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Office of Cable Television and Telecommunications (OCTV&T)

I/M/O the Application of
Verizon New Jersey, Inc. for
Renewal of a System-wide
Cable Television Franchise
BPU Docket No. CE13080756

FRANCHISE RENEWAL /
ASCERTAINMENT REPORT
MAY 5, 2020

BACKGROUND/PROCEDURAL HISTORY

In August 2006, amendments to the New Jersey Cable Act, N.J.S.A. 48:5A-1 et seq. ("State Act") were enacted which were intended to accelerate cable competition and consumer choice. This legislation provided cable operators a choice between acquiring traditional franchises town by town, as had been the practice in New Jersey since the 1970's, or applying directly to the Board of Public Utilities ("Board") for a system-wide franchise.

Verizon-New Jersey, Inc. ("Verizon"), a local exchange telecommunications carrier, was the first entity to apply for a system-wide franchise to provide cable television service under the newly enacted amendments to the State Act. In December 2006, the Board approved Verizon's system-wide franchise application, granting Verizon the authority to enter the cable television market in 316 municipalities.¹ On January 30, 2014, the Board approved the renewal of Verizon's System-wide Cable Television Franchise in 379 municipalities². As of the 1st quarter of 2020, Verizon has added 12 additional municipalities to its system-wide franchise service area, and is currently authorized to provide cable television service in 392³ municipalities.

Pursuant to the amended State Act, Verizon was granted a seven-year renewal of its franchise, which is set to expire on December 18, 2020. Franchise renewal in New Jersey is governed by the federal Communications Policy Act of 1934, as amended ("Federal Act"), the amended State Act, and the Board's rules in the New Jersey Administrative Code ("N.J.A.C."). The Federal Act (47 U.S.C. §546) sets out the *ascertainment* process required to be used by franchising authorities in the renewal process. Ascertainment is the term utilized to explain the fact-finding process used by franchising authorities to examine the past performance of the cable operator and identify the future cable-related needs of the community. The Board's review of Verizon's performance under its franchise as stated in both the State Act and the Board's rules at N.J.A.C. 14:18-14.17(b), is specifically limited to:

1. Any Statewide needs and requirements as may be established by the State Cable Act;
2. The extent to which Verizon has met its commitments pursuant to N.J.S.A. 48:5A-28 and the rules and regulations of the Office of Cable Television, in accordance with the State Cable Act; and
3. Performance and substantial compliance with material terms and conditions of Verizon's existing system-wide franchise based on notice and opportunity to cure under applicable Federal law as placed on the record.

The Board's rules at N.J.A.C. 14:18-14.17(c) require that, at least seven months prior to the expiration of the franchise, the Office of Cable Television and Telecommunications (OCTV&T) must issue an ascertainment report to the Board, which must be made available for public inspection.

¹ Order, *In the Matter of the Application of Verizon New Jersey, Inc. for a System-wide Cable Television Franchise*, BPU Docket No. CE06110768 (December 18, 2006).

² Order, *In the Matter of the Application of Verizon New Jersey, Inc. for Renewal of a System-wide Cable Television Franchise*, BPU Docket No. CE13080756 (January 29, 2014) Attachment 3

³ Verizon stated the number to be 392, based on the fact that it holds a franchise for Princeton Borough and Princeton Township. The Borough of Princeton and the Township of Princeton consolidated into one municipality to be known as Princeton ("Princeton") for all governmental functions, effective January 1, 2013.

On January 24, 2018, the OCTV&T notified Verizon of its intention to review its performance under its system-wide franchise pursuant to Federal and state guidelines, as outlined above. On February 13, 2020, the OCTV&T invited Verizon to file comments on its performance under the franchise and to assess how it will meet the future needs of the communities listed in its franchise application. Verizon filed its Initial Comments with the OCTV&T on March 30, 2020.⁴ In its comments, Verizon contends that it has widely deployed its cable television service in New Jersey to fulfill its statutory obligations under the system-wide franchise, and that current and future cable related needs of the municipalities served by Verizon are substantially fulfilled by the State Act's statutory obligations, including higher franchise fees, PEG programming, equipment and training and free municipal connections.

