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OFFICE OF CABLE TELEVISION

I/M/O Verizon New Jersey, Inc.
Application for a System-wide
Cable Television Franchise
BPU Docket No. CE06110768

FRANCHISE RENEWAL /
ASCERTAINMENT REPORT
MAY 30, 2013

BACKGROUND/PROCEDURAL HISTORY

In August 2006, amendments to the New Jersey Cable Act, N.J.S.A. 48:5A-1 et seq. ("State Act") were enacted which were intended to accelerate cable competition and consumer choice. This legislation provided cable operators a choice between acquiring traditional franchises town by town, as had been the practice in New Jersey since the 1970's, or applying directly to the Board of Public Utilities ("Board") for a system-wide franchise.

Verizon-New Jersey, Inc. ("Verizon"), a local exchange telecommunications carrier, was the first entity to apply for a system-wide franchise to provide cable television service under the newly enacted amendments to the State Act. In December 2006, the Board approved Verizon's system-wide franchise application, granting Verizon the authority to enter the cable television market in 316 municipalities.¹ As of the 1st quarter of 2013, Verizon has added 56 additional municipalities to its system-wide franchise service area, and is currently authorized to provide cable television service in 372 municipalities.

Pursuant to the amended State Act, Verizon was granted a seven-year franchise, which is set to expire on December 18, 2013. Franchise renewal in New Jersey is governed by the federal Communications Policy Act of 1934, as amended ("Federal Act"), the amended State Act, and the Board's rules in the New Jersey Administrative Code ("N.J.A.C."). The Federal Act (47 U.S.C. §546) sets out the *ascertainment* process required to be used by franchising authorities in the renewal process. Ascertainment is the term utilized to explain the fact-finding process used by franchising authorities to examine the past performance of the cable operator and identify the future cable-related needs of the community. The Board's review of Verizon's performance under its franchise as stated in both the State Act and the Board's rules at N.J.A.C. 14:18-14.17(b), is specifically limited to:

1. Any Statewide needs and requirements as may be established by the State Cable Act;
2. The extent to which Verizon has met its commitments pursuant to N.J.S.A. 48:5A-28 and the rules and regulations of the Office of Cable Television, in accordance with the State Cable Act; and
3. Performance and substantial compliance with material terms and conditions of Verizon's existing system-wide franchise based on notice and opportunity to cure under applicable Federal law as placed on the record.

The Board's rules at N.J.A.C. 14:18-14.17(c) require that, at least seven months prior to the expiration of the franchise, the Office of Cable Television (OCTV) must issue an ascertainment report to the Board, which must be made available for public inspection.

On May 4, 2011, the OCTV notified Verizon of its intention to review its performance under its system-wide franchise pursuant to Federal and state guidelines, as outlined above. On February 1, 2012, the OCTV invited Verizon to file comments on its performance under the

¹ Order, *In the Matter of the Application of Verizon New Jersey, Inc. for a System-wide Cable Television Franchise*, BPU Docket No. CE06110768 (December 18, 2006).

franchise and to assess how it will meet the future needs of the communities listed in its franchise application. Verizon filed its Initial Comments with the OCTV on April 16, 2012.² In its comments, Verizon contends that it has widely deployed its cable television service in New Jersey to fulfill its statutory obligations under the system-wide franchise, and that current and future cable related needs of the municipalities served by Verizon are substantially fulfilled by the State Act's statutory obligations, including higher franchise fees, PEG programming, equipment and training and free municipal connections.

The amended State Cable Act, N.J.S.A. 48:5A-25.2(d) specifically required the Board and the OCTV to commence a proceeding within 36 months of the issuance of the first system-wide franchise, and within six months of the proceeding, issue a report to the Governor and the Legislature regarding the effects of the entry of system-wide franchisees on the State's cable television market. The OCTV's report, issued in June 2010, examined the operation of Verizon's system-wide franchise, including the extent of its actual deployment, and its effect on consumers and choice in the marketplace.³ The Ascertainment Report will provide an update to the information provided in the June 2010 report regarding Verizon's performance under the franchise up to the 4th quarter of 2012 as reflected in reports filed with the Board.

² See Attachment 1.

