Teletruth Requests the FCC Create a New Broadband Workshop --- Investigate Current and Past Public Funding of Broadband, Including Overcharging Utility Customers.

The FCC has been creating a series of workshops as part of the National Broadband Plan. We are requesting that the FCC create a new, investigative workshop dedicated to ---- Follow the Broadband Money.

In June, 2009 the State of New York Department of Public Service allowed Verizon to raise local utility phone rates, claiming that Verizon needed more money to pay for Verizon's fiber optic upgrades, which are being deployed for Verizon's FiOS. In fact, since 2004 Verizon has increased local phone rates with the State's permission, 90% in New York.

The State wrote:

> "We are always concerned about the impacts on ratepayers of any rate increase, especially in times of economic stress," said Commission Chairman Garry Brown. "Nevertheless, there are certain increases in Verizon's costs that have to be recognized. This is especially important given the magnitude of the company's capital investment program, including its massive deployment of fiber optics in New York. We encourage Verizon to make appropriate investments in New York, and these minor rate increases will allow those investments to continue."

http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/B849A020314983A3852575D900530827/$File/pr09054.pdf

These increases were not minor and have been continuous since 2004. Also, the increases were not just for 'basic local service', but for almost all ancillary local services, from Call Waiting and inside wire maintenance, to even toll calls and packages. Ironically, those being most impacted by these increases are seniors, Lifeline customers, small businesses and others who rely primarily on the utility local service. Local service is supposed to be 'fair and reasonably' priced, yet, today, the utility local service is becoming the highest-cost service.

We have written a separate report on this topic and are going to be filing a complaint in New York state in the upcoming months.
http://www.teletruth.org/docs/NewYorkphone.pdf

It is obvious there is a short circuit in the regulatory fabric. Verizon and the State have made different claims for raising the rates. Besides funding fiber optics, Verizon claims there is competition, they are losing lines and that local service is not profitable. Based on free market economics, however, if there was competition, then local phone prices should continue to decline. Doesn't competition lower rates? In fact, local rates have been increasing throughout the US. New Jersey had an 80% increase while California has had a series of increases over the last few years on most services.

Why is raising local phone rates to pay for fiber optics a national broadband issue that needs investigation? And what is the actual status of competition?

The FCC is supposed to be creating a national broadband strategy, and yet, in no previous document, report, order, or opinion has the FCC actually examined a primary fact – Ratepayers of local service have been and continue to be the primary funders of broadband in New York and throughout America. It is not the shareholders; it is the utility customers. And because the FCC redefined broadband as an 'interstate information service', it has not examined the state alternative regulations that are the primary source of broadband investment in the US.

The new reality is --- Local service customers, which use the New York state local phone utility, are now being squeezed through increases in 'intrastate' rates and that money is now being siphoned to pay for the construction of FiOS, which we contend is illegal as it is cross-subsidizing a competitive 'interstate information service' and cable service.

Verizon's FiOS and AT&T's U-Verse are essentially dismantling the utility, and are instead shifting assets and services to a competitor, an interstate information service. This switchover removes the basic obligations the company had as a utility, such as making sure the products are offered throughout the entire state, not some portion of it.

Instead, both the FCC and State are allowing these companies to strip-mine the Public Switched Telephone Networks, including tearing out or disconnecting the utility copper wiring, and they now control where they will deploy and when, if at all. And to top it off, these companies get ratepayers to pay for these service deployments, which they may never use or even have available. It is not just raising phone rates, but the fact that these other branches of Verizon get to use the networks, the mailing lists, the advertising, and even the rights of way of the utility at little or no cost, which is anti-competitive.

If building infrastructure that is ubiquitous, open and competitive, affordable, and very fast are America's goals, then shouldn't we know exactly who is currently funding the networks and whether the customers are getting a raw deal?

