



Agenda Date: 09/12/08

Agenda Item: 3D-1

## **STATE OF NEW JERSEY**

*Board of Public Utilities*

*Two Gateway Center*

*Newark, NJ 07102*

*www.nj.gov/bpu*

### CABLE TELEVISION

IN THE MATTER OF VERIZON OF NEW JERSEY, ) ORDER  
INC. – REQUEST FOR ASSISTANCE RESOLVING )  
INTERCONNECTION NEGOTIATIONS WITH )  
CABLEVISION TKR, INC. ) BPU DOCKET NO. CO07070524

(SERVICE LIST ATTACHED)

BY THE BOARD:

#### Introduction

This matter has been opened to the Board as a request for assistance in resolving open issues associated with attempts to develop an agreement for interconnection between the public, educational, and governmental channels with Verizon New Jersey ("Verizon" or "VNJ") and Cablevision TKR, Inc. ("Cablevision" or "CV"). As will be discussed in more detail below, the Board hereby sets forth the framework and basic elements of an imposed interconnection relationship, as well as a discussion of the appropriate and necessary cost and service elements. The Board continues to believe that a negotiated business framework between the parties would be beneficial; but based upon legal and policy requirement, the Board will nevertheless impose the following framework in the absence of mutual agreement.

#### Background

On December 15, 2006, in Docket No. CE06110768, Verizon was granted a system-wide cable franchise by the Board, pursuant to P.L. 2006, c. 83 (the "System-wide Cable Television Franchise Act" or "Act"). The new law modified the State's Cable Television Act, N.J.S.A. 48:5A-1 et seq., by allowing for the option of competitive system-wide franchises for the provision of cable television service. System-wide cable franchise holders are required to provide certain services to each municipality which they serve, including two public, educational and governmental access ("PEG") channels. N.J.S.A. 48:5A-28(i). In addition, under the Act, cable television operators are required to provide interconnection access, if requested, for the purpose of allowing competing cable television operators to provide PEG content.

Following the passage of the System-wide Cable Television Franchise Act, the Board adopted regulations to establish the procedures for resolution of disputes involving PEG and interconnection:

If a cable television company is unable to interconnect with another cable television company because it believes the terms and conditions are not reasonable, it may petition the Board for assistance in resolution of the dispute. The Board may utilize the procedures set forth in N.J.A.C. 14:17-8.

[N.J.A.C. 14:18-15.4(d)(2).]

On July 12, 2007, Verizon filed a letter with the Board requesting assistance in resolving its interconnection negotiations Cablevision, which is one of the incumbent cable television operators in VNJ's expanding service territory, and through which VNJ seeks to interconnect in multiple municipalities. Response to Verizon's request was filed by Cablevision on August 10, 2007, and shortly thereafter, the Office of Cable Television ("OCTV") held two settlement conferences with Verizon and Cablevision, which were also attended by the Division of Rate Counsel.

#### Procedural History

After attempts by the OCTV to mediate settlement discussions were unsuccessful, on December 21, 2007, the Board initiated an evidentiary proceeding to address the outstanding issues, and issued a procedural schedule setting forth the dates for submission of testimony, discovery, evidentiary hearings and the submissions of briefs. Additionally, Commissioner Joseph L. Fiordaliso was designated as presiding officer in this matter.

Pursuant to the procedural order, on January 10, 2008, the New Jersey State League of Municipalities ("LOM") filed a request for intervention in the proceeding, which was granted on January 23, 2008.

On January 3, 2008, Verizon filed a letter motion with the Board requesting modification of the schedule so that the parties could conduct depositions prior to the filing of initial testimony scheduled for January 31, 2008. By letter dated January 10, 2008, Cablevision opposed the request for depositions, maintaining that depositions were inappropriate at the time, and objecting to any significant modifications to the schedule set by the Board in its December 12, 2007 Order. On January 23, 2008, Commissioner Fiordaliso issued an Order denying Verizon's motion for depositions and modification of the procedural schedule.

On January 16, 2008, Cablevision filed a letter motion with the Board requesting the scheduling of a "Case Management Conference" and a "scoping order" to be issued prior to the scheduled filing of initial testimony on January 31, 2008. On January 23, 2008, Commissioner Fiordaliso issued an Order which reiterated the two unresolved issues which were the subject of the proceeding: the appropriate point(s) of interconnection, and the meaning of "reasonable terms and conditions" for that interconnection. In addition, an additional conference was scheduled on January 31, 2008, to address any questions regarding the proceeding, and filing date for initial testimony was modified to February 8, 2008.

