

**PART VIII Case Study of One State — New Jersey****Chapter 43 Case Study: Opportunity New Jersey — A  
Broadband Failure<sup>635</sup>**

In order to get the full scope of this broadband journey, here's a complete picture of how it all played out in one state — going through the alternative regulation cycle, the merger cycle, the statewide cable franchise cycle, the 'refusal to fix the networks after a storm' cycle, and finally ending with the current planned ALEC-based deregulation campaign to remove all regulations and obligations, including the provision of even basic phone service.

And you can say it all started in Jersey. Opportunity New Jersey was the first of the "Opportunity" alternative regulation plans. More importantly, New Jersey Bell was going to lead the nation and be the "first fully fibered state". *The New York Times*<sup>636</sup> in 1991, which tracked the New Jersey story from its inception, wrote:

"A \$1 BILLION plan by New Jersey Bell to make New Jersey the first state to have fiber-optic communications available to virtually every household and business..."

"With fiber optics, New Jersey Bell officials say, they can create a vast network of high-speed audio, video and data services that will revolutionize the way residents and businesses in the state communicate."

"Mr. Bone, president of New Jersey Bell said a 'fully fibered network would provide consumers with unprecedented access to information and entertainment services and would encourage economic development as well'."

**Opportunity New Jersey: Bring on the Fanfare.**

It's 1991 and Al Gore's insistence that the country needs an information superhighway is everywhere. And in March of 1991, the findings of a report written by Deloitte & Touche on behalf of New Jersey Bell were presented to politicians and government regulators, from the Governor on down. Dubbed "Opportunity New Jersey", it stated that New Jersey needed to implement "policies that encourage development of an advanced telecommunication infrastructure". In fact, the study stated that fiber optics was essential for New Jersey's future.<sup>637</sup>

- "(fiber optics is) essential for New Jersey to achieve a high level of employment and job creation in that state",
- to "advance the public agenda for excellence in education",
- to "improve quality of care and cost reduction in the healthcare industry."

This rhetoric was also repeated by the phone company. Alfred C. Koepee, Vice President of New Jersey Bell, said the plan was New Jersey's future, building new networks to create jobs.<sup>638</sup>

"You have a choice as a regulator. You can move into the future, or you can put through a 10-cent reduction in somebody's bill. It makes a lot of sense to build the new technology to create new jobs."

According to an article by Rick Linsk titled "All the Right Connections — New Jersey Bell and the Wiring of a Regulatory Bonanza" in *The New Jersey Reporter*, the series of events that led to the passage of Opportunity New Jersey by the state legislature and endorsement by the state utility commission was due to one of the most masterful lobbying jobs in the state's history. According to Rick Linsk:

"Above all, though, credit goes to a combination of muscle and merit and to one of the savviest, most complete and aggressive lobbying efforts ever to accompany a public issue in New Jersey. For nearly a year, Bell missionaries had swarmed over the state spreading the gospel of fiber optics to doctors, teachers, labor leaders, the (Governor) Florio Administration and the Legislature. It is now clear, in retrospect, that the hard-sell worked so well, and the connections forged by top-flight influence-peddling ran so deep, that Bell had won long before the first vote was cast.

"When the dust had settled, the Bell had spent \$640,000 on lobbying, a huge sum by New Jersey standards. For comparison's sake, Bell spent \$79,079 the year before." (Note: This figure does not include the Deloitte & Touche study.)

Others, such as Nancy Becker of the New Jersey Cable Association, believed that the Deloitte & Touche study, at a cost of \$1.2 million, was nothing more than a lobbying document.<sup>639</sup>

"It was basically a lobbying document with the imprimatur of the board (Utility board) on it. It was a million-dollar lobbying document."

According to Linsk, other critics made it clear that the Board of Regulatory Commissioners (BRC), specifically Chairman Edward Salmon, was perceived as "too tight" with the Bell company.<sup>640</sup>

"Arthur Cooper, president of a pay-phone company that competes with the Bell: 'This is my opinion, but if everybody in the room was blindfolded, and without being introduced if he (Salmon) read his testimony, they would have thought he was not from the BRC; they would've thought he was from Bell'."

In 1992, the Telecommunications Act of 1992<sup>641</sup> was passed by the state legislature and in April of 1993, the New Jersey Board of Regulatory Commissioners, (now the Board of Public Utilities) officially implemented Opportunity New Jersey, with a few other closing alterations later.<sup>642</sup>

What exactly was the plan? The old copper wiring of the Public Switched Telephone Networks (PSTN) was going to be replaced with a fiber optic wire. The existing copper wire, that was mandated by the Telecommunications Act of 1934 and the updated 1996 Act, guaranteed that everyone could receive service — and in the state of New Jersey that was going to become fiber optic-based broadband, as standard.

The New Jersey Alternative Regulation Plan made this clear:<sup>643</sup> The phone line for voice was to be a fiber optic landline for video and data.

"NJ BELL'S PLAN FOR AN ALTERNATIVE FORM OF REGULATION MAY 21, 1992 — NJ Bell's plan declares that its approval by the Board would provide the foundation for NJ Bell's acceleration of an information age network in New Jersey and was referred to by NJ Bell as 'Opportunity New Jersey'... Opportunity New Jersey would ...accelerate the transformation of NJ Bell's public switched network, which today transports voiceband services (voice, facsimile and low-speed data), to a public switched network, which transports video and high-speed data services in addition to voiceband services."<sup>644</sup>

Moreover, according to the Order,<sup>645</sup> \$1.5 billion was to be spent from 1992-1999 to do these upgrades; that amount being increased one-half billion dollars before the law was finally passed.

#### **Speed Mattered and Deployment Was Set.**

In 1993, the plan was NOT for DSL, which travels over the old, existing copper wiring, but for a new, rewired network and connections to the home and office with fiber optics.

Regarding speed, the State Commission Order quotes testimony given by Verizon (then New Jersey Bell). Broadband was 45 Mbps services (or higher) that was capable of “high definition video” in both directions.<sup>646</sup>

“Broadband Digital Service — Switching capabilities matched with transmission capabilities supporting data rates up to **45,000,000 bits per second** (45 Mbps) and higher, which enables services, for example, that will allow residential and business customers to receive high definition video and to send and receive interactive (i.e., two-way) video signals.”

And the deployment schedule, as outlined in the next exhibit, was also part of the Order. The BAU (business as usual) is the deployment schedule without the new plan being in place, while ONJ (Opportunity NJ) is what would be deployed if the plan went through. For example, the old plan would have AIN (Advanced Intelligent Network) services starting in 1992 and 100% would be implemented by 2001. Under ONJ, the work would start in 1992 but be completed in 1998, saving three years. (‘Initial’ is when the project would start and the next line is when it would be finished.)

More to the point, under the new plan, “Wideband Digital Service” would have a speed of 1.5 Mbps and there would be 100% deployment by 2000, while the “Broadband Digital Service” would have speeds of 45 Mbps and would start in 1996 and be completed by 2010. Without the plan, “broadband” would be delivered by 2030.

