

From: Jim Rosenthal <jrosenthal@mintzgroup.com>
To: "secretary@dps.ny.gov" <secretary@dps.ny.gov>
Date: 05/06/2014 01:21 PM
Subject: FiOS on Fire Island: The 2007 Franchise Agreement of Verizon of NY and Town of Islip. Why is there no Cable Television (Video) Services on Fire Island? NYS PSC Case 13-C-0197 and NYS PSC Case 07-V-0890

From: Jim Rosenthal

Sent: Monday, May 05, 2014 12:42 PM

To: 'keefe.b.clemons@verizon.com'; 'Pamela.goldstein@verizon.com'; 'joseph.a.post@verizon.com'

Cc: 'ECANNAVA@townofislip-ny.gov'; 'keith.gordon@ag.ny.gov'; 'rlc123@optonline.net'; 'diane.burman@dps.ny.gov'; 'audrey.zibelman@dps.ny.gov'; 'patricia.acampora@dps.ny.gov'; 'Michelle.Phillips@dps.ny.gov'; 'eek@dps.ny.gov'; 'garry.brown@dps.ny.gov'; 'peter.mcgowan@dps.ny.gov'; 'Brian.Ossias@dps.ny.gov'; 'michael.rowley@dps.ny.gov'; 'dsalway@esd.ny.gov'; 'gregg.sayre@dps.ny.gov'; dunewood-community@googlegroups.com; 'suzy.goldhirsch@mssm.edu'; 'mario@saltaire.org'; 'erniefritz@gmail.com'; 'bspencerassoc@nyc.rr.com'; 'abrash@npca.org'; 'MHUNTERKISMET@aol.com'; 'hughobrien3@verizon.net'; 'Jmlund@optonline.net'; 'licafia1@verizon.net'; 'rcox@saltaire.org'; 'tachorba@aol.com'; 'siljvc@yahoo.com'; 'garysacks@aol.com'; 'ja315w@aol.com'; 'tmacri@millenniumweb.com'; 'cbnyc81@aol.com'; 'gene.FHCA@gmail.com'; 'e.ff@verizon.net'; 'jaypagano@verizon.net'; 'sbrautigam@villageofoceanbeach.org'; 'sbh@sbhays.com'; 'sfiyalka@earthlink.net'; 'JHLMD@aol.com'; 'Livhempel@aol.com'; 'secretary@dps.ny.gov'; 'supervisorsoffice@townofislip-ny.gov'; 'tbergin@townofislip-ny.gov'; 'jcochrane@townofislip-ny.gov'; 'sflotteron@townofislip-ny.gov'; 'asenft@townofislip-ny.gov'; 'esidasaras@farrellfritz.com'; 'townattorney@townofislip-ny.gov'

Subject: FiOS on Fire Island: The 2007 Franchise Agreement of Verizon of NY and Town of Islip. Why is there no Cable Television (Video) Services on Fire Island? NYS PSC Case 13-C-0197 and NYS PSC Case 07-V-0890

Keefe B. Clemons, Esq.
General Counsel – Northeast Region
Verizon of New York, Inc.
140 West Street
27th Floor
New York, NY 10007-2109
Tel (212) 321-8136
Fax (212) 962-1687
keefe.b.clemons@verizon.com

Pamela N. Goldstein, Esq.
Assistant General Counsel
Verizon of New York, Inc.
500 Summit Lake Drive, 4th Floor
Valhalla, NY 10595
(914) 801-9770
Pamela.goldstein@verizon.com

Joseph Post, Esq.
Deputy General Counsel - New York
Verizon New York Inc
140 West Street 27th Floor
New York, NY 10007-2109
Ph: (212) 321-8126
Fax: (212) 962-1687
joseph.a.post@verizon.com

Dear Mr. Clemons, Mr. Post and Ms. Goldstein:

This letter concerns NYS PSC Case # 13-C-0197 on Fire Island as well as NYS PSC Case # 07-V-0890 , which led to the [Cable Franchise Agreement By and Between The Town of Islip, New York and Verizon New York, Inc July 30, 2007](#) . On August 22, 2007, the NYS PSC in 07-V-0890, approved the Petition of [Verizon New York Inc., Order and Certificate of Confirmation, Town of Islip, Suffolk County](#) . County (Order and Certificate of Confirmation).

