



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9th Floor  
PO Box 350  
Trenton, NJ 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

OFFICE OF CABLE TELEVISION

IN THE MATTER OF THE PETITION OF VERIZON	)	ORDER ADOPTING INITIAL
NEW JERSEY INC. FOR ACCESS TO A MULTIPLE	)	DECISION
DWELLING UNIT PREMISES LOCATED AT 222	)	
ELLEEN TERRACE IN THE CITY OF	)	BPU DOCKET NO. CE10120889
HACKENSACK, BERGEN COUNTY, NEW JERSEY	)	OAL DOCKET NO. CTV 04699-11N
	)	
	)	

Parties of Record:

**William D. Smith, Esq.**, for Petitioner, Verizon of New Jersey, Inc.

**Frank Meli**, Owner/Property Manager of Record (did not actually appear in this proceeding)

**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On December 6, 2010, Verizon New Jersey Inc. ("Petitioner" or "Verizon") filed a Verified Petition with the New Jersey Board of Public Utilities ("Board"), pursuant to N.J.S.A. 48:5A-49 and N.J.A.C. 14:18-4.5, for an Order granting access to a multi-dwelling unit ("MDU") residential property located at 222 Elleen Terrace, in the City of Hackensack, County of Bergen, State of New Jersey ("222 Elleen Terrace" or "Premises") to install the facilities and equipment required to provide FiOS TV service and permit Petitioner to provide FiOS TV service to all residents of the Premises. Alternatively, Verizon asked the Board to waive Petitioner's requirements under N.J.A.C. 14:18-15.3 to make its FiOS network available to any of the residents located in the Premises under its system-wide franchise. The Premises is owned by Mr. Frank Meli ("Mr. Meli" or "Owner"), who, despite several duly issued notices, failed to respond to any part of this proceeding, including the evidentiary hearing.

By an Initial Decision dated September 21, 2011, the Administrative Law Judge determined that Verizon is entitled to install facilities to provide FiOS cable television services at the Premises, subject to the payment of the \$ 1.00 to Owner as consideration of the access, as required by N.J.A.C. 14:18-4.5, upon the issuance of an order of access by the Board, and other conditions. Having reviewed the record, the Board determines that the Initial Decision is supported by sufficient credible evidence in the record and is consistent with law and, therefore, adopts it in its entirety.

## PROCEDURAL HISTORY

In support of its petition, Verizon asserts that it is a cable television company subject to the jurisdiction of the Office of Cable Television ("OCTV") and the Board, pursuant to the Cable Television Act, N.J.S.A. 48:5A-1 et seq. ("the Act"). Verizon also avers that it is authorized to own, operate, and maintain a cable television system in the City of Hackensack, County of Bergen, pursuant to a system-wide franchise granted by the Board on December 18, 2006 in Docket No. CE06110768. In addition, Verizon states that while its preference is to upgrade its network for FiOS services in MDU properties where property owners/managers welcome the availability of FiOS TV, it has deployment obligations mandated under N.J.S.A. 48:5A-25.2 (Verified Petition, page 1-2).

On September 15, 2008, Mr. Thomas Didio, an apparent representative of 222 Elleen Terrace, executed Verizon's Premise Access License ("PAL") on behalf of the Owner as Licensor. The PAL authorizes Petitioner to provide FiOS services on the Premises, and includes provisions related to network design, ownership of facilities, approval of design plans, indemnification, and the term of the agreement. According to the PAL, "at any time after the fifth (5th) anniversary of the date of this License, Licensor may, upon one hundred twenty (120) days' prior written notice to Verizon, terminate this License. However, Verizon shall have the right to continue to access, maintain and operate the Facilities to provide Services to customers receiving such Services at the conclusion of any Term." (Verified Petition, Exhibit C, page 4).

On March 15, 2010, Verizon sent a letter ("March 2010 Letter") to Mr. Meli that indicated there had been no response to numerous attempts to contact him for the purpose of meeting to review plans for the installation of FiOS services. Attached to the March 2010 Letter were a number of documents, including design plans for FiOS TV service that had been developed in September 2009 for the property. Verizon received no response to the March 2010 letter (Verified Petition, page 2). By letter dated October 22, 2010, Verizon attempted to inform the Owner that it had received a request for FiOS service from at least one resident of the property. Verizon's letter renewed its request for entry to the premises to install FiOS services at the subject property. There was no response to Verizon's request for the owner's approval to install FiOS service at the Premises (Verified Petition, page 3; Initial Decision, page 2).

On December 6, 2010, Verizon filed a Verified Petition with the Board pursuant to N.J.S.A. 48:5A-49 and N.J.A.C. 14:18-4.5 for an Order granting access to the Premises to install the facilities and equipment required to provide FiOS TV service and permit Petitioner to provide FiOS TV service to all residents of the Premises. Alternatively, Verizon asked the Board to waive Petitioner's requirements under N.J.A.C. 14:18-15.3 to make its FiOS network available to any of the residents located in the Premises under its system-wide franchise. Verizon contended that the Owner's failure to grant it access to the Premises constitutes a violation of N.J.S.A. 48:5A-49 and N.J.A.C. 14:18-4.5(c). Verified Petition, pages 1-4; Initial Decision, page 3.

The Office of Cable Television ("OCTV") on several occasions left messages with the Owner's office seeking his position on Verizon's petition and to advise him of his rights and Verizon's obligations under its system-wide franchise to extend its FiOS services to residents of multi-dwelling unit properties in communities where Verizon is providing service. Because the Owner failed to respond, the OCTV Director sent him a letter on February 8, 2011 about Verizon's petition, the Owner's and Verizon's rights and obligations, and an invitation to meet with the parties to discuss the issues and for OCTV to try to mediate the matter. Since the Owner failed to respond to that letter, the OCTV Director sent a follow-up letter on March 9, 2011, to which the Owner did not respond.

Because the Owner had failed to respond to OCTV's communications and requests to meet, the Board transmitted this matter to the Office of Administrative Law ("OAL") as contested case on April 15, 2011, pursuant to N.J.S.A. 52:14B-2(b). The case was assigned to the Honorable Walter M. Braswell, Administrative Law Judge ("ALJ"). A Prehearing Conference was held via teleconference on May 26, 2011 to review the status of this proceeding, upon prior notice to all parties, including Mr. Meli. Counsel for Verizon, Rate Counsel, and OCTV entered appearances on the teleconference. Neither Mr. Meli, nor any representative on his behalf was present on the call. At the Prehearing Conference, a hearing was set for June 29, 2011, and the date of July 29, 2011 was reserved if an additional hearing date became necessary. The OAL subsequently mailed notices to all parties and informed them of the hearing dates. On June 29, 2011, the scheduled hearing was convened to take evidence to determine whether Verizon had satisfied the statutory and regulatory requirements to obtain an administrative order of access from the Board for the Premises. Mr. Meli failed to respond to the mailed notice from the OAL and failed to appear at the June 29, 2011 hearing (Initial Decision, page 3).

