New Networks Institute

February 3rd, 2016

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Sent via ECFS
Ms. Marlene Dortch, Secretary
Federal Communications Commission

Re: USTelecom Petition for Forbearance from Certain Incumbent LEC Regulatory Obligations, WC Docket No. 14-192; Connect America Fund, WC Docket No. 10-90.

On December 28th, 2015 the FCC released a Memorandum & Order for the USTelecom Petition for Forbearance, and much of this decision was based on biased and manipulated information or else major facts were totally ignored.[1]

On December 10th, 2015, New Networks Institute, now a consortium of independent telecom analysts, forensic auditors, and lawyers, released the two reports from the series "Fixing Telecommunications" and they have subsequently been filed in 31 FCC proceedings. The data is taken directly from 'primary sources' and contradicts many statements and findings in the current FCC USTA decision and other proceedings.[2]

We write this letter to request that the FCC start investigations into the data used in this and every related FCC Order. And while the facts we present are based on Verizon New York's actual financial annual reports from 2000-2014, (and other documents), it is clear that these same issues are national in scope and are happening, in varying degrees, in every AT&T, Verizon and Centurylink state.[3]

- Chairman Wheeler's claim that majority of construction expenditures from 2006-2011 went to fund the 'declining telephone network', is incorrect. The capx cross-subsidized fiber optic deployments, (including all components, such as new 'greenfield' conduit) as well as the wires to the Verizon Wireless cell sites.
- Based on these cross-subsidies, local phone customers were charged rate increases to pay for this fiber optic 'greenfield' construction.
- These fiber optic wires are classified as "Title II" and are part of what is commonly known as the "PSTN", Public Switched Telephone Networks.[4]

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1 http://apps.fcc.gov/ecfs/comment/view?id=60001364113
2 http://newnetworks.com/fixingtelecom/
3 The NY State Public Service Commission requires Verizon to submit a full annual report for Verizon NY, the state-based utility. No other state we know of has this requirement and the FCC stopped making public basic state-based data in 2007 with the cancellation of the "Statistics of Common Carriers".
4 The term "PSTN" refers to the state utility infrastructure (sometimes called "plant", and is a common term that does not apply only to the 'switched' access services, but to the network infrastructure. This includes

- Competitors are not on an equal footing due to the massive cross-subsidies of the other affiliates and the manipulation of the financial accounting.
- The ‘PSTN” networks are profitable. The affiliate companies are being cross-subsidized, in large part, due to the FCC’s ‘Big Freeze’ accounting debacle.
- There has been a massive manipulation of the accounting of copper and fiber optic access lines, helping to create faulty and harmful public policy decisions.

The ‘transition’ and ‘migration’ have been based on the assumption that local service and the phone networks are “unprofitable” and therefore customers should be forced onto wireless or lesser-regulated IP-based networks in certain areas. The telephone companies would then be allowed to then “discontinue” legacy services, then “shut off the copper”. These assumptions are false yet are being immortalized in faulty public policies and FCC rulings, and it is clear that the FCC is not ‘data-driven’.

The lack of objective information prejudices every discussion, from ‘shutting off the copper’, or the IP transition, to the costs of all services used by competitors. This bad data has also been used to block competitors from access to the new networks that have been funded by rate increases on local phone customers as part of the state-based, copper and fiber optic based, utility networks — the PSTN.

And this is not a matter of ‘switched’ or ‘non-switched’ or ‘IP’ services. It is a matter of access to the physical infrastructure, the wires. Verizon et al. have used the ‘IP Transition’ as nothing more than a way to remove basic regulatory requirements of access lines that are actually part of the state utility, were built as “Title II” and were funded via local phone rates and increases.

Moreover, the PSTN wires are profitable. What has occurred has been a massive manipulation of the flows of money, in large part based on the negligence of the FCC over a 15 year period to examine their own accounting and separations rules. The FCC’s Big Freeze, as we documented, dumps the majority of every expense into ‘Local Service’, allowing the affiliate companies and the other lines of business to have obscene profit margins, not pay market prices, as well as created artificial losses, that are NOT based on actual expenses. This has been used to create public policies, such as the USTA decision, to block and harm customers’ rights who use or want to use a competitive service.

