

**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

To: The Secretary

**NEW NETWORKS INSTITUTE & TELETRUTH
PETITION FOR INVESTIGATION**

Filed: January 13th, 2015

Summary:

This is an open and shut case. Verizon Communications, Inc. and its affiliates, including Verizon Wireless, have violated Section 1.17 of the Communications Act of 1934, by “intentionally omit[ting] material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading”.²

Simple to Prove: Compare these two statements by Verizon Communications, Inc., and the company’s affiliates.

² <http://www.law.cornell.edu/cfr/text/47/1.17>

New Networks Institute

The first excerpt is from a 2014 Verizon NY cable franchise agreement, and is similar, if not identical to every other Verizon state-based fiber-to-the-premises (FTTP) deployment.³

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.

The second excerpt is from Verizon's Open Internet Comments⁴ July 15, 2014

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.

PETITION FOR INVESTIGATION

New Networks Institute (NNI) and Teletruth file this Petition for Investigation of Verizon Communications, Inc., Verizon Wireless (DBA “Cellco”) and Verizon’s other state-based utilities, such as Verizon New York, Verizon New Jersey, et al, and Verizon’s other affiliate companies including Verizon Business and Verizon Online, among others. This Petition is brought in the Open Internet Proceeding, as Verizon made willful and repeated material misrepresentations to the Commission in GN Docket No. 14-28. The same is

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

⁴ http://publicpolicy.verizon.com/assets/images/content/07_15_14_Verizon_Verizon_Wireless_Open_Internet_Remand_Comments.pdf

New Networks Institute

also true in every FCC proceeding that included any Verizon submissions pertaining to fiber optic or copper infrastructure or services utilizing those facilities.

This petition is filed pursuant to Section 1.1 of the Commission's rules⁵. This Petition for Investigation incorporates our previous two comments and a letter filed in GN Docket 14-28.^{6,7,8}

The opening quotes reveal a key truth — that Verizon's Fiber-to-the-Premises (FTTP) used by Verizon's FiOS TV, Internet (Internet Service Provisioning, ISP), broadband and even digital voice services, is Title II, like the state utility phone networks (commonly known as the "PSTN", Public Switched Telephone Networks), which are Title II, common carriage, telecommunications networks under the Communications Act of 1934.

⁵ §1.1 Proceedings before the Commission. The Commission may on its own motion or petition of any interested party hold such proceedings as it may deem necessary from time to time in connection with the investigation of any matter which it has power to investigate under the law, or for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties or the formulation or amendment of its rules and regulations. For such purposes it may subpoena witnesses and require the production of evidence. Procedures to be followed by the Commission shall, unless specifically prescribed in this part, be such as in the opinion of the Commission will best serve the purposes of such proceedings.(Sec. 403, 48 Stat. 1094; 47 U.S.C. 403).

⁶ "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/titleshopping/>

⁷ "Verizon's FiOS Fiber to the Premise (FTTP) Networks are Already Title II in Massachusetts, Maryland, Florida, New Jersey, District of Columbia, Pennsylvania, New York..." Comment 2: Open Internet Remand Proceeding, GN Docket No. 14-28, July 18, 2014 <http://newnetworks.com/fiostitle2today>

⁸ **Letter:** "Dear FCC Chairman Wheeler, Commissioners, cc: Congress RE: Verizon's Fiber Optic Networks are 'Title II'—Here's What the FCC Should Do." Open Internet Proceeding, (GN No.14-28) <http://newnetworks.com/fcctitleiiletter/>

New Networks Institute

Punchline — Verizon’s Entire Financial Plan Is Based on Using Title II, and this has Not Changed Since Net Neutrality Became an Issue.

Our research reports,⁹ based on Verizon’s own financial reporting and other Verizon-authored documents¹⁰ have uncovered that Verizon’s entire investment in the fiber optic networks, including the wires to the cell towers for Verizon Wireless or the “special access” wires, is Title II. This is the basis of Verizon’s entire business plan. Using Title II allows the company not only to get utility rights-of-way, but as we will discuss and document, the use of Title II allows the company to get local phone customers to fund these investments of the fiber optic networks.

