



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center – Suite 801
Newark, NJ 07102
www.nj.gov/bpu

CABLE TELEVISION

IN THE MATTER OF VERIZON NEW JERSEY, INC)
FOR RELIEF OF A REQUIREMENT TO EXTEND ITS)
FIOS SERVICE TO CERTAIN MULTI-DWELLING UNIT)
PROPERTIES LOCATED IN MUNICIPALITIES WHERE)
EXTENSION OF FIOS SERVICE IS REQUIRED UNDER)
THE TERMS OF ITS SYSTEMWIDE FRANCHISE) AMENDED ORDER

DOCKET NO. CO10060408

Gregory M. Romano, General Counsel, Mid Atlantic Region, Verizon New Jersey, Inc.,
Basking Ridge, New Jersey for Petitioner

BY THE BOARD:

On March 1, 2010, Verizon New Jersey (Verizon NJ) filed with the New Jersey Board of Public Utilities (Board) and its Office of Cable Television (OCTV), a request for relief from certain deployment requirements pursuant to N.J.S.A. 48:5A-25.2(a)(2) and N.J.A.C. 14:18-15.3(a). Under the requirements of its system-wide franchise granted by the Board in I/M/O the Application of Verizon New Jersey, Inc. for a Systemwide Cable Television Franchise, Docket No. CE06110768 (December 18, 2006) and of N.J.S.A. 48:5A-25.2, Verizon is required to make its cable television service available to residential areas of county seats and municipalities with a population density greater than 7,111 persons per square mile of land area that are within Verizon's service area. N.J.S.A. 48:5A-25.2(a)(1)(a)&(b). However, N.J.S.A. 48:5A-25.2 and N.J.A.C. 14:18-15.3 provide that any cable television company that provides more than 40 percent of the local exchange telephone service market in New Jersey shall not be required to provide access to developments or buildings where:

- 1 [the system-wide franchisee] cannot access a development or building because of a claimed exclusive arrangement with another cable television company;
2. [the system-wide franchisee] cannot access a development or building using its standard technical solutions, under commercially reasonable terms and conditions after good faith negotiation; or
3. [the system-wide franchisee] cannot access the public rights-of-way under reasonable terms and conditions.

The Board notes that Verizon provides more than 40 percent of the local exchange telephone service market in New Jersey. I/M/O the Application of Verizon New Jersey, Inc. for a Systemwide Cable Television Franchise, *supra*, page 3.

Verizon claims that it has been unable to negotiate access to the properties or multiple dwelling units (MDUs)¹ noted in its petition under one of these allowable exceptions and accordingly seeks to be relieved from its requirement to extend its cable service, FiOS, to residents of the MDUs. Verizon contends in its filing that it has been unable to negotiate access to serve the subject properties using its standard technical solutions, under commercially reasonable terms and conditions after good faith negotiations and therefore seeks relief pursuant to N.J.A.C. 14:18-15.3(a)1-2. Verizon argued that with all properties noted in the petition, except for Horizon House and Plaza South Bridge Park, Verizon has been unable to negotiate access after several attempts. Verizon added that it had so far been unable to gain access to Horizon House due to a "purported exclusive agreement" with another cable television company, and that access was denied at Plaza South Bridge Park. Verizon attached to its petition correspondence from Verizon to representatives of the MDUs.

The Board notes that Verizon initially requested all information relating to the identification of the subject properties be exempt from public disclosure under the terms of the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq. based upon its belief that the information relating to the identity or location of the properties that are the subject of its notice is competitively sensitive and its disclosure would provide the company's competitors with an unfair competitive advantage relative to Verizon. Subsequently, after some discussion with staff concerning the scope of its request, Verizon withdrew its request for confidentiality by letter dated August 12, 2010.

In response to Verizon's petition, the OCTV by letter dated May 11, 2010, provided the property owners the opportunity to comment on Verizon's request. To date, owners / representatives of four of the subject properties have offered comments. The representative of Horizon House noted that Verizon and Horizon House were continuing to explore whether it was feasible to reach a good faith agreement for service and asked that the Board decline to act on Verizon's request with regard to this property so that the parties could continue to negotiate without prejudice. Horizon House's representative did, however, acknowledge that Horizon House currently is served under an exclusive bulk billing arrangement and therefore falls under one of the allowable exceptions. The property manager for Plaza South Bridge Park responded by letter indicating that the property management has no objection to the relief sought. The owner of both the Belmont Avenue and 59th Street properties contacted Staff by telephone on June 15, 2010. He indicated that he was interested in Verizon's FiOS services for his

¹ The properties specified in Verizon's filing are as follows:

Property Name	Address	Municipality
1. Briarcliff	250 Gorge Rd.	Cliffside Park
2. Hudson Harbor	1203 River Rd.	Edgewater
3. Independence Harbor	361 River Rd.	Edgewater
4. Horizon House	2 Horizon Rd.	Fort Lee
5. Mediterranean Tower South	2000 Linwood Rd.	Fort Lee
6. Plaza South Bridge Park	1500 Palisades Ave.	Fort Lee
7. Belmont Avenue	188 Belmont Ave.	Jersey City
8. 59 th Street	332 59 th St.	West New York

properties, and has not denied the company access. He further indicated that he had just completed expensive renovations to both properties and had requested a post wiring plan from Verizon before authorizing the construction. To date, he claims no wiring plan has been provided. Staff provided Verizon with the owner's contact information for appropriate follow-up.

