



Agenda Date: 4/15/15
Agenda Item: 3A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu

CABLE TELEVISION

IN THE MATTER OF VERIZON NEW JERSEY, INC.)
FOR RELIEF OF A REQUIREMENT TO EXTEND ITS) ORDER
FIOS TV SERVICE TO CERTAIN MULTIPLE)
DWELLING UNIT PROPERTIES LOCATED IN)
MUNICIPALITIES WHERE EXTENSION OF FIOS TV)
SERVICE IS REQUIRED UNDER THE TERMS OF ITS)
SYSTEM-WIDE FRANCHISE) DOCKET NO. CO11090534

Parties of Record:

Gregory M. Romano, Esq., General Counsel, Mid Atlantic Region, Verizon New Jersey, Inc.,
Basking Ridge, New Jersey for Petitioner
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD¹:

On September 9, 2011, 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 System-wide Cable Television Franchise, Docket No. CE06110768 (December 18, 2006), and as renewed by the Board in I/M/O the Application of Verizon New Jersey, Inc. for Renewal of a System-wide Cable Television Franchise, Docket No. CE13080756 (January 29, 2014), as well as 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) and (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 Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

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 System-wide Cable Television Franchise, *supra*, page 3.

Verizon claims that it was unable to negotiate access to the 108 properties or multiple dwelling units (MDUs)² 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 that it was 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 attached to its petition correspondence from Verizon to representatives of the MDUs, wherein Verizon attempted to gain access to all of the subject properties. Verizon also informed the property owners that it would seek relief from the Board if the property owners continued to be unresponsive to Verizon's efforts to gain access.

Through letters dated June 5, 2012, October 11, 2012, February 5, 2013, September 3, 2013, October 20, 2014 and December 8, 2014, Verizon requested that the Petition be amended to withdraw a total of 27 properties from consideration. The remaining 81 properties subject to this Order are set forth in Appendix A.

In response to Verizon's petition, the OCTV, by correspondence dated March 19, 2012 and May 2, 2012, provided the property owners the opportunity to comment on Verizon's request for relief. To date, the OCTV received 11 comments representing owners of 14 of the subject properties³. Of the comments received, most object to the design prepared by Verizon, suggesting or insisting on changes to that design for aesthetic issues, to prevent damage, or to preserve property values (Properties 10, 28, 44, 45, 46 and 49). In some of these cases, Verizon prepared new designs for review, but property representatives delayed review or became unresponsive. Other properties indicated various issues, including recent transfers of ownership or control (Properties 23, 24 and 47); an exclusive access agreement with an incumbent provider (Property 18); damage and / or compensation issues (Properties 14, 39 and 51); or general inquiries (Property 48). Staff reviewed each matter and sought responses from Verizon. Staff further worked with Verizon and property owners to address concerns, which resulted in the withdrawal of certain properties from this waiver application.

On February 5, 2013, New Jersey Division of Rate Counsel submitted a letter to the Board providing that there were no outstanding issues that would preclude a finding that Verizon met the conditions for waivers for the subject properties and, therefore, it does not object to a grant

² The properties specified in Verizon's filing are attached as Appendix A.

³ The Board received additional comments regarding properties which were withdrawn by Verizon and are not addressed herein.

of Verizon's waiver request, subject to the conditions imposed on Verizon pursuant to the June 15, 2011 Board Order in Docket No. CO10100800.

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 stated 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] cannot 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 System-wide Cable Television Franchise, supra, page 4.

The Board reminds Verizon of its obligation to negotiate with MDU owners in good faith in an attempt to reach an access agreement. Additionally, the Board reminds MDUs that any provision in an incumbent cable operator access agreement purporting to provide for exclusive access is "null and void" under federal law. 47 C.F.R. § 76.2000(a).

Upon review of the Petition, Staff's inquiries and the responsive documents submitted regarding certain properties, the Board **HEREBY FINDS** Verizon's requested waivers to be consistent with Law and applicable regulations. Accordingly, the Board **HEREBY GRANTS** Verizon's amended request for relief subject to the following conditions:


1. Nothing contained herein shall limit Verizon or an MDU's ability to subsequently enter into an access agreement or seek access to extend service to an MDU. In the event that Verizon and a 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 or 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 or installation, Verizon will complete all necessary construction needed to extend FiOS service to all residents or tenants of the property.

Within ten (10) days of its completion of all necessary construction needed to extend FiOS service to all residents or tenants of any of the subject property or properties, Verizon will file a certification of completion with the OCTV.

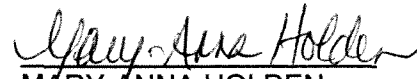
This Order shall be effective on April 27, 2015.

