

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE NOTICE BY)
VERIZON DELAWARE INC. OF ITS)
INTENT TO PROVIDE VIDEO) PSC DOCKET NO. 05-389
SERVICES IN THE UNINCORPORATED)
AREAS OF THE STATE OF DELAWARE)
(OPENED NOVEMBER 8, 2005))

ORDER NO. 6763

This 8th day of November, 2005, the Commission determines and Orders the following:

1. This is a procedural Order. The Commission enters it in an effort to make the statutory cable franchising process - crafted more than thirty years ago - fit a world where video (and other broadband) services will be made available to consumers by multiple providers utilizing a variety of delivery platforms.¹ This Order, and this docket, is precipitated by Verizon Delaware Inc.'s ("VZ-DE") Letter of Intent filed with the Commission on October 11, 2005. In that letter, VZ-DE says that it will soon file an application to provide "video services" and that such application will cover "unincorporated municipalities throughout the [S]tate of Delaware."

2. Subchapter VI of the Public Utilities Act of 1974 outlines the process for this Commission to award a franchise for a cable television system to operate, in whole or in part, in areas outside

¹The 1974 Public Utilities Act defines a "cable system" as facilities (utilizing public rights of way) which are operated to perform the service of "receiving and amplifying the signals of one or more radio and/or television broadcasting stations and distributing such signals by cable, wire, or other means to members of the public who subscribe to such services." 26 Del. C. § 102(4).

the boundaries of incorporated municipalities. See 26 Del. C. §§ 601(a), (c)-(d) (solicitation of franchise applications); 602 (contents of franchise application); 603 (a)-(c) (selection of franchise application); 604 (contents of franchise). However, the process for a "new" franchise under these provisions seemingly assumes that the franchise to be awarded will allow for service to be provided in a previously un-franchised, or un-served, area. Thus, under the statutory scheme, the Commission gives notice of its intent to award a cable franchise for a geographic area;² one or more operators file applications to be awarded such franchise,³ and the Commission, after hearing, selects one or more "winning" applications and awards the franchise or franchises.⁴

3. This scenario is not exactly the one presented by VZ-DE's Letter of Intent. That document announces that VZ-DE intends to apply to provide video services in the unincorporated municipalities

²See 26 Del. C. § 601(c).

³See 26 Del. C. § 601(d). Under the statutory scheme, an applicant may not amend its application, once filed, "to make substantive changes in the proposals or qualifications of the applicant if more than one application has been filed for the same franchise territory. This suggests that the applicants "compete" for the award of the franchise to serve the area.

⁴See 26 Del. C. § 603(a)-(c). One could read this process as envisioning the grant of an exclusive franchise for the area to the winning application. See n. 2 above. However, in the past (even before federal law banned exclusive cable franchises), the Commission disavowed such a reading and said that under the new franchise process it can, in the public interest, grant several applicants the opportunity (by franchise) "to serve the area which it seeks to serve and let [] the potential customers benefit from any competition which may develop in the overlapping areas." Findings and Opinion of the Commission Accompanying PSC Order No. 2163 (Dec. 9, 1980).

throughout the State.⁵ However, the Commission has, over the years, already awarded franchises to operators that allow them to provide cable services to subscribers in various unincorporated areas of the State.⁶ And, if the franchise territories described in those prior awards are accumulated, those earlier franchises "cover" most, if not all, of the unincorporated areas of the State.⁷ Thus, VZ-DE, by its later application, will not seek to serve an un-franchised area; rather, it will seek permission to provide its video services in areas that might be encompassed by an already existing franchise.⁸

4. However, the fact that VZ-DE's application might not neatly fit the scenario that might have been envisioned when sections 601 and 603 were originally enacted is not of decisive consequence. For more than a decade, federal law has not only precluded the award of exclusive franchises but also enjoined local franchising authorities (such as the Commission) from unreasonably refusing to award an additional "competitive" franchise.⁹ The Commission believes that the process dictated by sections 601 and 603 can be applied to VZ-DE's

⁵The Commission will assume, from such notice, that VZ-DE intends to seek a cable system franchise allowing it to provide its video services in any unincorporated area of the State.

⁶Several of those franchises are up for renewal at this time. See PSC Dckts. Nos. 02-24, 02-347, 02-385, 02-405.

⁷In several instances, the franchise areas granted under the prior awards overlap.

⁸In its Letter of Intent, VZ-DE does not provide any geographic specificity as to what "unincorporated municipalities" it will actually begin serving. Thus, one cannot presently say whether VZ-DE intends to provide its services in areas encompassed within a prior franchise territory but not presently served by the franchise holder or whether VZ-DE intends to go head-to-head to provide service to homes already passed by the present operator.

