

Prepared Testimony

PUBLIC HEARING

Application by Verizon New Jersey Inc. for a
Renewal of a System-Wide Cable Television Franchise
BPU Docket No. CE13080756

Presented by

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We are submitting this Testimony with other documents previously
presented to the NJBPU-See Appendix 1

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October 1, 2013

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Executive Summary

Verizon¹ announced in 2010 that the company was no longer going to upgrade its copper-based networks with fiber optic wires and would instead stay within the current deployment ‘footprint’ for its fiber-optic service (FiOS). In fact, Verizon² stated that it will ‘shut off the copper’ and force customers onto wireless. As the cable service under discussion in this docket is transmitted over the same fiber optic wire as well as the FiOS high-speed Internet access (broadband), it is clear Verizon has no intention of expanding and offering cable or broadband in new areas.

The cable franchise is now inextricably tied to the fiber optic deployments and Verizon’s push to shut down the copper wiring and move customers to wireless—whether they like or not.

However, Verizon's announced plans overlook the 20-year-old Verizon New Jersey (VNJ) commitment to “fully-fiberize” the entire state of New Jersey under Opportunity New Jersey (ONJ) and that the company has failed to do so. As a result, we recommend that the State reject Verizon New Jersey's application for a renewed statewide franchise for its cable service and make sure that New Jersey’s customers get what they paid for – a fully-fiberized state.

Background:

- In 1993, VNJ committed to “Opportunity New Jersey”, (ONJ) which was the company's plan to have 100% of the state wired with a fiber optic service capable of 45 Mbps in both directions, completed by 2010. And to pay for these upgrades state laws were changed to give the company billions of dollars in higher phone rates and tax incentives.
- In 2007, Verizon received a system-wide cable franchise for FiOS TV, which only required that 70 communities be completed. Verizon franchise covers 372 municipalities but to date has done some percentage of only 352 municipalities out of 526 communities in Verizon’s territory, and has dramatically slowed deployments in new areas, leaving at least 1/3 of all New Jersey municipalities in ‘digital dead zones’.
- Schools, libraries and government agencies were supposed to get discounted or free cable and broadband services under both cases —There’s been no tracking.
- In 2012, the NJBPU issued a ‘show cause order’ asking Verizon to explain why they had not fulfilled their obligations to supply broadband services to two small towns, Stow Creek and Greenwich, or deliver quality service. And in 2013, the State ordered Verizon to wire Stow Creek and Greenwich. However, there are no plans to wire other towns and Verizon has put Mantoloking on Voice Link, an inferior wireless service that can not handle based phone service applications like fax or alarm circuits.

¹ <http://online.wsj.com/article/SB10001424052702303410404575151773432729614.html>

² Verizon at Guggenheim Securities Symposium, June 21, 2012, http://www.media-alliance.org/downloads/Verizon_Kill_Copper.pdf.

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Issues

- If FiOS TV is based on the fiber optic deployments then it is clear that Verizon failed to upgrade at least 1/3 of all municipalities -- 40%-50% of its customers -- as many of the communities are only partially done. Verizon is in violation of ONJ commitments.
- Did Verizon commit fraud? Every year Verizon published annual infrastructure reports claiming that they had fulfilled ONJ. In 2000, VNJ claimed that 52% of the state had 45 Mbps in both directions. It's now clear that it didn't exist in 2000, and every annual report misrepresented the actual fiber optic deployments.
- It appears customers paid for the cable service expenses. Verizon claims to have spent \$2 billion on the cable roll out but it appears there was no extra construction spending itemized in the Verizon SEC state-based annual reports.
- It appears that the construction budgets have been diverted to pay for fiber-to-the-cell tower and other wireless expenses.

