

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

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I/M/O THE BOARD'S)	APPELLATE DIVISION
INVESTIGATION REGARDING THE)	
RECLASSIFICATION OF)	DOCKET NO.A-004769-14T2
INCUMBENT LOCAL EXCHANGE)	
SERVICES AS COMPETITIVE)	CIVIL ACTION
)	
)	On Appeal from the
)	May 19, 2015 Order of the
)	New Jersey Board of Public
)	Utilities in BPU Docket
)	No. TX11090570

SUPPLEMENTAL APPENDIX ON REPLY
OF APPELLANT
THE NEW JERSEY DIVISION OF RATE COUNSEL
VOLUME I

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Dated: February 9, 2016.

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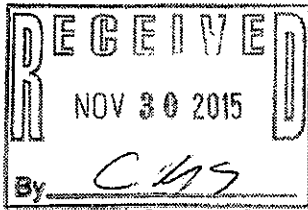
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Volume I

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Attorney for

IN THE MATTER OF VERIZON NEW)	
JERSEY'S DISCONTINUANCE OF)	BOARD OF PUBLIC UTILITIES
LAND LINE TELECOMMUNICATIONS)	
MAINTENANCE, FACILITIES, AND)	
INFRASTRUCTURE)	Docket No.
)	

PETITION ON BEHALF OF RURAL NEW JERSEY COMMUNITIES TO
COMPEL VERIZON NEW JERSEY TO MAINTAIN LANDLINE
TELECOMMUNICATION SYSTEMS

I. INTRODUCTION

This Petition is being filed on behalf of numerous rural communities within southern New Jersey seeking an order from the BPU to investigate and rectify Verizon New Jersey's (hereinafter referred to as "Verizon") discontinuance of maintenance of copper landline facilities and infrastructure which are instrumental to the continued provision of adequate landline telephone and data service to New Jersey customers who are without fiber optic service. The failure of Verizon to comply with its obligations in accordance with Opportunity New Jersey (ONJ) to provide fiber optic service throughout the State of New Jersey and the determination by Verizon to discontinue landline maintenance will effectively cripple the capability of customers in rural areas to maintain adequate telephone, data, and internet service. If fiber optic service is not provided by Verizon then rural customers will be compelled to resort to landline service

which, at best, would provide them with DSL service over existing copper landline infrastructure. In such an event, without adequate landline maintenance, all of these customers will, over time, have their telephone, data, and internet service deteriorate and such service will effectively be lost to these customers. Customers in these areas may also be compromised and at risk due to poorly operating or failures of 9-1-1 communications (including reverse 9-1-1 communications) during emergencies. In addition, the migration to cellular service is inadequate in the rural areas of the State to serve as an adequate substitute for landline or fiber optic service. This creates an enormous disparity between telecommunication service to rural areas as opposed to the more urban, developed, and affluent areas, where it is believed Verizon is attempting to concentrate its profit centers. Verizon has provided fiber optic service availability in other areas of New Jersey but has neglected and refused to provide such service to the Petitioners' communities. This Petition is being filed in an effort to have the Board investigate Verizon's refusal to continue landline copper infrastructure maintenance and to issue an order or orders to Verizon requiring that landlines be maintained and preserved until such time as rural communities have been fully built out with fiber optic telecommunication services, affording them the same quality telephone, internet, and data services as are enjoyed by other communities within the State of New Jersey. Alternately, the Petitioners assert that Verizon should be compelled to meet its Opportunity New Jersey obligations to provide statewide fiber optic service and to ensure that all areas of the State are being provided with equal service.

II. **EXISTING LANDLINE SERVICE WHICH IS NOT SAFE, ADEQUATE, OR PROPER REQUIRES INVESTIGATION AND ACTION BY THIS BOARD.**

PETITIONERS: from the County of Atlantic: City of Estell Manor, Weymouth Township; from the County of Salem: Alloway Township, Lower Alloways Creek, Mannington Township, Township of Pilesgrove, and Upper Pittsgrove Township; from the County of Gloucester: South Harrison Township, from Cumberland County: Commercial Township, Downe Township, Hopewell Township, Lawrence Township, Maurice River Township, City of Millville, Upper Deerfield Township, Fairfield Township, and the County of Cumberland hereby petition the Board of Public Utilities for investigation and an order directing and requiring that Verizon New Jersey be obligated to maintain landline infrastructure until a complete statewide built out of fiber optic occurs, and in support thereof state the following:

1. Verizon New Jersey is an entity providing telephone, data, internet, and telecommunications services to customers within the State of New Jersey.

2. The Board of Public Utilities has jurisdiction over disputes regarding safe and adequate service by a regulated entity to its customers including but not limited to, *inter alia*, any association, corporation, or company that owns, operates, manages, or controls any telephone system for public use pursuant to N.J.S.A. 48:2-13.

3. Pursuant to its regulatory authority, the Board of Public Utilities has promulgated regulations, N.J.S.A. 14:10-1A.6 and 14:10-1A.7 requiring that each telephone utility shall

provide and maintain equipment and facilities as necessary to insure the provision of safe, adequate, and proper service.

4. The responsibilities of a public utility to provide safe, adequate, and proper service pursuant to N.J.S.A. 48:2-21 and 48:3-3 is well established as part of its primary obligation to serve the public interest. See, IMO Valley Road Sewerage Co., 154 N.J. 224, 240 (1998).

5. Pursuant to N.J.S.A. 48:2-23, the Board of Public Utilities, after public hearing and notice may require any public utility to furnish safe, adequate, and proper service.

6. Verizon New Jersey has neglected, failed, and refused to provide adequate, and proper service pursuant to the foregoing statutory authority to residents and customers within the Petitioners' communities.

