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October 8, 2015

Ms. Irene Kim Asbury,
Board Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. BOX 350
Trenton, New Jersey 08625-0350

Re: I/M/O of Rate Counsel's Request for an Investigation into Verizon New Jersey, Inc.'s Continued Use of its Copper Infrastructure to Provide Telecommunications Services and Verizon New Jersey Inc.'s Transition Plan to Migrate Customers from its Copper-to-Fiber Infrastructure/Network in New Jersey.
BPU Docket No. TO15060749

Rate Counsel's Reply to Verizon's Response to Rate Counsel's Request for Investigation

Dear Secretary Asbury:

The Division of Rate Counsel ("Rate Counsel") herewith respectfully files its reply with the Board of Public Utilities ("BPU" or "Board") to Verizon's response dated September 17, 2015, ("Response") in the above referenced matter for the Board's consideration.

If you have any questions please do not hesitate to contact me.

Sincerely,

STEFANIE A. BRAND,
DIRECTOR
NEW JERSEY DIVISION OF RATE COUNSEL

Maria T. Novas-Ruiz,
Assistant Deputy Rate Counsel

MNR/rk
w/encls.
cc: Service List
(via Regular and Electronic Mail)

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**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

In the Matter of Rate Counsel’s Request For an
Investigation into Verizon New Jersey, Inc.’s
Continued Use of its Copper Infrastructure to
Provide Telecommunications Services and
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**RATE COUNSEL’S REPLY TO VERIZON’S RESPONSE TO
RATE COUNSEL’S REQUEST FOR INVESTIGATION**

I. Introduction

In this Reply filing Rate Counsel incorporates by reference herein the arguments contained in its initial and second request for investigation into Verizon’s copper to fiber transition in New Jersey respectively dated June 29, and August 27, 2015.

It is evident from Verizon’s Response that Rate Counsel and Verizon disagree and have different interpretations concerning what constitutes the discontinuance of service under Federal Communications Commission (“FCC”) regulations which would require Verizon to file a Section 214 Application and subject Verizon to customer notice requirements under §63.71.¹ As noted by Rate Counsel in its second request, in its *Tech Transition Order*² the FCC affirmed that

¹/ 47 C.F.R. § 63.71.

²/ *In the Matter of Ensuring Customer Premises Equipment Backup Power for Continuity of Communications*, PS Docket No. 14-174; *Technology Transitions*, GN Docket No. 13-5; *Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers*, RM-11358; *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, *Notice of Proposed Rulemaking and Declaratory Ruling*, (FCC 14-185, Adopted November 21, 2014, Released November 25, 2014); and *In the Matter of the Wireline Competition Bureau Short Term Network Change Notifications Filed By Verizon New Jersey*,

they "... are not preempting the ability of any state commission to evaluate an incumbent LEC's retirement of its copper loops to ensure such retirement complies with any applicable state legal or regulatory requirements." *Id.*, at Paragraph 96, p. 54.³ The Board continues to have an overarching responsibility on behalf of customers to ensure that the IP-Transition process proceeds in a safe and orderly manner, thus guaranteeing the continued provision of safe, adequate and reliable service by the carrier. At present, the interpretation and the manner in which Verizon continues its IP-Transition in New Jersey rests squarely before the Board.

Rate Counsel takes this opportunity to expand on some of the points raised in Verizon's Response.

II. Contrary to Verizon's contention, service offerings on Verizon's fiber platform are not comparable or necessarily better than services offered over its copper platform.

Verizon's states it is offering customers in the relevant areas, the same basic voice services (at the same rates, terms and conditions) . . . over superior fiber optic technology. *Response at pp.1-3.* Rate Counsel does not negate that a fiber platform is more durable and provides a customer with an opportunity to subscribe to a wider array of enhanced IP services, but this is not the issue for which Rate Counsel seeks the Board's intervention. The request here is for Board review of the manner in which Verizon is conducting its transition to fiber to ensure that vital utility service continues to be provided in a safe and reliable manner to New Jersey customers. The fiber system's durability and potential to provide enhanced communications

Inc., WC Docket No. 15-131. Adopted August 6, 2015 and Released August 7, 2015, ("*Technology Transitions et al.*, *Order and FNPRM*"), herein referred by Rate Counsel as the ("*Tech Transition Order*"), at Paragraph 96, p. 54.
³/ *Id.*, at footnote 347 p. 54, citing to 29 FCC Rcd at 14994, para. 54; *Triennial Review Order*, 18 FCC Rcd at 17148, para. 284.

options do not alter the fact that the fiber platform is not self-powered/self-sustaining and this generates grave concern among customers.

