

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on August 22, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 07-V-0890 - Petition of Verizon New York Inc. for a Certificate of Confirmation
for its Franchise with the Town of Islip, Suffolk County.

ORDER AND CERTIFICATE OF CONFIRMATION

(Issued and Effective August 22, 2007)

BY THE COMMISSION:

BACKGROUND

The above-captioned application was submitted by Verizon New York Inc. (Verizon or franchisee) on July 31, 2007. A copy of same was served on the franchisor, the Town of Islip (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 August 1, 2007, 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 conditions and/or clarifications on line extension and amendments.

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 telecommunications network with FTTP. We have assessed the environmental impact of

¹ We note that rule 16 NYCRR §897.7(a) incorrectly refers to 6 NYCRR §617.19, the

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. The offering of broadcast programming may result in an increase in requests for fiber drop wires and limited extensions of the already upgraded FTTP network. This incremental installation activity will be associated with customers that presumably already have service from Verizon. Verizon has represented to staff that much of the fiber optic cable is already installed within the Town. Moreover, Verizon has represented that any additional exclusively cable-related equipment necessary to provide cable service will be installed within existing Verizon central offices and that no other purely cable-related equipment need be installed. Further, 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.

DISCUSSION

This application seeks our approval of a Certificate of Confirmation of a cable television franchise granted by the Town of Islip by Resolution of the Town Board dated July 27, 2007 following a duly noticed public hearing held on the same date. The

prior subsection for the EAF form, which is now §617.20.

term of the proposed franchise agreement is ten 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, Section 5.3.2 of the agreement purports to excuse the franchisee from making certain PEG installment payments, if certain conditions occur. We clarify that exercise of this provision constitutes an amendment to the agreement and requires our approval under PSL §222 and 16 NYCRR §§892-1 and 895.1(f).

Third, Section 12.3 purports 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 this provision 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.

Fourth, we clarify that any ambiguity in the proposed agreement shall be construed in a manner most favorable to the LFA notwithstanding any provision in the proposed Agreement that attempts to undermine this determination.

Fifth, Exhibit C of the proposed franchise is inconsistent with Section 895.4 of our rules which does not require the LFA to request activation. Therefore, it will be a condition of this order that Section 895.4 be deemed a part of this franchise agreement as if specifically set forth therein and Exhibit C be stricken.

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 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.

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. The franchisee will file a description of the system proposed for construction consistent with section 895.1(b) of our rules with the Town and the Commission within sixty (60) days of the issuance of this order.

4. This proceeding is closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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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 Islip, Suffolk 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 Islip to provide cable service under Section 221 of the Public Service Law will not result in significant adverse environmental impacts because the incremental construction that would be induced is insignificant in that it would involve only individual service lines and equipment within existing Verizon central offices.

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