

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

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In the Matter of	)	
	)	
Application of Verizon New Jersey Inc. and	)	WC Docket No. 13-149
Verizon New York Inc. to Discontinue	)	
Domestic Telecommunications Services	)	Comp. Pol. File No. 1115
_____	)	
	)	
In the Matter of	)	
	)	
Application of Verizon New Jersey Inc. and	)	WC Docket No. 13-150
Verizon New York Inc. to Discontinue	)	
Domestic Telecommunications Services	)	Comp. Pol. File No. 1112
_____	)	

**COMMENTS OF U.S. TELEPACIFIC CORP.**

Tamar E. Finn  
Joshua M. Bobeck  
Bingham McCutchen LLP  
2020 K St., NW  
Washington, D.C. 20006  
202.373.6000 (Tel.)  
202.373.6001 (Fax)  
tamar.finn@bingham.com  
josh.bobek@bingham.com

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*Counsel for U.S. TelePacific Corp.  
and its affiliates*

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U.S. TelePacific Corp. (“TelePacific”) on behalf of itself and its affiliates,<sup>1</sup> file these comments in response to the Public Notice<sup>2</sup> issued by the Federal Communications Commission (“FCC” or “Commission”) regarding the application submitted by Verizon New Jersey, Inc. and Verizon New York, Inc.<sup>3</sup> Although TelePacific does not offer competitive local and broadband service in New York or New Jersey, it is concerned about the lack of a Commission process to address the impact of natural and man-made disasters on the wireline network infrastructure. In January, 2011, TelePacific’s CEO, Dick Jalkut, wrote to then Chairman Genachowski about the “unparalleled level of poor service” by the incumbents following California’s rain storms that left 3075 TelePacific customers without service from mid-December to early January.<sup>4</sup> Small and medium-sized businesses, the historical engine of growth in the U.S., rely on modern communications enabled by broadband connections. They also rely on the availability of competitive choices in broadband providers, because competition drives innovation and lower prices. Because Hurricane Sandy was not the first natural disaster to have an impact on communications, nor will it be the last, the Commission needs to develop a process to evaluate network restoration following such disasters, which includes the impact on consumers and competition.

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<sup>1</sup> Mpower Communications Corp., Arrival Communications, Inc., Mpower Network Services, Inc., and TelePacific Communications Co. f/k/a TelWest Network Services.

<sup>2</sup> Public Notice, Comments Invited On Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services, WC Docket No. 13-149, DA 13-1474; WC Docket No. 13-150, DA 13-1475 (June 28, 2013).

<sup>3</sup> Letter from Frederick Moacdieh, Verizon to Marlene H. Dortch, FCC WC Docket 13-150 (June 7, 2013); Letter from Frederick Moacdieh, Verizon to Marlene H. Dortch, FCC, WC Docket No. 13-149 (May 24, 2013).

<sup>4</sup> Ex Parte Letter from T. Finn, Counsel for U.S. TelePacific Corp., to M. Dortch, FCC, RM-11358, WC Docket No. 10-188, WC Docket No. 05-25 (Feb. 15, 2011) at Attachment, Letter from Richard A. Jalkut, CEO U.S. TelePacific Corp. to Chairman Genachowski at p. 1 (Feb. 14, 2011).

## I. Introduction and Summary

On June 21, 2012 Verizon Chief Executive Officer Lowell McAdam addressed an investors' conference and discussed Verizon's future planning for its wireline network:

We have got some work to do in New York and New Jersey there that are frankly pretty backward compared to the rest of these states, so we have got some work to do there. But the vision that I have is we are going into the copper plant areas and every place we have FiOS, we are going to kill the copper. We are going to just take it out of service and we are going to move those services onto FiOS. We have got parallel networks in way too many places now, so that is a pot of gold in my view.

And then in other areas that are more rural and more sparsely populated, we have got LTE built that will handle all of those services and so we are going to cut the copper off there. We are going to do it over wireless. So I am going to be really shrinking the amount of copper we have out there and then I can focus the investment on that to improve the performance of it. So there is lots of opportunities there and FiOS is continuing to do very well so we can grow the top line through FiOS and we can leverage the cost efficiencies on the network side. So margins can improve.<sup>5</sup>

While Verizon claims that its Application “is a narrow one that addresses only the unique circumstances of the storm damaged areas that are the subject of the 214 application”<sup>6</sup> it is obvious that well before Hurricane Sandy, Verizon was planning to “cut the copper off” and force customers in non-FiOS markets (including the areas covered by its application) to use wireless instead of wireline service.

