



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) ORDER
FIOS SERVICE TO CERTAIN MULTI-DWELLING UNIT)
PROPERTIES LOCATED IN MUNICIPALITIES WHERE)
EXTENSION OF FIOS SERVICE IS REQUIRED UNDER)
THE TERMS OF ITS SYSTEM-WIDE FRANCHISE) DOCKET NO. CO10100800

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

Stephanie A. Brand, Director, Division of Rate Counsel, Newark, New Jersey

BY THE BOARD:

On October 6, 2010, Verizon New Jersey (Verizon NJ) filed with the New Jersey Board of Public Utilities (Board) and its Office of Cable Television (OCTV) a 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(a).

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 Systemwide Cable Television Franchise, Docket No. CE06110768 (December 18, 2006) and N.J.S.A. 48:5A-25.2, Verizon is required to make its 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) and (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 Systemwide Cable Television Franchise, supra, page 3.

Verizon claims that it has been unable to negotiate access to the properties or multiple dwelling units (MDUs)¹ noted in its petition under one of these allowable exceptions and accordingly seeks to be relieved from its requirement to extend its cable service, FiOS, to residents of the MDUs. Verizon contends in its filing that it has been unable to negotiate access to serve the subject properties using its standard technical solutions, under commercially reasonable terms and conditions after good faith negotiations and therefore seeks relief pursuant to N.J.A.C. 14:18-15.3(a)1-2. Verizon attached to its petition correspondence from Verizon to representatives of the MDUs.

In response to Verizon's petition, the OCTV, by letter dated October 25, 2010, provided the property owners the opportunity to comment on Verizon's request. To date, owners or representatives of five of the subject properties have offered comments. The Vice President (Operations) of Marbella Tower (425 Washington Blvd., Jersey City) responded that the owner is ready and willing to fully comply with the State of New Jersey's (or "State's") Mandatory Access Law, but further noted that he is not aware of any building resident seeking to obtain Verizon FiOS at this time. He requested that Verizon's obligations to the building be suspended until such a time as the service is requested by a resident. The representative of Roc Harbour (8000 River Road, North Bergen) stated that FiOS installation would require complete invasive access to all building units and cause major upheaval

¹ The properties specified in Verizon's filing are as follows:

Property Name	Address	Municipality
1. Avenue A	662 Avenue A	Bayonne
2. Palisade Avenue	108 Palisade Avenue	Cliffside Park
3. Lawton Avenue	287 Lawton Avenue	Cliffside Park
4. Lorraine Court	254 Knox Avenue	Cliffside Park
5. Carlton Court	262 Knox Avenue	Cliffside Park
6. Lincoln Avenue	355 Lincoln Avenue	Cliffside Park
7. Grant Avenue	255-257 Grant Ave.	Cliffside Park
8. Dumont East Apts.	380 Knickerbocker Rd.	Dumont
9. Union Street Condos	75 Union Avenue	Hackensack
10. Willow Ave. Condo Assoc.	933 Willow Avenue	Hoboken
11. Ariel Condo Assoc.	636 5 th Street	Hoboken
12. Madison Garden Condos	615 Madison Street	Hoboken
13. Observer Plaza Condos	415 Newark Street	Hoboken
14. Grand Street Apts.	81-83 Grand Street	Jersey City
15. Marbella	425 Washington Blvd	Jersey City
16. Maybrook Gardens	6 Maybrook Drive	Maywood
17. Seventieth Street	1415 70 th Street	North Bergen
18. Fourth Avenue	8517 4 th Avenue	North Bergen
19. Blue Stone Equities	2643 JFK Blvd.	North Bergen
20. Roc Harbour	8000 River Road	North Bergen
21. Rosen Terrace	8900 Blvd. East	North Bergen
22. 173 Highland Avenue	173-175 Highland Ave	Passaic

to the site. He also indicated that the building is currently under an exclusive bulk billing arrangement and therefore falls under one of the allowable exceptions. The attorney for Rosen Terrace (8900 Boulevard East, North Bergen) and Maybrook Gardens (6 Maybrook Drive, Maywood) responded that the building owners deny impeding any effort by Verizon to provide FiOS TV services to the buildings. However, he added that the owners of the buildings have no objection to Verizon's request to be excused from providing FiOS TV services to the buildings. The manager for the Willow Avenue Condominium property (933 Willow Avenue, Hoboken) indicated that after reviewing the proposed wiring method with the Board of the Condominium Association, it voted not to allow Verizon to proceed to wire the building, confirming denial of access.

As noted above, Verizon provided copies to the Board of correspondence wherein Verizon attempted to gain access to all of the subject properties. Verizon also informed the property owners that they would be seeking relief from the Board if the property owners continued to be unresponsive to Verizon's efforts to gain access to provide its FiOS service.