Based on these findings and issues:

- We request that the New Jersey Board of Public Utilities reject Verizon's application to renew the FiOS cable TV cable franchise.
- We request that the State immediately start the process of enforcing the obligations of ONJ and have Verizon New Jersey 100% of their customers with a fiber optic service, capable of 45 Mbps in both directions or higher, replacing the aging Public Switched Networks copper networks, as was agreed to per state law.
- We request an investigation into the cross-subsidies currently with the Verizon Wireless, Verizon Online and all of the other affiliates including the cable service, as they violate state law and diverted funds that should have been used to 'transform' the PSTN into a digital service capable of 45 Mbps in both direction or higher.
- We request an immediate investigation – Did Verizon submit fraudulent documents to the State, claiming that they had fulfilled their obligations but had not – i.e., in 2000, Verizon claimed it has 52% of the State completed with a 45 Mbps residential service, which did not exist 2000.

Conclusion:

The State in its 2012 'show cause' order acknowledged that 100% of New Jersey was to be properly upgraded and maintained. Allowing Verizon to renew their cable franchise, without first enforcing the laws to deploy the very fiber optic wires that the cable service uses, would be to disregard laws that are on the books and leave half the state stranded without wired cable or broadband competition. Moreover, wireless can not handle and is not a replacement for high speed broadband and cable service; but this is the future that is in store 40-50% of the state of New Jersey.

The State already asked what happened to the ONJ commitments, and it needs to stay on course and take actions as Verizon's plans are the get rid of the wires – and the commission's oversight.

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Discussion

1) **The Commitment: Opportunity New Jersey's Broadband Promise.**

In 1991 Verizon New Jersey submitted a proposal called Opportunity New Jersey that was to replace the aging copper wire with a fiber optic service that would transform the Public Switched Network from 'voiceband' (commonly known as "POTS", Plain Old Telephone Service) to one that would handle video and high speed data services as well. The original alternative regulation plan calls for the "public switched (telephone) network" to be upgraded to deliver "video and high speed data services".

"D. NJ BELL'S PLAN FOR AN ALTERNATIVE FORM OF REGULATION MAY 21, 1992 --- NJ Bell's plan declares that its approval by the Board would provide the foundation for NJ Bell's acceleration of an information age network in Now Jersey and referred to by NJ Bell as 'Opportunity New Jersey'... Opportunity New Jersey would ...accelerate the transformation of NJ Bell's public switched network, which today transports voiceband services (voice, facsimile and low speed data), to a public switched network, which transports video and high speed data services in addition to voiceband services."³

And let us be clear. This is the utility PSTN copper based networks—which provides landlines, that would now be a 'fiber optic landline', not a separate 'broadband' network and a PSTN network.

2) **Speed: 45 Mbps in Both Directions Was the Speed of Broadband In 1992.**

The speed of 'broadband' in 1993 was capable of 45 Mbps in both directions to residential and business customers.

"Broadband Digital Service — Switching capabilities matched with transmission capabilities supporting data rates up to **45,000,000 bits per second** (45mps) 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."⁴

3) **Broadband and the PSTN is the Same Network.**

³ In the Matter of the Application of New Jersey Bell Telephone Company For Approval of its Plan for an Alternate Regulation, Decision Docket Number T092030358, 4/14/03

⁴ *Ibid.*

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Verizon's own words shows that the PSTN was ALL services as ALL services were being funded via customers' excess phone charges. FiOS is a 'brand', not a fiber optic network. The Verizon New Jersey 2001 infrastructure Report stated:

“By integrating a number of services on a single network, Verizon NJ will continue to make optimum use of our service delivery capabilities. The evolution to the full service ATM based switched broadband network will increase significantly the efficiency of serving New Jersey through automated provisioning and activation processes, increase capacity availability, and result in an even more flexible delivery platform. Verizon NJ's integrated network of switches, transmission facilities and operating systems provides New Jersey's residential and business communities with a technologically advanced telecommunications infrastructure that is ready, willing and able to act as the on-ramp to the Information Highway”.⁵

4) The Entire State Should have been Completed by the Year 2010.

There next exhibit is the timeline in the original agreement that outlines what would be deployed and in what year. The timeline went from 1992 through 2010 and at different milestones specific services were to be deployed and completed.

By 2010, 100% of Verizon New Jersey should have been completed with 'broadband digital service'. In fact, the chart shows the differences between what was supposed to happen under "ONJ" as opposed to "BAU" – "Business as Usual", i.e., if the state didn't grant the alternative regulation, "Broadband Digital Service" would not be completed until 2030.