The Commission ordered that:

1. Pursuant to Section 221 of the Public Service Law and the rules and regulations of this Commission, the application of Verizon New York Inc. for approval of a Certificate of Confirmation of the franchise **to provide cable television service** for the Town of Islip (Suffolk County) is hereby approved, subject to the conditions and clarifications set forth in the body of this certificate and order. Said certificate shall expire ten years from the date of this order.

Verizon began negotiating with Islip in 2006. After a hiatus, negotiations resumed in the spring and summer of 2007, and the public hearing on the Verizon Agreement was held on July 27, 2007. See Case 07-V-0890, "Petition for Confirmation" (filed July 31, 2007), ¶ 2. The Agreement became effective on August 22, 2007 upon Commission confirmation. See id., [Verizon New York Inc., Order and Certificate of Confirmation, Town of Islip, Suffolk County](#) (issued and effective August 22, 2007).

Verizon of New York's filing with the NYS PSC regarding Case 13-C-0197, filed on 04/17/14, and entitled Proposed Amendment to Verizon New York Inc. Tariff P.S.C. No. 15 maintains that its proposed revision implements § 1(C)(3)(e) of Verizon's Tariff P.S.C. No. 15, by removing from the Tariff provisions that addressed the circumstances under which Verizon could offer wireless service as its sole service offering in an area, and that the condition set forth in § 1(C)(3)(e) has now been met, in that Verizon has "complete[d] construction of a wireline network in western Fire Island, and service over that network is generally available to all customers in western Fire Island." (See [Proposed Amendment to Verizon New York Inc. Tariff P.S.C. No. 15](#)). The tariff specifically states that western Fire Island will fall within provisions of the tariff when "the Company completes construction of a wireline network in western Fire Island, and service over that network is generally available to all customers in western Fire Island" – which is now the case.

Before the NYS PSC approves Verizon's Amendment to Verizon New York Inc. Tariff P.S.C. No. 15, is it not right that the NYS PSC examine whether or not Verizon of New York has addressed its adherence to both the spirit, if not terms, of the [Cable Franchise Agreement By and Between The Town of Islip, New York and Verizon New York, Inc July 30, 2007](#) , as defined under NYS PSC in 07-V-0890 and the approved Petition of [Verizon New York Inc., Order and Certificate of Confirmation, Town of Islip, Suffolk County](#) . County (Order and Certificate of Confirmation, since Fire Island is now included as a Service Area in that 2007 Franchise Agreement?

As you know, as per resolution of NYS PSC Case 13-C-0197 and FCC Case # ECFS 13-150, Verizon FiOS is now being delivered to western Fire Island – **but not cable television (video) services** – only telephone and internet data. In other words, no "Triple Play" package to new FiOS customers. (See: Verizon's Northeast Region General Counsel filed with the NYS PSC a [Request for Suspension of All Deadlines and Proceedings in Case 13-C-0197](#) , attached, above. It also formally asked the NYS PSC [to withdraw the suspended language in § 1.C.3.b, and add new language explicitly stating that the remainder of the section will no longer be effective after Verizon's new wireline network is completed and the company is able to offer service over that network throughout western Fire Island](#) .)

On September 11, 2013, Verizon New York Inc. (Verizon) requested New York State Public Service Commission (NYS PSC) approval of a proposed amendment to its PSC No. 1 – Communications Tariff. (PSC NY No. 1 – Communications, § 1, 1st Revised Page 60, Original Page 60.1., C.3, 4 and 5.) The amendment proposed to withdraw a tariff provision authorizing Verizon to use wireless technology, known as Voice Link, for its sole service offering, if a substantial portion of its facilities in an area are destroyed, rendered unusable, or beyond repair (§1.C.3(a)). The tariff amendment provided that the provision of §1.C.3 are effective until Verizon completes construction of a wireline network and service over the network is generally available to all customers in western Fire Island. In a letter filed with its proposed tariff amendment, Verizon provided a summary of its construction plans in western Fire Island -- to build a Fiber-to-the-Premises (FTTP) network to serve all western Fire Island customers, which was completed on April 15, 2014 -- offering two options for standalone voice service: a standard service over the FTTP network established in its tariff and approved by the Public Service Commission; and Voice Link service. Verizon also now offers a bundled Fiber Optic Service (FiOS) over the FTTP network, which includes FiOS Digital Voice and broadband Internet access.

