

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

Framework for Broadband Internet)	
Service)	GN Docket No. 10-127
Open Internet Rulemaking)	GN Docket No. 14-28
New Networks Institute & Teletruth)	
Petition For Investigation)	

To: The Secretary

**Reply to January 20, 2015 Letter Response of Verizon to the
Petition for Investigation of New Networks Institute & Teletruth
Filed on January 13, 2015**

Verizon’s lawyers have decided that instead of actually addressing the issues we brought up in this Petition, they’d resort to condescending quips followed by responses bordering on non sequiturs that should make the FCC realize that — this is an open and shut case.

We asked the FCC to investigate Verizon for perjury because, using Verizon’s own documents, from Verizon’s own cable franchises for FiOS or the state-based SEC financial reports, we detailed that:

- a) Verizon’s entire fiber optic networks are Title II, common carriage, telecommunications networks.
- b) Title II is being used so that Verizon can get use of the state-based utility, telecommunications rights-of-way as well as charge local phone customers for construction of these FTTP networks through rate increases.

- c) Verizon continues to insist that the application of Title II harms investment when in fact Verizon's entire business plan for their networks is based on the use of Title II.

Verizon's letter fails to address any of these points and instead attempts hand waving and misquoting of what we said and resorts to a lack of respect, or more importantly an attempt to cover over the facts.

We break our reaction to Verizon's response into two parts. This document will address Verizon's refusal to address the issues we raised. Second, we are filing a supplement to the original Petition: **"Verizon: Show Us the Money". Part 1: Verizon's FiOS, Fiber Optic Investments, and Title II** It supplies additional details that should give the FCC confidence in the need for immediate investigations.

1) Verizon's Misquotes What We Said about Services and Networks and the Use of "Title" Classifications.

It is clear that Verizon didn't read what we actually wrote. In this next paragraph, Verizon suggests that somewhere we claimed that a 'service', which is classified as say, a "Title VI", cable service, will somehow magically change its classification to a "Title II", telecommunications 'service' if it uses the same FTTP network.

"There is no question, for example, that Verizon's FiOS video service does not become transformed into a Title II service, merely because it is transmitted via Verizon's FTTP network. Rather, the FiOS video service remains a Title VI service and subject to applicable cable laws and cable franchising agreements. Similarly, Verizon's broadband access service is not transformed into a Title II service simply because it is carried by the same fiber..."

Notice that Verizon has not admitted that the 'FTTP network' is Title II. Verizon is attempting a sleight of hand to claim that the 'fiber' wire is also NOT the FTTP, Title II network.

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Verizon's response covers over the fact that the fiber-to-the-premises wires are Title II, that they were constructed as Title II and that because the wires are Title II, Verizon was allowed to charge customers and get the state rights of way — i.e., Verizon used Title II as the primary investment vehicle.

Verizon is doing all this on purpose, of course.

In our Petition we made it clear that different services with different classifications can use a Title II network. So a cable service, Title VI, can use a Title II network. And we also made it clear that the networks are Title II, and this doesn't change the service classifications going over the wire — and that the infrastructure, the 'network' was paid for by customers as Title II, and 'services', such as the cable service, did NOT pay for the construction. Verizon has continuously attempted to confuse these different, distinct items in their filings.

2) Verizon has Confused 'Services' with the 'FTTP Networks' in Their Letter and in Multiple Filings at the FCC and Information Supplied to the Public.

First,

- The Fiber to the Home/Premises FTTP network, is infrastructure — wires, network switches and the telephone poles or the pipes carrying the wires.
- A 'service' is not the wire; it is not the infrastructure; a service rides over and uses the wire.

This is the same comparison as a highway/road and a car. The car is not the road.

