$10,515,650 in Vermont, and at \$12,500,000 in Maine. Source: *Investigation into a Successor Incentive Regulation Plan for Verizon New England Inc., d/b/a Verizon Vermont, Docket No. 6959, Investigation into Tariff Filing of*

- West Virginia: A new Retail Service Quality Plan was approved in December 2008 as a result of settlement and includes specific service quality standards, more frequent reporting, additional customer credits for service interruptions and commitments from Verizon to supplement its workforce and invest an additional \$11 million in infrastructure improvements.¹⁸

Legislation: As an example, in Illinois, as a result of legislation, customers receive credits for poor service quality. Telecommunications carriers are required to provide customer credits for (1) out-of-service over 24 hours; (2) installation occurring after five days; and (3) missed appointments.¹⁹

Alternative Regulation Plans: Numerous states have alternative regulation plans with explicit service quality components that typically entail broad customer credits for non-compliance.²⁰

Remedies for Poor Service Quality

West Virginia: On June 30, 2008, the Public Service Commission (“PSC”) opened a general investigation into service quality provided by Verizon West Virginia in response to a petition filed in May 2008 by the Consumer Advocate Division of the PSC and Commission Staff indicating that service quality complaints had risen since 2001.²¹ The Joint Stipulation, between

Verizon New England Inc., d/b/a Verizon Vermont, in re: Compliance Filing in Docket 6959, Docket No. 7141, Order Adopting Amended Plan, April 27, 2006. (APPENDIX B — 2005-2010 AMENDED RETAIL SERVICE QUALITY PLAN FOR VERIZON - Effective January 1, 2005).

¹⁸ / Verizon West Virginia, Inc. Investigation into Quality of Service, West Virginia Public Service Commission Case No. 08-0761-T-GI, Commission Order, December 19, 2008, at 2-3.

¹⁹ / 83 Ill. Adm. Code 732, effective August 1, 2001.

²⁰ / *Maine Public Utilities Commission Investigation into Bell Atlantic-Maine’s Alternative Form of Regulation, State of Maine Public Utilities Commission Docket No. 99-851, Order (Part 2), June 25, 2001; Investigation into Verizon Maine’s Alternative Form of Regulation, Docket No. 1999-851, NOTICE OF CONSIDERATION OF CHANGES TO SQI REBATE STRUCTURE, Investigation into Verizon Maine’s Service Performance, Docket No. 2005-24, NOTICE OF INVESTIGATION, January 13, 2005; Verizon New England Inc., Northern New England Telephone Operations Inc., Enhanced Communications of Northern New England Inc., Northland Telephone Company of Maine, Inc., Sidney Telephone Company, Standish Telephone Company, China Telephone Company, Maine Telephone Company, and Community Service Telephone Co., Re: Joint Application for Approvals Related to Verizon’s Transfer of Property and Customer Relations to Company to be Merged with and into FairPoint Communications, Inc., Maine Public Utilities Commission Docket No. 2007-67; Investigation into Verizon Maine’s Alternative Form of Regulation, Maine Public Utilities Commission Docket No. 2005-155, Order, February 1, 2008; Investigation into a Successor Incentive Regulation Plan for Verizon New England Inc., d/b/a Verizon Vermont, State of Vermont Public Service Board Docket No. 6959, Order, September 26, 2005; Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts’ intrastate retail telecommunications services in the Commonwealth of Massachusetts, Massachusetts Department of Telecommunications and Energy Docket No. DTE 01-31-Phase II, Order, April 11, 2003.*

²¹ / Verizon West Virginia, Inc. Investigation into Quality of Service, West Virginia Public Service

Verizon, Commission Staff and the Consumer Advocate Division (and unopposed by Citynet, FiberNet and the Communications Workers of America) provides a Retail Service Quality Plan.

Verizon West Virginia agreed to meet several service quality standards and metrics.²² Verizon West Virginia will provide monthly reports to the Consumer Advocate Division and Staff for one year and quarterly reports thereafter. In addition, Verizon West Virginia agreed to supplement its installation and maintenance force immediate by approximately 49 technicians through at least June 2009; assign a director level operations manager to monitor compliance; and invest an additional \$11 million for infrastructure improvements.²³ Finally, the agreement includes a system of consumer credits. Verizon West Virginia will provide a \$25 credit to consumers it misses a repair appointment (unless it provides notice by 8 pm the evening before the appointment) and will enhance its existing service interruption bill credits (currently in its tariff) beginning on January 1, 2010 as detailed in Tables 7 and 8 below.