Also, in response to Verizon's petition, Rate Counsel, by letters dated October 19, 2010, served interrogatories on Verizon and the affected property owners or management companies, seeking further information from all parties relative to Verizon's request for relief.

On February 1, 2011, Rate Counsel submitted a letter to the Board challenging the basis by which Verizon seeks relief and expressed its desire that the Board defer the matter, deem it to be a contested case, and that it be transmitted to the Office of Administrative Law for further fact finding. Rate Counsel contends that Verizon had failed to provide documented evidence that it satisfied one of the three standards specified in N.J.A.C. 14:18-15.3(a)(1) and (2), and that responses provided by both Verizon and the MDU owners to its data requests raise genuine issues of material fact as to whether Verizon meets those standards.

Thereafter, at its February 10, 2011 regularly scheduled agenda meeting, the Board agreed to defer its consideration of this matter so that Rate Counsel's data could be evaluated and considered as part of the record.

On March 1, 2011 representatives of Rate Counsel and Staff met to review and discuss Rate Counsel's evidence and findings and exchanged information with regard to their separate investigations.

On March 7, 2011, Staff met with Verizon to review Staff's and Rate Counsel's concerns relative to certain of the properties included in its request for relief. During this meeting, Verizon requested additional time to review the findings and address Staff's and Rate Counsel's concerns and identify what changes or additions were needed to the process leading up to its request for waiver.

Over the succeeding three month period, Verizon met with Rate Counsel and jointly agreed to follow-up with certain properties with regard to Verizon's request for access. Overall three joint calls were conducted with representatives of four properties (Lincoln Avenue and Grant Avenue in Cliffside Park, Maybrook Gardens in Maywood and Rosen Terrace in North Bergen).

By letter dated May 6, 2011, Verizon filed a request with the OCTV director to update the Board on the status of its discussions with Rate Counsel. As part of that letter, Verizon requested that its filing be amended to remove six of the twenty-two properties from its waiver request (identified above as properties 3, 4, 5, 7, 10 and 13) and proceed with the remainder. Verizon indicates that removal for these properties is appropriate at this time because sufficient progress has been made since the date of its filing in obtaining access to properties 4 and 5 and Verizon has received requests for service from residents in properties 3, 7, 10 and 13.

Verizon also agreed to amend its process involving advanced notification to property owners of its intention to seek a waiver to its build out requirements relative to their property and the company's obligations to seek mandatory access to the property if Verizon receives a request for service from one of the property's residents. Verizon further agreed, at Rate Counsel's suggestion, to revise its letter to include the reason for the denial of access to extent such a reason is provided by a property representative.

On May 13, 2011, Rate Counsel submitted its response to Verizon's May 6, 2011 letter, indicating it does not object to the removal of properties 3, 7, 10 and 13 from Verizon's waiver request and does not object to granting a waiver with respect to properties 2, 6, 17 and 18. Rate Counsel further states that based upon its joint conversations with Verizon and the building manager and attorney for properties 16 and 21, it would be appropriate to remove those properties as well from Verizon's waiver request. With respect to the remaining five properties 4, 5, 9, 19 and 22, Rate Counsel believes that a waiver for them should not be granted until remaining open issues involving those properties are resolved.

On May 23, 2011, Rate Counsel filed additional supplemental comments regarding this matter updating its position with regard to certain properties. Rate Counsel concurs that properties 1, 2, 6, 8, 11, 12, 13, 14, 15, 17, 18, 19 and 20 qualify for a waiver. Rate Counsel also agrees with Verizon's withdrawal of waiver requests for properties 3, 4, 5, 7, 10 and 13.

Also, on May 23, 2011, Verizon filed its response to Rate Counsel's May 13th submission. Verizon avers that despite recent follow-up with properties 9, 16, 21 and 22, no additional progress has been made. Verizon states that the representatives of properties 16 and 21 indicated in a conference call with the company and Rate Counsel that they would like to make access contingent upon a marketing agreement. With regard to properties 9 and 22, design plans were resent to the representative of property 9 on April 19, 2011, but the company has not received any response from the property's Condominium Board. With regard to property 22, Verizon indicates that although an updated access agreement was executed between the property and Verizon on April 6, 2011, the owner has still not approved its design plans.

The Board notes that based upon the various submissions in the record, there is mutual agreement among Staff, Rate Counsel and Verizon for granting the requested relief for properties 1, 2, 6, 8, 11, 12, 14, 15, 17, 18, 19 and 20 and for Verizon's removal of properties 3, 4, 5, 7, 10 and 13 from its waiver list.

There is, however, some lingering disagreement between Verizon and Rate Counsel as to the disposition of this matter relating to the four remaining properties 9, 16, 21 and 22.