Pursuant to the franchise renewal rules, N.J.A.C. 14:18-14.18, Verizon will file its formal franchise renewal application in August 2020. Ample opportunity for public comment will be available through two public hearings required to be held in October 2020, and written comments to the Board will be accepted as well prior to the Board's review of Verizon's renewal franchise due to expire in December 2020.

⁴ See Attachment 1.

PERFORMANCE CRITERIA

1. Any Statewide needs and requirements as may be established by the State Cable Act;

Verizon's deployment commitments under its system-wide franchise are delineated in the State Cable Act at N.J.S.A. 48:5A-25.2a:

48:5A-25.2 Requirements for CATV system-wide franchise

a. As part of any system-wide franchise issued by the board pursuant to P.L.1972, c.186 (C.48:5A-1 et seq.), a CATV company shall be required to:

(1) begin providing cable television service on a commercial basis, within three years of issuance of the system-wide franchise, in:

(a) each county seat that is within the CATV company's service area; and

(b) each municipality within the CATV company's service area that has a population density greater than 7,111 persons per square mile of land area, as determined by the most recent federal decennial census prior to the enactment of P.L.2006, c.83 (C.48:5A- 25.1 et al.). The requirements of this paragraph shall only apply to CATV companies that on the date of the issuance of the system-wide franchise provide more than 40 percent of the local exchange telephone service market in this State;

(2) make cable television service available throughout the residential areas of any such municipalities within six years of the date the CATV company first provides cable television service on a commercial basis directly to multiple subscribers within such central office area, subject to the CATV company's line extension policy; provided, however, that such provision of service shall not be required in:

(a) areas where developments or buildings are subject to claimed exclusive arrangements with other CATV companies;

(b) developments or buildings that the CATV company cannot access, using its standard technical solutions, under commercially reasonable terms and conditions after good faith negotiation; or

(c) areas in which the CATV company is unable to access the public rights-of-way under reasonable terms and conditions.

The requirements of this paragraph shall only apply to CATV companies that on the date of the issuance of the system-wide franchise provide more than 40 percent of the local exchange telephone service market in this State. As used in this subsection, "central office" has the same meaning as that term is defined in 47 C.F.R. Part 36, Appendix, and "central office area" means the towns or portions of towns served by such central office;

(3) provide service within the CATV company's service area where cable television service is being offered, without discrimination against any group of potential residential cable subscribers because of the income levels of the residents of the local area in which such groups reside; and

(4) fully complete a system capable of providing cable television service to all households within the CATV company's service area where cable television service is being offered, subject to the CATV company's line extension policy and the provisions of paragraphs (1) through (3) of this subsection.

Verizon's Deployment Commitments:

Verizon was granted approval to serve 316 municipalities in its initial franchise approved by the Board in December 2006. Under Verizon's renewal of the system-wide franchise approved January 2014, the total number of municipalities where service was authorized increased to 379.⁵ Verizon has since added 12 towns to its franchise and is now authorized to serve 392 towns. Verizon indicates in its comments that it now has already passed more than 2.7 million premises with its FiOS network in New Jersey, and is presently offering cable television service in all or parts of 371 of the total 392 towns in its franchise.⁶ Verizon is offering cable television service to

⁵ The Borough of Princeton and the Township of Princeton consolidated into one municipality to be known as Princeton "(Princeton)" for all governmental functions, which became effective January 1, 2013.

⁶ Verizon Comments at 3.

a number of households in these municipalities, and has certified with the Board that it is offering cable television service to more than 60% of the households in 262 municipalities.⁷ As of December 31, 2018, Verizon provided FiOS to approximately 765,000 customers.

Under the amended State Act, out of the 526 towns located in Verizon's local exchange telephone service territory, Verizon's deployment of its FiOS cable service was required in the residential areas of only 70 of the municipalities, consisting of the county seats in which it provides local exchange service, and those with greater than 7,111 residents per square mile.⁸ Verizon was required to start providing service to the noted 70 municipalities within three years of obtaining a system-wide franchise, and subject to certain exceptions, was required to make cable television service available throughout the residential areas of the noted 70 municipalities within six years of the date it first provided cable television service on a commercial basis.

