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May 14, 2013

Via email (to: secretary@dps.ny.gov) and US Mail

Honorable Jeffrey Cohen
Acting Secretary, Public Service Commission
State of New York
Three Empire State Plaza
Albany, New York 12223

Re: Proposed Amendments to Verizon New York Inc. Tariff, Case # 13-C-0197

Dear Acting Secretary Cohen:

On May 3, 2013, Verizon submitted to the Commission an application seeking to amend its existing tariff. The revised tariff would, among other things, substantially affect telephone service to Fire Island. Verizon at that time asked that the proposed tariff amendment be "allowed to go into effect on less than 30 days' notice, and that the requirement of newspaper filing be waived." Subsequently, on May 10, 2013, Verizon submitted what constitutes a significant amendment to that application.

The Commission has not as yet, so far as I know, set forth a schedule for a public hearing on the application, nor issued to a Notice Inviting Comments. While I would prefer additional time to consider these important issues, in an abundance of caution that these matters might be decided before relevant considerations are before the Commission, I respectfully submit the attached comments on the application.

I stand ready to provide additional supporting information if requested by the Commission or its Staff, to discuss these matters with the Staff or to attend any Hearing that may be held.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis Barash", written in a cursive style.

Louis Barash

Attachment

Cc: Mr. Chad G. Hume

Comment on Proposed Amendments to Verizon New York Inc. Tariff PSC No. 1
Matter Number 13-00986
Case Number 13-C-0197

Verizon's application, in part, relates to telephone service on Fire Island. As an affected customer, I respectfully submit the following comments.

I. There is no emergency justifying Verizon's requests to expedite the application and to dispense with public notice.

Verizon's application does not set forth any details supporting its claim of emergency. It is Verizon's conduct (or lack thereof) that creates the situation that Verizon now asserts (unfairly) to be an emergency.

As Commission Staff reported at the April 18 Commission public hearing, after Superstorm Sandy, Verizon started almost immediately to repair its damaged copper wire systems in both southern Manhattan and the Rockaways. Those repairs are virtually completed.¹ Verizon has done nothing whatsoever to repair the similarly damaged system on Fire Island. Accordingly, it is apparent that Verizon made a decision early on not to repair the Fire Island system. Yet it delayed in making this application until May 2013 – just as Fire Island summer residents are returning. Even allowing for some time to develop the supposed alternate alternative Voice Link system, there is no explanation why Verizon delayed this long in making this application.

Verizon now claims (only in its amended submission) that Fire Islanders would be inconvenienced by having necessary repairs done during the summer season and that it is important to provide service for the season. It does not explain (a) how it was able to effectuate repairs in Manhattan and the Rockaways without inconveniencing customers in those areas; and (b) why it did not avoid the problem by performing Fire Island repairs simultaneously with the Manhattan and Rockaways repairs, when most Fire Island residents would not have been inconvenienced.

Under these circumstances, the Commission should not expedite the application or dispense with the full public comment period. Fundamentally, if Verizon claims the reason for expedition is to avoid inconvenience to customers, it ought to be for the customers, not Verizon, to decide if the inconvenience of one summer of repairs and less than ideal service is greater than the inconvenience of a permanent end to wired service on parts of the Island.

II. Verizon has not provided adequate information to support its application.

This is a precedent-setting application. It is not merely an application with respect to Fire Island. It is clearly designed "to add language to the tariff setting forth the circumstances under which

¹ See April 18, 2013 Hearing Transcript, p. 121-22.

Verizon could discontinue its current wireline service offerings *in a specified area* and instead offer a wireless service as its sole service offering in the area.”²

The supposed justification for such departure from past practice is articulated in paragraph 2 of the proposed Tariff, which limits Verizon’s obligation to serve only to situations in which it is able to continue to provide service “without unreasonable expense”. This application thus raises important issues: such a limitation on the obligation to serve has not previously been acknowledged in this context in any Commission Order and there is no definition of the significant term “unreasonable”. But putting those rather large issues aside for a moment, there is a more fundamental problem with Verizon’s application: it does not provide adequate information concerning the costs to Verizon to allow the Commission to judge whether such costs are “unreasonable.”

Verizon’s initial application was obviously insufficient: it did not contain a single word about the cost to Verizon – reasonable or otherwise -- of repairing Fire Island’s service. Verizon attempts to remedy this by adding a single paragraph (paragraph 8) in its revised Certification. That paragraph does not suffice to meet Verizon’s burden on this application.

