



Agenda Date: 2/1/08
Agenda Item: IV A

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF)
VERIZON NEW JERSEY INC. FOR APPROVAL)
OF MUNICIPAL CONSENTS PURSUANT TO)
N.J.S.A. 48:2-14)

DECISION AND ORDER
DOCKET NOS. TE07100763
TE07100764
and TE07100765

(SERVICE LIST ATTACHED)

BY THE BOARD:

By verified petition filed pursuant to N.J.S.A. 48:2-14 on October 9, 2007, Verizon New Jersey Inc. (Verizon) requested the Board's approval of consent ordinances adopted by (1) the Township of Chester in Morris County (Docket No. TE07100763); (2) the Borough of Hopatcong in Sussex County (Docket No. TE07100764); and (3) the Township of Warren in Somerset County (Docket No. TE07100765).

Verizon is a public utility subject to the jurisdiction of the Board pursuant to the applicable provisions of Title 48 of the New Jersey statutes, and is authorized to provide telecommunications services in the State of New Jersey, including in the municipalities noted above.

After appropriate notice, a hearing in these matters was held on November 19, 2007, at the Board's Newark offices before Edward D. Beslow, Esq., the Board's duly designated Hearing Examiner.

At the hearing, Verizon relied on the testimony of Thomas A. Caserta, its Manager of Land Use Matters. Mr. Caserta noted that his duties include reviewing and negotiating consent ordinance renewals such as those that comprise the matters now pending. The witness testified that the ordinances provide Verizon with the authority to use the public rights-of-way and designated

areas for the purpose of locating, maintaining and operating its facilities, and are reasonably necessary in order that Verizon may provide its business and residential customers with proper and adequate telecommunications services. Mr. Caserta further testified that the consents also provide protection to the affected municipalities in that, among other things, they cover such topics as the location of poles and underground facilities, the use of facilities for police and fire protection purposes, as well as associated equipment and fixtures for Verizon's local lines and through lines. In addition, the witness noted that Verizon has agreed to comply with local ordinances for the purposes of street openings and restorations, and to provide indemnification for damages arising from any work performed by Verizon. Mr. Caserta went on to state that in addition to the payments in the aggregate of approximately \$130,500.00 and \$123,500.00 for 2006 and 2007, respectively, to the affected municipalities in the form of real and personal property taxes, Verizon also pays all reasonable fees charged by the governmental entities for related work, such as engineering reviews, associated with Verizon's activities.

Mr. Caserta also stated that the pending consents, which are not exclusive, are renewals of prior ordinances under which Verizon and its predecessors have been providing telecommunications services to the subject municipalities over an extended and uninterrupted period of time. In his testimony, the witness noted that the terms of the consents granted by the Townships of Chester and Warren were 5 years and 15 years, respectively, while the consent granted by the Borough of Hopatcong was silent as to the length of its term.

Mr. Caserta testified that Verizon presently has bonding arrangements with virtually all municipalities that it services, and noted that he considers such requirements to be reasonable. He also indicated that Verizon would prefer to receive consents that are perpetual or long-term and would be opposed to the imposition of a seven-year term as a standard term. The witness noted that while it is not burdensome to negotiate a handful of ordinances at short intervals, it would be administratively onerous to have to negotiate all future ordinances on a cycle of seven years or less given the number of municipal consents throughout New Jersey that Verizon has to negotiate, and the substantial amount of time necessary for those negotiations. In addition, he noted that these pending ordinances do not authorize Verizon to provide video service or relate to the ability of Verizon to provide video service.

By letter dated November 27, 2007, the Division of Rate Counsel (Rate Counsel) submitted post-hearing comments wherein it submitted that "...where a durational term is absent, the imputed term should be seven years consistent with the Board's award of a seven year cable franchise to Verizon since Verizon's equipment in the municipal right-of-way will be used for telecommunications and cable services." In addition, Rate Counsel argues that Verizon's acceptance of the consents granted by the Townships of Chester and Warren are indications of its willingness to accept consents with durational terms of less than 50 years. Accordingly, Rate Counsel submits that it is more prudent for the Board to implement a seven-year term in the absence of a term in the municipal ordinance rather than the 50-year term previously imputed by the Board.