Regarding deployment in the 70 required municipalities, as noted in the Board's 2014 Order renewing Verizon's franchise, Verizon furnished information to the Board via its quarterly deployment reports that it had achieved full availability of FiOS service in each of the 10 towns that were required for completion as of December 2012.⁹ Verizon was due to complete an additional 25 municipalities by year-end 2013, with the remaining half of the 70 required towns to be completed by year-end 2015. Verizon stated in its comments that it had satisfied its obligations under the above noted requirements by October of 2015.¹⁰ Following Verizon's completion of its build out to the 70 required municipalities, Verizon's deployment of services slowed to a halt. Since the State Act does not require that Verizon provide service outside of the 70 required municipalities, it is within Verizon's discretion as to where they will deploy service outside of its statutory deployment commitments. While the Board has continued to receive requests for extension of Verizon's service from residents outside of the 70 required municipalities, Verizon has chosen to not extend its deployment beyond the areas currently served at this time.

Multiple Dwelling Units (MDUs)/Waivers/Access Petitions

While Verizon's deployment requirement to the 70 required towns includes provision of service to MDUs, Verizon was allowed to seek a waiver of the requirements in three instances:

- “(a) areas where developments or buildings are subject to claimed exclusive arrangements with other CATV companies;
- (b) developments or buildings that the CATV company cannot access, using its standard technical solutions, under commercially reasonable terms and conditions after good faith negotiation; or
- (c) areas in which the CATV company is unable to access the public rights-of-way under reasonable terms and conditions.”¹¹

With respect to Verizon's deployment to MDUs in the 70 required towns, the Board set forth conditions in Verizon's Renewal Franchise, requiring that Verizon provide additional information in the quarterly service activation reports regarding the total addresses subject to waiver petitions and mandatory access petitions and the dates filed, as well as requiring waiver applications be filed prior to the required date of completion for deployment for the municipality

⁷ Verizon comments at 2.

⁸ Attachment II for listing of the 70 “must build” towns.

⁹ 1/29/14 Board Order at 4.

¹⁰ Verizon comments at 4.

¹¹ N.J.S.A. 48:5A-25.2a(2)

in which the MDU is located.¹² Verizon provided the required information to the Board in the quarterly activation reports up to its completion of deployment in October 2015, as noted above.

In its comments, Verizon discussed its deployment efforts to serve MDUs, which requires that MDU property owners enter into a premises access agreement (PAL) with Verizon to set the terms under which Verizon may be permitted to install equipment for the provision of service to the MDU. While Verizon has been able to successfully negotiate agreements to provide cable television service to thousands of MDU properties across the State, Verizon states in its comments that many MDU property owners have delayed and hampered their ability to provide service to MDUs. Among the reasons cited by Verizon for MDU owners refusing to allow access are: 1) doesn't want to inconvenience residents with an upgrade of the property's infrastructure unless residents request FiOS; 2) property already served by another cable provider; (3) doesn't want FiOS; (4) doesn't want to affect the aesthetics of the property.¹³ While Verizon has filed 84 waiver notices with the Board, it has still continued working with property owners to obtain access and to date, has withdrawn waiver notices covering more than 660 of the 5,500 MDU properties it had been unable to serve initially, with approximately 300 more pending withdrawal.¹⁴

Board Staff has been working with Verizon to try and assist in resolving many of the difficulties Verizon has had with various MDU property owners. In several instances, property owners raised concerns with the Board regarding damage to their buildings that may occur due to Verizon's proposed installations plans, and Verizon's unwillingness to negotiate certain aspects of the PAL in that regard. Board Staff recommends that Verizon continue to engage in good faith negotiations with MDU owners by attempting to accommodate their concerns with installation plans, where feasible.