Table 7²⁴

Verizon West Virginia Credits for Out of Service	
≥ 72 Hours and < 96 Hours	\$10
≥ 96 Hours and < 120 Hours	\$15
≥ 120 Hours	\$15 plus \$5 each 24 Hours thereafter

Commission Case No. 08-0761-T-GI, *Commission Order*, December 19, 2008, at 1-2.

²² / *Id.*, at 2.

²³ / *Id.*, at 3.

²⁴ / Source: Verizon West Virginia, Inc. Investigation into Quality of Service, West Virginia Public Service Commission Case No. 08-0761-T-GI, *Commission Order*, December 19, 2008, at Appendix A: Verizon West Virginia Inc. Retail Service Quality Plan, December 9, 2008, page 4. The credits will not exceed the total monthly recurring charges that are payable each month.

Table 8²⁵

Verizon West Virginia Credits for Service Affecting Trouble	
≥ 120 Hours and < 144 Hours	\$10
≥ 144 Hours	\$10 plus \$5 each 24 Hours thereafter

Arkansas: The Public Service Commission (“PSC”) approved a stipulation among Staff, the Arkansas Attorney General, and CenturyTel Northwest of Arkansas, LLC (“CenturyTel”), which addressed matters of revenue requirement, rate design, and service quality.²⁶ The stipulation and settlement approved by the PSC contained the following restoration of service provisions:

If Century Tel fails to meet the restoration of service within 24 hours requirements for a given calendar quarter in a specific exchange, it will provide a customer credit in the amount of a pro-rata portion (1/30th per day missed beyond a 24-hour period) of the monthly basic local exchange rate for each instance

Century Tel further agreed that if it failed to meet the restoration of service requirements within 5 days requirement it will provide a customer credit in the amount of the entire monthly basic local exchange rate for each individual instance.²⁷

Illinois: Customers also receive customer credits for poor service quality. Telecommunications carriers are required to provide customer credits for (1) out-of-service over 24 hours; (2) installation occurring after five days; and (3) missed appointments.²⁸ The credits are as follows:

²⁵ / Source: Verizon West Virginia, Inc. Investigation into Quality of Service, West Virginia Public Service Commission Case No. 08-0761-T-GI, Commission Order, December 19, 2008, at Appendix A: Verizon West Virginia Inc. Retail Service Quality Plan, December 9, 2008, page 4. The credits will not exceed the total monthly recurring charges that are payable each month.

²⁶ / I submitted testimony on these issues on behalf of the Arkansas Attorney General. See Attachment A to my testimony.

²⁷ / *In the Matter of the Application of CenturyTel of Northwest Arkansas, LLC for Approval of a General Change in Rates and Tariffs*, Arkansas Public Service Commission Docket No. 03-041-U, *Order No. 8*, January 29, 2004, at Attachment, Joint Exhibit No. 1: “Joint Stipulation and Settlement Agreement,” part 5. See, also, *id.*, at 11-13.

²⁸ / 83 Ill. Adm. Code 732, effective August 1, 2001; Illinois Commerce Commission, Docket No. 98-0252, Illinois Bell Telephone Company Application for review of alternative regulation plan; Docket No. 98-0335, Illinois Bell Telephone Company petition to Rebalance Illinois Bell Telephone Company's Carrier Access and Network Access Line Rates; Docket No. 00-0764, Citizens Utility Board and the People of the State of Illinois -v- Illinois Bell Telephone Company, Verified Complaint for a Reduction in Illinois Bell Telephone Company's Rates and Other Relief, Order, December 30, 2002 (“Illinois Order”), at 196. The Illinois Commerce Commission was among the first state commissions to incorporate a “Q” factor in the initial price cap plan that governed Ameritech-Illinois. The Illinois Commerce Commission adopted a specific service quality component that added as much as

Table 9

Illinois Credits for Out of Service for more than 24 Hours	
24 – 48 Hours	A pro-rated portion of the monthly recurring charges
48 – 72 Hours	33% of monthly recurring charges
72 – 96 Hours	67% of monthly recurring charges
96 – 120 Hours	100% of monthly recurring charges
> 120 Hours	Alternative telephone service or \$20/day (customer option)

Michigan: The Public Service Commission adopted new service quality rules for telecommunications on August 1, 2005.²⁹ Among other requirements, the comprehensive rules require providers to give customers a credit of \$25 for a missed repair commitment and either a 50 percent or 100 percent waiver of installation fees, depending on the tardiness of the installation.³⁰

