



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

TELECOMMUNICATIONS

IN THE MATTER OF THE APPLICATION OF VERIZON
NEW JERSEY, INC., FOR THE APPROVAL OF THE)
SALE AND CONVEYANCE OF REAL PROPERTY)
LOCATED IN THE TOWNSHIP OF SCOTCH PLAINS,)
UNION COUNTY, NEW JERSEY TO TRIPLE NET, L.L.C.)

ORDER OF APPROVAL

DOCKET NO. TM08030166

(SERVICE LIST ATTACHED)

BY THE BOARD

On March 19, 2008, Verizon New Jersey Inc. (Petitioner or VNJ) filed an application (Petition) for approval of the sale and conveyance of real property (Property) located in the Township of Scotch Plains, Union County, New Jersey to Triple Net Real Estate Limited Liability Company, (Buyer). According to the application, there is no relationship between the Petitioner and the Buyer other than that of transferor and transferee.

The Property consists of an existing 29,665 square foot building on approximately 5.369 acres of land, and was acquired on April 28, 1970, at a purchase price of \$161,010.00. Improvements to the Property consist of the existing 29,665 square foot building and subsequent internal improvements, at a total cost to date of \$3,090,892.00. The book value of the Property is \$2,136,252.00. The Property is not income producing, and its 2007/2008 assessed value is \$780,000.00.

On September 27, 2007, Petitioner determined that it has no present or prospective use for the Property for utility purposes. The Property has been used as a site for Petitioner's Business Service center, and will cease to be used for such purposes when the personnel from this location are transferred to other locations.

On March 21, 2006, Petitioner obtained an appraisal of the Property from Welsh Chester Galiney Matone, Inc. (WCGM), which determined that, the market value of the Property as of March 7, 2006 as an office building was \$2,750,000.00, and as residential land was \$2,350,000.00. The appraisal was re-examined by WCGM by report dated October 30, 2007. The reexamination resulted in no change in the previously appraised values.

The Petition states that the Property had been advertised in September, 2007. In response to the advertisement, eleven (11) bids were received. On November 9, 2007, Petitioner accepted the highest bid of \$4,171,000.00 submitted by Westfield Senior Citizens Housing Corp. ("WSCH") and began negotiations of the terms and conditions of a formal contract of sale as contemplated by the bidding documents. Thereafter, a purchase and sale agreement was executed by WSCH on January 14, 2008. However, on January 30, 2008, WSCH notified Petitioner's attorney that it was exercising its right to terminate the agreement pursuant to provisions thereof.

Upon receipt of notification from WSCH that it was canceling the purchase agreement, the Petitioner contacted the next highest responsive bidder, Kenneth Esdale, sole member of Triple Net Real Estate Limited Liability, Co., and determined that it remained interested in acquiring the property at its submitted bid price of \$2,521,525.00. A higher bid of \$3,000,000.00 submitted by ATA Developers was rejected by Petitioner since it required extensive land use approvals for residential development which Petitioner considered speculative and non-responsive.

On March 19, 2008, the Board approved the Petitioner's request to permit filing of a petition for the approval of the sale of the Property beyond 150 days from the last advertisement date of the Property. See, I/M/O the Letter Petition for Approval of the Sale of Lands in Scotch Plains in New Jersey beyond 150 days from the Advertisement of the Property. Docket No. TO08020090.

Pursuant to the sales agreement, the Petitioner will lease back the property for a period of nine months from the date of closing in order to have sufficient time to relocate its business operations to other locations. The details of this lease back arrangement are set forth in exhibit C, attached to the sales agreement submitted with the Petition.

Pursuant to the sales agreement, Petitioner reserves the rights and easements in the Property for the purpose of providing and continuing telecommunications services. The details of these rights and easements are described in exhibit E annexed to the sales agreement provided with the Petition.

On April 17, 2008, the Division of the Rate Counsel ("Rate Counsel") requested that the Board designate this matter as a contested case, and that it be adjourned from consideration until such time as Rate Counsel has had an opportunity to propound discovery which would assist Rate Counsel "in resolving core concerns on a property that has been in the rate base for 38 years." Rate Counsel maintains that public policy concerns require that Rate Counsel be afforded an opportunity to review the prudence and reasonableness of the proposed sale. Furthermore, Rate Counsel requested that the Board designate this as a contested matter and convene as soon as possible a pre hearing conference with all interested parties. Rate Counsel believes that issues exist regarding whether the sale is reasonable, appropriate, represents fair market value and is in the public interest which Rate Counsel is mandated to represent under N.J.S.A. 52:27EE-57, and whether the proposed sale is otherwise consistent with applicable rules.

On April 22, 2008 VNJ filed its comments in response to Rate Counsel's request for evidentiary hearings and adjournment of this matter. VNJ requested that the Board reject Rate Counsel's request because this matter does not meet the criteria for designation as a contested case, and therefore there is no good reason to delay action on the application.