SUMMARY OF VERIZON'S PLANS IN WESTERN FIRE ISLAND

1. Verizon will build a Fiber-to-the-Premises ("FTTP") network that will be capable of serving all of its customers in western Fire Island. Verizon is targeting Memorial Day 2014 for the completion of construction, and for the general availability of all services offered over the new network. Between now and the completion of construction, Verizon will keep Staff informed of the progress of construction efforts.
2. Verizon will offer two options for standalone voice service: (a) standard tariffed service over the FTTP network, and (b) Voice Link service. Verizon will also offer one or more bundled FIOS service offerings. The FIOS offerings will include FIOS Digital Voice and broadband Internet access.
3. Following the general availability of services over the FTTP network in Western Fire Island, Voice Link will be offered there as an optional service only. Current Voice Link customers in western Fire Island, if they choose to retain the service, will continue to be governed by the Terms of Service reviewed and approved by Staff in Case 13-C-0197.

The last time Verizon addressed the provisioning of video services to Fire Island was in 2007, when Verizon of New York, Inc. and the Town of Islip created the 2007 Franchise Agreement between Verizon of New York, Inc and the Town of Islip (LFA) ([Cable Franchise Agreement By and Between The Town of Islip, New York and Verizon New York, Inc July 30, 2007](#)) (Authored by Tracey A. Edwards, Region President New York North/West, Verizon Communications.)

Exhibit B of that document, on page 34, regarding Service Area, states:

"The Service Area shall be the area of the Franchise Area, excluding Fire Island."

The Franchise Agreement gave a construction schedule for Verizon's FTTP network, with a deadline for 100% deployment by July 2012.

A Verizon press release announcing the franchise agreement – "Town of Islip, Floral Park Join 49 Other New York Municipalities, **Introducing Real Choice for Cable TV**" stated:

Residents of Long Island's Town of Islip and village of Floral Park are a major step closer to having a real choice for their ~~cable television services~~, thanks to newly approved agreements authorizing Verizon to offer its FIOS TV service, delivered over the most advanced fiber-optic network straight to customers' homes. The Town of Islip covers 21 individual communities..."Reaching over 50 communities in New York with FIOS TV in less than two years is a significant milestone for us," said Monica Azare, Verizon senior vice president for New York and Connecticut. "As a result of these franchises, consumers in the Town of Islip and Floral Park will be able to choose their cable provider as easily as they choose their phone company. Competition like this drives innovation and value, and puts the consumer in control..." ~~Verizon's FIOS TV is a formidable competitor to cable and satellite, offering a broad collection of all-digital programming, 28 high-definition (HD) channels in the New York market and access to more than 8,600 on-demand titles, 60 percent of which are free. Verizon's fiber network delivers amazingly sharp pictures and sound, and has the capacity to transmit a wide array of high-definition programming that is so clear and intense it seems to leap from the TV screen.~~ In addition to FIOS TV, Verizon's fiber network also delivers Internet download speeds of up to 50 Mbps (megabits per second) and upload speeds of up to 5 Mbps, as well as high-quality voice service." (See <http://newscenter2.verizon.com/press-releases/verizon/2007/verizons-fios-tv-approved-by.html>.)

