



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu

CABLE TELEVISION

IN THE MATTER OF VERIZON NEW JERSEY, INC.
FOR RELIEF OF A REQUIREMENT TO EXTEND ITS)
FIOS SERVICE THROUGHOUT THE RESIDENTIAL)
AREAS OF THE CITY OF ASBURY PARK)
AS REQUIRED UNDER THE TERMS OF ITS)
SYSTEM-WIDE FRANCHISE)

ORDER

DOCKET NO. CO11010024

Gregory M. Romano, General Counsel, Mid Atlantic Region, Verizon New Jersey, Inc., Basking Ridge, New Jersey for Petitioner

BY THE BOARD:

On January 19, 2011, Verizon New Jersey (Verizon NJ) filed with the New Jersey Board of Public Utilities (Board) and its Office of Cable Television (OCTV) an amended request for relief from certain deployment requirements pursuant to N.J.S.A. 48:5A-25.2(a)(2) and N.J.A.C. 14:18-15.3(b), supplementing its original request submitted on June 29, 2010.

Under the requirements of its system-wide franchise granted by the Board in I/M/O the Application of Verizon New Jersey, Inc. for a System-wide Cable Television Franchise, Docket No. CE06110768 (December 18, 2006) and N.J.S.A. 48:5A-25.2, Verizon is required to make its FiOS cable television service available to residential areas of county seats and municipalities with a population density greater than 7,111 persons per square mile of land area that are within Verizon's service area. N.J.S.A. 48:5A-25.2(a)(1)(a)&(b). However, N.J.S.A. 48:5A-25.2 and N.J.A.C. 14:18-15.3 provide that any cable television company that provides more than 40 percent of the local exchange telephone service market in New Jersey shall not be required to provide access to developments or buildings where:

- 1 [the system-wide franchisee] cannot access a development or building because of a claimed exclusive arrangement with another cable television company;
2. [the system-wide franchisee] cannot access a development or building using its standard technical solutions, under commercially reasonable terms and conditions after good faith negotiation; or
3. [the system-wide franchisee] cannot access the public rights-of-way under reasonable terms and conditions.

The Board notes that Verizon provides more than 40 percent of the local exchange telephone service market in New Jersey. I/M/O the Application of Verizon New Jersey, Inc. for a System-wide Cable Television Franchise, supra, page 3.

Verizon claims that due to an ongoing redevelopment project within the City of Asbury Park, it should be relieved of its obligation to provide its FiOS cable television service throughout the residential areas of the City within the timeframes established under P.L.2006, c.83 (C.48:5A-25.1 et seq.) which require that Verizon begin providing cable television service on a commercial basis, within three years of issuance of the system-wide franchise under the population density threshold detailed above as determined by the most recent federal decennial census prior to the enactment of P.L.2006, c.83 (C.48:5A-25.1 et al), and that its cable television service be available throughout the residential areas of the City within six years of the date it first provides service. Since Verizon first provided its FiOS cable television service within the City in January, 2007, it currently must provide that service to all residential areas of the City by January, 2013 under the timeframes outlined above. These residential areas include both multiple dwelling unit (MDU) buildings and non-MDU structures. As enumerated above, N.J.A.C. 14:18-15.3(a)1-3 and N.J.A.C. 14:18-15.3(b) do allow Verizon to seek relief from this requirement should it be unable to serve a particular MDU property or other residential structure because it has been denied access to a particular MDU building due to a claimed exclusive arrangement with another cable television company; cannot access an MDU building using its standard technical solutions, under commercially reasonable terms and conditions, after good faith negotiation; or is unable to access the public rights-of-way under reasonable terms and conditions.

In its petition, Verizon claims that the City of Asbury Park's ongoing Waterfront Redevelopment Plan ("WRP", or "the Plan"), first begun in approximately 1984 and proceeding anew since approximately 2002, may present obstacles which prevent it from providing its FiOS service throughout the entirety of the City of Asbury Park because specific properties or areas within the Waterfront Redevelopment Plan fall under one or more of these allowed exceptions. Essentially, the City's WRP designates a specific portion of the City for redevelopment. This area is located generally east of Grand Avenue, and continuing in that direction four blocks to the Boardwalk. More specifically, it includes an area bounded by Ocean Avenue / Boardwalk on the east; Deal Lake Drive on the north; Grand Avenue on the west; and Lake Avenue to the south. The City's Plan divides this overall area into three separate redevelopment zones or areas; 1) a Renovation / Infill Area where properties are not subject to acquisition and condemnation by the City for new development; 2) a Primary Renewal Area where almost all properties are subject to acquisition and condemnation by the City for development; and 3) the Boardwalk area of the City, which includes properties fronting the City's oceanfront boardwalk along its entirety from north to south which is subject to development in certain areas, but does not generally appear to include any significant existing residential properties, only newly constructed ones.