These findings do not just impact this USTA Petition decision. Every related FCC or state proceeding that has relied on the phone companies’ claims that networks were unprofitable must now be reconsidered and opened for investigation.

‘non-switched’ services or the wires, including the fiber optic wires, that have been allowed to be classified as “Title II” and telecommunications and thus are part of the state utility.

Short Discussion — A Few Data Points

1) **The Majority of Construction Expenditures Did Not Go to Fund the 'Declining Telephone Network', but for the Fiber Optic Wires, Especially for Wireless.**

> "The majority of the capital investments made by U.S. telephone companies from 2006 to 2011 went toward maintaining the declining telephone network…" USTA Petition quoting Chairman Wheeler.[5]

False: The majority of capital expenditures, starting in 2006, went to fund Verizon's fiber optic deployments and cross-subsidized the Verizon affiliate lines of business and services, including Verizon Wireless.

In 2012, the NY State Attorney General's Office detailed that 75% of the capital expenditures in New York State in 2011 went to fund the building of the fiber optic wires (and conduit) to cell sites and to FiOS, not to the maintain the State's copper networks.

> "Verizon New York's claim of making over a 'billion dollars' in 2011 capital investments to its landline network is misleading. In fact, roughly three-quarters of the money was invested in providing transport facilities to serve wireless cell sites and its FiOS. Wireless carriers, including Verizon's affiliate Verizon offering wireless, directly compete with landline telephone service and the company's FiOS is primarily a video and Internet broadband offering....Therefore, only a fraction of the company's capital program is dedicated to supporting and upgrading its landline telephone service."[6]

2) **Customers were Charged Rate Increases Because the Fiber Optic 'Greenfield' Wires Were Classified as "Title II" and Part of the NY State PSTN.**

FCC USTA Decision[7]

> "We find that USTA has met the forbearance standard with respect to newly-constructed entrance conduit access in greenfield deployment situations."

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[5] http://apps.fcc.gov/ecfs/comment/view?id=60000976257
[6] http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={E46EDB40-99B2-4664- 8BE4-A9646D09BBBF}
[7] http://apps.fcc.gov/ecfs/comment/view?id=60001364113

A) The Fiber Optic Wires are Classified as Title II and are Part of the State-Based Utility.

The fiber optic wires for FiOS were allowed to be charged to local phone customers, starting in 2006, as the NY State PSC agreed that this fiber optic build out was not a new build but an enhancement of the existing PSTN and was classified as a Title II, common carriage, telecommunications network.

NY State PSC Order, 2005[8]

> In sum, we declare that Verizon's FTTP upgrade is authorized under its existing state telephone rights because the upgrade furthers the deployment of telecommunications and broadband services, and is consistent with state and federal law and in the public interest. In contrast to a company seeking to build an unfranchised cable television system, Verizon already has the necessary authority to use the rights-of-way to provide telecommunications service over its existing network, and should, therefore, not be required to seek additional authority to enhance its offerings related to that specific service.

And none of this should be ‘news’ to the FCC as we filed a Petition for Investigation against Verizon, January 13, 2015. Verizon never told the FCC, in any filing, especially pertaining to the Open Internet proceeding, that Verizon’s FiOS service rides on a Title II, common carriage, fiber optic telecommunications network, as stated in almost every cable franchise agreement.[9]

B) The Incumbent Greenfields are All Title II and are Mostly Funded Via Local Service Capital Expenditures Charged to Local Phone Customers.

No commenter, including the FCC, examined the actual flows of money or the state and federal regulatory framework in place, or the cross-subsidies of the affiliate companies. And yet the FCC forebeared on the new builds, ‘greenfields’, removing access requirements for competitors to use the conduits.