Verizon recently told the NYS PSC that because Fire Island receives FIOS – and is thus no longer an excluded Service Area under the 2007 Franchise Agreement (See [Proposed Amendment to Verizon New York Inc. Tariff P.S.C. No. 15](#)), -- the prior stipulations agreed to previously under NYS PSC Case # 13-C-0197 should not longer have any binding effect. Ostensibly, the main reason for the exclusion of Fire Island at the time as determined by Verizon of New York, Inc. in the 2007 LFA was the significant cost to build out fiber (FTTP Network) to the Fire Island communities from the mainland. Today, Fire Island is no longer excluded as a service coverage area, and has FIOS services. More importantly, the argument that there are uneconomic costs associated with fiber deployment to Fire Island have therefore been mooted. The obvious question is that since there is no further "build-out cost" for Verizon to serve Fire Island, why not offer cable television services? As an economic consideration to Fire Island residents and businesses is the fact that we must combine Verizon's data and voice services with DirecTV's television services and, as a result, are paying nearly double the subscriber fees as would have been the case in a Verizon "Triple Play" package.

Currently, Verizon is promoting for mainland Long Island customers who sign up for Verizon FIOS services on line, the following:

- Triple Play - \$79.99
- Internet 15/5 Mbps
- FIOS TV Prime HD
- Home Phone – unlimited nationwide residential calling
- No Installation Charge
- In Home demonstration of new services
- 2 Year – Price Guarantee
- No Annual Contract
- \$300 Visa Prepaid Card –if choose two year agreement

Customers on Fire Island are give the following offer:

- Double Play \$79.99
- Internet 15/5 Mbps
- Home Phone- unlimited nationwide calling
- Installation charge - \$18.21
- Premises Visit Charge - \$12.25
- Two Year Price Guarantee – with two year contract

Since the FiOS FTTP network is already laid out and “lit” on western Fire Island, it is no longer tenable for Verizon of New York, Inc. to argue that “the provision of Cable Service is economically infeasible because such provision requires nonstandard facilities which are not available on a commercially reasonable basis.” They already are available on a commercially reasonable basis.

As a general matter, the wireline entry of FiOS supported by the NYS PSC because it would promote competition for bundles. For this reason, incumbent cable providers, having monopoly pricing power, fought the entrance of FiOS into existing franchise areas. Verizon has always made the argument before state regulators that with cable companies now promoting packages of voice, video, and broadband Internet services throughout the country, Verizon FiOS’ entry into video would promote competition not only for the individual services that cable companies offer, but also for the bundle. A large and increasing number of consumers prefer to purchase these services on a bundled basis from a single provider. These bundles offer the convenience of a single bill and one-stop shopping, and typically provide discounts that are made possible from the efficiencies (such as reduced marketing costs) of providing multiple services to a single subscriber.

Multi-product bundles are ubiquitous. They function most directly as a form of quantity discount that, by inducing increased sales, can enable a firm to reduce its costs by taking advantage of scale economies, multi-product production and distribution synergies, and economies of scope. Bundled pricing can also lower costs by reducing uncertainty about aggregate demand, and it can reduce overhead and marketing expenses and economize on the quality-signaling benefits of well-known brands. Bundle discount programs can give diverse customers greater flexibility to choose an optimal combination of products that suits their particular and changing needs, while enabling both the customers and the supplier to avoid the transaction costs of more particularized negotiations.

Moreover, customers themselves increasingly insist on consolidating and reducing the number of their vendors. Verizon’s experience is that more than two-thirds of customers now buy at least two or more services from a single provider (not including long-distance service). For a majority of consumers, broadband Internet and multi-channel video programming are the most important component of these bundles.

Verizon itself most recently explained the benefits of policies that encourage innovation and network investment, of healthy competition, and of the price and service discipline that is associated with such competition, in a petition made by senior counsel for Verizon of New York, in a petition for Confirmation before the NYS PSC:

First, cable service is a key component of the suite of services (known as “Verizon FiOS SM”) that Verizon intends to offer over its Fiber-to-the-Premises (“FTTP”) platform. FTTP is an innovative technology that uses fiber-optic cable and optical electronics to link homes and businesses directly to Verizon’s network. Aside from making advanced services — including a robust array of video services — available to Verizon’s customers, FTTP exemplifies the substantial investments that Verizon has been making in new network technologies. By approving and confirming the Franchise, the Commission will thus be demonstrating its own commitment to policies that encourage innovation and network investment.

