



State of New Jersey  
DIVISION OF RATE COUNSEL  
140 EAST FRONT STREET, 4<sup>TH</sup> FL  
P. O. Box 003  
TRENTON, NEW JERSEY 08625

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

STEFANIE A. BRAND  
*Director*

May 27, 2014

**VIA HAND DELIVERY**

Joseph H. Orlando,  
Appellate Division Clerk  
Superior Court of New Jersey  
The Appellate Division Clerk's Office  
P.O. Box 006  
Trenton, New Jersey, 08625

Re: Appeal In the Matter of Verizon New Jersey, Inc.'s Alleged Failure to  
Comply with Opportunity New Jersey Commitments  
Appellate Division Docket No.:

Dear Mr. Orlando:

Annexed for filing on behalf of the Appellant, the New Jersey Division of the Rate  
Counsel,<sup>1</sup> please find an original and two copies of:

- 1) Notice of Appeal with Attachment A;
- 2) Case Information Statement (CIS) with Attachment B;
- 3) The New Jersey Board of Public Utilities Decision and Order dated April 29, 2014; and
- 4) The Transcript of the NJ Board of Public Utilities' April 23, 2014, Agenda Meeting  
(4 copies and an electronic CD copy).

Kindly return one copy date stamped "filed" for our records. Please note that Rate  
Counsel is exempt from paying filing fees under R. 2:5-2 of the Rules of the Appellate Division.

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<sup>1</sup>/ The New Jersey Division of the Rate Counsel is in, but not of, the Department of the Treasury and is authorized by statute to represent the public interest in such administrative and court proceedings as deemed by the Director shall best serve the public interest, in its mission of protecting New Jersey ratepayers in utility matters. See, N.J.S.A. 52:27EE-48 as defined in section 12 of P.L.2005, c.155 (C.52:27EE-12).

Thank you for your attention to this matter.

Very truly yours,

STEFANIE A. BRAND,  
DIRECTOR,

NEW JERSEY DIVISION OF RATE COUNSEL

By: Stefanie A. Brand  
Stefanie A. Brand, Esq.  
Division of Rate Counsel

SAB/ea  
w/encl.  
c: Service List

I/M/O Verizon NJ Inc.'s  
Alleged Failure To Comply With  
Opportunity New Jersey  
Appellate Docket No.:

John J. Hoffman,  
~~Acting Attorney General~~  
Hughes Justice Complex  
25 Market Street, PO Box 080  
Trenton, NJ 08625-080

Kristi Izzo, Secretary  
~~NJ Board of Public Utilities~~  
44 S. Clinton Ave., 9<sup>th</sup> Floor  
PO Box 350  
Trenton, NJ 08625

Stefanie Brand, Director  
~~NJ Div. of Rate Counsel~~  
140 E. Front St., 4<sup>th</sup> Floor  
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\*Caroline Vachier, DAG  
Division of Law & Pub. Safety  
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PO Box 45029  
Newark, NJ 07101-45029

John DeLuca  
NJ Board of Public Utilities  
44 S. Clinton Ave., 9<sup>th</sup> Floor  
PO Box 350  
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\*Gregory Romano, General  
Counsel, Mid-Atlantic Region  
Verizon  
One Verizon Way, VC54S204  
Basking Ridge, NJ 07920-109

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\* Email and Regular US Mail

All others-Email and Hand  
Delivery



**New Jersey Judiciary  
Superior Court - Appellate Division  
NOTICE OF APPEAL**

Type or clearly print all information. Attach additional sheets if necessary.

ATTORNEY / LAW FIRM / PRO SE LITIGANT

TITLE IN FULL (AS CAPTIONED BELOW):

**In the Matter of Verizon New Jersey, Inc.'s Alleged Failure  
to Comply with Opportunity New Jersey Commitments**

NAME

**Stefanie A. Brand, Dir., New Jersey Division of Rate Counsel**

STREET ADDRESS

**140 East Front Street, P.O. Box 003**

CITY

**Trenton**

STATE

**NJ**

ZIP

**08625**

PHONE NUMBER

**(609) 984-1460**

EMAIL ADDRESS

**njratepayer@rpa.state.nj.us**

ON APPEAL FROM

TRIAL COURT JUDGE

TRIAL COURT OR STATE AGENCY

**New Jersey Board of Public Utilities**

TRIAL COURT OR AGENCY NUMBER

**BPU Docket No.: TO12020155**

Notice is hereby given that The New Jersey Division of Rate Counsel appeals to the Appellate Division from a ☐ Judgment or ☐ Order entered on \_\_\_\_\_ in the ☐ Civil ☐ Criminal or ☐ Family Part of the Superior Court or from a ☒ State Agency decision entered on April 29, 2014.

If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.

The New Jersey Division of Rate Counsel is appealing the entire agency decision issued by the New Jersey Board of Public Utilities on the above captioned matter.

Have all issues, as to all parties in this action, before the trial court or agency been disposed of? (In consolidated actions, all issues as to all parties in all actions must have been disposed of.) ☒ Yes ☐ No

If not, has the order been properly certified as final pursuant to R. 4:42-2? ☐ Yes ☐ No

For criminal, quasi-criminal and juvenile actions only:

Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

This appeal is from a ☐ conviction ☐ post judgment motion ☐ post-conviction relief.

If post-conviction relief, is it the ☐ 1st ☐ 2nd ☐ other \_\_\_\_\_  
specify

Is defendant incarcerated? ☐ Yes ☐ No

Was bail granted or the sentence or disposition stayed? ☐ Yes ☐ No

If in custody, name the place of confinement:

Defendant was represented below by:

☐ Public Defender ☐ self ☐ private counsel \_\_\_\_\_  
specify

Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge		
Trial Court Division Manager		
Tax Court Administrator		
State Agency	New Jersey Board of Public Utilities	See Attachment A
Attorney General or Attorney for other Governmental body pursuant to R. 2:5-1(a), (e) or (h)	New Jersey Office of the Attorney General	See Attachment A

Other parties in this action:

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
Verizon, New Jersey, Inc.	Gregory Romano, General Counsel, Mid-Atlantic Region One Verizon Way, VC54S204, Basking Ridge, NJ 07920-109	May 27, 2014

Attached transcript request form has been served where applicable on the following:

	Name	Date of Service	Amount of Deposit
Trial Court Transcript Office			
Court Reporter (if applicable)			
Supervisor of Court Reporters			
Clerk of the Tax Court			
State Agency			

Exempt from submitting the transcript request form due to the following:

- ☐ No verbatim record.
- ☒ Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).  
List the date(s) of the trial or hearing:  
The attach transcript is of the NJ Board of Public Utilities Board Agenda meeting comments n this matter, dated April 23, 2014. To the Appellant's knowledge this is the only verbatim record connected to the Decision and Order being appealed.
- ☐ Motion for abbreviation of transcript filed with the court or agency below. Attach copy.
- ☐ Motion for free transcript filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief.  
I also certify that, unless exempt, the filing fee required by N.J.S.A. 22A:2 has been paid.

May 27, 2014

DATE



SIGNATURE OF ATTORNEY OR PRO SE LITIGANT

**New Jersey Judiciary  
Superior Court – Appellate Division  
NOTICE OF APPEAL – ATTACHMENT A**

In the Matter of Verizon New Jersey, Inc.'s  
Alleged Failure to Comply with Opportunity  
~~New Jersey Commitments~~

BPU Docket No.: TO12020155

**APPELLANT'S ATTORNEYS:**

Stefanie A. Brand, Director, NJ Division of Rate Counsel  
Christopher J. White, Deputy Rate Counsel  
New Jersey Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor, POB 003  
Trenton, NJ 08625  
T(609) 984-1460  
[njratepayer@rpa.state.nj.us](mailto:njratepayer@rpa.state.nj.us)

Notice of appeal and attached case information statement have been served where applicable on the following: **Continued - Additional Parties Served:**

<b>Name and Designation</b>	<b>Attorney Name, Address and Telephone No.</b>	<b>Date of Service</b>
New Jersey Board of Public Utilities, Respondent	Kristi Izzo, Board Secretary	May 27, 2014
	John DeLuca, Director, Div. of Telecommunications 44 South Clinton Avenue, 9th Fl., POB 350 Trenton, NJ 08625-0350 (609) 292-1554	May 27, 2014
New Jersey Office of the Attorney General	John J. Hoffman, Acting Attorney General Hughes Justice Complex 25 Market Street, POB 080 Trenton, NJ 08625-080 (609) 292-4925	May 27, 2014
New Jersey Office of the Attorney General	Caroline Vachier, DAG	May 27, 2014
	Alex Moreau, DAG Division of Law & Public Safety 124 Halsey Street, 5th Fl., POB 45029 Newark, NJ 07101- 45029 (973) 648-3441	May 27, 2014



**New Jersey Judiciary  
Superior Court - Appellate Division  
CIVIL CASE INFORMATION STATEMENT**

Please type or clearly print all information.

TITLE IN FULL

TRIAL COURT OR AGENCY DOCKET NUMBER

In the Matter of Verizon New Jersey, Inc.'s Alleged Failure to Comply with  
Opportunity New Jersey Commitments

BPU Docket No.: TO12020155

■ Attach additional sheets as necessary for any information below.

**APPELLANT'S ATTORNEY** EMAIL ADDRESS: sbrand@rpa.state.nj.us; and cwhite@rpa.state.nj.us

☐ PLAINTIFF ☐ DEFENDANT ☒ OTHER (SPECIFY) The New Jersey Division of Rate Counsel

NAME

Stefanie A. Brand, Director, New Jersey Division of Rate Counsel

CLIENT

New Jersey Ratepayers

STREET ADDRESS

140 East Front Street, 4th Floor, PO Box 003

CITY

Trenton

STATE

NJ

ZIP

08625

TELEPHONE NUMBER

(609) 984-1460

**RESPONDENT'S ATTORNEY \*** EMAIL ADDRESS: Alex.Moreau@dol.lps.state.nj.us

NAME

Alex Moreau, DAG, Law & Public Safety, NJ Attorney General's Office

CLIENT

New Jersey Board of Public Utilities

STREET ADDRESS

124 Halsey Street, 5th Floor, PO Box 45029

CITY

Newark

STATE

NJ

ZIP

07101

TELEPHONE NUMBER

(973) 648-3762

\* Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.

**GIVE DATE AND SUMMARY OF JUDGMENT, ORDER, OR DECISION BEING APPEALED AND ATTACH A COPY:**

Appeal from the April 29, 2014, Decision and Order of the New Jersey Board of Public Utilities ("Board"), which resolved issues raised in an Order to Show Cause, initiated by the Board against Verizon NJ ("Verizon"), and settled by Stipulation by the Board and Verizon, which materially altered the terms, commitments & conditions of service pursuant to a 2006 plan of alternative regulation entered into by Stipulation between the Board, Verizon and the New Jersey Division of Rate Counsel.

Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees?

