

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of the Application of Verizon New Jersey Inc.)
and Verizon New York Inc. To Discontinue Domestic) WC Docket No. 13-150
Telecommunications Services) Comp. Pol. File No. 1115

COMMENTS OF THE NEW JERSEY BOARD OF PUBLIC UTILITIES

BACKGROUND

1. Introduction

The New Jersey Board of Public Utilities (“Board”) submits the following comments in response to the Federal Communications Commission (“FCC” or “Commission”) June 28, 2013 Public Notice (“Public Notice” or “Notice”) in the above-captioned proceeding.¹ The Notice seeks comment on the Section 63.71 Application of Verizon New York Inc. and Verizon New Jersey Inc. (“Verizon”) filed with the Commission on June 7, 2013, “requesting authority under section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.71 of [the FCC’s] rules, 47 C.F.R. § 63.71, to discontinue certain domestic telecommunications services in certain parts of New Jersey and New York affected by Hurricane Sandy.”² Subsequently, the Application

¹ See, Federal Communications Commission Public Notice (Public Notice), Comments Invited on Application of Verizon New Jersey Inc. and Verizon New York Inc. To Discontinue Domestic Telecommunications Services, DA 13-1475, Released: June 28, 2013. Comments on Verizon’s Application must be filed with the Commission on or before July 29, 2013. Notice at 5. According to Verizon’s Application, in New Jersey, the discontinuance of services would apply to “portions of the Barrier Island communities of Mantoloking, Brick, and Bay Head.” *Id.* at 2.

² See, Public Notice at 1 and footnote 1, citing Letter from Frederick Moacdieh, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed June 7, 2013) (Verizon Application), available at <http://apps.fcc.gov/ecfs/document/view?id=7022424983>.

was updated by Verizon on June 14, 2013 to update the record regarding notice to affected customers.³ Based on the Board's review of the Public Notice and Verizon's Application, the Board respectfully objects to any action by the FCC that would automatically grant Verizon's Application on the 60th day after the release of the Public Notice, or otherwise allow Verizon's Voice Link service to go into effect, as set forth in the Public Notice. Pursuant to 47 C.F.R. § 63.71, the FCC should notify Verizon that its request for discontinuance will not be automatically effective and the FCC should allow an opportunity for further review of the Application.

2. Verizon's Section 214 Application and Voice Link Proposal

Verizon claims that the FCC should allow it to discontinue service as set forth in its Application because the copper wireline facilities used to provide service in areas in New Jersey and New York "were destroyed or rendered inoperable by Superstorm Sandy and where the new deployment of wireline facilities is impractical."⁴ According to Verizon, "customers in these areas whose copper facilities are still working will be permitted to keep using them while the copper works, but their services on these facilities will be grandfathered given the impracticality of repairing these copper facilities in the future should they give out."⁵

³ See, Public Notice at footnote 2, Letter from Frederick E. Moacdieh, Executive Director, Federal Regulatory Affairs, Verizon, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission (filed June 14, 2013) (stating that Verizon is sending additional notice to the billing address of a number of customers that were previously notified at their service address, and that Verizon has since identified an additional 65 affected customers that are being provided with the notice attached to the application). The Competition Policy Division of the Wireline Competition Bureau of the FCC received Verizon's letter on June 18, 2013.

⁴ Verizon Application at footnote 1. Also, to the extent the FCC deems it necessary, Verizon seeks a waiver of the timing provisions of sections 63.60(b), 63.63(a), and 63.71 of the Commission's rules. Notice at 2.

⁵ Verizon Application at 2.

As described in its Application, Verizon is discontinuing interstate wireline services to customers previously served over copper facilities that the company states is no longer usable. Instead Verizon is offering Voice Link for voice service in affected households using wireless technology that plugs into a customer's telephone jack.⁶ Also, "[t]he device uses wireless technology rather than wireline facilities to transmit and receive calls between a customer's home or business and Verizon's network." Notice at 3. In its Notice, the FCC summarized the distinctions between Verizon's Voice Link service and its copper-based wireline services as identified by the New York Public Service Commission, which include how Voice Link:

- 1) will not allow for digital subscriber line (DSL) services; 2) will be incompatible with medical alert systems and credit card machines; 3) will require the use of mandatory 10-digit dialing; and 4) will not allow customers to make certain types of calls that they could make using a wireline phone.⁷

In addition, the Notice states that Voice Link does not allow the customer to accept collect calls or third number billed calls; does not provide a broadband connection; and is not compatible with Video Relay services. Notice at 3. Moreover, according to the Notice, "although Verizon indicates that the Voice Link service will provide 'fully enabled' E911 capability, the Voice Link Terms of Service state, '[The customer] agrees[s] that any 911 calls made using the Service may be subject to network congestion and/or reduced routing or processing speed.'" *Id.* at 4. Furthermore, the FCC points out that the Voice Link Terms of Service explains that if the subscriber has "Call Forwarding, or

⁶ Verizon Application at 4.

