Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84
Technology Transitions	)	GN Docket No. 13-5
AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition	)	GN Docket No. 12-353
Jurisdictional Separations and Referral to the Federal-State Joint Board	)	CC Docket No. 80-286
In the Matter of Comprehensive Review of the Part 32 Uniform System of Accounts.	)	WC Docket No. 14-130

REPLY COMMENTS OF THE IRREGULATORS & NEW NETWORKS INSTITUTE

February 16, 2018

Simply put: There is a fatal structural flaw in every FCC proceeding, including:

- Accelerating Wireline Broadband by Removing Barriers to Infrastructure Investment, (commonly known as 'shut off the copper')
- Internet Freedom Order, (commonly known as killing Net Neutrality)

The Structural Flaw: The FCC Ignored Almost Everything that is State-Based.

America is made up of 50 states, (and the District of Columbia, D.C.) and they all have state-based telecommunications utilities. And, in almost every state (and DC), there were and are broadband investments, commitments, financial incentives, etc., and they have all relied on using Title II for state-based broadband deployments and investments—that's right, Title II.

And the FCC's decisions can be reversed because:

- The FCC has ignored, left out, and never mentioned that there are state utilities or "intrastate" (in-state) services. The FCC also never acknowledged that there were and are broadband commitments, and that the companies were given massive financial incentives for investment to build out the networks—over and over.
- The FCC failed to recognize that "Title II" is used in every Verizon state to fund these 'financial investments' via charging local phone customers. In fact, the telcos have been 'playing' the state regulations off the federal regs– called "Title Shopping". Thus, Verizon's fiber optic wires for FiOS are Title II.
- This flaw is made worse by the FCC's failure to examine the impacts of its cost accounting rules for 17 years, which allocates expenses between the "intrastate" (state-based) or "interstate" services using the state utility wires. But, over the last decade, they now dump most of the expenses into the local state networks. I.e.; Verizon has made the state utilities cash machines to fund the company's other lines of business, including wireless.

And **this flaw is in every 2017-2018, FCC proceeding,** from repealing Net Neutrality to shutting off the copper wires and replacing them with wireless, to the 'Business Data Services' deregulation decision. (These are utility wires that are used for business services, such as ATM machines, broadband or wireless services, but are classified as "interstate".)

The failure to examine the state-based utilities and services is like looking at your own hand and saying:

Well, there are only three fingers on a regular hand because you can't count the "pinky" or the "thumb"; they are not called 'fingers'.

It is that blatant, it is that stupid and it is that deceptive.

1) **FCC Never Investigated that the 'In-State' Fiber Plans are Based on "Title II"**

What is most bizarre about all of this is that the FCC never examined that state-based broadband commitments, especially the "FTTP", "fiber to the premises" networks—which have been and are now being put in, are using the "Title II" classification. (Yet, at the same time, Verizon claims that Title II harms investments.)

Starting in 2004, Verizon went to the state public service commissions and had them declare that the fiber optic, "FTTP" wires are part of the existing state utility – and are Title II. Here is part of the cable franchise agreement in New Jersey from 2014.

We filed a Petition for Investigation with the FCC about this.[i]

Verizon New Jersey's Cable franchise agreement, 2014

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 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.

The quote above is BLACK AND WHITE and in all Verizon state cable franchise laws and regulations, with only slight variations in language. And because Verizon got to use Title II, Verizon could also dump the expenses into the state utility and have local phone customers pay for an 'interstate', 'information' broadband…fiber optic …*We're the phone company…* wire.

2) **Customers Paid "Financial Incentives" and Were the 'Infrastructure Investor' for Decades, using Title II.**

In June 2009, the NY Public Service Commission (NYPSC) granted Verizon NY the third rate increase for residential POTS, plain old telephone service, since 2005. The NYPSC press release explained that the rate increase was due to "massive deployment of fiber optics".[ii]

"'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'."

This 2009 increase was the 3rd, adding 84% to the basic rates of all phone customers. This was on top of the increases on all other ancillary services, which started in 1995, from inside wire maintenance to non-listed numbers.