☐ YES ☒ NO

If so, has the order been properly certified as final pursuant to R. 4:42-2? (If not, leave to appeal must be sought. R. 2:2-4,2:5-6)

☐ YES ☐ NO

(If the order has been certified, attach, together with a copy of the order, a copy of the complaint or any other relevant pleadings and a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.)

Were any claims dismissed without prejudice?

☐ YES ☒ NO

If so, explain and indicate any agreement between the parties concerning future disposition of those claims.

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(h))

☐ YES ☒ NO

**GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:**

Verizon provides telecommunications services throughout New Jersey. On May 6, 2003, the Board approved a plan of alternative regulation ("PAR-1") for Verizon's predecessor. PAR-1 obligated Verizon to accelerate their deployment of advance switching and transmission technologies, which included full deployment of broadband services in its service territory by the end of 2010, under its network known as Opportunity New Jersey ("ONJ"). In 2003, the Board approved a second Plan of Alternative Regulation ("PAR-2") which replaced PAR-1 but kept the original PAR-1 ONJ deployment commitments. Parties signatory to the PAR-1 and PAR-2 were the Board, Verizon, and the New Jersey Division of Rate Counsel ("Rate Counsel") on behalf of New Jersey ratepayers. On March 12, 2012, the Board issued an Order to Show Cause ("OSC") directing Verizon to show cause why the Board should not find that Verizon failed to comply with the PAR Orders in providing full broadband capability in its service territory by 2010. [Continued - See Attachment B]

TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THE APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5). (Appellant or cross-appellant only.):

- I. The New Jersey Board of Public Utilities' Decision and Order was Contrary to Law, Arbitrary and Capricious.
- II. The New Jersey Board of Public Utilities' Decision and Order Violated Due Process.
- III. This is a Contested Case Where Material and Factual Issues Remain Which Require That the Matter Be Remanded for a Hearing.

IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

- 1. Did the trial judge issue oral findings or an opinion? If so, on what date? \_\_\_\_\_ ☐ YES ☐ NO
- 2. Did the trial judge issue written findings or an opinion? If so, on what date? \_\_\_\_\_ ☐ YES ☐ NO
- 3. Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)? ☐ YES ☐ NO

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

DATE OF YOUR INQUIRY: \_\_\_\_\_

1. IS THERE ANY APPEAL NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

- (A) Arises from substantially the same case or controversy as this appeal? ☐ YES ☒ NO
- (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? ☐ YES ☒ NO

2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY? ☐ YES ☒ NO

IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:

Case Name: \_\_\_\_\_

Appellate Division Docket Number: \_\_\_\_\_

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a CASP conference.

☐ YES ☒ NO

Explain your answer:

In our experience, the New Jersey Board of Public Utilities does not settle appeals of final orders.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

The New Jersey Division of Rate Counsel

Name of Appellant or Respondent

May 27, 2014

Date

Stefanie A. Brand, Dir. - NJ Div. of Rate Counsel

Name of Counsel of Record  
(or your name if not represented by counsel)

*Stefanie A. Brand*

Signature of Counsel of Record  
(or your signature if not represented by counsel)



**New Jersey Judiciary  
Superior Court - Appellate Division**

**CIVIL CASE INFORMATION STATEMENT: ATTACHMENT B  
(Page 1 of 2)**

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In the Matter of Verizon New Jersey, Inc.'s	:	BPU Docket No.: TO12020155
Alleged Failure to Comply with Opportunity	:	
New Jersey Commitments	:	
	:	

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**APPELLANT'S ATTORNEYS:**

Stefanie A. Brand, Director, New Jersey Division of Rate Counsel  
Christopher J. White, Deputy Rate Counsel, New Jersey Division of Rate Counsel

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**GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY: - CONTINUED -**

On April 12, 2012, Verizon filed an answer to the OSC stating it had fully met its ONJ commitments. The Board and Verizon proceeded to negotiate and enter into a proposed Stipulation of Agreement relating to Verizon's compliance with its PAR-2 ONJ deployment and service commitments. No other parties were included in these discussions. The Stipulation, among other things, implemented a new process known as a bonafide retail request or "BFRR" and would allow Verizon to meet its broadband service obligations through a 4G wireless connection. On January 29, 2014, the Board posted a Notice for Public Comment soliciting comments on the proposed Stipulation by no later than 5:00 p.m., on March 24, 2014.

A total of 2,827 comments were filed with the Board from individuals, municipalities, county organizations, trade unions, chambers of commerce, and other groups. Verizon and Rate Counsel filed comments on March 19, 2014. Of the total number of comments filed the Board reported that 63.5% opposed the Stipulation and requested that the Board reject and/or modify the proposed Stipulation; and 36.5% supported the Stipulation and requested speedy approval. See Board Order, at p. 5.

Rate Counsel objected to the parameters of the BFRR because it materially altered the original intent, design, terms and conditions of Verizon's ONJ deployment and service commitments, contemplated, negotiated and agreed to under the original alternative plans of regulation, known as "PAR-1 and PAR-2". Rate Counsel noted that the parameters of the BFRR are insufficient to meet the PAR-1 and PAR-2 mandated network deployment and upgrades agreed to by Verizon and expected by New Jersey ratepayers. In particular, PAR-1 and PAR-2 mandated 100% wireline network broadband deployment throughout Verizon's entire service territory. However, the stipulated BFRR permits Verizon to fulfill its ONJ commitments through deployment of a 4G-wireless broadband service which is not comparable to wireline or fiber broadband in service reliability or pricing. In addition, the BFRR removes Verizon's affirmative obligation to deploy broadband services to 100% of its customers by shifting and placing the burden on consumers, as under the BFRR deployment of services is required only when a minimum of thirty-five (35) single-line business or residential consumers request service in a Census Tract, and only requires deployment if these customers do not have access to cable or wireless service. Lastly, the stipulated BFRR allows Verizon to require a \$100 deposit before deploying broadband in addition to subjecting these ratepayers to a higher pricing module.

On April 29, 2014, without further consideration or opportunity for ratepayers to be heard, the Board issued its' Order approving without modification the proposed Stipulation, effective May 7, 2014. Rate Counsel is filing the within appeal of the Board's Decision and Order.

**- Continued on p. 2 -**

**New Jersey Judiciary  
Superior Court - Appellate Division**

**CIVIL CASE INFORMATION STATEMENT: ATTACHMENT B  
(Page 2 of 2)**

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In the Matter of Verizon New Jersey, Inc.'s  
~~Alleged Failure to Comply with Opportunity~~  
New Jersey Commitments

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BPU Docket No.: TO12020155

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**APPELLANT'S ATTORNEYS:**

Stefanie A. Brand, Director, New Jersey Division of Rate Counsel  
Christopher J. White, Deputy Rate Counsel, New Jersey Division of Rate Counsel

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**GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY: - CONTINUED -**

The PAR-1 and PAR-2 changes to Verizon's ONJ broadband deployment obligations were negotiated without input from the affected parties. Moreover, although the Board provided a notice and comment period on the proposed stipulated settlement, the Board failed to consider and incorporate the changes requested by the affected parties. The notice and comment process provided by the Board was merely procedural, as the Board failed to address the concerns raised in the comments submitted by the public or modify the Stipulated Settlement. While several comments raised issues of fact, the Board failed to afford the affected parties the opportunity to adjudicate those facts in a hearing. This matter should have been adjudicated as a contested case and the Board's failure to do so denied ratepayers' fundamental due process rights.



Agenda Date: 4/23/14  
Agenda Item: 4B

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## STATE OF NEW JERSEY

**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

### TELECOMMUNICATIONS

IN THE MATTER OF VERIZON NEW JERSEY, INC.'S ) ORDER  
ALLEGED FAILURE TO COMPLY WITH )  
OPPORTUNITY NEW JERSEY COMMITMENTS )  
 ) DOCKET NO. TO12020155

#### **Parties of Record:**

**Gregory M. Romano, Esq.,** for Verizon New Jersey, Newark, NJ  
**Stefanie A. Brand, Esq.,** Director, New Jersey Division of Rate Counsel

BY THE BOARD:

#### **BACKGROUND**

By Order dated March 12, 2012, the New Jersey Board of Public Utilities ("Board") issued an Order to Show Cause in the above captioned matter which ordered the following:

- 1) Verizon New Jersey, Inc. ("Verizon," "Verizon NJ," or "VNJ") to show cause before the Board why the Board should not find that Verizon failed to comply with the Plan for Alternative Regulation ("PAR") Order in providing full broadband capability by 2010.
- 2) Verizon to file an Answer to this Order to Show Cause, and any and all documents or other written evidence upon which Verizon relies in responding to the within Order to Show Cause, no later than April 12, 2012.

Verizon timely filed its response indicating, among other things, that Verizon is in compliance with its PAR obligations and that the Board should refrain from pursuing the Order to Show Cause. Subsequent to the issuance of the Order to Show Cause, Board Staff and Verizon entered into settlement discussions in an effort to resolve the issues raised in the Order to Show Cause. Following numerous discussions, Board Staff and Verizon reached a Stipulation of Settlement ("proposed Stipulation" or "the stipulation").

The proposed Stipulation would serve as a resolution to the Board's Order to Show Cause regarding Verizon's compliance with Opportunity New Jersey ("ONJ") by, among other things, implementing a new broadband request process known as a bonafide retail request or "BFRR." The proposed Stipulation described the details and terms and conditions of the BFRR, as well as notice and reporting requirements.

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Because the proposed Stipulation would modify the process for ordering broadband services contained in ONJ and the PAR, the Board determined that it was necessary and appropriate to seek public comment on the proposed Stipulation. By Order dated January 29, 2014, the Board established a 45-day comment period, which ended on March 24, 2014.

### THE EXECUTED STIPULATION

On April 22, 2014, Verizon and Board Staff filed with the Board the executed Stipulation of Settlement ("executed Stipulation," "the Stipulation," or "the stipulation"), which is attached to this Order and contains no revisions to the proposed Stipulation that was published for comments. The key provisions of the executed Stipulation are as follows:

- (1) Verizon is a local exchange carrier that provides local telephone and associated services in its service territory in New Jersey through a telecommunications network that it owns and operates.
- (2) On May 6, 1993, in Docket No. T092030358, the Board issued an order approving a plan of alternative regulation ("PAR-1") for Verizon's predecessor, New Jersey Bell Telephone Company. PAR-1 included a plan for accelerated deployment of advanced switching and transmission technologies for its network known as Opportunity New Jersey. The service capability and technology deployments outlined in ONJ were based upon assumptions regarding technology, markets and economic conditions over an extended period of time.
- (3) PAR-1 required Verizon to fully deploy broadband service in its service territory by the end of 2010 and provided for the monitoring of Verizon NJ's progress regarding such deployment.
- (4) Since the adoption of PAR-1, the Board has reviewed implementation of ONJ, particularly (i) the status of ONJ and relevant deployment strategies; (ii) the business as usual benchmarks established to gauge ONJ's progress to-date; and (iii) the economic development impacts that ONJ has had on the State. See, e.g., In the Matter of the Board's Inquiry into Bell Atlantic-New Jersey, Inc.'s Progress and Compliance with Opportunity New Jersey, Its Network Modernization Program, Docket No. TX96100707, Order dated October 18, 1996.
- (5) By Order dated August 19, 2003, in Docket No. T001020095, the Board approved a second plan for alternative regulation ("PAR-2") that replaced PAR-1, but left in place the requirements of ONJ established under PAR-1.
- (6) On March 12, 2012, the Board served on Verizon NJ an Order to Show Cause directing Verizon NJ to show cause why the Board should not find that it failed to comply with the PAR Orders in providing full broadband capability in its service territory by 2010; and to file an answer to the Order to Show Cause.

