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**Via Electronic Mail Only**

October 8, 2020

Ms. Aida Camacho-Welsh, Board Secretary  
New Jersey Board of Public Utilities  
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Re: In the Matter of Township of Alloway's Bona Fide Retail Request  
Application to Verizon NJ and Compliance with the Requirements Thereof.  
**BPU Docket No.: TC19121515; and**

In the Matter of Verizon New Jersey, Inc. - Discontinuance of Land Line  
Telecommunications Maintenance, Facilities, and Infrastructure  
Township of Washington (Burlington County) Request for Declaratory  
Determination of Verizon's Obligation Under Docket No. TO12020155.  
**BPU Docket No.: TC20080544**

Dear Board Secretary:

The New Jersey Division of Rate Counsel ("Rate Counsel"), due to the similarity of issues and in the interests of efficiency, files the comments below on the two above referenced petitions for the Board's consideration. The filing is provided electronically only, kindly acknowledge electronic filing for Rate Counsel's record.

**Background**

The State Legislature passed the Telecommunications Act of 1992 allowing the Board to approve an alternative form of regulation plan pursuant to N.J.S.A. 48:2-21.18(a) to address changes in technology and the structure of telecommunications industry; to modify the regulation of services; and to promote economic development. N.J.S.A. 48:2-21.16(a)(5). In April of 1993, the Board approved New Jersey Bell's ("Verizon NJ") application under an a plan of alternative regulation ("PAR 1") that included the upgrade of its public switched telephone network

throughout its New Jersey service territory, enhanced service metrics and several infrastructure deployment obligations, including but not limited to Opportunity New Jersey (“ONJ”) which required upgrading the public switched telephone network deploying state of the art technology throughout its service territory, initially digitalizing subscriber lines, then further upgrading the infrastructure by deploying fiber and/or fiber optics that would provide voice, and other communications and video services on the fiber platform; and Access New Jersey (“ANJ,”) a program to fund the wiring of all public and not-for-profit schools and libraries for broadband capability by the year 2000. These programs were agreed to by Verizon and required in exchange for regulatory flexibility regarding Verizon’s rates for its then regulated services.<sup>1</sup> Under PAR 2, the Opportunity New Jersey obligations (upgrades and deployment targets) remained the same and additional enhancements were added to the Access New Jersey program that would ensure the transition of voice service from a copper to a digital service platform and eventually to a fiber optic platform that would also be suitable for deployment of voice, video and data services such as broadband.<sup>2</sup> It was the State’s expectation that premier telecommunications and communications services (“Wideband Digital Service” with a speed of 1.5 Mbps with 100% deployment by the end of 1999, and “Broadband Digital Service” with a speed of 45 Mbps) would start in 1996 and would be completed reaching the entire state, providing full broadband

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<sup>1</sup> In the Matter of the Application of New Jersey Bell Telephone Company for Approval of its Plan for an Alternative Form of Regulation, Decision and Order, Docket No. T092030358, (May 6, 1993), (PAR-1 Order).

<sup>2</sup> In the Matter of 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, Decision and Order, Docket No. TO01020095, pp. 6-7 and Attachment A, §II.A; §IIA.2, and §A.1 (June 19, 2002), (PAR-2 Order).

capability by 2010.<sup>3</sup> In 2012, the Board issued an Order to Show Cause why the Board should not find that Verizon failed to comply with the PAR-1 Order in providing full broadband capability by 2010.<sup>4</sup> Verizon responded that it was in compliance its PAR obligations. In resolution of the Order to Show Cause, Board Staff and Verizon negotiated a Stipulation of Settlement implementing a new broadband request process known as a bona fide retail request or (“BFRR”) under ONJ.<sup>5</sup> The tentative Stipulation of Settlement was opened for public review under a 45-day comment period. The public and Rate Counsel provided comments objecting to various settlement terms and conditions of service. On April 22, 2014, the Board approved the stipulation of settlement signed by Verizon and Board Staff. (“ONJ OSC Order”).

The ONJ OSC Order directed Verizon within nine months (with opportunity for an extension of an additional six months, if the total number of BFRR deployments exceeded twenty (20) within a calendar year) from receipt of a BFRR application to provide broadband service to residential or single-line business customers in Verizon’s service territory with a minimum 35 customer threshold within the same census tract requesting the service, if applicants had no other available broadband provider (no access to 4G-based wireless service) and signed a one-year contract, paying a \$100 deposit (that would be credited towards service).<sup>6</sup> The ONJ

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<sup>3</sup> In the Matter of the Board’s Inquiry into Bell Atlantic - New Jersey, Inc.’s Progress and Compliance with Opportunity New Jersey, its Network Modernization Program, Decision and Order, Docket No. TX96100707, pp. 1-4, (October 9, 1996). In addition, Rate Counsel notes that the Board conducted several periodic compliance review matters throughout the period between the PAR-1 and the 2012 OSC that further reviewed and ascertained the upgrade and deployment of service under ONJ and ANJ.

