



State of New Jersey
DIVISION OF RATE COUNSEL
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

STEFANIE A. BRAND
Director

August 27, 2015

The Honorable Richard Mroz
President
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. BOX 350
Trenton, New Jersey 08625-0350

The Honorable 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: 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 Verizon New Jersey Inc.'s Transition Plan to Migrate Customers from its Copper-to-Fiber Infrastructure/Network in New Jersey. BPU Docket No. TO15060749

Dear President Mroz and Secretary Asbury:

The Division of Rate Counsel ("Rate Counsel") filed a petition on June 29, 2015, asking the Board of Public Utilities ("BPU" or "Board") to open an investigation of Verizon's copper to fiber migration in New Jersey to review compliance with New Jersey statutes and regulations and the Federal Communications Commission's ("FCC" and/or "Commission") ongoing proceedings regarding Technology Transitions.¹ Rate Counsel also asked the Board to issue an

¹/ *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, Inc.*, WC Docket No. 15-131. Adopted August 6, 2015 and Released August 7, 2015, ("*Tech Transition Order*"), herein referred by Rate Counsel as the ("*Tech Transition Order*").

Order prohibiting Verizon from disconnecting customers as part of its copper to fiber migration pending the outcome of the Board's review. Although no opposition to Rate Counsel's petition has been filed, the Board has not acted on the Petition in any way other than to docket it.

Since Rate Counsel's petition was filed, Verizon has continued its migration and has in fact disconnected customers who have not met the Company's deadlines, in violation of State requirements. In addition, the FCC issued an *Order and Final Notice of Proposed Rulemaking (FNPRM)* on August 7, 2015, (herein "*Tech Transition Order*") which further supports Rate Counsel's claim that Verizon's practices are inconsistent with the FCC's requirements for technology transition. As discussed below, the Board has the authority and the obligation to take action, oversee Verizon's copper to fiber migration in New Jersey and ensure its consistency with law and fairness to consumers. Accordingly, Rate Counsel writes once again to ask the Board to act on its June 29, 2015 petition.

Rate Counsel has continued to receive numerous calls as more customers receive Verizon's migration notice. In the few weeks between Rate Counsel's June 29 Request for Investigation and this submission, Rate Counsel has logged inquiries from concerned customers, and state and local elected officials on behalf of their constituents located in the following ten counties: Atlantic, Bergen, Cape May County, Essex, Hudson, Middlesex, Monmouth, Ocean, Passaic and Warren. In spite of the FCC's Tech Transition Order, Verizon has not provided customers with any more information. Verizon service representatives continue to tell customers that there are no other voice service providers they can migrate to and continue to threaten customers with complete discontinuance of service if they fail to acquiesce to migrate their service from copper to fiber. Rate Counsel has also been informed by callers that Verizon service representatives tell customers that competing service providers will only be able to

provide fiber services as Verizon will cease to allow competing carriers to utilize Verizon's copper platform. In addition we have been told that Verizon has frozen transfer requests to competing carriers and has told customers they must first allow Verizon to migrate them to fiber before they may re-request a transfer to another telecommunications carrier. In the most egregious cases brought to Rate Counsel's attention, a customer who, within the period allotted under Verizon's Notice, repeatedly requested that her services be transferred to another provider, had her service completely disconnected and her account terminated. One customer allowed the migration because she feared being disconnected altogether, but filed a complaint with the FCC. She later learned that Verizon contacted the FCC and requested that her complaint be closed because the issues had been "resolved." The customer was forced to contact the FCC to ask that the complaint not be dismissed because she is still very upset at how the process has been handled by Verizon. *See* Rate Counsel Attorney Certification and Attachment.

Rate Counsel notes that the majority of customers calling want more information about the migration process, and want to know if Verizon has the legal right to cut-off their telephone service. They ask who is overseeing the process in New Jersey, what Rate Counsel has done to protect their interests and why the public has not received any information regarding this transition from state and local government.