Consistent with this plan, Verizon is expanding its roll-back of wireline service in other parts of New York that did not suffer Hurricane Sandy-related damage. As the Attorney General of New York stated,

Verizon has delivered a pallet load of Voice Link devices to its Monticello Installation/Maintenance Center, and has instructed its

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<sup>5</sup> Transcript, Verizon at Guggenheim Securities Symposium, at p. 8 (June 21, 2012).

<sup>6</sup> *Ex Parte* letter from M. McCready, Verizon, to M. Dortch, FCC p. 2 (July 24, 2013).

technicians in that region to provide summer seasonal customers returning to Catskill vacation homes, who have long been received Verizon wireline service, only Voice Link service.” In addition some of Verizon’s seasonal customers “have been told Voice Link will be installed instead of repairing their wireline telephone service. Only by firmly refusing Voice Link were both customers able to keep their wireline service.<sup>7</sup>

It is thus reasonable to surmise, as has the New York Attorney General, that despite Verizon’s protest to the contrary, it is

clear that Verizon is leveraging the storm damage from Sandy as part of its long-term strategy to abandon its copper networks by substituting Voice Link for POTS service on western Fire Island and forcing customers to accept wireless Voice Link wherever it does not build FiOS. Verizon's failure to make prompt repairs to its Fire Island facilities during the seven months following Sandy left the Commission little choice but to provide temporary approval of Voice Link so that customers would have some form of telephone service during the 2013 summer beach season. However, this "temporary approval, should not be expanded to allow Verizon to avoid its ILEC obligations permanently, on Fire Island or anywhere else in New York.<sup>8</sup>

While Hurricane Sandy was not predictable, Verizon’s attempt to abandon its customers was. Although the situation in these areas is unique in that copper infrastructure appears in some locations to be damaged beyond repair, there is a danger that ILECs will use this proceeding as a precedent for more expansive abandonment of their copper networks in areas that have not experienced the devastation of Hurricane Sandy or similar destruction of copper plant.

It is critical that Verizon and other ILECs not be allowed to use the discontinuance process to deprive the public prematurely of basic wireline network facilities that customers

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<sup>7</sup> Emergency Petition Of New York Attorney General Eric T. Schneiderman For An Order Preventing Verizon From Illegally Installing Voice Link Service In Violation Of Its Tariff And The Commission's May 16, 2013 Order, Case No. 13-C-0197, p. 3, (NY P.S.C. June 26, 2013).

<sup>8</sup> Comments of Eric T. Schneiderman, Attorney General of New York, Case No. 13-C-0197, at p. 10 (NY P.S.C. July 2, 2013).

continue to rely on for a broad array of services. It is also critical that the Commission not allow ILECs to abandon prematurely copper networks that still provide a viable means of competition in the provision of affordable broadband such as Ethernet over Copper and other related technologies. These technologies continue to extend the useful life of the copper network, as the ITU is preparing to approve a new standard for copper based broadband network called G.fast that provides hundreds of megabits of bandwidth over last mile copper loops.<sup>9</sup>

The Commission, consistent with its obligation under Section 214 of the Act to protect the public interest, should not allow Verizon to use Fire Island and the New Jersey barrier islands as a petri dish for its new business model without a careful and deliberate review. Such review is not possible in the 60-day timeframe set forth in rule 63.71(c).<sup>10</sup> Instead TelePacific agrees with Public Knowledge that the Commission should remove Verizon's application from streamlined treatment,<sup>11</sup> and should coordinate its review with that of the New York Public Service Commission, which has granted Verizon limited authority to offer Voice link services as temporary a substitute for wireline service in the affected area.<sup>12</sup> Consistent with this, the Commission could grant Verizon temporary authority to discontinue wireline service until such time that the Commission determines that the public interest is adequately protected and the Commission concludes a broader proceeding regarding the ILECs' obligations with respect to

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<sup>9</sup> Sean Buckley, "G.fast gets ITU first stage approval," FierceTelecom, July 16, 2013 <http://www.fiercetelecom.com/story/gfast-gets-itu-first-stage-approval/2013-07-16#ixzz2aADXLhxs>.

<sup>10</sup> 47 C.F.R. § 63.71.

<sup>11</sup> Public Knowledge Motion to Remove Application to Discontinue Domestic Telecommunications Services From Streamlined Authorization, WC Docket No. 13-150 (filed July 22, 2013).