<sup>4</sup> In the Matter of Verizon New Jersey, Inc.’s Alleged Failure to Comply with Opportunity New Jersey Commitments, Order, (April 23, 2014), (“ONJ OSC Order”).

<sup>5</sup> ONJ OSC Order, p. 2.

<sup>6</sup> ONJ OSC Order, p. 14.

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OSC Order gave Verizon the option to provide the broadband service under its own infrastructure or connecting with another service provider (inclusive of wireless, cable or satellite providers). Additionally, the ONJ OSC Order allowed Verizon its choice of technology medium (4G-based wireless, fiber, copper, or cable) under which to provide the broadband service, at speeds of no less than the minimum speed of Verizon's Digital Subscriber Line Services ("DSL") provided by Verizon in 2014, defined as broadband up to 45 Mbps.<sup>7</sup> Rate Counsel appealed the Board's ONJ OSC Order to the Appellate Division, which upheld the Board Order.<sup>8</sup>

On November 15, 2015, the County of Cumberland (on behalf of 17 towns)<sup>9</sup> filed a Petition with the Board seeking an investigation into Verizon's maintenance of copper landline facilities and infrastructure necessary for the provision landline telephone service and data services to customers who are within Verizon's service territory but are without fiber optic service. The Petition asserted that Verizon had failed to repair and maintain its infrastructure, thus failing to ensure safe and proper landline and data transmission service to residents of the 17 towns. On May 31, 2017, the Board issued an Order approving a stipulation settling the matter, in which Verizon agreed to a number of measures, including but not limited to copper maintenance, DSL congestion relief, fiber deployment and extending the BFRR program until June 30, 2019, (herein referred to as the "2017 ONJ Order").

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<sup>7</sup> Id., pp. 13-14; See also, Stipulation of Settlement, pp. 3-4, attached thereto.

<sup>8</sup> In the Matter of Verizon New Jersey, Inc.'s Alleged Failure to Comply with Opportunity New Jersey Commitments, Appellate Division, Docket No. A-4352-13T3, Order dated June 16, 2016.

<sup>9</sup> In the Matter of Verizon New Jersey Discontinuance of Landline Telecommunications Maintenance, Facilities and Infrastructure, Order Approving Stipulation, Docket TO15121325, dated May 31, 2017. The original petition filed concerned 16 towns, on April 14, 2016, Washington Township was added as township number 17 joining in the Petition, ("2017 ONJ Order").

On July 16, 2020, the Federal Communications Commission (“FCC”) adopted new rules for the improved collection and mapping of broadband availability data through the Digital Opportunity Data Collection. It is expected that the new process will better identify connectivity gaps across the country.<sup>10</sup> The FCC laid out a three-pronged approach to developing an accurate national broadband map, with Internet service providers reporting more granular information on their networks’ reach and detailed coverage data; which will then be compared against locations that are, or could be, serviced by a broadband connection; and will provide additional information from consumers, state, local, and Tribal government entities, providing feedback on the accuracy of the broadband coverage data directly to the Commission.<sup>11</sup>

### **Overview of the Petitions**

#### **Alloway Twp. BPU Dkt. TC19121515**

On December 5, 2019, Alloway Township, in Cumberland County, New Jersey (“Alloway Twp.”) filed a Petition with the New Jersey Board of Public Utilities (“Board”) pursuant to the Board’s Orders in I/M/O Verizon NJ Inc.’s Failure to Comply with Opportunity New Jersey Commitments, BPU Docket TO12020155 (“ONJ OSC Order”), and I/M/O Verizon New Jersey Discontinuance of Landline Telecommunications Maintenance, Facilities and Infrastructure, Order Approving Stipulation, Docket TO15121325 (“2017 ONJ Order”), asking the Board to investigate Verizon’s denial of over 35 bona fide retail requests filed by residents of

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<sup>10</sup>*In the Matter of Establishing the Digital Opportunity Data Collection Modernizing the FCC Form 477 Data Program*, Second Report and Order and Third Further Notice of Proposed Rulemaking, WC Docket Nos.19-195, and 11-10 (“*Digital Opportunity Order and Third FNPRM*”), (Rel. July 17, 2020); <https://ecfsapi.fcc.gov/file/07172692426514/FCC-20-94A1.pdf>

<sup>11</sup> *Digital Opportunity Order and Third FNPRM*. <https://ecfsapi.fcc.gov/file/07172692426514/FCC-20-94A1.pdf>.