**EXHIBIT 100**

**NJ Bell Advanced Network & Broadband Deployment Schedule,  
1993**

Verizon New Jersey Time Line of Broadband Deployment, 1992-2010

BAU -- Business as Usual  
ONJ -- Accelerated Deployment

	BAU	ONJ
<u>Advanced Intelligent Network (AIN):</u>		
Digital switching and signaling systems deployed to provide call routing and database access services, which enables "follow me" type services, for example, that allow customers to program the public switched network to forward their calls automatically to different locations depending on the time of day.	Initial: 1992 100%: 2001	1992 1998
<u>Narrowband Digital Service:</u>		
Switching technologies matched with transmission capabilities to support data rates up to 144,000 bits per second which enables services, for example, that will meet the requirements of customers who use any combination of work stations, personal computers, FAX machines and telephones.	Initial: 1992 100%: after 2001	1992 1998
<u>Wideband Digital Service:</u>		
Switching technologies matched with transmission capabilities to support data rates up to 1,500,000 bits per second, which enables services, for example, that will allow students to remotely access multimedia information, including video, from home or school.	Initial: 1994 95%: undetermined but before 2030	1994 2000
<u>Broadband Digital Service:</u>		
Switching technologies matched with transmission capabilities support data rates up to 45,000,000 bits per second and higher, which enables services, for example, that will allow residential and business customers to receive high definition video and to send and receive interactive (i.e., two way) video signals.	Initial: 1996 100%: 2030	1996 2010

**384 Channels of Video: The Video Dialtone Commitments**

Around the same time that Bell Atlantic New Jersey was pitching the state, Bell Atlantic also put in requests with the FCC to offer video dialtone services for Dover Township, New Jersey. Bell Atlantic committed to 384 channels of services.

“The Commission’s grant is conditioned on the requirement that any video dialtone service offered after January 3, 1995, have available 384 channels of capacity and that all video programmer- customers pay the Tariffed rates filed with and approved by the FCC.”<sup>647</sup>

And it is clear from Bell Atlantic’s releases that this network was tied directly to Opportunity New Jersey with “all” of the customers getting interactive video “during the next several years”. That’s 1996-1997, not 2006-2007.

“This video dialtone network is significant to New Jersey because it reaffirms the state’s historic leadership in introducing new telecommunications technology that benefits consumers, the economy and quality of life. Under Bell Atlantic-New Jersey’s Opportunity New Jersey plan, we will offer interactive video capability to all of our customers during the next several years.”<sup>648</sup>

The FCC materials clearly demonstrate that the plan was for new fiber-based networks, not simply a rehash of the old copper wiring.<sup>649</sup>

“New Jersey Bell states that the video signal will travel over *fiber optic cable to the curb* and over coaxial cable from the curb to the home.”

**“Common Carrier” Provisions Were Included to Make Sure the Networks Were Open to Competitors.**

The FCC’s video dialtone decisions clearly laid out that these networks had “common carrier” provisions for use by competitive services. Common carrier means open to competitors for the public interest.<sup>650</sup>

“In the Video Dialtone Order, released in August 1992, the Commission established the video dialtone regulatory framework. The Commission defined video dialtone as the provision of a basic common carrier platform to multiple video programmers on a non-discriminatory basis. A 'basic platform' is a common carriage transmission service that enables customers to gain access to video programming carried on that platform. If a local telephone company provides such a basic platform, it may also provide enhanced and unregulated services related to the provision of video programming.”

The Commission also made sure that these networks would not be funded through customers or discriminate against competitors by the companies controlling the wires.<sup>651</sup>

“The Commission granted the application subject to conditions that will help protect against improper cross-subsidization and discrimination by New Jersey Bell, and help ensure that sufficient video dialtone capacity is available for video programmer-customers.”

The issue of keeping the networks open to competition was repeated page after page in the state Commission’s decision. “Unbundling” means to make competitive services available by selling necessary components of the network for the use by a competitor.<sup>652</sup>

“Staff submits that the unbundling provision must apply to all competitive services and not just for new filings to make a service competitive....”

“The Board FINDS’ that it is essential that this Board encourage optimal use of the public switched networks, and that therefore NJ Bell shall be required to unbundle all noncompetitive service into service arrangements... so that competitors may market such services.”

#### **The Outcome — Opportunity for the Bell, 1997**

According to the NJ Advocate:

"low income and residential customers have paid for the fiber optic lines every month but have not yet benefited."<sup>653</sup>

According to a brief filed by New Jersey's consumer advocate (Division of the Ratepayer Advocate) with the New Jersey Board of Regulatory Commissioners (BRC), on March 21, 1997:<sup>654</sup>

"Bell Atlantic-New Jersey (BA-NJ) has over-earned, underspent and inequitably deployed advanced telecommunications technology to business customers, while largely neglecting schools and libraries, low-income and residential ratepayers and consumers in Urban Enterprise Zones as well as urban and rural areas."

So much for the promise of the Info-bahn. The original rate of return regulation was replaced by Opportunity New Jersey, an alternative regulation plan that was based primarily on the promise of "greatly accelerated deployment of advanced technologies... approximately \$1.5 billion above current expenditures".<sup>655</sup>

"The ONJ (Opportunity New Jersey) plan replaced traditional rate-base/rate of return regulation with an incentive ratemaking system in exchange for a commitment from BA-NJ to greatly accelerate deployment of advanced technologies in its communications network to the entire State by the year 2010 at *an estimated additional capital expenditure of approximately \$1.5 billion above 'business as usual' from 1992 through 1999*. Through the incentive of alternative regulation under the ONJ Plan, BA-NJ was given the financial flexibility to operate in the new competitive telecommunications market in exchange for commitments to upgrade the network in order to realize 'positive benefits' to the New Jersey economy."

In fact, according to the Advocate, the Bell company only spent \$79 million, not the \$1.5 billion promised.<sup>656</sup>

"Although BA-NJ projected that it would expend approximately \$1.5 billion in network investment above 'business as usual' by the end of 1999.... However, the Ratepayer Advocate has calculated that *BA-NJ has spent a total of \$79 million above 'business as usual' over these years.*"(1992-1995)

More to the point, the actual dollars spent on construction dropped below normal levels from 1992-1995.<sup>657</sup>

"BA-NJ can hardly be characterized as having made capital expenditures beyond 'business as usual' during the first three years of ONJ (1992-1995). Indeed, in constant 1987 dollars, the company's capital expenditures have actually decreased."

How did Bell Atlantic prosper from the plan? By 1997, almost one billion dollars of excess profits and a return on equity almost twice what a regulated monopoly should be making was their reward.<sup>658</sup>

"Since the time of the adoption of the ONJ Plan, BA-NJ has received enormous financial benefits, greatly in excess of the Company's original projections. The gains captured by BA-NJ, which probably would not have been achievable but for the Plan, as set forth immediately below, involve earnings, dividends, return on equity, cost of debt and additional benefits."