On February 8, 2008, Verizon filed the Joint Direct Testimony of Paul Vasington, Thomas J. Mazziotti, and Peter Kilburn while Cablevision filed Initial Testimony of Bob Lee. Upon request

of the parties, the schedule was amended on March 12, 2008 to permit the filing of rebuttal testimony on April 8, 2008. On April 8, 2008, Verizon filed the Rebuttal Testimony of Paul Vasington, Thomas J. Mazziotti, and Peter Kilburn while Cablevision filed the Rebuttal Testimony of Howard Symons.

Both Verizon and Cablevision filed motions to compel discovery responses. Commissioner Fiordaliso issued Orders on April 7, 2008 granting in part and denying in part each party's motion. Commissioner Fiordaliso's Orders also permitted parties to supplement their Rebuttal Testimony filing by April 21, 2008 to address only the information contained in the outstanding discovery responses. On April 21, 2008, Cablevision filed the Supplemental Rebuttal Testimony of Robert Lee and Robert D. Willig. On April 23, 2008, Verizon filed a Motion to Strike Cablevision's Supplemental Rebuttal Testimony, arguing that the testimony was not limited to issues arising from Verizon's April 14, 2008 responses to Cablevision's interrogatories, as designated in the April 7, 2008 Order. On May 8, 2008, Commissioner Fiordaliso issued an Order granting Verizon's motion and striking certain portions of Cablevision's Supplemental Rebuttal Testimony.

Evidentiary proceedings were held on May 12, 2008, where Cablevision presented its witnesses for cross examination, and on May 14, 2008, where Verizon presented its witnesses. Post Hearing briefs were filed by the parties on June 5, 2008 and reply briefs were filed on June 20, 2008.

### Discussion and Findings

At core, the Board must make clear the concept that, once requested under the Act, interconnection for the provision of PEG channel programming is not for the benefit of either the incumbent cable operator or the new entrant; the benefit is for the public, and as such, the parties involved in the interconnection should receive neither a windfall nor a "free ride." Instead, and in the absence of a negotiated settlement between the business entities, the Board must impose an interconnection framework predicated upon the legal foundations in the Act and the Board's experience, judgment and expertise.

#### Interconnection

"Interconnection" refers to the physical linking of two cable television systems for the mutual exchange and transport of cable television signals. The System-wide Cable Television Franchise Act requires cable television companies to provide interconnection to any other cable television companies on reasonable terms and conditions if so requested. Accordingly, within the context of this case, the Board and the parties have concentrated on interconnection as it applies to PEG channels.

While traditionally grouped together as "PEG" channels, there nevertheless are differences between "public," "educational," and "governmental" access programming. The OCTV, on occasion, has defined them as follows:

Public access is non-commercial local programming cablecast without advertising for use by individuals in a community, usually on a first come, first served basis. Public access may be managed and/or operated by a municipality but often is operated by the cable television company for the benefit of its customers.

Educational access is non-commercial local programming cablecast without advertising utilized by school systems and colleges according to local needs. These channels are run by the municipality or a collection of municipalities.

Governmental access is non-commercial local programming cablecast without advertising which is reserved for governmental entities to cablecast public meetings, governmental messages and other information. In most cases, those municipalities that have a governmental access channel perform the day-to-day operations of the channel.

N.J.S.A. 48:5A-28(i) requires municipalities to assume operations, management and programming of PEG channels provided by the system-wide franchise. The statute does not, however, contemplate or address operation of public access originating from a cable television operator's facilities. A public "PEG" channel run by a cable television company therefore would not fall under the parameters of N.J.S.A. 48:5A-28(i). Therefore, we are excluding the requirement that Verizon interconnect with Cablevision's public access feeds, as further discussed below, and leave it to Verizon's discretion whether to interconnect with these feeds.

Cable television operators are not permitted to exercise any editorial control over PEG channels, except to the extent permitted by Federal law with regard to obscenity, indecency or nudity. 47 U.S.C.A. § 531(e) A municipality may specify that its channel is public ("P"), educational ("E"), and/or governmental ("G").