Virginia: The State Corporation Commission (“Commission”) initially responded to concerns about Verizon Virginia’s failure to meet out-of-service trouble report standards in 2007. Verizon Virginia acknowledged that it had failed to meet the standards but described the standards as “advisory.”³¹ The Commission determined that there was no ambiguity in the standard, but that the rule lacked any “specific penalty for failure to comply with the standard.”³² As such, the Commission concluded that modifications to the Service Quality Rules were in order and initiated a rulemaking in June 2008 to consider local exchange service quality standards and

two percentage points in a year to Ameritech Illinois’ X-Factor if Ameritech Illinois failed to meet all of its service quality performance standards. Petition to Regulate Rates and Charges of Noncompetitive Services Under an Alternative Form of Regulation, *Order*, Illinois Commerce Commission Docket No. 92-0448/93-0239 Consol. (October 11, 1994), at 56-59.

²⁹ / *In the matter, on the Commission’s own motion, to promulgate rules governing the quality of telecommunications services*, Michigan Public Service Commission Case No. U-14435, *Order Adopting Telecommunications Service Rules*, August 1, 2005.

³⁰ / *Id.*

³¹ / Commonwealth of Virginia, ex rel., State Corporation Commission v. Verizon Virginia Inc. and Verizon South Inc., Defendants, Virginia State Corporation Commission Case No. PUC-2007-00040, *Order*, February 29, 2008, at 3.

³² / *Id.*

rules.³³ That case is ongoing.³⁴

Maryland: On December 8, 2008, Verizon Maryland and its affiliates (“Verizon MD”), the Office of People’s Counsel (“OPC”) and the Maryland Public Service Commission Staff (“Staff”) filed a Joint Petition to Approve a Settlement Agreement with the Maryland Public Service Commission (“PSC”) that seeks to resolve ongoing issues in several proceedings, including the failure of Verizon Maryland to meet its service quality obligations, including out-of-service and missed appointment standards.³⁵ The settlement agreement includes elements to address past failures to meet service quality as well as a plan to cover future failures to meet service quality standards. Verizon MD will refund, in the form of bill credits, a total of \$870,000 (on a pro rata basis) to customers who experienced out-of-service conditions lasting longer than four days from August 1, 2007 to the date of the settlement approval.³⁶ Going forward, Verizon MD will track monthly “average days to repair total voice out-of-service network troubles” on its regular quarterly service quality reports, and beginning the first quarter after settlement approval:

If Verizon MD exceeds two calendar days for the metric “Average Days to Repair Total Voice Out-of-Service Network Troubles” in a quarter, Verizon MD will pay \$500,000 on a pro-rata basis and in the form of bill credits to Verizon MD customers who experienced out-of-service condition lasting more than four consecutive days during the quarter. If Verizon MD fails to meet the average days to repair standard for four consecutive quarters, the “amount at risk” will increase to \$1 million per quarter. If Verizon MD meets the standard in a following quarter, the “amount at risk” reverts to \$500,000 per quarter.³⁷

If Verizon MD fails to meet missed appointment standards in a particular quarter Verizon MD will pay \$250,000 on a pro-rata basis and in the form of bill credits to Verizon MD customers who experienced a missed repair during the month in which Verizon MD failed to meet the standard and whose trouble report was cleared or installation completed more than 24 hours after the missed appointment. If Verizon MD fails to meet the standard for four

³³ / Ex Parte: Revisions of Rules for Local Exchange Telecommunications Company Service Quality Standards, Virginia State Corporation Commission Case No. PUC-2008-00047, Order Prescribing Notice, Scheduling Hearing, and Inviting Comments, June 17, 2008, at 1.

³⁴ / Comments are due on revised proposed rules by February 5, 2009 and hearings are schedule for March. Ex Parte: Revisions of Rules for Local Exchange Telecommunications Company Service Quality Standards, Virginia State Corporation Commission Case No. PUC-2008-00047, Second Order for Notice and Hearing, December 15, 2008.

³⁵ / *In the Matters of Request of Verizon Maryland Inc. to Reclassify Certain Retail Bundled Services to the Competitive Service Basket as Provided by the Commission’s Price Cap Plan; Commission’s Investigation of Verizon Maryland Inc.’s Service Performance and Service Quality Standards; Commission’s Investigation Into Verizon Maryland Inc.’s Affiliate Relationships; Commission’s Investigations into Local Calling Area Boundaries and Related Issues; Appropriate Forms of Regulating Telephone Companies*; Maryland Public Service Commission Case Nos. 9072; 9114; 9120; 9121; and 9133, Joint Petition for Approval of Settlement Agreement, December 8, 2008, at 5.

³⁶ / *Id.*, at 11.