During this period (1992-1995):

- "BA-NJ paid out an additional \$954.8 million in dividends\* over what was projected in 1992." (1992-1995)
- "The Company is earning a return on equity in excess of 21%, well above the average New Jersey State utility rate of return (11.25%) and substantially higher than any rate of return authorized by the Board in recent memory."
- "Net earnings have increased by \$85 million; its cost of debt has declined substantially, resulting in an annual savings of \$22 million in interest expense."

\*Dividends, in this case, are the monies that New Jersey Bell paid to Bell Atlantic, the holding company.

#### **Uh-Oh, Another Billion Owed? What about the Massive Network Write-Offs?**

The Advocate found that Bell Atlantic-NJ's dividends were excessive and that the return on equity had doubled, but there was another billion dollars of extra profits that they didn't include. It was accrued from a massive network write-off, based on a

change in accounting, a change that was implemented because of Opportunity New Jersey.

"Depreciation" is a business accounting term that describes how a company writes off its construction expenses. We explain this issue in more detail in other sections. Essentially, by accelerating the write-offs, the Bell companies were able to garner billions in basically free cash being generated by a major savings in taxes. This cash was supposed to be used specifically to build the fiber optic highway but virtually nothing was ever built.

More to the point of our story, in examining the 1994 Bell Atlantic-New Jersey Annual Report we find that with the implementation of Opportunity New Jersey, the telephone company changed its accounting principles and took additional write-offs, adding over \$1 billion in free money. This accounting change is called "FAS 71" for "Financial Accounting Standard 71".<sup>659</sup>

#### EXHIBIT 101

##### Bell Atlantic New Jersey, Write-Off Bonanza, 1994

(In the millions)

Increase in plant and equipment depreciation reserve	\$946
Other regulatory assets and liability elimination	\$67
Total	\$1,013

*Source: New Jersey -Bell Atlantic Annual Report 1994*

This billion dollars was applied to income tax and so the company showed the charges as a savings of \$423 million in taxes and a charge of \$589.7 million in extra cash.<sup>660</sup>

*"In connection with the decision to discontinue regulatory accounting principles under Statement No. 71, the Company recorded a noncash, **after-tax extraordinary charge of \$589.7 million, which is net of an income tax benefit of \$423.2 million.**"*

Make no doubt about it; these savings were accrued because of Opportunity New Jersey.<sup>661</sup>

"The Company's determination was that it was no longer eligible for continued application of the accounting required by Statement No. 71. It was based on the belief that the convergence of competition, *technological change (including the Company's technology deployment plans)*, actual and potential regulatory, legislative and judicial actions, and other factors were creating fully open and competitive markets."

**Other Analyses Demonstrate Verizon's Ability to Benefit from ONJ at the expense of Customers.**

The Advocate's report was not the only data to show that Verizon New Jersey had essentially gamed the regulatory system in order to make more money. A study done by Economics & Technology found many of the same issues — a failure to invest coupled with cuts in expenses and new profits, and the only opportunity was to New Jersey Bell, not the customers.<sup>662</sup>

"The state's current regulation system, which was authorized by the New Jersey legislature in its 1992 *Telecommunications Act*, offers Bell Atlantic-New Jersey, Inc. (BA-NJ) expanded pricing flexibility and the opportunity for significantly increased earnings in exchange for a commitment by BA-NJ to substantially increase its level of investment in New Jersey's telecommunications infrastructure under the so-called 'Opportunity New Jersey' (ONJ) Plan.

"In the five years following the Board of Public Utilities' adoption of the ONJ Plan, BA-NJ has enjoyed major financial benefits even though it has not increased its investment as promised and has opposed competition at every turn. The increased pricing and earnings flexibility coupled with reduced investment and continued monopoly pricing practices has enabled

BA-NJ's profits to soar under alternative regulation. Consumers clearly have suffered under the ONJ Plan from unnecessarily inflated prices for many services, and have received few benefits in the form of new services and increased competitive choices."

The report continues: "Since the adoption of the ONJ Plan in 1993:

- "BA-NJ's financial return on equity (ROE) jumped from 22% to almost 40%.
- "Rather than put those profits back into its telecommunications infrastructure, BA-NJ actually *disinvested* some \$76-million between 1993 and 1995." ("Disinvestment" is to write-off more than you put into new construction.)
- "BA-NJ has paid increasing dividends to its parent holding company since 1993, and in fact, BA-NJ's dividend payments to Bell Atlantic Corp. are among the highest, on both a relative and an absolute basis, of any BA operating company.
- In 1997, BA-NJ provided a \$559-million dividend to its parent — equating to approximately \$93.17 per access line per year (or \$7.76 per line per month). By way of comparison, BA NY's dividend was only \$42.52 on a per-access line basis (\$3.54 per line per month)."

#### **Access New Jersey (ANJ) is Added**

The Ratepayer Advocate's solution for these harms was to make sure that Verizon was put back on track to build out the networks, and, as penance, Verizon NJ should be making these new, fabulous broadband services available to schools and libraries.

"Having established the Board's legal authority to modify the Plan so as to equalize the level of ONJ benefits between the business community and the education, low-income, residential rural and urban communities, the Ratepayer Advocate urges the Board to

modify ONJ to require BA-NJ to (1) create a fund to wire all public and not-for-profit schools and libraries for broadband capability by the year 2000 and provide these institutions with Internet access and discounted rates for these and other services; (2) institute rate reductions.”<sup>663</sup>

Access New Jersey was added in 1997. Verizon’s press release<sup>664</sup> in 2000 stated it had built a ‘video portal’ to “deliver broadband video services to schools”.

“New Jersey’s K-12 students have a new gateway to learning through a statewide video portal and “virtual academy” that is the first of its kind in the nation. The video portal, provided by Verizon New Jersey, enables schools around the state to hold live, interactive video classes for students statewide without incurring long-distance charges.

“Verizon is the first local phone company to deliver broadband video services on a large scale to schools across LATA (long-distance) boundaries under a provision of the Telecommunications Act of 1996. The portal provided by Verizon is part of the company’s Access New Jersey program to provide advanced technology to the state’s K-12 schools and public libraries.

But there was a massive gap between bringing the committed speeds of 45 Mbps to the schools and libraries versus selling very expensive services that most schools couldn’t afford.

Testimony by Thomas H. Weiss, on Behalf of the New Jersey Division of the Ratepayer Advocate, May 15, 2001<sup>665</sup> outlined the findings.

“While I found that approximately 98 percent of all New Jersey schools currently have some form of access to the Internet, only about 50 percent enjoy such access at wideband or broadband bit

transfer rates — rates that would permit the transmission of virtual full motion interactive video signals.