#### Public Interest

It is unquestioned that a franchising authority may set requirements in a franchise designating the use of channel capacity for the provision of PEG use. 47 U.S.C.A. § 531(a). Based upon this authority, and because of the important public interests served by PEG programming, see Time Warner Cable of New York City v. City of New York, 943 F. Supp. 1357 (S.D.N.Y. 1996), aff'd 118 F.3d 917 (2nd Cir. 1997), the Legislature set in place a method for the delivery of PEG programming to all subscribers regardless of the CATV provider. By providing an opportunity for competing cable television companies to avoid the cost, inconvenience, and difficulty of replicating existing PEG facilities in the municipalities they service, the Legislature hoped to minimize the time it takes a new CATV provider to enter the market and offer its services to the public. Furthermore, supporting interconnection as a means for a new market entrant to meet its PEG programming obligations, or, on a reciprocal basis for an incumbent cable television operator to provide additional benefits to the public by virtue of new or additional PEG programming, serves a significant benefit to the general public. Accordingly, the Board HEREBY FINDS that interconnection of municipal PEG channels is in the public interest and in keeping with the Legislative intent of the System-wide Cable Television Act.

#### Controlling Statutes

Two elements of the Act have been presented by the parties as controlling to the issue of PEG interconnection and associated costs. The first of these, N.J.S.A. 48:5A-28(i), provides that:

[a]ny and all CATV companies operating in a municipality shall provide interconnection to all other CATV companies on reasonable terms and conditions....

[N.J.S.A. 48:5A-28(i).]

In addition, a second element of the Act has been cited as providing a foundation for Board authority. Under N.J.S.A. 48:5A-28(m), the Act states:

With regard only to applications for a system-wide franchise, a commitment to provide a return feed from any one location in the municipality, without charge, to the CATV company's headend or other location of interconnection to the cable television system for public, educational or governmental use, which return feed, at a minimum, provides the ability for the municipality to cablecast live or taped access programming, in real time, as may be applicable, to the CATV company's customers in the municipality. No CATV company is responsible for providing a return access feed unless a municipality requests such a feed in writing. A CATV company that has interconnected with another CATV company may require the second CATV company to pay for half of the CATV company's absorbed costs for extension.

[N.J.S.A. 48:5A-28(m).]

Cablevision has taken the position that only N.J.S.A. 48:5A-28(i) controls the nature of the relationship for the provisioning of PEG channels and interconnection between CATV companies. All other sections of the Act, claims Cablevision, apply to other sections or other elements of network design, and are not intended to otherwise alter the "reasonable terms and conditions" analysis set forth in N.J.S.A. 48:5A-28(i). Likewise, Cablevision claims that the Board's regulations are simply a recital of the existing statutory language and that no intent was shown to limit recover to one half of the absorbed costs.

In a similar manner, Rate Counsel believes that N.J.S.A. 48:5A-28(i) controls, but believes that the Board does not have the authority to direct and mandate interconnection under the current legislative and regulatory environment. Rate Counsel rejects the idea that N.J.S.A. 48:5A-28(m) should apply as VNJ confuses the term "interconnection" with the term "extension" such that the requirements of absorbed costs become nonsensical.

VNJ, on the other hand, has asserted that N.J.S.A. 48:5A-28(m), and its obligation to "pay for half of the CATV company's absorbed costs for extension," must be considered and must temper any analysis of "reasonable terms and conditions" as set forth in N.J.S.A. 48:5A-28(i). Any other reading, claims VNJ, would render meaningless that element of the Act and would be counter to the Board's regulations. As such, alleges VNJ, the issue of interconnection compensation must center on the issue of absorbed costs.

Based upon the Board's review of the Act, as well as the nature of the interconnection for PEG and the testimony and evidence entered into the record during this proceeding, the Board concludes that N.J.S.A. 48:5A-28(i) is the only statutory provision dealing with PEG interconnection. The Board believes that N.J.S.A. 48:5A-28(m) is designed to consider the costs associated with the sharing of a return feed and not for the sharing of PEG

interconnections. PEG interconnections are controlled by N.J.S.A. 48:5A-28(i) alone, as that section speaks specifically to the PEG elements while N.J.S.A. 48:5A-28(m) speaks specifically to the return feed elements. PEG and return feeds are not interchangeable; while return feeds can often be used to provide PEG programming, a return feed is not, in and of itself, sufficient to provide a sharing of PEG programming as envisioned by N.J.S.A. 48:5A-28(i). Instead, it is the Board's belief that the use of the term interconnection in N.J.S.A. 48:5A-28(m) was simply an inartful duplication of terms and was not intended to pull the cost mechanism considered for the sharing of a return feed into the analysis of a PEG interconnection agreement.