Verizon has claimed and continues to claim that Title II would harm the companies’ investments. However, this is in direct contradiction to Verizon’s own filings, statements, SEC and state-based filings, the companies’ cable franchise agreements — every fiber optic wire appears to be Title II.

Verizon continues to make statements in FCC proceedings opposing the use of Title II as a solution to “Net Neutrality” issues, that polyglot term pertaining to customers’ (and competitors’) use of the service known as the Internet or World Wide Web. This ISP service travels over networks that are already Title II. Moreover, the call

⁹ “It’s All Interconnected”, Published by Public Utility Law Project and written by New Networks Institute, with the assistance of David Bergmann. May 2014. The report details the financials of Verizon New York and the Verizon affiliate companies. <http://newnetworks.com/verizonfiostitle2/>

¹⁰ NNI reports are based on Verizon’s own SEC-based investor reports as well as Verizon New York’s extensive annual financial reporting to New York Public Service Commission, and the FCC’s previously published Statistics of Common Carriers.

to 'reclassify' them as "Title II" is simply redundant, at least in the case of Verizon's fiber optic and copper network infrastructure.

Verizon Claims that Title II Harms Investment.

There are pages of quotes in Verizon's own [Open Internet Proceeding filings](#) about the harms to investment if Title II were imposed.

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.

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.

And Verizon uses FiOS as that the 'investment' and claims it could only be done because the networks are NOT title II today.

"We invest in world-class broadband networks, such as our all-fiber FiOS network..."

This is Misrepresentation on a Massive Level, Not Some Trivial Point.

This massively deceptive practice of getting Title II benefits on the state level while impaling it on the federal level has nothing to do with either the multiple classifications of services over the wire or some miss-matching ‘investor tale’ with that of the companies’ reports to the FCC.

We are well aware of the use of multiple classifications, i.e., that the Title VI cable service, combined with a Title I Internet information service, can use a Title II network, but it is the flows of money that is at the crux of the issue here.

The “Title II” Issue is About the Flows of Money and the Use of Title II as a Cash Machine.

Verizon uses Title II to fund the infrastructure as “Title II”, which means it is part of the state-based utilities as a telecommunications network. This allows utility customers to get charged for ‘massive deployment of fiber optics’. Verizon also gets the rights-of-way from the state-based utility as Title II.

There are those who will argue that the networks can have multiple classifications of service over the same wire. While true, the issue of investment is about the flows of money. In at least New York State, Verizon’s Title VI cable networks were built as part of the existing telecommunications network and therefore the cable division paid little or no construction costs for the FTTP networks it uses to deliver its cable programming. Similarly, it appears that the fiber optic wires to the cell towers and the wires used for Internet service, were all installed as Title II facilities — i.e., the affiliate companies are

getting a free ride on the backs of local phone customers who were charged multiple rate increases in New York for “massive deployment of fiber optics”.

The “Janus” of Telecom

Janus was the two-faced Roman mythology figure.¹¹ While the name in the 21st Century can have multiple implications, the simplest is when a person is “two-faced” or duplicitous.

The facts reveal, then, a massive duplicity on the part of Verizon Communications that continues to violate Section § 1.17 of the Communications Act, which requires “Truthful and accurate statements to the Commission”.

(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 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. It is at the very heart of the current Net Neutrality/Open Internet proceeding, and other proceedings related to network infrastructure policy and practices.

¹¹ SEE: <https://en.wikipedia.org/wiki/Janus>

New Networks Institute

- Verizon has deceived the FCC, the courts and the public over and over, and it is time for the FCC not only to acknowledge this fact but to start investigations into the failure of Verizon to disclose critical, material facts.
- The FCC needs to examine the extent of the use of Title II today by Verizon for deployment of infrastructure used for broadband, Internet, phone and cable service.
- The FCC needs to examine the role of customers as ‘de-facto’ investors; how Verizon has used Title II to get rate increases on basic POTS (plain old telephone service) customers and tax perks.
- The FCC must examine the role of Title II and the other classifications (‘titles’) in allowing the manipulation of the flows of money between and among Verizon New York, the state-based utility, and Verizon Communications and Verizon’s other affiliate companies, including Verizon Online, Verizon Business, Verizon Services and most of all Verizon Wireless.