³⁷ / *Id.*, at 12.

consecutive quarters, the “amount at risk” will increase to \$500,000 per quarter. If Verizon MD meets the standard in a following quarter, the “amount at risk” reverts to \$250,000 per quarter.³⁸

If Verizon MD fails to meet the standard for repeated trouble reports in a particular quarter Verizon MD will pay \$250,000 on a pro-rata basis and in the form of bill credits to Verizon MD customers who experienced a repeated trouble during the month in which Verizon MD failed to meet the standard. If Verizon MD fails to meet the standard for four consecutive quarters, the “amount at risk” will increase to \$500,000 per quarter. If Verizon MD meets the standard in a following quarter, the “amount at risk” reverts to \$250,000 per quarter.³⁹

In addition, if Verizon MD meets any of the above standards for two quarters in a row, the bill credits will not apply unless Verizon MD fails to meet the standards for two quarters in a row (in which case credits will apply to the second quarter). However, the bill credits will end July 1, 2012⁴⁰ or in the event that Verizon MD makes a showing that the percentage of households subscribing to regulated residential switched access line service from Verizon MD has declined to a particular threshold.⁴¹

Alternative Regulation Plans

Vermont: In 2005, the Vermont Public Service Board (“PSB”) adopted a new AFOR plan for Verizon Vermont in which it retained its Service Quality Plan.⁴² Verizon Vermont had proposed to eliminate the plan, arguing that there was a sufficient degree of competition in the market to justify such a decision. The Vermont PSB found that:

Existing and future competition for local exchange service and other telecommunications services alone will not substitute for a regulated approach to retail service quality . . . The existence of competitive alternatives alone will not necessarily substitute for service quality standards. Moreover, Verizon's performance over the last five years belies its assertion that competition is sufficient to protect service quality. Competition has clearly increased during this period, yet Verizon's service quality performance deteriorated. Unless we accept the premise that consumers must accept lesser service quality in a competitive market, which we do not, we can only explain this dichotomy by inferring that competition does not provide adequate restraint . . . As the Department points out, most of the New England states have imposed a set of service quality standards that include predetermined penalties or customer credits for service quality

³⁸ / *Id.*, at 12-13.

³⁹ / *Id.*, at 13.

⁴⁰ / *Id.*

⁴¹ / The particular threshold is apparently considered proprietary by the parties to the settlement agreement. *Id.*, at 14.

⁴² / *Investigation into a Successor Incentive Regulation Plan for Verizon New England Inc., d/b/a Verizon Vermont*, State of Vermont Public Service Board Docket No. 6959, *Order*, September 26, 2005.

failures. The Service Quality Plan that we adopt is consistent with these other programs. We conclude that Vermont's status as a relatively small part of Verizon's territory requires a service quality plan with significant penalty dollars attached in order to achieve its purpose of maintaining adequate service quality. Unless the plan contains a strong incentive for Verizon to keep its service quality high, there is too much risk that Verizon will not take steps to preserve service quality and treat the payments as a cost of doing business.⁴³

Verizon Vermont's Service Quality Plan calculates points based on the failure of Verizon VT to meet approved metrics on a monthly basis. These points are translated into dollar amounts to assess a penalty on Verizon Vermont. The penalty is then distributed to customers and on a yearly basis in the form of a one-time rebate, or "Service Quality Compensation."⁴⁴ The total penalty, or compensation, is capped at \$10,515,650.⁴⁵

In 2008, the Vermont Public Service Board approved the sale of Verizon's operations in Vermont to FairPoint Communications, Inc. FairPoint continues to operate under the same service quality standards and compensation penalties as well as an additional performance enhancement plan to address network deterioration that occurred before FairPoint bought the operations.⁴⁶

Maine: The current Service Quality Index in Maine, applicable to FairPoint, is largely based on Verizon's AFOR, first adopted in 2001 and again in 2005, and includes a rebate mechanism similar to Vermont's. Despite granting pricing flexibility for many of Verizon Maine's retail services, the Maine Public Utilities Commission ("PUC") retained Verizon Maine's Service Quality Index ("SQI") in 2005 and, in fact, increased the total number of indices and the amount of the potential penalty faced by the company.⁴⁷ The PUC found that precisely because Verizon Maine had gained a reduction in regulation, the SQI should be retained.⁴⁸

On February 1, 2008, the Maine Public Utilities Commission issued an Order Approving an Amended Stipulation in Dockets 2007-67 and 2005-155 that approved the sale of Verizon New England Inc., d/b/a/ Verizon Maine (Verizon) to FairPoint Communications, Inc.