In light of the language used, the Board is bound by what it perceives as the guiding legislative intent. McCann v. Clerk of the City of Jersey City, 167 N.J. 311, 320 (2001) ("Our overriding objective in determining the meaning of a statute is to 'effectuate the legislative intent in light of the language used and the objects sought to be achieved,'" quoting State v. Hoffman, 149 N.J. 564, 578 (1997)). Even if the Board were to find the language of the Act ambiguous, the Board is required to use its expertise and best understanding to develop a reasonable and rational interpretation, with the understanding that such interpretation is then subject to a significant level of deference. Matturri v. Board of Trustees of the Judicial Retirement System, 173 N.J. 368, 381 (2002). Accordingly, the Board **HEREBY FINDS** that the guiding statutory language for the sharing of costs associated with mandated interconnection is the "reasonable terms and conditions" element set forth in N.J.S.A. 48:5A-28(i), and not the "half of the CATV company's absorbed costs for extension" language of N.J.S.A. 48:5A-28(m). All further discussions flow from this conclusion.

#### Points of PEG Interconnection

Setting aside the assertion advanced by the New Jersey Cable Telecommunications Association ("NJCTA") and associated cable television companies that the Act's requirement for PEG interconnection is preempted by federal law, as this will be decided by the federal court action currently pending,<sup>1</sup> the Board must discuss the nature of "reasonable terms and conditions" as they apply to a PEG interconnection agreement between VNJ and Cablevision, in the absence of mutual agreement between the parties.

VNJ maintains that any interconnection should take place at the point of maximum aggregation. This point of maximum aggregation is typically a headend, sub-headend or hub. VNJ states that it should be allowed to interconnect at "the most efficient point(s) on the delivering provider's system." Any other interconnection point, VNJ claims, would be inconsistent with the intent of the Act because connection at a maximum aggregation point "minimizes the cost of interconnection and thus promotes competitive entry and expansion [and] helps new providers to expeditiously deliver existing PEG content to their subscribers."

Cablevision does not contest that interconnection should take place at the point of maximum content aggregation; Cablevision's concerns center much more upon the terms and conditions surrounding interconnection. Cablevision effectively acknowledges that it would be appropriate for VNJ to interconnect with the Cablevision system at 21 hub sites throughout the State.

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<sup>1</sup> New Jersey Cable Telecommunications Association, Comcast Cable Communications, LLC, Comcast Cable Communications Holdings, Inc., and CSC TKR, Inc. v. Jeanne M. Fox, Frederick F. Butler, Joseph L. Fiordaliso, Christine V. Bator and Nicholas Asselta, in their official capacity as Commissioners of the New Jersey Board of Public Utilities, Amended Complaint, United States District Court, District of New Jersey, 2:08-cv-02093, filed April 30, 2008.

Rate Counsel claims that VNJ does not have to interconnect with a cable television company to effectuate the Act's requirement. Instead, because VNJ is required to provide free cable service and Internet service to any municipal service property or school that requests it pursuant to N.J.S.A. 48:5A-28(j) and (k), VNJ could modify the drops in order to allow interconnection at the individual municipality. Thus, and in light of Rate Counsel's claim that the Board does not have the authority to order interconnection but rather must adopt rules prior to imposing interconnection requirements, Rate Counsel asserts that the Board should direct interconnection to take place at the municipal end of each return line.

The New Jersey State League of Municipalities ("LOM") filed participant comments stating that municipalities are most interested in ensuring that PEG programming is made available as quickly and reliably as possible and that all cable subscribers in a municipality receive access to the same PEG programming regardless of the cable service provider. The LOM calls upon the Board to enforce the statutory mandate of the Act. In addition, the LOM argues that return feeds do not replace interconnection and that interconnection is in addition to, and not instead of, return feeds. Further, the LOM states, interconnection is vital for the provision of critical public information to all subscribers in a municipality, regardless of their cable television provider and thus interconnection must happen as soon as possible. As such, the LOM does not take an explicit position on the question of where interconnection should occur.

The Board, based upon all the testimony and its own expertise, is aware that an interconnection point for the purposes of sharing PEG programming content could be established at any technically feasible point between the point of signal origination and the point of maximum aggregation. That point of maximum aggregation, be it a headend, sub-headend, or hub, can vary based on a cable television company's chosen method of PEG programming aggregation and transmission. Points of interconnection can be established through physical collocation at the signal provider's facility, virtual collocation connections near a signal provider's facility, or a connection at some remote meet point such as a local or other signal aggregation point.