According to VNJ, a party lacks the power to commence a contested case and demand an evidentiary hearing unless that party has some "particularized property rights or other special interests distinct from those of the general public." Here, VNJ argues, Rate Counsel has no specific "property rights or special interests" in the outcome of this matter. According to VNJ, the Board has repeatedly held – and the Appellate Division has recently confirmed – that sharing of proceeds of real property sales is not required under VNJ's Board approved regulatory plan. Based on the above facts, VNJ believes that there is no link between the property sale proceeds and Verizon rates, and thus, Verizon argues, Rate Counsel lacks the requisite interest in this matter to commence a contested case. VNJ argues that even if Verizon's ratepayers had an interest in this case, which VNJ believes they do not, Rate Counsel has no interest in this matter distinct from the general public, and thus is not entitled to an evidentiary hearing.

On April 28, 2008, Rate Counsel filed additional comments maintaining that before negotiating with Triple Net Real Estate Limited Liability Company, VNJ, pursuant to N.J.A.C. 14:1-5.6(i), was obligated to request a waiver of the advertising requirement from the Board and obtain a current independent appraisal of the Property. According to Rate Counsel, absent this waiver and an independent current appraisal VNJ failed to comply with the applicable rules for the sale of public utility property². Rate Counsel questions the prudence of the "Lease Back" arrangement for the Property, and whether it is indeed "no longer useful" as utility property. Furthermore, Rate Counsel contends that the appraisal submitted by Verizon on this Property dates back to March of 2006, and the subsequent appraisal conducted by the same appraisal company one and half years later, in October 2007, is only a letter appraisal devoid of in-depth analysis of market conditions. Rate Counsel requests that VNJ's Petition be rejected because it violates Board rules, and recommends that the Board withhold approval pending receipt and review by Rate Counsel and Board Staff of outstanding information requested by Rate Counsel. In the alternative if the Board elects to proceed under the circumstances, Rate Counsel recommends that the Board revisit its policy on profit sharing to flow through some profit to ratepayers in the form of an upward adjustment to the ANJ equipment fund.

On May 7, 2008, VNJ filed its reply comments, maintaining that Rate Counsel's arguments that, VNJ was obligated to (1) request a waiver from the Board before commencing contract negotiations with the next highest bidder, and (2) obtain a full independent appraisal of the Property have no merit. VNJ asserts that nothing in the Board's rules prohibits a utility from commencing negotiations with the next higher bidder when the high bidder withdraws its bid or terminates the purchase agreement, as was the case with the sale of this property. According to VNJ, Rate Counsel's reliance on the Board's finding that a waiver was required in connection

¹ See, *Cedar Grove v Sheridan*, 209 N.J. Super.267,274-75 (App.Div.1986)

² I/M/O the Application of Verizon New Jersey, Inc., for the Approval of the Sale and Conveyance of Real Property Located in the City of Jersey, Hudson County, New Jersey to Kennedy Business Center, LLC, BPU Docket No. TM05100861.

with VNJ's 2006 Jersey City property sale is misconceived. In that case Verizon argues, after receiving bids that were all lower than the appraised value of the Jersey City property, VNJ contacted the three highest bidders and requested that they submit additional "highest and best" bids. Verizon ultimately accepted the highest rebid. Rate Counsel challenged the sale because VNJ did not seek a waiver from the advertising requirement before seeking the rebids. In that case, VNJ maintains that although the Board agreed that VNJ should have sought a waiver from the advertising requirement, the Board ultimately found that "because the negotiations followed prior advertised bids, the Board believes that the intent of the regulation has been sufficiently met to warrant a waiver," and the Board approved the sale. VNJ argues that it did not seek to rebid or renegotiate the bids it received; VNJ simply selected the next highest responsive bid when the high bidder backed out of the sale. VNJ believes that the situation here is no different than if the high bidder had withdrawn its bid before the bids were opened or had its bid rejected as non-responsive. Therefore, VNJ argues that this case is distinguishable from the Jersey City sale. VNJ also disagrees with Rate Counsel that the "Lease Back" of the Property for a period of nine months after the closing date of the sale has any impact on the "no longer useful" status of the Property. According to VNJ, the determination of usefulness is not made as of the date that bids were sought, but, rather, on the date that VNJ ceases to use the property. VNJ again argues against Rate Counsel's recommendation on the issue of sharing of proceeds arising from the sale of the property. Furthermore, VNJ believes that information requested by Rate Counsel is not relevant to its petition. However, on May 8, 2008, VNJ provided responses to Rate Counsel's requests with a statement that VNJ is providing this information without prejudice to its position that this information is not relevant to the Board's consideration, and that approval of the sale should not be delayed.