Verizon asserts that it would cost “\$4.8 million for a voice-only digital loop carrier system comparable to the networking serving the eastern part of the island.” It is by no means clear, however, that such a system is the minimum required to restore/repair the western part of the system to the service it had pre-storm. Certainly Verizon’s application makes no representation to that effect. This estimate apparently contemplates an entire new system for the western portion of Fire Island, notwithstanding that a meaningful percentage of the copper wire system is still operational.³

Moreover, Verizon’s position on the required scope of repairs has been a constantly shifting target. Verizon apparently advised Commission Staff, and Staff repeated at the April 18, 2013 Commission Hearing, that the western Fire Island telephone system was “damaged beyond repair by the storm.”⁴ Verizon apparently has abandoned that claim; this application indeed is premised on the assumption that the system can be repaired. Furthermore, in its first (May 3) submission to the Commission, Verizon stated that “five of the six cables that run between Fire Island and the mainland – the five that serve the western portion of the Island – were also badly damaged by the storm.” Just a week later, it has abandoned that claim as well, and instead in its amended Certification asserts “Five of the six cables that run throughout Fire Island were badly damaged by the storm.” It is hard to accept at face value Verizon’s estimated repair costs when even at this late date it does not seem to have a handle on exactly the damage that needs repair. A full Hearing, with notice to affected customers, is necessary to develop facts sufficient to make such determinations and to be reasonably certain the Commission is acting based on reasonably verifiable facts.

² Letter from Keefe B. Clemons to Jeffrey Cohen, Acting Secretary Public Service Commission dated May 3, 2013 (emphasis added).

³ Also unclear is Verizon’s assertion of \$200,000 annually and declining revenue: does that refer only to regulated voice revenues and is Verizon omitting from the application the substantial additional data revenues such a system has generated and would continue to generate?

⁴ April 18, 2013 Hearing transcript, p. 123, line 14.

If the Commission is to approve such a significant departure from prior practice, it must have a complete record justifying its conclusion that repairs would be unreasonable. A single paragraph in a hastily amended Certification does not satisfy that standard. If the Commission is to adopt Verizon's novel position, it should do so only on a complete record.

III. Verizon's proposal does not provide equivalent service to Fire Island

Voice Link would not provide service to Fire Island that is equivalent even to basic copper wire service. Unlike copper wire, it does not provide power independent of the electric utility grid, which is a critical safety and service issue in remote Fire Island. The Island is susceptible to and has suffered numerous power outages. In a power outage, the phone can be a lifeline (as it was for many customers with electrical outages during Superstorm Sandy). The Voice Link battery backup, which is only two hours at best and is dependent on batteries that the customer may not have maintained, is not an equivalent service. Moreover, the associated wireless transmitters are not fully independent of the electric utility power grid and may fail even if power to the wireless phone unit is maintained.⁵

Separately, and this is apparently a conscious decision by Verizon in the design of Voice Link, the system is voice only and will not provide internet access or fax service.⁶ As Verizon is well aware, and has not made sufficiently clear in this application, Verizon has for years been the monopoly provider of data services on the western end of Fire Island. As Staff stated at the April 18 Hearing, Verizon is the only wire line provider of telephone and data services. There is no competing wire line cable service.⁷ Virtually all fax and most internet communications to Fire Island pass over the Verizon system. It is not merely, as Verizon apparently contends, that wireless data services are available yet more expensive than Verizon's DSL service. As Verizon's advertisements have repeatedly proclaimed, the Verizon DSL system is faster and more reliable than wireless competition, and western Fire Island customers have overwhelmingly chosen that service.

Verizon stresses that the data services it is declining to provide are not regulated.⁸ While there may not be rate regulation of those services, Verizon has enjoyed a monopoly of those services on Fire Island, and the associated revenues, based on a voice communications system built at the expense of its regulated customers. These systems are the most significant aspect of the service Verizon currently provides on Fire Island and it is proposing to abandon them.

Verizon's application has, in part, been justified by the supposed unreasonable cost of repairing copper wire service to Fire Island, and the unfairness of imposing those costs on Verizon's entire customer base.⁹ The real unfairness here is that Fire Island customers will be provided inferior service – both as to voice and data – and the charge for that inferior service will likely be

⁵ In addition, there will be some increase in customer cost to provide electrical power to the Voice Link unit. See Tariff, 1. C. 3. c.

⁶ This appears to be a conscious design choice because most modern wireless systems can provide both voice and data services. It seems possible that Verizon's hope is to have as many customers as possible seek such services from Verizon's unregulated wireless affiliate, Verizon Wireless.

⁷ April 18, 2013 Hearing transcript, p. 123.

⁸ See Tariff, C. 1. "In furnishing service and/or facilities, the Telephone Company does not undertake to transmit messages, but furnishes the use of its facilities to its subscribers for communications."