⁹See 47 U.S.C. § 546(a)(1). Many of the prior franchises awarded by the Commission are non-exclusive.

Letter of Intent, even though in some particulars - such as the solicitation of multiple applications - the details may not seem to easily fit.

5. Consequently, the Commission will provide notice to the public and to other cable system operators within the State of VZ-DE's intention to provide video services in the unincorporated areas of this State. To remain consistent with the requirements of § 601(b), the Commission will, in such notices, solicit applications from not only VZ-DE but any other person or entity. The applications will be for an additional competitive franchise to serve the unincorporated areas of the State.

6. Section 601(b) also commands that applicants be afforded ninety days after such notice to file franchise applications. The Commission will, in its notice, allow for such time in the case of this competitive franchise. However, suspecting that in this context VZ-DE may be the only applicant, the Commission urges VZ-DE to file its application early within that period. A prompt submission by VZ-DE might allow the Commission, once the application window closes, to move ahead promptly with the second stage of the process outlined in 26 Del. C. § 603.¹⁰

¹⁰If any person believes that the Commission should (consistent with 47 U.S.C. § 541(a)(1)) "reasonably" decline to grant any additional competitive franchise for cable or video services, that person should offer those views during the § 603 process. See 26 Del. C. § 603(b) (listing "the public need for the proposed franchise" as a criteria to be considered as part of the franchise award decision).

Now, therefore, **IT IS ORDERED:**

1. That, pursuant to 26 Del. C. § 601(c)-(d), the Commission will receive and consider applications from Verizon Delaware Inc., and any other person or entity to operate a cable system and provide cable television service to the unincorporated areas of this State under an additional competitive franchise.

2. That to be considered by the Commission, an application for such franchise must be filed with the Commission in an original and ten (10) complete copies, accompanied by a certified check for the filing fee of \$750 made payable to the State of Delaware, on or before 4:30 P.M., Wednesday, February 8, 2006. All applications must conform to the requirements of 26 Del. C. § 602.

3. That the Secretary of the Commission shall forthwith send, by certified mail (return receipt requested) a copy of this Order and the attached notice (Exhibit "A") to each person or entity currently operating a cable television system in the unincorporated areas of the State of Delaware. The Secretary shall also cause such notice attached as Exhibit "A" to be published, in two-column format, outlined in black, in the following newspapers on the below designated dates:

The News Journal (November 10, 2005)

Delaware State News (November 10, 2005)

The Secretary shall also forthwith post a copy of this Order with the attached notice on the Commission's Internet website under an appropriate heading.

4. That after February 8, 2006, the Commission will schedule and then conduct a public hearing concerning all applications timely

filed consistent with the provisions of 26 Del. C. § 603(a)-(b) and 47 U.S.C. § 541(a)(1).

5. That any person or entity filing a franchise application in this matter is hereby notified that it will be charged the costs of this proceeding under 26 Del. C. § 610(a)(2) (2004 Supp.).

6. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

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NOTICE OF ADDITIONAL COMPETITIVE FRANCHISE APPLICATION PROCESS

On October 11, 2005, Verizon Delaware Inc. ("Verizon") filed a letter with the Public Service Commission ("the Commission") reporting its intent to file an application for permission to provide video services in the unincorporated areas of the State of Delaware. Under the provisions of 26 Del. C. § 601(c), the Commission may not grant a franchise to an entity to construct or operate a cable television system without first giving at least ninety (90) days public notice of its intention to receive and consider applications for such a franchise. Therefore, pursuant to such section, the Commission hereby gives notice that it will receive and consider applications from Verizon and any other person or entity for an additional competitive franchise to provide cable television service in the unincorporated areas of the State.

To be considered, any such franchise application must be filed with the Commission at its office located at 861 Silver Lake

Boulevard, Cannon Building, Suite 100, Dover, Delaware 19904, on or before Wednesday, February 8, 2006. Any application must conform to the requirements of 26 Del. C. § 602, be filed in an original and ten (10) copies in a timely manner, and be accompanied by a certified check for the filing fee in the amount of \$750 (made payable to the State of Delaware).

Once submitted, any franchise application will be made available for public inspection. After the close of the window for submitting applications, the Commission will consider the applications consistent with the provisions of 26 Del. C. § 603(a)-(b) and 47 U.S.C. § 541.

This process for an additional or competitive franchise is more fully explained in PSC Order No. 6763 (Nov. 8, 2005). Such Order is available for review at the Commission's office at the address set out above and on the Commission's Internet website at www.state.de.us/delpsc.

If you have questions or inquiries, you can contact the Commission at (800) 282-8574 (toll-free in Delaware) or (302) 739-4247 (including text telephone). Inquiries can also be sent by Internet e-mail to james.strong@state.de.us.