7. Although Verizon is required to provide such service, its failure to do so, and its continued failure and refusal to meet its maintenance and repair responsibilities to ensure that safe and adequate landline telephone and data transmission are provided throughout New Jersey, is in violation of N.J.S.A. 48:3-3 which forbids a utility from providing or maintaining a service which is improper or inadequate.

8. There are numerous and widespread service deficiencies impacting on safe and adequate service by Verizon to residents and customers in Petitioners' communities. Landline telephone service as well as data and internet transmission over landlines have been interrupted, impeded or lost altogether in adverse weather conditions, including rain, snow, wind, or fog. Static, crackling, and service interruptions impeding voice transmission, complete service

outages in bad weather, and lack of audible voice transmission, have been regularly reported to the Petitioners' governing bodies. In addition, these problems not only affect voice transmission, but data and internet service as well. 9-1-1 service is also affected. Hundreds of customers have complained to the governing bodies regarding the foregoing problems.

9. By way of illustration, these complaints include but are not limited to: A municipality with landline service which, because of deteriorating and unreliable operation, cancelled its landline service and migrated to VOIP through a cable provider; another community with unreliable copper line service (and patchy cellular coverage) which has had safety communications compromised and is in close proximity to a nuclear plant. There have been numerous customer reports in every community that adverse weather conditions (even fog and drizzle) have caused static, crackling, and loss of voice transmission on copper telephone lines and similar interruptions or loss of DSL service. Literally hundreds of such complaints have been received in the Petitioners' communities. At least one of the Petitioners' communities has also documented unreliable and incompetent measures employed to maintain or repair landline service, further compromising reliability.

10. The foregoing widespread service deficiencies impact not only upon adequate and proper service, but also impact upon the health and safety of residents who are using landline telephone service for medical monitoring devices, smoke detectors, carbon monoxide detectors and alarm systems which are directly linked to physicians, hospitals, or to fire and police stations. In addition, 9-1-1 communications and responses are and will be adversely affected by deteriorating landline facilities, resulting in a compromise of public safety response capability,

for which inconsistent cell phone coverage is an inadequate substitute. As a result of deterioration of landline transmission infrastructure these residents' health and property may be at great risk without mandating that copper landlines be adequately maintained by Verizon.

11. In May, 2015, in connection with IMO the Board Investigation Regarding the Reclassification of Incumbent Local Exchange Carrier (ILEC) Services as Competitive-Phase II, Docket No. TX11090570 (at page 31) the Board specifically committed to "monitor the status of Verizon's residential basic exchange service and other services along with the quality of service provided by the company".

12. Accordingly, petitioners request the Board of Public Utilities to investigate the aforesaid service issues and issue an appropriate order to require the needed repairs and maintenance to landline infrastructure providing telephone, data, and internet service to the Petitioners' communities.

13. Verizon's refusal and failure to meet its landline maintenance obligations has caused and will cause significant damage and harm to the residents and businesses within the Petitioner communities.

Wherefore, the Petitioners request that the Board of Public Utilities undertake such inquiries and investigation as may be necessary to address Petitioners' allegations and to issue such order or orders as may be necessary to prevent existing and future damage and harm to Petitioners' communities.

III. LACK OF MEASURABLE PERFORMANCE STANDARDS BY VERIZON NEW JERSEY.

1. In accordance with N.J.A.C. 14:10-1A.9 a telephone utility is required to “take measurements of its performance in relation to the standards of N.J.A.C. 14:19-1A.8.

2. Such records should be retained for not less than 18 months and reported to Board staff under certain specified circumstances, including but not limited to a request of Board staff, or if service standards have not been met for three consecutive months.

3. Pursuant to N.J.A.C. 14:10-1A.8(f) each telephone utility shall insure that statewide average rates of customer trouble reports to the utility “.... shall not exceed 8 per 100 lines per month.”

4. Petitioners aver and allege that the reports of service problems with landline infrastructure including telephone, data, and internet transmissions exceed the standards applicable in N.J.A.C. 14:10-1A.8 and that the record of service histories is significantly lower than the actual incidence of such problems.

5. Petitioners aver and allege that Verizon has manipulated its customer complaint records to such an extent that underreporting has occurred, and moreover that reported incidents of service problems have not been appropriately maintained or compiled.

6. The lack of response to customer complaints and the lack of data, when contrasted with numerous complaints to the petitioners concerning outages of service, lack of service altogether, interrupted service, and other related problems has been so extensive that petitioners aver and allege that Verizon has discouraged or diverted reporting of such problems or has failed

to accurately record reporting of service problems such that they are in violation of the quality service standards set forth in N.J.A.C. 14:10-1A.8(f) and reporting requirements set forth in N.J.A.C. 14:10-1A.9.

7. Because of misleading and inaccurate quality of service reports and a lack of adequate response and cataloging of such complaints, petitioners request that this Board investigate quality of service issues independently, engage in fact finding, and issue such orders as may be necessary to require and enforce obligations imposed upon Verizon New Jersey to comply with both service quality standards and service quality reporting as required pursuant to the regulatory standards.

8. Verizon's failure to maintain adequate quality service and quality reporting records has prevented an accurate assessment of the damage and harm to Petitioners' communities from being measured, thereby contributing and causing a continued lack of adequate and proper service to these communities.

WHEREFORE, Petitioners request that the BPU initiate such inquiries and investigation as may be necessary to address Petitioners' allegations and to issue such order or orders as may be necessary to require that accurate service quality standards and reporting are complied with by Verizon.

