5.0 Timeline: Tracking the "Massive Deployment of Fiber Optics" & "Losses".

In order to understand how all this has played out in New York State over the last decade — how the 'losses' were used to raise rates or as an excuse to stop building and maintaining the networks — we thought a timeline highlighting some of the critical points would be beneficial.

The Timeline and Primary Issues

Summary

- In 2004, Verizon announced its plans for FiOS, a group of phone, Internet, broadband and cable TV services that ride over a fiber optic network wire.
- In 2005, Verizon was able to get the New York State Public Service Commission (NYPSC) to agree that the fiber optic wire was simply an upgrade and enhancement of the existing NY State telecommunications utility. In fact, all of Verizon's fiber optic networks are classified as a telecommunications, "Title II", "common carriage" service under the Communications Act of 1934.
- Starting in 2006, the NYPSC granted Verizon deregulation and started the process of multiple rate increases on residential as well as business customers' basic phone service; ancillary services were allowed to increase to 'market pricing'.
- The NYPSC claimed that Verizon needed rate increases and deregulation for two primary reasons — building broadband infrastructure and financial losses, which were being caused by competition and was evidenced by access line declines.
- In 2008 and 2009, Verizon was granted two additional rate increases based on "massive deployment of fiber optics" and financial losses.
- In 2010, Verizon Corporate announced it was no longer going to upgrade customers with fiber optic service unless there is an existing, unfulfilled agreement.
- In 2012, Verizon Corporate announced it was going to 'kill the copper' and shut off the networks in unupgraded areas and force-migrate customers onto wireless or in upgraded areas, force-migrate to FiOS.
- In 2015, the NYPSC is revisiting the last decade of telecommunications and its Staff has published a report. Unfortunately, the Commission never audited the company or conducted a major telecommunications proceeding. The NYPSC is also addressing the Petition by Connect New York Coalition (which was based, in part, on previous NNI reports).

2004-2005

Verizon Announces FiOS, a Brand of Services

Verizon announced that a fiber optic network would be created to deliver FiOS, a brand name for a group of services that includes broadband, Internet and cable TV. Verizon claimed that it will be built out to reach 18 million households nationwide, and the company would be spending $23 billion, with a proposed completion by 2011-2012. This ‘broadband carrot’ was used for multiple state and federal changes in policies, laws and regulations.[11]

Subplot: FiOS was announced to get the FCC to close the state utility networks, including any fiber optic upgrades, to all competition, it would allow Verizon to purchase MCI, which was then an independent company, and it would consolidate all of its services over the wire, sometimes referred to as a ‘vertical integration’ of products. (SBC, like Verizon, also wanted to shut down competitors from using the networks and to purchase AT&T; SBC would merge with AT&T and take the name. SBC/AT&T announced “U-Verse” around the same time. It was supposed to be a fiber optic service, but instead it is based on the exiting copper wires.)

2005

In 2005, Verizon Starts Promoting FiOS TV to Municipalities.

In 2005, Verizon tells the NYPSC that it is going to serve millions of New Yorkers, if only the NYPSC would just let the fiber optic networks be part of the state utility.[12] This is an excerpt of the original text. Notice it specifically states that this fiber optic network is “upgrading the existing network”.

INTRODUCTION

The legal question before the Commission is both narrow and straightforward. According to Petitioners, Verizon is prohibited from upgrading its existing network to provide improved telecommunications and information services to millions of New Yorkers until it obtains cable television franchises from the localities in which it already offers ubiquitous telecommunications and information services. Federal and state law, however, are unambiguously to the contrary.

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[11] See: “The Book of Broken Promises: $400 Billion Broadband Scandal & Free the Net”.

[12] http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C0FB1F9F-3880-417A-BAFE-EEF87DEB210D}

Verizon's Fiber Optic Networks are "Title II" and Part of the State Utility.

Verizon went to NYPSC and said that the Fiber-to-the-Premises, FTTP networks, are an enhancement and upgrade to the existing state telecommunications utility networks, and are classified as "Title II", "common carriage" networks, based on the Communications Act of 1934. This is commonly known as the "PSTN", Public Switched Telephone Network, and traditionally has been mostly based on a copper wire. This would also give Verizon the benefit of using the telecommunications rights-of-way.[13]

In 2005, the NYPSC Agrees with Verizon, Making the Fiber Optics Networks "Title II".[14]

This is an excerpt from the original decision.

> **On June 15, 2005, the New York Public Service Commission ("NY PSC") "declared that Verizon NY'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." The NY PSC determined that, unlike a company seeking to build an unfranchised cable television system, Verizon NY already has the necessary authority to use the rights-of-way to provide telecommunications service over its existing network. *See* Declaratory Ruling on Verizon Communication, Inc.'s Built-Out of its Fiber to the Premises Network, NY Public Service Commission, Case 05-M-0520/05-M-0247, June 15, 2005 at 4.**
>
> **As more fully described in Exhibit 1, Verizon NY maintains that it is constructing its FTTP network pursuant to its authority as a common carrier under Title II of the Communications Act of 1934, as amended, and Section 27 of the New York Transportation Corporations Law. For this reason and others, certain terms and conditions may differ between the incumbent cable provider's franchise and Verizon NY's franchise.**

2005-2006

Verizon NY Receives Major Deregulation of Services and Less Obligations.

