

**REMARKS OF SEEMA M. SINGH, ESQ,
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**PRESENTED BY
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**IN THE MATTER OF THE BOARD'S REGULATIONS OF CABLE
TELEVISION, PROPOSED READOPTION WITH AMENDMENTS: N.J.A.C.
14:18 AND PROPOSED NEW RULES N.J.A.C. 14:18-14 AND 15 VERIZON
BPU DOCKET NO. CX06030141 AND CX06080580,
PROPOSAL NUMBER: PRN 2006-384**

PUBLIC HEARING

Board of Public Utilities
Newark, New Jersey
January 4, 2007
10:30 a.m.

Good Morning. My name is Christopher White and I am the managing attorney for telecommunications and cable representing the New Jersey Division of Rate Counsel, a division within the Department of the Public Advocate of New Jersey. I am pleased to be here today to identify both the Public Advocate's and Rate Counsel's major issues surrounding several aspects of the Cable Television Proposed Amendments and New Rules.

The Department of the Public Advocate has from its inception supported the system-wide cable franchise application filed by Verizon, but warned that despite

its support, such a move will be closely watched in the hopes of requiring that the entire public will be served by a new provider of cable services. Upon learning of the Board of Public Utilities' approval of Verizon's statewide franchise, the Public Advocate has made sure the Verizon application met several requirements that limit the possibility of the communications giant engaging in any practices that are detrimental to the public, like "red-lining."

- The Department made sure that service provision would be equally available to residents of multiple dwellings units with very few exceptions – a major issue for urban customers.
- The Department made sure that Verizon's application reflected the company's legal requirement to follow a line extension policy that is exactly the same as those followed by the current cable companies - a major point of contention for rural customers.
- The Department of the Public Advocate made sure that it has access to all maps and schedules provided by Verizon to ensure monitoring.
- The Department of the Public Advocate made sure that Verizon submit quarterly reports that updates its progress in meeting the legal requirements to provide service to all portions of the state.

As the Public Advocate observed, "[T]hese are all specific provisions that all have to do with Verizon living up to their commitments to be established in the rules."

Nevertheless, the Board's proposed cable rules fail to include any safeguards to preclude cross subsidization of services and other appropriate safeguards that ensure the continued safe, and adequate cable service for New Jersey residents at just, reasonable, and affordable rates. Summarizing numerous comments as part of the recent Rule Adoption of Energy Competition Standards and Public Utility Holding Standards, at *N.J.A.C. 14:4-4A* the Board acknowledged commenters' positions that:

The Board has ample jurisdiction and broad regulatory powers under current statutes and regulations to investigate the activities of public utility holding companies, and ensure that those activities are not detrimental to public utility customers. Specifically, the Board has access to relevant information within public utility holding companies, statutory powers over transfers of capital and other service agreements, and full regulatory authority to prevent cross-subsidization. A thorough review of inter-corporate transactions is a standard process of all rate proceedings.

The Board has a comprehensive regulatory scheme in place to regulate New Jersey utilities and relationships of the utilities with their affiliates to the extent those relationships might interfere with the utilities' provision of safe, adequate and proper service to their customers at reasonable rates. This authority is broad and includes authority over rates, service quality, affiliate transactions, the transfer of control over a public utility as well as a variety of other areas....

Additionally, the Board has many other avenues for protecting utilities from any risk of affiliate diversification, through the control of regulatory capital structure, rates of return, the sale or encumbrance of utility assets, contracts with affiliates, and its general authority over customer rates. If necessary, the Board can require any New Jersey utility that is not already so structured to operate as a separate legal entity from its parent or affiliates, as most (if not all) New Jersey utilities already do and can impose other "ring fencing" protections.

The Board confirmed its authority when it concluded:

It is well established that the Board 'may exercise jurisdiction not only over the bottom corporate tier of the chain, the actual New Jersey [public utility], but to any entity which owns, controls, manages or operates the entity." *N.J.S.A 48:2-13*. See also, *In Re Proposed Corporate Restructuring of Tele-Communications, Inc.*, BPU Docket No.CM90121496, Order dated February 2, 1991. This sweeping grant of power is "intended to delegate the widest range of regulatory power over utilities to the [BPU]." *In Re Alleged Violations of Law by Valley Road Sewerage Company*, 154 *N.J.* 224, 235 (1998) (citing *Township of Deptford v. Woodbury Terrace Sewerage Corp.*, 54 *N.J.* 418, 424, 255 *A.2d* 737 (1969). The BPU's authority over utilities, like that of regulatory agencies generally, extends beyond powers expressly granted by statute to include incidental powers that the agency needs to fulfill its statutory mandate. *Ibid.*

38 N.J.R. 4237(a),¹ under Sections: A. The Board's Existing Protections and C. The Proposed Rule and State of Law

The Board correctly identified the risks that are involved when public utilities diversify and invest in non-utility businesses. The Board identifies the risks as:

First, the utility holding company investments in non-utility businesses may lead to utility ratepayer subsidies of non-utility services, second, the acquisition of a utility by a holding company can affect the incentives of utility management as new management may have priorities other than local utility service and may lack the State-specific experience necessary to ensure reliable service at reasonable rates. Third, because the utility industry is capital intensive, utilities are highly dependent on access to the capital markets. When the utility's credit ratings decline as a result of activities at the parent holding company or affiliate, the compensation demand by providers of capital can increase, putting ratepayers at risk.

