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PUBLIC UTILITIES COMMISSION

August 29, 2007

Ms. Luly Massaro, Commission Clerk
R. I. Public Utilities Commission
89 Jefferson Boulevard
Warwick, Rhode Island 02888

Re: Petition of Verizon New England Inc. as to Amended
Ordinance of August 20, 2007 Enacted by the City of Warwick

Dear Luly:

Enclosed find a Supplemental Petition for Review and nine copies for filing in the above captioned matter.

If you have any questions or require further information, please call me at 456-1234. Thank you.

Sincerely,


Peter J. McGinn

PJM:mfs

cc: John Earle, Esq.
Leo Wold, Esq.

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**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION**

Petition of Verizon New England Inc.,
d/b/a Verizon Rhode Island For Review of
Amended Ordinance of August 20, 2007
Enacted by the City of Warwick

Docket No. 3708

SUPPLEMENTAL PETITION FOR REVIEW UNDER R.I.G.L. SECTION 39-1-30

Verizon New England Inc., d/b/a Verizon Rhode Island (“Verizon RI”), brought a Petition on or about November 14, 2005 pursuant to Rhode Island General Laws Section 39-1-30 and Rules 1.10 and 1.31 of the Commission’s Rules of Practice and Procedure seeking to nullify an ordinance (“the Ordinance”) enacted by the City of Warwick (“City”) which would fine Verizon RI \$500 a day for failure to remove any Verizon RI utility pole located adjacent to City highways within ten days of termination of service of the pole or replacement of the pole with a new pole. Verizon RI asserted therein that the Ordinance is preempted by the exclusive statutory power of the Commission to regulate the conduct of utility companies and that the ten-day time limit in the Ordinance falls far short of the minimum amount of time Verizon RI reasonably requires in order to ensure the prudent and safe transfer of all attachments and plant from the old pole to its replacement and then remove the old pole. Verizon RI further asserted that the limit in said Ordinance was not reasonably related to any legitimate need of the City to maintain its highways. Accordingly, the time limit renders the Ordinance unduly and unnecessarily burdensome in its impact on the business and services of Verizon RI.

1. Effective on August 20, 2007, the City amended the Ordinance to provide further as follows:

Any utility or entity other than the utility or entity having ownership or control of the pole, which has wires or other appurtenances attached to the pole no longer being utilized shall remove said wires and/or appurtenances within the same ten (10) day period.

2. Verizon RI brings this Petition, which supplements the Petition of November 2005, pursuant to R.I.G.L. Section 39-1-30 and Rules 1.10 and 1.31 of the Commission's Rules of Practice and Procedure to nullify the Amended Ordinance of August 20, 2007 ("Amended Ordinance"). This Supplemental Petition, as the Original Petition, asserts that (i) the Amended Ordinance is preempted by the statutory power of the Commission to regulate Petitioner's conduct, (ii) the ten day time period is unreasonable, and (iii) the Amended Ordinance is not reasonably related to any legitimate need of the City to maintain its highways.

As in the Original Petition, Verizon RI states the following:

3. Verizon RI is a public utility offering telephone service within the state of Rhode Island. Verizon RI owns or controls utility poles that are located adjacent to highways owned or controlled by the City.

4. The Commission has jurisdiction over this matter pursuant to R.I.G.L. Section 39-1-30*.

5. The Amended Ordinance purports to allow Verizon RI and other owners of utility poles and non-owners using such poles just ten days to remove any pole that is no longer in use

* R.I.G.L. Section 39-1-30 provides in part as follows: "... Every ordinance enacted , or regulation promulgated by any town or city affecting the mode or manner of operation or the placing or maintenance of the plant and equipment of any company under the supervision of the commission, shall be subject to the right of appeal by any aggrieved party to the commission within ten (10) days from the enactment or promulgation..."

or that has been replaced by a new pole. Specifically, the Amended Ordinance (with amendment underscored) provides, in its entirety, as follows:

Any utility pole erected pursuant to this article or by any state agency regulation, upon, adjacent to or in any city owned or maintained highway, including the roadway, sidewalk, curbing, median or bugger thereof, which is no longer in use for its intended purposes, or which had been replaced by anew pole, shall be removed by the utility company which has ownership or control of the pole which is no longer in service, or, in the case of a replacement pole, by the utility company which has caused its replacement within ten (10) days of its termination of service, or of its replacement, as the case may be. Any utility or entity other than the utility or entity having ownership or control of the pole, which has wires or other appurtenances attached to the pole no longer being utilized shall remove said wires and/or appurtenances within the same ten (10) day period.