“This is an unacceptable penetration rate given that VNJ has deployed technology sufficient to enable wideband access, or better, to reach all schools in the state. I conclude that in order to effect improved deployment of wideband and broadband access for schools and libraries, VNJ should increase substantially the level of the discounts from tariff rates at which it offers wideband and broadband access to New Jersey schools and libraries.”

Weiss continued, outlining that average speed in 2001 was 1.5 Mbps.

“According to Verizon, schools and libraries in New Jersey are using approximately 2,700 data circuits at discounted prices under the ANJ program. Service is taken within the full range of bit transfer rates from 128 Kbps ISDN through OC3 SONET. By far the most extensively employed service is ATM at 1.5 Mbps.”

The next exhibit is Verizon Access New Jersey pricing sheet as of 2008 and gives the services and costs offered to schools, including the discounts. Even with the discount, a 45 Mbps service cost over \$1,825.00 a month. By 2008, fiber optics should have been almost ubiquitous in the state and should have cost \$50.00-\$100.00 a month or less with a discount, especially since these networks were being built with the help of excess profits charged to customers and were supposed to be part of the state utility networks. Also, since the schools were buying in bulk and there appears to be one provider for Access New Jersey — Verizon — it’s clear that Verizon was able to take advantage of a captive audience. Also, we have no way of knowing just how many schools and libraries were upgraded to a fiber optic wire.

## EXHIBIT 102

## Access New Jersey Pricing for Broadband, 2008

Services	Quantity	Current Monthly Tariff Rate (Ea.)	% off Current Tariff Rate	Monthly Education Rate (Ea.)	Non-Recurring Charge (Ea.)
<b>Verizon's Access New Jersey Frame Relay Service:</b>					
56 kbps Subscriber Network Access Line (SNAL)		\$175	43%	\$100	N/A
1.5 mbps Subscriber Network Access Line (SNAL)		\$435	31%	\$300	N/A
4 mbps Subscriber Network Access Line (SNAL)		\$2,300	42%	\$1,325	N/A
8 mbps Subscriber Network Access Line (SNAL)		\$2,600	45%	\$1,425	N/A
22 mbps Subscriber Network Access Line (SNAL)		\$3,000	40%	\$1,625	N/A
45 mbps Subscriber Network Access Line (SNAL)		\$3,800	52%	\$1,825	N/A

**Doubling Up?** The Universal Service Fund, which is a tax on any interstate call/cell phone call or service, was designed to make sure everyone in America can get phone service, as well as other activities. One component, commonly dubbed the “E-Rate”, has a Schools & Libraries Fund which gives discounts to schools — while the phone companies get reimbursed for their full business rates. This caveat, on a web site about school funding, explains that the schools could also get USF funding on their ‘ANJ services’.

“Effective 7/1/02 schools and libraries participating in Verizon’s Access New Jersey program will be able to apply for federal Universal Service discounts on their ANJ services. All schools and libraries intending to file for E-Rate discounts should follow the procedures outlined ...before signing any new contract for telecommunications services.”<sup>666</sup>

As of 2013, there are only remnants of the ANJ agreement; the web site is a placeholder in the state ‘archive’ with none of the links working.<sup>667</sup>

### Bring on FiOS, Bring on Cable.

While we discuss FiOS in detail elsewhere, it is important to remember that Verizon decided to rewrite history. In New Jersey, where fiber optic deployments were supposed to have been in full swing by 1995, Verizon now claimed that the first fiber optic deployments were about to happen — but about a decade later.

Verizon's FIOS Announcement, May 19, 2004<sup>668</sup>

"Verizon, in Historic First, Begins Large-Scale Rollout of Advanced Fiber-Optic Technology with Keller, Texas, Deployment. Verizon has begun installing in Keller a new technology known as fiber to the premises (FTTP), which uses fiber optic cable and optical electronics to directly link homes and businesses to Verizon's network. The fiber optic connections will replace traditional copper-wire links.... Although the use of fiber optic technology is common throughout the telecom industry, *Verizon is the first company to begin using it to directly connect homes and businesses to the network on a widespread scale.*"

With total amnesia, in 2004, Verizon New Jersey stated it was about to 'begin' bringing fiber optic services, again, to New Jersey. But first, Verizon wanted another round of new deregulations passed so once again they used this broadband carrot to hold the state hostage. *Associated Press*<sup>669</sup> put it this way:

"Verizon tells staff it may not build fiber network in N.J.

"Verizon, the state's dominant phone carrier, is threatening to drop plans to install a \$250 million fiber-optic network because state regulators will not let it charge competitors more to lease its local lines.

"We believe the future is broadband. The question for New Jersey is whether it will be sooner or later?" Verizon-New Jersey spokesman Richard J. Young said Friday... Verizon advised 4,000 managers of the review in an e-mail Wednesday. "This decision comes as a result of the New Jersey Board of Public Utility's failure last week to make any meaningful improvement in the artificially low rates Verizon can charge competitors for leasing its network facilities', the memo said."

And as we will soon discuss, Verizon New Jersey even stopped building out any of the networks — their construction expenditures went from about \$1 billion in 2000 to \$395 million in 2004 — a drop of 60%.

After the state capitulated, according to a letter from New Jersey League of Municipalities in April 2005, Verizon once again said that it was delivering fiber optics and it would be part of the obligations under Opportunity New Jersey and completed by 2010.<sup>670</sup>

“In 1993 the NJ Board of Public Utilities (BPU) came to an agreement with Verizon, called Opportunity New Jersey, which obligates Verizon to upgrade its telephone network by 2010 to include broadband access throughout its service area. Verizon’s installation of fiber optic cable is part of this telephone system upgrade and subject to BPU review for compliance with applicable laws governing the telephone system.

“Verizon has assured us on several occasions that they intend to abide by all appropriate state and municipal processes, including franchising, if and when they officially seek to offer video service over their fiber optic network.”

#### **Verizon New Jersey’s FIOS TV Cable Franchise.**

Not to miss a beat, right after FiOS was announced, Verizon and AT&T, via the ALEC-based bills, went state-to-state to call for offering cable TV over the existing FiOS networks. In New Jersey, Verizon started heavily promoting this type of ‘system-wide’ cable franchise, where ‘system-wide’ was a made-up term, so that the company only had to do their own territories and not, for example, the entire state.

According to an article in *NorthJersey.com*,<sup>671</sup> the company planned to roll out services possibly by 2006.

“Verizon said it will be ready to turn on TV service in 70 towns by year-end. If the franchise process begins on a town-by-town basis this summer, consumers won't see service until mid-2006.”

And a bill did pass, but with a small ironic twist. As discussed before, Verizon New Jersey had a campaign being run by the astroturf group “Consumers for Cable Choice”.

On January 30, 2006, Assemblyman John E. Rooney requested that the State start an investigation into Verizon New Jersey and NJ Consumers for Cable Choice (C4CC). While we found no serious consequence of this action, the investigation was amusing to read, as it reveals the standard operating procedure for C4CC that was documented in other states.