⁵ Verizon, New Jersey 2001 Annual Infrastructure Report

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Exhibit 1

Verizon New Jersey Time Line of Broadband Deployment, 1992-2010

BAU -- Business as Usual
 ONJ -- Accelerated Deployment

	<u>BAU</u>	<u>ONJ</u>
<u>Advanced Intelligent Network (AIN):</u>		
Digital switching and signaling systems deployed to provide call routing and database access services, which enables "follow me" type services, for example, that allow customers to program the public switched network to forward their calls automatically to different locations depending on the time of day.	Initial: 1992 100%: 2001	1992 1998
<u>Narrowband Digital Service:</u>		
Switching technologies matched with transmission capabilities to support data rates up to 144,000 bits per second which enables services, for example, that will meet the requirements of customers who use any combination of work stations, personal computers, FAX machines and telephones.	Initial: 1992 100%: after 2001	1992 1998
<u>Wideband Digital Service:</u>		
Switching technologies matched with transmsision capabilities to support data rates up to 1,500,000 bits per second, which enables services, for example, that will allow students to remotely access multimedia information, including video, from home or school.	Initial: 1994 95%: undetermined but before 2030	1994 2000
<u>Broadband Digital Service:</u>		
Switching technologies matched with transmission capabilities support data rates up to 45,000,000 bits per second and higher, which enables services, for example, that will allow residential and business customers to receive high definition video and to send and receive inter-active (i.e., two way) video signals.	Initial: 1996 100%: 2030	1996 2010

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5) Did Verizon Commit Fraud?

The State required Verizon to submit an annual infrastructure report that would detail the amount of upgrades for different technologies accomplished from 1996-2010. Verizon submitted these reports faithfully, but as the data shows, Verizon New Jersey was lying about its deployments in every year. The following exhibit is from Verizon’s 2000 infrastructure report.

Exhibit 2 Verizon, New Jersey Annual Infrastructure Report, 2000

APPENDIX B **Service Capability & Enabling Technology Deployment**

Opportunity New Jersey's Service Capabilities	1996	1997	1998	1999	2000	Commitments
Wideband (144 kbps to 1.5 mbps)						
w/o acceleration (est)	41%	50%	62%	71%	n/a	none
with acceleration (act)	50%	66%	78%	84%	95%	95% 2000
Broadband (up to 45 mbps & higher)						
w/o acceleration (est)	1%	1%	3%	9%	n/a	none
with acceleration (act)	19%	34%	35%	42%	52%	100% 2010

The exhibit below, taken directly from the report excerpt above, shows the deployment schedule for two services, “Wideband”, which was 144Kbps to 1.5 Mbps and ‘Broadband, which as speeds “up to 45 Mbps & higher”.

- “w/o acceleration” is what would happen if the Opportunity New Jersey deregulation didn’t happen.
- “with acceleration” means the law passed and the company got excess profits and tax perks to build out the networks.
- Notice the “(act)” meaning actual deployments vs the “(est)” which means estimated.

Exhibit 3 Verizon’s Timeline of Commitments for Broadband Upgrades.

	1996	1997	1998	1999	2000	commitments
With out	1%	1%	3%	9%	n/a	none
With	19%	34%	35%	42%	52%	100%2010

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This type of bold face misrepresentation happened in every year. And while Verizon in their response to the show cause order made obfuscation a new art form – 100% never meant 100%, the speeds were capabilities not services—to ‘the dog ate my homework’, as we outlined in our rebuttal⁶ to Verizon’s response, this is fraud 101. We have an annual, printed and mailed series of public documents that year after year the company knowingly made up facts for massive financial gains. Why is misrepresentation not fraud should be the question. We believe the most likely scenario is that Verizon believed no one would read or notice or have the fortitude to do anything about it.

6) In 2012, the NJBPU Issued Two Show Cause Order about Verizon New Jersey’s Broadband Commitments and Service Quality Issues.

