

Dear FCC Chairman Wheeler, Commissioners, cc: Congress

RE: Verizon's Fiber Optic Networks are "Title II" — Here's What the FCC Should Do.
DOCKET: Open Internet Proceeding, (GN No.14-28)

This quote is from a Verizon New York cable franchise agreement and it is similar, if not identical to language that appears in hundreds of Verizon's municipality, city and system-wide franchise agreements in multiple states.¹ (See Appendix 1 for other examples.)

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.

1. The Request

We, the undersigned, request that the FCC:²

- Acknowledge the fact that Verizon's entire Fiber-to-the-Premises (FTTP) networks are currently classified as "Title II," common carriage, telecommunications networks. There is no need for reclassification of Verizon's networks; — They are already Title II.
- Investigate Verizon's failure to disclose this essential fact to the FCC, to the courts or to the public in any documents, filings, comments, public statements, etc.
- Investigate "Title Shopping," where Verizon has used different classifications to get regulatory benefits in different state and federal proceedings for the same wires.
- Investigate Verizon's current use of the Title II classification to receive multiple benefits as part of state-based utility telecommunications networks, including utility rights-of-way as well as various financial benefits.
- To resolve Net Neutrality issues, it is time to require open access to these Title II networks so that customers can choose their own competitive broadband, Internet, cable and phone providers, regardless of whether the network wires are copper or fiber.
- The FCC needs to be 'data-driven' and must reinstate the financial and business data for the incumbent wireline telco and cable carriers. For example, the "Statistics of Common Carriers", first published in 1939, was discontinued in 2007.

2. The Basis for the Request:

Compare Verizon's Open Internet comments below with the previous quote. (Appendix 2 supplies other, similar quotes from Verizon.)

Verizon Comments, Open Internet Remand Proceeding, July 15th, 2014³

"Imposing a Title II common carriage regime on broadband providers would be a

¹ Re: Application of Verizon NY Inc. for a Cable Franchise, City of Glen Cove, exhibit 1.7, October 30, 2013.

² Although focused on Verizon, the issues discussed herein also apply to other incumbent network owners.

³ http://publicpolicy.verizon.com/assets/images/content/07_15_14_Verizon_Verizon_Wireless_Open_Internet_Remand_Comments.pdf

radical change in course that would only chill, not spur innovation. Title II is a regulatory dinosaur, crafted eighty years ago - and based on 19th-Century laws regulating railroads - to address the one-wire world of rotary telephones....”

This contrast is most distinct with Verizon, but other incumbent phone and cable companies take equivalent conflicted positions.

The FCC Needs to Investigate Verizon’s Failure to Properly Disclose Essential Facts about Their Use of Title II and “Title Shopping”.

Wikipedia defines “polycephaly” as “a condition of having more than one head.”⁴ In this case, Verizon’s entire Net Neutrality case at the FCC and in the courts hinges on the claim that federal law was changed by a series of FCC and court decisions to combine broadband and Internet into one category — an “information service” under Title I. Among other things, this allows Verizon to block competitors from using these FTTP networks. And in every Verizon statement, filing, comments, legal and regulatory action at the FCC and with the courts, Verizon has continually claimed Title II is detrimental to investments, innovation and a host of other harms.

Yet, the fact is — Verizon’s own cable franchise agreements in hundreds of locations are based on Title II transmission facilities. While the Net Neutrality issue extends well past Verizon’s FTTP networks, Verizon has been the leader in legal actions against the FCC’s decisions about the use of Title II — and their at best disingenuous actions need investigation.

“Title Shopping”⁵

Verizon’s use of different classifications in different state and federal proceedings needs investigation.⁶

“Title Shopping is the use of different regulatory classifications for the same product or service in different local, state and federal regulatory or legal proceedings. It is designed to maximize the ‘regulatory’ benefits that would not be available if only one classification was applied.”

Verizon’s Use of Title II Raises Many Other Financial and Regulatory Concerns.