Verizon's petition seeks relief from its obligations to extend its FiOS service throughout the entirety of the WRP by January, 2013 as required by its systemwide franchise, because those obligations may require it to expend significant resources in providing facilities to properties which are subject to eminent domain and may ultimately be condemned and demolished. It has also expressed concern over being required to construct facilities to individual properties in the public right-of-way in areas of the City subject to redevelopment because doing so prematurely (prior to, or during redevelopment) may necessitate reconfiguration of those facilities shortly after construction, or may subject those facilities to damage as a result of continuing work being performed by the City's developer or its agents in the public right-of-way. Accordingly, for these

reasons, which all fall under one of the allowable exceptions to the requirements of N.J.A.C. 14:18-15.3(a)1-3 as referenced by N.J.A.C. 14:18-15.3(b), Verizon seeks specific relief under that section, and general relief from the obligation to provide service throughout the residential areas of the City by January, 2013.

In response to Verizon's original petition, the OCTV, by letters dated July 16, 2010 and September 24, 2010, requested detailed information on the filing, including the current status of its construction throughout the WRP area, and further information concerning the necessity of the relief in all three areas of the City's Plan as submitted with the filing. In responses dated July 30, 2010 and October 7, 2010, Verizon indicated it has been placing facilities and providing service to many existing properties as well as newly constructed properties throughout the WRP wherever those properties are not subject to acquisition and demolition, and where access agreements have been successfully negotiated. It has made clear that the waiver it seeks is, in fact, limited to those specific properties within the WRP which remain subject to acquisition and demolition through the exercise of eminent domain by the City of Asbury Park, while the WRP remains operative.

As noted above, the relief being sought by Verizon includes both MDU and non-MDU residential properties located within the City. In regard to the MDU properties, the Board noted in the Order granting Verizon's System-wide Franchise that both the legislation and Executive Order No. 25 (2006) acknowledge the special significance the issue of access and service to MDUs has in the system-wide franchise scheme. Moreover, the Board discussed in that Order that Verizon "has committed to providing service to MDUs on a non-discriminatory basis, with specific configurations dependent upon the nature of the MDU In the event [Verizon] can not find a solution to an MDU issue, [Verizon] has committed to notifying [the Division of Rate Counsel] and the Board with the appropriate information." I/M/O the Application of Verizon New Jersey, Inc. for a Systemwide Cable Television Franchise, *supra*, page 4.

In the instant matter, Verizon is not contending that it can not gain access to any of the subject properties, or that it can not find standard technical solutions which will allow it to provide service to any MDU (or, for that matter, non-MDU) residential properties located within the redevelopment area of the City. Instead, it is asserting that requiring it to use significant resources to gain access or develop these solutions and provide service to the properties in question may be unreasonable if those properties are subsequently acquired through eminent domain and demolished.

On February 1, 2011, the Division of Rate Counsel filed comments in this matter. Rate Counsel supports granting the requested relief to Verizon subject to certain reporting requirements relative to the status of the City's WRP and Verizon's plans to deploy FiOS to residents affected by the Plan.

The Board, after due consideration of the record, FINDS that the requirement that Verizon provide service throughout the residential areas of the City of Asbury Park, within the timeframes established by L.2006, c.83 (C.48:5A-25.1 et seq.) and codified in N.J.A.C. 14:18-15.2(b), may not be reasonable insofar as there are areas of the City subject to redevelopment pursuant to a Waterfront Redevelopment Plan which identifies specific properties subject to acquisition, condemnation and eventual demolition through the exercise of eminent domain by the City, which would make any obligation to provide service to such properties potentially unreasonable where specific properties have been identified as being subject to redevelopment (and displacement of residents) with little further advance notice. It appears from the record, therefore, that Verizon is due relief as permitted under N.J.S.A. 48:5A-25.2 and N.J.A.C. 14:18-

15.3. Therefore, the Board HEREBY GRANTS Verizon's request for relief subject to the following conditions:

1. In the event that Verizon receives a request for service from a property within the Waterfront Redevelopment Plan which it believes is eligible for relief as permitted under N.J.S.A. 48:5A-25.2 and N.J.A.C. 14:18-15.3, Verizon will immediately notify the Board of the request; the specific location (address and block number) and portion of the Waterfront Redevelopment Plan it is located in; and whether the property is subject to the exercise of eminent domain by the City or its agents.
2. In the event that Verizon receives a request for service by one or more residents or tenants of a specific property located within the Waterfront Redevelopment Plan which is eligible for relief, but elects to provide service to the property instead of seeking relief, Verizon will notify the Board of its decision within (10) days of notification to the property owner.
3. Within ten (10) days of its completion of all necessary construction needed to extend FiOS service to all residents or tenants of any of the subject property or properties, Verizon will file a certification of completion with the OCTV.

DATED: 2/10/11

BOARD OF PUBLIC UTILITIES
BY:



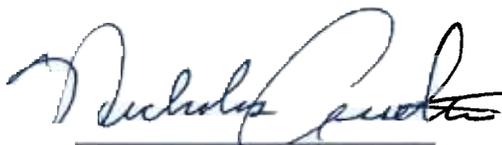
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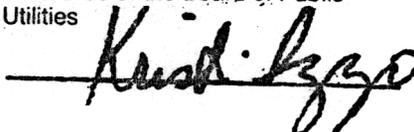
NICHOLAS ASSELTA
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



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THROUGHOUT THE RESIDENTIAL AREAS OF THE CITY OF ASBURY PARK,
NEW JERSEY AS REQUIRED UNDER THE TERMS OF ITS SYSTEMWIDE FRANCHISE**

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