Let us be clear: Verizon NY local phone customers had multiple rate increases to pay for FiOS, a fiber optic-based cable service. As we mentioned, in 2010, Verizon announced it was no longer going to be rolling out the service. Yet, the price of service was never lowered, the networks were never deployed, and the monies went to cross-subsidize other 'interstate' services, including wireless. Low income families, seniors, rural customers, small businesses – throughout the State paid extra for networks that they will never receive. Customers were charged over $1,500.00 per line extra through 2016; this does not include most ancillary services which were also granted rate increases, like non-listed numbers.

And, the FCC never mentions any of this, even though they claim to have jurisdiction over the broadband wires. Most importantly, the FCC claims it can 'shut off the copper' in one proceeding without any specific data. Over the last 5 years we created full reports and filed them with the FCC. (See Appendix 1)

Ironically, this cross-subsidy of interstate services was detailed by the NY Attorney General's Office in 2011, but it never took actions to investigate the actual harms.

3) FCC Never Examined that Local Intrastate Capital Expenditures are Being Diverted Through Title II to be Used for the Other Lines of Business.

In 2011, Verizon NY stated that the company spent over $1 billion on the utility capital investment. The NY Attorney General claimed this was misleading, as the money had been shifted to fund Verizon Wireless and FiOS TV.[iii]

> "Verizon NY'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 offering. Wireless carriers, including Verizon's affiliate Verizon Wireless, directly compete with landline telephone service and the company's FiOS is primarily a video and Internet broadband offering."

Since these subsidies are, in fact, investments in FiOS, which is fiber to the home, and the wireless networks, which are Business Data Services (special access) to the cell sites, therefore, the FCC can never say that it should preempt states much less that Title II has harmed investment when it has no evidence to support these claims.

4) Verizon New York Shows Massive Financial Cross Subsidies Using Title II.

And just to demonstrate the total corruption of the FCC's argument about Title II and capital expenditures, especially omitting critical state data, this excerpt is from the Verizon New York Annual Report for 2016, published in June 2017.

Over the last decade the FCC has never examined any of these state financials even though they are directly based on the FCC's own cost accounting rules. (Read "Follow the Money" report for details and caveats.[iv])

Verizon NY Revenues and Major Expenses by Category, 2016 (Excerpt)

	Total	Nonregulated	Local Service	Access
Total Operating Revenues	$5,240,782,258	$1,552,967,493	$1,211,751,622	$2,476,063,143
Major Operating Expenses				
Construction & Maintain (Plant)	$3,256,244,373	$1,113,045,276	$1,445,636,286	$697,562,811
Marketing	$ 308,034,588	$ 53,273,050	$165,799,314	$88,962,224
Customer Operations	$ 402,504,360	$ 28,387,919	$268,038,623	$106,077,818
Corporate Operations	$1,199,635,597	$ 122,758,995	$722,877,073	$353,999,528
Special Access Revenues				**$2,008,589,749**
Access EBITDA				50%
Net Operating Revenues	**$(1,079,606,687)**	**$183,548,944**	**$(2,098,768,683)**	**$835,613,052**

This shows that the Local Service category, which is primarily POTS, plain old telephone service, copper wires, was charged $1.4 billion in 2016 for capital expenditures and maintenance (known as "plant and nonspecific plant"), while it only brought in $1.2 billion in revenues—I.e.; the intrastate utility was charged 119% of revenues for construction.
Where is all the money going if the company stopped upgrading the POTS lines and are shutting them off? This is as compared to "Access" fees which had revenues of $2.5 billion (about $2 billion in Business Data Services), but only ended up paying less than ½ of what the Local service is paying for construction and maintenance.

And where on these financial books are the ISP services?

5) **The FCC's Cost Accounting Rules Overcharges Customers and Harms Broadband Deployment.**

Conclusion: The 'harms to investment' have been the use of the FCC mal-formed accounting rules on intrastate-interstate financial revenues and expenses, which overcharged customers and harmed broadband deployment.