1. Customers are receiving reduced service at increased cost.

For customers who rely on and value the availability of continued functioning voice service during prolonged emergency power outages, the service over a fiber platform is not comparable and is inadequate. For these customers, and there are many, the value of the copper wireline voice service is inextricably tied to its ability to continue working during emergencies. Transitioned customers now must shoulder the added cost of purchasing at a minimum, 12 back-up D-cell batteries to extend equipment functionality to allegedly a maximum of only 20 hours. Customers complain that while they may be paying the same rates for the fiber platform for the time being, they are actually receiving *reduced* voice service and reliability during prolonged power-outages. Additionally, customers who currently subscribe to Verizon's DSL service will have to upgrade to Verizon's FiOS product at an additional cost.

2. There should be no disconnections of service under any circumstance.

Verizon's customer letter clearly states that service will be discontinued if customers do not arrange for Verizon to switch their service within 45 days, with complete termination of service fifteen days thereafter, even if those customers seek continued wireline service and have paid their bills. This action is contrary to state statutes, the Board's regulations and the recent Order approving the Reclassification Stipulation recently entered into between Board Staff and Verizon. N.J.S.A. 48:3-3 provides that no utility may "withhold or refuse to provide any service which reasonably can be demanded or furnished when ordered by the board." Likewise, N.J.A.C. 14:3-3A8(d) states clearly that a telephone utility may terminate Basic Residential Local Telephone Service only for nonpayment of charges.

The Board has an overarching responsibility to ensure public utilities to provide safe, adequate and proper service and allows the Board to “require any public utility to continue to furnish service and to maintain its property and equipment in such condition as to enable it to do so.” N.J.S.A. 48:2-23. *See also*, N.J.A.C. 14:10-1A.7 (requiring telephone utilities to “maintain equipment and facilities as necessary to ensure the provision of safe, adequate and proper service at all times.”). In its response, Verizon completely ignores these statutes and regulations. Customers should not be disconnected for failing to meet Verizon’s arbitrary deadlines. Doing so violates the Board’s statutes and is contrary to the public interest and safety of customers.

3. Fiber may not be as reliable as Verizon asserts.

Rate Counsel has received a customer complaint concerning the fiber service itself, which in certain cases has resulted in disconnected calls, swooshing, clicking, tapping and echoing on a call. These interruptions may occur sporadically at any given time of day, and on any and all calls: incoming, outgoing, long distance and local, on phone calls received from wireless, copper and fiber platforms. Verizon technicians are still trying to determine the root cause of the problems encountered. The definition of safe, adequate and reliable service includes full functionality at any given time of day. Further investigation is needed to ascertain whether this is a general problem or an isolated one.

4. Questions remain regarding compatibility of customer devices with the fiber platform.

In prior filings Rate Counsel has raised concerns regarding customers who currently employ service devices such as medical remote monitoring systems and security alarms, which may not be compatible with fiber and may cease to function after the transition. Consumers have advised that they have been told certain devices will not work with fiber. Verizon, on the other hand, claims that all medical devices will work after the transition. Rate Counsel has been unable

to verify this information. This is a prime example of why the requested Board review is needed. Rate Counsel urges the Board to investigate whether alarm systems and medical and other customer devices are indeed compatible with the new fiber infrastructure. Such a review is necessary to protect public safety.

5. Verizon's discussion of the deployment of fiber in Greenwich and Stowe Creek is misleading. The experience in those towns actually underscores the need for a Board investigation.

Verizon argues that the "FCC and the Board have endorsed deployment of fiber facilities and migration of customers to such facilities, as asserted under the recent FCC IP-Transition Order and through Board support of Verizon's deployment of fiber facilities in the towns of Greenwich and Stowe Creek, New Jersey." Response at p. 2. However, the deployment of fiber facilities in the New Jersey Towns of Greenwich and Stowe Creek were the result of an *Order to Show Cause and Investigative Proceeding* initiated by the Board due to the over-whelming number of complaints by Verizon customers in these towns concerning the chronic deteriorated state of Verizon's copper system and the resulting persistent degraded voice service in those towns.⁴ Far from representing BPU support for Verizon's actions here, the situation in those towns supports Rate Counsel's assertion that BPU involvement is needed to force Verizon to provide safe, adequate and proper service and treat their customers fairly.

It is worth noting that Verizon has yet to resolve the voice and broadband service quality issues for thousands of residents in the many townships bordering and surrounding Greenwich and Stowe Creek. These neighboring towns have documented years of service quality complaints against Verizon regarding the chronic lack of service and the state of disrepair and deterioration of Verizon's copper infrastructure. Yet their requests for fiber or improved copper service have

⁴/ I/M/O the Board's Review of Verizon New Jersey Inc. 's Service Quality Issues, BPU Docket TO12020156, Order dated March 12, 2012.

been denied. The continued state of affairs for Verizon customers in these locations is a matter of concern, not evidence of success.