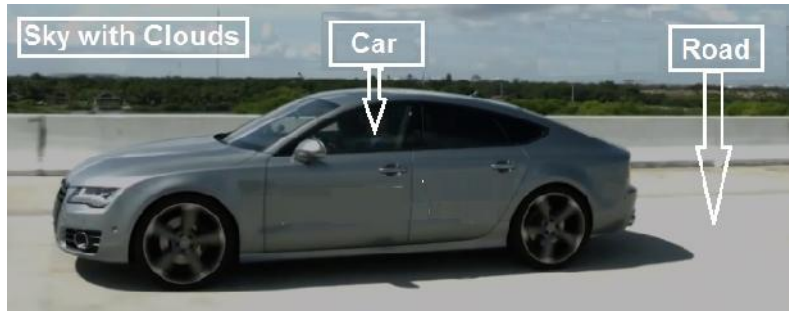


Diagram:

- Car Equals Service: Internet, Cable TV
- Road Equals Wire: Network, Infrastructure

A car rides on the road. Period. A service rides on the network. However, we note that in this analogy, Verizon also owns many of the cars as they control the Internet, broadband, and cable TV service over the customer-funded, Title II wires. (And since they control the speed, it could be argued that they even control the ‘gasoline’ stations and the gas.)

3) Verizon Confuses ‘Services’, ‘Networks’, ‘Telecommunications’, ‘Wires’, ‘FiOS’, Etc., Everywhere.

Verizon’s lawyers didn’t bother to actually read their own company’s prior statements about the FiOS TV service, the FTTP networks, and it is clear that Verizon can’t tell the difference between the networks and services in many of the filings, documents, and advertising.

Verizon appears to use all of these terms interchangeably.

In our first set of comments in this docket,¹ we specifically pointed to the various flat-out mistakes by Verizon lawyers and marketing materials that have been used to confuse the FCC and the public.

¹ “Special Report: ‘Title Shopping’ Exposed: Solving Net Neutrality Requires Investigations”, Comment 1:Open Internet Remand Proceeding, GN Docket No. 14-28, July 14, 2014
<http://newnetworks.com/tileshopping/>

Four Examples of Verizon's Confusion about Verizon's Networks and Services.

- **Example One: State-based SEC Report: FiOS TV is a Telecommunications Service.**

Verizon New York's SEC quarterly report for the year ending December, 31, 2010, lists three different *telecommunications* services the company offers; FiOS TV is one of the three. This description can be found in every Verizon state-filed SEC report for 2010 (the last year Verizon made public these SEC filings).

“1. DESCRIPTION OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

“Verizon New York Inc. (Verizon New York or the Company) and its wholly owned subsidiaries, Empire City Subway Company, Bell Atlantic Communications and NYNEX Long Distance Company are wholly owned subsidiaries of NYNEX Corporation (NYNEX), which is a wholly owned subsidiary of Verizon Communications Inc. (Verizon). Empire City Subway Company is primarily in the business of leasing underground conduit in Manhattan, New York (NY) and the Bronx, NY, principally to us, but also to other companies in the telecommunications business. NYNEX Long Distance is a provider of regional toll and long distance services. We presently serve a territory consisting of Local Access and Transport Areas (LATA) in New York, as well as a small portion of Connecticut (Greenwich and Byram only). We have one reportable segment which provides domestic wireline telecommunications services.

“We currently provide 3 basic types of telecommunications services:

- (1) “**Exchange telecommunication service** is the transmission of telecommunications among customers located within a local calling area within a LATA. Examples of exchange telecommunications services include switched local residential and business services, local private line voice and data services and Centrex services. We also provide toll services within and outside both LATA (intraLATA and interLATA long distance).
- (2) “**Exchange access service** links a customer's premises and the transmission facilities of other telecommunications carriers, generally interLATA carriers. Examples of exchange access services include switched access and special access services.
- (3) “In addition, we also provide **FiOS TV services** for residential and small business subscribers in certain areas.”

Three services:

- 1) Exchange telecommunications
- 2) Exchange access service
- 3) “FiOS TV”

Three telecommunications services mean three services.