On March 12, 2012, the New Jersey Board of Public Utilities issued a 'show cause' order⁷ asking Verizon to explain why they failed to wire 100% of their territories with a broadband service as they had promised. Moreover, the original ONJ laws were never ‘disturbed’, thus the commitment is still in force.

As the NJBPU writes

“By order dated August 2003 in docket no TO01020095, the Board approved a second plan for alternative regulation (“PAR-2”) that replace PAR-1. PAR-2 further enhanced ANJ, but did not disturb the existing ONJ broadband commitments made by Verizon.

“Based upon information and belief, residents of Greenwich and Stow Creek, Cumberland County are not being provided broadband capabilities consistent with ONJ. To date, full deployment of broadband has not been achieved

“The Board hereby orders: Verizon to show cause before the Board why the Board should not Verizon failed to comply with the PAR order in providing full broadband capability by 2010.”

7) In 2013, the NJBPU Issued an Order that Verizon Upgrade Stow Creek and Greenwich—But it was Not Tied to the Commitments under ONJ.

On April 29, 2013, the NJBPU issued an order⁸ for the two towns to be upgraded by Verizon but this Order does not reference the ONJ commitments to have 100% of the state completed by

⁶ <http://www.teletruth.org/docs/verizonshowcause.pdf>

⁷ <http://www.teletruth.org/docs/verizonshowcause.pdf>

⁸ <http://newnetworks.com/4-29-13-BPU%20Order.pdf>

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2010 with a fiber optic service capable of 45 Mbps in both directions. It only deals with quality of service issues as the reason for Verizon supplying fiber optic services.

8) How Far Did Verizon Get with a Fiber Optic Service?

We can project Verizon's progress or failure easily as Verizon's FiOS fiber optic product is directly tied to the cable deployments. The state's report on Verizon's cable franchise deployment is a grim story of just how the state got played. In the end, Verizon was only responsible for 70 communities to be fully wired. And since 2010, Verizon has slowed the progress to a crawl.

"In the June 2010 report, Verizon represented that its FiOS service passed 1.9 million New Jersey homes. 7 Verizon indicates in its comments that it now has already passed more than 2.2 million premises with its FiOS network in New Jersey, and is presently offering cable television service in all or parts of 352 of the total 372 towns in its franchise. As of December 31, 2012, Verizon Provided FiOS to approximately 600,000 customers Data appears to indicate that Verizon's deployment efforts have decreased dramatically in the last three years, with only three towns being added to the franchise since the June 2010 report. However, the State Act does not require that Verizon provide service outside of the 70 must build towns, and it is therefore within Verizon's discretion as to where they will deploy service outside of its statutory deployment commitments."⁹

9) Fiber Optic Deployment Is Not FiOS or the Cable Service— and there has been Creative Accounting Harms to Phone Customers.

FiOS is a brand name of a product. It is a cable service. It is a broadband-internet service and also is a VOIP-based phone service. And it has been illegal for the company to not upgrade the utility PSTN networks as a replacement of the copper wiring that was the mandate of ONJ—and move the assets into separate subsidiaries, dumping expenses into the Verizon New Jersey to create losses, or charge customers for network upgrades for a cable service.

From the original ONJ law, PAR 1¹⁰:

"The Act also provides that no local exchange telecommunication company may use revenues earned or expenses incurred in conjunction with non-competitive service to subsidize competitive services. NJSA 48:2-21.18 (c). The Act further empowers the Board to require an independent audit or such accounting and reporting systems from the local exchange carriers as may be necessary to allow a

⁹ <http://newnetworks.com/BPU2013cableanalysis.pdf>

¹⁰ In the Matter of the Application of New Jersey Bell Telephone Company For Approval of its Plan for an Alternate Regulation, Decision Docket Number T092030358, 4/14/03

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proper allocation of investments, costs or expense for all telecommunication services, competitive or non-competitive, subject to the boards' jurisdiction. NJSA 48-2-21.18.1(d).”

And while we are aware of the manipulations and wranglings over the last two decades to remove basic accounting safeguards, it is clear that various state rate increases, deregulations and others benefits accrued to Verizon but not to customers.