IV. VERIZON NEW JERSEY HAS VIOLATED SERVICE STANDARDS TO CUSTOMERS IN PETITIONERS COMMUNITIES UNDER FEDERAL LAW.

1. Pursuant to federal communication standards and findings IMO Technology Transitions, GN Docket No. 13-5, FCC 15-97, (adopted August 7, 2015 at page 50) the FCC specifically determined that "... allowing copper networks to deteriorate is harmful to competition, negatively impacting end users, and that *de facto* retirements should be covered in the copper retirement requirements. We therefore add to our definition of retirement 'any failure to maintain copper loops, subloops, or the feeder portions of such loops or subloops that is the functional equivalent of removing or disabling'".

2. In addition, it has been held by the Federal Communication Commission that neglect of copper lines may, in effect, constitute a *de facto* retirement or a loss of service in accordance with 47 U.S.C. 214(a). That section specifically states that "No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby."

3. Verizon has engaged in an effort to *de facto* impair service or engage in retirement or discontinuance of landline service and infrastructure deliberately and intentionally in violation of 47 U.S.C. 214(a).

4. Because the Federal Communication Commission will rely upon this Board's service quality standards to measure a potential impairment of service, see IMO Technology Transitions at page 113, the petitioners aver and allege that Verizon New Jersey's discontinuance,

impairment, and retirement of landline service constitutes impairment, loss, or retirement of service and that this Board should undertake the necessary investigation and determination as to an impairment or loss of service and to take such measures as may be required to order and direct that Verizon refrain from impairment of service and comply with service quality standards and service quality reporting requirements as mandated by existing State regulations to ensure that adequate, safe, and proper service is provided to Petitioners' communities.

5. As a result of Verizon's refusal or failure to comply with Federal law pursuant to 47 U.S.C. 214(a) the residents and businesses in Petitioners' communities have suffered and will continue to suffer damages and harm arising from Verizon's continued efforts to discontinue landline and copper infrastructure maintenance.

WHEREFORE, Petitioners request that the BPU initiate such investigation and inquires as may be necessary to address Petitioners' allegations and issue such order or orders as may be necessary to require that impairment of, discontinuance of, or retirement of safe, adequate, and proper landline service to Petitioners' communities is prevented.

V. THIS BOARD SHOULD UNDERTAKE TO RECLASSIFY VERZON NEW JERSEY'S BASIC TELEPHONE SERVICE IN ACCORDANCE WITH N.J.A.C. 14:10-5.6(c).

1. On or about May 19, 2015, the Board of Public Utilities approved a Stipulation Agreement with Verizon New Jersey pursuant to which a reclassification was granted of Verizon's ILEC (Incumbent Local Exchange Carrier) services as competitive pursuant to N.J.S.A. 48:2-21.19(b).

2. In that proceeding, IMO of the Board of Investigation regarding the Reclassification of Incumbent Local Exchange Carrier Services as Competitive, Phase II, Docket No. TX11090570 (5/19/15) numerous parties opposed the agreement including municipalities and the League of Municipalities.

3. Due to a significant lack of meaningful competition in the Petitioners' communities there is a lack of widely available VOIP through fiber optic or cable service and there is no widely available and reliable cell phone service. Despite coverage mapping indicating that cell coverage is available throughout many, if not all of Petitioners' communities, such mapping is patently lacking in accuracy and gaps in cell phone service exist throughout Petitioners' communities (see State Broadband Map and coverage issues existing in Cumberland and Burlington Counties, <http://connectingnj.state.nj.us/map/about/>). In addition, voice over internet protocol (VOIP) is also not widely available and cable service in rural areas through which telephone communications could be provided, is not widely available, and if available is only available in the more densely populated areas of the Petitioners' communities.

4. As a result of the lack of services mentioned in the preceding paragraph, there is a "lack of like or substitute services in the relevant geographic area" N.J.A.C. 14:10-5.6. This problem is exacerbated by Verizon's refusal to meet its Opportunity New Jersey (ONJ) fiber optic build out of the entire State of New Jersey.

5. As a result of the problems encountered respecting Verizon's service, together with its service quality standards and service quality reporting, there is a lack of appropriate and

meaningful competition with respect to telephone and telephone communications, internet and data services.

6. Pursuant to N.J.A.C. 14:10-5.6(c) the Board of Public Utilities can not only monitor the competitiveness of telecommunications services and/or providers, but can also request information to conduct an analysis as to whether or not such services are becoming more or less competitive. It is respectfully requested that such an investigation, monitoring, and requests for necessary information should be undertaken by the Board.

7. Pursuant to N.J.A.C. 14:10-5.6 the Board of Public Utilities has the authority to reclassify a service that had previously been found to be competitive if, after notice and a hearing, one or more of conditions set forth therein are met. Included among those conditions are such criteria as a lack of significant presence of competitors, the lack of substitute or like services in a relevant geographic area or the failure of a carrier to provide safe, adequate, or proper service. Additional reasons include that the public interest is no longer served by regulatory flexibility that has been provided to a carrier.

8. Providing the Petitioners' communities with safe, adequate, or proper service and a reclassification of Verizon pursuant to N.J.A.C. 14:10-5.6 should be undertaken pursuant to investigation, notice, and hearing to reclassify Verizon's basic telephone service in accordance with N.J.A.C. 14:10-5.6.

WHEREFORE, Petitioners request that the BPU undertake a reclassification review of Verizon's basic telephone service and its competitive and noncompetitive business operations pursuant to N.J.A.C. 14:10-5.6(c).

VI. VERIZON NEW JERSEY HAS FAILED TO MEET ITS OPPORTUNITY NEW JERSEY (ONJ) OBLIGATIONS.

1. On April 23, 2014, the Board of Public Utilities approved a Stipulation Agreement between Verizon and staff regarding obligations of Verizon pursuant to Opportunity New Jersey (see IMO Verizon New Jersey, Inc.'s Alleged Failure to Comply with Opportunity New Jersey Commitments, Docket No. TO12020155 (4/24/14)).

