



PUBLIC NOTICE

Federal Communications Commission
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COMMENTS INVITED ON APPLICATION OF VERIZON NEW JERSEY INC. AND VERIZON NEW YORK INC. TO DISCONTINUE DOMESTIC TELECOMMUNICATIONS SERVICES

WC Docket No. 13-149
Comp. Pol. File No. 1112

Comments Due: July 29, 2013

Section 214 Application

Applicants: Verizon New Jersey Inc. and Verizon New York Inc.

On **May 24, 2013**, **Verizon New Jersey Inc.**, located at **540 Broad Street, Newark, NJ 07102** and **Verizon New York Inc.**, located at **140 West Street, New York, NY 10007** (collectively, Verizon or Applicants), filed an application under section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.71 of the Federal Communications Commission's (FCC or Commission) 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.¹

Request to Discontinue Services. The application indicates that Verizon requests authority to discontinue three copper-based special access services, Metallic Service, Program Audio Service and Telegraph Grade Service (collectively, Affected Services), to customers in some parts of New Jersey and New York. Verizon explains that Metallic Service uses a metallic channel to transmit signals at low speeds up to 30 baud; Telegraph Grade Service uses a telegraph grade channel to transmit binary signals at rates up to 150 baud; and Program Audio Service provides a channel for the one-way transmission of a complex signal voltage with the option for customers to choose a bandwidth tier of 50 to 15000 Hz, 200 to 3500 Hz, 100 to 5000 Hz, or 50 to 8000 Hz.² Verizon asserts that copper wireline facilities used to provide these services in certain parts of New Jersey and New York were destroyed or rendered inoperable by Hurricane Sandy on or after October 29, 2012.³ Verizon indicates that the facilities are located in New Jersey and New York and are specifically referenced in network change notices that Verizon filed pursuant to its waiver for disaster planning and response on May 10, 2013.⁴

¹ Letter from Frederick Moacdieh, Executive Director – Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, Attach. (filed May 24, 2013) (Verizon Application), *available at* <http://apps.fcc.gov/ecfs/document/view?id=7022424987>.

² Verizon Application at 3.

³ Verizon Application at 1-2.

⁴ Verizon Application at 3. These include addresses served by the following identified Verizon wire centers in New Jersey: Allentown, Asbury Park, Atlantic Highlands, Bedminster, Bergen, Bernardsville, Bloomfield, Bordentown, Bound Brook, Closter, Cranford, Dover, Dumont, East Dover, Eatontown, Elizabeth, Franklin Park, Freehold, Hackensack, Haledon, Hightstown, Holmdel, Hopewell, Jamesburg, Journal Square, Keansburg, Kearny, Keyport,

Verizon maintains that it has been working to replace the affected copper facilities in the Service Areas with more advanced fiber infrastructure that will be more resilient in the future and will provide access to expanded broadband and other services. Verizon asserts, however, that the Affected Services are incompatible with fiber.⁵ Accordingly, Verizon seeks authority to discontinue the Affected Services lost in the Service Areas on or after October 29, 2012 as a result of damage from Hurricane Sandy.⁶ Verizon submits that the public convenience and necessity will not be impaired by this discontinuance because very few customers will be impacted, and the services have largely been supplanted by newer technologies and services including standard voice and data services over fiber from Verizon and other providers, voice and data services from cable providers, and other communications offerings from wireless providers.⁷ Verizon states that just seven customers, including one Verizon affiliate, subscribed to the Affected Services in the Service Areas prior to the storm. In addition, Verizon asserts that none of these customers has complained about the loss of these services following the storm.⁸ Verizon states that it provided notice to all affected customers by U.S. mail on or before May 24, 2013.⁹ The application indicates that Verizon is considered dominant with respect to the services subject to this discontinuance.¹⁰

Request for Waiver of Timing Requirements. Verizon also seeks a waiver of the timing provisions of sections 63.60(b), 63.63(a) and 63.71 of the Commission's rules to the extent necessary.¹¹ Although section 63.60(b) is not a timing provision, for purposes of part 63, section 63.60(c) defines a reasonable time for the restoration of service or the establishment of comparable service after a discontinuance, reduction, or impairment of service occasioned by conditions beyond the control of a service provider as no more than 60 days in most cases.¹² Section 63.63(a) states that informal requests for emergency discontinuance authority in most cases shall be made by filing not later than 65 days after the occurrence of the conditions which occasioned the discontinuance, reduction or impairment.¹³ In addition, for planned discontinuances of service, section 63.71 generally sets the timing for notice to

Lakewood, Leonia, Little Ferry, Long Branch, Madison, Mendham, Mercerville, Millburn, Millington, Montclair, Morristown, Murray Hill, New Brunswick, Nutley, Oakland, Passaic, Pennington, Perth Amboy, Plainfield, Point Pleasant, Princeton, Prospect Plains, Ramsey, Red Bank, Ridgewood, Rochelle Park, Rockaway, Roselle, Rutherford, Seaside Park, Somerville, Spring Lake, Succasunna, Summit, Toms River, Trenton, Union City, West Orange, West Osbornville, Westfield, Westwood and Whippany. These also include addresses served by the following identified Verizon wire centers in New York: Avenue U, Bell Harbor, Broad Street, East Northport, Hempstead, Huntington, Lindenhurst, Long Beach, Manhasset, Mineola, Oyster Bay, Sayville, Smithtown, Syosset, Wantagh and West Street (collectively, Service Areas). *See also Petition of BellSouth Corporation for Special Temporary Authority and Waiver To Support Disaster Planning and Response, Petition of Verizon for Special Temporary Authority and Waiver To Support Disaster Planning and Response, Petition of Qwest Communications International Inc. for Special Temporary Authority and Waiver To Support Disaster Planning and Response, WC Docket No. 06-63, Order, 21 FCC Rcd 6518, 6525 (2006).*

⁵ Verizon Application at 1-2.