And this must be done with a focus on Verizon’s own statements, information, comments, reply comments, etc, made to the FCC as well as to the courts. The FCC must examine whether Verizon intentionally provided factual information that is incorrect, or intentionally omitted material information, in an effort to mislead the Commission concerning Verizon’s claim that Title II harms investments.

Did Verizon Commit Perjury?

Section 47 CFR 1.16 states:

“Unsworn declarations under penalty of perjury in lieu of affidavits.

Any document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person...

We ask the FCC to start an immediate investigation into the fact that Verizon has not once disclosed, as far as we can ascertain, any of the documents and information about their use of Title II, which we have uncovered and will highlight in the next section.

I. The Petitioners

New Networks Institute and Teletruth are no stranger to the FCC. We have collectively filed more than 70 occasions, including having our own pages at the FCC for our Data Quality Act complaints. As Teletruth we served on the FCC’s Consumer Advisory Committee in 2003-2004. Nationwide, Teletruth has acted as a leading advocacy group in telecommunications, having helped to establish multiple, successful, settled class action suits, and with our communications auditing group, Teletruth helped to recover over \$35 million in customer overcharging. In 2002, we worked with the Small Business Administration’s Office of Advocacy to create a Small Business Telecom Summit, and worked with Congressmen Nadler’s office to create proposed legislation, “The Broadband Bill of Rights”.

New Networks Institute

New Networks Institute, established in 1992, is currently a market research and consulting firm and has an assembled team of independent experts, analysts, communications auditors and lawyers. Teletruth was established in 2002 as an independent customer advocacy group and its advisors have worked on a variety of related projects, as well as put together public campaigns.

Unlike other groups, Teletruth and New Networks Institute are independent and have remained for-profit organizations. We are not funded by large corporations or political parties or other influencers. Over the last decade, we have been funded by research grants, such as from the California Consumer Protection Board, the sale of books and research, and expert witness, research and analysis in (mostly successful) telecommunications-related legal and regulatory challenges.

Over the last few years — We have worked with Fire Island NY residents to get their community wired with fiber optics by Verizon in 2014 (after Verizon had refused to fix the copper wire and forced the communities onto inferior wireless, VoiceLink). We worked with Stow Creek and Greenwich, New Jersey residents and helped to get their towns upgraded to fiber optics after they challenged Verizon, based on existing New Jersey state law. We worked with groups and citizens in Massachusetts, New York, New Jersey, Pennsylvania, Kentucky and other states providing data and analysis in the state-based deregulation efforts by the American Legislative Exchange Council (ALEC). In May 2014, Public Utility Law Project of New York (PULP) published a report written by New Networks Institute (with assistance from David Bergmann, Esq.). The research was used, in part, in a petition filed with the NY State Public Service Commission (“NYPSC”) in July 2014 by the Connect New York Coalition (including AARP,

New Networks Institute

Consumer Union, Common Cause) to investigate Verizon New York's financial cross-subsidies for wireless services.¹² Also, our filing pertaining to the Time Warner-Comcast merger was highlighted in the City of New York's comments on the topic with NYPSC in 2014.

And finally, we are focused only on telecommunications policy, competition, infrastructure, and communications billing issues, not media reform, or just Internet, or content issues, like copyright.