“An Assembly Resolution urging the Attorney General and the Board of Public Utilities to investigate certain conduct of Verizon New Jersey and New Jersey Consumers for Cable Choice.

- Verizon New Jersey (“Verizon”) has been seeking a Statewide cable television franchise; and
- According to an article in *The Record* on January 1, 2006, Verizon took the names of New Jersey residents and, without their permission, generated letters in support of Verizon’s plan using those residents’ names and sent them to State Legislators; and
- *The Record* reported that, in at least one case, Verizon even went so far as to create fake stationery for the letter supposedly sent by the person whose name was used without permission; and
- *The Record* story also cited examples of letters which were purportedly sent by people who may not exist or were sent from street addresses that cannot be found; and

- Whereas, According to *The Record* story, a group calling itself “New Jersey Consumers for Cable Choice”, which has been actively lobbying in favor of pro-Verizon legislative action and which represents itself to be an independent coalition of community and civic groups, was actually created with \$75,000 in “seed money” from Verizon.”

“This House urges the Attorney General and the Board of Public Utilities to undertake an investigation as to whether Verizon New Jersey and New Jersey Consumers for Cable Choice have violated any laws by sending letters through the mail which purport to be from persons who have not given permission for their names to be put on the letters; by committing fraud in misrepresenting constituent opinion to Legislators; and by misrepresenting to Legislators and the public that a supposedly independent grassroots organization was in fact created with funds provided by Verizon New Jersey.”

And yet C4CC congratulates the State of New Jersey for allowing a system-wide cable franchise — and supposedly saving \$19 million a month, \$220 million a year.

“C4CC Congratulates NJ on New Cable Competition Law.

TRENTON, N.J. (August 5, 2006) — Consumers for Cable Choice and its Garden State sister organization today hailed New Jersey’s new cable competition law, which will help consumers save as much as \$19 million on their monthly bills this year.

‘With today’s high price of gas taking its toll on everything from family road trips to school supplies and the cost of morning cereal, the savings that will come from this law will really help New Jersey families,’ said Robert K. Johnson, C4CC president.

“Rachel Holland, executive director of C4CC New Jersey, said consumers in the Garden State are relieved to see the bill become law. ‘This law puts out a welcome mat for new cable television providers, and New Jersey residents are ready to open their doors to better prices, better service and innovative products,’ Holland said.”

### **How Far Did Verizon Get with a Fiber Optic Service?**

Verizon was granted the system-wide cable franchise, yet unbelievably the state never tied the franchise to Opportunity New Jersey, even though the cable service is made possible because it rides over the wires that were part of the original ONJ commitments.

And in 2013, Verizon’s cable franchise was up for renewal and the State’s assessment report on Verizon’s cable franchise deployment is a grim story of just how the state got played. In the end, Verizon was only responsible for 70 communities to be fully wired, with 352 other municipalities partially wired. And since 2010, Verizon has slowed the progress to a crawl.

“In the June 2010 report, Verizon represented that its FiOS service passed 1.9 million New Jersey homes. Verizon indicates in its comments that it now has already passed more than 2.2 million premises with its FiOS network in New Jersey, and is presently offering cable television service in all or parts of 352 of the total 372 towns in its franchise. As of December 31, 2012, Verizon provided FiOS to approximately 600,000 customers. Data appears to indicate that Verizon’s deployment efforts have decreased dramatically in the last three years, with only three towns being added to the franchise since the June 2010 report. However, the State Act does not require that Verizon provide service outside of the 70 must-build towns, and it is therefore within Verizon’s

discretion as to where they will deploy service outside of its statutory deployment commitments.”<sup>672</sup>

### **Stow Creek, Greenwich and Mantoloking; A Tale of Three Cities**

The story might have ended with literally one-third to one-half of customers never getting upgraded — except for some wrinkles — and new evidence.

In 2012, the NJBPU issued two Orders to show cause pertaining to Verizon New Jersey’s broadband commitments and service quality issues. One ‘show cause’ order<sup>673</sup> asked Verizon to explain why they failed to wire 100% of their territories with a broadband service as they had promised. Moreover, the original ONJ laws were never ‘disturbed’, thus the commitments are still in force.

As the NJBPU writes

“Pursuant to the Order, (known as “PAR-1”) Verizon was required to achieve Opportunity New Jersey (ONJ) in its entirety, including full broadband capability, by the year 2010, specifically, switching technologies match with transmission capabilities to support data rate up to 45,000,000 bits per second and higher, which enable services, for example, that will allow residential and business customers to receive high definition video and to send and receive interactive video signals with complete deployment by 2010.

“By order dated August 19 2003... the Board approved a second plan for alternative regulation (PAR-2) that replaces PAR-1. PAR-2 further enhanced Access New Jersey (ANJ), but did not disturb the existing ONJ broadband commitments made by Verizon.”

“Based upon information and belief, residents of Greenwich and Stow Creek, Cumberland County are not being provided

broadband capabilities consistent with ONJ. To date, full deployment of broadband has not been achieved.

“The Board hereby orders: Verizon to show cause before the Board why the Board should not Verizon failed to comply with the PAR order in providing full broadband capability by 2010.”

On April 29, 2013, the NJBPU issued another Order<sup>674</sup> for the two towns to be upgraded by Verizon but this Order does not reference the ONJ commitments to have the rest of the state completed by 2010 with a fiber optic service capable of 45 Mbps in both directions; it only deals with quality-of-service issues as the reason for Verizon supplying fiber optic services.

Mantoloking, located near the ocean, wasn't as lucky. After Superstorm Sandy came through in October 2012, the town's phone lines, power lines, not to mention homes and businesses, had extensive damage. Verizon decided that it would not 'fix the copper wiring' but instead would put these customers onto Voice Link, a 1990s-styled cell phone service that can't handle basic data applications like a fax machine or alarm monitoring.

Verizon had filed in New York to 'discontinue' wired phone service and push customers onto Voice Link. On Fire Island, this resulted in a mass filing of comments by the citizens with the state commission.

In September 2013, Verizon New York backed down; it claims it is now going to wire Fire Island with fiber by Memorial Day 2014. Mantoloking hasn't taken any steps in the matter, even though the law is on its side.

### **Should Verizon New Jersey be Taken to Court? How Much Money Did They Collect for this Broadband Scandal and What Were the Economic Harms?**

The State required Verizon to submit an annual infrastructure report that would detail the amount of upgrades accomplished for different technologies from 1996-2010. Verizon submitted these reports faithfully, but as the data shows, Verizon New Jersey

was lying about its deployments in every year. The following exhibit is from Verizon’s 2001 infrastructure report.