³ See Attachment 2, Excerpts of New Jersey Board of Public Utilities Report to the Governor and Legislature on the Effects of the System-wide Franchise Cable Television Franchise in New Jersey (June 2010) Full Report available on the Board's website:
<http://www.nj.gov/bpu/pdf/cablepdfs/SWF%20Report%20-%20final%206910.pdf>

PERFORMANCE CRITERIA

1. Any Statewide needs and requirements as may be established by the State Cable Act;

Verizon's deployment commitments under its system-wide franchise are delineated in the State Cable Act at N.J.S.A. 48:5A-25.2a:

48:5A-25.2 Requirements for CATV system-wide franchise

- a. As part of any system-wide franchise issued by the board pursuant to P.L.1972, c.186 (C.48:5A-1 et seq.), a CATV company shall be required to:
- (1) begin providing cable television service on a commercial basis, within three years of issuance of the system-wide franchise, in:
 - (a) each county seat that is within the CATV company's service area; and
 - (b) each municipality within the CATV company's service area that has a population density greater than 7,111 persons per square mile of land area, 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.). The requirements of this paragraph shall only apply to CATV companies that on the date of the issuance of the system-wide franchise provide more than 40 percent of the local exchange telephone service market in this State;
 - (2) make cable television service available throughout the residential areas of any such municipalities within six years of the date the CATV company first provides cable television service on a commercial basis directly to multiple subscribers within such central office area, subject to the CATV company's line extension policy; provided, however, that such provision of service shall not be required in:
 - (a) areas where developments or buildings are subject to claimed exclusive arrangements with other CATV companies;
 - (b) developments or buildings that the CATV company cannot access, using its standard technical solutions, under commercially reasonable terms and conditions after good faith negotiation; or
 - (c) areas in which the CATV company is unable to access the public rights-of-way under reasonable terms and conditions.

The requirements of this paragraph shall only apply to CATV companies that on the date of the issuance of the system-wide franchise provide more than 40 percent of the local exchange telephone service market in this State. As used in this subsection, "central office" has the same meaning as that term is defined in 47 C.F.R. Part 36, Appendix, and "central office area" means the towns or portions of towns served by such central office;

- (3) provide service within the CATV company's service area where cable television service is being offered, without discrimination against any group of potential residential cable subscribers because of the income levels of the residents of the local area in which such groups reside; and
- (4) fully complete a system capable of providing cable television service to all households within the CATV company's service area where cable television service is being offered, subject to the CATV company's line extension policy and the provisions of paragraphs (1) through (3) of this subsection.

Verizon's deployment commitments:

Verizon was granted approval to serve 316 municipalities in its franchise approved by the Board in December 2006. Since then, Verizon has added 56 towns to its franchise and is now authorized to serve 372 towns. Under the amended State Act, out of the 526 towns located in Verizon's local exchange telephone service territory, Verizon's deployment of its FiOS cable service was required in the residential areas of only 70 of the municipalities, consisting of the

county seats in which it provides local exchange service, and those with greater than 7,111 residents per square mile.⁴

As noted above, within three years, Verizon was required to begin providing service on a commercial basis to the 70 must build towns. The Board confirmed in its June 2010 report that Verizon had met this commitment, noting that Verizon was offering service to more than 60% of these households in 38 of these 70 municipalities.⁵ Verizon reiterated this point in their comments, noting that it had “taken substantial strides, with emphasis on building out these municipalities, as evidenced by the Board’s approval of certifications stating that Verizon is offering cable television service to more than 60 percent of the households in 55 of the 70 municipalities.”⁶

In the June 2010 report, Verizon represented that its FiOS service passed 1.9 million New Jersey homes.⁷ Verizon indicates in its comments that it now has already passed more than 2.2 million premises with its FiOS network in New Jersey, and is presently offering cable television service in all or parts of 352 of the total 372 towns in its franchise.⁸ As of December 31, 2012, Verizon provided FiOS to approximately 600,000 customers.⁹ Data appears to indicate that Verizon’s deployment efforts have decreased dramatically in the last three years, with only three towns being added to the franchise since the June 2010 report. However, the State Act does not require that Verizon provide service outside of the 70 must build towns, and it is therefore within Verizon’s discretion as to where they will deploy service outside of its statutory deployment commitments.

Verizon is also required under the State Act, subject to certain exceptions with respect to multiple dwelling units (MDUs),¹⁰ to make its FiOS cable service available throughout the residential areas of the 70 must build municipalities within six years of the date it first provides cable television service on a commercial basis directly to multiple subscribers within the central office area. As of December 2012, 10 of the 70 towns were required to have full availability to FiOS service. Verizon has reported to the Board that it has achieved full availability of FiOS service in each of the 10 towns as of December 2012.¹¹

As noted above, Verizon indicated that it had focused its deployment efforts on the 70 must build towns. However, by letter dated November 29, 2012, Verizon notified the Board that it was redirecting its resources to recovery and restoration efforts to address the devastation caused by Superstorm Sandy, and was suspending its FiOS installation efforts in certain MDUs and other properties. Verizon noted that this could place it within jeopardy of not reaching its deployment timelines as set out under the State Act. The suspended installations efforts affected 12 of the 70 must build towns, including MDUs located in 4 of the 10 towns required to

⁴ See Attachment 2, Appendix I for listing of the 70 “must build” towns.