Instead, we have a situation where many municipalities are considering or attempting workarounds from the very networks that are already in place. Instead, there are continuous price increases because real competition doesn't exist to lower the cost. And now, the companies have merged and vertically integrated Internet provisioning, broadband/DSL, and phone service. They can now hold America hostage as regulators attempt to come up with new 'financial incentives', even though no regulator has held AT&T or Verizon accountable for the monies they are already collecting. Yet, instead of pointing out that AT&T and Verizon are strip-mining the utility, many organizations are claiming we need to give more money to these companies; we need to increase the Universal Service Fund to help fund broadband. We need to give new tax breaks.

One of the stumbling blocks to this issue is the fact that broadband, until 2005, was a telecommunication service, and the actual wiring is part of the local service networks. The Internet was an 'interstate information service', as it is NOT the conduit but another, separate application that rides over the conduit. By tying the speed of the connection with the application and renaming it all an 'Interstate Information Service' without the obligations of the telecommunications service, this new paradigm is in direct conflict with the artifact of the utility. Using this distinction, the phone companies get to get rid of obligations and take ownership and control, but retain the utility benefits and perks.

In the end, local phone customers, especially seniors, end up funding the new networks, but get none of the benefits. Thus, the workshop we propose examines state and federal overlapping broadband network and funding issues, but also examines the chain of funding – from local phone customer through to how Verizon's divisions, including FIOS, takes advantage of the utility funding. --- Following the money trail.

$300 Billion and Counting. --- The Reason America is 15th in Broadband.

Ratepayer funding for broadband is not a new situation, though the FCC has continuously failed to examine this issue. In our recent Comments filed pertaining to the National Broadband plan, we have put an entire ebook into testimony, where we outline, in detail, how Verizon and AT&T and Qwest (and their previous incarnations) in almost every state, received changes in state regulation known as 'alternative regulations'.

See: http://www.newnetworks.com/broadbandcommentsrelease.htm

This deregulation gave these companies excess profits to pay for broadband services and network upgrades. We estimate that $300 billion dollars has already been collected, yet the networks, which were to be 'ubiquitous', open to all competitors, and very fast, over 45mbps in both directions, were never built. It is the reason America is now 15th in the world in broadband.

Instead of building out the Public Switched Telephone Networks with fiber optic upgrades, Verizon, AT&T and Qwest pulled a bait-and-switch, where they used the fiber-optic funding to deploy ADSL, a low-speed service that travels over the old copper wiring and was considered inferior in 1992. It was only after the FCC had agreed to allow the phone companies to essentially have controls over the fiber optic deployments did Verizon start to upgrade the last mile. AT&T's version, U-Verse, still relies on the old copper wiring and it fails to be able to deliver speeds that were set in 1992.

We have filed comments since 1998 outlining the state funding of broadband, yet, the FCC has never recognized or acknowledged that state regulatory plans were funding ‘broadband’ directly from customer phone rates and tax perks.

Nor has the FCC ever tracked the stated commitments and the outcomes or what happened to all of the funding that was being collected. By 2010, over 117 million households, i.e., almost all US households, should have been upgraded with fiber optics. For example, in the 1993-1996 timeframe, over 44 different video-dialtone applications were submitted for ‘permanent’ deployments. These applications on the federal level were directly tied to the state alternative regulations to upgrade the networks.

This is not a history lesson. Virtually all states changed laws to fund broadband. The networks weren’t built but, as far as we know. NO regulator examined the excess profits and either got refunds for the failure to build out the networks, or even stopped the overcharging from continuing.

This means --- today, built into many states’ local rates, are the increases for broadband that were never reduced or refunded, and it not only continues today, but because of amnesia on the part of the regulators, many states, like New York, are giving more money to the companies.

Here is a listing of our filings and related documentation.
http://www.newnetworks.com/broadbandreading.htm

Upgrading the PSTN Was the Goal.

We would like to make it clear, funding for broadband was supposed to be used to upgrade the “public switched telephone networks’, the utility. Here is the New Jersey state law. It specifically states that the monies to be collected were for the ‘public switched telephone networks’, not a 'competitive provider'.