Rate Counsel notes that it is the lack of reliable service in these townships, likely due to Verizon's *de facto* retirement of its copper facilities, that forced Verizon to migrate the customers in Greenwich and Stowe Creek to the fiber platform and that forces customers in other nearby towns to "clamor for deployment of fiber." Response p.3. Yet, in other areas of the state, Verizon is forcing customers to switch or be disconnected. What this demonstrates is that the transition to fiber is being accomplished haphazardly and that Verizon is using its considerable power over its customers to force them to bend to the Company's wishes. This is not the orderly transition contemplated by the FCC. The Board must step in to investigate the situation throughout New Jersey, and restore order and fairness to Verizon's customers.

6. Verizon's claims of cost savings cannot be substantiated.

Verizon states that "it has avoided approximately 1.4 million repair dispatches by migrating customers to fiber facilities to address repeated service issues with the copper facilities serving those customers. . . and . . . estimates consumer gains from these avoided repairs at \$140 million." *Response*, at p. 3. This claim cannot be substantiated and should not be accepted without further investigation. Verizon has never disclosed the cost to maintain the copper infrastructure despite consistent requests for this information by Rate Counsel in numerous prior proceedings. It thus cannot be determined whether the estimated "savings" were the result of rates collected by Verizon which should have been used for the continual maintenance of the copper infrastructure.

III. Service Discontinuance, Reduction and Impairment Are Subject to Section 214 Application and Review and Must Also Comply with State Regulations.

1. Verizon has failed to obtain necessary approvals or provide adequate notice.

Verizon contends that it has made the required FCC filings and its IP-Transition is compliant under both state and federal regulations. Response at pp. 4-6 and pp. 8-10. Verizon maintains that it is authorized to do so and that the Public Notice of “Short Term Network Change Notification” (“Short Term Public Notice”) filed pursuant to the requirements of §51.325-35 is FCC compliant.⁵ However, Rate Counsel reiterates that the FCC’s *Tech Transition Order* states that reduction, or impairment of service is subject to section 214(a), and prior authorization is required when the actions will discontinue, reduce, or impair service to retail customers. Para. 113, at p. 62. The FCC states:

Therefore, we reject arguments that a carrier need not ever seek Commission approval for discontinuance of service to a carrier-customer. ... As explained above, these arguments ignore the fact specific nature of the conclusions in those proceedings, and they overlook *BellSouth Telephone*. We also find that our clarification is fully consistent with and strengthens the Commission’s finding in these cases that it must distinguish between discontinuances, reductions, or impairments of service that will result in the discontinuance, reduction, or impairment of service to a community or part of a community and those that will not have such an impact on the using public. ... Discontinuance, reduction, or impairment of wholesale service is subject to section 214(a), and prior authorization is required when the actions will discontinue, reduce, or impair service to retail customers, including carrier-customers’ retail end users. ... In such cases, a 214 application is necessary to determine if the impairment of service to the carrier customer’s end users will adversely affect the present or future public convenience or necessity. *Id.* (citation omitted).

Rate Counsel submits that the nature of Verizon’s IP-transition in New Jersey requires Verizon to file an application for approval under Section 214(a) and then provide notice to customers pursuant to 47 U.S.C. § 63.71.⁶ Verizon’s compliance with the Short Term Public

⁵/47 C.F.R. §51.325-35.

⁶/ *Tech Transition Order*, at Paras.137-138, at pp. 76-78 and Para. 145 and fn 497 at p. 81 and Para. 149, p. 85 and Para. 153, at pp. 86-87.

Notice requirements is immaterial as it provides inadequate opportunity to object and review the full impact of the planned reduction and/or discontinuance of services on all customers and thus provides inadequate and/or no public notice to directly affected retail and end-user customers. Assuming *arguendo* that the filing of a Short Term Public Notice under § 51.333 is proper, which it is not, the Notice fails to provide customers with the *Tech Transition Order's* more robust 180-day customer notice.⁷ Moreover, Verizon currently violates the 90-day transition period on some if not all of its customer IP-transitions. Rate Counsel has noted that the implementation date on Verizon's Short Term Notice has and may differ from Verizon's customer notice letters to customers that transition customer services from wireline to fiber within as little as 30-45 days from receipt of the customer's notice letter, thereby cutting the Short Term Notice 90-day implementation period by as much as 25-30 days in violation of § 51.333(b)(2) of the Commission's regulations.⁸ This warrants the Board's investigation, review and oversight.

2. The Board has overarching responsibility to ensure that public utilities provide safe, reliable and proper service pursuant to N.J.S.A. 48:2-23.