Second, the offering of FiOS video services by Verizon will provide a competitive alternative to conventional cable and satellite services, thus promoting the emergence in the video market of the same sort of healthy competition that already exists in the telecommunications voice market — with the price and service discipline that is associated with such competition.

((STATE OF NEW YORK PUBLIC SERVICE COMMISSION. In the Matter of the Petition of Verizon New York Inc.

Pursuant to Section 221 of the Public Service Law for Confirmation of a Cable Television Franchise Awarded by the Village of Camillus, New York (Onondaga County. PETITION FOR CONFIRMATION, JOSEPH A. POST, Counsel for Verizon New York Inc., STATE OF NEW YORK, Counsel for Verizon New York Inc., November 21, 2013, at

[http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=\(43E2318B-20C5-4FD0-83A5-0C438EC0F8E6\)](http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=(43E2318B-20C5-4FD0-83A5-0C438EC0F8E6))))

Verizon counsel put an even finer point on the issue:

“(T)he offering of FiOS video services by Verizon will provide a competitive alternative to conventional cable and satellite services, thus promoting the emergence in the video market of the same sort of healthy competition that already exists in

the telecommunications voice market.”

In other words, Verizon of New York sought NYS PSC regulatory authority be brought to a Municipality to provision video services, just as it does for the telecommunications voice market.

Many Fire Island residents and businesses have been told by Verizon representatives that it is Town of Islip officials who are refusing to revisit the 2007 Verizon/Town of Islip Franchise Agreement to permit Verizon to offer cable television services without charging Verizon an additional fee. We have been told by Verizon representatives that Verizon would like to provide such cable television services, but will not do so if it means paying an additional franchise fee to the Town of Islip.

Town of Islip officials, meanwhile, maintain that they do not intend to charge an additional franchise fee to Verizon of New York, Inc. to revise the 2007 Franchise Agreement which would allow Verizon to provide Fire Island with FiOS cable television services. And the town attorney who would handle such matters says he has not been contacted by Verizon of New York representatives to address the issue of providing additional cable television services to Fire Island by simply amending the 2007 LFA.

Under the terms of Verizon's 2007 franchise agreement, Verizon is required to pay the Town of Islip the sum of \$90,000.00 each year for a period of ten years, due and payable no later than September 30 of each year. (See [Town of Islip submit comments requesting that PSC reject Verizon's arguments](#)). It is a flat monthly fee and not determined by subscriber volume.

If the terms of franchise fee arrangement, per NYS PSC Case 07-V-0890 -- which led to the [Cable Franchise Agreement By and Between The Town of Islip, New York and Verizon New York, Inc July 30, 2007](#) --- have not been altered by NYS PSC Case13-C-0197 to create additional franchise fees imposed on Verizon of New York for the provisioning to Fire Island for phone and data services, why would FiOS television (video) services be treated any differently?

Since the fiber network to western Fire Island now fully deployed, and can support cable television, why is it not “appropriate” for Verizon to “seek to provide cable service to customers” in the case of western Fire Island”? It is unclear at this time why Verizon NY is not providing service on the same terms and conditions as contained in the existing 2007 franchise still in effect. Unless there is an economic or regulatory consideration, Verizon NY should provide service on terms and conditions consistent with the needs and interests of the Municipality.

Under the [Cable Franchise Agreement By and Between The Town of Islip, New York and Verizon New York, Inc July 30, 2007](#). As regards the provision of cable services in the franchise area, the franchisee offers Cable Service to significant numbers of Subscribers within residential areas of the Franchise Area and makes Cable Service available to businesses in the Franchise Area within twelve (12) months and shall offer Cable Service to all residential areas of the Franchise Area within five (5) years of the Effective Date of this Franchise, or, in both instances, such longer period as may be permitted by the Cable Law, except, in accordance with NY PSC rules and regulations: (A) for periods of Force Majeure; (B) for periods of delay caused by the LFA; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Franchise Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in areas, developments or buildings where Franchisee cannot gain access after good faith efforts; and (F) in areas, developments or buildings where the provision of Cable Service is economically infeasible because such provision requires nonstandard facilities which are not available on a commercially reasonable basis.