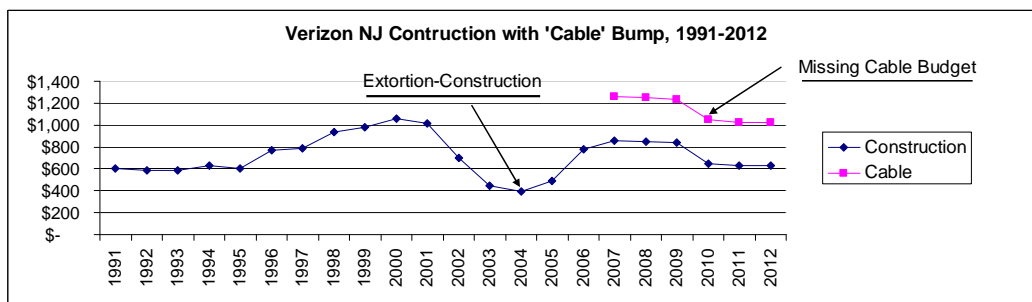
- Have customers paid for the development of the cable service?
- Has the cable affiliate paid to use the fiber optic networks – which should have been part of the utility network infrastructure?
- Was there ever an audit of these affiliate books?

We've brought up all of these questions and more in our previous New Jersey BPU filings. We included as back up materials for this testimony a report titled “State- Based Financial Issues & Tax Losses: The Destruction of America’s Telecommunications Utilities” which highlights the data that should concern the Board over these issues.

10) Did Verizon New Jersey Customers Pay for the Development and Deployment of FiOS as Well as the Cable Company?

VNJ claims in its filings that the company spent \$2 billion from 2007 through 2011 for the FiOS cable deployment. Yet this figure doesn't exist. There was no extra investment. It all came out of the previous construction and maintenance budgets, thus phone customers most likely paid for the cable development out of the normal construction budgets as an extra hidden expense.

Exhibit 4
Verizon New Jersey’s Construction Budgets vs the Cable Construction Budgets.



If there was a separate cable budget, then it would have to appear where the 'missing cable budget' line occurs as it would have added \$400 million extra annually for 5 years.

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We added the ‘extortion’ line which was the years Verizon held the State hostage, claiming they would not build unless the laws were changed and thus stopped spending money on the network construction, even though Verizon had a commitment to build out the networks EVERY YEAR.

11) Construction Budgets and Other Monies Were Diverted to the Wireless Business.

Fran Shammo¹¹, Verizon’s EVP and CFO stated that the wireline construction budgets have been diverted to charge customers for the wireless companies’ construction needs.

“The fact of the matter is Wireline capital —and I won’t get the number but it’s pretty substantial —is being spent on the Wireline side of the house to support the Wireless growth. So the IP backbone, the data transmission, fiber to the cell that is all on the Wireline books but it’s all being built for the Wireless Company.”

NEW DATA:

- **COMMENTS¹²** were filed by Common Cause–NY, Consumer Union, Communications Workers of America and the Fire Island Association Calling for an investigation of Verizon Wireline and Verizon Wireless’s business relations by the New York State Commission — Data was from New Networks’ research reports.
- New Networks issued a **NEW REPORT¹³** Verizon Wireless and the Other Verizon Affiliate Companies Are Harming Verizon New York’s (The State-based Utility) Customers & the State.
- Identical issues are found in Verizon New Jersey’s dealing with the affiliates.

12) The Plan: Shutting Off Customers and Replacing them with Wireless.

Verizon has stated publicly that they have stopped expanding FiOS—which means their cable service. And the plan is to shut off anyone still left on copper and force them onto wireless, which will be the majority of customers as the numbers being promulgated by Verizon for FiOS are households – and do not include the business customers. (And, as we pointed out in previous submissions, neither the state nor the FCC have an accurate accounting of the total number of lines that are in service as most have been reclassified as not switched or an “information service” and are not part of the ‘switched’ access line accounting.)