⁵ June 2010 Report at 2.

⁶ Verizon comments at 4.

⁷ June 2010 Report at iii.

⁸ Verizon comments at 2.

⁹ Board of Public Utilities Cable Facts 2013.

¹⁰ See N.J.S.A. 48:5A-25.2a(2).

¹¹ Verizon comments at 4. As noted, Verizon has filed several MDU waiver notices and mandatory access petitions with the Board pursuant to the guidelines in the State Act and the Board’s rules. Data includes pending waiver notices and mandatory access petitions filed by Verizon for MDUs located in these towns.

be fully built by December 2012. The remaining towns that were affected are due to be fully built before the 2d quarter of 2013. Verizon indicated in its November 29, 2012 letter that both the Board and the Division of Rate Counsel would be notified when the installation efforts would be reinstated. OCTV recommends that Verizon provide an update on the status of their deployment to these properties in its franchise renewal application, and provide an update as to when the build out of these towns is expected to be completed.

2. The extent to which Verizon has met its commitments pursuant to N.J.S.A. 48:5A-28 and the rules and regulations of the Office of Cable Television, in accordance with the State Cable Act;

Additional requirements for Verizon's system-wide franchise are set out under N.J.S.A. 5A-28:

48:5A-28. Contents of application, commitments by system-wide franchise

Each application for a municipal consent or system-wide franchise shall contain:

...

h. (1) With regard only to applications for a system-wide franchise, a commitment as to those municipalities that are served by a CATV company at the time of the application, to match or surpass any line extension policy operative at the time the system-wide franchise is granted and placed into effect prior to the enactment of P.L.2006, c.83 (C.48:5A-25.1 et al.) by a local franchise or certificate of approval, for the duration of the system-wide franchise. In any event, the CATV company shall extend its plant along public rights-of-way to all residences and businesses within 150 aerial feet of the CATV company's existing plant at no cost beyond the normal installation rate, and to all residences and businesses within 100 underground feet of the CATV company's plant at no cost beyond the normal installation rate, and shall set a minimum house per mile density of not less than 35 homes per square mile.

(2) This commitment shall be in addition to any and all board orders and rules that impact upon the extension of plant, except that such commitment shall supersede the board's regulations adopted as N.J.A.C. 14:3-8.1 et seq., which shall not apply to CATV companies, including telecommunications service providers that have obtained a system-wide franchise.

i. With regard only to applications for a system-wide franchise, a commitment to provide to each municipality that is served by a CATV company, with two public, educational and governmental access channels. In the event that two or more access channels are requested by a municipality, the municipality shall demonstrate that its cable-related needs require the provision of such additional access channels. Any and all CATV companies operating in a municipality shall provide interconnection to all other CATV companies on reasonable terms and conditions, and the board shall adopt regulations for procedures by which disputes between such CATV companies shall be determined and expeditiously resolved. Each municipality or its nonprofit designee shall assume responsibility for the management, operations and programming of the public, educational and governmental access channels.

j. With regard only to applications for a system-wide franchise, a commitment to install and retain or provide, without charge, one service outlet activated for basic service to any and all fire stations, public schools, police stations, public libraries, and other such buildings used for municipal purposes.

k. With regard only to applications for a system-wide franchise, a commitment to provide free Internet service, without charge, through one service outlet activated for basic service to any and all fire stations, public schools, police stations, public libraries, and other such buildings used for municipal purposes.

l. With regard only to applications for a system-wide franchise, a commitment to provide equipment and training for access users, without charge, on a schedule to be agreed upon between the municipality and the CATV company.

m. With regard only to applications for a system-wide franchise, a commitment to provide a return feed from any one location in the municipality, without charge, to the CATV company's headend or other location of interconnection to the cable television system for public, educational or governmental use, which return feed, at a minimum, provides the ability for the municipality to cablecast live or taped access programming, in real time, as may be applicable, to the CATV company's customers in the municipality. No CATV company is responsible for providing a return access feed unless a municipality requests such a feed in writing. A CATV company that has interconnected with another CATV company may require the second CATV company to pay for half of the CATV company's absorbed costs for extension.

n. With regard only to applications for a system-wide franchise, a commitment to meet any consumer protection requirements applicable, pursuant to board regulations, to cable television companies operating under certificates of approval.