**EXHIBIT 103**

**Verizon, New Jersey Annual Infrastructure Report, 2001**

*APPENDIX B Service Capability & Enabling Technology Deployment*

Opportunity New Jersey's Service Capabilities	1997	1998	1999	2000	2001	Commitments
<b>Advanced Intelligent Network</b>						
w/o acceleration (est)	80%	88%	94%	achieved		100% 1998
with acceleration (act)	100%					
<b>Narrowband (up to 144 kbps)</b>						
w/o acceleration (est)	74%	82%	87%	achieved		none
with acceleration (act)	100%					100% 1998
<b>Wideband (144 kbps to 1.5 mbps)</b>						
w/o acceleration (est)	50%	62%	71%	achieved		none
with acceleration (act)	66%	78%	84%	95%		95% 2000
<b>Broadband (up to 45 mbps &amp; higher)</b>						
w/o acceleration (est)	1%	3%	9%	achieved		none
with acceleration (act)	34%	35%	42%	52%	55%	100% 2010

The exhibit, taken directly from the report, shows the deployment schedule for two services, Wideband, which was 144Kbps to 1.5 Mbps, and Broadband, which has speeds “up to 45 Mbps & higher”.

- **w/o acceleration** is what would happen if the Opportunity New Jersey deregulation didn’t happen.
- **with acceleration** means the law passed and the company got excess profits and tax perks to build out the networks.
- Note the (act), meaning actual deployments vs the (est) which means estimated.

This type of bold face misrepresentation happened in every year. Verizon, in their response to the Show Cause Order, made obfuscation a new art form — 100% never meant 100% and the speeds were capabilities, not services. This is from Verizon New Jersey 2005 and 2010 annual infrastructure reports that they quote in their response.

**EXHIBIT 104****Verizon New Jersey's Infrastructure Report Summaries, 2005, 2010****2005 Infrastructure Report:**

- 2.1 million miles of fiber
- 83% broadband availability
- 129 Fast Packet Switches
- 62 ATM Switches
- Mass market deployment of FTTP
- 100% of Verizon wire centers and 766 remote terminals equipped to provide DSL service

**2010 (Final) Infrastructure Report<sup>14</sup>:**

- 3.7 million miles of fiber
- Over 99% broadband availability
- 100% digital switching
- High speed switching available statewide via 146 Fast Packet and ATM switches deployed hub locations around the state
- DSL available in 100% of Verizon Central Offices and more than 750 remote terminals equipped for DSL
- 2.1 million premises passed with the fiber-to-the-home technology on the FiOS network

Notice that, in 2010 Verizon NJ claimed that they had “99% broadband availability”, and this included DSL, which, as we discussed, was considered inferior in the companies’ 1991 Deloitte Study. The “45 Mbps” doesn’t appear at all; also notice 100% DSL and 100% Digital Switching are ‘capabilities’ in the networks and not actual services offered to residential or business customers.

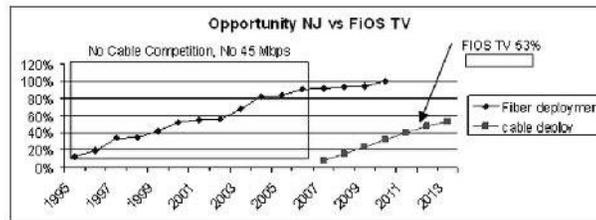
In our rebuttal to Verizon’s response of the Show Cause Order<sup>675</sup> we noted that annual reports were printed and mailed and they are public documents. The company fabricated statistics for massive financial gains — from 1996-2010, 15 years. The most-likely scenario is that Verizon believed no one would read, notice or have the fortitude to do anything about it.

**Verizon NJ Cable Competition Didn’t Show Up, And Now It Won’t.**

What do we know about the ONJ commitments and the actual deployment? The New Jersey cable franchise renewal and Verizon’s own response to the State’s Show Cause

Order give us data for actual deployments.

#### EXHIBIT 105



Beginning in 1995 and continuing through 2010, Verizon NJ was supposed to have 100% of the state completed. FiOS TV didn't start until 2007 and has now reached about 50% completion.

- Verizon indicates in its comments that it now has already passed more than 2.2 million premises with its FiOS network in New Jersey.
- As of December 31, 2012, Verizon was offering FiOS cable to approximately 600,000 customers.
- The State of New Jersey<sup>676</sup> has 3.2 million residences and 782,000 businesses. Notice that in the above 2 bullet points they are using 'premises' and 'customers', not residences. Since lawyers write and OK these stats, we assume there is a reason they are not using the word 'residences'.
- There is a caveat in the 2012 Verizon Annual Corporate report<sup>677</sup> that claims that in 2012, Verizon had a 33.3% penetration rate for FiOS video, which would mean that with 600,000 customers, 53% of Verizon New Jersey's premises are using the service, equating to 1.7 million homes passed by FiOS for cable service.

This all adds up to no cable competition from 1995-2007, 13 years; then it ramped up to the current 53% (though they could have added customers since 2012).

**Opportunity Costs: How Much Money Did Verizon's Failure to Deliver 45 Mbps Cost Customers and the State?**

Imagine that in the State of New Jersey, Verizon had actually deployed what they were contractually required to do — have 100% of their territory completed by 2010 with a fiber optic service capable of 45 Mbps in both directions. And let's throw in the caveat that that the networks were supposed to be fully opened to all competition, something that was also in the Telecom Act of 1996 — and also in the NJ state law.

- **Economic Growth** — New Jersey would have been the first fully fiberized state and our belief, based on the data pertaining to 'broadband as an economic driver', is that the state would have been an attractor, a high-tech hub of the US, as NJ was also the home of Bell Labs and AT&T's former headquarters.
- **Education** — Schools and libraries would have had 45 Mbps as well at reasonable prices, as it would have been a 'commodity', not a scarcity and therefore Verizon wouldn't have been able to get away with charging \$3,800 retail, \$1,825 with the discount, per month for a 45 Mbps service.
- **Rural Communities** — All of the rural areas would have also been upgraded. Instead, the current plan for areas where Verizon failed to upgrade and the customers are still on copper is to force these customers onto wireless services.
- **Competition for Cable Services** — Verizon's FiOS TV currently goes to about 50% of customers (though Verizon's statements are contradictory). Moreover, the law was passed in 1993 and yet the first FiOS deployment was in 2006-2007; customers did not have any wired cable choice for at least 13 years, about half still don't, and about 30%-50% never will.
- **Lower Phone Rates** — Phone service prices should have been cheaper due to competition on broadband, Internet, phone and cable services.

Using data from Verizon New Jersey, Verizon and AT&T's funded think-tanks and astroturf-supplied numbers, and other primary sources including census data, let us

reverse-engineer the hype and quantify the ‘Opportunity Costs’ — How much did Verizon’s failure to properly upgrade and maintain the state-based utility networks cost customers and the state?

### **Follow the Money**

Since 1993 we have tracked Verizon New Jersey’s broadband infrastructure deployment as well as the company’s financials using Verizon’s own SEC filed state-based annual reports. This included the financial returns generated from the Opportunity New Jersey’s alternative regulations, including basic items like profit margins, construction expenditures, depreciation, dividends paid and other financial gains.