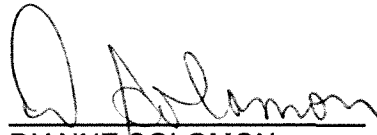
DATED: 4/15/15

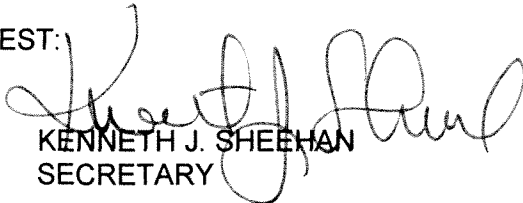
BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER

ATTEST:

KENNETH J. SHEEHAN
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities



Appendix A

Property Name (if applicable)	Address	Municipality	
1. Parkview Terrace Apartments	702 5 th Avenue	Asbury Park	
2. The Capri	302 5th Avenue	Asbury Park	
3. Stephen Manor	1100 Atlantic Avenue	Asbury Park	
4.			WITHDRAWN
5.			WITHDRAWN
6. Crest Arms	32 West Church Street	Bergenfield	
7.	85 West Main Street	Bergenfield	
8.	372-378 South Washington Avenue	Bergenfield	
9.	24-26 East Fort Lee Road	Bogota	
10. MacInnes Flats	501 Lake Terrace	Bradley Beach	
11.	436 Anderson Avenue	Cliffside Park	
12.	245 Lawton Avenue	Cliffside Park	
13.			WITHDRAWN
14.	160 Palisade Avenue	Cliffside Park	
15.	334-336 Palisade Avenue	Cliffside Park	
16. Fairview Gardens	580 Fairview Avenue	Fairview	
17.	92 Anderson Avenue	Fairview	
18. Plateau Gardens	1241 Anderson Avenue	Fort Lee	
19.	400 Midland Avenue	Garfield	
20.	26 Van Winkle Avenue	Garfield	
21.	7104 Hudson Avenue	Guttenberg	
22.			WITHDRAWN
23.	143 71st Street	Guttenberg	
24.	147 71st Street	Guttenberg	
25.	66 Jackson Street	Hackensack	
26. Willow Court Apartments	895 Main Street	Hackensack	
27.			WITHDRAWN
28. The Seacaucus	807 Washington Street	Hoboken	
29.	130-132 Adams Street	Hoboken	

Property Name (if applicable)	Address	Municipality	
30.	461 4th Street	Hoboken	
31.			WITHDRAWN
32.	727-733 Jefferson Street	Hoboken	
33. Courtyard at Jefferson	801 Madison Street	Hoboken	
34.			WITHDRAWN
35.	349 7th Street	Jersey City	
36.			WITHDRAWN
37.			WITHDRAWN
38.	700 Grove Street	Jersey City	
39. Grandview Terrace	3060 JFK Boulevard	Jersey City	
40.	248 Fowler Avenue	Jersey City	
41.	1-3 Nelson Avenue	Jersey City	
42. Fallen Manor	43 Church Street	Keansburg	
43.	238 Harrison Avenue	Lodi	
44.	15 Massey Street	Lodi	
45.	20 Rennie Place	Lodi	
46.	50 Brookside Avenue	Lodi	
47.	53 Chestnut Street	Lodi	
48.	1 Twombly Court	Morristown	
49. The Carlton	63 Hill Street	Morristown	
50.			WITHDRAWN
51. Westview Towers	6115 Granton Avenue	North Bergen	
52.	8301 4th Avenue	North Bergen	
53.	8114 5th Avenue	North Bergen	
54.			WITHDRAWN
55.			WITHDRAWN
56.	245 Grand Avenue	Palisades Park	
57.	428 Grand Avenue	Palisades Park	
58. Austin Manor	49 Austin Street	Ridgefield Park	
59.			WITHDRAWN
60.	435 Teaneck Road	Ridgefield Park	
61.			WITHDRAWN
62. Hopes Crossing	1 Vans Way, et al	Toms River	
63.	1024 Greenwood Avenue	Trenton	

Property Name (if applicable)	Address	Municipality	
64. North 25 Housing Corp.	2-500 Fairview Drive; 1-30 Carver Lane	Trenton	
65.	319 8th Street	Union City	
66.	715 28th Street	Union City	
67.	801 West Street	Union City	
68.	208 48th Street	Union City	
69.	311, 315, 317 8th Street	Union City	
70.			WITHDRAWN
71.	409 15th Street	Union City	
72.	725 18th Street	Union City	
73.			WITHDRAWN
74.			WITHDRAWN
75.			WITHDRAWN
76.	1716 Summit Avenue	Union City	
77.	700A 22nd Street	Union City	
78.	520 28th Street	Union City	
79.	1202 Bergenline Avenue	Union City	
80.	4500 Bergenline Avenue	Union City	
81.			WITHDRAWN
82.			WITHDRAWN
83.	3701 Park Avenue	Union City	
84.	325 8th Street	Union City	
85.	309 8th Street	Union City	
86.	4816 Hudson Avenue	Union City	
87.	60 Reservoir Avenue	Wallington	
88.	23 Brook Avenue	Wallington	
89.	3-5 Potter Place	Weehawken	
90.			WITHDRAWN
91.	4901 Murphy Place	West New York	
92.	429 61st Street	West New York	
93.	6308 Hudson Avenue	West New York	
94.	6311 Dewey Avenue	West New York	
95.	411 58th Street	West New York	
96.	525 51st Street	West New York	
97.			WITHDRAWN

Property Name (if applicable)	Address	Municipality	
98.			WITHDRAWN
99.			WITHDRAWN
100.			WITHDRAWN
101.			WITHDRAWN
102.	233 61st Street	West New York	
103.			WITHDRAWN
104.	304 60th Street	West New York	
105.	316 59th Street	West New York	
106.	6004 Buchanan Place	West New York	
107.	5129 Bergenline Avenue	West New York	
108.	5309 Hudson Avenue	West New York	

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

DOCKET NO. CO11090534

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