



Agenda Date: 2/17/23  
Agenda Item: 3A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 1<sup>st</sup> Floor  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://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. CO11110844  
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 November 8, 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 Fios<sup>1</sup> 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”).<sup>2</sup>

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(a)(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

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<sup>1</sup> “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.

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

buildings that 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 telecommunications service provider, 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 11 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 November 8, 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 11 locations:

**Table 1:** Properties Listed in Verizon NJ’s November 8, 2011 Waiver Request

No.	Street address	Municipality	Number of Units
1	300 Gorge Rd.	Cliffside Park	77
2	257-261 12 <sup>th</sup> St.	Hoboken	30
3	1 Bayside Terrace	Jersey City	34
4	104 Corbin Ave.	Jersey City	24
5	110 Mercer St.	Jersey City	9
6	112 Sussex St.	Jersey City	10
7	126 Newark Ave.	Jersey City	29
8	34 Clifton Pl.	Jersey City	21
9	425 Ocean Ave.	Jersey City	109
10	429 Fairmont Ave.	Jersey City	65
11	462 Bramhall Ave.	Jersey City	85

In response to Verizon NJ’s Waiver Request, 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 May 18, 2012. After extensive correspondence between Staff, Verizon NJ representatives, and following conversations with property owners, it was determined that an agreement could not be reached with Verizon NJ to provide Fios service to the 11 properties listed in the Waiver Request due to the aforementioned technical issues and/or architectural impediments

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 letters dated April 8, 2015, October 3, 2019 and November 6, 2020, Verizon NJ filed notices with the Board

that it had reached an agreement for access with four (4) of the 11 properties listed in its Waiver Request. Verizon NJ, therefore, withdrew its request for relief for the following properties: 300 Gorge Rd., Cliffside Park; 425 Ocean Ave., Jersey City; 429 Fairmount Ave., Jersey City; and 462 Bramhall Ave., Jersey City.

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 seven (7) properties from Verizon NJ's Waiver Request.

**Table 2:** Remaining Properties Listed in Verizon NJ's November 8, 2011 Waiver Request Without Fios Service as of December 2022

No.	Street address	Municipality	Number of Units
1	257-261 12 <sup>th</sup> St.	Hoboken	30
2	1 Bayside Terrace	Jersey City	34
3	104 Corbin Ave.	Jersey City	24
4	110 Mercer St.	Jersey City	9
5	112 Sussex St.	Jersey City	10
6	126 Newark Ave.	Jersey City	29
7	34 Clifton Pl.	Jersey City	21

By letter dated September 23, 2022, 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; however, no comments were received from the property owners/management of the remaining unserved MDUs. Additionally, in an effort to gather information that could assist the Board in making a decision on the Waiver Request, Staff notified public officials in certain municipalities throughout Verizon NJ's SWF service territory on the status of the MDUs in their respective communities.<sup>3</sup> Certified letters were sent between July 13, 2022 and August 30, 2022, respectively, to mayors in over 60 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 officials.<sup>4</sup>

<sup>3</sup> In addition to the November 8, 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.

<sup>4</sup> 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.

The New Jersey Division of Rate Counsel (“Rate Counsel”) submitted comments on January 19, 2023. In its comments, Rate Counsel 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. Rate Counsel noted, however, that the Board Order should include conditions that reaffirm deployment obligations should requests for service from these locations be renewed and technological advances facilitate Fios deployment at these locations. Accordingly, Rate Counsel does not oppose the Board’s granting of Verizon NJ’s Waiver Request.

### **DISCUSSION AND FINDINGS**

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.<sup>5</sup> 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.”<sup>6</sup>

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 76 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 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.<sup>7</sup> 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

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<sup>5</sup> In re Comcast Cablevision of Jersey City, Inc. for Access to Certain Premises Known as “Newport”, A-0562-03 (App. Div. July 18, 2007).

<sup>6</sup> In re the Application of Verizon New Jersey, Inc. for a System-wide Cable Television Franchise (December 18, 2006), *supra*, page 4.