- (7) On April 12, 2012, Verizon NJ filed an answer responding to the Order to Show Cause ("Answer"). In its Answer, Verizon NJ asserted that it satisfied its ONJ commitments, including full deployment of broadband service within its service territory, and requested that the Board dismiss the Order to Show Cause.

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Board Staff and Verizon specifically agree as follows:

1. Implementation of Broadband Request Process: For single-line business or residential consumers ("consumers") residing in Verizon NJ's authorized service territory who do not have access to Broadband service (as defined below), Verizon NJ will, commencing thirty (30) days after the issuance and service of a Board Order approving this Stipulation and concluding the earlier of the Board's approval of a new plan of alternative regulation or December 31, 2017, make Broadband service available to such consumers pursuant to the terms of the bonafide retail request ("BFRR") requirements described below. Under the BFRR process, Verizon NJ shall make Broadband service available to:
  - a. a minimum of thirty-five (35) single-line business or residential consumers (in any combination) located in a Census Tract (as defined by the United States Census Bureau on the date of this Stipulation's execution) in Verizon NJ's authorized service territory who:
    - i. have no access to Broadband from cable service providers (including single-line business or residential consumers located outside of cable providers' Primary Service Area (defined in the applicable cable providers' Franchise Order issued by the Board));
    - ii. have no access to 4G-based wireless service; and
    - iii. each sign a contract agreeing to at least one (1) year of service and pay a \$100 deposit to be credited towards their service ("BFRR consumer").
  - b. Within nine (9) months of the receipt of a completed BFRR that meets the criteria referred to in 1(a)(i)-(iii) above ("BFRR consumer"), Verizon NJ must either itself or by contracting with another provider (including wireless, cable, or satellite provider<sup>1</sup>), arrange to have Broadband service provided to such BFRR consumer's home or business. The nine (9) month time period for completing broadband installation may be extended by up to six (6) months upon notice by Verizon NJ to the Board and to the BFRR consumer, for delays beyond Verizon NJ's reasonable control, including situations involving equipment or property acquisition, rights-of-way, permitting, or if the total number of BFRR deployments exceeds twenty (20) in a calendar year.

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<sup>1</sup> The satellite technology referred to herein shall be technology that is superior to broadband satellite technology commonly deployed in the past. For example, a certain industry-leading satellite provider has announced plans to launch new satellite-based broadband services at speeds of between five and 10 megabits per second, far in excess of the arrangements previously available.

- c. For the purposes of this Stipulation, Broadband is defined as delivering, through the use of any technology medium (including 4G-based wireless, fiber, copper, or cable), data transmission service at speeds no less than the minimum speed of Verizon NJ's Digital Subscriber Line Services ("DSL") that is provided by Verizon NJ as of today's date.
- 
- d. Consumers who request Broadband service and meet the criteria set forth in paragraph 1(a) above, shall be advised by Verizon NJ that the BFRR process is available and provided with details of the program. Consumers who believe that Broadband service is improperly being denied to them under the BFRR process should also be advised by Verizon NJ that they can contact the Board to contest the denial.
- e. Within thirty days after the issuance and service of a Board order approving this Stipulation, Verizon NJ shall post detailed information concerning the BFRR program on its web site. Within ninety days after the issuance and service of a Board order approving this Stipulation, Verizon NJ will include an insert into its paper bills providing notice to its customers of the BFRR program. Verizon NJ shall provide semi-annual reports to the Board detailing the number of BFRR requests received by Census Tract. The reports should identify: (1) every BFRR request received; (2) the action taken in response to each request; (3) all applicants who are denied Broadband service under the BFRR process, and (4) the reason for the denial. The Board Staff may, upon reasonable notice to Verizon NJ, request that Verizon NJ provide supplemental reports updating the most recent semi-annual report.
2. Public Entities: Public schools, municipal police and fire stations, emergency services, rescue squads and/or paramedics shall not be subject to the BFRR process described in section 1 above. With regard to any such public school, municipal police, fire station, emergency service, rescue squad and/or paramedic in Verizon NJ's authorized service territory that does not have access to Broadband from a cable service provider or access to 4G-based wireless service, Verizon NJ shall: (i) establish a single point of contact to handle inquiries about Broadband service options and (ii) shall make Broadband service available on terms, conditions and rates mutually agreeable to the parties. Within nine (9) months of the execution of this Stipulation resolving this investigation, Verizon NJ shall provide written notice to the public elementary schools in Hopewell and Upper Pittsgrove in Cumberland County, of their option to order Broadband service through what is known as the "Pittsgrove Consortium."<sup>2</sup>
3. Access to BFRR: For residential consumers of Hopewell and Upper Pittsgrove who do not have access to Broadband and meet the BFRR process requirements set forth in Section 1 (a) above, Verizon NJ shall complete all BFRR requests no later than nine (9) months of Verizon NJ's receipt of a qualified request. The six (6) month extension referred to in Section 1(b) above, shall not apply to BFRR applications submitted by Hopewell and Upper Pittsgrove residential consumers.

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<sup>2</sup> The Pittsgrove Consortium allows for a group e-rate application that allows discounts to be passed on to each member district, and allows for shared expenses among members.

upon the signatories, Verizon NJ will implement the BFRR process detailed above to any qualified consumers who request Broadband service within Verizon NJ's service territory. Further upon the Board's adoption of this Stipulation and service upon the signatories, this Order to Show Cause will be closed and Verizon NJ's ONJ requirements will be enforced through Verizon NJ's compliance with the BFRR process and the requirements of this Stipulation. If Verizon NJ fails to comply with the terms of this Stipulation, the Board may take action to enforce such terms as the Board deems appropriate.

## **SUMMARY OF COMMENTS ON THE PROPOSED STIPULATION**

Following the issuance of the Board Order seeking comments on the proposed Stipulation, citizens of New Jersey filed comments between February 7 and March 24, 2014. As of Friday, April 4, 2014, a total of 2827 comments from individuals, municipalities, trade unions, chambers of commerce, New Jersey Division of Rate Counsel ("Rate Counsel"), Verizon, and other groups were received. More than 98% of the comments were from individual citizens, 0.42% from municipalities and the rest from counties, trade unions, professional organizations, and Verizon. Of the 98% of individual comments, 94.5% were form letters and 5.5% were individualized letters.

An overview of all comments indicated that 63.5% of individual commenters opposed the stipulation for various reasons and recommended that the Board reject or modify the stipulation to reflect their understanding of the goals of the ONJ Order. Of the 36.5% of individual commenters who supported it, many called for a speedy approval of the Stipulation. Major opponents of the stipulation are municipalities, county organizations, trade unions, New Network Inc., and Rate Counsel. These commenters focused on the details of the stipulation, such as the 35 single-line requirements, the definition of broadband, the use of wireless, and the need for competition to be made available in the broadband sector. Chambers of Commerce, Verizon, and about half a dozen groups found the stipulation to be a step forward in the process of keeping New Jersey the most broadband state in the nation. The summaries follow.

### **Individuals**

Of the 2766 individual comments, about 63% opposed the stipulation, while more than 36% were in support. Most residents who opposed the approval of the stipulation asserted that approval would halt the deployment of fiber in the state. The most vocal residents were from southern counties, especially the township of Hopewell, who suggested that they cannot possibly run their households and businesses with Verizon's 4G LTE proposal because wireless is spotty and unreliable. In addition, data transmission services at rates of today's DSL are severely outdated and do not meet the current federal standards of 4 Mbps downstream and 1 Mbps upstream. The opponents added that internet access via deteriorating copper lines is not a solution since loss of connection is so frequent that DSL becomes unusable.

Other commenters felt they have been inundated by FiOS advertisements for years, hoping to subscribe to FiOS when it is available in their neighborhood. However, it never became available. Verizon's opting out through the stipulation leaves them with no competitive carriers. They would like to see VNJ complete its fiber upgrade, without which New Jersey will fall behind and lose additional revenue as a result of insufficient bandwidth. The sentiments of the commenters are that businesses will not be formed and existing businesses will leave. Some stated that the people of New Jersey will not stand the conceivable forgiveness of Verizon's obligation under ONJ.

For these reasons, plus the concessions made to Verizon in 1993, which they contend were funded by tax payers, these residents urge the Board to oppose the stipulation and hold Verizon to its 1993 ONJ contract that was expected to provide all New Jerseyans with a 45 Mbps broadband technology.

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Some supporters of the stipulation state that the stipulation "is fair and balanced" and "will build on the success that the Board and Verizon have achieved in making the Garden State one of the most wired broadband states in the country." By leveraging new and innovative technologies such as 4G LTE and fiber, stipulation supporters affirm that Verizon has helped put the power of the internet into more consumers' hands. Access to these services will not only benefit New Jersey's businesses and nonprofits, but consumers of all ages as well.

Supporters indicated that New Jersey has benefitted from the significant investments Verizon has made here to build a robust communications network. Comments in support of the stipulation stated that our state is now the most wired broadband state in the country and continued investment in broadband technologies will be critical to New Jersey's ongoing economic competitiveness.

### **Municipalities**

The Board received comments from 12 municipalities<sup>3</sup> and the New Jersey League of Municipalities. Overall the municipalities stated that "broadband access through mobile devices is not an acceptable solution; the speed and size of the internet service provided by cable or FiOS is far superior to anything available on a mobile device." See, e.g., comments of Pilesgrove Township at 1. Upgrades under ONJ were funded through substantial tax breaks from the state of New Jersey since 1993. Municipal authorities commented that the stipulation is inadequate and does not go far enough in protecting the residents of New Jersey. Therefore, the Board must modify the proposal to reflect the terms of Opportunity New Jersey.

Hopewell Township indicated that as a rural community, the requirement of 35 single-line or business residential customers to be located in a census tract will "amount to less than a drop in the bucket," given that it shares a census tract with the neighboring Borough of Shiloh. The stipulation will impede meeting federal mandates for submitting online reports, tax returns, time sensitive financial filings, and so on. A second set of comments were submitted by Hopewell Township, indicating its original understanding of the 35 threshold was mistaken and that it now understands the threshold and indicates that the Township could satisfy that requirement. The Township still opposes the Stipulation arguing that the Board should order Verizon to deploy fiber optic wire to all of Hopewell Township.