The FCC's August 7 *Tech Transition Order* underscores the Board's ability – and obligation – to protect customers and ensure that any transition is accomplished in an orderly and safe manner. The *Tech Transition Order* affirms the Board's authority to investigate, review and provide oversight regarding Verizon's copper to fiber migrations in New Jersey. The FCC clearly states that "local authorities have an important and unique role to play . . . regarding ongoing maintenance obligations." *Id.*, at paragraph 96, p. 54. The Commission thus reaffirms

that 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.*²

Far from preempting State Commission involvement, the FCC 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.*, at 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 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.*, at Para. 70, at pp. 40-41.

The Board’s primary mission and mandate is to ensure that public utilities provide safe, adequate and proper service. N.J.S.A. 48:2-23. The Board’s regulations provide that it may “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.A.C. 14:10-1A.7. This authority has not been removed, curtailed or preempted by federal regulation. 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.” *See also*, N.J.A.C. 14:3-3.1 and 14:10-1A.11. N.J.A.C. 14:3-3A.8(d) states that a telephone utility may terminate Basic Residential Local Telephone Service only for nonpayment of charges. These provisions also remain fully intact. Thus, the Board continues to have the regulatory authority to review Verizon’s copper to fiber plans in

²/ *Tech Transitions Order* at footnote 347 p. 54, citing to 29 FCC Rcd at 14994, para. 54; *Triennial Review Order*, 18 FCC Rcd at 17148, para. 284.

New Jersey to ensure that impermissible service interruptions are not occurring and that copper retirement, whether planned or *de facto*, comply with FCC mandates.

The Board also has the continuing obligation under N.J.S.A. 48:2-23 to ensure that copper to fiber migration occurs in an orderly fashion and that utility property and equipment continues to operate.³ The Board has an overarching responsibility to ensure that service upgrades do not jeopardize the provision of safe and adequate services and that Verizon's migration plans do not result in discriminatory and anti-competitive behavior against interconnecting carrier customers and ultimately the more vulnerable class of customers, the retail end-user ratepayers.

The *Tech Transition Order* requires that copper retirement notices provide 90-days notice to residential customers include the information set forth under 47 C.F.R. section 51.332(c).⁴ The FCC defines copper retirement as "the removal or disabling of" covered copper facilities, *i.e.*, "copper loops, subloops, or the feeder portion of such loops or subloops," and further defines removal as physical removal or disabling that renders the copper facilities inoperable (through acts of commission or omission, such as "*De Facto*" Retirement). Id. at Paras. 84 - 92, at pp. 49-52. The *Tech Transition Order* prohibits copper retirement without a minimum of 180-days notice for interconnecting carriers for the protection and benefit of not only the carrier customer but ultimately for the safety and the interest of the ultimate customer end-users. Para. 29, at p.19; Para. 39, at p. 24; and Id. at Para. 44, at p. 28. 180-days notice is also required for non-residential retail customers, and 90-days notice is required for residential retail customers. Id. at Para. 62, at p. 36. The *Short Term Notices* released by Verizon in New Jersey pursuant to 47 C.F.R. 327(a) violated the noticed 90-day migration date printed on the *Notices* themselves,

³/ N.J.A.C. 14:10-1A.7.

⁴/ *Tech Transition Order*, Para. 27, at p. 17 and *fn* 94 referring to Appendix A of the Order.

as customers are being migrated or having their service suspended and/or completely disconnected anywhere between a 45 to 60 day time period, in violation of not only FCC regulations but also State statutes and Board regulations discussed by Rate Counsel above.