## **ISSUES TO BE RESOLVED**

The issues to be resolved, according to the ALJ, can be summarized as follows: (1) whether Verizon is entitled to install cable television services at the Owner's property, pursuant to N.J.S.A. 48:5A-49 and N.J.A.C. 14:18-4.5; (2) what, if any, conditions should be imposed on Verizon and the Owner for access to the Premises, and is the Owner entitled to indemnification?;(3) is the Owner entitled to compensation from Verizon in connection with a grant of access to the Premises?; and, (4) has Verizon demonstrated compliance with N.J.S.A. 48:5A-49 and N.J.A.C. 14:18-4.5, the requirements to establish an enforceable right of access to the Premises?<sup>1</sup> Initial Decision, pages 4-5.

## **EVIDENTIARY HEARING**

The only testifying witness at the hearing was Mr. Jeff Lahm, a retired Verizon employee and currently a consultant to Verizon for FiOS deployment in New Jersey, who testified for Verizon and presented evidence to demonstrate that Verizon had satisfied its regulatory and legal obligations concerning access to the subject premises and was entitled to an order compelling access to the premises (Initial Decision, page 3). Mr. Lahm testified, among other things, regarding the ownership of 222 Eileen Terrace, service upon Mr. Meli by way of certified mail of Verizon's correspondence and the within Verified Petition, and the requests for FiOS TV service that Verizon had received from residents of the Premises. In addition, Mr. Lahm testified that Mr. Meli was seeking compensation from Verizon in return for access to the Premises (Initial Decision, pages 3-4).

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<sup>1</sup> Referencing Final Order of the BPU rendered I/M/O the Petition of Comcast Cablevision of Jersey City, Inc. for Access to Certain Premises Known as the "Newport," in the City of Jersey City, New Jersey, BPU Dkt. No. CE01090585, OAL Dkt. No. CTV 9687-01, 2003 N.J. AGEN LEXIS 273 (Aug. 7, 2003)(the "Newport Case"), which the ALJ noted as the Board's leading decision on mandatory access issues.

During the July 29, 2011 evidentiary hearing, Rate Counsel stated that it had no objection to the Board's granting Verizon an Order of Access for the Premises. On cross-examination by Rate Counsel, Mr. Lahm elaborated on Verizon's service of the access documents on and communications with representatives of the Owner. In addition, Mr. Lahm summarized discussions that a Staff representative had had with representatives of the Owner regarding this proceeding and Verizon's request for access to the Premises. No other witness appeared, and the record was closed at the end of the hearing (Initial Decision, page 4).

In sum, the ALJ found that Verizon's Petition shows that it served all relevant documents in this proceeding on Mr. Meli or one of his representatives (see Exhibit P-1, Verizon's Petition, which attaches receipts for certified mailings to Respondent and Exhibit P-2, which is the Certified Mail Receipt for the Petition). Verizon's Petition includes a one-page overview of the proposed method of installation of fiber-to-the Premises (Exhibit P-1, Exhibit B), and a five-page confidential document, dated September 26, 2009, which provided a detailed overview of the proposed FiOS network design for the Premises (Exhibit P-1, Exhibit B1, pages 1-5.) (Initial Decision, page 5). Also, on September 15, 2008, an apparent representative of Mr. Meli for the Premises, Mr. Thomas Didio, executed a PAL with Verizon that authorized Verizon to provide FiOS services to the Premises (Exhibit P-1, Exhibit C, page 4). The ALJ found no evidence that Mr. Meli had disavowed or otherwise disputed Mr. Didio's apparent authority on his behalf (Initial Decision, pages 6-7).

In addition, the ALJ found that the executed PAL includes a number of provisions related to network design, ownership of facilities, approval of design plans, indemnification, and the term of the Agreement; and, the PAL states that "Licensor must approve detailed engineering plans prior to construction, installation of equipment or modification to existing infrastructure." (Initial Decision, page 6). Since this condition was not satisfied, the PAL was never implemented. Id.

According to the Initial Decision, in a letter dated March 15, 2010 to Mr. Meli, Verizon attempted to inform him that there had been no response to numerous attempts to contact him for the purpose of meeting to review plans for the installation of FiOS services. (Exhibit P-1, Exhibit A). Also, by letter dated October 22, 2010 via certified mail, Verizon attempted to inform Mr. Meli that it had received requests for FiOS service from at least one resident of the property. Verizon renewed its request to construct and install FiOS services at the property (Exhibit P-1, Exhibit C, pages 1-3). Other than signing the PAL, neither Mr. Meli nor any representative responded to Verizon's requests for permission to install service at the Premises (Exhibit P-5) (Initial Decision, page 6).

Verizon provided ample documentation at the hearing that it had sufficient tenant requests for cable service (Confidential Exhibit P-4). Verizon provided evidence that the Owner was seeking compensation from Verizon for access to his building (Exhibit P-5). The terms of compensation sought by Mr. Meli are unknown. Also, this matter was set for evidentiary hearings on June 29, 2011 with notice to all parties involved; notice was issued to Mr. Meli's known address; Mr. Meli failed to appear for the evidentiary hearings on June 29, 2011. Verizon presented evidence that satisfied its regulatory and legal obligations concerning access to the Premises (Initial Decision, pages 6-7).

The ALJ further found that Verizon had submitted a list of contacts from several residents of the Premises requesting Verizon's FiOS cable television service (Confidential Exhibit P-4) and that there was more than sufficient evidence that Petitioner had received multiple valid requests for cable television service from residents of the Premises, which satisfied the condition precedent to trigger the access statute. Verizon also provided uncontested evidence that the Owner had sought compensation from Verizon in return for access to his building, although there was no

testimony or other proof as to the terms of the compensation sought by the Owner. In addition, the ALJ determined that any compensation sought beyond the \$ 1.00 fee set forth in N.J.A.C. 14:18-4.5 would violate N.J.S.A. 48:5A-49(a) (Initial Decision, page 8).

In sum, although Verizon's offer of proof was not subject to opposition or contradiction, the ALJ, in finding that Verizon is entitled to install facilities for FiOS TV service at the Premises, imposed various conditions, consistent with N.J.S.A. 48:5A-49, N.J.A.C. 14:18-4.5, and the PAL, including the \$ 1.00 fee set forth in N.J.A.C. 14:18-4.5; the five-year term of access and design specifications set forth in the PAL; and appropriate indemnification mandated by N.J.S.A. 48:5A-49 (Initial Decision, pages 14-16).