2. Pursuant to that Stipulation (at page 14) the Board's order states that "The utilization of DSL to fulfill ONJ obligations has not been an issue over the years and thus the Board has considered DSL acceptable to meet the ONJ broadband requirement. [Verizon] has reported DSL deployment as the means of deployment towards its ONJ commitment for many years and it has not been asserted in the past by the Board that DSL in any way is insufficient."

3. However, Verizon itself has conceded the importance of fiber optic build out and the inferior quality and performance of copper land line telecommunications service. See IMO Rate Counsel's Request for an Investigation into Verizon New Jersey's Continued Use of its Copper and Migration from its Copper Infrastructure, Page 2, BPU Docket No. T015060749 where Verizon stated "... fiber provides the best and most reliable platform to meet customer's communications needs now and into the future". Despite this acknowledgement Verizon persists in its efforts to renege upon its commitment to complete statewide fiber optic build out and instead attempts to rely upon inferior and poorly maintained (if at all) copper based infrastructure.

4. Given the Stipulation between Verizon and the Board staff regarding Verizon's obligations under Opportunity New Jersey and Verizon's subsequent declaration to discontinue landline infrastructure maintenance, the deterioration of and eventual loss of DSL and telephone service becomes an inevitability. Moreover, numerous complaints are already being received within the Petitioners' communities that many residents have interruptions to their internet DSL service and it becomes unavailable or blocked as heretofore described.

5. Digital subscriber lines (DSL) require dependable land line copper infrastructure which, due to a lack of maintenance, will deteriorate and render DSL service unreliable or unavailable to provide safe and proper service to Verizon's customers.

6. As a result of Verizon's intention to discontinue copper land line infrastructure maintenance, Verizon is not and will not meet its ONJ obligations. It is, therefore, requested that this Board investigate or take appropriate action to ensure that ONJ commitments by Verizon to provide safe, adequate, and proper DSL and telephone service.

7. The Petitioners' communities and residents and businesses therein have been caused and will be caused future harm and damage arising from Verizon's failure to meet its Opportunity NJ obligations.

WHEREFORE, Petitioners request that the BPU investigate Petitioners' allegations and issue such order or orders as may be necessary to enforce Verizon's compliance with its Opportunity NJ obligations.

VII. AS A RESULT OF ITS FAILURE TO MAINTAIN LANDLINE INFRASTRUCTURE, VERIZON HAS VIOLATED N.J.S.A. 48:2-21.18(c) BY MISDIRECTING FUNDS FROM ITS RATE REGULATED BUSINESS IN ORDER TO SUBSIDIZE ITS COMPETITIVE SERVICES.

1. Pursuant to N.J.S.A. 48:2-16, the Board of Public Utilities has supervisory and regulatory powers over every public utility. Such regulatory power includes but is not limited to compliance with the laws of the State, any municipal ordinance, or the charter of the public utility. Verizon is subject to the aforesaid regulatory power.

2. Included among the regulatory powers to which Verizon New Jersey is subject, the Board may investigate, on its own initiative, or upon a complaint, any matter concerning a public utility including the condition of property of a public utility pursuant to N.J.S.A. 48:2-19, as well as testing the products or equipment of a utility and the service it provides to its customers, pursuant to N.J.S.A. 48:2-20.

3. Pursuant to N.J.S.A. 48:2-21.18, Verizon New Jersey is a local exchange telecommunications company regulated under an alternative form of regulation. Pursuant to such an approved plan, Verizon is required to not "unduly or unreasonably prejudice or disadvantage a customer class or providers of competitive services." Further, the regulatory framework must be in the public interest, and enhance economic development together with a program of service quality standards.

4. In addition, any local exchange telecommunications company which is subject to an alternative form of regulation pursuant to N.J.S.A. 48:2-21.18 shall not use revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize competitive services.

N.J.S.A. 48:2-21.19(e)(4) also prohibits telecommunications companies from making or imposing unjust preferences, discriminations, or classifications for noncompetitive services.

5. Verizon has earned revenues from noncompetitive services and should be prohibited from using such revenues earned in conjunction with noncompetitive services to subsidize its competitive services including cable and internet services.

6. Verizon has earned and used revenues which have not been expended for their intended purpose to provide noncompetitive service throughout the State of New Jersey and instead is using such revenue for competitive services to its economic benefit.

7. Petitioners allege and aver that Verizon has misused money which was intended to be utilized for a noncompetitive services including its telephone service over copper landline infrastructure and has instead diverted such funding into its competitive unregulated business contrary to N.J.S.A. 40:2-21.18.

8. Further, petitioners believe and allege that based upon the volume of complaints concerning current landline services provided by Verizon, that Verizon has diverted revenue from noncompetitive service to subsidize its competitive services while at the same time unreasonably prejudicing or disadvantaging a customer class, i.e., rural and lower income users, has failed to enhance economic development, and has failed to insure the affordability and viability of protected telephone services, all in violation of N.J.S.A. 48:2-21.18 and N.J.S.A. 48:2-21.19. Petitioners, therefore, request that this Board investigate the utilization of Verizon New Jersey's funds derived from Opportunity New Jersey to insure that such funding is being and will be used in accordance with statutory and regulatory requirements and to conduct such

necessary investigation and take such other action as may be appropriate to enforce legal compliance with respect to the use and misuse of such revenue. Such a review should include, as the Board may direct, "an independent audit or accounting as may be necessary to allow a proper allocation of investment, costs, or expenses, subject to the jurisdiction of the Board" pursuant to N.J.S.A. 48:2-21.18(d).