The New Jersey League of Municipalities opposed the stipulation because it runs contrary to the obligations of ONJ where VNJ was supposed to make fiber optics available to all residents of the state as promised in the PAR-1 Order. According to the League, the existence of cable internet in a census tract is of no legal significance in this matter. The League urges the Board to reject the stipulation and have Verizon and staff develop a proposal in conformance with VNJ's Opportunity New Jersey.

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<sup>3</sup> The municipalities that filed comments are: Alloway Township, Borough of Bay Head, Borough of Ridgefield, Elsinboro Township, Hopewell Township, Lower Alloway Creek Township, Pilesgrove Township, Upper Deerfield Township, Upper Pittsgrove Township, West Amwell Township, Weymouth Township, Woodland Township, and the New Jersey League of Municipalities.



The Borough of Ridgefield filed in favor of the proposal. Also, Woodland Township in rural Burlington County believes that the stipulation appears to be intended to benefit it and similarly situated communities.

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### **County Organizations**

In general, county entities filed comments opposing the stipulation. Cumberland and Salem County executives as well as the New Jersey Association of Counties ("NJAC") officials decried the failure by Verizon to provide fiber optic service to 100% of its residents by 2010 as understood under ONJ. The NJAC reported that 2 to 7% of residents and businesses in Atlantic, Burlington, Cumberland, Cape May, Hunterdon, Salem, and Warren counties lack access to a fixed broadband network. The stipulation, if approved as is, will relegate these residents to the use of less reliable and more expensive technologies for vital education, commerce and communications needs.

Cumberland Development Corporation ("CDC"), comprising the mayors of eight municipalities, voice strong opposition to the stipulation. The CDC raised its relative low density, rural farm lands as areas that must not be overlooked. The sentiments in sum are that coverage data used by the Board to determine access are flawed and must be reviewed by a third party. In addition, 8% of its population remains without reliable access to the internet.

The Cumberland Department of Planning agreed with the previously mentioned county executives by stating that "even with the FiOS build out of Greenwich and Stow Creek, Cumberland is still the left-behind county." Wireless maps in the region conflict with one another and expert studies show a lack of coverage in Western Cumberland. Because internet is only as good as the network that delivers it, the Department implored the Board to perpetuate the original vision of Opportunity New Jersey and hold Verizon to the same high standards.

The Salem County Board of Freeholders noted that though expansion or enhancement to high speed broadband services is necessary, "broadband access through mobile devices is not an acceptable solution as 4G LTE is not equivalent to FiOS in speed and cost." Also, the nature of Salem County makes the provision of 35 consumers in a single census tract a significant hurdle to increasing high speed broadband services by consumers who are not currently receiving that service.

According to the Cumberland County Board of Agriculture's comments, the Broadband Request Process will be disastrous for rural, agricultural communities in New Jersey. Farmers currently using DSL, satellite, or wireless internet access know firsthand that such broadband access is insufficient for the growing demands of agri-businesses. In addition, data cap pricing makes wireless more expensive and precision agriculture calls for robust telecommunications infrastructure, i.e., "fiber to the farm; wireless to the tractor." Id. at 2.

### **Chambers of Commerce**

Comments were filed by the Bridgeton Area Chamber of Commerce ("BACC"), Greater Atlantic City Chamber of Commerce, Meadowlands Regional Chamber of Commerce, Greater Paterson Chamber of Commerce, Greater Elizabeth Chamber of Commerce and the Commerce and Industry Association of New Jersey ("CIANJ"). These groups, with the exception of BACC are in favor of the stipulation stating that it would "develop a process to continue expanding broadband service to more communities across the state." These entities stated that the stipulation is an

undertaking that should be allowed to proceed so as to contribute to economic growth over the years. CIANJ specifically supported the stipulation since it allows schools and universities to tap into educational resources online and around the world. Greater Elizabeth affirmed that Verizon has not only met the requirements of ONJ, but has exceeded them, deploying 4G LTE, and FiOS have increased competition and driven prices down. BACC, like counties and municipalities, opposed the stipulation.

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## **Trade Unions**

New Jersey IBEW, IBEW 827 and the Communications Workers of America, AFL-CIO ("CWA") filed comments opposing the stipulation. The NJ IBEW supported comments filed by IBEW Local 827. Local 827 commented that in 1993, "Verizon made a commitment of 100% broadband access across New Jersey by 2010. In exchange, Verizon received the benefits of ONJ including tax benefits and additional surcharges which amount to \$15 billion by some estimates." Instead of the promised 100%, IBEW 827 asserted that the stipulation allows Verizon to provide service to only 35 single-line business or residential customers in a census tract. The 35-single line provision deprives business and residential consumers who have paid and were promised access and may not be one of the 35 consumers fortunate enough to be selected in the census tract.

IBEW 827 also stated that approving the stipulation will cause Verizon to abandon the copper based infrastructure as it continues to deteriorate. As the copper wire network erodes, Verizon will force consumers to migrate to wireless. Rejecting the stipulation ensures that Verizon repairs its dilapidating copper based network. Wireless, according to the trade union, cannot provide the speeds which Verizon had promised under ONJ. Wireless is slower and less reliable than copper or fiber (wired) broadband, which falls within Verizon's strategy of replacing wired with Voice link and wireless broadband. Permitting Verizon to abandon its fiber build out gives Verizon the opportunity to restrict consumers to unregulated, unreliable and unsafe services, such as Voice link.

The IBEW 827 claims the stipulation affects Verizon's work force. Since 2002, the work force of Verizon has decreased by as much as 60%, creating a shortage of skilled workers to maintain the wired network or respond to emergencies. FiOS installations fell in 2012 by the diversion of manpower to Super Storm Sandy restoration. Continued reduction of the workforce, if the stipulation is approved, will exacerbate the delay in the FiOS build out. Therefore, the trade union urged the Board to hold Verizon to its ONJ obligations to provide 100% broadband in the state.

The CWA intimated that "the quid pro quo for the elimination of traditional rate of return regulation, allowing Verizon to increase its profits and granting the company access into new markets, was Verizon's agreement to build out a broadband network for all residential and business consumers within its service territory capable of delivering high speed broadband." Since the issuing of PAR-1 and then PAR-2, the CWA continued, the Board ordered Verizon in 2012 to show cause that these commitments were met. Accordingly, the CWA asserted that the proposed settlement weakens the terms of PAR-2 by extending for seven years the time for meeting Verizon's ONJ obligations. "Verizon would only need to make broadband available to a minimum of 35 single-line business or residential consumers located in a census tract and who meet three conditions; no cable provider, no 4G LTE provider and contract to \$100 deposit." The CWA estimated that these requirements extinguish the ONJ commitment to provide broadband to all.

The trade union also saw the definition of broadband contained in the stipulation as reducing Verizon's original obligation of 20 years ago to provide speeds up to 45 megabits per second. They argued that "4G-based wireless service is not comparable to wireline high speed broadband service. Wireless is more expensive and has less capacity." For these reasons, the union urges the Board to reject the stipulation.

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### **New Networks**

Bruce Kushnick representing the New Network Institute ("NNI") filed a multipart commentary requesting dissolution of the proposed agreement immediately. In its filing, NNI proposed an OPRA request and called for a full investigation into Verizon's failure to upgrade state-based networks, massive cross-subsidization with affiliates and a case study of Opportunity New Jersey as a broadband failure.

According to NNI, the company indicated that in 1993, Broadband was understood to be Digital Service - switching capabilities matched with transmission capabilities supporting data up to 45 megabits per second and higher, which enables services, for example, that will allow residential and business customers to receive high definition video and send and receive interactive (i.e. two way) video signals. Yet in 2012, Verizon argued in the Show Cause Order that DSL, which travels over the old copper wire, was its answer. But DSL was considered inferior in 1991, and seen as an interim product.<sup>4</sup> NNI stated that the real Verizon plan is to stop fixing copper and push customers to wireless because it makes more money for the company. NNI contended that 4G LTE is not a substitute for FIOS.

NNI stated that New Jersey Bell was going to lead the nation and be the first fully fibered state. Verizon was given a system-wide franchise deployment limited to 70 must-build municipalities and 352 partially wired municipalities. However, the system-wide franchise was never tied to Opportunity New Jersey and Verizon has slowed the progress to a crawl. Neither did the Board's Order for Stow Creek and Greenwich reference the ONJ commitments to have the rest of the state completed by 2010 with fiber optic service capable of 45 Mbps in both directions<sup>5</sup>. NNI suggested that Verizon NJ overcharged customers about \$15-16 billion or \$4,000-5,000 per household in New Jersey for upgrades that never happened.<sup>6</sup> NNI also alerted that \$8.2 billion nationwide was charged to customers in excess of cable expense because of lack of competition.

For these reasons, NNI requested that the proposed stipulation agreement be dissolved, the OPRA request upheld, and an investigation of Verizon's cross subsidization started. The Board should then require Verizon to either wire 100% of the state with a fiber optic service capable of 45 Mbps in both directions or start a procedure to give back the billions collected, including damages to every Verizon customer.

### **New Jersey Farm Bureau and Other Groups**

Comments were separately filed by 13 additional entities, among them the New Jersey Farm Bureau ("NJFB"), Oakland Farms, the Southern Jersey Development Council ("SNJDC"), Jersey

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<sup>4</sup> New Networks Institute Part 2: Supplementary Information and Documentation, p. 8.

<sup>5</sup> New Networks Institute Part 4: Case Study, ONJ, a Broadband Failure, p. 21.

<sup>6</sup> New Networks Institute Part 4: Case Study; ONJ, a Broadband Failure, p. 27.

Action Group, New Jersey Technology Council ("NJTC") and others<sup>7</sup>. These commenters were split between approving and rejecting the proposed Settlement. Commenters from farming communities such as Happy Valley Berry Farms, Oakland farms, the New Jersey Farm Bureau ("NJFB"), the Senior Thrift and Caring Center, Inc., and the Jersey Action Group ("JAG") felt "the stipulation is a very bad idea." The opposing commenters stated that while many areas in New Jersey have gained from having fiber optics solutions, those in rural areas have suffered. Whole communities are in "digital dead zones" and their economies will suffer if the stipulation were approved as is. The New Jersey Farm Bureau<sup>8</sup> specifically noted that farmers already using DSL, satellite or wireless internet access know that these access methods are insufficient for their current operations, let alone the growing demand for precision agriculture. In addition, data cap pricing and limits make cellular or satellite solutions more expensive. The NJFB stated that "communities successful in the preservation of farmland and open space are penalized for being good stewards of the land." Oakland Farms based in Hopewell Township exemplified the situation by insisting that when it rains, copper wire phone or fax lines are inoperable, cell phones do not work in buildings, and dial-up internet is simply useless. These entities call for a rejection of the stipulation while forcing a third party audit of Verizon's actual wireless coverage in Cumberland County.