- **Example 2: “Next-Generation, All-Fiber FiOS Network”, from Verizon’s Own Reply Comments, Docket 14-28**

In multiple locations in Verizon’s comments we find that FiOS is now an “all-fiber network”.²

Verizon is investing more than \$23 billion to pass 19 million premises with its next-generation, **all-fiber FiOS network** by the end of this year, and has already passed more than 14.5million of those premises. (Verizon Comments, Topper Decl. ¶ 25.)

Verizon has invested tens of billions of dollars to build our wired and wireless broadband networks, including more than \$23 billion spent to construct our **fiber-optic FiOS network** since 2004.

Verizon has invested more than \$23 billion deploying our **all-fiber FiOS network**, and tens of billions more deploying mobile broadband facilities. (Emphasis added)

- **Example 3: FiOS is a Network, from Verizon's Website, July 8th, 2014**

What Exactly is FiOS You Ask?³

Well, it's not cable. And it's definitely not copper wiring. FiOS replaces them by building a network of 100% fiber optics, making it an even **FASTER** way to transfer data for Internet, TV and Digital Voice—literally connecting you to all you love at the speed of light.

²http://publicpolicy.verizon.com/assets/images/content/07_15_14_Verizon_Verizon_Wireless_Open_Internet_Remand_Comments.pdf

³ <http://www.verizon.com/home/fios/>

- **Example 4: Fiber is a physical medium; FiOS is a branded service.**

Verizon's Letter filed in the Section 251⁴ application to shut off the copper wires in areas of New York City after the Sandy storm destroyed the original utility copper wire infrastructure, details that the fiber optic wire is different from FiOS service.

“To be clear: service received over fiber facilities is not the same thing as Verizon's FiOS service. Fiber refers to a physical medium: a network made up of fiber optic cables. FiOS refers to particular Verizon branded voice, video, and data services – FiOS Digital Voice, FiOS TV, and FiOS Internet – that Verizon provides on an optional basis to customers over fiber.”

We filed in this proceeding and asked the following questions:⁵ Verizon never responded.

- Is this a replacement of the Public Switched Telephone Networks (PSTN), the state-based utility, copper-based networks, with a fiber optic wire?
- Is the wire being put in as “Title II”?
- Was this fiber optic wire paid for by local phone service customers?
- Did Verizon receive other funding that was supposed to be used for fixing the PSTN utility networks after Sandy?

There are more examples but the point is clear; Verizon needs a remedial course in the differences between a ‘service’ vs a ‘network’.

4) Verizon Delivers Legal Gobbledygook about Phone Service and Our Petition.

First, and foremost, let's correct Verizon — “POTS”, “Plain Old Telephone Service”, is not an “inter-state” service (a service that crosses state lines). POTS is an “intra-state” service, meaning a service within a state, and this definition has been in place for time & memorial.

“Verizon continues to provide interstate POTS services over its fiber facilities, at the same price and under the same terms and conditions as POTS over legacy copper facilities.”

⁴ <http://www.teletruth.org/docs/VerizonNYVaresponse.pdf>

⁵ For our filing and related documents: <http://newnetworks.com/verizonquick/>

But again, it is clear Verizon didn't read the New Networks Institute/Teletruth Petition. We never mentioned phone service in our Petition, except when local phone customers, who are paying for intrastate POTS service, had multiple rate increases to pay for "massive deployment of fiber optics". Verizon writes:

"Offering POTS over the network – and relying on our traditional telephone franchise for purposes of deploying networks that are still used to offer traditional telephone services – is irrelevant to the question of the regulatory classification for broadband Internet access services or what the best regulatory framework is to encourage continued investment in broadband/Internet access."

This is irrelevant. We never brought this topic up. The lawyers are simply attempting to add confusion.