We advocate for Verizon customers who continue to be harmed in several ways by Verizon's material misrepresentations to the FCC. First, regulated ratepayers of Title II services are being forced to subsidize Verizon's unregulated services, which, due to Verizon's duplicity, are not classified as Title II. Second, customers of Verizon's Internet services are unfairly deprived of the benefits of Title II regulation and are unable to choose an Internet Service Provider (ISP) other than Verizon because Verizon will not permit interconnection with competing ISPs. Third, we advocate for small ISPs who are unable to serve Verizon customers because Verizon denies them access to their networks. The number of competing ISPs has shrunk over the last fifteen years, from 9,500 independent ISPs to a few hundred, because Verizon's (and SBC, now-AT&T's) material misrepresentations were a primary cause of the FCC's withdrawal of Title II regulation and continue to fuel its fight against the reinstatement of Title II.

¹² See: <http://newnetworks.com/2014/07/connectnypetition/>

II. Background

As the FCC stated:¹³

On December 23, 2010, the Commission released the Open Internet Order which established high-level rules requiring transparency and prohibiting blocking and unreasonable discrimination to protect Internet openness. The FCC's rules were challenged in federal court, and on January 14, 2014, the United States Court of Appeals for the District of Columbia Circuit affirmed the Commission's authority to regulate broadband Internet access service and upheld the Commission's judgment that Internet openness encourages broadband investment and that its absence could ultimately inhibit broadband deployment. The court upheld the transparency rule, but vacated the no-blocking and no-unreasonable-discrimination rules. The court also invited the FCC to act to preserve a free and open Internet.

In response, the FCC on May 15 launched a rulemaking seeking public comment on how best to protect and promote an open Internet. The Notice of Proposed Rulemaking poses a broad range of questions to elicit the broadest range of input from everyone impacted by the Internet, from consumers and small businesses to providers and start-ups.

III. The Fiber-to-the-Premises Networks Were Constructed as Title II and Funded by Customers.

1) Verizon Charged Residential Phone Customers for the Deployment of Fiber Optics.

In 2009 the NYPSC allowed Verizon New York to increase basic residential phone rates for “massive deployment of fiber optics”. According to the NYPSC,¹⁴ in June 2009:

¹³ <http://www.fcc.gov/openinternet>

¹⁴ 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

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).

This was not the first but the third such increase on residential rates — totaling an 84% increase on basic phone rates starting in 2006. There were also 100-300% increases on other related services, such as unlisted numbers or inside wire maintenance.¹⁵

Finding these increases started what has become a five-year investigation into Verizon's business practices by New Networks Institute's independent expert team and is continuing today as it relates directly to current telecom and Internet policy issues, including Net Neutrality.

2) Verizon NY's SEC Reports Details that the Networks are Telecommunications — I.E., Title II, and it Includes FiOS TV.

Here is a direct excerpt from Verizon NY's SEC 4th quarter report for investors for 2010; the language is similar, if not identical to all of the other Verizon territory holdings, including NJ, PA, MA, etc. It says — Verizon provides telecommunications services (Title II) and it includes the FTTP networks for FiOS TV.

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

¹⁵**See:** Verizon New York Basic Service Rates: 1980-2012
<http://www.newnetworks.com/NYCphonebills19802012.htm>

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. DESCRIPTION OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Description of Business

Verizon New York Inc. We have one reportable segment which provides domestic wireline telecommunications services. We currently provide three basic types of telecommunications services:

- *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).
- *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.
- In addition, we also provide fiber-to-the-premises services, operated under the FiOS service mark (FiOS TV), for residential and small business subscribers in certain areas.

Note: Nowhere does the Verizon SEC report discuss whether Title I or Title VI applies.

They don't; the networks are Title II.

3) **Even in the Verizon Cable Franchise Agreements, the FTTP Networks are Title II.**

In every state we examined, besides these SEC reports that details that the FIOS TV networks are based on telecommunications (Title II), Verizon also details that the FTTP networks that are used to offer cable services ("Title VI") are also based on Title II.

Verizon New Jersey's Cable franchise agreement, 2014¹⁶

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

¹⁶ http://www.verizon.com/about/community/nj_swf_renewal.htm

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.

4) **NY State PSC Decision: The FTTP Networks are Telecommunications.**

In a 2005 proceeding at the NYPSC,¹⁷ Verizon claimed the networks were Title II, telecommunications, and that it only needed to be classified as a cable company, 'Title VI', once the company was offering cable service.