WHEREFORE, Petitioners request that the BPU investigate Petitioners' allegations respecting Verizon's alleged violation by Verizon of N.J.S.A. 48:2-21.18 regarding the use of income from its regulated business to fund its competitive services and issue such order or orders as may be necessary to prevent such a misuse from occurring in the future.

VIII. THIS BOARD SHOULD ASSIST PETITIONERS' COMMUNITIES TO OBTAIN COMPLETE FIBER OPTIC BUILD OUT.

1. Petitioners are rural communities or contain portions of rural areas which are underserved with respect to the most modern and up to date telephone, data, and internet service.

2. In the event that regulated providers of such services such as Verizon either fail to or are not required to provide adequate, modern, and up to date service to residents in Petitioners' communities, such that Verizon will enhance economic development while maintaining affordable rates, as required by law, Petitioners' communities will experience lack of economic growth and deterioration of economic opportunities, including but not limited to educational opportunities for students and families living within the Petitioners' communities.

3. As recognized by the Broadband Opportunity Council Report and Recommendations, August 20, 2015 (at 6) rural and tribal regions of the nation have inadequate coverage to meet community needs. See, National Telecommunication and Information Administration, U.S. Dept. of Commerce, Broadband Opportunity Council Report and Recommendations, August 20, 2015, and March 23, 2015, Presidential Memorandum "Expanding Broadband Development and Adoption by Addressing Regulatory Barriers and Encouraging Investment & Training."

4. In addition, adequate service today has "... steadily shifted from an optional amenity to a core utility for households, businesses, and community institutions, and ... is taking its place alongside water, sewer, and electricity as essential infrastructure for communities." See, Broadband Opportunity Council Report at page 12.

5. As a means toward insuring that all residents and communities within the State of New Jersey have equal access to communication facilities for voice, data, and internet services, petitioners are requesting that the Board of Public Utilities take such steps and engage in such investigation and efforts as may be required and necessary to insure that alternative forms of funding and development opportunities exist for Petitioners' communities to insure that adequate, affordable, and the most modern and up to date telephone, internet, and data communication facilities are available to the residents and business in such communities.

6. Petitioners, therefore, urge and request that this Board investigate alternative funding sources, measures, and opportunities that will insure that Petitioners' communities are not placed in a disadvantaged position with respect to telephone, data, and internet services as compared to other areas within the State of New Jersey.

7. One such resource source may be the Connect America Fund, but the petitioners are unaware that any steps have been taken by the State of New Jersey or by this Board to insure that such funding mechanisms and opportunities, via alternative means to insure adequate communications and internet services, have been undertaken either by this Board or the State of New Jersey.

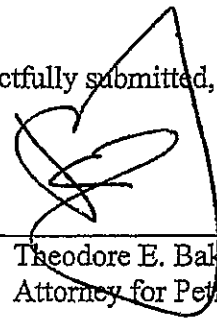
8. Accordingly, the petitioners request that this Board engage in and take such steps and measures to assist Petitioners' communities to insure that telephone communications, data, and internet services are equally available to the residents of Petitioners' communities as they are in other areas of the State of New Jersey.

WHEREFORE, petitioners request appropriate relief from the Board of Public Utilities in order to address the aforesaid issues and complaints brought before the Board including an order or orders directing Verizon to respond to the allegations herein and the initiation of an investigation of Petitioners' allegations.

Dated: 11/24/15

Respectfully submitted,

By:



Theodore E. Baker
Attorney for Petitioners

VERIFICATION

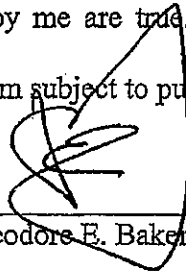
I, Theodore E. Baker, Esquire, of full age, certify and say as follows:

1. I am County Counsel to the County of Cumberland. I have read the foregoing Petition and the factual allegations contained therein are true and accurate to the best of my information, knowledge, and belief.

I certify that the foregoing statements made by me are true. I am aware that if the foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

11/24/15



Theodore E. Baker

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

IN THE MATTER OF)	
)	
·VERIZON NEW JERSEY INC.)	
DISCONTINUANCE OF LAND LINE)	DOCKET NO. TO15121325
TELECOMMUNICATIONS MAINTENANCE,)	
FACILITIES AND INFRASTRUCTURE)	

RESPONSE OF VERIZON NEW JERSEY INC.

Verizon New Jersey Inc. (“Verizon”) files this response to the Petition on Behalf of Rural New Jersey Communities to Compel Verizon New Jersey to Maintain Landline Telecommunications, filed with the Board of Public Utilities (“Board”) on November 24, 2015 (“Petition”).¹ Verizon respectfully requests that the Board dismiss this Petition. While styled as an attempt to address service quality issues, the Petition is in fact a thinly-veiled attempt to force Verizon to deploy fiber-optic facilities throughout these communities by creating a service crisis that does not exist. In support of that objective, the Petition offers largely unsubstantiated allegations about Verizon’s service quality in Southern New Jersey and contains inaccurate assertions about Verizon’s deployment obligations in New Jersey. In fact, Verizon has consistently met the Board’s Customer Trouble Report Rate (“CTRR”) metric – the best overall indicator of Verizon’s network reliability in New Jersey. Verizon’s solid CTRR metric performance over an extended time is no accident. It is a direct result of the significant financial

¹ The County of Cumberland and sixteen (16) cities and townships from Atlantic, Salem, Gloucester and Cumberland Counties have petitioned the Board for an investigation and order requiring Verizon to maintain its landline infrastructure until it can complete a statewide build-out of Verizon’s fiber optic network. Petition at 3. The Petitioners claim, based on a small number of customer complaints apparently received by their governing bodies, that Verizon has discontinued maintenance of its copper network, which provides voice and data services to their constituents in these rural South New Jersey communities. They further claim that this alleged decision is negatively impacting both residential and business customers in their communities. The Petitioners ask the Board (1) to investigate Verizon’s failure to repair its network, (2) to order Verizon to make the required repairs until Verizon deploys fiber-optic facilities to these communities, and (3) to compel Verizon to meet its (purported) Opportunity New Jersey (“ONJ”) obligation to deploy a fiber-optic network statewide. Petition at 1-2.

investments Verizon has made in its New Jersey network to ensure that its customers continue to have access to safe, adequate, and proper service. Accordingly, there is no need for the Board to commence the investigation sought by the Petition. Further, the Board should dismiss the Petition to the extent it suggests that Verizon has an obligation to build a fiber-optic network across the entire State of New Jersey, since no such obligation exists.