But since Verizon brought this up, let us dig further about Verizon's voice services and the fiber networks. Verizon denies that its basic dial tone telephone service is a Title II Telephone Exchange Service offering. It argues that its tariffed telephone service is available upon request, but that FiOS Digital Voice service itself is some other kind of offering. That telephone service is of course a telecommunications service, properly subject to Title II. Verizon, and it is not alone in doing this, instead pretends that it is some kind of "voice over IP" service, simply based upon its use of IP internally. It is no such thing — Voice *over* IP is delivered *over* a third party's IP transport service. FiOS Digital Voice is Voice *using* IP, in which the loop plant and all switching remain property of the same parent company. By disclaiming even this obvious Title II responsibility, Verizon is evading its most basic responsibilities to state and federal regulators, even as it uses its Title II privileges to build its plant on advantageous terms.

5) Is Verizon Implying that the Reason Why the Fiber-to-the-Home Networks Are Title II Is Because It Is Deploying Phone Service?

Verizon's weak comeback is that it is somehow justified in "relying on our traditional telephone franchise for purposes of deploying networks that are still used to offer traditional telephone services". What Verizon is saying here is that because it provides

“interstate POTS”, a Title II service, over its fiber network, it is entitled to build this network under Title II authority and increase rates for telephone service to fund the project. Does Verizon really expect anyone to believe that it spent \$23 billion on a fiber network to provide plain old telephone service, which was being done just fine over copper? So POTS is the tail that wags the cable/broadband dog! This patently absurd claim is an insult to the FCC and the public it represents.

No; the fiber optic networks are for the delivery of cable and broadband service. We quote Verizon — The New Jersey cable franchise specifically states that the reason the FTTP networks are being built is for use of the cable service, NOT voice service.

Verizon New Jersey’s Cable franchise agreement, 2014⁶

“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.”

6) Verizon Admits it is Using the Traditional Telephone, Title II, Franchise.

Moreover, Verizon’s admission that it is “relying on its traditional telephone franchise” to build its fiber network substantiates our Petition’s claim that the company has violated the Communications Act rules for truthfulness by asserting Title II in the states, while bashing Title II before the FCC. What Verizon has never told the FCC is that without Title II it

⁶ http://www.verizon.com/about/community/nj_swf_renewal.htm

could never have constructed its fiber network and charged ratepayers of regulated services for something they never got. By contrast Verizon's July 15, 2014 comments in this proceeding state the following:⁷

“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.

“Applying Title II to the American broadband industry would be like tying a cinder block to the ankle of an Olympic sprinter in the midst of a race and then wishing her luck. 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 innovation, Title II and related proposals would only impede, not advance, the public's access to and enjoyment of the Internet.”

7) Title II as the Primary Investment Vehicle.

Which brings us to the use of Title II to charge local phone customers as defacto investors.

Verizon New York received multiple rate increases for “massive deployment of fiber optics”. As we quoted, in June 2009, the NY Public Service Commission (NYPSC) granted Verizon NY a rate increase for residential POTS customers. The NYPSC press release explains the rate increase was due to “massive deployment of fiber optics”.

“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’.” (Emphasis added).⁸

⁷http://publicpolicy.verizon.com/assets/images/content/07_15_14_Verizon_Verizon_Wireless_Open_Internet_Remand_Comments.pdf at pages 47 and 50

⁸ 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 (IMR and IFR) by \$1.95 per month*, State of

And in granting previous 2006 and 2008 rate increases, the NYPSC said that the fiber optic investments were a principle reason for the rate increases.

“This is especially important given the magnitude of the company's capital investment program, including its massive deployment of fiber... “⁹

POTS service never required “massive deployment of fiber optics”. It uses the existing copper wires, and in fact, the company had stopped doing major upgrades of the copper networks once it started to deploy FiOS in 2006 in all of its states.

And these weren't the only increases to POTS service customers as rates increased on every service 100-300%.

These increases were charged to ALL POTS customers as well as other increases on all small business services throughout the entire state of New York — i.e., all customers were charged for massive deployment of fiber optics including seniors, low income families, small businesses, etc.