The content of the *Notices* is also inconsistent with FCC guidance. To ensure that customers receive sufficient information to make informed decisions, the FCC Order provides that certain information regarding copper retirement must appear in the *Notice* and be presented in a “clear and conspicuous manner”. Paras. 45-52, pp. 29-32. The FCC’s Order, at Para. 50, “requires that the notice must be free from any statement attempting to encourage a customer to purchase a service other than the service to which the customer currently subscribes.” *Id.* However, the *Notices* that have been mailed by Verizon clearly state that the customer’s internet service will not work after the transition, and markets Verizon’s FiOS product as an upgrade, in violation of the FCC’s directive. *Id.* Such marketing must be done in separate communications not connected to the copper retirement notices. *Id.*, at Para. 51, p. 31. The FCC Order also requires that the *Notice* contain a “URL for a related web page with relevant information,” as well as contact information for the Commission (including a link to the Commission’s consumer complaint portal) and the relevant state PUC. *Id.*, at Para. 50, at p. 31. The Notice mailed to Verizon customers in New Jersey does not contain the required information.

Finally, the *Tech Transition Order*, confirms Rate Counsel’s position that Verizon’s copper to fiber transition is a discontinuance of service to retail customers that requires prior approval by the FCC under 47 U.S.C. section 214. The Commission has consistently held that under section 214(a), prior Commission approval is required when a carrier seeks to discontinue service to retail customers or to another carrier that uses the service to provide service to a community or any part of a community if discontinuing, reducing, or impairing that service will

impact the carrier-customer's retail customers. *Id.*, at Para. 108, at p. 60. The Commission found that "for Section 214(a) purposes, we must distinguish those situations in which a change in a carrier's service offerings to another carrier will result in an actual discontinuance, reduction or impairment to the latter carrier's customers as opposed to a discontinuance, reduction or impairment of service to only the carrier itself." *Id.*, Para. 109, at pp. 60-61.⁵

The Commission has noted that the section 214(a) notice and approval requirements "are directed at preventing a loss or impairment of a service offering to a community or part of a community without adequate public interest safeguards."⁶ Moreover, "[D]iscontinuance, 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. *Id.*, Para. 113, at p. 62, and is necessary to determine if the impairment of service to the carrier-customer's end users will adversely affect the present and future public convenience or necessity. *Id.*"⁷

Here, Verizon's transition clearly constitutes a "discontinuance, impairment or reduction" in service. While Verizon is offering basic telephone service over fiber, its notice acknowledges that the new service offering will not be the same as existing service. The notice makes clear that High Speed internet will be inoperable, that battery backup will be required and will not work with cordless phones, and, if the transition is not accomplished within Verizon's deadline, all service will be discontinued, impaired and reduced. As noted above, in the weeks following Rate Counsel's initial request for a Board investigation, Rate Counsel has continued to receive

⁵/ *Tech Transition Order*, quoting Commission action in the *Western Union Telegraph Company Petition for Order to Require Bell System to Continue to provide Group/Supergroup Facilities*, Memorandum Opinion and Order, 74 FCC 2d 293, 296, at para. 7 (1979) ("*Western Union*").

⁶/ *Id.*, at Para.109, quoting Commission action in *Western Union*, at paras. 6 and 7.

⁷/ *Tech Transition Order* citing to *Western Union*, at para 7., also citing to 47 C.F.R. § 63.62(b) requiring an application for the ("severance of physical connection or the termination or suspension of the interchange of traffic with another carrier.").

complaints from affected residential customers. At least one has been disconnected. Others requested to be switched to a competing provider but their request was denied. Customers have been advised by Verizon's customer service representatives that Verizon's copper lines will no longer be operational. *See Rate Counsel Certification*. These actions clearly constitute a "discontinuance, impairment or reduction" in service. The *Tech Transition Order* is clear that before Verizon can take such action, it is required to obtain Commission approval under section 214(a). In addition, as an interim measure pending Commission action regarding access rates, Verizon must continue to provide "*last mile*" connectivity to competing service providers so that customers seeking to switch may do so.

Accordingly, Rate Counsel urges the Board to act on its June 29 request and open an investigation to assess whether Verizon's copper to fiber migration in New Jersey is consistent with BPU statutes and regulations, the FCC's *Tech Transition Order*, and the requirement of a section 214 application with the FCC. Rate Counsel asks that the BPU also issue an Order prohibiting any disconnection pending the outcome of this investigation and review.