The Initial Decision was served on the parties on September 22, 2011, and no party filed exceptions. By Order of Extension dated October 13, 2011, the time limit for the Board to render a final agency decision was extended until December 22, 2011.

## DISCUSSION

The Initial Decision granting Verizon's request to install facilities to provide FiOS cable television services at the Premises appears to be a thorough and well-reasoned recommendation, based on the statutory and regulatory requirements set forth in N.J.S.A. 48:5A-49 and N.J.A.C. 14:18-4.5, and therefore the Board **HEREBY ADOPTS** it in its entirety. Nevertheless, although the Owner failed to respond to Verizon's petition, the Board deems it important to address its duty to balance the interests of the multi-unit dwelling owner, the cable company, and the consumer and therefore briefly states as follows.

It is undisputed that Verizon has deployment obligations mandated under N.J.S.A. 48:5A-25.2. As indicated in N.J.S.A. 48:5A-2(h), consumer choice and competition are two of the legislative objectives of the Act. Also, the Federal Communications Commission in In re Earth Satellite Communications, Inc., 95 F.C.C.2d 1223, 1233 (November 8, 1983) precluded New Jersey from exercising jurisdiction over Satellite Master Antenna Television ("SMATV") systems, but noted that in states where franchised cable is provided access to multi-unit dwellings by state regulatory fiat, the SMATV and the franchised cable services may co-exist, or at least have the opportunity to compete for subscribers. Under N.J.S.A. 48:5A-49, MDU consumers have choice for franchised cable services, subject to various protections to the MDU owner.

In Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 441 (1982), the United States Supreme Court held that where a New York law required a landlord to permit a cable television company to install its cable facilities upon his property, such physical occupation of property was a taking of property for which just compensation is due under the Fifth and Fourteenth Amendments of the Constitution. Although it was not required to directly address the value of the taking, the Court noted that the issue of the amount of compensation that is due is a matter for the state courts to consider. Id.

In Princeton Cablevision, Inc. v. Union Valley Corp., 195 N.J. Super. 257, 268 (Ch. Div. 1983), which in part involved access to a multi-dwelling unit under N.J.S.A. 48:5A-49, the court stated: "The BPU must determine, on application of the franchised company, such things as the manner of access and installation, the permitted nature and location of equipment, the time when access must be provided and the level and kind of damage and liability protection and the compensation to be afforded the owner." Id. at 268. The court also noted that "the Constitution requires fair compensation to an owner whose property is to be physically occupied by cable television facilities, and that proceedings to fix compensation will be in the BPU in accordance with rules and regulations the BPU will develop for the purpose." Id. at 271. Also, in NYT Cable

TV v. Homestead at Mansfield, 111 N.J. 21 (1988), the New Jersey Supreme Court declared that N.J.S.A. 48:5A-49 "impliedly authorizes the payment of just compensation and is constitutional," and that the Cable Television Act, N.J.S.A. 48:5A-1 et seq., "may be read as authorizing [the Board] to create a compensation mechanism," but the Court found "no need directly to rule on the validity of this compensation mechanism." Id. 33. The referenced compensation mechanism, including the \$ 1.00 payment to the fee owner, has not since been substantively amended and is currently set forth at N.J.A.C. 14:18-4.5.

Because the Owner failed to appear in this proceeding, there was no controverted evidence regarding just compensation. Despite duly issued notices, the Owner did not appear at any of the proceedings in this matter, including the pre-hearing conference or the evidentiary hearing scheduled by the ALJ, who proceeded with the evidentiary hearing, pursuant to N.J.A.C. 1:1-14.4(a) and (d) and permitted Verizon to present its proofs ex parte, as reflected in the Initial Decision. Id. at 3-4.

N.J.A.C. 1:1-14.4(a) provides:

If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the non-appearance within one day, the judge shall, unless proceeding pursuant to (d) below, direct the Clerk to return the matter to the transmitting agency for appropriate disposition . . .

Also, N.J.A.C. 1:1-14.4(d) states:

If the appearing party requires an initial decision on the merits, the party shall ask the judge for permission to present ex parte proofs. If no explanation for the failure to appear is received, and the circumstances require a decision on the merits, the judge may enter an initial decision on the merits based on the ex parte proofs, provided the failure to appear is memorialized in the decision.

Based on the Owner's previous failures to respond to procedural notices, the ALJ exercised reasonable discretion in proceeding with the evidentiary hearing, thereby allowing Verizon to make its case for access to the Premises in respond to tenants' request for FiOS TV service. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (citations omitted). See also Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 14 (1978) (holding that "[t]he purpose of notice under the Due Process Clause is to apprise an affected individual of, and permit adequate preparation for, an impending 'hearing'" which may affect their legally protected interests). Indeed, what constitutes due process varies with the circumstances of each case as well as with the individual situation of particular litigants. Rubin v. Rubin, 188 N.J. Super. 155, 159 (App. Div. 1982). Under these circumstances herein, the record establishes that the Owner continually failed to appear to oppose Verizon's petition, and, thus, there was no basis for deviating from the compensation mechanism of the \$ 1.00 fee currently set forth in N.J.A.C. 14:18-4.5.

The Board is satisfied that the ALJ's Initial Decision is supported by the sufficient credible evidence in the record and, therefore, **HEREBY ADOPTS** it in its entirety, incorporating it by reference as if fully set forth at length herein. The Board finds that the conditions of access are consistent with N.J.S.A. 48:5A-49, N.J.A.C. 14:18-4.5, and the PAL, and the Board therefore **HEREBY ORDERS** access consistent with the Initial Decision. Also, sixty days after the effective date of this Order, Verizon shall inform the Board and Rate Counsel whether it has been granted access to install its facilities to provide FiOS TV service at the Premises.