FCC USTA Petition: Greenfields are ‘Forebeared’, December 2015

> “We find that USTelecom has met the forbearance standard with respect to newly-constructed entrance conduit access in greenfield deployment situations. Competitors contend that they are not on equal footing with incumbents when seeking to deploy conduit in both greenfield and brownfield areas, arguing that incumbents have ‘a more favorable environment in which to build entrance conduit than competitors in terms of costs as well as relationships with owners, prospective customers, and

8 http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C8ACFCF6-6D31-4DE8-BE5B-6B8489CBB9AA}

9 http://newnetworks.com/investigateverizontitleii/

> municipalities,' which gives incumbents 'an overall advantage over competitive carriers.'

C) Rate Increases are Paying for "Greenfield" Buildout, Not the Company Investors.

In New York State, local phone customers have had three major, separate rate increases starting in 2006 for 'massive deployment of fiber optics' and 'losses', i.e., 100% of local phone customers paid for 'greenfield' upgrades of the state utility but only 50% or so ever got upgraded – or will get upgraded.

Verizon NY Rate Increase, June 2009: Statement by NY Public Service Commission.[10]

> "We are always concerned about the impacts on ratepayers of any rate increase, especially in times of economic stress,' said Commission Chairman Garry Brown. 'Nevertheless, there are certain increases in Verizon's costs that have to be recognized. This is especially important given the magnitude of the company's capital investment program, including its massive deployment of fiber optics in New York. We encourage Verizon to make appropriate investments in New York, and these minor rate increases will allow those investments to continue."

How is it that the FCC neglected to understand that the 'greenfields' are being built with ratepayer funding and are getting massive regulatory perks as Title II and are part of the state-based utility?

And how can the FCC, then, make claims that the competitors and the incumbent state utilities are on the same level playing field for new builds?

And, the wires are controlled by Verizon. Period. No other incumbent utility phone company was created and no other company rewired the Verizon New York State territory.

3) Competitors are Not on an Equal Footing.

FCC USTA Decision

> **"Competitors contend that they are not on equal footing with incumbents."**

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[10] NYPSC Press Release: CASE 09-C-0327–Minor Rate Filing of Verizon New York Inc. to Increase the Monthly Charges for Residence Local Exchange Access Lines (1MR and 1FR) by $1.95 per month, State of New York, 6/19/09

The FCC writes that they did not remove parts of Section 272, which deals with the affiliate transactions of the incumbent phone company and its affiliates.

> "The only remaining section 272 requirements are those of subsection (e), which govern BOCs' treatment of unaffiliated providers that seek access to their local networks. Section 272(e)(1) directs a BOC to 'fulfill any requests from an unaffiliated entity' for such access 'within a period no longer than the period in which it provides' such access to itself. BOCs must also report to the Commission quarterly on performance metrics related to their 'order taking, provisioning, and maintenance and repair' of DS0, DS1, DS3, and OCn special access services. Section 272(e)(3) requires a BOC to impute to itself an amount for access to its local network 'that is no less than the amount charged to any unaffiliated interexchange carriers for such service.' BOCs are also subject to additional imputation obligations, including the requirement that they impute to themselves their "highest tariffed rate for access, including access provided over joint-use facilities."

A) The FCC's "Big Freeze" Manipulated the Incumbent Financial Accounting to Make Local Service Look Unprofitable through Massive Cross-Subsidies.

The FCC's own "Big Freeze" made sure that the affiliate companies and these other lines of business have had massive financial advantages over all competitors as all of the financial accounting has been cooked.

The FCC's "Big Freeze" assigns all expenses as if it was the year 2000, literally. And instead of assigning the costs to offer special access services, or any non-POTS service, the majority of expenses were placed into Local Service with no care about actual expenses. This allowed all of the affiliate companies to enjoy major financial perks, especially when they are classified as Title II.

For the stark contrast, this next chart shows the revenues and the 'Corporate Operations' expenses for Verizon New York from 2003-2014.