In other words, the laws were changed in 1993 to give the company rate increases and tax perks that were to be used for new construction, exchanging the existing copper wires with fiber optic wires — and all were part of the PSTN, public switched telephone networks. And it was to be completed by 2010. How much money was collected, how much was spent on construction, and how much ended up as profits?

We estimate that Verizon NJ overcharged customers about 15-16 billion dollars — \$4000-\$5000 per household in New Jersey for upgrades of the utility networks that never happened from 1993-2013 — and it continues today unabated as these excess profits were built into the cost of service or the deregulation of services.

Two simple examples of deregulation: The law removed the profit caps on basic services, such as ‘calling features and ancillary services’ which were deemed ‘competitive’ and therefore were not examined by the commission for profits. Caller ID cost business customers \$12.75 while non-listed numbers cost \$3.70 (as of 2012). Caller ID had a profit margin estimated to be 5,695% and non-published numbers had a 36,900% profit margin. And while under ONJ, Verizon NJ’s excess profits were supposed to be used for new construction. They weren’t.

You can argue that FiOS is a fulfillment of their commitments in part, except that it is not the PSTN and it appears that some of FiOS is now part of a separate subsidiary, where the profits don’t go to Verizon New Jersey, only the expenses. Or

you can argue that FiOS TV is also part of the fulfillment, but it is illegal to charge customers for the deployment of a cable service as it cross-subsidizes the cable networks — getting customers to pay for the development and deployment of a cable product.

All of these factors could be taken into consideration once there actually were audits to examine the flow of money in detail.

**Not Having Cable Competition Cost Customers \$4 Billion Extra.**

Using the same approach as with the national statistics — where we relied on a report and data provided by the Verizon-funded think tank, the Phoenix Center, we found that \$8.2 billion nationwide was charged to customers in excess cable expenses because of a lack of competition. Verizon New Jersey’s failure to provide cable competition — which was one of the intents of the original Opportunity New Jersey proposal, added an estimated \$4.1 billion to cable bills, about \$1,626 per household, from 1993-2013.

This is an excerpt from our analysis.<sup>678</sup> It shows that in 1995 customers, on average, paid an additional \$51 a month and by 2012, it was about \$144 a month, and the overall excess in 2012 came to about \$400 million. The “Kagan” numbers are based on Kagan’s average cable bill.

Note: Consumers for Cable Choice stated that \$19 million a month, \$228 million annually, was being saved by competition in 2005-2006 timeframe. Our number, generated using the Phoenix Center’s analysis, came to \$223 million for 2005.

**EXHIBIT 106**

	C	D	E	F	G	H	I
Verizon New Jersey FiOS and cable deployments in New Jersey, 1995-2012							
		1995	2000	2005	2010	2011	2012
Subscribers		2,179,105	2,451,695	2,530,317	2,658,465	2,675,138	2767444.5
Add 10% sat.			2,696,865	2,783,349	2,924,312	2,942,652	3,044,189
Kagan	\$	28.50	\$ 39.00	\$ 49.00	\$ 75.00	\$ 78.00	\$ 80.00
Excess		111,788,087	172,108,989	223,173,959	358,892,775	375,589,375	398,512,008
Customer excess	\$	51	\$ 70	\$ 88	\$ 135	\$ 140	\$ 144

- **Verizon New Jersey FiOS Entry — No Reduction of Costs to Consumers.**

Verizon's entry with FiOS TV appears to prove one thing — a duopoly doesn't appear to impact pricing. In fact, the state summary of the impact of Verizon's FiOS entry into the marketplace found that:<sup>679</sup>

“Today, the average is... \$45.68 for CPST for a hike of... slightly more than 28% in CPST rates. Equipment prices have fluctuated as have initial installation charges. ...advanced converters have risen between 2% and 56% depending on functionality. Initial installations charges are up on average 13% since 2006.”

A caveat: the state data didn't include taxes, fees or surcharges or most of the other additional costs, which can come to 15-40% more.

In summary, Verizon New Jersey didn't provide cable competition for at least 13 years and when it did, it was only offering service to about half the state. Its entry didn't lower prices significantly, but actually appears to be part of the raising of rates.

### **Cross-Subsidies Add Billions to Customer Overcharging.**

The \$15 to \$16 billion pales to the additional harms outlined in the previous discussion of cross-subsidization by affiliates. Did customers get charged for the construction budgets that were transferred, in part, to the Wireless company, for example?

As we discussed in our section on cross-subsidization, Fran Shammo<sup>680</sup>, Verizon's EVP and CFO, stated that the wireline construction budgets have been diverted to charge customers for the wireless companies' construction needs.

“The fact of the matter is wireline capital — and I won't get the number but it's pretty substantial — is being spent on the wireline side of the house to support the wireless growth. So the IP

backbone, the data transmission, fiber to the cell that is all on the wireline books but it's all being built for the wireless company.”

We add that without audits it is impossible to determine the full extent of the overcharging of phone customers who may have been charged for the construction of the wireless fiber optics-to-the cell towers or charge for the development of the cable service.

#### **Opportunity Costs — Economic Harms**

Using the same ramp-up analysis that was used for the national potential additional GDP growth from broadband as claimed in the Criterion-Brookings and Gartner studies, that growth would be incremental over a 10-20 year timeframe. In New Jersey we have a definitive fact — there was a timeline in the law which established how fast these deployments were to come, giving us a unique picture of actual deployment vs the ‘commitments’.

- **Verizon Pulled a No-Show from 1995-2006.**

As discussed, Verizon was supposed to originally start deployment in 1995, then it was moved to 1996, but no fiber optics were deployed for any 45 Mbps residential service until at least 2006-2007, which coincided with the Verizon cable deployments.

This means that whatever economic growth that was to accrue from the ramp-up didn't even start until 2007.

We estimate that the State lost between \$173 billion to \$214 billion — based purely on the methodologies of Verizon's own funded research and Gartner Dataquest's analysis, which we quoted earlier. The reports claimed that ½ trillion would accrue if the US had the companies built out these broadband networks. (Gartner's belief is that the speed of broadband would have to be 'true' broadband, with at least 10 Mbps or better to get the benefits of broadband deployment.) Tracking the 45 Mbps in both directions means that virtually in no year did Verizon actually deploy and customers have available and in use 45 Mbps — thus the higher number.

**Closing Caveat**

A curious report circulated in New Jersey in 2010. The state appears to have lost economic growth, especially with rich people. An article in the *Star-Ledger* had the headline: “N.J. loses \$70B in wealth during five years as residents depart”.<sup>681</sup> The article goes on to quote a study by the Center on Wealth and Philanthropy at Boston College, stating “the report found wealthy households in New Jersey were leaving for other states — mainly Florida, Pennsylvania and New York — at a faster rate than they were being replaced.”