In May of 2014, the Public Utility Law Project of New York, Inc. (“the Utility Project”) released a report written by New Networks Institute, with the assistance of David Bergmann, which outlined how Verizon New York uses the Title II classification to get the utility-based rights-of-way as a telecommunication service. The report, “It’s All Interconnected,” showed how Verizon also receives financial benefits from using Title II, which included rate increases on basic rate phone customers for the ‘massive deployment of fiber optics’ that then supported the FiOS product, fiber-to-the-cell towers for Verizon Wireless and Verizon’s special access services to business.

In July 2014, the Connect New York Coalition (consisting of AARP, Common Cause, Consumer Union, Communications Workers of America (CWA)-District 1, mayors of New York cities and

⁴ <http://en.wikipedia.org/wiki/Polycephaly>.

⁵ Eli Noam, Director of Columbia’s Business CITI program, originated the term “Title Shopping”.

⁶ See New Networks Institute comments filed in GN Docket No. 14-28, July 14, 2014, outlining this use of “Title Shopping”.

other politicians and groups) filed a petition with the New York State Public Service Commission to investigate these financial issues.⁷ The FCC needs to do the same investigations about the financial benefits of ‘Title II’ to Verizon, as these problems appear to exist in all Verizon states.

Opening the Networks to Direct Competition Would Solve Net Neutrality Issues.

The Connect NY’s petition and the Utility Project report point directly to the ability of the companies’ own affiliates, Verizon Online, Wireless and Business, to receive multiple business and financial advantages from the ties to the State utility’s wires over all competitors — through the use of Title II. This has allowed Verizon and Verizon’s affiliate subsidiaries to create new ‘bottlenecks,’ on the end-user side, as well as on the business side for competitors and content providers.

The FCC has already started a proceeding on Special Access services⁸ but it is time to understand and investigate Verizon’s use of Title II and the other Titles in federal and state proceedings, as well as how the affiliates can and will ‘vertically integrate’ and work together to block, degrade, filter, slow down or other interfere with a customer’s service.

The solution is simple — return direct competition to these Title II networks. The FCC may be reluctant to take this path. However, it is clear from former Chairman Michael Powell’s reasoning for closing the networks, during the Triennial Review, that it is time to reconsider. Powell’s decision was based on a ‘commitment’ of AT&T (then SBC) to deploy fiber-to-the-home, capable of 100 Mbps services in 2004 — which never happened.

Powell wrote, in October 2004:

In my separate statement to the *Triennial Review Order* and in countless other statements during my seven years at the Commission, I have emphasized that ‘broadband deployment is the most central communications policy objective of our day’. Today, we take another important step forward to realize this objective.... By removing unbundling obligations for fiber-based technologies, today’s decision holds great promise for consumers, the telecommunications sector and the American economy. The networks we are considering in this item offer speeds of up to 100 Mbps and exist largely where no provider has undertaken the expense and risk of pulling fiber all the way to a home.

SBC has committed to serve 300,000 households with a FTTH network while BellSouth has deployed a deep fiber network to approximately 1 million homes. Other carriers are taking similar actions.”⁹

AT&T (then SBC and BellSouth) instead deployed U-Verse over their original, legacy copper utility networks. (Ironically, a decade later, AT&T again claims it will deploy fiber optic services with speeds of over 100 Mbps — and is using these deployments as a means to ‘sweeten’ the

⁷ <http://www.scribd.com/doc/232125660/Connect-New-York-Coalition-Petition>

⁸ http://www.fcc.gov/Commission-Moves-Forward-with-Special-Access-Data-Collection_FCC.gov.htm, DA-1201, August 14, 2014

⁹ Separate Statement of Chairman Michael K. Powell. October 22nd, 2004, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-253492A2.doc.

merger of AT&T-Direct TV and push through AT&T's IP transition trials¹⁰), Verizon, meanwhile, was able to game the regulatory system by keeping competitors off its fiber networks using the federal rulings, while simultaneously invoking Title II in the states to get regulatory and financial favors. There have been no audits or oversight about these issues.

The FCC Needs to be 'Data-Driven' with Actual Data.

