



State of New Jersey
DIVISION OF RATE COUNSEL
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TRENTON, NEW JERSEY 08625

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

STEFANIE A. BRAND
Director

VIA HAND DELIVERY

June 29, 2015

Joseph H. Orlando, Appellate Division Clerk
Superior Court of New Jersey
The Appellate Division Clerk's Office
P.O. Box 006
Trenton, New Jersey, 08625

Re: Appeal from the New Jersey Board of Public Utilities Decision and Order In the Matter of the Board's Investigation Regarding the Reclassification of Incumbent Local Exchange Carrier (ILEC) Services as Competitive – Phase II Proceeding under BPU Docket TX11090570
Appellate Division Docket No.:

Dear Mr. Orlando:

Annexed for filing on behalf of the Appellant, the New Jersey Division of the Rate Counsel,¹ please find an original and two copies of:

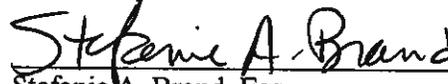
- 1) Notice of Appeal with Attachments 1;
- 2) Case Information Statement (CIS) with Attachments 1;
- 3) The New Jersey Board of Public Utilities Decision and Order dated June 5, 2015; and
- 4) The Transcripts of the NJ Board of Public Utilities' May 19, 2014, Agenda Meeting and the Transcripts of the July 17, 2012 Evidentiary Hearing in the within matter inclusive of (4 copies of each and 4 electronic CD copies).

Kindly return one copy date stamped "filed" for our records. Please note that Rate Counsel is exempt from paying filing fees under R. 2:5-2 of the Rules of the Appellate Division.

Thank you for your attention to this matter.

Very truly yours,

Stefanie A. Brand, Director,
New Jersey Division of Rate Counsel


Stefanie A. Brand, Esq.

SAB/rk
c: Service List
w/encls.

^{1/} The New Jersey Division of the Rate Counsel is in, but not of, the Department of the Treasury and is authorized by statute to represent the public interest in such administrative and court proceedings as deemed by the Director shall best serve the public interest, in its mission of protecting New Jersey ratepayers in utility matters. See, N.J.S.A. 52:27EE-48 as defined in section 12 of P.L.2005, c.155 (C.52:27EE-12).

**Appeal from the NJ BPU Decision &
Order IMO the Board's Investigation
Regarding the Reclassification of
Incumbent Local Exchange Carrier
(ILEC) Services as Competitive -
Phase II Proceeding under BPU
Docket No.: TX11090570**

Gregory M. Romano, General
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One Verizon Way VC54S201
Basking Ridge, NJ 07920

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New York, NY 1007

Kevin Walsh and Lawrence Lustberg,
Esqs.
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Newark, NJ 07102

Irene Kim Asbury, Board Secretary
NJ Board of Public Utilities
44 South Clinton Avenue, 9th Fl.
P.O. Box 350
Trenton, NJ 08625

Paul Flanagan, Executive Director
NJ Board of Public Utilities
44 South Clinton Avenue, 9th Fl.
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Ava-Marie P. Madeam, VP State
Government Affairs
Verizon New Jersey, Inc
50 Broad Street
Newark, NJ 07101



**New Jersey Judiciary
Superior Court - Appellate Division
NOTICE OF APPEAL**

Type or clearly print all information. Attach additional sheets if necessary.

ATTORNEY / LAW FIRM / PRO SE LITIGANT (2)

TITLE IN FULL (AS CAPTIONED BELOW): (1)
In the Matter of the Board's Investigation Regarding the
Reclassification of Incumbent Local exchange Carrier
Services as Competitive - Phase II Proceeding

NAME
Stefanie A. Brand, Dir., New Jersey Division of Rate Counsel

STREET ADDRESS
140 East Front Street, 4th Fl., P.O. Box 003

CITY Trenton	STATE NJ	ZIP 08625	PHONE NUMBER (609) 984-1460
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EMAIL ADDRESS
sbrand@rpa.state.nj.us

ON APPEAL FROM

TRIAL COURT JUDGE (3)

TRIAL COURT OR STATE AGENCY (4)

TRIAL COURT OR AGENCY NUMBER (5)

New Jersey Board of Public Utilities

BPU Docket No. TX11090570

(7) Notice is hereby given that (6) The New Jersey Division of Rate Counsel appeals to the Appellate Division from a Judgment or Order entered on June 5, 2015 in the Civil Criminal or Family Part of the Superior Court or from a State Agency decision entered on June 5, 2015.

(8) If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.