As discussed by Rate Counsel in its requests for investigation, state authority to safeguard the public interest in receiving reliable, safe and adequate telecommunications services has not been preempted by federal regulation.⁹ Verizon argues that N.J.S.A. 48:2-23 is silent about the types of facilities (i.e. copper or fiber) that must be used to provide services. Response at pp. 4 and pp. 10-11. Yet, Verizon fails to acknowledge that it is disconnecting customers that do not meet Verizon's deadlines and the regulations clearly authorize the Board to "require any public utility to continue to furnish service and to maintain its property and equipment in such

⁷/ *Id.*, at Para. 16, at pp. 12-13; Para. 23, at pp. 15-16; and Paras. 28, 29 and 30, at pp. 18-20.

⁸/ 47 U.S.C. § 51.533(b)(2); *See also, Id.*, at Para. 28 and *fn* 98, at p. 18.

⁹/ *Id.*, at Para. 96, at p. 54.

condition as to enable it to do so.” N.J.A.C. 14:10-1A.7. Rate Counsel’s petition merely asks the Board to exercise its overarching responsibility to ensure the continued provision of safe and reliable service and the utility company’s obligation to provide services on equipment that will guarantee safe and reliable service.

3. Further investigation is needed concerning the time allowed for migration before suspension of service and the duration of battery back-up life.

In its response Verizon describes its standard in-house notice procedures and practices. Response at pp. 5-6. However, complaints received by Rate Counsel belie that a standard practice are being utilized or followed by Verizon personnel to provide customer notification and follow-up information when Verizon customer representatives and technicians contact customers regarding the migration process. Rate Counsel recently received a complaint from a customer who claims his notice letter provides only a 30-day window, as opposed to a 45-day window to migrate services before complete disconnection and suspension of voice service occurs. Rate Counsel has also been advised through customer complaints that customers have been told by Verizon representatives and/or technicians that the battery back-up unit only has a life-supply/duration of 12-16 hours, which contradicts Verizon’s statement that its battery unit provides 20-hours of standby time for customers. Response at pp. 6-7. These and other discrepancies connected to Verizon’s transition process further support Rate Counsel’s request that the Board take action and investigate the process to ensure fairness to customers and compliance with the law.

4. Contrary to Verizon’s interpretations the FCC’s rulings confirm overarching public interest concerns and the need for continued monitoring by the Board.

Verizon states that the FCC’s *Battery Backup Order* and the additional rules released in the FCC’s August 7, *Tech Transition Order* were released to encourage and support the IP-

Transition. Response at pp. 6-8. Rate Counsel submits that the rules released were for the benefit of customers, in an effort to curtail and limit the potential for customer abuse and to promote public interest by ensuring the continued provision of safe and reliable service. The orderly retirement, reduction and discontinuance of service requires that the Board review and closely monitor the process to avoid the customer confusion and alarm caused by Verizon throughout this process.

5. All interested local and state parties should have been given notice pursuant to the FCC's *Tech Transition Order*.

Verizon further asserts that it is retiring copper facilities in five New Jersey wire centers, has made the required Notice filings at the FCC and has provided copies of same with Board Staff. Response at pp. 4-5. Again whether or not Verizon has made the appropriate filings under FCC regulations and provided the required notice and required information to customers in its notice, is a question of both state and federal regulatory interpretation. For the reasons detailed in Rate Counsel's requests for investigation into this matter, Rate Counsel asserts that Verizon has and continues to violate both state and federal regulations.¹⁰ Moreover, Rate Counsel was not aware that Verizon had provided advance notice and copies of their FCC Notice Filings to Board Staff of the planned transitions in the five wire centers. Rate Counsel was not provided with copies of the notices. Rate Counsel reiterates that the FCC's *Tech Transition Order* specifically finds that "key public agencies" are important players in the process, as guardians of the public interest. The Order strongly encourages cooperation between carriers and state commissions, and other state and local entities to ensure consumers understand and are prepared for the transition. *Id.*, Para. 64, at p. 38 and Para. 78, at p. 47. The FCC finds that "[I]n light of the accelerated pace of copper retirements and the allegations in the record of this and other

¹⁰/ Rate Counsel's Initial Request for Investigation at pp. 2 and pp. 6-9; *See also*, Rate Counsel's Second Request discussion at pp. 4-8.

proceedings, ... that the states should be fully informed of copper retirements occurring within their respective borders so that they can plan for necessary consumer outreach and education”.

Id., Para. 70, at pp. 40-41.

Rate Counsel respectfully urges the Board not to relinquish its authority to oversee and ensure that the transition of services for customers from copper to fiber occurs in an orderly and safe manner, and meets all state and federal regulatory requirements ensuring proper customer notification and education. To accomplish these goals Rate Counsel recommends that the Board initiate an investigation of Verizon’s copper to fiber transition and a process for review and oversight of that transition.

Thank you for your attention and consideration in this matter.

Respectfully Submitted,

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Dated: October 8, 2015.