Alloway Twp. in census tract 212.01 with Verizon seeking broadband service under Verizon's BFRR process. Alloway Twp. notes that as Verizon's denial was in part based on the existence of "other" broadband availability in the area, the Board should investigate and determine the appropriate DSL speed and the minimum speed of Verizon's digital subscriber line service in Alloway Twp. and throughout New Jersey as of the date of the Stipulation to determine whether or not broadband is available (defined as 4G service) within Alloway Township.<sup>12</sup> Moreover, Alloway Twp. notes that a portion of the census tract 212.01 is outside of the Township and pursuant to the BFRR program customers in the entire census tract in the neighboring municipality have been connected with fiber or FiOS service.<sup>13</sup> Therefore, Alloway Twp., requests a declaratory determination that, upon approval of 35 BFRR applications, Verizon must deploy the broadband service throughout the entire census tract.<sup>14</sup>

Verizon filed an Answer to Alloway Twp.'s petition on January 17, 2020. In its Answer Verizon denied the allegations (affirming only perfunctory paragraphs containing general public information), and admitted that the BFRR applications were denied because of the availability of DSL and 4G broadband service to the applicants and set forth affirmative defenses that the Board lacked jurisdiction over the matter, and Alloway Twp. had failed to state a claim upon which relief can be granted.

In reply, Alloway Twp. stated that DSL is not available to any Alloway Twp. resident and that the Board's ONJ OSC Order failed to define what constitutes 4G or 4G LTE service or

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<sup>12</sup> In the Matter of Township of Alloway's Bona Fide Retail Request Application to Verizon NJ and Compliance with the Requirements Thereof, BPU Docket No.:TC19121515 ("Alloway Twp., Complaint Petition").

<sup>13</sup> Alloway Twp., Complaint Petition, Third Claim for Relief, paragraph 2, p. 8.  
Id.,

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what minimum speed standards apply, and in connection with DSL service what download and upload speed should be provided or what average speed, lowest speed or highest speed should be provided during a 24 hour period.<sup>15</sup> Therefore, Alloway Twp. contends that Verizon cannot state that Alloway Twp. residents have available 4G service that would relieve Verizon from its obligation to deploy broadband service under its Opportunity New Jersey service commitments throughout all of Alloway Twp. Moreover, Alloway Twp. emphasizes that N.J.S.A 48:2-23 requires that Verizon provide safe, adequate, and proper service and the terms of the Stipulation, In the Matter of Verizon New Jersey, Inc.'s Alleged Failure to Comply with Opportunity New Jersey Commitments, Docket No. TO12020155 is no exception to that statutory requirement.<sup>16</sup> Alloway Twp. notes that a utility should not be able to pick and choose its customers and pick, based on economic motives, those who will and those who will not be served, citing to Lakewood Township v. Lakewood Water Company, 29 N.J. Super. 422 (App. Div. 1954) at 429. Alloway also contends that the FCC broadband service maps relied on by Verizon in support of the existence of broadband service in Alloway Twp., are incorrect or inconclusive as the FCC itself has “discarded the utilization of the 4G map and has requested customers and citizens to make speeds tests available to the FCC so a more accurate rendition of the serviceability of 4G service can be evaluated.”<sup>17</sup> Therefore, arguing that Verizon’s basis for denial of Alloway Twp.’s BFRR applicants was incorrect, Alloway Twp. requests that denied BFRR applications be reopened (allowing these to be amended if necessary) for reconsideration by Verizon.

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<sup>15</sup> Alloway Twp. Complaint Petition, p.7

<sup>16</sup> *Id.*, pp. 7-9.

<sup>17</sup> *Id.*

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Moreover, additional Alloway Twp. residents unaware of the BFRR application process but who have no viable/available broadband service should be allowed to also apply.<sup>18</sup>

**Washington Twp. Petition BPU Dkt. TC20080544**

Similarly, on August 19, 2020, Washington Township, a rural community with approximately 710 residents,<sup>19</sup> in Burlington County, New Jersey (“Washington Twp.”) filed a Verified Petition with the New Jersey Board of Public Utilities (“Board”) asking the Board to investigate and determine if Verizon has complied with the Board’s directives in I/M/O Verizon NJ Inc.’s Failure to Comply with Opportunity New Jersey Commitments, BPU Docket TO12020155 and TO15121325. Washington Twp. states that although Verizon originally deployed its broadband service under the BFRR it has refused to completely buildout to the remaining residents in census tract 7047, Burlington County (which also encompasses the Townships of Woodland and Bass River) in violation of the Board’s ONJ OSC Order. Washington Twp. further states that such “denial of service to a rural area that is greatly in need of up to date broadband service” has deprived Washington Twp., schools, libraries and school children (who currently must learn remotely during the pandemic) of sufficient internet access and/or infrastructure to effectively receive a thorough and efficient education in violation of their State Constitutional right to a thorough and efficient education. *See*, N.J. Const. Art. VIII § 4 ¶ 1.

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<sup>18</sup> Alloway Twp. Complaint Petition, pp. 7-9.