⁷ *See*, Public Notice at 3. The Terms of Service filed in New York indicate that "[t]he Service does not allow the Customer to make 500, 700, 900, 950, 976, 0, 00, 01, 0+, calling card or dial-around calls (e.g., 10-10-XXXX). The service does not allow the Customer to accept collect calls or third number billed calls." *Id.*, citing Letter from Joseph A. Post, Deputy General Counsel -- New York, Verizon New York Inc., to Hon. Jeffrey C. Cohen, Acting Secretary, New York State Public Service Commission, NY PSC Case No. 13-C-0197, Attach. at 2, para. 1(g) (filed June 12, 2013) (Voice Link Terms of Service), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={0241FDFA-D31F-4063-B9B9-988D97C1AADA}>. Notice, footnote 22.

other features programmed and in use at the time you dial a 911 call and your call is interrupted, the emergency dispatcher may not be able to call you back at the phone from which you dialed the call.” Notice, footnote 24, citing Verizon Application at 4. According to the Notice, “Verizon also acknowledges that certain customer equipment may not work over Voice Link service, such as alarm systems or facsimile machines.” Notice at 4. And, for those customers seeking data services, “Verizon states that it will refer customers to Verizon Wireless specialist for 4G LTE broadband services in Voice Link areas.” Id. at 3.

3. Standard of Review for Verizon’s Section 214 Application

47 U.S.C. § 214 provides in relevant parts as follows:

No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, or partial discontinuance, reduction, or impairment of service, without regard to the provisions of this section.

[47 U.S.C. § 214(a)].

Also, 47 C.F.R. § 63.71(c) provides as follows:

The application to discontinue, reduce or impair service, if filed by a domestic, dominant carrier, shall be automatically granted on the 60th day after its filing⁸ with the Commission without any Commission notification to

⁸ The Notice in this matter states: “In accordance with section 63.71(c) of the Commission’s rules, Verizon’s request to discontinue service will be deemed to be granted automatically on the 60th day after

the applicant unless the Commission has notified the applicant that the grant will not be automatically effective.

According to the Notice, when reviewing Verizon's Application, the FCC "has discretion in determining whether to grant a carrier authority to discontinue service pursuant to section 214," and the Commission "also can delay grant of a discontinuance authorization if it believes an unreasonable degree of customer hardship would result." Notice at 4.

The Notice notes the Commission's need to balance the interests of the applicant and the affected user community and generally considers a number of factors, including: "(1) the financial impact on the carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations." Ibid. In addition, the Notice states that "Verizon will receive authority for the discontinuance of interstate wireline telecommunications services including interstate interexchange and exchange access services in the Service Areas on or after August 27, 2013, in accordance with Verizon's filed representations." Id. at 5. Finally, the Notice points out that the Commission normally will authorize proposed discontinuances of service "unless it is shown that customers or other end users would be unable to receive service or a reasonable substitute from another carrier, or that the public convenience and necessity would be otherwise adversely affected." Ibid.

the release date of this public notice, unless the Commission notifies Verizon that the grant will not be automatically effective."

DISCUSSION

Verizon's Application Should Not Be Automatically Granted And The FCC Should Allow For A Further Opportunity To Be Heard On Whether Voice Link May Adversely Affect The Present Or Future Public Convenience And Necessity

In accordance with 47 U.S.C. § 214 and 47 C.F.R. § 63.71, the FCC first needs to determine the extent to which granting authority on Verizon's Application may adversely affect the present or future public convenience and necessity. The Board submits that the FCC should not accept Verizon's unsupported assertions as to why Voice Link is appropriate for the Barrier Island communities and on that basis should deny the Application. Alternatively, the FCC should not allow Verizon's Voice Link service to automatically go into effect on the 60th day. The FCC should require Verizon to support its allegations and provide interested parties, including the states, with an opportunity to be heard, so that an informed decision can be made as to whether or not Voice Link adversely affects the present or future public convenience and necessity.