DATED: 11/30/11

BOARD OF PUBLIC UTILITIES  
BY:



LEE A. SOLOMON  
PRESIDENT



JEANNE M. FOX  
COMMISSIONER



JOSEPH L. FIORDALISO  
COMMISSIONER



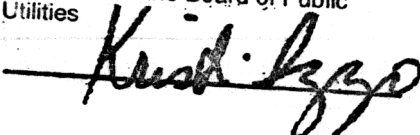
NICHOLAS ASSELTA  
COMMISSIONER

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



IN THE MATTER OF THE PETITION OF VERIZON NEW JERSEY INC. FOR ACCESS  
TO A MULTIPLE DWELLING UNIT PREMISES LOCATED AT 222 ELLEEN TERRACE  
IN THE CITY OF HACKENSACK, BERGEN COUNTY, NEW JERSEY

BPU DOCKET NO. CE10120889  
OAL DOCKET NO. CTV04699-11N

SERVICE LIST

Walter M. Braswell, ALJ  
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33 Washington Street  
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Celeste M. Fasone, Director  
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*State of New Jersey*  
OFFICE OF ADMINISTRATIVE LAW  
33 Washington Street  
Newark, New Jersey 07102

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OCT 19 2011  
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Kurt Schwartz  
Deputy Clerk

October 11, 2011

Valerie Haynes, Chief  
Board of Public Utilities  
Office of Cable Television  
44 So. Clinton Ave., 9<sup>th</sup> fl. East  
Trenton, NJ 08625-0350

Re. *In The Matter of The Petition of Verizon New Jersey Inc.*  
OAL DKT. No: CTV 4699-11  
Agency Dkt. No. CE 10120889


Dear Ms. Haynes:

The Initial Decision issued on September 21, 2011 in the above referenced matter Contained an error on page 1, enclosed is a copy of said pages.

The copy on file with this office has been revised in accordance with the attached. Kindly correct the original decision, which has been filed with your agency.

Please note that by copy of this letter, I am requesting that the parties also correct Their copies of the decision.

Very truly yours,

  
Kurt Schwartz  
Deputy Clerk

WS/dh

Enclosure

Cc: William D. Smith, Esq.

Frank Meli

Alex Moreau, Dag.

Anne Marie Shatto, Dag.

Jose Rivera-Benitez, Esq.



**State of New Jersey**  
**OFFICE OF ADMINISTRATIVE LAW**  
33 Washington Street  
Newark, New Jersey 07102  
(973) 648-7245 (Tel.)

Kurt Schwartz  
Deputy Clerk

September 28, 2011

Celeste Fasone, Director  
Board of Public Utilities  
Office of Cable Television  
Two Gateway Center, Suite 801  
Newark, NJ 07102

Re: IN THE MATTER OF THE PETITION OF VERIZON NEW JERSEY INC..  
OAL DKT. NO.: CTV 04699-11  
AGENCY DKT. NO. CE10120889

Dear Director:

The decision issued on September 21, 2011 in the above referenced matter contained errors on the first page the appearances failed to include rate counsel. The appearances should read:

**William D. Smith**, Esq. appearing on behalf of petitioner, Verizon New Jersey,

**Frank Meli**, Owner/Property Manager, respondent failed to appear

**Alex Moreau and Anne Marie Shatto**, Deputy Attorney Generals appearing on behalf of the Board of Public Utilities

**Jose Rivera-Benitez**, Esq. Assistant Deputy Rate Counsel, on behalf of the New Jersey Division of Rate Counsel (Stefanie A. Brand, Director, New Jersey Division of Rate Counsel)

The copy on file with this office has been revised in accordance with the attached. Kindly correct the original decision, which has been filed with your agency.

Please note that by copy of this letter, I am requesting that the parties also correct their copies of the decision.

Very truly yours,

*Kurt Schwartz*  
Kurt Schwartz,  
Deputy Clerk

cc: William D. Smith, Esq.  
Frank Meli  
Alex Moreau, DAG  
Anne Marie Shatto, DAG  
Jose Rivera-Benitez, Esq.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CTV 04699-11N

AGENCY DKT NO. CE10120889

**IN THE MATTER OF THE PETITION OF VERIZON  
NEW JERSEY INC. FOR ACCESS TO A MULTIPLE  
DWELLING UNIT PREMISES LOCATED AT 222  
ELLEEN TERRACE IN THE CITY OF HACKENSACK,  
BERGEN COUNTY, NJ**

---

**William D. Smith, Esq.** appearing on behalf of petitioner, Verizon New Jersey,

**Frank Meli**, Owner/Property Manager, respondent failed to appear

**Alex Moreau and Anne Marie Shatto**, Deputy Attorney Generals appearing on  
behalf of the Board of Public Utilities

**Jose Rivera-Benitez, Esq.** Assistant Deputy Rate Counsel, on behalf of the New  
Jersey Division of Rate Counsel (Stefanie A. Brand, Director, New Jersey  
Division of Rate Counsel)

Record Closed: July 29, 2011

Decided: September 21, 2011

**BEFORE WALTER M. BRASWELL, ALJ:**

CMG  
Helbert  
DAG(2)  
RPA  
Lee-Thomas  
Cable



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

BPU MAILROOM

SEP 26 2011

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INITIAL DECISION

OAL DKT. NO. CTV 04699-11N

AGENCY DKT NO. CE10120889

IN THE MATTER OF THE PETITION OF VERIZON  
NEW JERSEY INC. FOR ACCESS TO A MULTIPLE  
DWELLING UNIT PREMISES LOCATED AT 222  
ELLEEN TERRACE IN THE CITY OF HACKENSACK,  
BERGEN COUNTY, NJ

---

William D. Smith, Esq. appearing on behalf of petitioner, Verizon New Jersey,

Frank Meli, Owner/Property Manager, respondent failed to appear

Alex Moreau and Anne Marie Shatto, Deputy Attorney Generals appearing on  
behalf of the Board of Public Utilities

Record Closed July 29, 2011

Decided: September 21, 2011

BEFORE WALTER M. BRASWELL, ALJ

STATEMENT OF THE CASE

Verizon New Jersey Inc. ("Petitioner" or "Verizon") seeks an Order compelling access to a multi-dwelling unit ("MDU") residential property located at 222 Elleen Terrace, in the City of Hackensack, County of Bergen, State of New Jersey ("222 Elleen

OAL DKT NO CTV 04699 1

Terrace or "Premises"), pursuant to N.J.S.A. 48:5A-49 and N.J.A.C. 14:18-4.5. The Premises is owned by Mr. Frank Meli (the "Owner").

Verizon's efforts to contact the owner of the premises in pursuit of the rightful claim of access have not been responded to by the owner of the premises. Verizon now seeks an order to secure and enforce its rights under law for access to the premises for the purpose of installation of cable television video service ("FiOS") equipment at the premises.

#### PROCEDURAL HISTORY

On September 1, 2008, Mr. Thomas Didio, an apparent representative of 222 Fleen Terrace, executed Verizon's Premise Access License ("PAL") on behalf of the Owner. The PAL authorized Petitioner to provide FiOS services on the Premises, and included provisions related to network design, ownership of facilities, approval of design plans, indemnification, and the term of the Agreement.