> “"D. 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 Now Jersey and referred to by NJ Bell as "Opportunity New Jersey" (See the Deloitte Report). Opportunity New Jersey would accelerate the deployment of key network

> technologies to make available advanced intelligent network, narrowband digital, wideband digital, and broadband digital service capabilities in the public switched network, and thereby 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."

This law is still in effect in New Jersey. In fact, by 2010, 100% of the entire state is supposed to be completed and upgraded with fiber optic services, capable of 45mbps service. Here is the timeline for the completion of the entire upgrade of the public switched telephone network, from the Order.

http://www.newnetworks.com/nj45mbpspar1.htm (See the bottom left hand corner.)

We note: The speed of broadband in the US in 1992 was 45mbps in both directions. It is in New Jersey law, as well as Texas law, among other states.

> "Broadband Digital Service — Switching capabilities matched with transmission capabilities supporting data rates up to 45,000,000 bits per second (45mps) 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."

Does FiOS fulfill the state obligations? We believe it does not and we will explain this in more detail.

Uptake Rates, Demand Models, and Capital Expenditure Analyses Are All a Waste of Time.

Under the various state laws, ALL customers were to be served as the monies collected were for upgrading the utility which was to be ubiquitous; rural, urban and suburban areas, rich and poor neighborhoods would be equally served.

Take the case of Verizon, Pennsylvania. The state law specifically called for 45mbps in both directions to be deployed in rural, urban and suburban areas equally, with ½ of the state to be finished by 2004, 100% by 2015. (Order Re: Verizon Pennsylvania, Inc., Petition and Plan for Alternative Form of Regulation Under Chapter 30 P-00930715 2000 Biennial Update to Network Modernization Plan)

> "Verizon PA has committed to making **20%** of its access lines in each of rural, suburban, and urban rate centers broadband

> capable within five days from the customer request date by **end of year 1998**; **50% by 2004;** and 100% by 2015."
>
> "In order to meet this commitment, Bell plans to deploy a broadband network using **fiber optic** or other comparable technology that is capable of supporting services requiring bandwidth of at least 45 megabits per second or its equivalent."

The alternative regulations gave Verizon, PA excess monies, paid to the incumbents to build out the networks – it was not their 'discretion'; they were getting paid. Think of it as a contract with a contractor to build a road.

> "Thus, Bell's deployment of broadband facilities will take place in locations where conventional economic, financial, business or plain engineering justifications for such deployment may not exist. In this respect, Bell may install broadband facilities and bear the associated variable and fixed costs of the investment without realizing any corresponding streams of revenues in return, especially if such broadband facilities are not going to initially serve significant demand quantities for telecommunications services. Thus, Bell may be called upon to bear the risk of such initially unproductive capital investments."

While there could be 'unproductive capital investments", Verizon could, at any time, return to the well to get more money. The outcome in PA was Verizon, PA's return-on-equity (profits) post the alternative regulation doubled, going from 14% to 29%, and the company took the money but never built out the networks. Instead, like they did in their entire territory, they rolled out ADSL over the old copper wiring until they were able to build FIOS as a competitive service without the obligations. According to the PA Commission, ADSL was NOT what was promised or paid for as ADSL is an inferior product.

> "It is apparent that **DSL, as it currently exists today, (March 2002), is unable to provide the broadband availability of 45 Mbps both upstream** and downstream that the Company voluntarily committed to and the Commission approved in 1995."

New York State's alternative plan, and even subsequent proceedings pertaining to the pricing of competitive services, was based on Verizon, New York claiming it would have 100% upgrades of the basic infrastructure. New York Public Service Commission, 1997 (Opinion 97-14, page 10)

> "We adopted New York Telephone's position and used, as an input, 100% fiber (optic) feeder. In doing so, we …acknowledged the "incontrovertible evidence" that New York Telephone contemplated installing a broadband system and that fiber and associated equipment were needed for that system. (A feeder is the endpoint of the network that connects multiple homes, offices, etc.)."