Finally, we focused on Verizon specifically because of the documentation and financial information that has been found, as shown in the New Networks/Utility Project report. AT&T benefits from not publishing SEC-filed state reports and a lack of state commission-required information, but most importantly the FCC has erased obligations for AT&T to provide, by state, basic business and financial information that was part of the "Statistics of Common Carriers" that had been published since 1939, as well as the FCC's "ARMIS" reports, and the requirement to supply basic, fundamental information was halted in 2007. And the FCC has a current proceeding to "streamline telephone company accounting rules," which is a euphemism for erasing more obligations to provide basic data.¹¹

We request that the FCC reinstate all data collection that has erased the ability for the public to act as watchdog to help the FCC create policy that is 'data-driven'.

Conclusion: To be blunt, Verizon has gamed the entire regulatory process via "Title Shopping" in the Open Internet docket and in many other ongoing proceedings that impact all of America's communications. Verizon has repeatedly invoked the Title II status of its fiber networks when it benefits them, but then adamantly complains about alleged (but untrue) burdens flowing from Title II such as investment deterrence. The continuing common carrier status of the fiber network must be recognized and fully taken into account through immediate investigations and initiatives to restore data collection.

Opening these "Title II" networks, which have been funded through utility customers, not only solves Net Neutrality, but also brings needed, direct competition to networks that were closed through misrepresentation by the incumbent phone companies for way too long.

Verizon promised a Title II, open fiber-based platform that would be available to all. It received Title II benefits, but has do date avoided the concomitant burdens. The open platform is closed to competition and available only to affiliates on secret, favorable and below-cost terms. The FCC should finally force a telephone company to keep the promises it has made.

SIGNATURES

¹⁰ http://about.att.com/story/att_commits_to_deliver_iverse_with_gigapower_in_jacksonville.html

¹¹ Notice of Proposed Rulemaking, Comprehensive Review of the Part 32 Uniform System of Accounts, WC Docket No. 14-130, August 20,2014 <http://www.fcc.gov/document/fcc-seeks-comment-streamlining-telephone-co-accounting-rules>

APPENDIX 1

Quotes from Some of Verizon's Cable Franchises in Massachusetts, Florida, Pennsylvania, Maryland, New Jersey, District of Columbia and New York.

- **District of Columbia, Verizon Cable Franchise Application, 2007¹²**

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.

- **Verizon New York, Cable Franchise, 2005¹³**

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.

¹² http://oct.dc.gov/information/legal_docs/Verizon_Revised_Cable_Franchise_Application.pdf

¹³ <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={6E9A2E9B-776D-4282-BC58-A3647F3037BA}>

- **New York State, Additional Quote, Verizon Cable Franchise¹⁴**

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, 2008¹⁵**

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

- **Tampa, Florida, Verizon Cable Franchise¹⁶**

“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

¹⁴ <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={6E9A2E9B-776D-4282-BC58-A3647F3037BA}>

¹⁵ <http://www.mass.gov/ocabr/docs/dtc/catv/license/verizon/abingtonvrz-2-08.pdf>

¹⁶ http://www.tampagov.net/dept_cable_communication/information_resources/Franchise_Documents/verizon_cable_franchise.asp

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.

- **Arlington Massachusetts, Verizon cable franchise 2007¹⁷**

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.¹⁸**

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 LIA, 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. 2006¹⁹**

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, 2014²⁰**

"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

¹⁷ <http://www.mass.gov/ocabr/docs/dtc/catv/license/verizon/arlintonvrz-3-07.pdf>

¹⁸ <http://www.tredyffrin.org/home/showdocument?id=146>

¹⁹ <http://www6.montgomerycountymd.gov/content/cableOffice/pdf/20061128verizonfranchise.pdf>

²⁰ http://www.verizon.com/about/community/nj_swf_renewal.htm

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 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."

APPENDIX 2

Verizon Comments and Statements on the Use of Title II and 'Reclassification/

Verizon Policy Blog, July 16, 2014²¹

"Reclassifying broadband Internet access service as a Title II common carriage telecommunications service, as some have suggested, would be a radical departure that would not achieve its proponents' stated goals and would only endanger the entire Internet ecosystem. The arcane regulatory framework embodied in Title II was crafted for 19th Century railroad monopolies and the early 20th century one-wire telephone world. The price and service regulation inherent in Title II have no place in today's fast-paced and competitive Internet marketplace, and the threats posed by this approach would not likely be confined to broadband providers, but would spread inevitably to other Internet sectors. Moreover, such an approach would be unlawful and, at a minimum, would result in years of counterproductive uncertainty for the entire industry.