On March 5, 2010, Verizon sent a letter ("March 2010 Letter") to Mr. Meli that indicated there had been no response to numerous attempts to contact him for the purpose of meeting to review plans for the installation of FiOS services. Attached to the March 2010 Letter were a number of documents including design plans for FiOS TV service that had been developed in September 2009 for the property. Verizon received no response to the March 2010 letter.

By letter dated October 22, 2011, Verizon attempted to inform the Owner that it had received a request for FiOS service from at least one resident of the property. Verizon's letter renewed its request for entry to the premises to install FiOS services at the subject property. There was no response to Verizon's request for the owner's approval to install FiOS service at the Premises.

On December 6, 2010, Verizon filed a Mandatory Access Petition ("Petition") with the New Jersey Board of Public Utilities ("Board"). Respondent did not respond to Verizon's Petition. Verizon contends that the Owner's failure to grant it access to the Premises constitutes a violation of N.J.S.A. 48:5A-49 and N.J.A.C. 14:18-4.5(c). In its Petition, Verizon requests the Board to issue an order that either grants it access to the Premises to construct and install cable television equipment and wiring or a waiver of its obligation to provide cable TV service to this MDU, and such other relief as the BPU may deem equitable.

The Board transmitted this matter to the Office of Administrative Law ("OAL") on April 15, 2010, as a contested matter pursuant to N.J.S.A. 52:14B-2(b). A Prehearing Conference was held via teleconference on May 26, 2010 to review the status of this proceeding, upon prior notice to all concerned including Mr. Meli. Counsel for Verizon, Rate Counsel, and OCTV entered appearances on the teleconference. Neither Mr. Meli, nor any representative on his behalf, was present on the call. At the Prehearing Conference a hearing was set for June 29, 2011, and the date of July 29, 2011 was reserved if an additional hearing date was necessary. The OAL subsequently mailed notices to all parties and informed them of the hearing dates.

On June 29, 2010, the scheduled hearing was convened to take evidence to determine whether Verizon had satisfied the statutory and regulatory requirements to obtain an Administrative Order of Access from the Board for the Premises located at 222 Elleen Terrace. Respondent also failed to respond to the mailed notice from the Office of Administrative Law ("OAL") and failed to appear at the June 29, 2011 hearing.

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At the hearing, Mr. Jeff Lahm, a retired Verizon employee and currently a consultant to Verizon for FiOS deployment in New Jersey, testified on behalf of Verizon. He presented evidence to demonstrate that Verizon had satisfied its regulatory and legal obligations concerning access to the subject premises and was entitled to an Order compelling access to the premises. Among other things, Mr. Lahm provided testimony regarding the ownership of 222 Elleen Terrace, service upon Mr. Meli, by way

of certified mail of Verizon's correspondence and Petition, and the requests for FiOS TV service that Verizon had received from residents of the premises. In addition, Mr. Lahm testified that Mr. Meli was seeking compensation from Verizon in return for access to his building.

Rate Counsel indicated that it had no objection to the Board granting Verizon an Order of Access for the Premises. On cross-examination by Rate Counsel, Mr. Lahm elaborated on Verizon's service of documents, communications with representatives of the Owner, and the ownership of 222 Elleen Terrace. In addition, Mr. Lahm summarized discussions that a Staff representative had with representatives of 222 Elleen Terrace regarding this proceeding and Verizon's request for access to the premises. No other witness appeared. The record closed at the end of the hearing.<sup>1</sup>

#### ISSUES TO BE RESOLVED

The issues to be resolved in this matter can be summarized as follows:

1. **Access:** Whether Petitioner, Verizon New Jersey Inc., is entitled to install cable television services at the Owner's property, located at 222 Elleen Terrace, in the City of Hackensack, County of Bergen, State of New Jersey, pursuant to N.J.S.A. 48:5A-49 and N.J.A.C. 14:18-4.5?
2. **Conditions and Indemnification:** What, if any, conditions should be imposed on Verizon and the Owner for access to the Premises, and is the Owner entitled to indemnification?
3. **Compensation:** Is the Owner entitled to compensation from Verizon in connection with a grant of access to the property?

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<sup>1</sup>Pursuant to cross examination by Rate Counsel, Verizon agreed to submit as a late filed exhibit any documentation that substantiated its claim that the Owner was seeking compensation in return for access. This late filed exhibit will be labeled as P-5.

4. **Statutory and Regulatory Issues:** Has Verizon demonstrated compliance with N.J.S.A. 48:5A-49 and N.J.A.C. 14:18-4.5, the requirements to establish an enforceable right of access to the property known as 222 Elleen Terrace?<sup>2</sup>

**FINDINGS OF FACT**

Based upon a review of the record and by an agreement of the parties, **FIND** the following to be **FACTS**:

1. Tax records establish that Mr. Frank Meli is the owner of the premises located at 222 Elleen Terrace in the city of Hackensack, New Jersey. (Exhibit P-3.)

2. Verizon is obligated to provide competitive cable television service to MDUs, by virtue of a system-wide franchise granted by the Board on December 18, 2006 in Docket No. CE06110768, pursuant to P.L. 2006, c.83.

3. The subject Premises is an MDU and residents of the premises have requested Verizon's cable television service.

4. Verizon's Petition shows that it served all relevant documents in this proceeding on Mr. Meli or one of his representatives. (See Exhibit P-1 --Verizon's Petition, which attaches receipts for certified mailings to Respondent and Exhibit P-2, which is the Certified Mail Receipt for the Petition.) Verizon's Petition includes a one page "overview of the proposed method of installation of fiber-to-the premise ("FTTP") network to serve the multi-dwelling unit property located at 222 Elleen Terrace" (Exhibit P-1, Exhibit B) and a five-page confidential document, dated September 26, 2009, which provided a detailed overview of the proposed FiOS network design for 222 Elleen Terrace. (Exhibit P-1, Verizon's Petition, Exhibit B1, pages 1-5.)

5. On September 15, 2008, an apparent representative of Mr. Meli for 222 Elleen Terrace, Mr. Thomas Didio, executed a PAL with Verizon that authorized Verizon to provide FiOS services to the Premises. (Exhibit P-1 --Verizon's Petition, Exhibit C,

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<sup>2</sup>See Final Order of the BPU rendered I/M/O the Petition of Comcast Cablevision of Jersey City, Inc. for Access to Certain Premises Known as the "Newport," in the City of Jersey City, New Jersey, BPU Dkt. No. CE01090585, OAL Dkt. No. CTV 9687-01, 2003 N.J. AGEN LEXIS 273 (Aug. 7, 2003)(the "Newport Case).The Newport Case is the Board's leading decision on mandatory access issues.



page 4.) There is no evidence that Mr. Meli disavows or otherwise disputes Mr. Didio's apparent authority on his behalf.