In its responding letter dated November 30, 2007, Verizon objected to the imposition of a maximum term not exceeding seven years and noted that in his testimony, Mr. Caserta had indicated that: (1) given the number of municipalities in New Jersey and the need to have all consents granted by local governing bodies approved by the Board, the granting of large numbers of consents with short durational terms would be administratively burdensome; and (2) the consents granted to Verizon are non-exclusive and do not preclude the municipality from granting similar consents to carriers competing with Verizon. Verizon further argued that the Board has previously determined that there is no nexus between the consents granted to telecommunications service providers for the provision of telecommunications services and the

consents that they may receive for the provision of video services. I/M/O the Petition of Bell Atlantic-New Jersey, Inc. for Approval of Municipal Consent Ordinances, Docket Nos. TE94120615 through TE94120664 (September 18, 1997). In addition, Verizon noted that in regard to a subsequent request made by Rate Counsel for a maximum term of seven years, the Board rejected that position as “unpersuasive.” I/M/O the Petition of Verizon New Jersey for Approval of Municipal Consents Pursuant to N.J.S.A. 48:2-14, Docket Nos. TE06050347 through TE06050356, TE06060460 through TE06060461 (September 14, 2006).

Based on a review of the entire record, the Board HEREBY FINDS that said record reflects that Verizon complies with all pertinent local ordinances, including those that pertain to street openings and restorations, and provides indemnification for damages arising from any work performed by the utility. The record further reflects that Verizon pays real and personal property taxes to the affected municipalities as well as all reasonable fees charged by those governmental entities for related work, such as engineering reviews, associated with Verizon's activities.

The Board FURTHER FINDS that the consents granted to Verizon New Jersey Inc. by the Township of Chester, the Borough of Hopatcong and the Township of Warren are reasonable and are necessary and proper for the public convenience and properly conserve the public interests. With regard to the consent that is silent as to length of duration, the Board again finds the position presented by Rate Counsel that there is a nexus between the pending consents and the ability of Verizon to provide video services to be unpersuasive. There is currently nothing in the existing law which would allow Verizon to utilize the consents that are the subject of this proceeding as support or license for the provision of video services or lead to the conclusion that setting the same durational terms for consents for telecommunications services and video services would be prudent. Accordingly, consistent with its recent determinations in similar matters as noted above, and pursuant to its authority under N.J.S.A. 48:2-14, the Board will continue to impose terms of 50 years to those consents that are silent as to term.

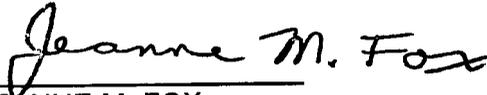
Therefore, the Board, pursuant to N.J.S.A. 48:2-14, HEREBY APPROVES the consents granted to Verizon New Jersey Inc. by the Township of Chester for a term of 5 years and the Township of Warren for a term of 15 years. With regard to the consent granted by the Borough of Hopatcong with no specified term, the Board HEREBY MODIFIES said consent only to the extent necessary to impose therein a term of 50 years.

DATED:

2/4/08

BOARD OF PUBLIC UTILITIES

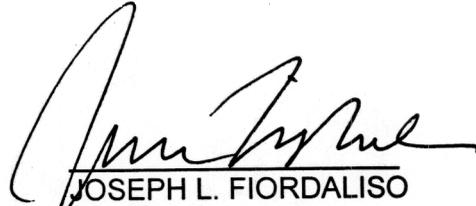
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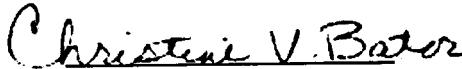
JEANNE M. FOX
PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER



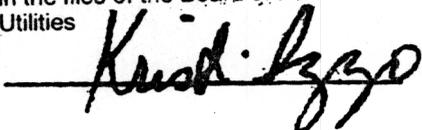
CHRISTINE V. BATOR
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



I/M/O THE PETITION OF VERIZON NEW JERSEY INC. FOR APPROVAL OF MUNICIPAL
CONSENTS PURSUANT TO N.J.S.A. 48:2-14

BPU DOCKET NOS. TE07100763, TE07100764 AND TE07100765

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