<sup>12</sup> Order Conditionally Approving Tariff Amendments in Part, Revising In Part and Directing Further Comments, New York Public Service Commission Case No. 13-C-0197, (May 16, 2013) ("*NYP.S.C. May 16 Order*").

their wireline infrastructure after natural disasters.

## **II. Verizon’s Application Fails to Meet the Standard Under Section 63.71**

The Commission typically balances four factors in evaluating discontinuance of service under Section 214. These factors include: the financial impact on the carrier if required to continue providing service; the general need for service and the existence of alternatives; the need for the particular facilities; and increased charges for alternative services.<sup>13</sup>

Verizon’s application fails to provide details sufficient to allow the Commission to evaluate these factors properly. For example, Verizon provides no information regarding other sources of service to customers in the affected areas. Of course, Verizon has admitted that, at least on Fire Island, “no other cable or telephone company provides landline service ... Verizon has been the sole landline provider for decades.”<sup>14</sup>

Further, while the Application states that “for data customers, Verizon will refer customers to a Verizon Wireless specialist for 4G LTE broadband services in Voice Link areas,”<sup>15</sup> the Application provides no information regarding the pricing or service terms for such customers. That is no surprise because Verizon apparently does not want the Commission to learn that such customers will experience drastic price increases if they want to continue receiving broadband.

According to Verizon’s website, customers in the areas affected by Hurricane Sandy can purchase a portable 4G LTE wireless hotspot — Jetpack — to replace their DSL service. The

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<sup>13</sup> See Section 63.71 Application of Time Warner Rescom of New York, LLC For Authority to Discontinue Domestic Telecommunications Services, 19 FCC Rcd. 13173, 13175 ¶ 6 (2004); AT&T Communications’ Application To Discontinue Domestic Telecommunications Services, 18 FCC Rcd 24376, 24379, ¶ 6 (2003).

<sup>14</sup> Ex Parte letter from M. McCready, Verizon, to M. Dortch, FCC (July 24, 2013) at Attachment, Thomas Maguire Blog Post p. 2.

<sup>15</sup> Application, WC Docket No. 13-150, p. 5.

customer must purchase the equipment from Verizon and the price of the equipment ranges from free to \$49.99 with a two-year contract, depending on the device and the size of its battery and other factors.<sup>16</sup> If a customer selects a month-to-month service instead, the cost of the Jetpack device ranges from \$169.99 to \$229.99. But the big expense — and it is a recurring expense— is for usage. First Verizon charges a flat \$20/month fee per line.<sup>17</sup> The data is extra. Four GB of data costs \$30 per month; 6GB is \$40 per month; 8GB costs \$50; 10 GB is \$60.00 and 12 GB is \$70.<sup>18</sup> Additional data is available for hundreds of dollars. On any plan, data overages cost \$15 per GB over the monthly allotment. Verizon DSL service, by comparison, offers between 1 to 15 Mbps for \$29.99/month for unlimited data and \$19.99 for unlimited data below 1 Mbps.

A customer in a Hurricane Sandy affected area who was previously paying \$29.99 per month for broadband now has to pay, at a minimum, \$50 for data service from Verizon wireless and that service is capped at 4 GB; additional usage will cost even more. Such rate increases cannot possibly be consistent with the public interest.

Furthermore, the lack of wireline infrastructure is a detriment to competition and therefore harmful to the public interest. Especially in communities — such as those covered in the Application — where Verizon either has a monopoly or there is an ILEC-cable duopoly, the presence of copper facilities provides a check on anti-competitive practices. Where copper loops are available for competitive carriers to lease and use to provide affordable broadband service,<sup>19</sup>

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<sup>16</sup> <http://www.verizonwireless.com/b2c/device/mobile-hotspot>.

<sup>17</sup> <http://www.verizonwireless.com/wcms/consumer/shop/share-everything.html?tab=internet-devices>.

<sup>18</sup> <http://www.verizonwireless.com/b2c/store/controller?item=phoneFirst&action=viewPlanList&continue=true>.

<sup>19</sup> Mpower et al., Request to Refresh Record and Take Expedited Action to Update Copper Retirement Rules and to Promote Affordable Broadband over Copper, WC Docket Nos. 10-188, 12-353; GN Docket Nos. 09-51, 13-5; RM-11358 (filed Jan. 25, 2013), pp. 4-6; XO

the availability of unbundled network elements constrains the ability of the ILECs and cable companies to engage in monopolistic behavior.