Verizon claims that its FTTP network is not a cable television system as defined under federal and state law. Rather, Verizon asserts that it is conducting a network upgrade to its existing telecommunications system for voice and broadband services... Verizon argues that it has the requisite authority to conduct this upgrade under its existing state telephone rights.¹⁸

The conclusion of NYPSC was that Verizon's FTTP networks are Title II.

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.

This means that the FTTP networks are built first, then cable service is provided, which rides over these networks, and not the other way around.

¹⁷ <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7bc8acfcf6-6d31-4de8-be5b-6b8489cbb9aa%7d>

¹⁸ Id.

5) **Different ‘Titles’ Over the Same Wire are Used to Manipulate the Financials and Public Policies.**

There are many who commented that the services can have different ‘classifications’ over the wire. For example, Verizon’s cable TV service is classified as Title VI, while Verizon’s Online Internet service is asserted to be a Title I information service. But, if Verizon claimed that these networks were, say, a cable TV service (Title VI), then the networks couldn’t have been built using the telecommunications rights-of-way of the state utility nor have the construction budgets paid for by basic “POTS”, customers. In fact, the cable part of the company didn’t pay for the construction.

This is the summary written by the NYPSC in 2005, in response to Verizon’s claim that a) Verizon is building the networks as Title II, that b) it uses the telecommunications rights of way, and that c) it isn’t a ‘cable service’ until it ‘enters head-to-head competition’. We reproduce the entire quote to make this point clear.

Second, Verizon objects to the imposition of cable franchising requirements upon its FTTP network until Verizon actually enters head-to-head competition with cable companies, because Verizon is already subject to entirely different regimes. Verizon has already obtained the legal right to use the rights-of-way to upgrade and maintain its existing telephone system. Verizon has maintained its telecommunications network for years under its existing authorizations and consents. The record here suggests that Verizon has the requisite authority from local governments to use the public rights-of-way and that municipalities have sufficient legal authority over Verizon's upgrade activities as a telephone company to properly manage their rights-of-way. Verizon has represented in its pleadings that it is subject to local oversight. Municipal governance over rights-of-way is still in effect and Verizon must adhere to those requirements.

Accordingly, to the extent the network upgrade to further Verizon's telecommunication service is consistent with pre-existing rights-of-way

authorizations, and inasmuch as Verizon's activities are subject to municipal oversight and do not involve plant used exclusively for cable nor do they involve the offering of broadcast programming for hire, we do not construe Article 11 as mandating that Verizon must first obtain cable franchises to construct its FTTP network. Thus, we conclude that Verizon does not need to obtain a cable franchise at this time. However, should Verizon seek to install plant in its network that can only be used exclusively for cable or offer for hire broadcast programming, we conclude that Verizon's network would then constitute a cable television system requiring cable franchises prior to any further build-out.

IV. Conclusion

Bottom line — We caught the culprit red-handed. It is an open and shut case. Verizon either did or did not tell the FCC that their entire current investment in fiber optics is based entirely on using the Title II classification. Or that the Verizon companies have made phone customers ‘defacto’ investors by using Title II to make the networks telecommunications and therefore part of the state based utility. We allege that Verizon did deceive the FCC. These material misrepresentations taint every FCC decision and policy affecting Verizon’s regulatory status, but most importantly now the Open Internet Proceeding.

Accordingly, New Networks and Teletruth petition the FCC, pursuant to Section 1.1 of the Commission’s rules, to commence an investigation into material misrepresentations and omissions in violation of Section 1.17 of the Communications Act made by the Verizon companies to the FCC in the Open Internet and other Commission proceedings, seeking to skew the decision making process in Verizon’s favor.

New Networks Institute

Respectfully submitted,

Bruce Kushnick, Executive Director,

New Networks Institute

bruce@newnetworks.com

Tom Allibone, Director of Audits, Teletruth,

tom@teletruth.org

DATE: January 13th, 2015