The remaining seven associations supported the proposed stipulation for various reasons. The Newark Regional Business Bureau noted that "high-speed internet connections, smartphones and social networking have revolutionized how today's companies operate." The Newark Bureau added that New Jersey businesses have benefited from the significant investment communications companies like Verizon have made in New Jersey.<sup>9</sup> The New Jersey Technology Council ("NJTC") encouraged the Board to approve the stipulation because the Board's "prudent public policies that encourage broadband investments and expansion have played a role and Opportunity New Jersey has contributed to this success story."

Supporters such as Southern Jersey Development Council ("SNJDC")<sup>10</sup> concurred that Verizon has invested billions of dollars to bring "state of the art" communication services to New Jersey residents and businesses, including the deployment of DSL, deployment of tens of thousands of miles of fiber optic cables and providing substitute technologies for wireless broadband access, making New Jersey "the most wired state in the nation." SNJDC sees the stipulation as a defining "process that can work to identify and deploy broadband to communities not currently served." Supporting accelerated deployment of broadband services promotes competition in the market place and ensures better products and services for New Jersey. Forbes echoed SNJDC and warned against the efforts of special interest groups like AARP and trade unions to derail the process.

New Jersey Shares ("NJ Shares"), a partner of Verizon in providing "critically needed assistance to families that are not eligible for other programs such as telephone assistance," encouraged the Board to approve the stipulation. According to NJ Shares, the stipulation will improve the

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<sup>7</sup> The 13 groups are the New Jersey Farm Bureau, New Jersey Technology Council, New Jersey Shares, Jersey Action Group, Oakland Farms, Southern Jersey Development Council, Happy Valley Berry Farm, Forbes, Latino Institute Inc., New JerseyEdge.Net, Puerto Rican Association for Human Development, Newark Regional Business Partnership, and Senior Thrift and Caring Center.

<sup>8</sup> The New Jersey Farm Bureau represents 11,000 members across the State of New Jersey. Its members form the foundation of the agricultural industry.

<sup>9</sup> NRBP comments dated, March 21, 2014 at para 3.

<sup>10</sup> SNJDC is a business economic development organization comprised of over 300 mid to large sized businesses in South Jersey.

quality of life. NJ Shares urged the Board to approve the stipulation in order to make broadband, and especially wireless broadband, a part of everyone's life.

New JerseyEdge.Net expressed its full support for the stipulation since New Jersey is well positioned when it comes to meeting the demands of mobile learning due to "robust communications infrastructure thanks to Verizon."

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The Puerto Rican Association for Human Development (PRAHD) and the Latino Institute both support the stipulation because "broadband has been essential to their institutional goals and broader goals of improving and connecting with the community." They argued that both wired and wireless technologies are continually being used to expand opportunities to educational resources, employment opportunity and life-sustaining services. Wireless technology in particular is helping Hispanic Americans close the digital divide among their counterparts. PRAHD noted that "Verizon has been a good corporate agent in New Jersey, investing billions of dollars to advance its network, support local charitable causes and ensure its customer needs are met."

#### **Division of Rate Counsel**

The Division of Rate Counsel submitted comments stating that the parameters set forth in the stipulation are insufficient to meet the mandated network deployment and upgrades agreed to by Verizon under its alternative plans of regulation (PAR-1 and PAR-2). Rate Counsel faults the stipulation on its 35 single-line business or residential consumers in a census tract as a measure that is inadequate to meet the 100% deployment commitment. Rate Counsel also submitted that providing 4G wireless services is not the same as the deployment of 100% wireline broadband. It cited its comments on Verizon's 214 filing, seeking to discontinue copper-based landline telecommunications services in parts of New York and New Jersey where Rate Counsel noted that wireless service is not a comparable service. Wireline broadband service permits unlimited use without additional charges. Wireless service requires a data plan and is more costly than current wireline broadband service. Wireless would only be acceptable to Rate Counsel if the cost was capped at the rate charged for Verizon DSL service pricing. Rate Counsel also recommended that Verizon provide coverage maps to demonstrate that it has the 4G capability to serve 100% of customers affected by the Stipulation. Id. at 1-2.

Finally, Rate Counsel noted that, as contemplated in the Stipulation, "a BFRR consumer would have to agree to a one year term of service and pay a \$100 deposit to be credited towards wireless service". Id. at 2. Rate Counsel submitted that this condition coupled with the higher costs of wireless broadband service be rejected and asked the Board to reject the Stipulation and direct Verizon to meet its broadband commitments by a date certain. Ibid.

#### **Verizon**

In its March 24, 2014 Comments, Verizon argued that the stipulation builds on Verizon's widespread deployment of broadband in New Jersey; many individuals in New Jersey support the broadband deployment process in the stipulation; and, comments opposing the stipulation are primarily generated by special interest groups and contain false or misleading claims. Id. at 4-6. Verizon claimed that broadband deployment in New Jersey is not only ubiquitous but also robust. Id. at 2. The company stated that New Jersey has been ranked as one of only five states in the nation where eighty-one to ninety-seven percent of the rural population has access to speeds of 25 Mbps; New Jersey has been a success because Verizon invested billions more in broadband deployment than was contemplated or required; Verizon and Board Staff came

together to build on the success of ONJ through a stipulation where Verizon will make service available to communities in which at least 35 residential or single-line business customers who lack broadband availability agree to subscribe to at least one year of service and pay a deposit of \$100; and, public entities, such as public schools and fire stations, can work directly with Verizon to obtain broadband services. Ibid.

Verizon stated that "many of the comments in opposition repeat claims that are simply inaccurate." Id. at 3. Verizon lamented the false assertion of the opposing commenters that the Board had allowed Verizon to impose a surcharge on customers to fund broadband when the Board has never authorized, and Verizon has never charged, a surcharge for the deployment of broadband in New Jersey. To clarify the misconceptions, Verizon stated that "the regulatory plan adopted with Opportunity New Jersey allowed a modest amount of pricing flexibility for certain services while imposing a price cap that resulted in Verizon not increasing the price for basic phone service in New Jersey for twenty-three years (between 1985 and 2008)." Ibid. (emphasis in original).

Verizon also stated that statements by commenters that Verizon's broadband obligations could only be met by fiber facilities are misguided since FIOS service as broadband did not exist in 1992. Verizon emphasized that 4G LTE wireless provides broadband at data rates that exceed DSL, which has been recognized for years by the Board as a broadband solution. Ibid. Verizon added that "the Board's prescient recognition back in 1993 that ONJ would be 'an evolving project, subject to changing conditions and market realities' has been borne out, to the benefit of New Jerseyans." Id. at 5. According to Verizon, cable, wireless, and satellite providers make cost-efficient broadband services in New Jersey; Verizon has begun reaching out to municipalities and entities that filed comments opposing the stipulation in order to help them understand the terms of the stipulation, emphasizing that the 35 single-line threshold in a census tract is only a lower limit for deploying broadband and not an upper limit as erroneously stated by many commenters; it is not a cap. Id. at 5-7.

Verizon argued that other opponents, such as Rate Counsel, did not explain why the terms agreed to between Verizon and Board Staff were an issue. The company noted that Rate Counsel's and other opponents' ideas were mistakenly based on the issue that a particular broadband technology was mandated under ONJ. It added that what was envisioned for broadband deployment under ONJ was that it contained switching technologies matched with transmission capabilities to support up to 45 Mbps and higher. Id. at 8.

## DISCUSSION

In 1991, the New Jersey State Legislature enacted the Telecommunications Act of 1992, L. 1991, c. 428, N.J.S.A. 48:2-21.16 to -21.21. Among other things, the Legislature authorized the Board to approve alternative forms of regulation in order to address changes in technology and the structure of the telecommunications industry; to modify the regulation of competitive services; and to promote economic development. N.J.S.A. 48:2-21.16(a)(5).

When approving Verizon's PAR in 1993, the Board recognized that ONJ represented "NJ Bell's plan to accelerate the deployment of advanced switching and transmission technologies to make available advanced intelligent network, narrowband digital, wideband digital, and broadband digital service capabilities in the public-switched network, which will result in a public switched network that is capable of transporting video and high speed data services in addition to voiceband services." (PAR 1 Order at 73).

~~"Under PAR-2, VNJ committed itself to achieve the PAR-1 Opportunity New Jersey (ONJ) service capability targets." Par-2 Order at 6, citing to Attachment A, § IIA. According to Par-2 Order, footnote 6: "The remaining commitment under Opportunity New Jersey is 100% Broadband availability (switching and transmission rates of up to 45 megabits per second and higher) by year-end 2010." Id. at 55.~~

In its April 12, 2012 Answer to the Order to Show Cause, Verizon argued that, among other things, it (i) has exceeded its ONJ obligations to bring broadband availability to the State; (ii) invested billions of dollars more in deploying broadband in New Jersey than what was contemplated in ONJ; (iii) as a result of Verizon's massive investment, all of its central offices are now equipped with broadband capability and broadband availability has reached more than 99% of census blocks in New Jersey; (iv) met its commitments despite the fact that the communications market changed dramatically since the submission of the ONJ plan; and (v) fulfilled its ONJ obligations under the prevailing technological, market, and economic conditions. Id. at 3-18.

ONJ states that the service and technology deployments described in the plan are based upon assumptions regarding technology, markets and economic conditions over an extended period of time and that the evolution of ONJ will be guided by developments in these areas. PAR-1 Order at 86, 136-140. Needless to say, there have been dramatic technological changes that impact the telecommunications market since the inception of ONJ in 1992. In addition, broadband digital service was described in ONJ as "switching technologies matched with transmission capabilities to support data rates up to 45,000,000 bits per second [45 mbps] and higher, which enables services, for example, that will allow residential and business customers to receive high definition video and to send and receive interactive (i.e., two way) video signals." PAR-1 Order at 74.

A significant number of comments centered on a misunderstanding that there was a surcharge associated with ONJ. This plain factual error in the comments effectively negates the main thrust of a great portion of the comments, as the statement about the presumed surcharge is invalid. The second misunderstanding of the commenters concerns the 35 threshold number contained in the stipulation regarding the number of consumers needed to seek service prior to VNJ's deployment provided that the other elements of the stipulation are satisfied. The 35-customer level is the minimum number of consumers needed in order to evoke the BFRR in a census tract and is not a cap on the customers who will receive the service upon request.

Comments opposing the stipulation focused primarily on five (5) areas, which are outlined and discussed below. In sum, the comments generally reflect misunderstandings regarding ONJ and the stipulation; a misinterpretation of ONJ; and/or inaccurate information concerning rates and charges and the impact on competition. A review of the comments clearly indicates confusion regarding the scope of ONJ, Verizon's FIOS offerings, and Verizon's cable franchise.

**ONJ and a surcharge, tax credit, or other financial benefit paid to VNJ which is dedicated to the deployment of ONJ:** This assertion is plainly inaccurate. There was never a surcharge placed on consumers bills, nor were rate increases or tax abatements dedicated to ONJ. ONJ is a single element of the PAR and has never involved dedicated financing.