The Utility vs the "Interstate Information Service".

This is a critical issue – The utility is supposed to be 'ubiquitous', meaning that everyone is paying and the funding is going to be used to upgrade ALL of the state. The utility is supposed to be 'common carriage' and be required to make sure that every part of the service is competitive. I.e., the customer can select an Internet provider, or a broadband provider or a cable programming provider. And common carriage does not let the phone companies degrade, filter or others tamper with the actual traffic or call. This was one of the main reasons for the Telecom Act of 1996.

Instead, FIOS is a closed network; the customer can't select an Internet provider. The service is not being rolled out as a 'ubiquitous service'. Verizon's CEO, Ivan Seidenberg made clear that only 70% of the Verizon territory would be upgraded; thus, upstate New York; rural and suburban areas are not going to get upgraded, even though these utility rate-paying customers are funding the upgrades.

FIOS is also a 'competitor' to the local utility, yet it is draining the local phone utility of construction upgrades. FIOS and the other Verizon products, including DSL, are also getting a free ride --- from the utility phone bill insert advertising for FiOS, the rights of way, or using the networks without paying their fair share --- the utility is being harmed by FIOS.

Destruction of Utility Property

The clearest harm to the utility is the destruction of utility property when Verizon 'cuts' the copper wiring to replace it with FIOS. Under the original state laws, Verizon was supposed to upgrade the utility with fiber. Instead, it cuts the copper, which is counted as a 'line loss', (which the company uses to claim there's heavy 'competition'). It also shows up as a loss of revenue to the utility. Is it the illegal transfer of the utility property to a free market company for 'personal' use?

Removing the Copper Harms the Remaining Competition.

The FCC's rulings to block competition on the fiber networks, and remove the obligations to offer competitors use of the copper-based DSL service using line sharing has had a harmful impact on competition. In 1999, there were over 9500 independent ISPs, but, after the FCC's decision to block competitors, especially Internet providers, from using higher speed networks, (not to mention a failure of the FCC to stop predatory pricing and sub-standard customer services to competition), literally 7000 small, independent companies were put out of business.

The remaining competitors who can still use the wholesaling of the copper wire (through UNE-L), and offer competitive DSL service, are now being squeezed even further as the fiber optic networks are now off limits to ISP competition, and pulling the remaining copper therefore blocks the remaining customers from getting a competitive service, or going back to a competitor.

Depending on the Incumbents Is a Sure Way to Harm the Economy and America's Broadband Future.

AT&T and Verizon are now claiming that the utility is dead and that their own services should act as the essential infrastructure. We believe that depending on Verizon or AT&T would be a seriously flawed decision.

As we discussed, Verizon is only rolling out fiber to 70% of their territory, which impacts 10 states as well as the former GTE and ALLTEL territories. AT&T is much worse. AT&T now controls 22 states' telecommunications and their broadband product is inferior to anything being built in other countries as it relies on using the old copper wiring. More to the point, Verizon or AT&T could, at any time, stop building, impacting the entire US market.

In fact, AT&T is reportedly cutting back on U-Verse deployment while Verizon is also slowing down.
http://www.dslreports.com/shownews/ATT-Slowing-UVerse-Deployment-102795

They can, at whim, raise rates, create roadblocks, such as those that create net neutrality problems. This control is not simply in the infrastructure, but the vertical integration of control over the wire, including excluding others from offering Internet Service provisioning, or other broadband services. They also have been and continue to discuss metering broadband, charging application services, like Google, and blocking some content, which they can do when the control both the network and the connectivity to the Internet.

And there are also ancillary networks, such as the 'special access', which are critical for wireless broadband deployment, yet they have been deregulated to the point where the entire critical infrastructure is no longer a utility but controlled by a group of unregulated/deregulated monopolies who do not compete.