None of these provisions apply to western Fire Island.

As to availability of cable service, under the [Cable Franchise Agreement By and Between The Town of Islip, New York and Verizon New York, Inc July 30, 2007](#), the Franchisee makes Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Franchise Area, and the Franchisee **may not discriminate between or among any individuals in the availability of Cable Service** or based upon the income in a local area. In the areas in which Franchisee provides Cable Service, Franchisee is required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee is allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet and the actual costs incurred to connect any non-residential dwelling unit Subscriber.

Since the FiOS FTTP network is already laid out and “lit” western Fire Island, it is no longer tenable for Verizon of New York, Inc. to argue that “the provision of Cable Service is economically infeasible because such provision requires nonstandard facilities which are not available on a commercially reasonable basis.” They already are available on a

commercially reasonable basis on western Fire Island.

Verizon of New York's is now petitioning the NYS PSC to amend Tariff P.S.C. No. 15 – through its most recent filing with the NYS PSC regarding Case 13-C-0197, (See [Proposed Amendment to Verizon New York Inc. Tariff P.S.C. No. 15](#)). filed on 04/17/14 --because its prior stipulations no longer apply. Verizon has laid out its FTTP network on western Fire Island and its proposed revision implements § 1(C)(3)(e) of Verizon's Tariff P.S.C. No. 15, by removing from the Tariff provisions that addressed the circumstances under which Verizon could offer wireless service as its sole service offering in an area, and that the condition set forth in § 1(C)(3)(e) has now been met, in that Verizon has "complete[d] construction of a wireline network in western Fire Island, and service over that network is generally available to all customers in western Fire Island."

The residents and businesses of Fire Island simply want to understand why Verizon of New York refuses to provide its FiOS customers with cable television services.

Since there are no cost considerations to Verizon to provide "Triple Play" packages, it would be greatly appreciated that Verizon revisit the issue at this time.

If I can be helpful in this cause in any way, please let me know what I can do.

Many thanks for your time and consideration.

All best,
jim

Jim Rosenthal
Resident, Community of Dunewood, Fire Island
Town of Islip, New York 11706
(917) 362-9491
jrosenthal@mintzgroup.com

Cc:
Ernest J. Cannava
Senior Assistant Town Attorney
Town of Islip
655 Main Street
Islip, NY 11751
Tel. (631) 224-5550
Fax (631) 224-5573
ECANNAVA@townofislip-ny.gov

Keith Gordon
Assistant Attorney General
NYS Department of Law
New York State Office of The Attorney General
120 Broadway, Consumer Bureau, 3B42
New York, NY 10271
Ph: 212-416-8320
Fax: 212-416-6003
keith.gordon@ag.ny.gov

Robert Cox
Mayor
Inc Village of Saltaire
Village of Saltaire
8 Coventry Place
Garden City, NY 11530
rc123@optonline.net

Kathleen H. Burgess
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350
secretary@dps.ny.gov

Supervisor Tom Croci
Town Supervisor
Town of Islip Town Hall
655 Main St
Islip, New York 11751
631-224-5500
supervisoroffice@townofislip-ny.gov

Councilwoman Trish Bergin-Weichbrodt
631-224-5890
tbergin@townofislip-ny.gov

Councilman John Cochrane
631-224-5559
jcochrane@townofislip-ny.gov

Councilman Steven Flotteron
631-224-5565
sflotteron@townofislip-ny.gov

Councilman Anthony Senft
631-589-0234
asenft@townofislip-ny.gov

This communication may be protected by the attorney/client privilege and may contain confidential information intended only for that person to whom it is addressed. If it has been sent to you in error, please do not read it. Please reply to the sender by e-mail or the phone number immediately above that you have received the message in error. Then delete this message and any attachments without copying, forwarding or reading it. Any dissemination, distribution, copying, forwarding or other reproduction of this message is strictly prohibited.