



Agenda Date: 4/28/10

Agenda Item: IVA

## STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

### TELECOMMUNICATIONS

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

ORDER

DOCKET NOS. TE09110949  
through TE09110953

Sidney D. Weiss, Esq., Cedar Knolls, New Jersey, on behalf of Verizon New Jersey Inc.,  
Petitioner

#### BY THE BOARD:

By verified petition filed pursuant to N.J.S.A. 48:2-14 on November 23, 2009, Verizon New Jersey Inc. (Verizon) requested the Board's approval of consent ordinances adopted by (1) the Township of Bernards in Somerset County (Docket No. TE09110949); (2) the City of Bordentown in Burlington County (Docket No. TE09110950); (3) the Borough of Fair Haven in Monmouth County (Docket No. TE09110951); (4) the Township of Quinton in Salem County (Docket No. TE09110952); and (5) the Township of Wall in Monmouth County (Docket No. TE09110953). Said consents grant Verizon the continued right to install, maintain and operate its facilities in local rights-of-way in order to provide customers within the affected municipalities with telecommunications services.

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

After appropriate notice, a hearing in these matters was held on January 19, 2010, at the Board's Newark offices before Edward D. Beslow, Esq., the Board's duly designated Hearing Examiner.

At the hearing, Verizon relied on the testimony of Thomas A. Caserta, its manager of land use matters. Mr. Caserta noted that his duties include reviewing and negotiating consent ordinance renewals such as those that comprise the matters now pending. The witness testified that the ordinances provide Verizon with the authority to use the public rights-of-way and designated areas for the purpose of locating, maintaining and operating its facilities, and are reasonably necessary in order that Verizon may provide its business and residential customers with proper and adequate telecommunications services. He emphasized that the consents were limited to the provision of telecommunications services and in no way authorized Verizon to utilize its



facilities to provide video and/or internet service. Mr. Caserta further testified that the consents also provide protection to the affected municipalities in that, among other things, they cover such topics as the location of poles and underground facilities, the use of facilities for police and fire protection purposes, as well as associated equipment and fixtures for Verizon's local lines and through lines. In addition, the witness noted that Verizon has agreed to comply with local ordinances for the purposes of street openings and restorations, and to provide indemnification for damages arising from any work performed by Verizon. Mr. Caserta went on to state that in addition to the payments in the aggregate of approximately \$3.7 million and \$4.1 million for 2008 and 2009, respectively, to the affected municipalities in the form of real and personal property taxes, Verizon also pays all reasonable fees charged by the governmental entities for related work, such as engineering reviews, associated with Verizon's activities.

Mr. Caserta also stated that the pending consents, which are not exclusive, are renewals of prior ordinances under which Verizon and its predecessors have been providing telecommunications services to the subject municipalities over an extended and uninterrupted period of time. In his testimony, the witness noted that the terms of the consents granted by the Townships of Bernards and Wall were each for 10 years, while the consents granted by the City of Bordentown, the Borough of Fair Haven and the Township of Quinton were silent as to the length of their term. Mr. Caserta testified that Verizon presently has bonding arrangements with virtually all municipalities that it services, and noted that he considers such requirements to be reasonable. He further testified as to the minor differences between the terms of the individual consents and the standard form of consent that Verizon uses in its negotiations with individual municipalities and indicated that Verizon had no problem with the Board's past policy of imputing a term of 50 years related to those consents that were silent as to term.

By letter dated February 2, 2010, the Division of Rate Counsel (Rate Counsel) submitted post-hearing comments wherein it submitted that "...where the ordinance is silent as to a durational term, the imputed term should be seven years consistent with the Board's award of a seven-year cable franchise to Verizon since Verizon's equipment in the municipal right-of-way will be used to house telecommunications and cable service infrastructure." In addition, Rate Counsel argues that Verizon's acceptance of the consents granted by the Townships of Bernards and Wall are indications of its willingness to accept consents with durational terms of less than 50 years. Accordingly, Rate Counsel submits that it is more prudent for the Board to implement a seven-year term in the absence of a term in the municipal ordinance rather than the 50-year term previously imputed by the Board.

