

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 15, 2009

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

CASE 08-V-1464 - Petition of Verizon New York Inc. for a Certificate of Confirmation
for its Franchise with the Town of Carmel, Putnam County.

ORDER AND CERTIFICATE OF CONFIRMATION

(Issued and Effective January 16, 2009)

BY THE COMMISSION:

BACKGROUND

The above-captioned application was submitted by Verizon New York Inc. (Verizon or franchisee) on December 18, 2008. A copy of same was served on the franchisor, the Town of Carmel, Putnam County (local franchising authority [LFA] or Town). All local notice requirements were met.

This application is governed by Section 221 of the Public Service Law (PSL), which requires our approval of a Certificate of Confirmation unless we find specific violations of law, Commission regulations, or the public interest. Section 221(4) of the PSL provides that we may approve the application contingent upon compliance with certain standards, terms or conditions set by the Commission. After reviewing the subject petition, in the context of the applicable statutory and regulatory standards, we have determined to approve the Certificate of Confirmation subject to the clarifications and/or conditions set forth herein. Because this confirmation will promote consumer

choice and enhance competition in the cable market, our determination furthers the public interest.

SUMMARY OF COMMENTS

A public notice of Verizon's application for a Certificate of Confirmation to the Commission was published in a newspaper of general circulation in the Town on December 23, 2008, as required pursuant to 16 NYCRR §897.2(g). No comments were received on the filing.

As discussed in detail below, we approve the Certificate of Confirmation subject to the following conditions and/or clarifications.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

Under SEQRA (Article 8 of the Environmental Conservation Law) and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 897), all state agencies must determine whether the actions they are requested to approve may have a significant impact on the environment. SEQRA (6 NYCRR §617.6(a)(3)) requires applicants to submit a completed environmental assessment form (EAF) describing and disclosing the likely impacts of the proposed actions. Verizon submitted an EAF for our review.

We have reviewed Verizon's application for its impact on the environment. We find that the proposed action does not meet the definitions of either a Type I or Type II action contained in 6 NYCRR §§617.4, 617.5 and 16 NYCRR §7.2, and, therefore, is an "unlisted" action. We assume "Lead Agency" status and pursuant to an "uncoordinated" review determine that our approval and construction of the proposed cable system will not have a significant impact on the environment.¹

In determining that the action of approving the certificate here will not result in any significant adverse environmental impacts, we note that the Commission has previously recognized that Verizon has the independent authority to upgrade its existing

¹ We note that rule 16 NYCRR §897.7(a) incorrectly refers to 6 NYCRR §617.19, the prior subsection for the EAF form, which is now §617.20.

telecommunications network with FTTP.² We have assessed the environmental impact of our action on the entire franchise area. The action here is limited to the confirmation of a cable franchise which authorizes the construction of equipment used exclusively for cable television service and the offering for hire of broadcast programming. In the Town, Verizon has approximately 55% of the fiber optic cable installed, anticipates installing up to 68% within 12 months of deployment, 82% installed within 24 months, 90% within 36 months, 95% within 48 months and 100% in 60 months. The majority of the fiber will be installed in previously placed conduit. In other cases, the fiber will be placed in existing underground ducts or placed overhead lashed to existing aerial cable. In limited circumstances, open-cut trenching will be used to install ducts for the fiber.

Based upon our review of the EAF, we determined that the Town does not contain certain land uses such as agriculture that might be adversely impacted by the type of construction proposed. However, should future extensions of the system entail construction in wetlands, coastal zones or affect buildings, structures or districts on the National Historic Landmarks and State and National Registers of Historic Places, the franchisee shall seek consultation and/or permitting from the appropriate local, state and federal agencies including but not limited to the New York State Department of State, Department of Environmental Conservation and Office of Parks, Recreation and Historic Preservation.

A Notice of Determination of Significance, Negative Declaration, for this unlisted action is approved in conjunction with this order. The Notice and EAF will be retained in our files. A copy of the Notice is annexed to this order.