In a physical collocation environment, the providing company maintains the physical security for the building, dedicated space for the connecting company's equipment, network wiring, environmental controls, battery and generator power backups. In a virtual collocation environment, the connecting company maintains its own facility, commonly in a vault or cabinet nearby the signal provider's facility, and is responsible for its own security, network wiring, environmental controls, and battery and generator power backups as well as for running a line into the signal provider's facility to establish the connection. With remote meet point connections, a local or other signal aggregation point connections could be made at the incumbent cable television company's point of signal aggregation or at the signal source. A connection at an aggregation point is similar to virtual collocation in that the connecting party is responsible to run its own line to the point of connection and is responsible for the installation and maintenance of its own equipment.

While Rate Counsel believes that VNJ should establish its own "interconnection" network at each municipal service property and/or school, the Board does not agree that this would serve the Legislative intent of an interconnection; that is, the sharing of PEG programming so that all residents in any municipality served by both Cablevision and VNJ would receive the same municipal PEG programming. Rate Counsel's approach also does not take into consideration that VNJ may be unable to use identical points of origination that Cablevision uses due to differences in its footprint, network architecture or plant location.

In light of the apparent agreement between VNJ and Cablevision over the location of interconnection, the Board is inclined to accept that interconnection should take place at the 21 hub sites throughout the State previously mentioned. Therefore, the Board HEREBY FINDS that Cablevision shall interconnect with VNJ to its 21 hubs as presented in the Cablevision proposal. Such interconnection shall be at either a physical or virtual collocation point if the parties can agree; if not, the Board HEREBY DIRECTS the interconnection to be through a virtual collocation.

### Costs

In order to meet general PEG programming obligations under its franchise, cable television companies have historically incurred a variety of capital, equipment, construction costs as well as training, support and other on-going operation and maintenance expenses to receive and ultimately broadcast PEG programming content to its subscribers. In the event of an interconnection between cable television companies, the providing party, which is usually the incumbent cable television company, incurs certain additional direct and indirect costs to accommodate the interconnection and provide the PEG feeds to the receiving company.

It is a general point of agreement that the costs incurred by virtue of an interconnection must be borne by the cable television company seeking interconnection, and that the providing cable television company in an interconnection relationship must be compensated for the costs it incurs as a result of the interconnection. It is the type and source of costs that are recoverable and ultimate level of compensation that is at issue.

VNJ's initial position set forth that, pursuant to N.J.S.A. 48:5A-28(m), it was only required to pay one-half of the incumbent cable television company's absorbed costs for interconnection. However, in later briefs, Verizon stated that it would pay the whole cost of the line extensions needed for interconnection, which it argues is consistent with N.J.S.A. 48:5A-28(m). Furthermore, it stated, the recoverable costs must be limited to the cost of the interconnection line extension itself. Verizon opines that "reasonable terms and conditions" provided for in N.J.S.A. 48:5A-28(i) do not apply to costs, only to the interconnection agreement document regarding insurance, indemnification, etc. VNJ's interconnection cost model combines its "non-recurring" interconnection costs (amortized over a ten (10) year term based upon a cost of capital assumption of 11.925%) with its "monthly recurring" interconnection charges, resulting in a "Total Monthly Recurring Cost" per headend, sub-headend or hub. VNJ claims that incorporating non-recurring costs into the monthly recurring charges is a common method of cost recovery for interconnection agreements. VNJ has argued that N.J.S.A. 48:5A-28(m) is the only section which can be reasonably read to allow cost recovery for interconnection. VNJ maintains that Cablevision should not be able to charge VNJ for any costs other than those associated with the actual physical interconnection line extension because the statute does not permit it. VNJ further maintains that PEG interconnection rates should be based on the actual additional costs incurred by the delivering company, in this case, Cablevision, to extend its existing facilities to the point of interconnection. VNJ has also put forth two cost models, one for a "physical" collocation, that is, at Cablevision's premises, and one for a "virtual" collocation, that is, at some point outside Cablevision's premises but nearby.