There are also significant differences between Verizon's Voice Link service and the traditional wireline service Verizon provided in the past and continues to provide in other markets that render Voice Link a poor substitute. The differences include:

- customers will be unable to choose alternative wireline suppliers of voice service for either local or long distance service.<sup>20</sup>
- Voice Link "is not compatible with fax machines, DVR services, credit card machines, medical alert or other monitoring services or some High Speed or DSL Internet services."<sup>21</sup>
- Voice Link is "not ... compatible with certain monitored home security systems."<sup>22</sup>
- While wireline customers "whose service is suspended for nonpayment can still reach a 911 operator in case of emergencies, suspension of Voice Link 'will prevent ALL Service, including any 911 dialing and associated emergency response services.'"<sup>23</sup>
- Voice Link "does not allow the Customer to make 500, 700, 900, 950, 976, 0,

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Communications Services, LLC's Objection To Verizon's Invocation Of The Limited Waiver And Special Temporary Authority Granted In The Order Issued In The Matter Of Petition Of Bellsouth Corporation For Special Temporary Authority And Waiver To Support Disaster Planning And Response And Request For A Cease And Desist Order, WC Docket No. 06-63; RM-11358 pp. 13-14 (filed July 1, 2013) ("XO Petition").

<sup>20</sup> Application, WC Docket No. 13-150, p. 5 (Verizon proposing to cease providing exchange access).

<sup>21</sup> Voice Link Terms of Service, ¶1.b (June 12, 2013).

<sup>22</sup> *Id.* ¶ 1.d.

<sup>23</sup> NY Attorney General Comments, p. 6 *citing* Voice Link terms of Service ¶ 7.b.

00, 01, 0+, calling card or dial-around calls (e.g., 10-10-XXXX).”<sup>24</sup>

- Voice Link “does not allow the Customer to accept collect calls or third number billed calls. The Company will not bill any charges on behalf of other carriers. [Customers] must have an International Calling Plan in order to make international calls.”<sup>25</sup>
- Voice Link Service “is subject to the availability of adequate wireless coverage throughout [the] home, and is not available in all locations.”<sup>26</sup>

Each of these differences has the capability to lead to significant public interest harms.

The Application is deficient because it fails to explain how Verizon will replace the functionality customers will lose if they have no choice but to use Voice Link.

### **III. The Commission Should Remove the Application from Streamlined Treatment; Provide Temporary Discontinuance Authority and Coordinate with the New York P.S.C to Thoroughly Examine the Impact of Verizon’s Discontinuance on the Public Interest**

In light of the tremendous disruption Verizon has proposed, the New York Public Service Commission (NY P.S.C.) denied Verizon’s request to replace its wireline network on Fire Island permanently with wireless service.<sup>27</sup> Instead the NY P.S.C. has opened a proceeding investigating Verizon’s plans, and seeking public comment.<sup>28</sup> As part of that proceeding, the NY P.S.C. has required Verizon to submit detailed information and coordinate with its staff. Under the terms of the Order, the New York P.S.C. Staff “will monitor and oversee Voice Link service

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<sup>24</sup> Voice Link Terms of Service ¶ 1.g.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* ¶ 1.h.

<sup>27</sup> *Tariff Filing by Verizon New York Inc. To Introduce Use Of Wireless Technology As An Alternative To Repairing Damaged Facilities (“NYP.S.C. May 16 Order”).*

<sup>28</sup> *Id.*

on Fire Island, with Verizon's cooperation and provision of any information necessary to assist Staff in assessing service conditions, including service quality, outages and repair needs."<sup>29</sup>

Included among the information initially requested are a:

statement of the number of subscribers served by Voice Link in each month; description of the extent of customer acceptance of Voice Link as an alternative to traditional [wireline] service; assessment of quality and reliability as measured by trouble reports, outages and repair intervals; description of performance during commercial power outages; description of the impact on customers' 911 access; statement of costs associated with providing the Voice Link service; description of customer complaints and customer satisfaction; and, any other information useful in evaluating the advantages and disadvantages of Voice Link as an alternative to traditional [wireline] service and the need for modifications to the service.<sup>30</sup>

While TelePacific understands Verizon's reluctance to rebuild wireline services in areas where existing wireline facilities were materially damaged by Hurricane Sandy, Verizon's proposed discontinuance should not be granted on a permanent basis until the Commission has had more time to evaluate the impact on customers in the affected areas. During that evaluation the Commission should conduct its own review and coordinate with the NY P.S.C. and analyze the data collected and determine whether customers have been harmed by Verizon's decision not to rebuild wireline infrastructure. "It would be ... appropriate for the [Commission] to work with the [NY] P.S.C, Verizon, and other interested and affected parties to ensure that the [Commission] has access to the results of the Fire Island trial."<sup>31</sup> It is not in the public interest for the Commission to allow discontinuance while the NY P.S.C. continues to gather evidence regarding the impact Verizon's planned discontinuance would have on users of wireline service

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<sup>29</sup> *Id.* pp. 9-10.

