



Agenda Date: 12/21/22
Agenda Item: 3A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

OFFICE OF CABLE TELEVISION
AND TELECOMMUNICATIONS

IN THE MATTER OF VERIZON NEW JERSEY, INC) ORDER
NOTICE FOR RELIEF OF A REQUIREMENT TO)
EXTEND ITS FIOS TV SERVICE TO CERTAIN MULTI-)
DWELLING UNIT PROPERTIES LOCATED IN)
MUNICIPALITIES WHERE EXTENSION OF FIOS TV) DOCKET NO. CO11090548
SERVICE IS REQUIRED UNDER THE TERMS OF ITS)
SYSTEM-WIDE FRANCHISE)

Parties of Record:

Elizabeth Gray Nunez, Esq., Counsel, Verizon New Jersey, Inc.
Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On September 14, 2011, Verizon New Jersey, Inc. (“Verizon NJ” or “Company”), filed a notice with the New Jersey Board of Public Utilities (“Board”) pursuant to N.J.A.C. 14:18-15.3(a) requesting relief of a requirement to extend its Fios¹ cable television service to certain Multi-Dwelling Unit (“MDU”) properties located in municipalities where the Company was granted a system-wide cable television franchise (“SWF”) (“Waiver Request”).²

Under the requirements of the SWF granted by the Board and pursuant to N.J.S.A. 48:5A-25.2(a)(1)(a) and (b), Verizon NJ 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 NJ's service area. However, N.J.S.A. 48:5A-25.2 also provides that any cable television company with 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 in: a) areas where developments or buildings are subject to claimed exclusive arrangements with other cable television companies; b) developments or buildings that

¹ “Fios” or “Verizon Fios” is a registered trademark of Verizon NJ's fiber optic service, namely, transmission of voice, data, images, audio, video, information and other content via a communications network.

² See In re the Application of Verizon New Jersey, Inc. for a System-wide Cable Television Franchise, Docket No. CE06110768 (December 18, 2006), and as subsequently renewed by the Board on January 30, 2014 and December 16, 2020.

the cable television company cannot access, using its standard technical solutions, under commercially reasonable terms and conditions after good faith negotiation; or c) areas in which the cable television company is unable to access the public rights-of-way under reasonable terms and conditions.

BACKGROUND

2011 MDU Waiver Request

Verizon NJ is a cable television company and a Local Exchange Carrier as defined in N.J.S.A. 48:5A-3 that provides more than 40 percent of the local exchange telephone market in New Jersey. As such, Verizon NJ qualifies for relief of its deployment requirements to MDUs under N.J.S.A. 48:5A-25.2 and N.J.A.C. 14:18-15.3, respectively. In its Waiver Request, Verizon NJ claimed that it has been unable to negotiate access to 12 MDU properties in multiple municipalities using its standard technical solutions, under commercially reasonable terms and conditions after good faith negotiations. In support of its Waiver Request, Verizon NJ provided copies to the Board of correspondence wherein Verizon NJ attempted to gain access to all of the subject properties. Verizon NJ also provided documentation describing the technical issues and architectural impediments preventing the installation of Fios equipment to the subject properties. Finally, by certified letter dated September 14, 2011, Verizon NJ informed the property owners that the Company would be seeking relief from the Board if it could not reach an agreement for access to the properties at the following 12 locations (“September Letter”):

Table 1: Properties Listed in Verizon NJ’s September 14, 2011 Waiver Request

No.	Street address	Municipality	Number of Units
1	15 Overlook Avenue	Belleville	14
2	355 Belleville Avenue	Bloomfield	30
3	211 Johnson Avenue	Hackensack	43
4	294-298 Terrace Avenue	Hasbrouck Heights	16
5	1031-1035 Clinton Street	Hoboken	20
6	415 Baldwin Avenue	Jersey City	9
7	234 Jewett Avenue	Jersey City	14
8	101 73rd Street	North Bergen	33
9	158 Gregory Avenue	Passaic	32
10	35 Broad Street	Toms River	24
11	419-421 60th Street	West New York	30
12	600 Harbor Blvd.	Weehawken	258

In response to Verizon NJ’s Waiver Request, the Board Staff (“Staff”) provided the property owners the opportunity to comment or submit their objections to Verizon NJ’s request. Letters were sent to property owners via certified mail on November 16, 2011. Several property owners responded to the Staff’s November 16, 2011 letter expressing their desire to have Fios installed in their buildings. However, after extensive correspondence between Staff, Verizon NJ representatives, and property owners, and review of site surveys of several properties, it was determined that due to the aforementioned technical issues and/or architectural impediments, an agreement could not be reached with Verizon NJ to provide Fios service to the 12 properties listed in the Waiver Request.

