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**New Networks -- Comment 2:
Open Internet Remand Proceeding
GN Docket No. 14-28
July 18, 2014**

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**Verizon's FiOS Fiber to the Premise (FTTP) Networks are Already Title II in
Massachusetts, Maryland, Florida, New Jersey, District of Columbia, Pennsylvania,
New York...**

- **Verizon New York, cable franchise, 2005¹**

LEGAL AUTHORITY TO CONSTRUCT FIBER TO THE PREMISES

Verizon New York Inc. ("Verizon"), as a common carrier under Title II of the Communications Act of 1934 (the "Act"), constructed its *Fiber To The Premises* (FTTP) network as an upgrade to its existing telecommunications network.

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While Verizon has continuously told anyone who will listen that using the Title II classification for its broadband networks would harm innovation and investment, Verizon appears to have failed to disclose a basic fact to regulators and the courts:

FiOS uses a FTTP, 'fiber to the premises' network which has been based on the Title II, common carriage, telecommunications classification for about a decade. Why? Title II gives Verizon the ability to use the existing telecommunications rights of way, but it also has allowed Verizon to use basic phone customers as defacto investors through multiple rate increases to fund this FTTP network, which we documented in New York State. See our report: *'It's All Interconnected'*² (which we have also filed in this proceeding.)

Here are quotes from some of Verizon's cable franchises in Massachusetts, Pennsylvania, Maryland, Florida, New Jersey, District of Columbia and New York.

IMPORTANT: Verizon has never revealed to the FCC that their premier fiber optic-based FiOS service is already using the Title II classification in any documents, filings or comments we could find, nor anything submitted to or in front of the US courts, including the recent case against the FCC.

¹ <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={6E9A2E9B-776D-4282-BC58-A3647F3037BA}>

² <http://newnetworks.com/verizonfiostitle2/>

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We question whether the Appeals Court would have made the same verdict if they were informed that Verizon, while telling the court one thing, was in reality using Title II in every state and in every FTTP deployment, not to mention the ease of charging basic rate customers for the construction of the FTTP networks.

Verizon Cable Franchises and Title II

- **New York State, additional quote, Verizon cable franchise³**

As more fully described in Exhibit 1, Verizon NY constructed its FTTP network pursuant to its authority as a common carrier under Title II of the Communications Act of 1934, as amended, and Section 27 of the New York Transportation Corporations Law. For this reason and others, certain terms and conditions may differ between the incumbent cable provider's franchise and Verizon NY's franchise.

- **Abington Massachusetts, Verizon cable franchise, 2008⁴**

2.2. *Issuing Authority Does Not Regulate Telecommunications:* The parties recognize that the FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or an extension of Licensee's existing Telecommunications Facilities under Title II and M.G.L. c. 166. The jurisdiction of the Town over such Telecommunications Facilities is restricted by federal and State law, and the Town does not and will not assert jurisdiction over Licensee's FTTP Network, in contravention of those limitations. The Issuing Authority's regulatory authority under Title VI does not extend to the construction, installation, maintenance or operation of the FTTP Network to the extent the FTTP Network is constructed, installed, maintained or operated for the purpose of upgrading and/or extending Verizon's existing Telecommunications Facilities for the provision of Non-Cable Services.

Town of Abington – Verizon New England Inc.
Cable Television Final License – 2-25-08

³ <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={6E9A2E9B-776D-4282-BC58-A3647F3037BA}>

⁴ <http://www.mass.gov/ocabr/docs/dtc/catv/license/verizon/abingtonvrz-2-08.pdf>

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- **District of Columbia, Verizon cable franchise application, 2007⁵**

As of August 3, 2007, affiliates of VZ DC hold cable television franchises (both local and state issued) covering 835 jurisdictions in areas of Texas, Indiana, Virginia, Maryland, Florida, California, Pennsylvania, New York, New Jersey, Delaware and Massachusetts, Oregon, and Rhode Island. As of the end of June, 2007, FiOS TV service was available to more than 3.9 million premises in 12 of the states where the Fiber to the Premises (FTTP) network is being constructed: California, Delaware, Florida, Indiana, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Texas and Virginia. 515,000 customers subscribed to FiOS TV as of the end of June 2007.

Verizon affiliates currently hold cable franchise agreements in the following local franchising authorities in the State of Maryland: Howard County, Montgomery County, Barnesville Town, Brookeville Town, Chevy Chase Town, Chevy Chase Section 5 Village, Chevy Chase Section 3 Village, Chevy Chase View Town, Garrett Park Town, Glen Echo Town, Kensington Town, Laytonsville Town, Martin's Additions Village, North Chevy Chase Village, Poolesville Town, Somerset Town, Takoma Park City, Washington Grove Town, Prince Georges County, Berwyn Heights, Bladensburg, Brentwood, Cheverly, College Park, Colmar Manor, Cottage City, District Heights, Edmonston, Glenarden, Greenbelt, Hyattsville, Landover Hills, Morningside, Mt. Rainier, New Carrollton, North Brentwood, Riverdale Park, Seat Pleasant, University Park, Upper Marlboro, City of Bowie, City of Laurel, Anne Arundel County, City of Annapolis, Baltimore County, Anne Arundel County, City of Annapolis, Baltimore County and Highland Beach.

Verizon affiliates currently hold cable franchise agreements in the following local franchising authorities in the Commonwealth of Virginia: Arlington County, Fairfax County, Town of Vienna, Town of Herndon, City of Falls Church, City of Fairfax, Town of Clifton, Prince William County, Town of Dumfries, Loudoun County, Town of Leesburg, Spotsylvania County, City of Fredericksburg, Henrico County, Chesterfield County, City of Richmond, City of Virginia Beach and City of Newport News.