Verizon New York Revenues by Category, 2003, 2010, 2014

2003	Total	Nonregulated	Local Service	Access
Revenues	$7,148,203,639	$219,748,000	$4,666,839,000	$2,230,978,000
% of Revenues		3.1%	65.3%	31.2%
Corporate	$1,921,045,187	$131,435,000	$1,249,051,000	$537,299,000
		7%	65%	28%
2010	**Total**	**Nonregulated**	**Local**	**Special**
Revenues	$4,982,344,773	$657,117,766	$2,198,098,276	$2,127,128,731
% of Revenues		13.19%	44.12%	42.69%
Corporate	$996,443,439	$101,275,522	$605,665,165	$289,502,751
		10.16%	60.78%	29.05%
2014	**Total**	**Nonregulated**	**Local Service**	**Access**
Revenues	$5,230,477,636	$1,431,325,888	$1,441,591,799	$2,357,559,949
% of Revenues		27.37%	27.56%	45.07%
Corporate	$2,604,155,474	$264,678,550	$1,572,288,568	$767,188,356
		10.16%	60.38%	29.46%

Sources: Verizon New York Annual Reports, 2003-2014

In 2003, Local Service represented 65% of the revenues and it paid 65% of Corporate Operations. By 2014, Local Service represented 27.6% of Verizon NY's revenues but paid 60% of corporate expenses — $1.57 billion. In fact, 'Access' charges, (which include the special access revenues), were the major source of revenue in 2014, representing 45% of the total revenues, but somehow it only paid 29% of the Corporate Operations cost because of the FCC's Freeze.[11]

'Local Service' is essentially POTS, Plain Old Telephone Service, as well as calling features. Local Service did not generate the 'Corporate Operations' expenses; they are simply based on the FCC Big Freeze manipulation. This Freeze made the Local Service category unprofitable, for just this one line item, Corporate Operations.

Besides making Local Service look unprofitable, it is clear that the affiliate companies are getting financial perks that no other competitor can get.

And the FCC has no clue about actual costs; it has not audited these books, nor has any state (we could find) for the last 15 years. Thus, the FCC never audited -- "impute to

[11] Note: The total revenues went down in this regulated books; however, much of the revenues generated are NOT displayed in the state-based annual financials reports but are in separate subsidiaries, and are a financial "black hole". As we uncovered, the revenues ended up in a non-identified part of Verizon New York revenues. For 2010, the SEC financial reports for Verizon New York had $2.3 billion more revenue than the state-based annual report for the same year.

itself an amount for access to its local network 'that is no less than the amount charged to any unaffiliated interexchange carriers for such service'."

The DS1, etc, are all part of the state PSTN networks and the data from Verizon New York's Annual reports shows that Access is paying a fraction of every expense and it is clear that for access services, the affiliate companies are not paying market prices.

4) There has been a Manipulation of the Accounting of Access Lines and Customers by the FCC and Center for Disease Control, CDC.

The FCC has been making major and significant policy decisions based on corrupted, incomplete and downright deceptive data. And this isn't specifically about the USTA decision but every decision where an accounting of access lines is applied as some sort of 'fact'.

FCC USTA Decision, 14-192, December, 2015

> "We noted that 44 percent of households were "wireless-only" during January-June of 2014…by the end of December 2014, such that more than two in every five households did not have a landline telephone."

And,

> "In reviewing the Petition, we are cognizant of the broad market trends associated with the services at issue. For example, we recently pointed out in the Emerging Wireline Order that 30 percent of all residential customers choose IP-based voice services from cable, fiber, and other providers as alternatives to legacy voice services.
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> "We noted that 44 percent of households were "wireless-only" during January-June of 2014. That number increased to 45.4 percent by the end of December 2014, such that more than two in every five households did not have a landline telephone. We have stated that, overall, almost 75 percent of U.S. residential customers (approximately 88 million households) no longer receive telephone service over traditional copper facilities.
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> "Similarly, USTelecom asserts in its Petition that barely one-quarter of U.S. households rely on traditional switched service from an incumbent LEC. We further note that, according to our most recent data, 53.5 percent of connections to businesses are currently provisioned over incumbent LEC switched facilities."

A DS1 uses the exact same legacy copper wires that are part of the PSTN as is used by a regular phone line. AT&T's entire U-Verse is a copper-to-the-home service that uses the legacy copper wires of the state-based utilities, such as AT&T California. And the 'greenfield' fiber optic wires are also Title II, common carriage and telecommunications wires.