Any violation of this section shall be punishable by a fine of \$500.00. Each day in which the violation occurs shall constitute a separate offense.

See Article III of Chapter 30 of the Code of Ordinances of the City of Warwick, Section 70-78.

6. As in the Original Petition, the conduct of the City in enacting the Ordinance constitutes an unlawful exercise of power contrary to R.I.G.L. Section 39-1-1-(c), which vests in the Commission “the exclusive power and authority to supervise, regulate, and make orders governing the conduct of companies offering . . . communication . . . services....” The Ordinance and Amended Ordinance falls outside any authority the City may have to regulate the manner in which its roadways are maintained , repaired or reconstructed. The Ordinance and Amended Ordinance are thus preempted by operation of R.I.G.L. Section 39-1-1-(c).

7. The ten-day time limit in the Amended Ordinance is unreasonable in light of the work that must be performed and completed, most often by multiple pole owners, attachers and licensees, after a new pole is installed and before the old one can be replaced. Once a new pole is

in the ground, the many attachments on the old pole must be transferred to the new one. As a matter of mechanics, this process must be completed from the top down, so that any electric power lines on the pole (which are almost always the uppermost attachments) must be transferred to the new pole first. Only after the power company has completed this work can the non-owner licensees such as CATV operators, wholesale fiber companies and municipal agencies (usually fire and police) transfer their attachments. The standard aerial license agreement between Verizon RI and its licensees provides that each licensee shall have 15 days in which to transfer its plant after notice. Only when the power company and all licensees have transferred their attachments to the new pole may Verizon RI transfer its own facilities, which are usually the lowest attachments on a pole. Finally, the appropriate pole owner or entity using the pole can then remove the old pole. Due to the amount of labor involved, the availability and scheduling of crews for each of the users of the pole and the need to coordinate the efforts of multiple pole users, ten days does not even begin to allow a reasonable amount of time for the proper and safe completion of this work and removal of an old pole. Indeed that time limit is not even sufficient to allow proper notice to the licensees and time for each of them to move its attachments.

8. Verizon RI could not meet the ten-day requirement of the Amended Ordinance without renegotiating its aerial license agreements with licensees, re-organizing substantial sectors of its workforce and re-deploying trucks and equipment, at substantial monetary expense and at the additional cost of pulling these resources away from other critical work, such as emergency and other repair and installation. Alternatively, Verizon RI could possibly conform to the ten-day requirement only by hiring additional construction crews and purchasing additional heavy equipment. Either way, the disruption to the Company's ability to provide high-quality

service to its customers and the cost of new crews and equipment, which may be passed along to ratepayers, would be prohibitive and in any event would far outweigh any benefit to the City from such lightning-fast removal of poles.

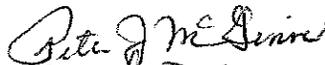
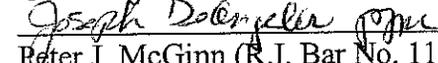
9. The temporary presence of poles or attachments which are no longer in service has no effect on the use of City streets by the public or on the maintenance, repair or restoration of the roadways. Thus, any balancing of the need of the City to maintain its highways with the need of Verizon RI to serve its customers must come down in favor of Verizon RI's customers. Accordingly, the Ordinance and the Amended Ordinance are unduly and unnecessarily burdensome in their impact on the business and services of Verizon RI.

WHEREFORE, Verizon RI requests that the Commission enter an order: (1) Consolidating this Petition and the Petition of November, 2005 prior to hearing; (2) nullifying the Original Ordinance and the Amended Ordinance and declaring them void; (3) finding that the Ordinance as Amended and enforcement thereof by the City is preempted by state law; and (4) granting such other and further relief as the Commissions deems just.

VERIZON RHODE ISLAND

By its attorneys

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August 29, 2007

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the within Petition to be served upon the people listed below by first-class, postage pre-paid mail, on August 29, 2007.



A handwritten signature in cursive script, reading "Peter J. McGuire", is written over a horizontal line.

John Earle, Esq.
City Solicitor
Warwick City Hall
3275 Post Road
Warwick, RI 02886

Leo Wold, Esq.
Special Assistant Attorney General
150 South Main Street
Providence, RI 02903

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