Neither the Board’s rules, nor an Order granting Verizon NJ’s Waiver Request, prohibit the Company from continuing to negotiate for access with MDU property owners. In a letter dated October 3, 2019, Verizon NJ filed a notice with the Board that it had reached an agreement for access with four (4) of the 12 properties listed in its Waiver Request. Verizon NJ, therefore, withdrew its request for relief for the following properties: 211 Johnson Ave., Hackensack; 1031-1035 Clinton Street, Hoboken; 234 Jewett Ave., Jersey City; and 35 Broad St., Toms River.

Verizon’s 2020 SWF Renewal and MDU Waiver Status

On December 16, 2020, Verizon NJ received Board approval of its renewal application for a SWF in Docket No. CE20080516. As a condition of the SWF renewal, Verizon NJ was required to submit information to the Board concerning the status of previously unserved MDUs for which the Company was seeking relief in its Waiver Request. The information submitted by Verizon NJ in 2021 and 2022 reflects that access agreements have not been reached with building ownership/management on a number of MDUs, and a significant number of MDU residents are still without Fios, including eight (8) properties from Verizon NJ’s Waiver Request.

Table 2: Remaining Properties Listed in Verizon NJ’s September 14, 2011 Waiver Request Without Fios Service as of November 2022

No.	Street address	Municipality	Number of Units
1	15 Overlook Avenue	Belleville	14
2	355 Belleville Avenue	Bloomfield	30
3	294-298 Terrace Avenue	Hasbrouck Heights	16
4	415 Baldwin Avenue	Jersey City	9
5	101 73rd Street	North Bergen	33
6	158 Gregory Avenue	Passaic	32
7	419-421 60 th Street	West New York	30
8	600 Harbor Blvd.	Weehawken	258

By letters dated July 13, 2022 and September 12, 2022, respectively, Staff attempted to contact the property owners and management of the remaining unserved MDUs seeking comment on Verizon NJ’s Waiver Request. Staff received certified mailing confirmation of delivery for five (5) properties. The only comments received were from the property management of 600 Harbor Blvd in Weehawken (a/k/a Riva Pointe at Lincoln Harbor Condo Association) requesting that the Board not grant Verizon NJ relief as the parties were engaged in negotiations for access to the property to provide service to 600 Harbor Blvd.

Additionally, Staff notified public officials in certain municipalities throughout Verizon NJ’s SWF service territory on the status of the MDUs in their respective communities in an effort to gather information that could assist the Board in making a decision on the Waiver Request.³ Certified letters were sent between July 13, 2022 and August 30, 2022, respectively, to mayors in over 60

³ In addition to the September 14, 2011 request for relief, Verizon NJ has filed over 80 separate waiver requests for thousands of MDU properties scattered through 68 municipalities, most of which are still pending before the Board.

municipalities with MDUs where Fios service was required pursuant to the SWF, including those listed in the Waiver Request (see Table 2). To date, Staff has received written comments from three (3) public officials⁴, including the Mayor for the City of Passaic, which has one property listed in this proceeding.⁵

The New Jersey Division of Rate Counsel (“Rate Counsel”) submitted comments on September 7, 2022 and subsequently amended its comments on September 8, 2022. In its comments, Rate Counsel generally expressed support for the approval of Verizon NJ’s Waiver Request. Rate Counsel noted that Verizon NJ has provided evidence as required under N.J.S.A. 48:5A-25.2(a)(2) and N.J.A.C. 14:18-15.3, that it attempted negotiations in good faith and was unable to access the properties for the installation and deployment of its Fios service using its standard technical solutions under reasonable terms and conditions. Therefore, Rate Counsel did not object to a Board Order granting Verizon NJ’s Waiver Request, subject to conditions previously imposed on Verizon NJ in prior Board Orders of factually similar matters. However, as to the property located at 600 Harbor Blvd, Rate Counsel recommended the Board defer relief because of the ongoing negotiations between the parties.