<sup>30</sup> *Id.* p. 9.

<sup>31</sup> Cbeyond *et al* Comments GN Docket 13-5 (filed July 8, 2013).

in the affected areas.

In addition to the benefit of providing customers with choice over their voice providers, many customers rely on Verizon's wireline network for an array of related services that as explained above are simply not supported by Voice Link. More time is needed to ascertain the harm to these and other customers deprived of the reliable service on which they have come to rely.

At a minimum, the Commission should take action necessary to prevent Verizon's request from taking effect automatically on August 27, 2013 under 63.71(c) as provided in the Notice. Instead, the Commission should grant Verizon temporary authority to provide Voice Link to affected customers until the Commission has had sufficient time to evaluate Voice Link service and any alternatives that may exist, as well as coordinate with the NY P.S.C.

#### **IV. The Commission Should Adopt a More Comprehensive Process for ILEC Response to Natural Disasters**

Verizon's conduct in the wake of Hurricane Sandy should prompt the Commission to undertake a thorough review of its processes for granting ILECs regulatory relief in the wake of natural disasters. It certainly is sensible to provide regulatory relief to companies where regulation would serve as a genuine impediment to timely restoration of service to customers — including both retail and wholesale customers. TelePacific agrees with Public Knowledge that the Commission "should decide the basic issues underlying this process in a notice of inquiry or rulemaking proceeding to solicit public comment on how carriers and subscribers should proceed when handling post-disaster network damage."<sup>32</sup> TelePacific further agrees with XO that the Commission should not allow Verizon to undertake extensive copper retirements on the pretext

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<sup>32</sup> *Ex Parte* Letter of J. Griffin, Public Knowledge to M. Dortch, FCC, p. 2 (June 12, 2013).

of damage from Hurricane Sandy.<sup>33</sup>

Such a process is critical because natural disasters such as Hurricane Sandy provide ILECs the opportunity to thwart competition. XO's Petition provides details regarding Verizon's misinformation regarding the extent of damage to its copper networks resulting from Hurricane Sandy,<sup>34</sup> and explains the impact Verizon's misrepresentations had on XO's relationships with their own customers.<sup>35</sup> Verizon's behavior is certainly predictable: its CEO has promised to "kill the copper"<sup>36</sup> and recently stated that Hurricane Sandy provides an opportunity to "take advantage of the disruption" and replace copper infrastructure.<sup>37</sup> The Commission's process should ensure that useful copper is not prematurely replaced and that ILECs cannot use natural disasters to undermine competition and provide consumers with inferior and less affordable services.

## **V. Conclusion**

For the aforementioned reasons, the Commission should remove Verizon's discontinuance application from streamlined treatment, coordinate a more searching analysis, in conjunction with the NY P.S.C. of whether customers in the affected areas are adequately served by Verizon's proposal to eliminate wireline service, initiate a proceeding to establish a more comprehensive process governing ILEC responses to natural disasters and take action on the XO petition.

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<sup>33</sup> XO Petition, pp. 9-10.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at p. 9.

<sup>36</sup> *Supra* n. 5.

<sup>37</sup> Sean Buckley, "Verizon take advantage of Superstorm Sandy to Accelerate Copper-to-Fiber Migration," FierceTelecom (Dec. 4, 2012) available at <http://www.fiercetelecom.com/story/verizon-takes-advantage-superstorm-sandy-accelerate-copper-fiber-migration/2012-12-04>.

Respectfully submitted,

/s/ Joshua M. Bobeck

Tamar E. Finn

Joshua M. Bobeck

Bingham McCutchen LLP

2020 K St., NW

Washington, D.C. 20006

202.373.6000 (Tel.)

202.373.6001 (Fax)

tamar.finn@bingham.com

josh.bobek@bingham.com

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*Counsel for U.S. TelePacific Corp.  
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