I. VERIZON IS MAINTAINING ITS COPPER NETWORK IN SOUTHERN NEW JERSEY IN COMPLIANCE WITH NEW JERSEY LAW

Based entirely on anecdotal reports, the Petitioners allege that Verizon has “neglected, failed, and refused to provide adequate, and proper service [pursuant to *N.J.S.A. 48:3-3*²] to residents and customers within the Petitioners’ communities,” alleging “numerous and widespread service deficiencies impacting on safe and adequate service...in Petitioners’ communities,” and that “[h]undreds of customers have complained to the governing bodies regarding the foregoing problems.” Petition at 4, 5. The Petition further describes the problems of two communities, but does not provide any more detail other than sweeping allegations of customer reports of service outages in their communities. From these anecdotal reports, Petitioners jump to the conclusion that Verizon has made a “determination” to discontinue maintenance of its copper network in these communities. Petition at 1. Verizon’s consistently solid CTTR performance, both statewide and within the 16 communities referenced in the Petition, as well as Verizon’s significant financial investments in its copper network in Southern New Jersey, support the conclusion that Verizon continues to meet its statutory obligation to provide safe, adequate, and reliable service to its customers in Southern New Jersey.

² *N.J.S.A. 48:3-3(a)* provides that [n]o public utility shall provide or maintain any service that is unsafe, improper or inadequate....”

A. Verizon's Customer Trouble Report Rate Demonstrates Verizon's Commitment to Maintain its Copper Network in South New Jersey

Verizon takes its obligation to provide quality service to its customers seriously, and it is reflected in the service quality reports. Verizon's monthly service quality performance data that is filed with the Board demonstrates that Petitioners' claims are totally unfounded. The Board's rules require that "[e]ach telephone utility shall ensure that its Statewide average rate of customer trouble reports to the utility shall not exceed eight per 100 lines per month." *N.J.A.C.* 14:10-1A.8(f). However, Verizon is obligated to meet a much more aggressive monthly CTRR metric than is generally required of New Jersey telephone companies. Under its current plan of alternative regulation, referred to as "PAR2," Verizon is obligated to meet a CTRR metric of 2.3 reports per 100 lines per month.³

The CTRR is the most reliable indicator of network reliability because it accurately tracks the number of service-impacting network-related events experienced by our customers every day.⁴ On a statewide basis, Verizon's monthly CTRR rate has consistently averaged well below the BPU's 2.3 standard. In Attachment A, we set forth Verizon's statewide CTRR results for 2014 and 2015. In every month over the past two years, Verizon's results have been below the 2.3 troubles per 100 access lines standard required by the Board, and in most months, the reported results were well below the 2.3 standard. Also in Attachment A, we set forth Verizon's CTRR results for 2014 and 2015 for the Petitioners' sixteen communities. Similar to the statewide results, in most months, Verizon has consistently averaged well below the 2.3 standard for all sixteen communities. As the data clearly demonstrate, *Verizon is fully compliant with*

³ *I/M/O the Application of Verizon New Jersey Inc. for Approval (i) of a New Plan for an Alternative Form of Regulation and (ii) to Reclassify Multi-line Rate Regulated Business Services as Competitive Services, and Compliance Filing*, Docket No. TO01020095, August 19, 2003, Attachment B.

⁴ The trouble report data is routinely monitored by Verizon's Operations personnel in order to determine the source of new service issues, which analysis drives Verizon's network maintenance activities across New Jersey.

both the N.J.A.C. and the PAR2 standards for CTRR, both statewide and in Southern New Jersey.

This data flatly refutes many of the Petitioners' allegations and illustrates a number of important points. First, contrary to Petitioners' allegations, Verizon continues to maintain its copper network in Southern New Jersey and throughout the State. If the Petitioners' allegations were true, the Board would have seen reports showing a continuing upward trend in Verizon's CTRR performance. That has not happened. Verizon is and has been committed to providing good service to its customers, both in Southern New Jersey and across the entire state, as evidenced by the data in Attachment A. Second, the Petitioners' implication that Verizon's customers in Southern New Jersey have been abandoned by Verizon is false and is contradicted by the monthly CTRR data for the sixteen Southern New Jersey communities, which experienced network trouble report rates well below the Board-approved standard of 2.3 troubles per 100 access lines. In short, Verizon is *not* discriminating against Southern New Jersey's rural communities.

Petitioners compound their unsupported allegations about Verizon's commitment to its customers with the wholly unsubstantiated claim that Verizon has manipulated its customer complaint records such that Verizon is not accurately reporting trouble reports to the Board. Petition at 7-8. Yet, Petitioners present not a scintilla of evidence to support this very serious charge. The basis for their claim appears to be nothing more than a *belief* that the Verizon reports to the Board "cannot be true" because of the numbers of complaints brought to the attention of municipal officials. Yet, Petitioners made no effort to tabulate the numbers of complaints that they have received, to provide Verizon the names and telephone numbers of the complaining customers, or to otherwise provide any meaningful data to support their allegations.