<sup>7</sup> Improving Competitive Broadband Access to Multiple Tenant Environments, GN Docket No. 17-142 (Feb. 15, 2022).

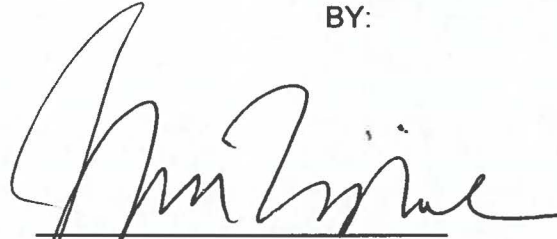
television service to Properties #1 through #7 listed in Table 2 above that are still without service, subject to the following conditions:

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 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.
3. In the event that Verizon receives a request for service by one (1) or more residents or tenants of any of the properties but does not have an agreement for access in place, Verizon will provide notice to the Board and 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.
4. Within 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 Board.
5. Within 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.

This Order shall be effective on February 24, 2023.

DATED: February 17, 2023

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER

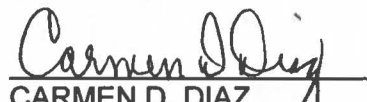


ROBERT M. GORDON  
COMMISSIONER



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. CO11110844

SERVICE LIST

**VERIZON NEW JERSEY, INC.**

Elizabeth Gray Nunez, Esq., Counsel  
One Verizon Pl., 18 Floor Room 1839C  
Alpharetta, GA 30004  
[elizabeth.gray.nunez@verizon.com](mailto:elizabeth.gray.nunez@verizon.com)

Ava-Marie Madeam, Director  
State & Local Government Affairs  
999 West Main Street, 3rd Floor  
Freehold, NJ 07728  
[avamarie.p.madeam@verizon.com](mailto:avamarie.p.madeam@verizon.com)

Laura A. Shine, Senior Analyst  
State Regulatory Affairs  
140 West Street, 7th Floor  
New York, NY 10007  
[laura.a.shine@verizon.com](mailto:laura.a.shine@verizon.com)

**DIVISION OF RATE COUNSEL**

140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-0003

Brian O. Lipman, Esq., Director  
[blipman@rpa.nj.gov](mailto:blipman@rpa.nj.gov)

Robert Glover, Esq.  
Assistant Deputy Rate Counsel  
[rglover@rpa.nj.gov](mailto:rglover@rpa.nj.gov)

Emily Smithman, Esq.  
Assistant Deputy Rate Counsel  
[esmithman@rpa.nj.gov](mailto:esmithman@rpa.nj.gov)

**NEW JERSEY DIVISION OF LAW**

Department of Law and Public Safety  
Richard J. Hughes Justice Complex  
Public Utilities Section  
25 Market Street, P.O. Box 112  
Trenton, NJ 08625

Pamela L. Owen, DAG, ASC  
[Pamela.Owen@law.njoaq.gov](mailto:Pamela.Owen@law.njoaq.gov)

Meliha Arnautovic, DAG  
[Meliha.Arnautovic@law.njoaq.gov](mailto:Meliha.Arnautovic@law.njoaq.gov)

**BOARD OF PUBLIC UTILITIES**

44 South Clinton Avenue, 1<sup>st</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350

Carmen D. Diaz, Acting Secretary  
[board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)

Stacy Peterson, Deputy Executive Director  
[stacy.peterson@bpu.nj.gov](mailto:stacy.peterson@bpu.nj.gov)

Carol Artale, Deputy General Counsel  
[carol.artale@bpu.nj.gov](mailto:carol.artale@bpu.nj.gov)

Steven Athanassopoulos, Legal Specialist  
[steven.athanassopoulos@bpu.nj.gov](mailto:steven.athanassopoulos@bpu.nj.gov)

Lawanda R. Gilbert, Esq., Director  
[lawanda.gilbert@bpu.nj.gov](mailto:lawanda.gilbert@bpu.nj.gov)

Joseph Costa  
[Joseph.costa@bpu.nj.gov](mailto:Joseph.costa@bpu.nj.gov)