The article continues:

“More than \$70 billion in wealth left New Jersey between 2004 and 2008 as affluent residents moved elsewhere, according to a report released Wednesday that marks a swift reversal of fortune for a state once considered the nation’s wealthiest.”

Wouldn’t you know it, the article quoted then-president of Verizon New Jersey, Dennis Bone, who was also the Chairman of the NJ Chamber of Commerce. He blamed it on the state’s tax policies.

“‘This study makes it crystal clear that New Jersey’s tax policies are resulting in a significant decline in the state’s wealth,’ said Dennis Bone, chairman of the New Jersey Chamber of Commerce and president of Verizon New Jersey”.

Verizon didn’t even start doing the upgrades until 2006-2007, and worse, in Verizon’s response to the Show Cause Order, Verizon claimed that in 2006 the company had completed 91% of the State, which was supposed to be for 45 Mbps in both directions. It didn’t exist in 2006.

Might the State have not lost these wealthy residents but instead added to them, as broadband might have ‘retained’ the businesses and citizens and thus added to

the wealth of the state? Or, would the tax base have increased to the point where the taxes weren't so onerous in the first place?

### **11<sup>th</sup> Hour Attack: Erasing the Laws**

Like one of those action or horror movies — just when you think there's a light at the end of the tunnel, you see an oncoming train with the villain in the engine car, smiling.

Instead of the State doing the right thing and actually attempting to get Verizon to finish wiring the state based on their original commitments, the state is now planning to erase the entire set of commitments — and replace it with something so embarrassing that it is now clear that the Board of Public Utilities should remove the words "public" and the State's Rate Counsel should change its name to 'rate-increase'.

But it gets suspicious that Governor Christie, now famous for 'bridge-gate', has been manipulating the situation to help Verizon.

On January 29<sup>th</sup>, 2014, the State Board of Public Utilities decided to extinguish the contract with Verizon — Opportunity New Jersey.

But, on January 14<sup>th</sup>, 2014, two weeks before, a new President of the Board of Public Utilities<sup>682</sup> was installed and she was not only chosen by Governor Christie, but is part of his cabinet.

“Dianne Solomon was named by Governor Christopher J. Christie as President to the N.J. Board of Public Utilities (BPU) on January 14, 2014. President Dianne Solomon also serves as a member of the Governor's Cabinet. President Solomon was nominated by Governor Chris Christie to serve as Commissioner to the Board of Public Utilities on April 17, 2013, and confirmed by the New Jersey Senate on June 27, 2013.”

Is it coincidence that they decide to erase the laws, even though the State had actually issued a show cause order asking Verizon why Stow Creek and Greenwich weren't upgraded, and ordered them to do so in 2013?

And yet, right after this appointment, Verizon is about to get multi-billion dollar bonus, not to mention be able to start getting rid of the unions, and force customers onto their wireless products. Oh, and every municipality loses its taxes Verizon pays — if they removes the wires, they remove their taxes.

### **What Does Erasing a Law Looks Like?**

There is a stipulation agreement<sup>683</sup> between Verizon and the State and the language demonstrates that those who created it really do give a damn about anything but helping Verizon put this behind them.

(I must note that this Commission also OK'ed the cable franchise without any regards to the original commitments or to the fact that it doesn't cover all of Verizon's customers, leaving 1/3 to 1/2 without upgraded service.)

What this says is — forget you paid thousands of dollars to have the phone networks upgraded with fiber optics by 2010 with a 45 Mbps, bi-directional service. Forget that the FiOS cable franchise was granted because it guaranteed cable competition. If you have any other choice, including Verizon Wireless 4G or a cable provider or even DSL or satellite — sorry. Go somewhere else. Or if you quality, then wait 9 months before we give you service.

The Stipulation agreement:

- 1) “have no access to Broadband from cable service providers (including single-line business or residential consumers located outside of cable providers' Primary Service Area (defined in the applicable cable providers' Franchise Order issued by the Board));
- 2) have no access to 4G-based wireless service; and

“Broadband is defined as delivering any technology including Verizon's 4G wireless, fiber, copper or cable, data transmission service at speeds no less than the minimum speed of Verizon New

jersey's Digital Subscriber line (DSL that is provided by Verizon New Jersey today.”

I.e., we're continuing our plan to close down the copper wires so we'll be glad to give you our more expensive 4G product.

As we outlined elsewhere, Verizon is closing down the copper wiring because it makes them more money.

Lowell McAdam, Verizon's CEO stated in June 2012.<sup>684</sup>

“And then in other areas that are more rural and more sparsely populated, we have got LTE built that will handle all of those services and so we are going to cut the copper off there.”

At the September 2012 JP Morgan analyst conference, McAdam<sup>685</sup> said moving the customers to wireless makes the company more profits.

“And in many areas we're also taking customers that aren't performing well on copper and we're moving them over to the wireless technology. So that improves our cost structure significantly and streamlines all those ongoing maintenance costs.”

**Wireless LTE is Not a Substitute for FiOS for Video.**

Verizon knows that wireless, even their LTE product, doesn't replace wireline broadband networks for video.

Lowell McAdam,<sup>686</sup> June 2012 stated:

“I mean we want to shift as much onto FiOS or onto the fixed network where we can and then provide — use that capacity to provide those higher demand services like video. I don't expect

anybody to sit in their home watching video over LTE. I want them to be able to watch it on their tablet anywhere in the house using the Wi-Fi network.”

And this admission means that Verizon’s plan to halt their FiOS deployment will harm every customer outside the ‘footprint’, which could be as much as 50% of their territories.

And this is happening in every state, including New Jersey.

### **The Villains Win?**

On April 24th, 2014 the BPU voted unanimously to close down Opportunity New Jersey. According to *The Bergen Record*.<sup>687</sup>

“BPU President Dianne Solomon said that there was ‘clearly confusion’ over Newark- based Verizon’s original broadband obligations under an agreement, called Opportunity New Jersey, a deal that also reduced regulation of the company. The agency and its staff said that the telecom company, known as New Jersey Bell in 1993, was never required to deliver broadband via fiber-optic lines and denied that Verizon customers were ever issued a surcharge to finance ONJ.”

What? Did you think that the State would defend the rights of customers? If the HBO series ‘The Sopranos’, about a bunch of Jersey wise guys, was still on the air, I could imagine Tony Soprano, head of the ‘family’ saying “And they call us crooks?”

### **The Villains Challenged.**

And just like one of those movies where the innocent guy (and yes, we saw the real murderer confess) is on death row and being strapped to the electric chair, and

everyone is staring at the clock— something miraculous almost always happens to restore our faith in happy endings.

In this case, the New Jersey Ratepayer Advocate (now called the Division of the Rate Counsel) did the right thing and filed an appeal to stop the stipulation agreement, and as of August 5<sup>th</sup>, 2014, there is a stay of execution. And as of February 14<sup>th</sup>, 2015 the appeal is still going on.

Will New Jersey really get the fiber optic state that they paid for?