While the FCC claims that their financial accounting rules have been erased or forborne and not applicable anymore—unfortunately, it would appear that they are very much alive and being applied in New York, where they are used for rate-setting of local rates.

We wrote an entire report, the Hartman Memorandum, to explain the rules and how they became deformed.[v]

The FCC ‘froze’ the accounting rules in the year 2001 so that the expenses would be allocated based on the year 2000, and then, over the last 17 years never changed them or seriously investigated their impact on the state- based financials.

This exhibit shows the revenues for Verizon New York, the state utility, divided up by the three standard categories: “Local Service”, “Access” fees and “Nonregulated”, (a garbage pail of expenses that were either previously regulated or were never regulated. Parts of FiOS revenues and expenses, or inside wire maintenance are in nonregulated.)

Verizon NY Revenues and Corporate Operations Expense, 2003-2014

2003	Total	Nonregulated	Local Service	Access
Total Revenues	$ 7,148,203,639	$ 219,748,000	$ 4,666,839,000	$ 2,230,978,000
% of Revenues		3%	65%	31%
Corporate	$ 1,921,045,187	$ 131,435,000	$ 1,249,051,000	$ 537,299,000
% of Corporate		7%	65%	28%
2010	Total	Nonregulated	Local Service	Access
Total Revenues	$4,982,344,773	$657,117,766	$2,198,098,276	$2,127,128,731
% of Revenues		13%	44%	43%
Corporate	$996,443,439	$101,275,522	$605,665,165	$289,502,751
% of Corporate		10%	61%	29%
2014	Total	Nonregulated	Local Service	Access
Total Revenues	$5,230,477,636	$1,431,325,888	$1,441,591,799	$2,357,559,949
% of Revenues		27%	27.6%	45%
Corporate	$2,604,155,474	$264,678,550	$1,572,288,568	$767,188,356
% of Corporate		10%	60%	29%

Sources: Verizon New York, New Networks Institute

As you can see, the “Corporate Operations” expense went from 65% in 2003 to 60%+ for “Local Service”, even through 2014. However, the revenues for Local Service had a steep decline, from 65% of the total of Verizon NY in 2003 to 27.6% of revenues in 2014.

Nonregulated and Access services all enjoyed the ability to dump expenses into Local Service as in 2014; Nonregulated paid only 10% of the $2.6 billion of Corporate Operations expense in NY, while Access only paid 29% of the expenses, even though it brought in 45% of the revenues.

“Corporate Operations” expense is a bucket for everything from lawyers and lobbying to the corporate jet.

Oh, but it gets worse. In the accounting of access lines, the FCC has flipped their equation and only quotes “intrastate” access lines—and even leaves out all businesses. The FCC never tells the public how many interstate, voip, information service lines there are or how many are ‘intrastate’-paid lines that have been confiscated through this manipulation.

Manipulating Access Line Accounting: Where are the Interstate Lines?

11) Manipulating the Accounting of Access Lines in Every FCC Proceeding

In every FCC proceeding, the FCC, AT&T & Verizon, or Centurylink have manipulated the accounting of basic access lines, fiber or copper. Here are a few examples:

The FCC quotes AT&T reply comment, WC Docket No. 17-84, July 2017

> "About 65% of American households now receive all or almost all telephone calls on cell phones, **while only about 14% of American households still rely on legacy TDM landlines.** More than half of all American households (50.8%) have now abandoned land-line voice service entirely."

Elsewhere, the FCC also quotes AT&T. The numbers do not match.

> "Retail POTS subscriptions have declined to the point that less than 17% of households purchase switched-access voice service from an ILEC, and these services will only continue to decline."

The base of these quotes is total obfuscation to make it appear that there have been major losses of access lines and so the companies should be able to 'shut off the copper'.

Manipulations Galore:

- **Notice the words/terms:** "retail", "POTS", "households", "switched access", "voice service", "ILEC", "legacy", and "TDM".
- **To Sum Up:** The FCC is only discussing residential (household), basic "POTS", Plain Old Telephone Service lines offered by the "ILEC"; i.e., the existing incumbent telecommunications utility, Verizon, AT&T or Centurylink, mostly. And these are the existing copper' legacy lines, also called "switched access", or TDM".