And instead of dealing with the fact that the CDC numbers do not count actual wires and lines, but only 'voice calling', or that the FCC now claims that 60% of all special access services are "mostly copper" – and therefore part of the state utility PSTN, the FCC has yet to figure out that 'shutting off the copper' based on the accounting of 'voice-POTS lines' has corrupted public policy, as 'shutting off a copper wire' also shuts off the data line used for 'alarm services' or the copper-based DSL service.

It is time to realize that the wires are Title II and part of the state utility and that these imaginary 'classifications' changes the regulatory framework of the same, legacy copper wire that could have been in place for 20-70 years.

Customers stopped using the copper networks for just voice phone service since the first fax, or dial-up service to 'bulletin boards' in the 1980's. Yet, the FCC persists in creating artificial distinctions based on 'landlines' or 'voice phone service' or 'IP services' that travel over the Title II wires.

The FCC has no idea how many total access lines are in service today. It has no idea about how many customers will be 'shut off' or 'transitioned'. And it has no idea that all of the wires, including the fiber optic 'greenfields' are part of the same legacy utility or that customers paid for these upgrades.

A) Access Line Accounting has been Manipulated.

Findings: **The telco-supplied information about access lines only refers to one class of service, POTS, plain old telephone service. Period.**

The majority of access lines are special access and the FCC has not tracked the number of actual lines in service and even stopped collecting basic data since 2007. This excerpt from the final SOCC report shows that in New York, Verizon had 47 million total lines of which only 7.2 million were 'switched' lines.

Verizon New York Access Lines, 2006-2007

		2007	2006
Switched Access Lines in Service:			
Main Access Lines		4,658,451	5,116,406
PBX & Centrex Trunks		460,379	463,709
Centrex Extensions		999,354	963,213
Other Switched Access Lines		1,064,404	1,417,158
Total Switched Access Lines		7,182,588	7,960,486
Central Office Switches Excluding Remote Switches		301	301
Remote Switches		300	299
Central Office Switches		601	600
Basic Rate ISDN Control Channels		62,486	67,019
Primary Rate ISDN Control Channels		14,952	14,442
Access Lines in Service by Customer:			
Business Switched Access Lines:	Single Line	145,466	151,497
	Multiline/Other Than Payphone	2,677,605	2,799,836
	Payphone Lines	88,614	99,305
Residential Switched Access Lines:	Lifeline	263,473	276,013
	Non-Lifeline/Primary	3,584,790	4,137,632
	Non-Lifeline - Non-Primary	422,640	496,203
Total Switched Access Lines		7,182,588	7,960,486
Special Access Lines (Non-Switched):	Analog (4kHz or Equiv)	25,765	27,279
	Digital (64kbps or Equiv)	39,615,573	35,005,428
Total Access Lines (Switched and Special)		46,823,926	42,993,193
Local Private Lines		595,918	592,305

(FCC Statistics of Common Carriers, for the Year Ending December, 31, 2007)

Starting with the 2007 ARMIS data, and combining different available data, including Verizon New York annual reports for 2009-2014, we found:

Verizon NY Access Lines, POTS & Special Access, Based on FCC Calculations 2007-2014

	2007	2014	Change
Special Access	39,615,000	62,626,294	58.09%
POTS Access	7,182,588	2,700,000	-62.41%
Total Access Lines	46,823,926	65,326,294	39.51%
Percent of Total	15.34%	4.13%	
US Total	379,266,676	529,114,940	**US Total**

Sources: Verizon NY, FCC, New Networks Institute

- In 2014, there are approximately 65 million ‘special access’ lines and ‘equivalents’ in NY State.
- According to Verizon, there were only 2.7 million POTS access lines; about 4% of total lines in 2014.
- NOTE: This ‘loss’ does not take into account the ‘migration’ of customers off of POTS to another Verizon IP voice service, or customers dropping their DSL-copper based service, for FIOS, for example.
- Special Access line accounting is not included in the access line accounting supplied by Verizon, or any telephone company.
- The FCC’ recent report showed that mostly copper-based special access services represented 60% of the total of $40 billion dollars in revenue—i.e., $24 billion in America of copper-based TDM services but 0 lines – how can that be?