As noted above, Verizon provided copies to the Board of correspondence wherein Verizon attempted to gain access to all of the subject properties, including Belmont Avenue and 59th Street. Verizon also informed the property owners that they would be seeking relief from the Board if the property owners continued to be unresponsive to Verizon's efforts to gain access to provide its FIOS service.

As the Board noted in the Order granting Verizon's System-wide Franchise, both the legislation and Executive Order No. 25 (2006) acknowledge the special significance the issue of access and service to MDUs has in the system-wide franchise scheme. Moreover, the Board discussed in that Order that Verizon "has committed to providing service to MDUs on a non-discriminatory basis, with specific configurations dependent upon the nature of the MDU In the event [Verizon] can not find a solution to an MDU issue, [Verizon] has committed to notifying [the Division of Rate Counsel] and the Board with the appropriate information." I/M/O the Application of Verizon New Jersey, Inc. for a Systemwide Cable Television Franchise, *supra*, page 4.

By letter dated September 14, 2010, the Division of Rate Counsel filed comments in this matter, stating that it had no information regarding the substance of the matter, they had not been properly served with the petition pursuant to N.J.A.C. 14:18-15.3(c), and that there is no record to support granting any relief. Rate Counsel suggested that action on this matter be postponed until a proper request for relief is filed with full support and that Rate Counsel then be afforded the opportunity to comment on the adequacy of the record and whether any relief is in the public interest.

Verizon filed a response to Rate Counsel's comments by letter dated September 15, 2010, stating that Rate Counsel had ample opportunity to review its filing and provide any substantive comments it had and appended proof that Rate Counsel had been served a copy of its filing at the same time it was filed with the Board as provided by N.J.A.C. 14:18-15(c). Verizon noted that the petition had been considered in great detail by Board staff through discovery, and that Rate Counsel's late filed comments offer no credible reason for the Board not to proceed with the matter as planned.

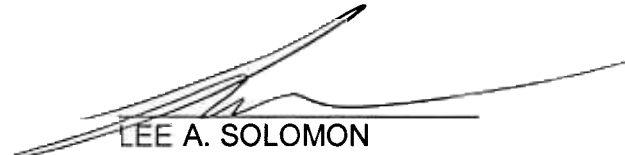
The Board does not agree with Rate Counsel's assertion that there is no record on which to grant relief here. Verizon's filing clearly seeks relief from a requirement to extend its facilities to the named MDU properties by virtue of an inability to gain access to them. As discussed above, Verizon provided copies of correspondence to the Board from the property owners exhibiting their efforts to gain access to the properties, and the Board solicited comments from the property owners as well. Thus, the Board has a full and developed record upon which it can properly determine whether the relief Verizon seeks is warranted, and the Board does not believe that Rate Counsel has demonstrated sufficient cause for action on this matter to be delayed.

The Board, after due consideration of the record and the comments submitted by the affected property owners, FINDS that Verizon has been unable to access the MDUs noted herein in order to provide cable television service and is due relief as permitted under N.J.S.A. 48:5A-25.2 and N.J.A.C. 14:18-15.3. Therefore, the Board HEREBY GRANTS Verizon's request for relief subject to the following conditions:

1. In the event that Verizon and the property owner should reach an agreement for access to the property, the rights of each party with regard to said access will be governed by the terms of N.J.S.A. 48:5A-49 and N.J.A.C. 14:18-4.5. A copy of all such agreements will be filed with the OCTV within ten (10) days of their execution.
2. In the event that Verizon receives a request for service by one or more residents / tenants of any of the properties but does not have an agreement for access in place, Verizon will immediately commence proceedings for formal access to the property as provided by N.J.S.A. 48:5A-49 and N.J.A.C. 14:18-4.5.
3. Within ninety (90) days of the execution of an access agreement or the date that an Order of Access is issued by this Board, Verizon will undertake and complete any and all necessary site surveys, engineering, wiring design and pre-construction activities for the subject property or properties and submit a copy of same to the OCTV.
4. Within one-hundred eighty (180) days of the completion of all necessary site surveys, engineering, wiring design and landlord approval of the proposed method of wiring / installation, Verizon will complete all necessary construction needed to extend FiOS service to all residents / tenants of the property.
5. Within ten (10) days of its completion of all necessary construction needed to extend FiOS service to all residents / tenants of any of the subject property or properties, Verizon will file a certification of completion with the OCTV.

DATED: 10/5/10

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

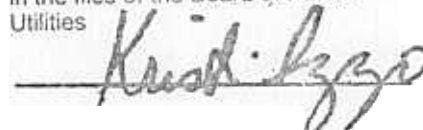

NICHOLAS ASSELTA
COMMISSIONER


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



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LOCATED IN MUNICIPALITIES WHERE EXTENSION OF FIOS SERVICE
IS REQUIRED UNDER THE TERMS OF ITS SYSTEMWIDE FRANCHISE**

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