**Definition of Broadband in Stipulation** – it requires a minimum speed of current DSL. Commenters argue that is antiquated and it should be either 45 mbps or at least the FCC definition of 4 mbps download and 1 mbps upload. The utilization of DSL to fulfill ONJ obligations has not been an issue over the years and thus the Board has considered DSL acceptable to meet the ONJ broadband requirement. VNJ has reported DSL deployment as the means of deployment toward its ONJ commitment for many years and it has not been asserted in the past by the Board that DSL is in any way insufficient. Many commenters argue that the ONJ obligation is fiber; it is not. DSL is less robust than fiber but fiber is not required under ONJ. The Board ordered broadband up to 45 mbps but did not order a specific transmission medium.

**Wireless 4G:** Many commenters oppose the use of wireless, contending it does not meet Verizon's ONJ broadband obligations. They argue it is not as reliable as wireline (copper or fiber), and it contains data caps and is significantly more expensive than wireline broadband. ONJ did not specify wireline and did anticipate developments in technologies. There is no prohibition in ONJ from the use of wireless service for broadband.

**The Stipulation limits competition:** The stipulation only requires Verizon broadband build-out to consumers who do not have any broadband access. Commenters argue that ONJ required Verizon to build-out to 100% of its territory, regardless of whether any other broadband provider exists. Therefore, these commenters argue that the Stipulation limits broadband competition if VNJ only has to build where no other broadband is available. However, when the ONJ plan was adopted in 1993, no other broadband competitors existed, and therefore VNJ was the only broadband provider. Therefore, the issue of competition is misplaced.

**35 customers Threshold:** This provision in the stipulation generated mass misunderstanding. Many commenters thought this provision meant that VNJ only needs to serve 35 consumers in a census tract and would no longer have to deploy broadband to any other household in that tract. Contrary to the comments, once 35 customers sign up, broadband must be deployed to the entire census tract, which ensures that groups of unserved consumers in a census tract (generally 1,200 – 8,000 people ) will have an opportunity to get broadband access, as long as they commit to one (1) year of service and a \$100 deposit.

The purpose of the BFRR is to determine underserved areas and provide a process for deployment where deployment has not yet taken place. While many voiced their desire for FiOS, ONJ was not designed to be a plan for FiOS build out, and attempts to force FiOS deployment under the guise of an ONJ obligation is inappropriate. Further, some commenters confused Verizon's obligations under ONJ with its commitments under its statewide cable franchise, which is not at issue in the Order to Show Cause. The Stipulation is an effort to achieve the same goals as reflected overall in the comments, to facilitate and improve access to broadband. The intent of the comments and the Stipulation are one effort toward the same end.

The Board has reviewed the executed Stipulation for approval based on certain rudimentary principles. The Board has "general supervision and regulation of and jurisdiction and control over all public utilities as hereinafter in this section defined . . . so far as may be necessary for the purpose of carrying out the provisions of this Title." N.J.S.A. 48:2-13. Under N.J.S.A. 48:2-23, the Board may require any public utility to furnish safe, adequate, and proper service. Also, the Board must ensure that no public utility provides or maintains any service that is unsafe, improper, or inadequate. N.J.S.A. 48:3-3. The Board must also ensure that a public utility is providing service at just and reasonable rates. N.J.S.A. 48:2-21.18(a)2 and 48:2-21(b). Indeed, the New Jersey Supreme Court has stated that it is in the public interest to entrust the regulation



of public utilities "to an agency whose continually developing expertise will assure uniformly safe, proper and adequate service by utilities throughout the State" and that "[o]ur courts have always construed these legislative grants to the fullest and broadest extent." In re Public Service Electric & Gas Co., 35 N.J. 358, 371 (1961). Thus, the grant of power by the Legislature to the Board is to be read broadly, and that the provisions of the statute governing public utilities are to be construed liberally.

The Board is also vested with the authority, pursuant to N.J.S.A. 48:2-19, to investigate any public utility, and, pursuant to N.J.S.A. 48:2-40, to extend, revoke, or modify an order made by it. The Board understands that administrative agencies must possess the ability to be flexible and responsive to the particular needs of the public and those of the regulated community. See, e.g., In re A Declaratory Ruling Pursuant to N.J.S.A. 48:3-10 & N.J.A.C. 14:3-10.13, 234 N.J. Super. 139, 146-147 (App. Div. 1989), citing Texter v. Human Services Dep't., 88 N.J. 376, 385 (1982). This flexibility "includes the [discretion] to select those procedures most appropriate to enable the agency to implement legislative policy." *Ibid.* And, the Board is also mindful of New Jersey's strong public policy in favor of settlement. Petition of Public Service Elec. and Gas Co., 304 N.J. Super. 247, 271 (App. Div. 1997); Dep't of Pub. Advocate v. N.J. Bd. of Pub. Utils., 206 N.J. Super. 523, 530 (App. Div. 1985).

No contested-case or evidentiary hearing is required here. The Board is cognizant that a "contested case" is defined as "a proceeding . . . in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. . ." See N.J.S.A. 52:14B-2(b). The Board is also aware that the New Jersey Administrative Procedures Act ("APA"), N.J.S.A. 52:14B-1 to -25 "does not create a substantive right to an administrative hearing. The act merely prescribes the procedure to be followed in the event an administrative hearing is otherwise required by statutory law or constitutional mandate." In re Application of Modern Indus. Waste Serv., Inc., 153 N.J. Super. 232, 237 (App. Div. 1977).

In addition, there are no "material disputed adjudicative facts" at issue arising from the Order to Show Cause and its proposed resolution. In re Public Service Elec. and Gas Company's Rate Unbundling, Stranded Costs and Restructuring Filings, 330 N.J. Super. 65, 119 (App. Div. 2000), *aff'd*, 167 N.J. 377, *cert. denied*, 534 U.S. 813, 122 S. Ct. 37, 151 L. Ed. 2d 11 (2001), citing Frank v. Ivy Club, 120 N.J. 73, 98, *cert. denied*, 498 U.S. 1073, 111 S. Ct. 799, 112 L. Ed. 2d 860 (1991). Also, "[i]t is only when the proposed administrative action is based on disputed adjudicative facts that an evidentiary hearing is mandated." In re Solid Waste Util. Customer Lists, 106 N.J. 508, 517 (1987). See also State Div. of Motor Vehicles v. Pepe, 379 N.J. Super. 411, 419 (App. Div. 2005) ("No disputed issue of material facts existed. Hence, no evidentiary hearing was required.").

The Board deems the executed Stipulation a just and reasonable resolution of the Order to Show Cause. The Board notes that under the stipulation, the Order to Show Cause will be closed and Verizon's ONJ requirements will be enforced through its compliance with the BFRF process and the requirements of the stipulation. Also, if Verizon fails to comply with the stipulation, the Board may take appropriate action to enforce it. The stipulation avoids a potentially protracted proceeding and will allow Verizon to continue to advance deployment of broadband capabilities throughout its service territory, which will benefit New Jersey. The Board believes that the stipulation will provide advanced technologies to consumers throughout Verizon's service territory.

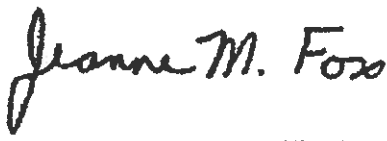
Based on its review of this matter, the Board has determined that the executed Stipulation is just and reasonable, serves to advance the level of broadband deployment with the understanding that technology has evolved since the original inception of the plan, and is consistent with law, and therefore the Board **HEREBY APPROVES** the executed Stipulation and incorporates the attached executed Stipulation herein in its entirety, and **HEREBY DISCHARGES** the Order to Show Cause. ~~Approval of the executed Stipulation is predicated on the specific facts of this matter and establishes no precedent for the resolution of other matters.~~

This Order shall be effective on May 7, 2014.

DATED: 4/29/14

BOARD OF PUBLIC UTILITIES  
BY:

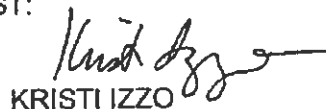
  
DIANNE SOLOMON  
PRESIDENT

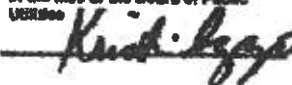
  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
MARY-ANNA HOLDEN  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities  


**IN THE MATTER OF VERIZON NEW JERSEY INC.'S ALLEGED FAILURE TO  
COMPLY WITH OPPORTUNITY NEW JERSEY COMMITMENTS  
DOCKET NO. TO12020155**

**SERVICE LIST**

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April 22, 2014

**BY HAND DELIVERY**

Kristi Izzo, Secretary  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Trenton, New Jersey 08625

Re: **BPU Docket No. T012020155 – Verizon New Jersey Inc. – Opportunity New Jersey**

Dear Secretary Izzo:

This firm represents Verizon New Jersey, Inc., in the above-referenced matter. I enclose for filing an original, fully executed Stipulation of Settlement that has been signed by Deputy Attorney General Carolyn McIntosh of the Division of Law, and by General Counsel Gregory M. Romano of Verizon New Jersey, Inc.

I would welcome your telephone call at 973-596-4769 if you have any questions.

Very truly yours,

s/ Kevin G. Walsh

Kevin G. Walsh

Enclosure

cc: Gregory M. Romano, General Counsel, Mid Atlantic Region, Verizon (by email only)  
Tricia Caliguire, Esq., Chief Counsel, Board of Public Utilities (by email only)

IN THE MATTER OF VERIZON NEW  
JERSEY INC.'S ALLEGED FAILURE TO  
COMPLY WITH OPPORTUNITY NEW  
JERSEY COMMITMENTS

## STIPULATION OF SETTLEMENT

WHEREAS, on May 6, 1993, in Docket No. T092030358, the Board issued an order approving a plan of alternative regulation ("PAR-1") for Verizon NJ's predecessor New Jersey Bell Telephone Company. PAR-1 included a plan for accelerated deployment of advanced

switching and transmission technologies for its network known as Opportunity New Jersey ("ONJ"). The service capability and technology deployments outlined in ONJ were based upon assumptions regarding technology, markets and economic conditions over an extended period of time.

WHEREAS, PAR-1 required Verizon NJ to fully deploy broadband service in its service territory by the end of 2010 and provided for the monitoring of Verizon NJ's progress regarding such deployment.

WHEREAS, since the adoption of PAR-1, the Board has reviewed implementation of ONJ, particularly (1) the status of ONJ and relevant deployment strategies; (2) the business as usual benchmarks established to gauge ONJ's progress to date, and (3) the economic development impacts that ONJ has had on the State. *Ség. e.g., In the Matter of the Board's Inquiry into Bell Atlantic-New Jersey, Inc.'s Progress and Compliance with Opportunity New Jersey, Its Network Modernization Program*, Docket No. TX96100707, Order, October 18, 1996.

WHEREAS, by Order dated August 19, 2003, in Docket No. T001020095, the Board approved a second plan for alternative regulation ("PAR-2") that replaced PAR-1, but left in place the requirements of ONJ established under PAR-1.

WHEREAS, on March 12, 2012, the Board served on Verizon NJ an Order to Show Cause directing Verizon NJ to show cause why the Board should not find that it failed to comply with the PAR Orders in providing full broadband capability in its service territory by 2010; and to file an answer to the Order to Show Cause.