On May 30, 2008, Rate Counsel filed further comments requesting that the Board withhold approval pending receipt and review by Rate Counsel and Board Staff of outstanding information requested by Rate Counsel. Rate Counsel has received from VNJ certain requested information, but claims information concerning the detail of the improvements made, and the tax information going further than the 2001 tax year are still outstanding. Rate Counsel claims that the missing information is needed to determine whether the net book cost has been erroneously over-stated. Rate Counsel would then determine if any over-statement of the net book cost affords ratepayers an opportunity to share in the proceeds from the sale, should the Board decide to revisit its current policy on sharing of assets in this matter. Therefore, Rate Counsel requests that the Board defer this matter until Rate Counsel can have further meetings and discussions with VNJ. However, if the Board elects to proceed on the subject petition under the circumstances presented, Rate Counsel requests that the Board revisit its policy on sharing and condition approval of the sale on the sharing of some profit from the sale by flow through of such profit to ratepayers in the form of an upward adjustment to the ANJ equipment fund.

On June 3, 2008, VNJ responded to Rate Counsel's comments of May 30, 2008. VNJ continues to assert that the information requested is irrelevant to ratepayers because the sharing of the property sale proceeds—to which those considerations pertain—has repeatedly been determined by the Board to be inconsistent with VNJ's Plan of Alternative Regulation. VNJ pointed out that by Rate Counsel's own admission the requested information would only be relevant if the Board revisits and reverses its current policy on sharing which has consistently been reaffirmed by the Board, and was recently judicially approved.

BOARD'S DISCUSSION

After reviewing the Petition and supporting exhibits, the Board FINDS that VNJ and the Buyer have complied with all statutory requirements regarding the sale of utility property as contained in N.J.A.C. 14:1-5.6 and N.J.S.A. 48:3-7. The Board is not persuaded that, under the circumstances described, VNJ was required to readvertise the Property or seek a waiver of the advertising requirement.

After reviewing the parties' arguments, the Board FINDS that Rate Counsel has failed to articulate a specific interest in the outcome of this matter including how the public interests that it represents will be affected by this sale. Rate Counsel has failed to raise any specific issues concerning the legality of the sale. In the absence of a requirement for the sharing of the sale proceeds³, and since VNJ's rates under its Board approved alternative plan of regulation are not determined using rate base/ rate of return analysis, this property sale has no impact on VNJ's ratepayers, and there is no basis for conducting a prudency review. The Board declines Rate Counsel's invitation to revisit the policy on sharing of proceeds under PAR 2 within the context of a sale of property.

The Board agrees with VNJ that no party, ratepayer or individual has particularized property rights that will be affected by the Board's ruling on VNJ's Petition based on the provisions of the company's alternative plan of regulation. In view of the foregoing, the Board FINDS that VNJ's Petition should not be designated as a contested case, and that no evidentiary hearings need be conducted. The Board also FINDS that the proposed sale of said Property will not affect Petitioner's ability to provide safe, adequate and proper service, is in the public interest and in accordance with law, and accordingly HEREBY APPROVES the sale, subject to the following conditions:

Petitioner is directed to advise the Board of the date on which the transaction is completed, within ten (10) days of completion;

This Order shall be of no effect, null and void, if the sale hereby approved is not completed within six (6) months of the date hereof unless otherwise ordered by the Board; and

³ See *I/M/O the Board's Investigation As To Whether Ratepayers Should Share In Proceeds Arising From The Sale And Conveyance Of Real Property By Verizon New Jersey Inc.* BPU Docket No. TX04080749 (8/12/2005). See also, *I/M/O the Application of Verizon, New Jersey, Inc. for the Approval of the Sale and Conveyance of Real Property Located in the City of Jersey City, Hudson County, New Jersey to Kennedy Business Center, L.L.C.*, Superior Court of New Jersey, Appellate Division, Dockets Nos. A-4473-05T2, A-6566-05T2, and A-6567-05T2 (Jan 4, 2008) ("We note that the BPU has already resolved the income sharing in the Investigation Order ... We agree with the BPU's conclusions that Rate Counsel is raising an argument that has previously been rejected for good reasons by BPU.")

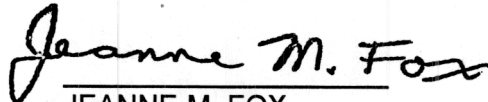
The approval of the proposed journal entries recording the sale of this Property shall not affect or in any way limit the exercise of the authority of this Board, or of this State, in any future petition or in any proceeding with respect to rates, financing, accounting, capitalization, depreciation or in any other matters affecting Petitioner.


DATED:


6/16/08


BOARD OF PUBLIC UTILITIES

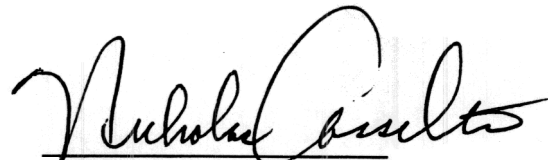
BY:


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PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

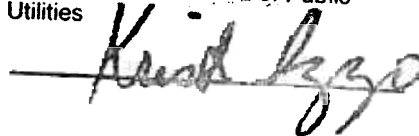

CHRISTINE V. BATOR
COMMISSIONER


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 Sale and Conveyance of Real Property Located in the Township of
Scotch Plains, Union County, New Jersey, to Triple Net, L.L.C.**

Docket No. TM08030166

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