The Petition thus fails to offer any meaningful evidence that would warrant an investigation of this issue.

To be clear, to the extent any of these communities experience any specific service issues, Verizon will work directly with them to address any such issues. Petitioners, however, have failed to articulate any systemic issue that might warrant the Board's attention at this time.

B. Verizon Is Proactively Maintaining Its Copper Network in Southern New Jersey

Consistent with its commitment to its customers and its legal obligations, Verizon continues to dedicate *substantial* resources to the maintenance of its copper infrastructure in Southern New Jersey through its Proactive Preventative Maintenance Program. Since January 2014, Verizon has spent capital and expense dollars totaling approximately [BEGIN VERIZON PROPRIETARY INFORMATION] [REDACTED] [END VERIZON PROPRIETARY INFORMATION] in the Southern New Jersey counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem. Over 60 percent of that amount [BEGIN VERIZON PROPRIETARY INFORMATION] [REDACTED] [END VERIZON PROPRIETARY INFORMATION] was expense dollars spent on maintaining and improving the existing plant in Southern New Jersey while the remaining amount [BEGIN VERIZON PROPRIETARY INFORMATION] [REDACTED] [END VERIZON PROPRIETARY INFORMATION] was capital dollars spent on new plant investment serving residents in the Southern counties.

Contrary to the assertions of the Petitioners, Verizon devotes significant resources and dollars to analysis of customer trouble reports through its Cable Rehabilitation and Infrastructure Improvement Program ("IIP"). Overall since 2007, Verizon has spent approximately [BEGIN VERIZON PROPRIETARY INFORMATION] [REDACTED] [END VERIZON PROPRIETARY INFORMATION] on IIP in New Jersey, which includes proactive cable maintenance, battery replacement, air pressure movement, and cable rehabilitation. Verizon routinely analyzes

customer trouble reports using its Proactive Preventive Maintenance Tool, which allows for the creation and dispatch of work packages for purposes of network maintenance. These work packages fall under two categories: (1) Capital, and (2) Expense. Expense work packages are for customer-reported troubles that can be permanently repaired *without cable replacement*. Capital work packages, which would be considered IIP, are *used for copper cable replacement* only where conditions cannot be permanently repaired under the Expense package guidelines. In the sixteen southern communities referenced by the Petitioners, Verizon has completed a total of [BEGIN VERIZON PROPRIETARY INFORMATION] ■ [END VERIZON PROPRIETARY INFORMATION] Expense packages and [BEGIN VERIZON PROPRIETARY INFORMATION] ■ [END VERIZON PROPRIETARY INFORMATION] Capital packages since 2007.

This evidence of Verizon's maintenance activities and investment in the copper network wholly contradicts the unsubstantiated allegation made by Petitioners that Verizon has made a business decision to discontinue maintenance of the copper network in these communities. Verizon will continue to dedicate significant capital and expense dollars to the maintenance of the copper network serving our customers in Southern New Jersey because we understand that the performance and quality of our network is important to our customers.

We must also address briefly the similarly unfounded allegation in the Petition that Verizon has engaged in a *de facto* retirement of its copper loop facilities in these communities, without the necessary FCC approval. Petition at 9-10. Petitioners allege that "Verizon has engaged in an effort to *de facto* impair service or engage in retirement or discontinuance of landline service and infrastructure deliberately and intentionally in violation of 47 U.S.C. 214(a)." Petition at 9. This claim can be summarily dismissed by the Board. The monthly CTRR data plus the significant financial investment discussed above undercuts this claim. If the

claim had any basis, one would expect to see months in which Verizon failed to meet the CTRR standard. That is simply not happening.

II. VERIZON DOES NOT HAVE A STATEWIDE FIBER BUILD-OUT OBLIGATION

The Petition is based, in part, upon the false premise that Verizon's Opportunity New Jersey ("ONJ") obligations require a statewide build-out of fiber-optic facilities. Petition at 2 ("Verizon should be compelled to meet its [ONJ] obligations to provide statewide fiber optic service....") and 13 (Verizon persists in its efforts to renege upon its commitment to complete statewide fiber optic build out..."). Petitioners are thus asking the Board to enforce a commitment that was never made and one that is not grounded in New Jersey law.

Verizon has two specific obligations in New Jersey with respect to deployment of non-voice services: (1) to deploy *broadband* services to the entire state, pursuant to its ONJ commitment⁵, and (2) to deploy cable television service to 70 municipalities pursuant to its system-wide cable television franchise.⁶ No statute, Board order or rule, or other law obligates the company to a statewide *fiber* build-out. Petitioners confuse, perhaps purposely, the statewide deployment of *broadband* services with a statewide build-out of Verizon's fiber network, which Verizon is not obligated to do. As determined by the Board in 2014: "Many commenters argue that the ONJ obligation is fiber; it is not. DSL is less robust than fiber but fiber is not required

⁵ *I/M/O the Application of New Jersey Bell Telephone Company for Approval of its Plan for an Alternative Form of Regulation*, Docket No. T092030358, May 6, 1993 ("PAR 1 Order"). *I/M/O the Application of Verizon New Jersey Inc. for Approval (i) of a New Plan for an Alternative Form of Regulation and (ii) to Reclassify Multi-Line Rate Regulated Business Services as Competitive Services, and Compliance Filing*, Docket No. TO01020095, Decision and Order, August 29, 2003 ("PAR 2 Order"). The scope of this obligation was the subject of a settlement between the Board Staff and Verizon, approved by the Board on April 29, 2014 in *I/M/O Verizon New Jersey, Inc.'s Alleged Failure to Comply with Opportunity New Jersey Commitments*, Docket No. TO12020155 ("Order Approving Stipulation of Settlement"). This order is currently on appeal by the Rate Counsel to the Superior Court, Appellate Division.