- The FCC is only discussing state-based utility 'intrastate' lines, not the total lines.
- These are basic POTS, plain old telephone service, copper lines
- These are only voice lines, leaving out the data lines.
- These are only 'households', meaning residential services only.
- This leaves out all business lines.
- This leaves out all copper based lines that have been declared "interstate", even if they are part of the state utility.
- "Special Access" lines, (renamed by the FCC "Business Data Service") lines have been left out. This includes the wires to ATM machines or other data services, including the wires to cell sites and hot spots.

- This leaves out all fiber optic lines, such as FiOS' FTTP lines.
- This leaves out all copper-based POTS lines that are now used for AT&T's U-Verse.

This means that the majority of access lines, even copper lines, were never counted in the FCC's 'shut off the copper' proceeding. This means that the FCC is only counting "Intrastate" lines, but the FCC has no jurisdiction over these lines. And this also means that the FCC has manipulated the accounting to leave out all "Information Service", all "VOIP" lines and all "Interstate" lines.

This next chart shows that the majority of AT&T lines in 2016 were never counted, even though many can be 'shut off', and even though AT&T's entire networks are still mostly copper wires, including U-Verse, which is a copper-to-the-home service.

The Copper-Wire World of AT&T

			Access Line
1.	**Total Number of 'Locations' in AT&T Territories**	76,000,000	
2.	**Fiber Optic Locations 'Passed'**	4,600,000	Not Counted
3.	**Retail Consumer Switched Access Lines**	**5,853,000**	**Counted**
4.	Percent of Customers Using "POTS"	**17%**	
5.	Households 100%	**34,000,000**	**Not Counted**
	MISSING ACCESS LINES: COPPER		
6.	**U-Verse Consumer VoIP Connections**	**5,425,000**	Not Counted
7.	"IP"	12,888,000	Not Counted
8.	DSL	1,291,000	Not Counted
9.	U-Verse	4,253,000	Not Counted
10.	**Connections 15 -20 million**		Not Counted
11.	**Missing**: Special Access Lines, Wires to Cell Sites	?	Not Counted
12.	**Missing:** Business Access Lines	?	Not Counted
13.	**Missing:** Access Lines Wholesale	?	Not Counted
14.	**Access Lines Not Counted**	50-90%	Not Counted

Source; AT&T 2016 Annual Report, AT&T FCC Filings

This is like some sleazy carnie trick. If the FCC was in grade school and they handed in this garbage, they would get a failing grade. Unfortunately, this is being offered as 'the record', 'the evidence', the logic for copper retirement – i.e., let the companies shut off the phone lines at will.

12) Verizon NY Copper "Access Lines" Demonstrates FCC Corrupted Accounting

Even though the FCC claims no one is using these networks, in just New York, Verizon detailed it had 2,157,592 copper regular POTS, Plain Old Telephone Service, lines in service at the end of 2016.

But, if you stare at the information supplied in the Verizon NY 2016 Annual Report, which was published in June 2017, on the left is a list of the caveats about what is being counted as a 'line'.

Verizon New York "POTS" Access Lines, 2016

IRREGULATORS

Annual Report of VERIZON NEW YORK INC. For the period ending DECEMBER 31, 2016

61. ACCESS LINES IN SERVICE

		Number of Access Lines At End of the Year
1.	Access lines are any and all facilities appearing at a customer's premises for which an access line charge is made as provided for in company tariffs.	
2.	Multi-line business access lines shall include all access lines provided to businesses with two or more lines on the same premises(i.e., two line service, key telephone system services, PBX system services).	Confidential
		Confidential
3.	Public access lines shall include all access lines provided to serve public coin telephones, semi-public coin telephones, customer owned coin operated telephones (COCOTS) and credit card telephones.	Confidential
		Confidential
4.	Private Line Circuits are telephone facilities furnished under contracts providing exclusive service. i.e., service not requiring central office switching operations.	Confidential
		2,157,592

Number 3, Public Access lines, are the pay phone lines and at the end of 2016 there were roughly 6,084, while in Number 4, there were 116,075 private line circuits that are part of this total. However, this data excluded the "Single Line Business" accounts; this information was "not available".

