

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 13, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

CASE 16-V-0361 - Petition of Verizon New York Inc. for Orders of
Entry for 41 Multiple-Dwelling Unit Buildings
in the City of New York.

ORDERS OF ENTRY

(Issued and Effective October 20, 2016)

BY THE COMMISSION:

INTRODUCTION AND BACKGROUND

On May 21, 2015, Verizon New York Inc. (Verizon or the Company) filed a Verified Petition for Orders of Entry (petition) seeking access to 41 Multiple-Dwelling Unit Buildings in the City of New York (premises). Subsequent to the Company's filing, it was successful in obtaining access to six of those properties or named them in error and withdrew its complaint against them. In addition, the Company advises that it is currently working with eight other properties that are cooperating with Verizon and, thus, there is no need, at this time, to decide the petitions against those premises. For three properties, Staff was unable to effectuate delivery of its request for a response to Verizon's petition. The Commission and/or Verizon also received responses from two properties

opposing the Company's installation.¹ For the remaining 22 properties, we have not received any responses. The management of those premises have, according to Verizon, denied access to the Company and failed to return correspondences and notices requesting access from both the Company and Staff.

Access by Verizon is required for the purpose of installing cable television facilities to provide cable service to tenants residing in its franchise area and to upgrade its equipment. A landlord is prohibited from interfering with the installation of cable television facilities upon a property or premises (Public Service Law (PSL) §228(1)(a)). Upon failure of a landlord to grant access, the Commission may issue an Order of Entry, provided the cable television company complies with applicable statutory and regulatory requirements (PSL §228(1)(a) and 16 NYCRR Part 898). In its petition, Verizon submits information establishing that it complied with the statutory and regulatory requirements and conditions necessary for granting an Order of Entry. Accordingly, we grant Verizon's request for Orders of Entry to install its cable television facilities on the premises listed in the attachment to this order, as requested in its petition.

PETITION

Verizon seeks to enter the premises for the purpose of installing fiber optic feeder cable approximately .5" in diameter between a Verizon manhole in the street and the basement of the building, using existing entrance conduit. A fiber terminal (approximately 17"x20"x16") will be installed in

¹ The Department of Public Service Staff (Staff) intends to work with Verizon and those property representatives in the future. If Staff is unsuccessful in facilitating mutually agreed upon access by Verizon, Staff will recommend further action for Commission consideration.

the basement. Fiber distribution cables approximately .5" in diameter will be connected to the fiber terminal and will be run horizontally through the basement, using strand wire or 3-4" metallic conduit to a vertical riser path. Vertical risers consisting of one or more fiber cables approximately .5" or less in diameter will be placed in 3-4" metallic conduit, which will be run through newly created holes drilled in the stairwell. 8" pull boxes will be established on the stairwell landing on each floor to house the pulled-through fiber cables. Where warranted, 20"x16"x8" lock boxes will be installed on the floor to house fiber distribution terminals. Horizontal fiber connections to each living unit (drops) will be established with self-adhesive fiber cables. Small (4"x1.5"x.25") fiber termination boxes will be installed outside each living unit; the fiber drop will be extended into the living unit from this box at the time of installation. All Verizon work will be conducted in conformity with the property work requirements and with consideration for the safety of the residents and the proper functioning of the building. Impact to building aesthetics will be minimized by the use of materials smaller than those that typically serve the building at present.

In its petition, the company provides details of its attempts to gain access to the premises including: numerous letters and notices in 2015 and 2016 attempting to discuss with management the company's right and obligation to provide cable services and description of the required access; and, service on the premises' management of Notices of Intention to Install Cable Television Facilities (Notice of Intent) and its Verified Petition for Order of Entry.

The petition also states that Verizon will assume the entire cost of installation of its facilities; has obtained insurance to indemnify the building's management for any damage

caused in connection with the installation, operation and removal of equipment; and, will install the facilities in a manner that protects the safety, functioning and appearance of the premises and convenience and well-being of its tenants. To date, the company states that the owner has not responded to its requests and repeated attempts to gain entry to the premises. The premises management did not file a response to the petition, despite a request by Department of Public Service Staff for an explanation of the failure to provide access to Verizon for installation of its cable television facilities.

DISCUSSION

No landlord shall interfere with the installation of cable television facilities upon a property or premises, provided the installation conforms to reasonable conditions necessary to protect the safety, functioning and appearance of the premises and convenience and well-being of the tenants; and, the cable television company assumes the entire cost and agrees to indemnify the owner for any damage caused by the installation, operation or removal of the equipment and facilities (PSL §228(1)(a)). The Commission's rules establish requirements for access to premises for installation of cable television facilities. These requirements include service of a Notice of Intent at least 15 days prior to commencement of the installation (16 NYCRR §898.3); if installation of the facilities is not effected pursuant to the Notice, submission to the Commission and service on the landlord of a verified petition containing specific information; and, opportunity for the landlord to answer the petition within 20 days of its receipt.