⁶ See *N.J.S.A. 48:5A-25.2*; see also *I/M/O the Application of Verizon New Jersey, Inc. for Renewal of a System-wide Cable Television Franchise*, Docket No. CE13080756, January 30, 2014.

under ONJ. The Board ordered broadband up to 45 mbps but did not order a specific transmission medium.”⁷

Nevertheless, Verizon *is* seeking to deploy its fiber network to locations outside the so-called “70 must build” towns covered by its cable television franchise, as the needs of the business dictate. For example, Verizon’s network transformation initiative – in which Verizon is planning, consistent with the FCC’s rules, to discontinue voice service over copper facilities in order to provide the same services over the fiber network – includes two wire centers in Southern New Jersey – Collingswood and Haddonfield. Further, as part of its settlement of the recent ONJ proceeding, Verizon has agreed to a Bona Fide Retail Request (“BFRR”) process under which communities can secure access to broadband services from Verizon, provided certain conditions are satisfied. To date, one community, Woodland Township has satisfied the requirements and Verizon made the decision to deploy its fiber network to that community in order to satisfy its BFRR requirement. To be clear, Verizon is not required to deploy fiber to communities who qualify for broadband service under the BFRR process; Verizon has the option to utilize other methods to provide broadband, such as DSL or wireless.⁸

III. PETITIONERS’ OTHER CLAIMS ARE WITHOUT MERIT

Petitioners have made a number of other baseless claims for relief flowing from or concerning Verizon’s alleged failure to maintain its copper network in Southern New Jersey. We address those briefly here.

Reclassification of basic service: Petitioners argue that the Board should reclassify Verizon’s basic service as noncompetitive, alleging that “[a]s a result of the problems

⁷ Order Approving Stipulation of Settlement at 14.

⁸ We must note here that none of the communities covered by this Petition have submitted the required number of eligible applications in order to qualify for broadband under the BFRR process.

encountered respecting Verizon's service, together with its service quality standards and service quality reporting, there is a lack of appropriate and meaningful competition with respect to telephone and telephone communications, internet and data services." Petition at 11-12. Petitioners request that the Board undertake a review of the competitiveness of Verizon's basic telephone service. *Id.* at 12. As the Board is well aware, last year the Board completed a lengthy proceeding on the competitiveness of Verizon's retail services. The Board approved, after developing an extensive evidentiary record on the status of telecommunications competition in New Jersey, a stipulation between Board Staff and Verizon that reclassified the final four Verizon rate-regulated services as competitive.⁹ In this Petition, the Petitioners present *no evidence* of changed market conditions that would warrant the requested review. This request should be dismissed.

Cross-subsidy: The Petitioners allege that Verizon is using revenues from non-competitive services to subsidize competitive services, in violation of *N.J.S.A. 40:2-21.18*. That statute provides that "[n]o local exchange telecommunications company may use revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize competitive services." *N.J.S.A. 40:2-21.18(c)*. As the Board found in 2015, Verizon has no non-competitive retail services.¹⁰ Verizon faces intense competition in all its retail markets and lacks the ability to raise rates of *any* services to generate additional revenues that can be used to subsidize rates for competitive services. Petitioners' claim is wrong both on the facts and the law and should be summarily dismissed.

⁹ *I/M/O the Board Investigation Regarding the Reclassification of Incumbent Local Exchange Carrier (ILEC) Services as Competitive – Phase II*, Docket No. TX11090570, June 5, 2015 ("Reclassification Order").

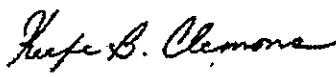
¹⁰ Reclassification Order at 30-31.

Fiber service for rural communities: Finally, the last claim for relief in the Petition is not directed specifically at Verizon. Rather, it is a request from these communities for help in securing a fiber build-out to rural New Jersey. The Petitioners ask the Board to investigate opportunities to bring advanced services to their communities. If the Board sees merit in conducting the requested investigation, we request that it be severed from its review of its allegations against Verizon, which we believe, as stated above, should be dismissed summarily.

CONCLUSION

As shown above, the Petition is not grounded in facts or law. The claims that Verizon has made a conscious decision to discontinue maintenance of its copper network in Southern New Jersey are clearly contradicted by the monthly performance reports filed by Verizon with the Board on its CTRR performance, the most reliable indicator of network reliability. Moreover, Verizon has and continues to invest significant dollars in its copper network in Southern New Jersey to ensure that its customers continue to have safe, reliable, and proper services. In short, there is no reason for the Board to commence the investigation sought by the Petitioners. For all of the reasons stated above, the Board should dismiss the Petition in its entirety.

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Network Troubles/100 Lines

2014	Standard	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14
MAINTENANCE													
CTRR - NJ State	Standard												
	2.3												
Hopewell Twp													
Weymouth Township													
Downe Township													
Estelle Manor													
South Harrison Township													
Alloway Township													
Lower Alloways Creek													
Mannington Township													
Town of Pilesgrove													
Upper Pittsgrove Township													
Commercial Township													
Lawrence Township													
Maurice River Township													
City of Millville													
Upper Deerfield Township													
Fairfield Township													

2015	Standard	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15
MAINTENANCE													
CTRR - NJ State	Standard												
	2.3												
Hopewell Twp													
Weymouth Township													
Downe Township													
Estelle Manor													
South Harrison Township													
Alloway Township													
Lower Alloways Creek													
Mannington Township													
Town of Pilesgrove													
Upper Pittsgrove Township													
Commercial Township													
Lawrence Township													
Maurice River Township													
City of Millville													
Upper Deerfield Township													
Fairfield Township													