To date however, the Board has not received a filing from Verizon, an incumbent local exchange carrier ("ILEC"), regarding Voice Link. Therefore, the Board asks that it be afforded the opportunity to receive the anticipated filing and to evaluate its merits prior to FCC action on Verizon's Application. Although Verizon has not filed a petition with the Board to discontinue wireline service to the Barrier Island communities or proposed Voice Link for that area, Board Staff is currently reviewing and monitoring Verizon's proposal to utilize its Voice Link product in New York and has requested information from the Company regarding its plans to utilize Voice Link in New Jersey. Board Staff's preliminary understanding of the service has yielded numerous unanswered questions as to the magnitude of the discrepancies between Voice Link service and the existing service provided by Verizon.

Although a formal petition has not been yet been filed by Verizon with the Board, from the information available thus far, Board Staff believes that there could be a significant

impact on Verizon's New Jersey customers, and on the Barrier Island communities specifically, if the FCC were to authorize Verizon's Application as indicated in the Public Notice. A plain reading of the terms and conditions of the Voice Link service, and as acknowledged in the Public Notice (pages 3-4), details the discrepancies between the existing wireline service and Voice Link. Accordingly, the FCC must ascertain the extent to which these limitations could adversely affect consumers and competitors. The identified limitations of the service, the differences of Voice Link as compared with the existing service that has already been deemed to be in the public interest of wireline customers, and the predominantly negative response that the proposal has garnered in New York gives the FCC sufficient grounds to delay a decision on whether to grant Verizon's Application.⁹

Thus, a review of the Application, a balancing of claims concerning impracticability versus the public-interest needs for a service that is capable of functioning in a manner consistent with Verizon's existing offering, and all the attendant issues associated with Verizon's Application should cause the Application not to be automatically granted on the 60th day after the release of the Public Notice or to be otherwise allowed to go into effect, as set forth in the Public Notice. Rather, on the whole, consistent with 47 C.F.R. § 63.71, the FCC should notify Verizon that its request for discontinuance will not be automatically effective and the FCC should allow for further review of the Application.

In addition, there must be a determination on whether Verizon's proposed Voice Link service meets its federal and state requirements, as an ILEC, including its ability through Voice Link to provide access to its network to competitors. Since the same network is used to complete both inter and intra-state toll calls, the effect of permitting the requested relief may potentially limit long-distance (or intra-state toll) calling exclusively to Verizon's wireless service.

⁹ See, generally, comments filed in Tariff Filing by Verizon New York Inc. To Introduce Use of Wireless Technology as an Alternative To Repairing Damaged Facilities, State of New York Public Service Commission, Case 13-C-0197.

Verizon is the carrier-of-last-resort (“COLR”) in the Barrier Islands; there is an issue regarding the extent to which Verizon can meet its COLR obligations through the use of Voice Link. Carrier-of-last-resort obligations, as the FCC has found, are the province of the states. See, e.g., In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform -- Mobility Fund, 26 FCC Rcd 17663, 17671-17672, 2011 FCC LEXIS 4859 (rel. November 18, 2011):

We recognize the statutory role that Congress created for state commissions with respect to eligible telecommunications carrier designations, and we do not disturb that framework. We know that states share our interest in extending voice and broadband service, both fixed and mobile, where it is lacking, to better meet the needs of their consumers. Therefore, we do not seek to modify the existing authority of states to establish and monitor carrier of last resort (COLR) obligations. We will continue to rely upon states to help us determine whether universal service support is being used for its intended purposes, including by monitoring compliance with the new public interest obligations described in this Order. We also recognize that federal and state regulators must reconsider how legacy regulatory obligations should evolve as service providers accelerate their transition from the Public Switched Telephone Network (PSTN) to an all IP world.

Thus, legacy obligations are the domain of the states and any policy adopted or decision made by the FCC should bear in mind the jurisdictional framework designed by Congress to preserve the authority of the states.

These are a few of the preliminary issues causing concern for the Board and are the basis for its comments herein. By not allowing Verizon’s request for discontinuance of service to be automatically effective, pursuant to 47 U.S.C. § 214 and 47 C.F.R. § 63.71, the FCC will further recognize New Jersey’s jurisdictional authority regarding the service requirements or conditions of Verizon’s telecommunications service in New Jersey.

CONCLUSION

For the foregoing reasons, the FCC should deny the application. The Board respectfully objects to any action by the FCC that would automatically grant Verizon's Application on the 60th day after the release of the Public Notice, or otherwise allow Verizon's Voice Link service to go into effect, as set forth in the Public Notice. Pursuant to 47 C.F.R. § 63.71, the FCC should notify Verizon that its requests for discontinuance will not be automatically effective and the FCC should allow for further review of the Application.

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