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PULP WHITE PAPER

THE FUTURE OF TELECOMMUNICATIONS: ASSERTING AND REGAINING THE RIGHTS OF CONSUMERS, INCLUDING LOW-INCOME CONSUMERS, IN NEW YORK STATE.

Since 2006, Verizon New York (VNY) has been granted major rate increases for basic residential POTS customers, including low income families, by the New York State Public Service Commission (NYPSC). These increases on both basic service as well as all ancillary services, were for “massive deployment in fiber optics” and because of claimed major financial losses. At the same time, Verizon has been pushing deregulatory bills to remove the obligations to provide wired phone service and in areas where it chose not to maintain the copper, allow it to force customers onto wireless or to cable VoIP (Voice-over-Internet-Protocol). Verizon has an agreement to bundle the wireless services with the cable bundle in non-upgraded areas. And many have complained that Verizon New York has been cherry-picking more affluent communities, while neglecting low income areas, in the deployment of FiOS.

Verizon’s own data shows that VNY has only 183 communities that will be upgraded to fiber, but this is about 20% of the estimated towns and cities in the VNY territory.¹ But it appears that low income areas were doubly harmed.

In May 2012, a group of nine mayors from upstate cities outlined how Verizon had been ‘redlining poor and minority communities’. *Stop the Cap* wrote:

“Virtually every mayor in the urban centers of upstate New York is accusing Verizon Communications of redlining poor and minority communities when deciding where to provide its fiber-to-the-home service FiOS...The mayors are upset that Verizon has chosen to target its limited FiOS network primarily on affluent suburbs surrounding upstate New York City centers.”

“Verizon has not built its all-fiber FiOS network in any of our densely-populated cities. Not in Albany, Buffalo, Syracuse, Binghamton, Kingston, Elmira or Troy,’ the mayors say. ‘Yet, Verizon has expanded its

¹ There are 996 towns and cities in New York State. Based on FCC data, we estimate that Verizon NY has 90% of the incumbent, wired telephone utility coverage in New York. See Part XII

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FiOS network to the suburbs ringing Buffalo, Albany, Troy, and Syracuse, as well as many places in the Hudson Valley, and most of downstate New York. As a result, the residents and businesses in our cities are disadvantaged relative to their more affluent suburban neighbors who have access to Verizon's FiOS, providing competitive choice in high-speed Internet and video services.”²

This issue has been both a down-state as well as up-state issue. On April 26, 2013, now-Mayor Bill De Blasio, as New York City Advocate, released a statement:

“Public Advocate Bill de Blasio today assailed the City and Verizon for falling behind schedule in providing access to high-speed Internet, especially in the lowest-income communities. Five years into one of the biggest franchise agreements issued by the city, roughly half of homes still have no access to fiber network connections—most of them concentrated in low-income areas like Upper Manhattan, the South Bronx, Western Queens and Central Brooklyn.”³

All of these actions have a disproportionate impact on low income workers and families, seniors and adversely affect communities' economic health.

But more importantly, the increases in rates for basic service to these low income customers were justified in order to pay for fiber optic infrastructure that many, if not most, will never receive. The increases should never have been imposed in the first place: Telephone customers should not be funding facilities for cable services, wireless services or Internet services. As the report discusses, telephone customers should also not be required to fund other Verizon affiliate companies.

The acknowledged Verizon plans to ‘kill the copper’ directly harm those who depend on it today, including small businesses, communities that have not been upgraded, and seniors who are not rushing to drop their land lines for wireless replacements to fiber. The failure to upgrade these areas also means that in low-income areas there are other harms. Many communities don't have the benefits of cable competition to lower prices or the high-speed fiber optic networks to use — for which they are paying.

² <http://stopthecap.com/2012/05/22/nine-upstate-ny-mayors-accuse-verizon-of-avoiding-urban-poor-in-fiber-upgrades/>

³ <http://archive.advocate.nyc.gov/verizon>

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Low Income Issues

Of New York's 19.65 million people, 14.9%, or 2.9 million, were below the federal poverty level in 2013.⁴

Low-income consumers generally are less able to afford broadband service, or live in areas where that service is not available from VNY.

And again, all VNY consumers paid for facilities to provide broadband. That includes Lifeline customers.

Further, there are some 2.75 million New Yorkers 65 years or older.⁵ About 11.3% of those — or almost 330,000 million — live in poverty.⁶

Seniors will also be further impacted if Verizon New York is allowed to 'kill the copper' and force customers outside the FiOS area onto wireless or to a cable VOIP provider who, as a result of this market division, will have a monopoly on wired telephone service. According to a Pew survey, 77% of older adults have a cell phone, up from 69% in April 2012.⁷ But despite these gains, only 13% of seniors' households were considered "wireless only" by the Center for Disease Control's (CDC), statistics for 2013.⁸ Seniors also continue to lag behind younger Americans when it comes to tech adoption. And many seniors remain largely unattached from online and mobile life — 41% do not use the Internet at all, 53% do not have broadband access at home, and 23% do not use cell phones.⁹ Most seniors continue to not be "wired",¹⁰ which means that in VNY territory they are subject to Verizon's marketing strategies and plans for the future of the networks. As described in the Report, these include not expanding FiOS and, in fact, "killing the copper" that is left, thus abandoning customers outside the FiOS footprint and requiring customers within the footprint to take FiOS.

The FCC Lifeline program provides assistance to only some of the qualifying low-income telephone customers.¹¹ (Lifeline eligibility includes more than those below the poverty line.) Specifically, VNY serves few Lifeline customers. In 2013 in New York,

⁴ <http://quickfacts.census.gov/qfd/states/36000.html>.