Verizon currently provides cable service in Montgomery County, Maryland; the cable franchise agreement was effective as of November 28, 2006 and Verizon initiated cable service in the County on December 5, 2006. Verizon also provides cable service in Fairfax County, Virginia; the cable franchise agreement was effective as of October 1, 2005 and Verizon initiated cable service in the County on November 25, 2005. In both counties, Verizon began the construction of its Title II FTTP network in late 2004. Therefore, Verizon was able to initiate cable service to some residents soon after the execution of a cable franchise agreement.

The proposed cable service will be provided over VZ DC's FTTP network, an extension and enhancement of the existing telecommunications network. A general description of the construction of the FTTP network is provided in Attachment 4.

VZ DC will install its FTTP network as a common carrier pursuant to Title II of the Communications Act of 1934, as amended, in accordance with its authority under DC and Federal law. Accordingly, VZ DC is not seeking authority through this Application to construct the FTTP network, but rather is seeking a franchise to use the FTTP network, once installed, to provide cable services in the District.

⁵ http://oct.dc.gov/information/legal_docs/Verizon_Revised_Cable_Franchise_Application.pdf

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- **Tampa, Florida, Verizon Cable Franchise⁶**

“**SYSTEM OPERATION.** The parties recognize that Franchisee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities. The parties agree that the LFA cannot assert authority pursuant to this Agreement over Franchisee's FTTP Network, except to the extent such facilities, if any, are used exclusively to provide Cable Service and are located in the Public Rights-of-Way.

WHEREAS, Franchisee is in the process of installing a Fiber to the Premises Telecommunications Network ("FTTP Network") in the Franchise Area for the transmission of Non-Cable Services; and

WHEREAS, the FTTP Network will occupy the Public Rights-of-Way within the LFA, and Franchisee desires to use the FTTP Network once installed to provide Cable Services in the Franchise Area; and

2.2 LFA Does Not Regulate Telecommunications: The LFA's regulatory authority under Title VI of the Communications Act and this Agreement is not applicable to the construction, installation, maintenance or operation of the Franchisee's FTTP Network to the extent the FTTP Network is constructed, installed, maintained or operated for the purpose of upgrading and/or extending Verizon's existing Telecommunications Facilities for the provision of Non-Cable Services.

1.8 Cable System or System: The Cable System shall not include Telecommunications Facilities or the tangible network facilities of a common carrier subject in whole or in part to Title II of the Communications Act

1.10 Communications Act: The Communications Act of 1934, as amended.

⁶http://www.tampagov.net/dept_cable_communication/information_resources/Franchise_Documents/verizon_cable_franchise.asp

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- **Arlington Massachusetts, Verizon cable franchise 2007⁷**

WHEREAS, Licensee is in the process of upgrading its existing Telecommunications Facilities through the installation of a Fiber to the Premise Telecommunications Network (“FTTP Network”) in the Town which transmits Non-Cable Services pursuant to authority granted by M.G.L. c. 166 and Title II, which Non-Cable Services are not subject to the Massachusetts Cable Law or Title VI;

WHEREAS, the FTTP Network occupies the Public Rights-of-Way within the Town, and Licensee desires to use portions of the FTTP Network once installed to provide Cable Services (as hereinafter defined) in the Town;

- **Town of Tredyffrin, Pennsylvania, Verizon cable franchise.⁸**

WHEREAS, Franchisee is in the process of installing a Fiber to the Premises Telecommunications Network (“FTTP Network”) in the Franchise Area for the transmission of Non-Cable Services pursuant to authority granted by the Commonwealth of Pennsylvania;

WHEREAS, the FTTP Network will occupy the Public Rights-of-Way within the F.F.A, and Franchisee desires to use portions of the FTTP Network once installed to provide Cable Services (as hereinafter defined) in the Franchise Area;

- **Montgomery County Maryland, Verizon cable franchise. 2006⁹**

WHEREAS, Franchisee is in the process of installing a Fiber to the Premise Network (“FTTP Network”) in the Franchise Area and the FTTP Network will occupy the Public Rights-of-Way within the County, and Franchisee desires to use the FTTP Network once installed to provide Cable Services (as hereinafter defined) in the Franchise Area;

- **New Jersey, Verizon system-wide cable franchise, renewed, 2014¹⁰**

"Verizon NJ has been upgrading its telecommunications facilities in large portions of its telecommunications service territory so that cable television services may be provided over these facilities. This upgrade consists of deploying fiber optic facilities directly to the subscriber premises. The construction of Verizon NJ's fiber-to-the-premises FTTP network (the FTTP network) is being performed under the authority of Title II of the Communications Act of 1934 and under the appropriate state

⁷ <http://www.mass.gov/ocabr/docs/dtc/catv/license/verizon/arlingtonvrz-3-07.pdf>

⁸ <http://www.tredyffrin.org/home/showdocument?id=146>

⁹ <http://www6.montgomerycountymd.gov/content/cableOffice/pdf/20061128verizonfranchise.pdf>

¹⁰ http://www.verizon.com/about/community/nj_swf_renewal.htm

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telecommunications authority granted to Verizon NJ by the Board and under chapters 3 and 17 of the Department of Public Utilities Act of 1948. The FTTP network uses fiber optic cable and optical electronics to directly link homes to the Verizon NJ networks.

"Pursuant to the NJSA 45:5A-15, telecommunication service providers currently authorized to provide service in New Jersey do not require approval to upgrade their facilities for the provision of cable television service.

"As such any construction being performed in the public rights of way is being undertaken pursuant to Verizon NJ authority as a telecommunication service provider."