WHEREAS, on April 12, 2012, Verizon NJ filed an answer responding to the Order to Show Cause ("Answer"). In its Answer, Verizon NJ asserted that it satisfied its ONJ

commitments, including full deployment of broadband service within its service territory, and requested that the Board dismiss the Order to Show Cause.

**WHEREAS**, as a resolution to the Board's investigation regarding Verizon NJ's compliance with ONJ, the signatories agree that the requirements embodied in this Stipulation resolve the dispute between the signatories in a reasonable manner and **THEREFORE** agree as follows;

1. Implementation of Broadband Request Process: For single-line business or residential consumers ("consumers") residing in Verizon NJ's authorized service territory who do not have access to Broadband service (as defined below), Verizon NJ will, commencing thirty (30) days after the issuance and service of a Board Order approving this Stipulation and concluding the earlier of the Board's approval of a new plan of alternative regulation or December 31, 2017, make Broadband service available to such consumers pursuant to the terms of the bonafide retail request ("BFRR") requirements described below. Under the BFRR process, Verizon NJ shall make Broadband service available to:

a. a minimum of thirty-five (35) single-line business or residential consumers (in any combination) located in a Census Tract (as defined by the United States Census Bureau on the date of this Stipulation's execution) in Verizon NJ's authorized service territory who:

i. have no access to Broadband from cable service providers (including single-line business or residential consumers located outside of cable providers' Primary Service Area (defined in the applicable cable providers' Franchise Order issued by the Board));

ii. have no access to 4G-based wireless service; and

iii. each sign a contract agreeing to at least one (1) year of service and pay a \$100 deposit to be credited towards their service ("BFRR consumer").

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- b. Within nine (9) months of the receipt of a completed BFRR that meets the criteria referred to in 1(a)(i)-(iii) above ("BFRR consumer"), Verizon NJ must either itself or by contracting with another provider (including wireless, cable, or satellite provider<sup>1</sup>), arrange to have Broadband service provided to such BFRR consumer's home or business. The nine (9) month time period for completing broadband installation may be extended by up to six (6) months upon notice by Verizon NJ to the Board and to the BFRR consumer, for delays beyond Verizon NJ's reasonable control, including situations involving equipment or property acquisition, rights-of-way, permitting, or if the total number of BFRR deployments exceeds twenty (20) in a calendar year.
- c. For the purposes of this Stipulation, Broadband is defined as delivering, through the use of any technology medium (including 4G-based wireless, fiber, copper, or cable), data transmission service at speeds no less than the minimum speed of Verizon NJ's Digital Subscriber Line Services ("DSL") that is provided by Verizon NJ as of today's date.
- d. Consumers who request Broadband service and meet the criteria set forth in paragraph 1(a) above, shall be advised by Verizon NJ that the BFRR process is available and provided with details of the program. Consumers who believe that Broadband service is improperly being denied to them under the BFRR process

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<sup>1</sup>The satellite technology referred to herein shall be technology that is superior to broadband satellite technology commonly deployed in the past. For example, a certain industry-leading satellite provider has announced plans to launch new satellite-based broadband services at speeds of between five and 10 megabits per second, far in excess of the arrangements previously available.



should also be advised by Verizon NJ that they can contact the Board to contest the denial.

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- c. Within thirty days after the issuance and service of a Board order approving this Stipulation, Verizon NJ shall post detailed information concerning the BFRR program on its web site. Within ninety days after the issuance and service of a Board order approving this Stipulation, Verizon NJ will include an insert into its paper bills providing notice to its customers of the BFRR program. Verizon NJ shall provide semi-annual reports to the Board detailing the number of BFRR requests received by Census Tract. The reports should identify: (1) every BFRR request received; (2) the action taken in response to each request; (3) all applicants who are denied Broadband service under the BFRR process, and (4) the reason for the denial. The Board Staff may, upon reasonable notice to Verizon NJ, request that Verizon NJ provide supplemental reports updating the most recent semi-annual report.
2. Public Entities: Public schools, municipal police and fire stations, emergency services, rescue squads and/or paramedics shall not be subject to the BFRR process described in section 1 above. With regard to any such public school, municipal police, fire station, emergency service, rescue squad and/or paramedic in Verizon NJ's authorized service territory that does not have access to Broadband from a cable service provider or access to 4G-based wireless service, Verizon NJ shall: (i) establish a single point of contact to handle inquiries about Broadband service options and (ii) shall make Broadband service available on terms, conditions and rates mutually agreeable to the parties. Within nine (9) months of the execution of this Stipulation resolving this investigation, Verizon NJ

shall provide written notice to the public elementary schools in Hopewell and Upper Pittsgrove in Cumberland County, of their option to order Broadband service through what is known as the "Pittsgrove Consortium."<sup>2</sup>

3. Access to BFRR: For residential consumers of Hopewell and Upper Pittsgrove who do not have access to Broadband and meet the BFRR process requirements set forth in Section 1(a) above, Verizon NJ shall complete all BFRR requests no later than nine (9) months of Verizon NJ's receipt of a qualified request. The six (6) month extension referred to in Section 1(b) above, shall not apply to BFRR applications submitted by Hopewell and Upper Pittsgrove residential consumers.
4. Order to Show Cause: Upon the Board's adoption of this Stipulation and service upon the signatories, Verizon NJ will implement the BFRR process detailed above to any qualified consumers who request Broadband service within Verizon NJ's service territory. Further upon the Board's adoption of this Stipulation and service upon the signatories, this Order to Show Cause will be closed and Verizon NJ's ONJ requirements will be enforced through Verizon NJ's compliance with the BFRR process and the requirements of this Stipulation. If Verizon NJ fails to comply with the terms of this Stipulation, the Board may take action to enforce such terms as the Board deems appropriate.
5. Effective upon Approval: The signatories agree that this Stipulation was negotiated and agreed to in its entirety with each section being mutually dependent on approval of all other sections. If the Board modifies or rejects any of the terms of this Stipulation, each signatory will have the option, before implementation of any different terms, to accept,

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<sup>2</sup> The Pittsgrove Consortium allows for a group e-rate application that allows discounts to be passed on to each member district, and allows for shared expenses among members.

change, or to resume the proceeding as if no agreement had been reached. If this proceeding is resumed, each signatory is given the right to return to the position it was in before this Stipulation was executed.

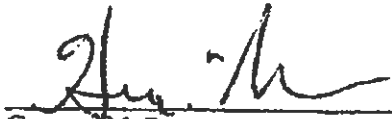
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6. Drafting of Stipulation. The entire Stipulation has been reviewed by and is acceptable to the signatories and their counsel as to form, content and meaning. The Stipulation was drafted jointly by the signatories and shall not be construed against any signatory based on its preparation.
7. Enforceability. In the event of default or breach of any term and/or condition of this Stipulation, the harmed signatory shall be entitled to rely upon this Stipulation or any other recourse available by law, to enforce the terms and conditions of this Stipulation.
8. Counterparts. This Stipulation may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one agreement.
9. Authority to Bind. The signatories hereby agree to be bound to this Stipulation, and they acknowledge that they are authorized on behalf of their respective clients to execute this Stipulation and to bind their respective clients by their signatures below.
10. Governing Law. This Stipulation shall be governed by the applicable law of New Jersey without regard to choice of law rules.

WHEREFORE, the parties hereto do respectfully submit this Stipulation and request that the Board issue a Decision and Order approving it in its entirety, in accordance with the terms hereof, as soon as reasonably possible.

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VERIZON NEW JERSEY INC.

By:   
Gregory M. Romano

Date: April 22, 2014

NEW JERSEY BOARD OF PUBLIC UTILITIES  
JOHN J. HOFFMAN, ACTING ATTORNEY GENERAL  
FOR THE STATE OF NEW JERSEY  
*ATTORNEYS FOR THE STAFF OF THE NEW JERSEY  
BOARD OF PUBLIC UTILITIES*

By:   
Deputy Attorney General *C. [illegible]*

Date: April 21, 2014

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES  
TRENTON, NEW JERSEY

BOARD AGENDA

DATE: WEDNESDAY, APRIL 23, 2014

ITEM 4B

TELECOMMUNICATIONS

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DOCKET NO.: TO12020155

IN THE MATTER OF VERIZON NEW  
JERSEY, INC.'S ALLEGED FAILURE  
TO COMPLY WITH OPPORTUNITY NEW  
JERSEY COMMITMENTS.  
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BEFORE: PRESIDENT DIANNE SOLOMON  
COMMISSIONER JEANNE M. FOX  
COMMISSIONER JOSEPH L. FIORDALISO  
COMMISSIONER MARY-ANNA HOLDEN