Concerning properties 16 and 21, both Verizon and Rate Counsel agree that a premises access agreement has been executed between Verizon and the property owner and that the sole impediment to access is the failure of those parties to agree to terms of a marketing agreement, without which the property owner will not permit Verizon access to install its services. Rate Counsel avers that since there is a signed Premises Access License (PAL) for those properties, and that the parties committed to further discussion on entering into marketing agreements for them, that there has been no denial of access to warrant a waiver. Rate Counsel recommends that the Board defer action on these properties and instruct Verizon to negotiate and/or send a certified letter explaining its policy for entering into marketing agreements with properties and why these properties do not qualify. Verizon on the other hand, maintains that that the company could not agree on terms of a marketing agreement with the building owners despite negotiation over a three year period and that the owners will not grant access without the marketing agreement. On this basis, Verizon believes it

satisfies the allowable exception which permits it to seek a waiver where it cannot access a development or building using standard technical solutions, under commercially reasonable terms and conditions after good faith negotiations. Verizon, also, contends that a waiver for those two properties does not prevent the company and the property representatives from engaging in further discussions, and if mutual agreement on marketing is reached in the future, Verizon is prepared to begin its FiOS installation and provide service to the buildings residents.

The Board agrees with Verizon here. While the owners of properties 16 and 21 have indicated willingness to allow Verizon to install its services within the subject properties, the owner's failure to grant Verizon access to the buildings for FiOS installation because they have not reached agreement on the marketing of those services is not reasonable. In addition, failing to reach a reasonable agreement after three years of negotiation presents a situation where a waiver is appropriate. The fact that the parties have been unable to reach agreement after three years of negotiation would indicate that an agreement is not imminent. Presented with these circumstances and its obligation to serve under its franchise agreement, Verizon could either seek a waiver to serve, as it has done, or instead seek an Order for mandatory access to the properties. Had Verizon sought mandatory access, one of the issues the Board would have been asked to decide is whether a marketing agreement is a necessary and reasonable term of access. It is not. Accordingly, the Board believes a waiver for these properties is appropriate here. Furthermore, as noted above, in responding to the OCTV's October 25, 2010 letter, the attorney for these properties indicated that the owners of the buildings, while denying impeding any efforts by Verizon to provide FiOS services to the buildings, have no objection to Verizon's request to be excused from providing FiOS TV services to the buildings.

Rate Counsel's submissions and Verizon's reply also indicate that unresolved issues still remain with properties 9 and 22 and that Rate Counsel believes that these buildings should not be approved for waiver until those issues are resolved. Rate Counsel agrees that Verizon and the building owners for these properties have already executed a property access agreement and that Verizon has tendered its standard installation plan for approval to both properties. However, Rate Counsel submits that the Board should defer action on these properties and instruct Verizon to send a certified letter to the properties informing them that they must return the approval within ten days or the installation plan will be deemed to be rejected. Absent receipt of approved plans Rate Counsel agrees that Verizon should be granted a waiver.

Concerning property 9, according to Rate Counsel's submissions, there is an on-going dispute between Verizon and the property owner concerning the payment of construction permit fees sought by the City of Hackensack. According to Rate Counsel's records, the Condominium Board of the building believes that Verizon should pay for the construction permit from the town while Verizon insists that it is the responsibility of the Condominium Board to add its name to the existing construction permit that is being used for renovations in the building. Rate Counsel sides with the building on this issue and asserts that Verizon should pay for the construction permit from the town as requested by the Condominium Board of the building. Verizon, on the other hand, claims that in March of 2010, the property manager for this location verbally requested a deferral of FiOS construction until major property renovations are completed.

With regard to the dispute involving the responsibility for the construction permit, the Board also agrees with Verizon. Following review of the applicable rules concerning the installation of cable television and low voltage communications wiring enacted by Department of Community Affairs in 2004 (N.J.A.C. 5:23-2.7 et seq.) and agency's response to public comments on this issue (see 36 N.J.R. 5709(b)), the Board is convinced that the building owner would be responsible for obtaining the permit and would be responsible for the Uniform Construction Code permit fees that are

assessed for the specified work. The Board also notes that since there is an on-going renovation in the building which the town has already approved, Verizon's request to be added to the current permit being used for the renovation for completion of its work is not unreasonable.

Regarding property 22, the lingering issue as noted above is that the building owner has not approved Verizon's FiOS installation plan since it was submitted to the owner in 2009. Verizon insists it made several attempts to get the owners approval, including sending a certified mail to the owner in July of 2010 and executing an updated access agreement on April 6, 2011 without getting a response from the owner on its design plans. Verizon disagrees with Rate Counsel. The company maintains that it has attempted for two years to get approval for the FiOS installation plan for this building without success and does not believe another certified letter to the owner will result in a response. On this basis, Verizon believes it satisfies the allowable exception which permits it to seek a waiver where it cannot access a development or building using standard technical solutions, under commercially reasonable terms and conditions, after good faith negotiations.