Thank you for your attention and consideration in this matter.

Respectfully Submitted,

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



Stefanie A. Brand,
Director
Maria T. Novas-Ruiz,
Assistant Deputy Rate Counsel

SAB/db
cc: Service List
Via Electronic & Regular Mail

SERVICE LIST

I/M/O 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.:

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SERVICE LIST
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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.:

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

	:	STATE OF NEW JERSEY
	:	DIVISION OF RATE COUNSEL
	:	
In the Matter of Rate Counsel's Request For an	:	REQUEST FOR AN ORDER TO HALT
Investigation into Verizon New Jersey, Inc.'s	:	DISCONNECTIONS RELATED TO
Continued Use of its Copper Infrastructure to	:	VERIZON NEW JERSEY INC.'S
Provide Telecommunications Services and	:	COPPER-TO-FIBER TRANSITION
Verizon New Jersey, Inc.'s Transition Plan to	:	
Migrate Customers from its Copper-to-Fiber	:	AND
Infrastructure/Network in New Jersey.	:	
	:	SECOND REQUEST FOR AN
	:	INVESTIGATION OF VERIZON'S
	:	COPPER-TO FIBER TRANSITION
	:	IN NEW JERSEY
	:	BPU Docket No.TO15060749

ATTORNEY CERTIFICATION

I Maria T. Novas-Ruiz, an attorney in the State of New Jersey and Assistant Deputy Rate Counsel for the State of New Jersey Division of Rate Counsel, and staff attorney in the Telecommunications and Cable Section, certify as follows,

1) In the few weeks between Rate Counsel's June 29 Request for Investigation and Rate Counsel's annexed Second Request for Investigation, Rate Counsel has logged inquiries from concerned customers, and state and local elected officials on behalf of their constituents located in the following ten counties: Atlantic, Bergen, Cape May County, Essex, Hudson, Middlesex, Monmouth, Ocean, Passaic and Warren.

2) In spite of the FCC's August 7, 2015, *Tech Transition Order*, Verizon has not provided customers with any more information regarding the migration of services.

Rate Counsel has been informed by more than one customer that Verizon service representatives tell customers variations of the following: 1) that there are no other voice service providers in the area that they can migrate to; 2) that competing service providers will only be able to provide fiber service just like the services Verizon will offer them, as Verizon will cease to provide competing carriers Verizon's copper infrastructure; and 3) that complete discontinuance of service will result if they fail to acquiesce to migrate their service from copper to fiber within the 30 to 45-day period.

3) In addition, complaints have been reported that Verizon has frozen transfer requests made by customers to transfer to other providers, and that when the customer has inquired as to why they have not been transferred to the new service provider, Verizon has stated that the customer must first allow Verizon to migrate them to their fiber product and then re-request a transfer to another telecommunications service provider.

4) In the most egregious case to date brought to Rate Counsel's attention is the plight of one customer who stated that in spite of the customer's repeated request to transfer to another carrier within the period of time allotted under Verizon's Notice, her voice service was completely discontinued and her account was terminated without putting through her request to transfer to another carrier.

5) Lastly, one senior customer who said she acquiesced to the migration of services because she feared being disconnected altogether, filed a complaint with the FCC. The customer thereafter was copied on a letter from Verizon to the FCC requesting that the customer's complaint be dismissed as her concerns had been resolved. The customer immediately contacted both Verizon and the FCC and asked that the complaint not be dismissed because the customer was still very upset at how the process has been handled by

Verizon. A true and correct copy of that correspondence provided to Rate Counsel from the consumer is attached.

Dated: August 27, 2015.