And with an 84% increase on basic rate phone customers starting in 2006-2013, based on actual bills, customers paid over \$500.00 per line because of these increases.¹⁰

8) Title II as Investment: A Direct Contradiction to Verizon's Filed Statements with the FCC and a Massive Omission of Facts.

The facts, based on Verizon's own documents, or government agencies, reveal a massive duplicity on the part of Verizon Communications that continues to violate Section § 1.17 of the Commission's rules, which requires “Truthful and accurate statements to the Commission”.

New York, 6/19/09 <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={3C0D0FC7-606A-4CD3-B360-EA19179D2008}>

⁹ Cases 06-C-0897 - *Pricing Flexibility For Verizon's Business Services, and 07-C-0610 – Further Amended Tariff Filing of Verizon New York Inc. to Implement Pricing Flexibility for Non-Basic Services, Order Denying Request for 25% Pricing Flexibility and Allowing For a 10% Increase to Certain Business Rates* (Issued January 17, 2008).

¹⁰ See: *It's All Interconnected*”, May 2014, Published by Public Utility Law Project (ATTACHED)

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading...

The omission in every document filed in the Open Internet Proceeding, and all other FCC proceedings, of any statement that Title II is used for investments and that the fiber-to-the-premises networks are already Title II (which is then used to charge local phone customers as ‘defacto investors’), requires immediate investigation.

9) **Verizon: Show Us the Money**

Our supplement to the Petition will supply enhancements and more detail about the flows of money between and among Verizon’s affiliate companies and the state-based utilities, including Verizon New York.

- We have attached Part I as a supplement to this Petition. “**Verizon: Show Us the Money**”. **Part 1: Verizon’s FiOS, Fiber Optic Investments, and Title II**”
- Part 1 includes APPENDIX 1: Excerpts from our report “**It’s All Interconnected**”, published by Public Utility Law Project (written with the assistance of David Bergman, Esq.), in May 2014.

Conclusion:

Verizon’s Letter does not even bother to address the primary issue raised in the Petition — that Title II has been used as the primary vehicle for investment over the last decade, which contradicts every statement Verizon has made to the FCC claiming that Title II harms investment and innovation and is an obsolete mode of regulation. Verizon’s Response letter does nothing to rebut the allegations in the Petition that Verizon has made material misrepresentations and omissions in its filings and presentations to the FCC. New Networks Institute & Teletruth respectfully request the FCC immediately to commence an

investigation into Verizon's untruthfulness. We ask that this investigation be conducted on a notice and comment basis in this proceeding, so that the public will have an opportunity to substantiate the claims made in the Petition and that Verizon's misrepresentations will not further taint the decisions that the FCC will be making on Title II regulation.

We also request that the FCC initiate a hearing before an Administrative Law Judge so that the evidence and Verizon's rebuttal can be tested in a proper adversarial setting with in-the-record cross examination. Since the allegation is that Verizon is not truthful, the only way to reveal the truth is through formal testimony and cross examination. We are concerned that, as we have just witnessed, a "paper hearing" only encourages obfuscation and runaround, and wastes our valuable time and scarce resources.

And, as we mentioned in the beginning of this response, we have added a supplement to this Petition, requesting that the FCC investigate and has Verizon "Show Us the Money".

We leave you with quotes from Verizon about the harms to investment from using Title II.

In Verizon's filings with the FCC,¹¹ there are pages of quotes about harms to investment if Title II were imposed. There are no quotes about Verizon's use of Title II as the primary basis for its investments.

"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 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."

¹¹http://publicpolicy.verizon.com/assets/images/content/07_15_14_Verizon_Verizon_Wireless_Open_Internet_Remand_Comments.pdf

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“The prospect of 19th-Century price regulation and Title II’s other arcane requirements would stifle investment in and development of the Internet.

“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’.”

Bruce Kushnick, Executive Director

New Networks Institute

bruce@newnetworks.com

Tom Allibone, Director of Audits

Teletruth

Tom@teletruth.org

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