⁶ Verizon Application at 2.

⁷ Verizon Application at 3-4.

⁸ Verizon Application at 2.

⁹ Verizon Application at 4.

¹⁰ Verizon Application at 4.

¹¹ Verizon Application at 1 n.1.

¹² *See* 47 C.F.R. §§ 63.60(b)-(c).

¹³ *See* 47 C.F.R. § 63.60(a).

customers, as well as for comment and the possible automatic grant of authority after the release of a public notice seeking comment on the provider's application.¹⁴

Standard of Review. The Commission has discretion in determining whether to grant a carrier authority to discontinue service pursuant to section 214.¹⁵ The Commission also can delay grant of a discontinuance authorization if it believes that an unreasonable degree of customer hardship would result.¹⁶ The Commission reviews each discontinuance application to determine, as applicable, issues such as whether proper notice has been given, whether customers or other end users are able to receive the service or a reasonable substitute from another carrier, and whether the public convenience and necessity is otherwise adversely affected.¹⁷ Balancing the interests of the carrier and the affected user community, the Commission 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.¹⁸

Request for Comment. We seek comment on Verizon's request for authority to discontinue the Affected Services in the Service Areas, including comment on its requested waiver, the steps it has taken to notify customers given the particular circumstances in this case, the availability of alternative services including the steps Verizon has taken to offer alternative service to customers, and any other relevant issues in light of the above mentioned factors. What impact, if any, should the circumstances of this case have on the Commission's traditional analysis, including the fact that many of the affected customers have already lost service? Parties expressing concern should identify whether any conditions could ensure that the discontinuance does not harm the public interest?

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 release date of this public notice, unless the Commission notifies Verizon that the grant will not be automatically effective. In the application and notice to customers, Verizon indicates that it seeks authority to discontinue the three copper-based special access services lost in the Service Areas on or after October 29, 2012 as a result of damage from Hurricane Sandy, including Metallic Service, Program Audio Service and Telegraph Grade Service. Accordingly, pursuant to section 63.71(c) and the terms of Verizon's application and notice, absent further Commission action, Verizon will receive authority for the discontinuance of the Affected

¹⁴ See 47 C.F.R. § 63.71.

¹⁵ See *Verizon Telephone Companies, Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, WC Docket No. 02-237, Order, 18 FCC Rcd 22737 (2003) (*Verizon Expanded Interconnection Discontinuance Order*); see also *FCC v. RCA Communications, Inc.*, 73 S. Ct. 998, 1002 (1953) (ruling that the Commission has considerable discretion in deciding how to make its section 214 public interest finding).

¹⁶ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, CC Docket No. 79-252, 85 FCC 2d 1, 146 (1980) (*Competitive Carrier First Report and Order*).

¹⁷ See 47 C.F.R. § 63.71(a); see, e.g., *AT&T Application to Discontinue Interstate Sent-Paid Coin Service Not Automatically Granted*, Public Notice, NSD File No. W-P-D-497, 16 FCC Rcd 14935 (CCB 2001) (requiring AT&T to show how it would minimize the negative impact on affected customers).

¹⁸ *Application for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service*, File Nos. W-P-C-6670 and W-P-D-364, 8 FCC Rcd 2589, 2600, para. 54 (1993) (*Dark Fiber Order*), remanded on other grounds, *Southwestern Bell v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994); see *Verizon Expanded Interconnection Discontinuance Order*.

Services in the Service Areas on or after **August 27, 2013**, in accordance with Verizon's filed representations. 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.

Comments on this application must be filed with the Commission on or before **July 29, 2013**. Such comments should refer to **WC Docket No. 13-149 and Comp. Pol. File No. 1112**. Comments should include specific information about the impact of this proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the Web site for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number.

Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. The filing hours are Monday through Friday, 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

Two copies of the comments should also be sent to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 5-C140, Washington, D.C. 20554, Attention: Carmell Weathers. In addition, comments should be served upon the Applicants. Commenters are also requested to fax their comments to the FCC at (202) 418-1413, Attention: Carmell Weathers.

This proceeding is considered a "permit but disclose" proceeding for purposes of the Commission's *ex parte* rules.¹⁹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of

¹⁹ 47 C.F.R. §§ 1.1200 *et seq.*

electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

For further information, contact Carmell Weathers, (202) 418-2325 (voice), carmell.weathers@fcc.gov, or Rodney McDonald, (202) 418-7513 (voice), rodney.mcdonald@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau. The tty number is (202) 418-0484. For further information on procedures regarding section 214 please visit http://www.fcc.gov/wcb/cpd/other_adjud.

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