The New Jersey Division of Rate Counsel is appealing the New Jersey Board of Public Utilities Decision and Order rendered in the above a captioned matter in its entirety. Order Attachment 2

(9) Have all issues, as to all parties in this action, before the trial court or agency been disposed of? (In consolidated actions, all issues as to all parties in all actions must have been disposed of.) Yes No

If not, has the order been properly certified as final pursuant to R. 4:42-2? Yes No

For criminal, quasi-criminal and juvenile actions only:

(10A) Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

(10B) This appeal is from a conviction post judgment motion post-conviction relief. If post-conviction relief, is it the 1st 2nd other _____ specify

(10C) Is defendant incarcerated? Yes No
Was bail granted or the sentence or disposition stayed? Yes No

(10D) If in custody, name the place of confinement:

Defendant was represented below by:

Public Defender self private counsel _____ specify

(11) Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge		
Trial Court Division Manager		
Tax Court Administrator		
State Agency	The New Jersey Board of Public Utilities	Attachment 1, Service
Attorney General or Attorney for other Governmental body pursuant to <u>R. 2:5-1(a), (e) or (h)</u>	The New Jersey Office of the Attorney General	List [June 29, 2015]
Other parties in this action:		

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
Verizon New Jersey, Inc.	Gregory M. Romano, General Counsel, Mid-Atlantic Region One Verizon Way VC54S201, Basing Ridge, NJ 07920	June 29, 2015
Verizon New Jersey, Inc.	William D. Smith, Assistant General Counsel 140 West Street, 27th Fl., New York, NY 10007	June 29, 2015
Verizon New Jersey, Inc.	Kevin Walsh, Esq. and Lawrence Lustberg, Esq., Gibbons PC One Gateway Center, Newark, NJ 07102-5310	June 29, 2015

(12) Attached transcript request form has been served where applicable on the following:

	Name	Date of Service	Amount of Deposit
Trial Court Transcript Office			
Court Reporter (if applicable)			
Supervisor of Court Reporters			
Clerk of the Tax Court			
State Agency			

(13) Exempt from submitting the transcript request form due to the following:

- No verbatim record.
- Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).
List the date(s) of the trial or hearing:
There are two attached transcripts. Attachment 3 is of the New Jersey Board of Public Utilities' ("Board") Agenda Meeting of May 19, 2015, approving the Stipulation and Attachment 4 the Board's Evidentiary Hearing below on July 17, 2012.
- Motion for abbreviation of transcript filed with the court or agency below. Attach copy.
- Motion for free transcript filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by N.J.S.A. 22A:2 has been paid.

(14) 6/29/15
DATE

(15) Stefanie A. Brand
SIGNATURE OF ATTORNEY OR PRO SE LITIGANT

**New Jersey Judiciary
Superior Court – Appellate Division
NOTICE OF APPEAL – ATTACHMENT 1**

In the Matter of the Board's Investigation	:	BPU Docket No.: T X11090570
Regarding the Reclassification of Incumbent	:	
Local Exchange Carrier Services as Competitive -	:	
Phase II Proceeding	:	

APPELLANT'S ATTORNEYS:

Stefanie A. Brand, Director, NJ Division of Rate Counsel
 Maria T. Novas-Ruiz, Assistant Deputy Rate Counsel
 New Jersey Division of Rate Counsel
 140 East Front Street, 4th Floor, POB 003
 Trenton, NJ 08625
 T(609) 984-1460
sbrand@rpa.state.nj.us
mnovas-ruiz@rpa.state.nj.us

Notice of appeal and attached case information statement have been served where applicable on the following: **Continued - Additional Parties Served:**

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
New Jersey Board of Public Utilities, Respondent	Irene Kim Asbury, Board Secretary	June 29, 2015
	Paul Flanagan, Executive Director	June 29, 2015
	Carole Artale, Counsel's Office 44 South Clinton Avenue, 9th Fl. PO BOX 350 Trenton, NJ 08625-0350 (609) 292-1554	June 29, 2015
New Jersey Office of the Attorney General	John J. Hoffman, Acting Attorney General Hughes Justice Complex 25 Market Street, POB 080 Trenton, NJ 08625-080 (609) 292-4925	June 29, 2015
New Jersey Office of the Attorney General	Caroline Vachier, DAG	June 29, 2015
	Alex Moreau, DAG	June 29, 2015
	Veronica Beke, DAG Division of Law & Public Safety 124 Halsey Street, 5th Fl., POB 45029 Newark, NJ 07101- 45029 (973) 648-3441	June 29, 2015
Verizon New Jersey, Inc.	Ava-Marie P. Madeam, VP State Government Affairs 50 Broad Street, Newark, NJ 07101 (973) 649-3125	June 29, 2015



**New Jersey Judiciary
Superior Court - Appellate Division
CIVIL CASE INFORMATION STATEMENT**

Please type or clearly print all information.

TITLE IN FULL (1)

TRIAL COURT OR AGENCY DOCKET NUMBER (2)

In the Matter of the Board's Investigation Regarding the Reclassification of Incumbent Local Exchange Carrier Services as Competitive - Phase II Proceeding

BPU Docket No. TX11090570

■ Attach additional sheets as necessary for any information below.