And the FCC should really be concerned about just how manipulated their data is when staring at the 'Total Access Lines'.

By the end of 2014, we estimate that there could be 529 million total access lines, as told by the FCC's own 'access line equivalent' accounting presented in the 2007 FCC's *Statistics of Common Carriers,* and previous reports.

B) The CDC Numbers Are Useless.

The Center for Disease Control, CDC, data does not represent 'wireless-only households' as it doesn't count the wires; it counts voice calling only. The alarm circuits (15-20% of households), the wires used for cable service, the wires for the home office, etc., aren't counted; neither are the small business ATM machines, credit card readers and a host of wires that go to the WiFi hot spots. They are the same PSTN copper wires and the FCC has neglected any accounting.

But, we are amused that the FCC believes that customers "choose" IP-based services. "30 percent of **all residential customers choose IP-based voice services** from cable, fiber, and other providers as alternatives to legacy voice services." It just proves how out of touch the FCC really is about the IP transition. Does the FCC really think a customer, moving to a cable company-offered 'triple play', is thinking that this phone service is somehow different or special as compared to their 'landline'?

They 'chose' the phone service because it is part of the 'bundle'. They choose the service because the incumbent phone company manipulated the policies claiming these networks were unprofitable, and got rate increases—which drove more customers to 'drop their landlines'. Or they got a disconnection notice that their copper-based service was being 'shut off' or in the case of the AT&T IP Transition trials, they were asked to drop their line in favor of an inferior wireless service.

The FCC has no clue about the actual number of copper wires in service today and it is making public policy decisions that are NOT data-driven. Period.

Conclusion

To repeat: The "transition" and "migration" have been based on the assumption that local service and the phone networks are "unprofitable" and therefore customers should be forced onto wireless or lesser-regulated IP-based networks in certain areas. The telephone companies would then be allowed to then "discontinue" legacy services and then "shut off the copper".

The lack of objective information prejudices every discussion, from 'shutting off the copper', or the IP Transition, to the costs of all services to competitors. This bad data has also been used to block competitors from access to the new networks that have been funded by rate increases on local phone customers as part of the state-based, copper and fiber optic based, utility networks — the PSTN.

These findings do not just impact this USTA Petition decision. Every related FCC or state proceeding that has relied on the phone companies' claims that networks were unprofitable must now be reconsidered and opened for investigation.

Reports, Filing, Proceedings, and Team Members

The first two released reports from the new series Fixing Telecommunications highlights some of our new findings. The reports go into the FCC's Big Freeze, some of the cross-subsidy issues as well as summarizes some of what we found with Verizon New York. There are 11 reports in the series.

For the reports, our related filings and the NNI Team:

http://newnetworks.com/fixingtelecom/

The Following Reports are Slated for Fixing Telecommunications, 2015-2016:

- Report 1: Verizon's Manipulated Financial Accounting & the FCC's Big "Freeze"
- Report 2: Data Report on Verizon New York's Financial Accounting.
- Report 3: The FCC's 15 Year Big Freeze
- SPECIAL Report 4: The FCC's Big Freeze: A Nationwide, Financial Accounting Scandal involving AT&T, Verizon and CenturyLink, in Every State.
- Report 5: Special Access: Revenues, Access Line Accounting & Cross-Subsidies.
- Report 6: Reverse Engineering Verizon's Expenses: Regulatory and Legal Challenges on Prices, Special Access and Fiber Optic Deployment.
- Report 7: Wireline-Wireless Cross-Subsidies and 'The Takeover'.
- Report 8: Follow the Money: Tracking the Revenues from Communications Bills and Business Services.
- Report 9: Getting America's Municipalities Upgraded
- Report 10: Miss-Allocation & the IP Transition, Copper Migration, Net Neutrality
- Report 11: Communications in America, 2016-2020.

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