<sup>19</sup> In the Matter of Verizon New Jersey, Inc. - Discontinuance of Land Line Telecommunications Maintenance, Facilities, and Infrastructure Township of Washington (Burlington County) Request for Declaratory Determination of Verizon's Obligation Under Docket No. TO12020155, BPU Docket No.: TC20080544, (“Washington Twp., Complaint Petition”).

Washington Twp. requests that the Board require that Verizon meet its obligation and build out census tract 7047 in its entirety.<sup>20</sup>

On October 1, 2020, Verizon filed a reply to Washington Twp.'s petition denying all (except perfunctory paragraphs containing generally known public information) of the allegations raised therein and putting forth the affirmative defenses that the Board lacks jurisdiction over the matter, and Washington Twp. has failed to state a claim upon which relief can be granted.

### **Discussion**

The petitions filed by the Townships of Alloway and Washington raise serious concerns regarding the availability of reliable, adequate and safe broadband service to residents of both townships located within Verizon's service territory. The complaints also raise questions concerning the definition of broadband service and the infrastructure and deployment obligations contemplated under the Board's ONJ OSC Order.

The current COVID-19 pandemic has made even clearer the imperative that all state residents have access to broadband service necessary to telecommute, as the majority of state residents work, learn and receive medical attention remotely. We know that carriers have the technology to ensure state residents have access to properly functioning broadband service. For a majority of state residents this service allows an average family of four or more to simultaneously operate various broadband applications and functions on separate equipment (personal computers, laptops, and tablets) allowing residents to work and learn from home

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<sup>20</sup> Washington Twp., Complaint Petition, pp. 3-4.

without loss of power or other degradation or interruption of service. The Board has an overarching statutory duty to ensure that residents receive the service that was envisioned under Opportunity New Jersey and Access New Jersey currently enjoyed by many ratepayers throughout Verizon's service territory.

Rate Counsel believes that both petitions raise important issues that require additional investigation and review as contested matters. It is a documented fact that our national broadband service map is not accurate. Unfortunately, as is the case in many states, there is a strong likelihood that New Jersey's assumptions on the availability of broadband service for New Jersey residents is likewise skewed and/or inaccurate. The inaccuracy of broadband mapping coupled with ratepayer complaints that contradict Verizon's assertions and raise doubt regarding the existence of adequate broadband coverage are enough to require further Board investigation to assess the basis of Verizon's BFRR application denials on February 22, 2019.<sup>21</sup> Moreover, further inquiry is required where the Board's ONJ OSC Order and/or the 2017 ONJ Order do not provide a dispositive answer to issues raised by Alloway and Washington Twps. in their complaints. A proceeding is needed to provide an opportunity for the Board to assess whether Verizon is in compliance with the Board's prior Orders and what standards should be met to ensure adequate, safe and reliable service while remote working and/or learning for the affected residents of Alloway and Washington townships. The petitions demonstrate the need for the Board to clarify what constitutes substitute service that would allow Verizon to deny the 35 BFRR requests in these towns. The petitions also present squarely the issue of whether

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<sup>21</sup> Alloway Twp. Complaint Petition, p. 2.

satisfaction of the BFRR requirements then require connection of the entire census tract, as indicated in the ONJ OSC Order at p. 14, or just portions of it as Verizon asserts. Concerning the BFRR process itself, the Board's ONJ Orders do not discuss if BFRR applications may be amended, supplemented, or resubmitted after filing and if Verizon must provide reconsideration of amended, supplemented or resubmitted BFRR applications that were timely filed by an applicant but initially declined by Verizon. Additionally, the Board ONJ Orders do not provide a process for a customer's appeal or challenge to a denial of service eligibility under the BFRR process; nor do they provide a process for Board and public review of Verizon's BFRR application approval/determination process.<sup>22</sup> Surely the Board did not, and could not consistent with due process, intend to make the determination of BFRR eligibility a matter solely within the discretion of Verizon with no ability to appeal to the Board. While the ONJ OSC Order does not specify a process to determine the actual existence and level of broadband service available to customers or a process to confirm the veracity of information concerning available broadband service, due process requires that such procedures be available to customers who have followed the BFRR process but have been denied for reasons they dispute.

The current pandemic underscores the importance and emergent need to resolve the issues raised by Alloway and Washington Townships as quickly as possible. Further Board action should resolve the issues and ensure that the public benefits envisioned under ONJ and ANJ are met and maintained for the residents of Alloway and Washington Townships. For these

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<sup>22</sup> ONJ OSC Order, p. 4, under paragraph 1d. of the Stipulation discussed therein.

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reasons, Rate Counsel strongly supports these petitions and joins in requesting that the Board open an investigation to resolve these important issues.

Respectfully submitted,

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*/s/ Maria T. Novas-Ruiz*

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MNR/td

cc: Service List