(3) APPELLANT'S ATTORNEY EMAIL ADDRESS: sbrand@rpa.state.nj.us

PLAINTIFF DEFENDANT OTHER (SPECIFY) The New Jersey Division of Rate Counsel (Party Below)

NAME

Stefanie A. Brand, Director, New Jersey Division of Rate Counsel

CLIENT

New Jersey Ratepayers

STREET ADDRESS

140 East Front Street, 4th Floor, P0 Box 003

CITY

Trenton

STATE

NJ

ZIP

08625

TELEPHONE NUMBER

(609) 984-1460

(4) RESPONDENT'S ATTORNEY * EMAIL ADDRESS: Alex.Moreau-dol.lps.state.njus

NAME

Alex Moreau, DAG, Law & Public Safety, NJ Attorney General's Office

CLIENT

The New Jersey Board of Public Utilities

STREET ADDRESS

124 Halsey Street, 5th Floor, P0 Box 45029

CITY

Newark

STATE

NJ

ZIP

07101

TELEPHONE NUMBER

(973) 648-3762

* Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.

(5) GIVE DATE AND SUMMARY OF JUDGMENT, ORDER, OR DECISION BEING APPEALED AND ATTACH A COPY:

Appeal from the June 5, 2015, Decision and Order of the New Jersey Board of Public Utilities ("Board"), which reclassified as competitive the four remaining rate regulated telephone services provided by Verizon New Jersey, Inc., throughout New Jersey as well as relinquished Board oversight of service quality three years to five from the date of this Board Order.

(6) Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees? YES NO

If so, has the order been properly certified as final pursuant to R. 4:42-2? (If not, leave to appeal must be sought. R. 2:2-4.2:5-6) YES NO

(If the order has been certified, attach, together with a copy of the order, a copy of the complaint or any other relevant pleadings and a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.)

Were any claims dismissed without prejudice? YES NO

If so, explain and indicate any agreement between the parties concerning future disposition of those claims.

In our experience, the New Jersey Board of Public Utilities does not settle appeals of final orders.

(7) Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? YES NO (R. 2:5-1(h))

(8) GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

The matter under appeal In the Matter of the Board Investigation Regarding the Reclassification of Incumbent Local Exchange Carrier (ILEC) Services as Competitive - Phase II, BPU Docket No. TX11090570, ("2011 ILEC Proceeding" and/or "2011 ILEC Phase II"), is part of a two phase proceeding in which New Jersey's two incumbent local exchange carriers ("ILECs") Verizon New Jersey, Inc., ("Verizon") and United Telephone Company of New Jersey, Inc., formerly d/b/a/Embarq (currently d/b/a "CenturyLink") seek to reclassify as competitive all telephone services and remove these services from rate regulation as permitted under N.J.S.A. 48:2-21.19. SEE ATTACHMENT

(9) TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THE APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5). (Appellant or cross-appellant only):

- I. The New Jersey Board of Public Utilities' Decision and Order Violated Due Process.
- II. The New Jersey Board of Public Utilities' Decision and Order was Contrary to Law, Arbitrary and Capricious.
- III. Material and Factual Issues Remain in this Contested Case Which Require That the Matter Be Remanded for Hearing.

(10) IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

- 1. Did the trial judge issue oral findings or an opinion? If so, on what date? _____ YES NO
- 2. Did the trial judge issue written findings or an opinion? If so, on what date? _____ YES NO
- 3. Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)? YES NO

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

DATE OF YOUR INQUIRY: _____

(11) 1. IS THERE ANY APPEAL NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

(A) Arises from substantially the same case or controversy as this appeal? YES NO

(12) (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? YES NO

(13) 2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY? YES NO

(14) IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:

Case Name: _____

Appellate Division Docket Number: _____

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

(15) State whether you think this case may benefit from a CASP conference. YES NO

Explain your answer:

In our experience, the New Jersey Board of Public Utilities does not settle appeals of final orders.

(16) I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

(17) The New Jersey Division of Rate Counsel
Name of Appellant or Respondent

(18) Stefanie A. Brand, Dir. - NJ Div. of Rate Counsel
Name of Counsel of Record
(or your name if not represented by counsel)

(19) 6/29/15
Date

(20) Stefanie A. Brand
Signature of Counsel of Record
(or your signature if not represented by counsel)

**New Jersey Judiciary
Superior Court - Appellate Division**

**CIVIL CASE INFORMATION STATEMENT ("CIS"): ATTACHMENT 1
(Page 1 of 2)**

In the Matter of the Board's Investigation	:	BPU Docket No.: T X11090570
Regarding the Reclassification of Incumbent	:	
Local Exchange Carrier Services as Competitive -	:	
Phase II Proceeding	:	