6. The executed PAL includes a number of provisions related to network design, ownership of facilities, approval of design plans, indemnification, and the term of the Agreement.

7. The 2008 PAL states that "Licensor must approve detailed engineering plans prior to construction, installation of equipment or modification to existing infrastructure." Since this condition was not satisfied, the PAL was never implemented.

8. In a letter dated March 15, 2010 to Mr. Meli, Verizon attempted to inform him that there had been no response to numerous attempts to contact him for the purpose of meeting to review plans for the installation of FiOS services. (Exhibit P-1 -- Verizon's Petition, Exhibit A.)

9. By letter dated October 22, 2010 via certified mail, Verizon attempted to inform Mr. Meli that it had received requests for FiOS service from at least one resident of the property. Verizon renewed its request to construct and install FiOS services at the property. (See Exhibit P-1 --Verizon's Petition, Exhibit C, pages 1-3.)

10. Pursuant to its regulatory obligations, Verizon attached copies of N.J.S.A. 48:5A-49 and N.J.A.C. 14:18-4.5 setting forth its statutory and regulatory rights and obligations to demand and gain access to 222 Elleen Terrace. (*Id.*, Exhibit C, pages 5,7-8.) Also, as required, Verizon included a copy of N.J.S.A. 48:5A-51, which, among other things, gives the Board the authority to seek a court order to enforce any Mandatory Access Order that is disobeyed. (*Id.*, Exhibit C, page 6.)

11. Other than signing the PAL, neither Mr. Meli nor any representative responded to Verizon's requests for permission to install service at the Premises. (See *also* Late Filed Exhibit P-5.)

~~12. Verizon provided ample documentation at the hearing that it had sufficient tenant requests for cable service to pursue its rights under the Mandatory Access Statute. (See Confidential Exhibit P-4.)~~

13. Verizon provided evidence that the owner of 222 Elleen Terrace was seeking compensation from Verizon for access to his building. (Late Filed Exhibit P-5.) The terms of compensation sought by Mr. Meli are unknown.

14. This matter was set for evidentiary hearings on June 29, 2011 with notice to all parties involved. Notice was issued to Mr. Meli's known address.

15. Mr. Meli failed to appear for the evidentiary hearings on June 29, 2011.

16. Through the testimony of Mr. Jeff Lahin Verizon presented evidence that demonstrated that Verizon had satisfied its regulatory and legal obligations concerning access to the subject premises.

### DISCUSSION AND LEGAL ANALYSIS

#### **A. Statutory Compliance**

N.J.S.A. 48:5A-49(a) prohibits a building owner from preventing access to cable television providers to install cable service equipment. The owner is allowed to stipulate reasonable conditions for installation and the cable company will be responsible for any resulting damages. The statute provides in full as follows:

[1] No owner of any dwelling or his agent shall forbid or prevent any tenant of such dwelling from receiving cable television services, nor demand or accept payment in any form as a condition of permitting the installation of such service in the dwelling or portion thereof occupied by such tenant as his place of residence, nor shall discriminate in rental charges or otherwise against any such tenant receiving cable television service; [2] provided, however, that such owner or his agent may require that the installation of cable facilities conforms to all reasonable conditions necessary to protect the safety, functioning, appearance and value of the premises and the convenience, safety and well-being of other tenants; [3] and further provided that a cable television company installing any such facilities for the benefit of a tenant in any dwelling shall agree to indemnify the owner thereof for any damage caused by the installation, operation or removal of such facilities and for any liability **which may arise out of such installation, operation or removal.**

Thus, the statutory provision contains three salient provisions (addressed below) that must be satisfied in the evaluation of a request for Mandatory Access to an MDU by a Cable TV provider. In addition, the Courts have found that under this statute Cable TV companies must provide the property owner with just compensation prior to the installation of service to address Constitutional Takings concerns. See, NYT Cable TV v. Homestead at Mansfield, 111 N.J. 21, 24 (1998).

**1. Tenant's Rights** The first section of N.J.S.A. 48:5A-49(a) protects tenants by preventing owners from blocking a tenant's access to cable television or demanding compensation from the cable company as a condition for the provision of cable service to his MDU. Only one tenant request for cable television is required to "trigger" use of this access statute for the entire property. See I/M/O Comcast of New Jersey City, LLC for Access to Certain Premises, known as the "Pacific", Located in the City of Jersey City, County of Hudson, State of New Jersey, OAL Dkt. No. CTV 3200-05 Agency Dkt. No. CE04111418, State of New Jersey, (OAL), 2006 N.J. AGEN LEXIS 970 (Decided, November 6, 2006) (the "Pacific Case"), at 25 (citing I/M/O the Petition of Comcast of Central New Jersey, LLC for Access to Certain Premises Known as the "Regency at Monroe," located in the Township of Monroe, County of Middlesex, State of New Jersey, Order Partial Summary Decision, OAL Dkt. No. CTV 2991-05 (Oct. 18, 2005) at 9.)

Verizon has submitted a list of contacts from several residents of 222 Elleen Terrace requesting Verizon's FiOS cable television service. (See Confidential Exh. P-4.) This document, which is based on business records retained by the Company and supports Verizon's assertion that it received requests for FiOS service from residents of 222 Elleen Terrace, is not disputed. This evidence is more than sufficient to demonstrate that Petitioner had multiple valid requests in hand for cable television service from residents of the premises and satisfies the condition precedent to trigger the access statute.

Verizon also provided uncontested evidence that the owner of 222 Elleen Terrace sought compensation from Verizon in return for access to his building although there was no testimony or other proof as to the terms of the compensation sought by the Owner.

Any compensation sought beyond the \$1.00 fee permitted by N.J.A.C. 14:18-4.5, would violate N.J.S.A. 48:5A-49(a).

**2. Reasonable Conditions for Protection of the Premises and Tenants**

N.J.S.A. 48:5A-49(a) provides that an owner of a building undergoing cable installation has a right to require "reasonable conditions" for installation:

[T]he owner or his agent *may require* that the installation of cable television facilities conforms to all reasonable conditions necessary to protect the safety, functioning, appearance and value of the premises and the convenience, safety and well-being of other tenants. (Emphasis added.)

In this case, the Owner failed to participate in the proceeding, and, thus, was not able to seek any conditions pursuant to the above provision. The analysis, however, does not end at this point since the statutory provision contemplates that any "reasonable conditions" imposed on the cable company also would inure to the benefit of the tenants of the dwelling. The statute states that "reasonable conditions" are also desirable for "the convenience, safety and well-being of other tenants." In addition, a review of prior Mandatory Access Proceedings indicates that there is a real potential for disputes between the cable provider and owner in the absence of any reasonable conditions on both parties. See, e.g., Newport Case.