Verizon noted in its comments that it has also filed over 560 mandatory access petitions requesting that the Board either grant Verizon access or waive the deployment obligation. Pursuant to N.J.A.C. § 14:18-4.5(b), upon receipt of a request for service from an MDU resident, Verizon must request access from the MDU owner to provide service. If the MDU owner refuses to provide access, Verizon is required to file a petition for mandatory access with the Board. Verizon has withdrawn more than 120 of these petitions after having successfully negotiated access to the subject properties. Board Staff continues to work with Verizon to address resolution of these petitions as well. Board Staff recommends that Verizon refresh their data with respect to their last date of contact with property owners, in an effort to resolve further petitions.

¹² 1/29/14 Board Order at 6.

¹³ Verizon Comments at 5

¹⁴ Verizon Comments at 4-5.

2. The extent to which Verizon has met its commitments pursuant to N.J.S.A. 48:5A-28 and the rules and regulations of the Office of Cable Television, in accordance with the State Cable Act;

Additional requirements for Verizon's system-wide franchise are set out under N.J.S.A. 48:5A-28:

48:5A-28. Contents of application, commitments by system-wide franchise

Each application for a municipal consent or system-wide franchise shall contain:

...

h. (1) With regard only to applications for a system-wide franchise, a commitment as to those municipalities that are served by a CATV company at the time of the application, to match or surpass any line extension policy operative at the time the system-wide franchise is granted and placed into effect prior to the enactment of P.L.2006, c.83 (C.48:5A-25.1 et al.) by a local franchise or certificate of approval, for the duration of the system-wide franchise. In any event, the CATV company shall extend its plant along public rights-of-way to all residences and businesses within 150 aerial feet of the CATV company's existing plant at no cost beyond the normal installation rate, and to all residences and businesses within 100 underground feet of the CATV company's plant at no cost beyond the normal installation rate, and shall set a minimum house per mile density of not less than 35 homes per square mile.

(2) This commitment shall be in addition to any and all board orders and rules that impact upon the extension of plant, except that such commitment shall supersede the board's regulations adopted as N.J.A.C. 14:3-8.1 et seq., which shall not apply to CATV companies, including telecommunications service providers that have obtained a system-wide franchise.

i. With regard only to applications for a system-wide franchise, a commitment to provide to each municipality that is served by a CATV company, with two public, educational and governmental access channels. In the event that two or more access channels are requested by a municipality, the municipality shall demonstrate that its cable-related needs require the provision of such additional access channels. Any and all CATV companies operating in a municipality shall provide interconnection to all other CATV companies on reasonable terms and conditions, and the board shall adopt regulations for procedures by which disputes between such CATV companies shall be determined and expeditiously resolved. Each municipality or its nonprofit designee shall assume responsibility for the management, operations and programming of the public, educational and governmental access channels.

j. With regard only to applications for a system-wide franchise, a commitment to install and retain or provide, without charge, one service outlet activated for basic service to any and all fire stations, public schools, police stations, public libraries, and other such buildings used for municipal purposes.

k. With regard only to applications for a system-wide franchise, a commitment to provide free Internet service, without charge, through one service outlet activated for basic service to any and all fire stations, public schools, police stations, public libraries, and other such buildings used for municipal purposes.

l. With regard only to applications for a system-wide franchise, a commitment to provide equipment and training for access users, without charge, on a schedule to be agreed upon between the municipality and the CATV company.

m. 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. With regard only to applications for a system-wide franchise, a commitment to meet any consumer protection requirements applicable, pursuant to board regulations, to cable television companies operating under certificates of approval.

Verizon's performance:

(h) – Line Extension Policy

Under its franchise, Verizon was required to provide a line extension policy ("LEP") that meets or exceeds the LEP offered by the incumbent in each municipality served. An LEP is a cost sharing formula that determines the dollar amount to be shared between a cable operator and a potential customer for construction along public right-of-way outside of the area where the company has agreed to provide service at no cost beyond installation charges. To date, while the OCTV&T has received some requests as to when FiOS service will be available to a particular location, it has not received any LEP requests. While Verizon has invoked LEPs in a limited number of municipalities, in all cases, it is where the company has no obligation to provide full service. Verizon has simply stated that it does not have FiOS plant available and the law does not permit the OCTV&T to require the company to provide service to residents that are not in one of the 70 required municipalities. Therefore, while an LEP may be in place in some towns, it is unlikely that it will be invoked.