(**NOTE:** There are two main incumbent utility phone companies in New York; Verizon and Frontier. The deregulation discussed in this part applies to both companies.)

In 2005, Verizon applies for major deregulation of most services and the NYPSC grants the request in 2006, in an Order referred to as "Comp III". Except for 'basic' phone

[13] http://newnetworks.com/verizonasutility2005/

[14] Ibid.

service, most of the other services could have “market pricing”, i.e., whatever they wanted to charge — with some caveats.

The idea was to give “regulatory” flexibility, meaning the companies can do what they want about the pricing of most non-basic services, such as nonlisted numbers and Caller ID.

Verizon claimed that there was plenty of “intermodal competition” and it needed a ‘level playing field’. The NYPSC claimed that raising rates and making the cost of service reflect the company’s reported cost to offer the service, was the way to do this.[15]

The NYPSC also claimed that this new regulatory freedom would bring investment in infrastructure (FiOS) and help stem Verizon’s financial losses. (There are two overlapping documents: the Order to raise rates, commonly referred to as “Comp III” and the press release.[16,17])

NYPSC Uses Infrastructure Investment as a Main Reason for Rate Increases.

One of the reasons to grant deregulation was to have the incumbents, Verizon and Frontier, build out infrastructure — for Verizon it was FiOS. The NYPSC Order and press release in 2006, make multiple references to this.

Notice these phrases in the following quotes: “Investment in the state telecom infrastructure”, “proper market-based incentives to invest in infrastructure” and “encourage economic investment in the state telecom infrastructure”.

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[15] Essentially, “intermodal competition” is a term that usually refers to the cable and phone companies being the primary competitors and all of the other competitors, from independent ISPs and CLECs are removed or severely hampered. This is as opposed to “open networks” that was part of the Telecommunications Act of 1996 which allowed competitors to rent parts of the network, (including the use of a phone line) to offer their own Internet, broadband, phone or even cable services. In 2001, the FCC created a series of interlocking orders known as the “Triennial Review”, to remove competitors from the networks. See: “The Book of Broken Promises”

[16] Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services. STATEMENT OF POLICY ON FURTHER STEPS TOWARD COMPETITION IN THE INTERMODAL TELECOMMUNICATIONS MARKET AND ORDER ALLOWING RATE FILINGS, CASE 05-C-0616, NYPSC (Issued and Effective April 11, 2006)
http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={DE5DAC8C-CB50-4CAE-90BE-A5A56DB6DE99}

[17] Commission Adopts Telecommunications Policy Framework to Address Changing Industry Dynamics, Case 05-C-0616, NYPSC, April, 11, 2006
http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={BBB737DE-69AE-4E98-978D-61475362A027}

Some quotes:

> "The Commission's policy is designed to encourage infrastructure investment to promote network reliability and preserve the existing network, strengthen service quality and promote the emergence of new services."
>
> "The Commission undertook this comprehensive examination of the policies, rules and practices governing telephone service in New York with the goal of establishing a more flexible and symmetrical regulatory framework that will promote innovation, increase consumer benefits, encourage economic investment in the state's telecommunications infrastructure."
>
> "Commissioner Thomas Dunleavy said, 'The information economy requires widespread access to flexible telecommunications applications that facilitate economic development and investments in jobs from the private sector. Achieving that objective requires a level playing field where all telecommunications providers have the proper market-based incentives to invest in infrastructure'."

The NYPSC Granted Rate Increases Based on Losses — But Verizon Never Asked for Rate Increases Based on the Losses.

This is the most bizarre part of the story. Verizon is 'losing money', but as the quote below highlights, Verizon never went to the NYPSC to raise rates for the losses.

> "We conclude that Verizon-NY and Frontier Telephone of Rochester, Inc. (Frontier of Rochester), in particular, have lost significant market share and are losing dominance and market power. This circumstance is apparent from the fact that they are **experiencing dramatically lower earnings and in the case of Verizon operating losses.**
>
> **"Verizon has not come to the Commission for major rate changes to redress the situation since the end of the Verizon Incentive Plan in March 2004.**
>
> "It is our responsibility to balance interests in setting rates, and despite comments to the contrary, New York's wireline business is under substantial competitive financial pressure. It thus seems clear that the arrival of intermodal competition has affected the customer/investor balance to the detriment of the legacy carriers. The wireline losses cannot long continue before serious problems will arise in the

> maintenance and operation of the legacy infrastructure. Accordingly, we believe the appropriate balance in this instance is to permit Verizon and Frontier of Rochester to raise the monthly charge for the access line portion of message rate service. Similarly we will allow Verizon to gradually raise existing flat rate basic service rates up to a statewide cap rate, and to retain any additional revenues generated by the increases from both the message rate and flat rate services." (Emphasis added)

The NYPSC Did Not Audit the Books or Make Them Public.

First, a footnote from the Order states that the New York Attorney General's Office pointed out that Verizon did not ask for the rate increases because it wanted to get "around a formal rate proceeding".