J.H. BUEHRER & ASSOCIATES  
1613 BEAVER DAM ROAD  
POINT PLEASANT BORO, NJ 08742  
(732) 295-1975

Page 2	Page 4
<p>1 PRESIDENT SOLOMON: 4B.  2 MR. CENTRELLA: On March 12, 2012, the Board  3 issued an order to show cause. Staff and Verizon in  4 this matter -- staff and Verizon engaged in settlement  5 discussions over an extended period of time and reached  6 a proposed settlement which is intended to resolve all  7 issues in the order to show cause.</p>	<p>1 The first one, ONJ deployment obligations  2 and the suggestion that a surcharge tax credit or other  3 financial benefit has been paid to Verizon -- dedicated  4 to the deployment of broadband through ONJ. These  5 arguments are not correct. Many argue that ONJ's  6 obligation -- rights and obligation under ONJ is fiber  7 build-out and that is not true.</p>
<p>8 By order dated January 29th of this year,  9 the Board established a 45-day comment period seeking  10 public comment on the proposed stipulation prior to  11 Board consideration of the agreement.  12 The comment period expired on March 28th of  13 this year and the Board received more than 2800 comments  14 from individuals, municipalities, trade unions, chamber  15 of commerce, rate counsel, Verizon and various other  16 groups. More than 98 percent of the comments were from  17 individual citizens; and of those 98 percent, 95 percent  18 were form letters.  19 An overview of the comments indicates that  20 about 63 percent of the individual commenters were  21 opposed to the stipulation for various reasons and  22 recommend that the Board reject or modify the document.  23 Other opponents of the stipulation were  24 about a dozen municipalities, some county organizations,  25 trade unions, new network incorporated, and rate</p>	<p>8 The Board order -- up to 45 megabytes but  9 did not order a specific transmission medium or a  10 minimum speed of transmission. There was never a  11 surcharge placed on consumers bills nor rate increases  12 or tax abatements dedicated to ONJ. ONJ is a single  13 element of the plan for alternative regulation. There  14 is no dedicated financing of ONJ through a surcharge  15 from consumers.  16 The second issue is wireless 4G. Many  17 commenters opposed the use of wireless -- let me start  18 again.  19 Many commenters opposed the use of wireless  20 for meeting ONJ broadband obligations in the  21 stipulation. They argued it is not as reliable as  22 wireline, it contains data caps, and it's more expensive  23 than wireline broadband. ONJ did anticipate  24 developments and technologies and the current generation  25 of wireless services fits that description.</p>
Page 3	Page 5
<p>1 counsel. These comments were focused on details of the  2 stipulation and I'll describe those in a few minutes.  3 Of the 37 percent of individuals who  4 supported it, many called for speedy approval. The  5 chambers of commerce, Verizon, and about a half dozen  6 groups on the stipulation to be a step forward in the  7 process of keeping New Jersey the most wired state in  8 the nation.  9 Just by way of background, ONJ states that  10 the service and technology deployments described in the  11 place are, quote, Based upon assumptions regarding  12 technology, markets, and economic conditions for an  13 extended period of time and that, quote, the evolution  14 of Opportunity New Jersey will be guided by developments  15 in these areas.  16 There have been dramatic technological  17 changes, as well as changes in the markets since the  18 inception of the ONJ in 1993.  19 In addition, broadband digital service was  20 described in ONJ as, quote, switching technologies  21 matched with transmission capabilities to support data  22 rates up to 45 megabits and higher. As I described  23 below, the comments from the individual commenters fall  24 into about five categories and I will go through each  25 one of them if I may.</p>	<p>1 In addition, federal law precludes the Board  2 from regulating broadband prices, either wireline or  3 wireless.  4 The third issue is an argument that the  5 stipulation limits competition because the stipulation  6 would only have Verizon build-out where consumers don't  7 have access to broadband. These commenters argued that  8 the stipulation limits broadband competition and Verizon  9 has to build only where there is no other broadband.  10 The plan that was developed in 1993 was at  11 the time -- I'm sorry.  12 At the time in 1993 when ONJ was put in  13 place, there was no broadband competition. It didn't  14 exist. Therefore, Verizon was the only provider of  15 broadband.  16 The market has changed dramatically for  17 broadband since 1993 and it's staff's view that the  18 objective of ONJ was to encourage the deployment of  19 broadband.  20 The next issue is the 35 customer threshold.  21 This provision generated mass misunderstanding in the  22 comments. Many commenters thought that this provision  23 meant that Verizon only serve 35 customers in the census  24 tracks to meet its obligation and that is not true.  25 Once 35 individuals sign-up in the census</p>

<p style="text-align: right;">Page 6</p> <p>1 tracks, and the census tracks generally contains between  2 1200 and 8000 people, broadband must be deployed. This  3 provision ensures that groups of unserved households in  4 a census track will have an opportunity to get broadband  5 access as long as they commit to one year of service and  6 a \$100 deposit. It recognizes the cost of deployment  7 <u>versus a long-life desire by a consumer who currently</u></p>	<p style="text-align: right;">Page 8</p> <p>1 this issue.  2 So with that all said, staff would recommend  3 that the Board adopt the stipulation as proposed.  4 COMMISSIONER FIORDALISO: So moved.  5 COMMISSIONER FOX: Second.  6 PRESIDENT SOLOMON: Thank you, Anthony. And  7 <u>you clearly from your comments have taken the</u></p>
<p>8 does not have access to broadband.  9 The fifth issue is the definition of  10 broadband in the stipulation. It requires a minimum  11 speed of the current DSL service. Commenters have  12 argued that it's antiquated and it should be 45  13 megabytes or at least the FCC broadband benchmark.  14 The Board has not determined at this point  15 that DSL is not acceptable to meet the ONJ broadband  16 requirement.  17 The Board has not determined at this point  18 that DSL is not an acceptable form of broadband a needed  19 requirement. Verizon has reported DSL deployment  20 towards ONJ obligation for many years and the Board has  21 never challenged that it was inefficient. DSL may not  22 be as robust as fiber, again fiber is not required under  23 ONJ.  24 The issue of what obligations are  25 enforceable under ONJ dispute that absent the</p>	<p>8 opportunity to educate all of us and have reviewed the  9 information from the hearings and the comments that we  10 received, the information about the issues relating to  11 the stipulation which are clearly confusing. I know it  12 was for me initially, and I appreciate the education  13 that you supplied to us here at the Board.  14 This stipulation, as you stated, is for  15 Verizon's obligation under the Opportunity New Jersey to  16 provide broadband across New Jersey.  17 In March 2012 the Board issued the order to  18 show cause for Verizon's alleged failure to comply with  19 ONJ commitments. According to the order, quote, today  20 full deployment of broadband had not been achieved. End  21 quote.  22 In Verizon's New Jersey's answer to the  23 order to show cause, it asserted that Verizon has had  24 spotted ONJ commitments. Full deployment was not  25 defined in the plan for alternative regulation as</p>
<p style="text-align: right;">Page 7</p> <p>1 stipulation of agreement would rest with the court after  2 litigation on the issue.  3 In an effort to avoid protracted hearings in  4 the appropriate judicial form over the actual meaning of  5 the terms of ONJ, staff negotiated a stipulation that  6 clarifies the obligation of Verizon to deploy broadband  7 in their service territory.  8 Absent an agreement, litigation over  9 Verizon's obligations under ONJ will ensue and it's  10 undisputed that a resolution will not be achieved in a  11 timely manner and would further extend the time frame  12 implementation of the goal for ONJ.  13 The stipulation was executed with the  14 understanding that the terms of the agreement will  15 provide access to broadband's unserved consumers in  16 Verizon's service territory.  17 The purpose of the BFRR is to determine  18 unserved areas and provide a process for deployment  19 where deployment has not yet taken place. While many  20 voice to desire FiOS, ONJ was not designed as a plan for  21 FiOS and attempts to force FiOS deployment under the  22 guise of the ONJ obligations.  23 Much confusion has arisen over the  24 obligations of Verizon under ONJ and the statewide cable  25 franchise and the stipulation is designed to resolve</p>	<p style="text-align: right;">Page 9</p> <p>1 Anthony stated and was left open to interpretation and  2 this stipulation will enable undeserved -- excuse me --  3 underserved ratepayers to finally get access to  4 broadband services rather than continuing to wait  5 indefinitely while the matter is litigated.  6 So there has been a great deal of  7 misinformation regarding this issue. As Anthony  8 mentioned, Verizon has not received, as someone had  9 stated, ratepayer money for broadband build-out under  10 ONJ.  11 Correct?  12 MR. CENTRELLA: Yes.  13 PRESIDENT SOLOMON: ONJ is part of the plan  14 for alternative regulation that was adopted in 1993 and  15 there was never a surcharge line item or a fee put on to  16 ratepayers' bills to fund the ONJ deployment.  17 And similarly ONJ did not require the  18 deployment of fiber optics cable, such as Verizon  19 FiOS -- and maybe when I'm done here, you can tell us  20 the difference between them -- but instead required full  21 deployment of broadband.  22 ONJ and the state franchise law have been  23 incorrectly confused on several occasions as a required  24 action by the state legislature in order to expand FiOS  25 cable service beyond those areas required by law.</p>

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<p>1 And if you just want to answer that one 2 question, what's the difference between the two. 3 MR. CENTRELLA: FiOS is a product provided 4 by Verizon and generally it's considered the triple play 5 which is voice, video, and Internet. The distinction 6 here I think is in 2006 the state video franchise 7 statute was passed and Verizon began providing cable 8 television service after it got approved from the Board 9 and that -- that is -- that statute does not require 10 statewide build-out. It does not require FiOS to be 11 provided everywhere. There is a build-out to 70 12 municipalities in the state. 13 So FiOS is a product. Fiber is a 14 transmission medium that provides the information, 15 either data, voice, or video. So that's the 16 distinction. One is generic and one is a particular 17 company's product or suite of products. 18 COMMISSIONER FOX: One of the other things, 19 I discussed with Anthony -- I'm not thrilled -- I'm 20 going to vote for this because I think it's a decent 21 stipulation. I am concerned about the 35 customers in a 22 census track is huge and I think that especially rural 23 areas where you have census tracks of 1200 up to 24 thousands of people. Now, 35 people to sign on to this, 25 especially people that don't have any other service. So</p>	<p>1 have to put notice in the newspaper. So we have several 2 ways of getting information out and the Board can 3 certainly put it on our website and clearly contact 4 those of the league who did file comments so we will 5 make sure to get the word out as quickly as possible. 6 COMMISSIONER FOX: Yeah, I mean it might be 7 offer that staff could have a meeting even at the 8 conference in November in Atlantic City or at the 9 session they put together so those towns can get 10 together with your staff. 11 MR. CENTRELLA: John's staff. 12 We can certainly do that. 13 SECRETARY IZZO: On the motion to approve 14 staff's recommendation, 15 Commissioner Fox? 16 COMMISSIONER FOX: Yes. 17 SECRETARY IZZO: Commissioner Fiordaliso? 18 COMMISSIONER FIORDALISO: Yes. 19 SECRETARY IZZO: Commissioner Holden? 20 COMMISSIONER HOLDEN: Yes. 21 SECRETARY IZZO: President Solomon? 22 PRESIDENT SOLOMON: Yes. 23 (Whereupon recommendation of staff was 24 approved.) 25 MR. CENTRELLA: Shall I leave this here or</p>
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<p>1 I think that's fair. I'm not thrilled with wireless 2 service, but I don't believe it's reliable yet. It 3 might be in the future. But as pointed out by staff, 4 the '93 part did not require that and, in fact, talks 5 about future events and the technologies. 6 THE COURT REPORTER: Could you hold one? 7 COMMISSIONER FOX: Sure. 8 I think that makes some sense and the 35 9 census track it's going be doable. The other thing I 10 wanted to point out is that while I know the original 11 part in '93 did have a statewide build-out, that's when 12 there was no competition. There's competition now and 13 more importantly in the legislature in '06 in the law 14 they adopted changed that. And so that requirement from 15 '93 was changed in '06 and there was no requirement for 16 Verizon to have a statewide build-out as current 17 legislature. 18 So I think this makes sense. I am hopeful 19 that the people who want the broadband can get it. I 20 expect that will be the case. And I'm sure whoever 21 replaces Anthony will stay on top of it. 22 MR. CENTRELLA: We can certainly make the 23 municipalities aware and comments and leagues specifics 24 of the agreement and how they go about getting to 25 Verizon, Verizon putting this on web site. They would</p>	<p>1 do you want me to take it with me? 2 (Item 4B - Telecommunications Concluded.) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>



## 1 CERTIFICATE

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I, Lorin Thompson, a Notary Public and  
Shorthand Reporter of the State of New Jersey, do hereby  
certify as follows:

I DO FURTHER CERTIFY that the foregoing is a  
true and accurate transcript of the testimony as taken  
~~stenographically by and before me at the time, place and~~  
on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a  
relative nor employee nor attorney nor counsel of any of  
the parties to this action, and that I am neither a  
relative nor employee of such attorney or counsel, and  
that I am not financially interested in the action.

  
Notary Public of the State of New Jersey  
My commission expires July 26, 2016

Dated: April 23, 2014

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