Cablevision put forth a plan which contained five elements and which seeks both monthly recurring and non-recurring charges to VNJ. These charges included historical or legacy costs, ongoing costs, and general fees. The five elements were: 1) the cost of capital grants and equipment provided to municipalities; 2) PEG signal transportation costs; 3) physical interconnection equipment and maintenance costs; 4) physical link costs; and 5) capital,



operational and administrative costs of providing interconnection. Cablevision believes its five element proposal based in part on VNJ's tariffed "TV 1" model (in the record as Exhibit "-CV-2") for transmission from its 21 hubs is reasonable and that Verizon should be required to pay a mixture of recurring (monthly) and non-recurring (one time) costs, based on a general utility model. Flat costs that are monthly charges to recover overhead and use charges must be included as one-time charges for the actual engineering and extension of its lines to meet Verizon at the point of interconnection. Cablevision's cost model also seeks to recover costs for capital or operating contributions and PEG equipment paid or granted to municipalities under the terms of their franchises; as well as public access associated sunk costs going back to 2003 for operating its public access studios. Cablevision proposed to average costs for all 21 hubs rather than break down the costs for each.

Rate Counsel asked that the Board require immediate interconnection, adopt a "program cost model" and establish an interim rate for interconnection at \$0.30 per subscriber subject to refund and true-up after agreement of the parties on all terms and conditions, including rates, of interconnection.

In order to obtain and ultimately provide PEG services, in the broadest sense of the term, a cable television company incurs a variety of costs. Such costs may include capital grants in the form of money, construction of studio or other facilities, provision of equipment like cameras or character generators, training on the use of the PEG equipment, and on-going operation and maintenance expenses for the PEG equipment itself. Cable television companies have also incurred costs to construct, operate and maintain facilities and transmit the PEG signals to a headend or other aggregation point for ultimate delivery over the network to the company's end users. To the extent these costs have already been incurred, the Board has determined that these costs, generally termed "legacy costs", are franchise-related costs and with limited exception they exist and remain whether or not any interconnection occurs. As such, they would generally not be recoverable as part of an interconnection agreement. Specifically, based on the testimony in the proceeding, the Board HEREBY FINDS that the recovery for capital grants must be excluded since the incumbent cable television operator indicated that the use of such funds is not audited or tracked to assure its use was restricted to PEG related needs.

One exception to the general exclusion of legacy costs would be if a new return line feed were required under a shared arrangement with an interconnecting company, a portion of the cost for that feed could be recoverable pursuant to N.J.S.A. 48:5A-28(m). Similarly, if the cable television company providing the interconnection incurs costs for on-going operation and maintenance of PEG equipment necessary in the production and transmission of PEG programming that are not otherwise covered by the municipality or through a portion of a capital grant for that purpose, a portion of these costs would legitimately be included in the group of recoverable costs.

Upon interconnection, the cable television company providing the interconnection would also incur certain costs that are directly attributable to the interconnection. Such costs include, but are not limited to, cables between its and the interconnecting company's facilities, cross connection between facilities, circuit engineering, video and audio distribution amplifiers, transmitters, equipment, specialized cabling, any labor costs for technicians if needed to maintain the interconnection. Also, there may be charges for space, equipment racks, security cages, commercial and back-up power, security access and escort at the provider's premises to facilitate site access (where physical collocation is provided). In addition, there may be potential costs involving processing or otherwise conditioning the PEG signal for hand-off to the other

provider aside from the cost for a signal receiver that matches the transmitter at the signal origination site and the cost to install it if it is on the provider's premises. The Board HEREBY FINDS that each of these costs, to the extent they are incurred by Cablevision as a consequence of an interconnection with VNJ, would legitimately be included in a group of recoverable costs.

Also upon interconnection for PEG purposes, there are costs involved in transporting the PEG signal from point of signal origination to the provider's headend or other aggregation point for ultimate delivery over the receiving cable television company's network. The Board believes it is reasonable for a portion of the cost incurred for signal transport between the point of signal origination to the point of interconnection, as well as a share of the operation and maintenance of the return line facilities between these points to be included in the group of recoverable costs.

Verizon seeks to limit the recovery by the cable television company with which it seeks to interconnection to the cost for line extension necessitated by the request for interconnection. As noted above, the Board does not believe that this proposal is reasonable. Cablevision, in its "New Jersey PEG Interconnection Pricing" proposal (in the record as Exhibit "CV-2") outlined a series of recurring and non-recurring costs it was seeking to recover. Because the Board believes that some elements of Cablevision's proposal hold merit, the Board has examined each element of the pricing proposal:

a. Capital Grant to Municipalities. The Board HEREBY FINDS that capital grants made to municipalities are non-recoverable; Cablevision stated in testimony that these capital grants are not tracked and therefore, whether the money was spent on PEG support is unknown. Cablevision cannot seek to recover these costs because it is unclear whether the grants were specifically used to support the operation of PEG channels. Additionally, these capital grants are part of doing business; that is, Cablevision agreed to provide the grant in return for a franchise with a specific term and conditions agreed to by Cablevision and the municipality.