DISCUSSION

Access to any MDU by a cable television operator is governed by N.J.S.A. 48:5A-49 and N.J.A.C. 14:18-4.5.⁶ Under its SWF, Verizon NJ is obligated to attempt good faith negotiations with MDU owners for access. Before approving Verizon NJ’s Waiver Request pursuant to N.J.A.C. 14:18-15.3(a)(2), the Board must determine whether Verizon NJ has provided notice to the MDU owner consistent with N.J.A.C. 14:18-4.5(b), and whether Verizon’s access complies with its statutory obligation under N.J.S.A. 48:5A-49(a).

As the Board noted in its 2006 Order granting Verizon NJ’s SWF, 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 stated that Verizon NJ “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] cannot find a solution to an MDU issue, [Verizon] has committed to notifying [the Division of Rate Counsel] and the Board with the appropriate information.”⁷

The Board also notes that any provision in an incumbent cable operator MDU access agreement purporting to provide for exclusive access is “null and void” under 47 C.F.R. § 76.2000(a). Additionally, recent amendments to 47 C.F.R. Parts 64 and 67 continue to recognize the significance and complexity of MDU access by telecommunications carriers and multichannel video programming distributors, and a need for action on this issue. On February 15, 2022, the

⁴ Staff received written comments from the City of Elizabeth, the Township of Toms River and the City of Passaic. Staff also exchanged email information with the City of Trenton.

⁵ The comments from Mayor Lora of Passaic urged the Board to establish a program to assist property owners in defraying the costs of upgrading MDUs that may be needed to facilitate the installation of Verizon NJ’s Fios equipment. The Board notes that such programs are outside the scope of the SWF legislation and the Board’s authority.

⁶ In re Comcast Cablevision of Jersey City, Inc. for Access to Certain Premises Known as “Newport”, A-0562-03 (App. Div. July 18, 2007).

⁷ In re the Application of Verizon New Jersey, Inc. for a System-wide Cable Television Franchise (December 18, 2006), *supra*, page 4.

Federal Communications Commission (“FCC”) issued a Report and Order targeting specific practices that frustrate competition, impede deployment by competitive providers, and reduce choice for MDU residents.⁸ Specifically, the FCC amended its rules to prohibit the practices of exclusive and graduated revenue sharing and exclusive marketing arrangements, which have the effect of reducing opportunities for competitive providers to offer service to MDU residents.

Upon review of Verizon NJ’s Waiver Request, and having considered all subsequent documentation relevant to the subject properties, the Board **HEREBY FINDS** Verizon NJ’s Waiver Request to be consistent with current law and applicable regulations. Accordingly, the Board **HEREBY GRANTS** Verizon NJ’s Waiver Request of the requirement to extend Fios cable television service to Properties #1 through #7 listed in Table 2 above that are still without service, subject to the following conditions:

1. Nothing contained herein shall limit Verizon NJ or an MDU’s ability to subsequently enter into an access agreement or seek access to extend service to an MDU. In the event that Verizon NJ and a 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 Board within 10 days of its execution.
2. Within 180 days of the completion of all necessary site surveys, engineering, wiring design and property owner approval of the proposed method of wiring or installation, Verizon NJ will complete all necessary construction needed to extend Fios service to all residents or tenants of the property.
3. Within 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 NJ will file a certification of completion with the Board.


With respect to Property #8, the Board **DEFERS** approval of the Waiver Request on said property to allow additional time for negotiation between the parties. Verizon NJ is **HEREBY DIRECTED** to submit monthly progress reports to the Board for a period of 180-days from the effective date of this Order advising of the status of the negotiation. In the event the parties are unable to reach a settlement at the end of the 180-day period, the relief sought by Verizon NJ in its Waiver Request shall be deemed automatically **GRANTED** with no further action required from Verizon NJ or the Board.

⁸ Improving Competitive Broadband Access to Multiple Tenant Environments, GN Docket No. 17-142 (Feb. 15, 2022).

This Order shall be effective on December 28, 2022.

DATED: December 21, 2022


BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARYANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER



DR. ZENON CHRISTODOULOU
COMMISSIONER

ATTEST:



CARMEN D. DIAZ
ACTING SECRETARY

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

IN THE MATTER OF VERIZON NEW JERSEY, INC. NOTICE FOR RELIEF OF A
REQUIREMENT TO EXTEND ITS FIOS TV SERVICE TO CERTAIN MULTI-DWELLING UNIT
PROPERTIES LOCATED IN MUNICIPALITIES WHERE EXTENSION OF FIOS TV SERVICE
IS REQUIRED UNDER THE TERMS OF ITS SYSTEM-WIDE FRANCHISE

DOCKET NO. CO11090548

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