Verizon's performance:

(h) – Line Extension Policy

Under its franchise, Verizon was required to provide a line extension policy ("LEP") that meets or exceeds the LEP offered by the incumbent in each municipality served. An LEP is a cost sharing formula that determines the dollar amount to be shared between a cable operator and a potential customer for construction along public right-of-way outside of the area where the company has agreed to provide service at no cost beyond installation charges. To date, while the OCTV has received some requests as to when FiOS service will be available to a particular location, it has not received any LEP requests. While Verizon has invoked LEPs in a limited number of municipalities, in all cases, it is where the company has no obligation to provide full service. Verizon has simply stated that it does not have FiOS plant available and the law does not permit the OCTV to require the company to provide service to residents that are not in one of the 70 required municipalities. Therefore, while an LEP may be in place in some towns, it is unlikely that it will be invoked.

(i)/(l) – Public Educational and Governmental (PEG) access channels and equipment and training;

(j)/(k) – free basic cable and internet service to public schools, libraries and municipal bldgs.;

(m) – return feeds

The State Act requires that upon request, Verizon provide to the municipalities: up to two PEG access channels with equipment and training; free basic cable and internet connections to public schools, libraries and certain municipal locations; and one free return line. Verizon stated in its comments¹² that it had:

- installed 165 return lines and interconnected with incumbent cable companies that enabled 267 municipalities to distribute or receive PEG programming;
- provided 7 county-wide PEG channels reaching residents in 190 municipalities;
- provided access to free PEG equipment and training at 7 county colleges across the State through its partnership with NJEDge (a consortium of NJ colleges); and
- installed free Internet and cable connections to 927 municipal locations in 192 municipalities.

It is noted that when Verizon began providing return lines, PEG access channels and free cable television and Internet service, the OCTV was copied on many requests as well as some complaints that the company was not complying with its obligations. Because of this, the OCTV required Verizon to provide quarterly reports on the status of these requests. In January of 2011, the OCTV relieved Verizon of filing reports, noting that it had received very few complaints since beginning of 2010, and that all inquiries/complaints would be handled on a case-by-case basis. The OCTV has been copied on only a few requests for these services since that time; the OCTV has received no new complaints.

¹² Verizon comments at 5.

Verizon was required to provide training and equipment for customers in its municipalities to produce PEG access programming. Verizon has noted that while seven county colleges in the State have this free equipment for use, it has received few requests for its use. Therefore, the program has not expanded.

(n) – Consumer protection requirements

Verizon is required under the State Act to meet any consumer protection requirements under the Board's regulations. Per Verizon's franchise, the OCTV has served as the designated complaint office. To date, Verizon has complied with the consumer protections requirements under the Board's rules.

Under the Board's rules, N.J.A.C. 14:18-16.7, a cable television company that is subject to effective competition may seek relief from the Board on certain notification and recordkeeping requirements. Verizon sought relief under the rule and in March of 2011, was granted relief pursuant to the rule. In its request for relief, Verizon committed to cooperate with any reasonable requests for information from the Board or Board staff regarding any matter for which relief was granted.

3. Performance and substantial compliance with material terms and conditions of Verizon's existing system-wide franchise based on notice and opportunity to cure under applicable Federal law as placed on the record.

Pursuant to the Federal Act, if the franchising authority finds that there are any substantial violations of the current franchise, it must provide the cable operator "notice and opportunity to cure" (47 U.S.C. § 546(d)). To date, Verizon has not been provided with notice of any substantial non-compliance with the terms of the existing franchise. Compliance reviews are generally conducted by the OCTV on each cable television company in the state every 2-3 years on average. Since the report of June 2010, no enforcement action has been brought to the Board. However, the OCTV will continue to review Verizon's compliance under its system-wide franchise and the Board's rules.

The June 2010 report noted that complaint statistics compiled by the OCTV indicated that complaints increased by less than 2% from the prior year in 2007, the first year of Verizon's entry.¹³ Complaint numbers have continued to rise steadily, with cable industry reports almost doubling from 4.8 million in 2007 to 8.7 million in 2011, which could be indicative of greater levels of competition in the industry.¹⁴ The top complaint categories of billing, reception, service interruption, and appointment service calls continue to remain consistent over the years.

NOTE:

Pursuant to the Board's rules, within 90 days of the filing of the OCTV Ascertainment Report, Verizon is required to file its franchise renewal application. Public Hearings will be scheduled within 45 days of the filing of Verizon's application to allow public comment.

¹³ June 2010 Report at 22.

¹⁴ BPU Office of Cable Television 2011 Annual Video Industry Complaint Report.

ATTACHMENT 1

<http://nj.gov/bpu/pdf/cablepdfs/vzcomments4-16-12.pdf>

ATTACHMENT 2

<http://www.nj.gov/bpu/pdf/cablepdfs/SWF%20Report%20-%20final%206910.pdf>