Maria T. Novas-Ruiz, Esq.
State of New Jersey - Division of Rate Counsel
Assistant Deputy Rate Counsel
Attorney at Law – State of New Jersey

P.O. Box
Wallington, New Jersey 07057

August 17, 2015

The Federal Communications Commission (FCC)
Attention: Rebuttal Team
445 12th Street, SW
Washington, D.C. 20554

To Whom It May Concern:

I am writing to you in response to a letter I received from Verizon dated August 7, 2015. It is my understanding that you also have a copy of this correspondence. This letter implies that because I have made an appointment for this conversion, my complaint should be closed. I would like it clearly understood that even though this transition will probably occur, I feel I have been bullied and coerced into having this done.

The above information is related to a complaint (Ticket #439543) I filed on July 31, 2015 with your agency against Verizon. My reason for originally filing this complaint was twofold. First of all, I did not want to convert my phone service from copper wiring to fiber-optics, because I was concerned about what could be involved in the process. Secondly, I was extremely offended by the manner in which Verizon chose to inform me of this change. I had received an intimidating and threatening letter dated July 23, 2015 on July 29, 2015, my birthday. It stated that I had 30 days from the date of the letter to make an appointment for the conversion, or 2 weeks after that, my service would be suspended. So, in essence, I was given only 3 weeks notice to complete this transition. I recently learned I should have received 3 months notice.

I have to wonder why Verizon chose to bypass my New Jersey Board of Public Utilities and go to the FCC instead for authorization to do this. Perhaps Verizon anticipated that after carefully scrutinizing their plans for conversion, the BPU would not approve their course of action.

Unfortunately, I am not the only one experiencing Verizon's overreach of power. Consumers rely on agencies like the FCC and the BPU to protect them. I would hope now that this information has been presented to you that this matter will be thoroughly investigated.

Very truly yours,



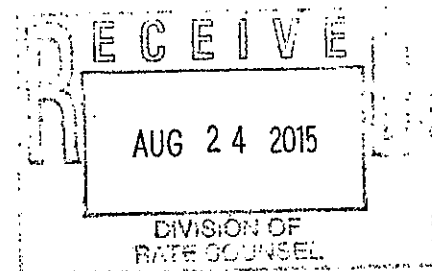
Verizon Executive Relations Team
290 West Mount Pleasant Avenue
Dispatch Floor 2, DRC
Livingston, NJ 07039

August 07, 2015

Complaint

Sharon Bowers
Division Chief
Consumer Inquiries and Complaints Division
Consumer & Governmental Affairs Bureau
Federal Communications Commission
1270 Fairfield Road
Gettysburg, Pennsylvania 17325-7245

RE:



Received: August 03, 2015

Thank you for referring the complaint of Mary Lou Sommer to our office for review. We appreciate this matter being brought to our attention. Mary Lou Sommer expressed concern about migrating service to fiber.

According to our records, this concern was received from the New Jersey Board of Public Utilities on July 29, 2015. Ms. Sommer lives in an area where Verizon is upgrading its network from copper to fiber facilities in order to improve the reliability of the services delivered to its customers. We are communicating to customers served by copper facilities in these areas in phases. The letter sent to these customers states that they must contact Verizon within 30 days of receipt of the letter to schedule an appointment to migrate their services to fiber. If no action is taken within 30 days, then service could be disrupted after 45 days. As part of our communication to these customers, we also follow-up with an automated message, outbound calls, and a postcard, each clearly asking for a call back so that we can explain the situation and schedule an appointment. For customers that do not respond to our last resort is to suspend their service. While suspended, customers still have the ability to call E911 and Verizon.

Following receipt of this complaint, Verizon representatives spoke with Ms. Sommer several times, explaining the benefits of fiber facilities and that there would be no change in her rates or terms of service and no charge for the migration. Ms. Sommer has advised she has an appointment set for August 19, 2015 to migrate her service to fiber facilities.

We trust that this information will assist you in closing this complaint. We apologize for any inconvenience that Mary Lou Sommer has experienced as a result of the above matter. Should the Federal Communications Commission have any questions, please contact S. Kashif using the contact information you have on file.

Sincerely,

Angela Shackelford
Verizon Executive Relations Team
(804) 772-7820