In its responding letter dated February 3, 2010, Verizon's post-hearing comments objected to the imposition of a maximum term not exceeding seven years. Verizon stated, in pertinent part, that:

First, there is no legal basis or rational for Rate Counsel's' suggestion that a lesser term than that previously imputed by the Board (and accepted by Petitioner) is warranted because of Petitioner's entry into the field of cable television service or that the facilities in the public right of way may also be used to provide video service when otherwise authorized by law. To the contrary, as previously recognized and held by the Board, the municipal consents here involved do not authorize or in any way relate to Petitioner's provision of cable television service. In the Matter of the Petition of Bell Atlantic-New Jersey, Inc. for Approval of Municipal Consent Ordinances, Docket Nos. TE94120615 through TE94120664 (September 18, 1997). In that matter, the Board rejected a



motion by the New Jersey Cable Television Association ("NJCTA") to clarify the approvals of similar municipal consents by specifically providing that such consents not be construed to permit Petitioner (then known as Bell Atlantic-New Jersey, Inc.) to provide video programming services. In rejecting NJCTA's motion, the Board stated (at page 4 of its order):

The pending ordinances authorize the placement and operations of BA-NJ's communications network for the purpose of providing all services that are now or hereafter permitted under applicable federal and State law. BA-NJ must continue to separately obtain any and all service-specific approvals as may be required by applicable law and regulation. Proceedings in which BA-NJ seeks such service-specific approvals are the appropriate forum for determination of the particular services that may or may not be provided in the future over such communications network.

Therefore, Verizon argues that the terms of the specific consents in the pending matters will not have any impact on the durational terms for any consent that Verizon may receive in the future under any applicable State or local laws authorizing the provision of such service. Accordingly, Verizon further argues that there is no need for consistency of such laws in the pending ordinances as requested by Rate Counsel or for the Board to modify its long-standing policy of imputing a 50-year maximum term for an ordinance that does not specify a specific term.

Verizon further notes that the same request for a maximum seven-year term was made by Rate Counsel and rejected by the Board in the Petitioner's most recent prior petitions for approval of municipal consents. I/M/O the Petition of Verizon New Jersey for Approval of Municipal Consents Pursuant to N.J.S.A. 48:2-14, Docket Nos. TE06050347 through TE06050356 and TE06060460 through TE06060461 (September 14, 2006); and I/M/O the Petition of Verizon New Jersey for Approval of Municipal Consents Pursuant to N.J.S.A. 48:2-14, Docket Nos. TE07100763 through TE07100765, (February 4, 2008). Verizon ended its argument by indicating that in these prior proceedings, the Board: (1) rejected Rate Counsel's position as unpersuasive and reaffirmed its prior determinations to imply a 50-year term to those consents that are silent as to term; (2) noted that the imposition of a seven-year term for a large number of municipalities would be an administrative burden on Petitioner; and (3) the consents granted to Verizon are non-exclusive and do not preclude the municipalities from granting similar consents to competing carriers.

In addition to adopting the post-hearing comments of Verizon as accurate, the Board would also note that it has previously determined that there is no nexus between the consents granted to telecommunications service providers for the provision of telecommunications services and the consents that they may receive for the provision of video services. I/M/O the Petition of Bell Atlantic-New Jersey, Inc. for Approval of Municipal Consent Ordinances, Docket Nos. TE94120615 through TE94120664 (September 18, 1997).

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




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

Therefore, the Board, pursuant to N.J.S.A. 48:2-14, HEREBY APPROVES the consents granted to Verizon New Jersey Inc. by the Townships of Bernards and Wall each for a term of 10 years. With regard to the consents granted by the City of Bordentown, the Borough of Fair Haven and the Township of Quinton which included no specified term, the Board HEREBY MODIFIES said consents only to the extent necessary to impose therein a term of 50 years.

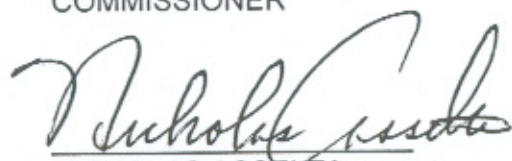
DATED: 4/28/10

BOARD OF PUBLIC UTILITIES  
BY:

  
LEE A. SOLOMON  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

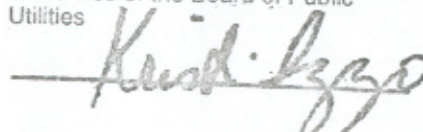
  
NICHOLAS ASSELTA  
COMMISSIONER

  
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



SERVICE LIST

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CONSENTS PURSUANT TO N.J.S.A. 48:2-14  
DOCKET NOS. TE09110949 THROUGH TE09110953

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