⁹ See, e.g. April 18, 2013 Hearing Transcript, p. 130 (comments of Commissioner Larocca).

increased to pay for the substantial costs incurred by Verizon to repair the damaged copper wire systems in New York City and Queens.¹⁰

IV. Verizon is proposing to abandon customers whose service is operational.

Significantly, Verizon's application seeks to abandon completely copper wire service in western Fire Island, even where the copper wire system is still functional. During the April 18 Commission Hearing, Staff reported that "where copper facilities survive, Verizon will continue to provide voice and DSL service as long as the copper facility remains operational."¹¹ There is no such representation in the Tariff application, which seeks authority to "discontinue its current wireline service offerings *in a specified area*", and not merely to discontinue them for those customers whose copper wire service had been damaged.¹²

V. Verizon's application raises broad policy issues that should not be resolved without extensive discussion and significant input from the public.

While originally phrased as an order affecting only Fire Island, Verizon's application as submitted is clearly far more than that. It is a request to create a new "tariff setting forth the circumstances under which Verizon could discontinue its current wireline service offerings in a specified area and instead offer a wireless service as its sole service offering in the area." If there were any question that this language is exceedingly broad, the Company's letter goes on to state: "*Additionally*, the western portion of Fire Island is identified as a location where Verizon would be authorized to provide a wireless service as its sole offering." Simply put, this is not just about Fire Island.

Verizon's decision to repair the Manhattan and Rockaways copper wire systems and not the Fire Island system is not based on current costs (unreasonable or otherwise). It is based on potential future revenue. Lower Manhattan and the Rockaways were repaired because that made good business sense. Because of lower potential revenues on Fire Island, it is proposed that the system be abandoned. This can clearly be seen in the amendments to the Certification.¹³ While that may be the kind of judgment that an unregulated business makes routinely, it has never been the basis for regulation of utility providers with an obligation to serve. When a similar calculus applies to other remote regions of its service territory, will Verizon be permitted to abandon them as well, notwithstanding that the Company and its predecessors have had a decades-long monopoly in providing service? This is a critical, long-term policy question that this Commission must address and it should provide all potentially affected customers an opportunity to be heard.

Moreover, it is a remarkable concept in utility regulation that a regulated utility may determine that costs are unreasonable and as a result choose to provide alternative, and potentially

¹⁰ Verizon does not set forth the cost of its repairs in Manhattan and the Rockaways. The costs of such repairs are likely huge multiples of the true costs of repairing the Fire Island system. And the impact of the relatively small cost of Fire Island repairs on all other customers is likely trivial. (Even on Verizon's assumptions, the total incremental system cost is \$4.3 million.)

¹¹ April 18, 2013 Hearing transcript, p. 123, lines 18 through 21.

¹² I live in Seaview, in western Fire Island. I currently have working copper wire service, including DSL, notwithstanding the Superstorm. By this application, Verizon seeks authority to abandon that service.

¹³ See, e.g., the added language in paragraph 2 of the revised Certification.

unregulated, service to affected customers. Verizon proposes to permit the Commission to regulate that activity, but it is not clear that the Commission has such authority. And it certainly isn't clear that the Commission would have any authority to reverse its decision, or otherwise to sanction the company, if Verizon failed to comply with its undertakings.¹⁴

The Commission should have far more information, and the public a significant opportunity to participate in the process, prior to deciding so significant a change in utility regulatory policy.

Moreover, the Commission should have ample time to consider alternatives to the approach, proposed on an expedited basis, by Verizon. For example, should Verizon abandon this service, it might be appropriate to require Verizon to make available to third party providers the remaining working portion of the backbone of its Fire Island services so as to provide customers with a real alternative to Verizon's service offering.

Conclusion

Verizon's application raises significant questions. Approving the application would have significant near-term consequences for existing Fire Island customers and potentially far-reaching consequences for other customers in less-populated communities in the State. The application has been submitted on an expedited basis and with an extremely abbreviated record. There are legitimate questions concerning the accuracy of the limited information in the record. The public has not had a meaningful opportunity to study the application and submit its views. The motion to expedite the application should be denied. If the application is considered, it should be denied.

Dated: May 14, 2013

Respectfully submitted,



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¹⁴ See Proposed Tariff §1.C.3(b). The Commission generally does not assert authority to regulate Verizon's wireless service. During the Commission's April 18 meeting, Commissioner Sayre suggested that Voice Link service could be seen as essentially a land line service with a wireless link in the distribution chain, somewhat akin to microwave transmission between central offices. (April 18, 2013 Hearing Transcript, p. 134.) That is not, however, the approach Verizon took in this application. The tariff subsequently submitted by Verizon is clear: "3. The Telephone Company may offer service using wireless as its sole offering . . .".