b. PEG Equipment Grant. The Board HEREBY FINDS that PEG equipment grants are non-recoverable because, generally, there are no ongoing costs after the company provides them except as discussed in paragraph c below. Cablevision does not maintain, repair or replace the equipment once granted to the municipality. Cablevision has conferred ownership rights of the equipment to the municipality and therefore, PEG equipment grants are not entitled to recovery.

c. PEG Equipment Operation and Maintenance. The Board HEREBY FINDS that this element is recoverable where VNJ interconnects for the purpose of obtaining public access channels from Cablevision which are not considered municipal PEG channels but these costs are only recoverable to the extent that Cablevision maintains, repairs or replaces PEG equipment provided to the municipality. If there are any existing franchises which contain a requirement that Cablevision maintain, repair and/or replace PEG equipment in a municipality, it is considered a recoverable cost, but only where VNJ does not have a return line that duplicates the PEG programming. Additionally, Cablevision is not entitled to recover costs incurred in any future renegotiation of its franchises.

Furthermore, for any PEG equipment and studio operated and maintained by Cablevision for use of residents of the municipalities they serve, the Board HEREBY FINDS that these costs are recoverable but only on a going forward basis. Recovery of past or sunk costs is unreasonable since Cablevision received a benefit from the existence of its PEG equipment and studios, especially since most, if not all, are used for production of local origination ("L.O.")

programming and even local insert commercials. Therefore, recovery is permissible for any costs (other than L.O. or advertising costs) for equipment, production, operation, overhead, maintenance, etc. related to the purchase, repair, operation and maintenance of Cablevision's PEG studios from the date an interconnection agreement is signed by the parties.

d. PEG Training. The Board HEREBY FINDS that this element is not recoverable. This is generally an aspect of franchise negotiations, or of good business practices. The Board disallows recovery of this element.

e. Return Line Construction, Operation and Maintenance. The Board HEREBY FINDS that these elements are recoverable on a going forward basis insofar as they benefit VNJ. Each element is discussed more fully below.

i. *Return line construction.* This element is recoverable only on a going forward basis for return line construction necessary to effectuate or maintain interconnection with VNJ. Additionally, Cablevision is not permitted to recover costs for construction of return lines where VNJ already has return lines and is delivering the same PEG programming as Cablevision does.

ii. *Return line operation.* The administrative aspect of this element (i.e., monitoring of the signal) is recoverable if the return line is shared with VNJ. To the extent that there are operational costs associated with the return line, those costs are recoverable.

iii. *Return line maintenance.* This element is recoverable to the extent the signal is shared with VNJ and if maintenance extends to upgrade or replacement. This element is only recoverable if VNJ does not already have a return line in the municipality that duplicates the signal provided by Cablevision.

f. PEG Signal Transport. The Board HEREBY FINDS that this element is recoverable if Cablevision pays a cost to transport the PEG signal from its origination point to an aggregation and connection point and if the return line is shared with VNJ. This is an accommodation cost for VNJ. For example, where Cablevision carries a PEG channel that may aggregate three connection points within a municipality on one channel, and VNJ wishes to receive all PEG signals transparently, it is VNJ's responsibility to pay an allocated portion of this transport since there is a network cost to "produce" the end product.

g. Physical Connection. The Board HEREBY FINDS that this element is recoverable. The full cost of cables, cross connect, circuit engineering, etc. must be paid by VNJ since it is seeking the interconnection and the cost would not be necessary if not for the request to interconnect by VNJ.

h. PEG Signal Conversion and/or Processing. The Board HEREBY FINDS that this element is recoverable if Cablevision is required to process or otherwise condition the PEG signal for transport to VNJ. For example, if Cablevision must convert an analog signal to a digital one, or it is required to ensure that the PEG signal meets requisite signal quality and integrity, sought by VNJ in its interconnection proposal. To the extent that additional costs are incurred by Cablevision for PEG signal conversion and processing to accommodate the interconnection, VNJ is responsible for these costs.