⁴³ / *Id.*, at 130-131.

⁴⁴ / *Id.*, at Appendix C.

⁴⁵ / *Id.*

⁴⁶ / *Joint Petition of Verizon New England Inc., d/b/a Verizon Vermont, certain affiliates thereof, and FairPoint Communications, Inc. for approval of an asset transfer, acquisition of control by merger and associated transactions*, Vermont PSB Docket No. 7270, Order entered February 15, 2008, at 20-26; *Joint Petition of Verizon New England Inc., d/b/a Verizon Vermont, certain affiliates thereof, and FairPoint Communications, Inc. for approval of an asset transfer, acquisition of control by merger and associated transactions*, Vermont PSB Docket No. 7270, Order entered December 21, 2007, at 105.

⁴⁷ / *Maine Public Utilities Commission Investigation into Bell Atlantic-Maine's Alternative Form of Regulation*, State of Maine Public Utilities Commission Docket No. 99-851, Order (Part 1), May 9, 2001.

⁴⁸ / *Maine Public Utilities Commission Investigation into Bell Atlantic-Maine's Alternative Form of Regulation*, State of Maine Public Utilities Commission Docket No. 99-851, Order (Part 2), June 25, 2001, at 39.

(FairPoint).⁴⁹ The Order largely left the service quality regime that had been in place intact. FairPoint must comply with the prevailing Service Quality Index (“SQI”) procedures and is subject to penalties. The rules are based on the Verizon’s prior alternative plan of regulation adopted in 2001 and 2005 and the Amended Stipulation. The Amended Stipulation, approved by the Maine Public Utilities Commission in its investigation of the sale of Verizon’s local exchange business to FairPoint, increases the penalties for failure to meet service quality benchmarks in multiple years. “If FairPoint has failed to achieve its performance benchmark for a given metric in two or more consecutive years, beginning after July 1, 2008, the SQI penalty for that metric shall be the base penalty for that metric multiplied by a multiplier equal to the number of consecutive years that penalty has been missed.”⁵⁰ However, the maximum annual penalty for all benchmarks remains \$12.5 million.

Massachusetts: The Massachusetts Department of Telecommunications and Energy (“DTE”) adopted a service quality rebate, or credit, in 2003. Currently, the plan includes a financial penalty that is paid as a one-time credit to *all* residence and business lines on an annual basis.⁵¹ In adopting the plan, the Massachusetts DTE stated:

Although Verizon is no longer subject to price cap regulation, competition for some customers may introduce a financial incentive for the regulated entity to reduce costs by reducing service quality to other customers, so we conclude that there should continue to be some form of protection against a reduction in service quality.⁵²

⁴⁹ / *Verizon New England Inc., Northern New England Telephone Operations Inc., Enhanced Communications of Northern New England Inc., Northland Telephone Company of Maine, Inc., Sidney Telephone Company, Standish Telephone Company, China Telephone Company, Maine Telephone Company, and Community Service Telephone Co., Re: Joint Application for Approvals Related to Verizon’s Transfer of Property and Customer Relations to Company to be Merged with and into FairPoint Communications, Inc.*, Maine Public Utilities Commission Docket No. 2007-67; *Investigation into Verizon Maine’s Alternative Form of Regulation*, Maine Public Utilities Commission Docket No. 2005-155, *Order*, February 1, 2008. The Amended Stipulation was entered into by FairPoint, The Office of Public Advocate, the Commission’s Advocacy Staff, Biddeford Internet Corp. d/b/a Great Works Internet (GWI), Cornerstone Communications, LLC (Cornerstone), and the AARP filed with the Commission December 21, 2007 and amended January 3, 2008. The Stipulation was further amended with the addition of “Commission-imposed conditions.” *Id.*, at 2.

⁵⁰ / *Investigation into Verizon Maine’s Alternative Form of Regulation*, Maine Public Utilities Commission Docket No. 2005-155; *Compliance with Commission Order dated 2/1/08 in Docket No. 2005-155*, Maine Public Utilities Commission Docket No. 2008-209, *Procedural Order – SQI Calculations*, May 9, 2008, citing Amended Stipulation, Attachment 1, para. 3. A new metric was also added to the SQI: Duration of Residential Outages. The metric is based on FCC ARMIS data. *Id.*, at 3.

⁵¹ / *Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts’ intrastate retail telecommunications services in the Commonwealth of Massachusetts*, Massachusetts Department of Telecommunications and Energy Docket No. DTE 01-31-Phase II, *Order*, April 11, 2003, at 96, 100-101.

⁵² / *Id.*