APPELLANT'S ATTORNEYS:

Stefanie A. Brand, Director, New Jersey Division of Rate Counsel
Maria T. Novas-Ruiz, Assistant Deputy Rate Counsel, New Jersey Division of Rate Counsel

GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY: - CONTINUED -

This matter began on October 13, 2011, when the Board of Public Utilities ("Board") issued an order regarding the re-evaluation of the competitiveness of the ILEC's four remaining rate-regulated services (residential basic exchange service, single-line business basic exchange service, nonrecurring charges for installation of residential services, and residential directory assistance directory assistance ("DA") services). ("October 2011 Order"). The proceeding was litigated through the hearing stage. An evidentiary hearing was held on July 17, 2012, and three public hearings were held in October and November 2012.

Three months after the close of the record, on March 23, 2013, the Board issued an Order in the 2011 ILEC Phase II, ("March 2013 Order") which approved a Stipulation and Agreement regarding CenturyLink, reclassifying item (iv) residential Directory Assistance as competitive; and requiring CenturyLink to provide one free call per month through December 2014 and continuing rate-regulation over CenturyLink's (i) residential basic exchange service; (ii) single-line business basic service; (iii) installation of residential service; and (iv) residential directory assistance, but allowing CenturyLink to file for competitive status for the remaining three services in the future. (March 2013 Order at 8). Thereafter, the matter remained inactive for approximately two and a half years, but for a brief meeting held on April 20, 2015, between Verizon and Rate Counsel initiated at Verizon's request to discuss Verizon's proposal for reclassification of all four remaining services as competitive.

On May 6, 2015, Board Staff and Verizon entered into a Stipulation which reclassified all of Verizon's remaining services as competitive and permits Verizon to make capped rate adjustments for the four rate-regulated services on an annual basis for five years. The rate increases amount to a 36% increase at the end of the five year period and result in an increase of \$15.840 million in revenue over 5 years based upon 220,000 subscribers (minus life line customers). Lastly, unless the Board determines otherwise at year three, the Stipulation terminates and relinquishes the Board's authority and oversight over Verizon's service quality. The Board may extend its oversight of service quality for two additional years, but will relinquish such authority after five years at the latest. On May 6, 2015, the Board Secretary issued a Notice attached to the Stipulation and Service List asking the parties to submit comments on the Stipulation of Settlement to the Board by May 15, 2015. [CIS Attachment 2].

- Continued on p. 2 -

**New Jersey Judiciary
Superior Court - Appellate Division**

**CIVIL CASE INFORMATION STATEMENT ("CIS"): ATTACHMENT 1
(Page 2 of 2)**

In the Matter of the Board's Investigation	:	BPU Docket No.: T X11090570
Regarding the Reclassification of Incumbent	:	
Local Exchange Carrier Services as Competitive -	:	
Phase II Proceeding	:	

APPELLANT'S ATTORNEYS:

Stefanie A. Brand, Director, New Jersey Division of Rate Counsel
Maria T. Novas-Ruiz, Assistant Deputy Rate Counsel, New Jersey Division of Rate Counsel

GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY: - CONTINUED -

On May 15, 2015, Rate Counsel filed its comments asking that the Board reject the Stipulation of Settlement and reopen the matter to allow parties the opportunity to provide empirical evidence regarding the current state of competition on the four remaining rate-regulated services and convene public hearings to allow interested parties a meaningful opportunity to be heard regarding pricing and service quality issues which had not been a part of the record. Rate Counsel noted that the relief granted, the reclassification of the remaining four services as competitive, was unsupported by the record as demonstrated by empirical evidence provided by Rate Counsel in 2012, and that a determination on the true state of competition for these services should not be made on stale four-year old data. Moreover, Rate Counsel noted that the record below was devoid of any empirical evidence or data regarding Verizon Service Quality Issues, as service quality had not been part of the earlier proceedings. Neither Rate Counsel, nor the public was given an opportunity to address these issues below. Rate Counsel's comments also noted that the record did not support the Stipulation's provisions and that approval of the Stipulation would permit further erosion of Verizon's service quality and jeopardize the continued provision of reliable, safe and adequate telephone service as required by N.J.S.A. 48:2-23.

On May 19, 2015, without further proceedings or opportunity for ratepayers to be heard, the Board approved the Stipulation entered into by Board Staff and Verizon and issued its Decision and Order on June 5, 2015, approving the proposed Stipulation without modification. Based on the staleness of the evidence in the record and the new issue addressed by the Stipulation on service quality the matter should have been reopened for public and evidentiary hearings to refresh the empirical evidence and give the parties the opportunity to provide evidence on service quality issues. The Board's failure to do so denied ratepayers' fundamental due process rights. As this Stipulation violates both sound public policy and basic principles of due process, and is arbitrary and capricious, Rate Counsel has instituted this appeal.