(i)/(l) – Public, Educational and Governmental (PEG) access channels; equipment and training;

(j)/(k) – free basic cable and internet service to public schools, libraries and municipal bldgs.;

(m) – return feeds

The State Act requires that upon request, Verizon provide to the municipalities: up to two PEG access channels with equipment and training, free basic cable and internet connections to certain municipal locations, and one free return line. Verizon stated in its comments¹⁵ that it had:

- installed 522 return lines and interconnected with incumbent cable companies that enabled 310 municipalities to distribute or receive PEG programming;
- provided 7 county-wide PEG channels reaching residents in 224 municipalities;
- provided access to free PEG equipment and training at 7 county colleges across the State through its partnership with NJEDge (a consortium of NJ colleges); and
- installed free Internet and cable connections to 929 municipal locations in 213 municipalities.

It is noted that when Verizon began providing return lines, PEG access channels and free cable television and Internet service, the OCTV&T was copied on many requests as well as some complaints that the company was not complying with its obligations. Because of this, the OCTV&T required Verizon to provide quarterly reports on the status of these requests. In January of 2011, the OCTV&T relieved Verizon of filing reports, noting that it had received very few complaints since beginning of 2010, and that all inquiries/complaints would be handled on a case-by-case basis. The OCTV&T had been copied on only a few requests for these services, and since that time, the OCTV&T has received no new complaints.

Verizon was required to provide training and equipment for customers in its municipalities to produce PEG access programming. Verizon has noted that while seven county colleges in the State have this free equipment for use, it has received few requests for its use. Therefore, the program has not expanded.

¹⁵ Verizon comments at 6.

(n) – Consumer protection requirements

Verizon is required under the State Act to meet all consumer protection requirements under the Board's regulations. Per Verizon's franchise, the OCTV&T has served as the designated complaint office. To date, Verizon has complied with the consumer protections requirements under the Board's rules.

3. Performance and substantial compliance with material terms and conditions of Verizon's existing system-wide franchise based on notice and opportunity to cure under applicable Federal law as placed on the record.

Pursuant to the Federal Act, if the franchising authority finds that there are any substantial violations of the current franchise, it must provide the cable operator "notice and opportunity to cure" (47 U.S.C.A. § 546(d)). To date, Verizon has not been provided with notice of any substantial non-compliance with the terms of the existing franchise. Compliance reviews are performed by Staff of the OCTV&T of each cable television company in the state every 2-3 years. The OCTV&T will continue to review Verizon's compliance under its system-wide franchise and the Board's rules.

The complaint statistics compiled by the OCTV&T indicated the prior ascertainment report stated Complaint numbers continued to rise steadily, with cable industry reports almost doubling from 4.8 million to 8.7 million in 2011. While complaint numbers over the last seven (7) years have fluctuated, the overall pattern demonstrated is a steadily decline, with cable industry reports going from 4.06 million in 2013 to 3.07 million in 2019, which could be attributed to greater levels of competition in the industry. Upon review it appears the top complaint categories of billing, reception, appointment service calls and service interruption continue to remain consistent over the years.

NOTE:

Pursuant to the Board's rules, within 90 days of the filing of the OCTV&T Ascertainment Report, Verizon is required to file its franchise renewal application. Public Hearings will be provided following the filing of the Verizon's application to allow public comment.

ATTACHMENT 1

[Verizon SWF Renewal - VNJ Comments \(1\) 3.30.2020.pdf](#)

ATTACHMENT 2

[Verizon FIOS Municipalities 5.5.2020.pdf](#)

ATTACHMENT 3.

Order, In the Matter of the Application of Verizon of New Jersey, Inc. for Renewal of a System-Wide Cable Television Franchise, BPU Docket No. CE13080756 (January 29, 2014)

[IMO Verizon NJ SWF Renewal order Dk no CE13080756 1-29-14-3A.pdf](#)