"Ironically, reclassification would impose these harms and not even preclude the differentiation of service that its proponents seek to ban. Title II expressly recognizes that reasonable discrimination is lawful and has long permitted many of the practices that Title II proponents criticize. Thus, the application of Title II requirements to broadband providers would amount to regulation for the sake of regulation, strapping a straightjacket onto this competitive and dynamic sector.

"In contrast, a balanced framework will ensure that broadband providers act reasonably and would protect against backsliding or bad acts that threaten consumers or competition, while preserving flexibility for all providers to experiment with new approaches that could offer new choices and benefit consumers and small players alike.

"Verizon supports and relies upon a robust and open Internet. Our customers demand it, and our business depends on it. We have committed to our customers our support for the open Internet, and our broadband Internet access services enable them to go where they want and do what they want online. We invest in world-class broadband networks, such as our **all-fiber FiOS network** and our 4G LTE wireless network, to keep pace with consumers' demand and offer an ever-more-robust range of services. We also are actively engaged in many other parts of the Internet ecosystem, including through our Internet backbone networks, content delivery networks, over-the-top services, cloud-services, and other innovative services that rely on the open Internet and enable a better Internet experience."

²¹ <http://publicpolicy.verizon.com/blog/entry/verizons-open-internet-filing>

Verizon Comments, Open Internet Remand Proceeding, May 14, 2014²²

"Rotary Telephone-Era Utility Regulation Is Not the Answer. In contrast to an approach that encourages innovation and investment in all parts of the Internet ecosystem, some now propose that the Commission 'reclassify' Internet access service and apply 1930's utility regulation to these services."

Verizon's Open Internet Comments Excerpts, July 15, 2014²³

A. Reclassification Would Be a Radical and Risky Reversal of Successful Policy Uniformly Championed by Commissions for Two Decades.

"Imposing a Title II common carriage regime on broadband providers would be a radical change in course that would only chill, not spur innovation. Title II is a regulatory dinosaur, crafted eighty years ago - and based on 19th-Century laws regulating railroads - to address the one-wire world of rotary telephones. All of the hallmarks of Title II - rate regulation, mandatory fees, and the need for advance regulatory permission before offering or discontinuing services - were tailored to address an environment characterized by a government-sponsored monopoly for the provision of pure, relatively simple, and standardized transmission services (i.e., rotary telephone service). That government-granted monopoly and the rudimentary service it proffered would be a radical and risky new approach for today's fast-paced and competitive marketplace for broadband and the wide range of sophisticated services that it encompasses

"For nearly twenty years, the light-touch approach uniformly taken by successive administrations has been successful in ensuring investment, experimentation, and explosive growth in broadband capabilities and services.

"For example, that successful regulatory framework has spurred Verizon and others throughout the Internet ecosystem to invest billions of dollars in building out broadband networks and developing the services that ride on them.

"Title II, by contrast, would cripple that freedom, flexibility, and innovation, for its core provisions - such as intrusive price regulation and entry and exit regulation - are classic examples of the kind of arcane regulations that deter investment. Price regulation under Section 201 would empower the Commission, not the market, to determine the value of broadband Internet access. As the Department of Justice warned as recently as 2010, such price regulation would threaten investment in broadband infrastructure and could "stifl[e] the infrastructure investments needed to expand broadband access."

"Reclassification would create a major drag on new and improved broadband infrastructure, even though substantial investment in such infrastructure is precisely what is needed to keep pace with exponentially increasing consumer demands for bandwidth. By chilling such investment and discouraging

²² <https://prodnet.www.neca.org/publicationsdocs/wwpdf/0516ver.pdf>

²³ http://publicpolicy.verizon.com/assets/images/content/07_15_14_Verizon_Verizon_Wireless_Open_Internet_Remand_Comments.pdf

innovation, Title II and related proposals would only impede, not advance, the public's access to and enjoyment of the Internet. Broadband services and features would ossify, become less robust, and be less able to meet consumers' demands over time. It is no wonder that previous administrations uniformly have avoided that radical path."