Thus, where a property owner has failed to contest a Petition for Mandatory Access and has not exercised his right to request "reasonable conditions," good public policy dictates that reasonable conditions, *based on the evidence in the record*, should nevertheless be imposed upon both Verizon and the Owner. This should help avoid future disputes between Verizon and the Owner and provide reasonable protection to the building tenants during and after the installation of the FiOS TV services.

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Based upon the record in this proceeding, the following conditions will be imposed upon the parties and will govern their rights and obligation during and after the installation of FiOS Cable TV service at 222 Elleen Terrace:<sup>3</sup>

<sup>3</sup> The Board noted in the Newport Order that parties are welcome to agree to negotiate other terms. Newport Case at 13-14

- a. **Term**—At any time after the fifth (5<sup>th</sup>) anniversary of the date Verizon obtains access to the Premises, the Owner may, upon one hundred twenty (120) days prior written notice to Verizon, terminate Verizon's right to access his property. However, Verizon shall have the right to continue to access, maintain and operate any existing facilities at the conclusion of any Term.
- b. **Design Plan**—The property owner was provided with detailed engineering/design plans that were never approved or *disapproved* by him. Once Verizon has obtained access to the Premises pursuant to an Administrative Order of Access, it should follow the design plans previously developed for 222 Elleen Terrace.
- c. **Other Conditions** –The following conditions, regarding fixtures to be installed in the Premises by Verizon, which were previously agreed upon by the parties, are reasonable and will be included in this order:

If Verizon installs conduits, raceways or molding ("Pathways") in the building, then the Pathways will be deemed Building fixtures and will be owned by the owner, subject to Verizon's right to remove, replace and maintain the Pathways. The fiber optic, copper and coaxial cables and lines and any flexible microducts ("Cabling Equipment") installed by Verizon within such Pathways will not be Building fixtures and will continue to be owned by Verizon. The Owner shall not move, disturb, alter or change the Cabling Equipment or connect, directly or indirectly, any telephones, computers, televisions or other devices to the Cabling Equipment.

- ii. If molding is installed by Verizon ("Verizon's Molding"), Verizon's Molding may cover the conduits and raceways containing Verizon's Cabling Equipment as well as any adjacent conduits and raceways owned by Owner or any cable TV or other communications company serving the Building, and the Owner shall have the right to remove, replace and maintain Verizon's Molding and shall also have the right to allow its contractors and any cable TV or other communications company serving the Building to remove, replace and maintain Verizon's Molding; provided such installation, removal, replacement or maintenance of Verizon's Molding does not materially adversely affect the operation of Verizon's Facilities.
- iii. Verizon owns all facilities that it installs except the Pathways described above. All work performed by Verizon shall be performed in a good and workmanlike manner and any damage

to the premises caused thereby shall be corrected by Verizon, all to the reasonable satisfaction of the owner.

3. **Indemnification** -- N.J.S.A. 48:5A-49(a) provides that a cable television company "shall agree to indemnify the owner thereof for any damage caused by the installation, operation or removal of such facilities and for any liability which may arise out of such installation, operation or removal." Thus, N.J.S.A. 48:5A-49(a) governs indemnification to owners for any damage caused by the installation, operation, or removal of equipment by a cable television company being granted access under the statute. Prior Mandatory Access cases indicate that the owner is entitled to the indemnification protection set forth in the statute and nothing further. See *Pacific Case*.

4. **Compensation** -- Verizon will provide the Owner \$1.00 within 15 days of the issuance of the Administrative Order of Access. See discussion below regarding the requirements of N.J.A.C. 14:18-4.5(a) for compensation.

#### **Regulatory Requirements -- N.J.A.C. 14:18-4.5**

In order to obtain an Administrative Order of Access, Verizon must also establish that it has satisfied the pertinent provisions of N.J.A.C. 14:18-4.5.

1. **Compensation -- N.J.A.C. 14:18-4.5(a)**
2. Under N.J.A.C. 14:18-4.5(a),

"A cable television operator shall award \$1.00 to a fee owner . . . in consideration of the access granted pursuant to the Cable Television Act, N.J.S.A. 48:5A-49."<sup>4</sup> In this case, the owner has not allowed Verizon access to his MDU. Thus, Verizon will make payment to the owner in the amount of \$1.00 within 15 days of receipt of the Administrative Order of Access. See *Pacific Case* (Ordering Clause 2: "Comcast should only be required to pay the statutory fee of \$ 1 as set forth in N.J.A.C. 14:18-4.5(a).")

The owner is not entitled to compensation in excess of \$1.00 for allowing Verizon access to the property. Any request for more compensation as a condition of access is

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<sup>4</sup>N.J.A.C. 14:18-4.5(a) is based on N.J.S.A. 48:5A-49, which has been interpreted by the Supreme Court of New Jersey to be within the legislature's constitutional rights. *NYT Cable TV v. Homestead at Mansfield*, 111 N.J. 21, 24 (1998).

a violation of N.J.A.C. 14:18-4.5(a), absent proof that the owner will incur additional costs and expenses. See discussion, *infra*, regarding the requirements of N.J.A.C. 14:18-4.5(d).

**2. Written Notice of Intent to Install Cable Service --N.J.A.C. 14:18-4.5(b)**

This section outlines the six steps that a cable company must take to notify the property owner of its intention to install cable TV at the Premises. This section states in relevant part that:

[A] cable television operator shall serve written notice to the fee owner, landlord or agent of its intent to install cable television service or facilities upon the fee owner's property at least 30 days prior to commencing such installation. Notice shall be served by certified mail and the form and content of such notice shall include at a minimum:

- a. The name and address of the cable television operator;
- b. The name and address of the fee owner, manager or superintendent;
- c. The approximate date of the installation;
- d. Citations from the Cable Television Act and New Jersey Administrative Code, specifically N.J.S.A. 48:5A-49 and N.J.S.A. 48:5A-51, and N.J.A.C. 14:18-4.5;
- e. A general description of the proposed method of installation;
- f. Notice that the amount of \$ 1.00 in consideration for the access granted pursuant to the Cable Television Act will be tendered when an agreement is signed.

As demonstrated above, Verizon has clearly satisfied each of the requirements of subsections a-e. As for subsection f, that provision will be satisfied when Verizon tenders the payment of \$1.00 within 15 days of the issuance of an Administrative Order of Access. See, e.g., Pacific Case.