Single Line Business is	Not Available
Public access Lines	6,084
NY Private lines	116,075

One has only to compare the various sources of information to see just how devious Verizon, AT&T and the FCC are in their access line presentation and manipulations.

This next exhibit is taken from the FCC's last "Statistics of Common Carriers" report that supplied information about the state utilities and the last year the FCC published this info was for the year 2007.

This excerpt is of Verizon NY. Going down the column we find that there were a total of 39.6 million "Special Access" lines in 2007, which were the overwhelming part of access line accounting. And there are a host of caveats about these lines as they are counted as replacing a copper wire basic line with an access line 'equivalent'.

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)

Note: There were also about 596,000 private lines and about 89,000 pay phone lines, so those categories had big drops from 2007 through 2016.

But, here's the fundamental manipulation: The revenues for special access since 2007 had dramatic increases. According to Verizon New York's financials, the revenues went up 62%. If the access lines followed suit, then there would be over 64 million access lines and equivalents.

Verizon New York Special Access Revenues, 2007-2016

	2007	2016	Increase
Revenues	$1,229,611,000	$1,987,796,784	62%
Access Lines	39,615,573	64,177,228	

Source: Verizon NY Annual Reports, New Networks Institute

And here is the kicker: **This means that access lines increased, not decreased**. This means that the number of lines that the FCC is counting has been totally distorted to claim losses.

And let us be clear; the majority of these lines are copper-wire based.

In 2015, the FCC published some new data and claimed that special access revenues are about $40 billion and the majority, 60%, or $24 billion, are 'mostly-copper based' telecom ("TDM") services that are part of the state utility wires.[vi]

> "TDM-based business data services... are the dedicated (usually copper) circuits that many business and other institutional users continue to rely on for their data and other communications needs... Despite the growth of newer technologies, preliminary analysis of the Commission's special access data collection shows that **revenues from such TDM services**

> **continue to make up in the range of sixty percent** of the roughly $40 billion annual special access market."

This new data (which we were blocked from examining in detail) shows the special access market has doubled in size since the FCC's guesstimate in 2013, when common wisdom was that this market was only $12-$18 billion. This means that the wired networks are growing, and that the copper-wired-networks had massive increases in lines overall, contradicting all of the noise about 'dropped' lines.[vii]

13) How Many Special Access Lines are there? "Zero"?

Unfortunately, the FCC has revealed "0" Special Access Lines; that's "Zero". There is no mention in any document we can find that supplies the basic special access line accounting. But, based on the number of access lines in 2007 and the growth in revenues discussed, there could now be as many as 600 million related access lines as of 2016.[viii]

In another proceeding the FCC has decided that it will allow the incumbents to shut off/raise rates to 'legacy' copper-based special access services, from T1 (DS1) to T3 (DS3) but the FCC has supplied zero lines.

In all of this the FCC supplies 'intrastate' POTS lines but it supplies no information about the total access lines in service. This, of course, would contradict that the state utility is losing lines if special access and these other wires that are classified as "Title II" and part of the state utility were added.

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[i] http://newnetworks.com/investigateverizontitleii/
[ii] http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7b3C0D0FC7606A-4CD3-B360-EA19179D2008%7d
[iii] http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7bE46EDB40-99B2-4664-8BE4-A9646D09BBBF%7d
[iv] http://irregulators.org/wp-content/uploads/2017/06/NYrteportjune22FINAL.pdf
[v] http://newnetworks.com/hartmanmemorandum/
[vi] https://apps.fcc.gov/edocs_public/attachmatch/DA-15-1194A1.pdf
[vii] http://www.huffingtonpost.com/bruce-kushnick/att--verizon-with-the-fcc_b_9259834.html
[viii] https://www.huffingtonpost.com/bruce-kushnick/how-many-special-access-l_b_9371370.html