In its petition, Verizon proposes a reasonable plan for its cable installation, and states that its installation

plan will protect the safety, functioning and appearance of the premises and the tenant's convenience and well-being. In addition, it will bear the costs of the installation, operation or removal of its facilities and indemnify the landlord for any damage caused by the installation, operation or removal. It provided the information required in our rules for granting an Order of Entry, including proof of service of its Notice of Intent on the landlord, a description of the proposed installation, proof of insurance, and a summary of efforts to effectuate entry. Accordingly, Verizon complied with the requirements established for granting Orders of Entry (PSL §228(1)(a) and 16 NYCRR §898.4).

Our rules provide that, upon failure of a landlord to answer a petition or appear in an Order of Entry proceeding, the Commission may grant the petitioning cable television company an Order of Entry (16 NYCRR §898.4). A statutory obligation is imposed on a landlord to provide a right of entry for installation of cable television facilities, upon reasonable conditions; and, the owner of the premises did not respond to requests for access or an explanation of the failure to provide access.

Granting access to the premises in this instance is necessary to ensure that Verizon is able to provide its customers enhanced cable service including, but not limited to, digital television and high speed cable modem services in compliance with its obligations under the franchise agreement with the City of New York. Verizon is obligated, pursuant to its franchise agreement with the City of New York to provide cable service upon request and to upgrade its system to offer these enhanced services. Therefore, granting access to the premises serves a valid public interest.

The Commission determines that Verizon complied with the requirements of PSL §228(1)(a) and 16 NYCRR Part 898 and grant Verizon Orders of Entry for the properties attached to this order. These Orders of Entry are granted without prejudice to the legal rights of the owner, including just compensation² under PSL §228 and 16 NYCRR Part 898. Finally, the Commission has heard from a number of property owners regarding Verizon's tactics that it utilizes to try to gain access to the premises the Company seeks to enter to install equipment. We note here, that despite its purported failed attempts to gain access to those premises listed below as well any others, the Commission fully expects the Company to exercise appropriate action in its attempts to enter those premises and proceed consistent with our statutory and regulatory requirements (PSL §228 and 16 NYCRR Part 896).

CONCLUSION

Verizon complied with the requirements of PSL §228(1)(a) and 16 NYCRR §898.4. Orders of Entry to the premises attached hereto for installation and upgrade of cable television facilities and related equipment, as requested in the petition, is granted.

² A landlord is entitled to just compensation (Loretto v. Teleprompter Manhattan CATV Corp., 53 N.Y.2d 124 (1981)); the Commission is authorized to determine the reasonable compensation for installation of cable television facilities (Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982), on remand, 58 N.Y.2d 142 (1984)); and, the New York State Commission on Cable Television determined that a landlord is entitled to a one-time payment of one dollar, in the absence of a special showing of greater damages attributable to the installation.

The Commission orders:

1. The petition of Verizon New York Inc. for Orders of Entry to enter the premises attached hereto for the purpose of installing and upgrading its cable television facilities is granted, subject to the legal rights of the owner under Public Service Law §228 and 16 NYCRR Part 898.

2. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

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Property at: 45 OCEANA DR E Brooklyn NY

Property at: 325 E 201 ST Bronx NY

Property at: 900 OGDEN AVE Bronx NY

Property at: 135 W 238 Bronx NY

Property at: 2775 KINGSBRIDGE TERR Bronx NY

Property at: 1090 FRANKLIN AVE Bronx NY

Property at: 272 E 237 ST Bronx NY

Property at: 861 E 163 ST Bronx NY

Property at: 192 E 75 ST Manhattan NY

Property at: 534 E 84 ST Manhattan NY

Property at: 55 PARADE PL Brooklyn NY

Property at: 320 PLEASANT AVE Manhattan NY

Property at: 140 E 2 ST Brooklyn NY

Property at: 6 W 132 ST Manhattan NY

Property at: 742 ST NICHOLAS AVE Manhattan NY

Property at: 96 BAXTER ST Manhattan NY

Property at: 350 W 124 ST Manhattan NY

Property at: 84-25 ELMHURST AVE Queens NY

Property at: 175 W 92 ST Manhattan NY

Property at: 431 W 121 ST Manhattan NY

Property at: 34 W 139 ST Manhattan NY

Property at: 444 MANHATTAN AVE Manhattan NY