38 N.J.R. 4237(a),² under Section A. The Board's Existing Protections

Similarly, the Cable Act has the same type of broad provisions that are found in sections of Public Utility Law and these parallel provisions give the Board the same authority to protect cable ratepayers when cable companies diversify into other non-cable businesses, like telephone and Internet services. This broad authority compels that the Board impose appropriate safeguards on both telephone companies and cable companies as part of this rulemaking. Our specific recommendations will be filed with our comments later this month. The Board must not abdicate its responsibility under the Public Utility Act and the

¹/ See Rule Adoptions, Public Utilities, Board of Public Utilities, N.J.A.C. 14:4-4A, Energy Competition Standards, Public Utility Holding Company Standards, BPU Docket No.: AX05070641 proposed December 19, 2005 at 37 N.J.R. 4889(a), adopted by the Board on August 16, 2006, as R.2006 d.339, effective October 2, 2006, at 38 N.J.R. 4237(a), expiration date April 18, 2011.

²/ *Id.* at FN 1.

Cable Act to ensure service at rates that are just and reasonable. As you are aware the Division of Rate Counsel has the statutory duty to represent and protect the interests of all classes of utility consumers in the state of New Jersey, in an effort to advance the interests of all ratepayers. Therefore, the Public Advocate/Rate Counsel recommends that the Board should consider modifying the proposed new regulations to address and/or include the following:

- Verizon will fulfill its statutory obligation on build out to wire all 146 municipalities, as was stipulated, instead of the 70 they initially offered to wire.
- Use of the current definition of 'good faith' – honesty in fact in the conduct or transaction concerned—as adopted in the newest UCC Articles 2 and 2A.
- Verizon and its cable operation is subject to and must comply with all Public Utility and Cable Act requirements, including structural safeguards to preclude cross-subsidies.
- These safeguards will not only provide the Board with proper assurances that telecommunications/cable television video providers are not misallocating costs between cable/video and non-cable/video services, but will also serve to deter telecommunications/cable television video providers from engaging in pricing discrimination.
- Any and all agreements by and between the common carrier providing video programming and other affiliates in connection with and including but not limited to the provision of service must be filed with the Board for Board approval with a copy to Public Advocate/Rate Counsel and all interested parties.
- Inclusion, under the MDU's portion of the rules, the requirement that Verizon notify Public Advocate/Rate Counsel when a ratepayer has requested service.
- In connection with a municipality's access to PEG channels, the Public Advocate/Rate Counsel must be copied on all correspondence between a municipality and Verizon and will be a party in the Dispute Resolution process before the OCTV.

- Verizon shall furnish Public Advocate/Rate Counsel with updates to municipal PEG access issue.
- Full and complete reports on the equipment and training provided to municipalities will be provided to the Public Advocate/Rate Counsel on a quarterly basis
- Verizon to supply quarterly updates on deployment and progress for meeting build-out requirements.
- The Public Advocate/Rate Counsel cautions and wants service activation rules adopted that requires no service activation until Verizon provides PEG channels.
- Inclusion of detailed franchise renewal rules that identify the criteria that will be used in making a renewal determination.

The Public Advocate/Rate Counsel respectfully submits that the Board's Order exempting Verizon from rate regulation is in error and premature. The Public Advocate/Rate Counsel recommend that the rules under review recognize that Verizon's video programming service is subject to regulation by the Board as the local franchising authority until the FCC rules, upon a properly filed Petition for a declaration of effective competition, that one of the four tests in the 1996 Act is satisfied. Until then, basic service rate regulation is required.

Verizon's cable service does not qualify for any exemption of regulation. Although a respected Telecommunications Law treatise notes that the 1934 Communications Act "expressly exempts from the requirements of Title VI common carriers that provide video programming through their facilities,"³ Title II exemption applies so long as the carrier is only providing video programming of

³ / *Federal Telecommunications Law*, Huber, Kellogg, Thorne and Leo, Aspen Publishers, 2nd edition, 2007 Supplement, at p. 168.

exclusively on-demand video or operating as an open video system.”⁴ Verizon’s cable service is not exempt.

Also, Section 522(7)(C) provides that a cable system, such as that proposed by Verizon here, is considered a cable system. Therefore, the Board must regulate Verizon’s rates. The Board’s legal analysis is simply wrong. Verizon does not fall under any exemption and is therefore subject to regulation.

Finally, these rules are subject to further review in regard to the effect, if any, that the FCC’s recent Order on the franchising process for new video entrants will have.

In conclusion, the Board should modify the proposed rules, and incorporate sections addressing the Public Advocate’s/Rate Counsel’s concerns to further safeguard both cable and telephone ratepayers while ensuring the continuance of safe and adequate service at reasonable rates.

⁴ / *Id.*