Subsection f also contemplates that the parties will enter into a signed access agreement. (See also 14:18-4.5 (g) ("All executed access agreements must be available for inspection by the Office of Cable TV.)) In this case, it would be pointless to require Verizon to attempt to obtain a signed agreement with the Owner. Instead, the Administrative Order of Access acts in lieu of any agreement between the parties and

will govern their future rights and obligations regarding the FiOS Cable TV service provided at 222 Elleen Terrace.

**3. Application for Access-- N.J.A.C. 14:18-4.5(c)**  
N.J.A.C. 14:18-4.5(c) provides that:

If no response to the notice is forthcoming within 30 days, the cable television operator has a statutory right and a franchise obligation to provide cable television service. In order to enforce this right and satisfy said obligation, a cable television company must apply for an administrative approval for access. To apply, said company must submit to the Board of Public Utilities, copies of its notice and a specific description of the proposed method of installation.

The record demonstrates that Verizon has satisfied this provision.

**4. Owner's Costs and Expenses -- N.J.A.C. 14:18-4.5(d)**

Under N.J.A.C. 14:18-4.5(d), the owner of a building is allowed to recover the following three types of costs and expenses associated with the installation of the cable service.

1. Under N.J.A.C. 14:18-4.5(d) (1-3) the owner is given the right to establish that he is entitled to just compensation greater than \$1.00.
2. Under N.J.A.C. 14:18-4.5(d) (4) the owner is entitled to seek "[o]ut of pocket costs directly attributed to the installation and presence of cable television facilities in the multi-unit dwelling."
3. Under N.J.A.C. 14:18-4.5(d) (5) the owner is entitled to seek "[a]ny extraordinary costs to be borne by the applicant associated with the installation and presence of cable television facilities."

By failing to appear, the Owner has failed to demonstrate any additional costs and expenses associated with the installation of FiOS service at 222 Elleen Terrace,



beyond the \$1.00 in just compensation that Verizon will provide to him.<sup>5</sup> In addition, both parties will be required to adhere to the conditions set forth in this Order.

\* \* \*

In summary, Verizon has adhered to the mandates of N.J.A.C. 14:18-4.5<sup>6</sup> and has provided the owner of 222 Eileen Terrace with the requisite letters with the appropriate documentation as mandated by the regulations and rules and, thus, is entitled to an Administrative Order of Access subject to the conditions outlined herein.

### ORDER

Based upon the foregoing, hereby **ORDER** the following:

1. Verizon New Jersey Inc. is entitled to install equipment for the provision of cable television services at the property located at 222 Eileen Terrace, Hackensack, Bergen County, New Jersey and is granted access to the premises for that purpose. This Order obviates any regulatory requirements for the parties to enter into an access agreement and will govern the rights of the parties during and after installation of FiOS TV at the Premises.

2. Verizon will provide the property owner an award of \$1.00 within 15 days of the date of the Administrative Order of Access.

3. In addition to the compensation provision addressed above, the following conditions will be imposed on the parties:

a. At any time after the fifth (5<sup>th</sup>) anniversary of the date Verizon obtains access to the Premises, the Owner may, upon one hundred twenty (120) days prior written notice to Verizon, terminate Verizon's right to access his property. However, Verizon shall have the right to continue to access, maintain and operate any existing facilities at the conclusion of any Term.

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<sup>5</sup>N.J.S.A. 48:5A-49(a) already provides that "a cable television company . . . shall agree to indemnify the owner thereof for any damage caused by the installation, operation or removal of such facilities and for any liability which may arise out of such installation, operation or removal." Therefore, any damages that arise from the installation will be covered by Verizon.

<sup>6</sup>N.J.A.C. 14:18-4.5(e) and N.J.A.C. 14:18-4.5(f) grant certain procedural rights to the Director of the OCTV and are not relevant to this matter.

b. Verizon will install FiOS service at 222 Elleen Terrace using the confidential engineering/design plans that were annexed to its petition.

4. Verizon and the Owner will adhere to the following conditions related to the installation of any fixtures in the Premises:

- a. If Verizon installs conduits, raceways or molding ("Pathways") in the building then the Pathways will be deemed Building fixtures and will be owned by the owner, subject to Verizon's right to remove, replace and maintain the Pathways. The fiber optic, copper and coaxial cables and lines and any flexible microducts ("Cabling Equipment") installed by Verizon within such Pathways will not be Building fixtures and will continue to be owned by Verizon. The Owner shall not move, disturb, alter or change the Cabling Equipment or connect, directly or indirectly, any telephones, computers, televisions or other devices to the Cabling Equipment.
- b. If molding is installed by Verizon ("Verizon's Molding"), Verizon's Molding may cover the conduits and raceways containing Verizon's Cabling Equipment as well as any adjacent conduits and raceways owned by Owner or any cable TV or other communications company serving the Building, and the Owner shall have the right to remove, replace and maintain Verizon's Molding and shall also have the right to allow its contractors and any cable TV or other communications company serving the Building to remove, replace and maintain Verizon's Molding; provided such installation, removal, replacement or maintenance of Verizon's Molding does not materially adversely affect the operation of Verizon's Facilities.
- c. Verizon owns all facilities that it installs except the Pathways described above. All work performed by Verizon shall be performed in a good and workmanlike manner and any damage to the premises caused thereby shall be corrected by Verizon, all to the reasonable satisfaction of the owner.

5. The Owner is entitled to the indemnification protection set forth in N.J.S.A. 48:5A-49(a) and that provision will apply Verizon's access to 222 Elleen Terrace.

6. Verizon will serve the Administrative Order of Access on the Owner of 222 Elleen Terrace within 15 days of the receipt of said order. Sixty (60) days after service of the Administrative Order of Access, Verizon will inform the Board and Rate Counsel whether access has been achieved.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT. NO. CTV 04699-11

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 2 Gateway Center, Suite 801, Newark, NJ, 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

September 21, 2011  
DATE

Walter M. Braswell  
WALTER M. BRASWELL, ALJ

Date Received at Agency:

Aura Perkins  
DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed to Parties:  
ljb

SEP 22 2011

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**APPENDIX**

Witnesses

For Petitioner:

Mr. Jeff Lahm

For Respondent

None.

**Exhibits**

For Petitioner:

P-1 Verizon's Petition for Mandatory Access.

P-2 Acknowledgement of Service upon Respondent.

P-3 Tax record Ownership.

P-4 Confidential Chart Demonstrating Requests for Service from Residence.

P-5 Late Filed Exhibit --Document Reflecting Property Owner's Request for Compensation for Access to 222 Elleen Terrace.

For Respondent

None.