¹¹ Thomson Reuters Edited Transcript, Verizon at Goldman Sachs Communacopia Conference, Sept. 20, 2012, http://www22.verizon.com/investor/DocServlet?doc=goldman_vz_transcript_092012.pdf

¹² <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B637AEC91-C05A-45BD-8CEC-0F63F3C388DC%7D>

¹³ <http://newnetworks.com/VerizonNYAffiliatereport.pdf>

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Lowell McAdams, CEO of Verizon said Quote- Kill the Copper', June 21, 2012.

“But the vision that I have is we are going into the copper plant areas and every place we have FiOS, we are going to kill the copper. We are going to just take it out of service and we are going to move those services onto FiOS. We have got parallel networks in way too many places now, so that is a pot of gold in my view.

“And then in other areas that are more rural and more sparsely populated, we have got LTE built that will handle all of those services and so we are going to cut the copper off there. We are going to do it over wireless. So I am going to be really shrinking the amount of copper we have out there...”¹⁴

As we outlined, Verizon has already started to dump customers. In [Fire Island, New York and parts of New Jersey](#), including Mantoloking, Verizon refused to repair customers' wires that were out of service because of Sandy and has forced them onto Voice Link, a 1990's styled cell phone-like service that can't handle basic data services, from alarm circuits to dial-up Internet service.

13) How Much Money was Charged to Customers? About \$15 Billion and Counting.

Since 1993 we have tracked Verizon New Jersey's broadband infrastructure deployment with interest and have also tracked the company's financial using Verizon's own SEC filed state-based annual reports. This included the financial returns from the Opportunity New Jersey's alternative regulations, including basic items like profit margins, construction expenditures, depreciation, dividends paid and other financial gains.

We estimate that Verizon overcharged customers about \$15-\$16 billion dollars -- \$4000-\$5000.00 per household in New Jersey for upgrades of the utility networks that never happened from 1993-2013—and it continues today unabated as these excess profits were built into the cost of service or the deregulation of services.

In our previous filing in 2008, we used two simple examples of deregulation where 'calling features and ancillary services' were deemed 'competitive' and therefore were not examined by the commission. Caller ID cost business customers \$12.75 while non-listed numbers cost \$3.70. Caller ID had profit margin estimated to be 5695% and non-published numbers had a 36,900% profit margin, and under ONJ, the companies' excess profits were supposed to be used for new construction. It wasn't.

But the \$15 billion pales to the additional harms outlined in the previous discussion of cross-subsidization by affiliates. Did customers get charged for the construction budgets that were transferred, in part, to the Wireless company, for example?

¹⁴ http://www.media-alliance.org/downloads/Verizon_Kill_Copper.pdf

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And to top all this off, Verizon's own corporate funded think tanks have pointed out multiple times that competition dramatically lower cable and phone rates – and thus cost savings to customers. However, none of which showed up as of 2013 because Verizon has not taken their FiOS cable deployment seriously, or any wired networks and has refocused on wireless services.

Conclusion:

Unless the state forces Verizon to complete its fiber optic deployments to 100%, the entire state of New Jersey will be harmed, with inferior services, no cable competition and higher prices.

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Appendix 1

We are submitted these documents previously presented to the NJBPU:

- New Networks rebuttal to Verizon New Jersey's response to the NJBPU's show cause order on Verizon's broadband commitments, DOCKET NO. TO12020155¹⁵
- Comments and Testimony of Teletruth to the NJ Board of Public Utilities Reclassification of Incumbent Local Exchange Services Docket No. TX 07110873¹⁶
- Case Study: Verizon New Jersey's broadband failures¹⁷
- Testimony in front of the New Jersey BPU pertaining to the original system wide franchise hearings.¹⁸
- Report: Verizon's State- Based Financial Issues & Tax Losses: The Destruction of America's Telecommunications Utilities¹⁹

¹⁵ <http://www.teletruth.org/docs/verizonshowcause.pdf>

¹⁶ <http://www.teletruth.org/docs/Verizonincreases.doc>

¹⁷ <http://www.teletruth.org/docs/casestudyNJVerizon.pdf>

¹⁸ <http://www.newnetworks.com/teletruthtestimonyverizon.htm>

¹⁹ <http://www.newnetworks.com/Verizonshellgame2012.pdf>