² Case 05-M-0250, Joint Petition of the Town of Babylon, the Cable Telecommunications Association of New York, Inc. and CSC Holdings, Inc. for a Declaratory Ruling Concerning Unfranchised Construction of Cable Systems in New York by Verizon Communications, Inc., Declaratory Ruling On Verizon Communications, Inc.'s build-out of its Fiber to the Premises Network (issued June 15, 2005).

DISCUSSION

This application seeks our approval of a Certificate of Confirmation of a cable television franchise granted by the Town of Carmel, Putnam County by Resolution of the Town Board dated December 17, 2008 following a duly noticed public hearing held on the same date. The term of the proposed franchise agreement is 10 years, measured from the date of this order.

We find that subject to the conditions and/or clarifications set forth below the proposed franchise agreement substantially complies with our prior orders and rules at 16 NYCRR Part 895.

First, we clarify that consistent with our line extension rules pursuant to Section 895.5, the exercise of the economic feasibility exception in provision 3.1 of the proposed agreement is subject to Commission notice and approval. Our rules on line extension allow for the Commission to consider a waiver, if the Commission determines that compliance would not be possible within the limitations of economic feasibility. Accordingly, any such waiver request must first be filed with the Commission and will be considered in light of the standard noted above, based on the particular set of facts. Waiver of our line extension rules cannot unilaterally be exercised by the parties.

Second, provisions 2.7.3 and 12.3 purport to effect an automatic amendment and/or termination to the proposed agreement under certain circumstances. We clarify that any modification including termination of the agreement pursuant to these provisions would constitute an amendment of the franchise subject to our approval pursuant to Section 222 of the PSL and Subpart 892-1 of our rules.

Finally, the parties are reminded that provision 6.3 of the proposed agreement is subject to the Commission's order on reconsideration in Case 07-V-1523, et al.³

³ Case 07-V-1523, et al., Verizon New York Inc. – Petition for Rehearing, Order Granting Reconsideration and Amending Orders (issued October 23, 2008).

The proposed franchise agreement contains additional provisions not required by Part 895 of our rules. We approve these provisions to the extent that they are consistent with Article 11 and its regulations.

Based on the foregoing, and subject to the conditions and clarifications described herein, we find that the proposed franchise agreement is in substantial compliance with our cable regulations.

The Commission orders:

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 Carmel, Putnam County is hereby approved, subject to the conditions and clarifications set forth in the body of this certificate and order. Said certificate shall expire 10 years from the date of this order.
2. This certificate and order does not in any way confer rights or privileges other than those granted in the underlying franchise and the certificate holder remains subject to the obligations imposed by Article 11 of the Public Service Law, the underlying franchise and all applicable rules, regulations and orders of this Commission.
3. This proceeding is closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

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NOTICE OF DETERMINATION
OF SIGNIFICANCE

NEGATIVE DECLARATION

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the approval by the Public Service Commission of the Petition of Verizon New York Inc., for a Certificate of Confirmation for its cable television franchise with the Town of Carmel, Putnam County, based upon our determination in accordance with Article 8 of the Environmental Conservation Law, that such action will not have a significant adverse effect on the environment. The approval of this action is an Unlisted Action as defined under 6 NYCRR Section 617.7(c).

Based upon our review of the record, the confirmation of the exercise of the franchise granted to Verizon New York Inc by the Town of Carmel, Putnam County to provide cable service under Section 221 of the Public Service Law will not result in significant adverse environmental impacts because the majority of the fiber will be installed in previously placed conduit. In other cases, the fiber will be placed in existing underground ducts or placed overhead lashed to existing aerial cable. There may be some incremental construction involving open-cut trenching to install ducts for fiber.

The address of the Public Service Commission, the lead agency for the purposes of the Environmental Quality Review of this project is Three Empire State Plaza, Albany, New York 12223-1350. Questions may be directed to Richard H. Powell at (518) 486-2885 or to the address above.

JACLYN A. BRILLING
Secretary