⁵ <http://quickfacts.census.gov/qfd/states/36000.html>

⁶ http://ams.nyscommunityaction.org/Resources/Documents/News/NYSCAAs_2013_Poverty_Report.pdf at 5.

⁷ <http://www.pewinternet.org/2014/04/03/older-adults-and-technology-use/>.

⁸ <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201312.pdf>

⁹ Ibid.

¹⁰ Ibid.

¹¹ <http://www.fcc.gov/encycloped¹¹ia/lifeline-public-service-announcements-psas>.

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there were 1.33 million Lifeline customers.¹² This was only 40% of the eligible low-income customers. And, of the Lifeline customers in the State, only 176,000 were VNY Lifeline customers, as seen in Exhibit 2.

Also, Exhibit 1 shows that VNY collected almost \$27 million from federal Lifeline in 2010, but only \$22 million in 2012, with (it appears) a drop to \$15 million in 2013.

Exhibit 1
VNY Lifeline Support Amounts
(In the Thousands)

	2010	2011	2012	2013 ¹³
Lifeline	\$26,549	\$25,335	\$22,305	\$15,140

(Source: USAC 2Q14 FCC filing, Appendix L01¹⁴)

VNY Lifeline subscribership, as reported to the NYPSC, declined throughout 2012.¹⁵

Exhibit 2
VNY Lifeline Subscribership, by Month, 2012

Month	Lifeline subscribers
January	207,034
February	205,449
March	203,938
April	202,330
May	200,463
June	197,317
July	195,282
August	187,927
September	180,638
October	180,276
November	179,153
December	176,791

Low-income customers were and continue to be devastated by the 2008 recession. But additional harm comes from the “harvesting” of POTs residential customers by VNY, where the company has hit them with multiple rate increases, and a serious lack of wired competition has caused many to make the reasonable choice between two high-priced

¹² <http://www.usac.org/about/tools/fcc/filings/2014/Q1/LI08%20Lifeline%20Subscribers%20by%20State%20or%20Jurisdiction.xlsx>.

¹³ 2013 (9 months annualized)

¹⁴ <http://www.usac.org/about/tools/fcc/filings/2014/Q2/LI01%20Low%20Income%20Support%20Projected%20by%20State%20by%20Study%20Area%20-%202Q2014.xlsx>

¹⁵ <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=10-01709>

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alternatives for telephone service — wireless and wireline — when they could afford only one. Many went wireless-only (so-called “cutting the cord”), for their voice telephony. These factors, in the context of New York regulation, have led New York to rank relatively low in the percentage of the state’s Lifeline customers being served by incumbent carriers.¹⁶

In order to protect and better the lot of New York’s low-income and other customers, Public Utility Law Project makes the following recommendations.

The Recommendations Are Made Because:

- Low income and Lifeline basic service (POTS) customers have paid excess phone charges in the form of rate increases since 2006 for ‘deployments in fiber optics’ and losses when they have not received the promised upgrades.
- The mayors of major upstate New York cities as well as New York City have recognized that low income areas have not been served and VNY has announced it is not planning on expanding FiOS beyond its current deployments.
- Verizon has announced its plans to ‘shut off the copper’ wiring in areas that have not been upgraded and replace the utility networks with a wireless service.

The Recommendations

In order to protect, assert and regain the rights of low income customers, who have the right to ‘just and reasonable’ utility rates and who paid for fiber optic upgrades for cable, high-speed Internet and digital phone service — that they may never want, much less get, we recommend that State and federal regulators and legislators expeditiously:

- Investigate why low income residential basic rate utility customers were charged for fiber optic services they may never receive, as well as why the rates they pay fund the deployment and development of non-regulated services.
- Investigate FiOS deployment in the State of New York including how many communities are upgraded and whether Verizon has properly served low income and minority communities.
- Investigate the issues surrounding the proper maintenance and availability of utility-based wired services, including maintaining the copper networks.
- Investigate exactly how many lines VNY has in service, what types of lines they are, and what are they being used for. How many customers are actually using

¹⁶ <http://www.usac.org/res/documents/about/pdf/annual-reports/usac-annual-report-2013.pdf>.

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FiOS or another provider for cable, broadband, Internet or are using the copper wires for any service including voice and data applications? This is especially important in areas where Verizon is planning on shutting off the copper.

- Examine the ties between the VNY regulated utility and Verizon Wireless and other affiliates. Is Verizon Wireless profiting from the VNY rate increases for regulated phone service, the lack of broadband construction, and the Verizon Wireless deal with the cable companies to divide their markets where Verizon doesn't upgrade?
- The harms to Lifeline customers, and those who are Lifeline-eligible, should be especially examined. Are they overcharged? Did Verizon add 'fiber optic' upgrades to the cost of their services when painting a picture of their unprofitability for the NYPSC and tax authorities, while recording overall profits on their wireline and wireless services? Have the increases for Verizon wired services forced POTS customers off of the networks?

At a minimum, the following principles should be observed:

- VNY should not be permitted to withdraw facilities and thereby cease providing current wired telephone service to any location without approval by state and federal regulators.
- VNY should be required to deploy wireline high-speed Internet access to all of its territory. Alternatively, VNY should be required to present a binding schedule for completing that task and a showing of the results for broadband availability of its rate increases for basic service since those increases were authorized by the NY PSC starting in 2006.
- VNY should be required to provide voice telephony and high-speed Internet access of reasonable quality at just and reasonable rates, based on appropriate cost allocation in an IP network.
- Verizon should be required to provide broadband Internet access consistent with the FCC's Open Internet Principles.
- State and federal regulators should retain and regain the ability to address service, billing and other complaints against VNY's service, and should examine financial statements, and investigate affiliate transactions.