Rate Counsel has requested that the Board establish an "interim rate" for interconnection at \$0.30 per subscriber, subject to refund and true-up after the parties reached an agreement on the terms and conditions of interconnection. The Board HEREBY FINDS that Rate Counsel's

proposal does not sufficiently address the interconnection issues raised in this proceeding. The costs associated with the delivery of PEG programming are independent of the number of customers receiving the PEG programming; this disconnect makes the imposition of a per-customer funding model unreasonable. Additionally, and as discussed above, the Board believes it has the authority to direct interconnection. Therefore, no "interim" rate need be established.

With regard to non-recurring costs, the Board HEREBY FINDS that it is reasonable for the parties to amortize the recovery of one-time non-recurring costs over the life of the interconnection agreement unless the parties agree to recover them as a lump-sum expense in the year they occur. These one-time non-recurring charges are considered capital costs. If the one-time non-recurring costs are amortized, the Board FINDS the amortization should be based on a cost of capital assumption derived from Cablevision's cost of money, not on VNJ's cost of capital, as proposed by VNJ.

With regard to recurring costs and Cablevision's proposal to use VNJ's TV-1 tariff for signal transportation, the Board HEREBY FINDS that it is a reasonable surrogate for its own costs. No other proposal for transportation costs was presented and therefore the Board believes it is reasonable. Cablevision is not in the business of transporting signals for other entities and should not be burdened with determining actual transportation costs, when VNJ already has a useable, tariffed model available.

With regard to Cablevision's proposal to average costs over its 21 hubs, the Board believes that to the extent possible costs should be based on actual costs. However, the Board HEREBY FINDS that Cablevision's proposal is reasonable. Because Cablevision receives no benefit from interconnection with VNJ, it should not be forced to produce costs for each hub and specifically identify a cost for each and every element.

To the extent recoverable, the Board also HEREBY FINDS that if VNJ interconnects with Cablevision's public access channels, Cablevision may average costs for its 14 public access feeds as well, even if VNJ does not elect to interconnect with all 14 public access feeds.

### Conclusion

The Board HEREBY DIRECTS that Cablevision and VNJ shall develop an agreement to allow for interconnection based upon this Order. The parties may, if they wish, negotiate an agreement with terms different from those set forth in this Order; if, however, no such agreement is completed and filed with the Board within 30 days of the issuance of this Order, the parties shall have the terms and conditions set forth in this Order imposed upon them. The Board directs the following timeline:

- 1 Within 30 days from the date of issuance of this order, the parties shall present a signed finalized agreement to the Board for its review or shall notify the Board that they have been unable to reach an agreement and will instead be bound by this Order.
- 2 Within 60 days from the date of issuance of this order, Cablevision and Verizon shall have completed engineering and design of the interconnection and shall submit the same to the Board for its review.

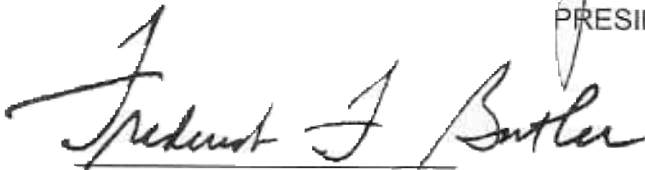
3. Within 90 days from the date of issuance of this order, the interconnection shall be completed and the parties shall so certify to the Board.


As noted, the parties shall be relieved from any and all elements of this order, with the exception of the timeframe for completion of the interconnection specified above, if they can reach an interconnection agreement on mutually agreeable terms. If this occurs, the parties shall present the agreement to the Board for its review and approval and shall request relief of the ordering clauses contained herein.

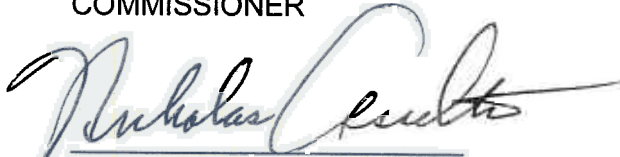
DATED: 10/15/08

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

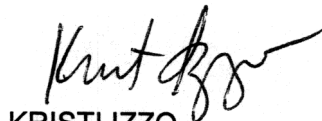
  
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COMMISSIONER

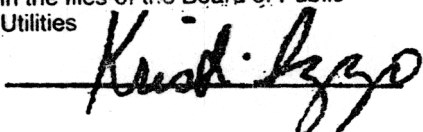
  
NICHOLAS ASSELTA  
COMMISSIONER

  
ELIZABETH RANDALL  
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



Verizon of New Jersey, Inc. - Request for Assistance Resolving Interconnection Negotiations  
with Cablevision TKR, Inc.

Docket No. CO07070524

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