> "The Attorney General of the State of New York) (DOL) charges that the rate increases proposed here are an improper shortcut around a formal rate proceeding."[18]

The Attorney General of the State of New York ripped at the NYPSC, which had issued a report about the market and the increases. The AG found that the companies didn't present a real proposal of rate increases; there was insufficient evidence, no independent public examination, and the rates were not supposed to be tied to the company's revenues and profits.

> "No affected telephone company presented the proposal sketched in the Staff White Paper. In fact, Staffs proposed rates are greater than some of the rates recently requested in a tariff filed by Verizon, the state's largest regulated incumbent.
>
> "The record evidence is insufficient to justify such across-the-board rate changes, and this proceeding, to date, has not allowed the parties to adequately examine the proposed new rates.
>
> "For example, Verizon's financial performance data has not been subjected to examination by interested parties, and has not even been vouched for under oath by a Verizon witness. Staff relies upon an assessment that Verizon's financial condition requires these increases. Yet, Verizon voluntarily chose to divorce earnings from rates when it agreed to the Performance Regulatory Plan in 1995, and again more recently with adoption in 2002…

[18] See footnote 6

> "Instead, formal hearings with sworn testimony and a reasonable opportunity for examination of providers' financial data pursuant to Public Service Law §§91 and 92 should precede the adoption of any significant rate changes. Even If the Commission believes that the days of full- blown rate proceedings are past, prudence requires development of a record considerably more substantial than the high-level conceptual analysis and theoretical approach that has been applied thus far in this proceeding." [19]

2008

Verizon is Granted a Second Rate Increase in 2008.

In 2008, the NYPSC granted the second rate increase, again based on "massive deployment of fiber optics" and "losses". And again, in 2008, Verizon "explicitly refused to make its case on financial need".[20]

> "And, moreover, it makes sense to allow Verizon to fund its capital program through increases to relatively inelastic customers (in much the same way exchange access was subsidized by pricing custom calling features and other non-basic services far above cost). Nor is it too little: Verizon explicitly refused to make its case on financial need and we could simply deny the requested relief. For the reasons set forth above, Verizon will be allowed to make tariff filings to increase rates for these services."

2009

Verizon Receives a Third Rate Increase for "Massive Deployment of Fiber Optics" and Financial Losses.

For the third increase, which occurred in June 2009, Verizon filed a 2-page letter, with attachments — that's it.[21]

In the discussion, Verizon characterizes the FiOS build out as "an advanced voice/video/data network".

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[19] http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D6B4AB39-B159-4F5E-BC70-01E347801A1B}

[20]

[21] http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={8AD98EB0-80A2-420C-9CFD-ED6E011E9CBB}

And most important, Verizon does not mention it is losing money but quotes the NYPSC that addresses Verizon's own financials.

Excerpt from Verizon's request for a rate increase:[22]

> This price increase will generate needed additional short-term revenues for Verizon, as the company faces the dual financial pressures created by competitive access line losses and the costs of building out an advanced voice/video/data network in the State. As the Commission has noted, Verizon's financial condition is "relevant" when the Commission considers pricing changes because "the state has an interest in a viable company. This is especially important given the magnitude of the company's capital investment program, including its massive deployment of fiber." "There seems to be little question that the company is in need of financial relief; Verizon [New York] reported an overall intrastate return of a negative 4.89% in 2006 and its reported intrastate return on common equity was a negative 73.6%."[3] For 2007, Verizon reported an overall intrastate return of negative 6.24% and an intrastate return on common equity of negative 46.0%.
>
> Moreover, this price change will encourage the migration of customers towards higher-value service bundles, consistent with the trend toward bundled service offerings in the market as a whole.

And there is a curious note added to the Verizon letter above — Verizon's plan will encourage customers to pay more via "higher-value service bundles", which is a euphemism for when the customer goes to FiOS, the company can upsell them and make more money, which we documented in statements made by Verizon's CEO and CFO.[23]

Verizon's quote references the original language of the State-granted 2008 rate increase.

> "Cases 06-C-0897 and 07-C-061 0, "Order Denying Request for 25% Pricing Flexibility and Allowing for a 10% Increase to Certain Business Rates" (issued and effective January 17, 2008), at 13-14 (emphasis in original). The Public Service Law requires the Commission to consider a regulated company's ability to earn a reasonable rate of return in considering price changes. See Pub. Serv. L. §§ 97(1), 114."

Notice: Verizon is a 'regulated' company.

[22] Ibid.

[23] http://www.huffingtonpost.com/bruce-kushnick/want-to-know-what-verizon-and-att-really-tell-their-investors_b_4640640.html

2010-2012

Verizon Stops the Deployment of FiOS.

Verizon made announcements that it will no longer be upgrading most of their territories, except where there are existing requirements, starting in 2010, but most of the discussion happened in 2012.

Stop the Cap, writes:[24]

> "Verizon Won't Expand FiOS Beyond Current Franchise Obligations, CFO Tells Investors, September 25th, 2012.

[24] http://stopthecap.com/2012/09/25/verizon-wont-expand-fios-beyond-current-franchise-obligations-cfo-tells-investors/