The Board also agrees with Verizon on this issue. The Board notes that although the Building's owner has indicated its willingness to allow Verizon to install its service by signing premises access agreements in 2009 and earlier this year, he has failed to act for the past two years on Verizon's proposed installation design plans, even after recent follow-up by the company. Two years is more than adequate time for the building owner to consider Verizon's FiOS installation plan and approve them or propose a reasonable alternative for discussion. Given these facts, a further certified letter as proposed by Rate Counsel would not be expected to generate a different result. Therefore, the Board does not agree that it should be a condition precedent to action on Verizon's request.

As the Board noted in the Order granting Verizon's System-wide Franchise, 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." 1/M/O the Application of Verizon New Jersey, Inc. for a Systemwide Cable Television Franchise, supra, page 4.


Therefore, the Board HEREBY GRANTS Verizon's request for relief with respect to properties 1, 2, 6, 8, 9, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21 and 22 subject to the following conditions:

1. In the event that Verizon and the property owner should reach an agreement for access to the property, the rights of each party with regard to said access will be governed by the terms of N.J.S.A. 48:5A-49 and N.J.A.C. 14:18-4.5. A copy of all such agreements will be filed with the OCTV within ten (10) days of their execution.
2. In the event that Verizon receives a request for service by one or more residents or tenants of any of the properties but does not have an agreement for access in place, Verizon will immediately commence proceedings for formal access to the property as provided by N.J.S.A. 48:5A-49 and N.J.A.C. 14:18-4.5.
3. Within ninety (90) days of the execution of an access agreement or the date that an Order of Access is issued by this Board, Verizon will undertake and complete any and all necessary site surveys, engineering, wiring design and pre-construction activities for the subject property or properties and submit a copy of same to the OCTV.

4. Within one-hundred eighty (180) days of the completion of all necessary site surveys, engineering, wiring design and landlord approval of the proposed method of wiring or installation, Verizon will complete all necessary construction needed to extend FiOS service to all residents or tenants of the property.
5. 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: 6/15/11

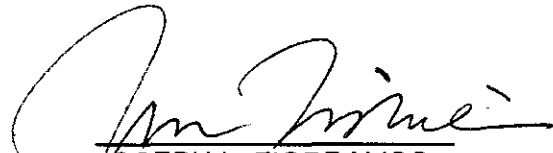
BOARD OF PUBLIC UTILITIES
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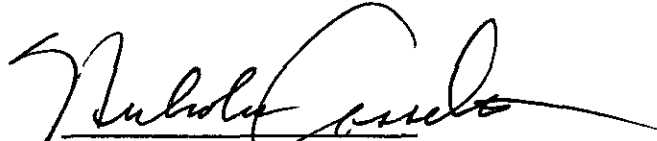
LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER



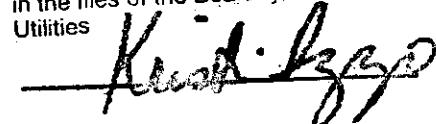
JOSEPH L. FIORDALISO
COMMISSIONER



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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DOCKET NUMBER: CO10100800

Gregory M. Romano, Esq.
Vice President and General Counsel
Verizon New Jersey, Inc
540 Broad Street, Floor 20
Newark, NJ 07102

Hesser G. McBride, Jr., Esq.
Wilentz, Goldman & Spitzer P.A.
90 Woodbridge Center Drive
Suite 900, Box 10
Woodbridge, NJ 07095-0958

William Kettleson, Vice President
Comcast
1191 Fries Mill Road
Franklinville, NJ 08322

Harriet Novet, Regional VP
Time Warner Cable
120 East 23rd Street
New York, NY 10010

Dennis C. Linken, Esq.
Stryker, Tams and Dill
Two Penn Plaza East
Newark, NJ 07105

Adam Falk, Vice President
Government and Public Affairs
Cablevision Systems Corporation
1111 Stewart Avenue
Bethpage, NY 11714-3581

Sidney A. Sayovitz, Esq.
Schenck, Price, Smith & King
PO Box 905
Morristown, NJ 07963

Celeste Fasone, Director
Board of Public Utilities
Office of Cable Television
Two Gateway Center
Newark, NJ 07102

William H. Furlong, Bureau Chief
Karen A. Marlowe, Admin. Analyst I
Richard Wagenblast, Admin. Analyst I
Steven Rastatter, Telco Sys Analyst
Anthony Udechukwu, Admin. Analyst II
Board of Public Utilities
Office of Cable Television
Two Gateway Center
Newark, NJ 07102

Lawanda Gilbert, Esq.
Legal Specialist
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Alex Moreau
Deputy Attorney General
Division of Law
124 Halsey Street
Newark, New Jersey 07101

Christopher White, Esq.
Division of Rate Counsel
31 Clinton Street
11th Floor
Newark, NJ 07102