If the FCC believes America needs to have a national broadband strategy that serves every home, as well as act as critical infrastructure to all businesses, we need a plan to take the monies that have been allocated to 'utility infrastructure' back and to upgrade networks that are not beholden to corporate whim, which has not served us well. We are, after all, 15^{th} in the world in broadband. Something went terribly wrong.

Manipulating the Data: Moving Buckets of Money Around to Obfuscate the Company's Money Trail.

Verizon, in New York, helped by way-too-cozy state regulators, claimed that local service is 'losing money'. This is just an artificial financial shell game being played to raise rates. The State wrote:

> "For 2008, Verizon reported an overall intrastate return of negative 6.7 percent and a return on common equity of negative 48.66 percent."

How artificial are the mathematics presented by New York State? In the recent decision, the State didn't include the FCC Line Charge, which is on every local bill at a cost of $6.42 a month. Hidden in the 'taxes and surcharges' section, most people believe it is to pay for the FCC to exist, but it is really direct revenue to the phone companies. The state also doesn't include most of the 'deregulated' products, nor did they examine the cross-subsidization of all of the other non-local service expenses, including FIOS. Since there is no explanation of the losses, and no one auditing the books, who knows what is or is not being included in the cost-of-service losses.

But the ultimate irony is what is happening with the costs of local service in New York and throughout the US. It is no longer tied to actual expenses, and virtually all of the parts, from directory assistance to inside wiring have all had major increases, though the actual costs are never examined. For example, Call Waiting costs less than a penny to offer, yet Verizon has just raised the rate in New York.

Meanwhile, it seems Verizon is very profitable. Verizon's Annual Report for 2008 shows that Verizon had revenues of $48.2 billion for Wireline service, and only $35.3 billion in expenses (not counting depreciation). The EBITDA (Earnings Before Income Taxes, Depreciation and Amortization) for end of 2008 was 27% -- That's $13 billion in cash.

The state never examined the actual reported income or profits of the company to see just how far off their financial 'losses' matched the reports being told to the investors or public.

Who is Getting Harmed by Rate Increases: Seniors, Lifeline Customers Are Primary Funders of Broadband.

In examining who uses local utility service is it clear that seniors, Lifeline customers, small businesses and low volume customers are being thrown under the bus. These are groups that rely on local phone service. There are those who will argue they should be put onto packages, but a closer analysis shows that those making those claims haven't examined the data.

Take the case of seniors and Lifeline customers, who are the main stay of low volume customers. (Low volume users represent 1/3 of US households.) According to the last census data (June 2009) the majority of seniors were not online or had broadband, most seniors do not have a cell phone (or would replace their landline for one) and based on the DTV transition, over 25% of seniors rely on over the air TV, and thus are not candidates for more expensive cable packages.

The state, however, knows it is 'harvesting' customers and has not done its homework to track who is really being harmed.

> "The current trend in the market is toward bundled service offerings, and Verizon believes the proposed price changes to its message rate residential service will encourage the migration of customers towards higher-value service Bundles. These amounts have not been audited by staff."

The FCC's Own Data on Phone Bill Charges Is Inaccurate, Distorted, and Harmful to Public Policies.

The FCC has never examined this wholesale harm to local phone service customers, as it does not have sufficient data nor even understands low volume customers. For example, in 2007, the FCC stated that high volume residential customers made basic rates obsolete.

The FCC wrote: (Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service Industry Analysis & Technology Division Wireline Competition Bureau)

> "Toll Service Rates 'The increased availability and marketing of discount and promotional long distance plans, as well as the popularity of wireless 'bucket-of-minutes' plans, has made basic schedule rates obsolete for many long distance customers, particularly business customers and high volume residential consumers."

Yet, there was no mention of how many 'high-volume' customers there are, or what happened to the low and medium volume customers. We bring this up because the FCC must come to grips with the fact that seniors are now a primary funder of FIOS, even though they will most likely never use or benefit from the offering.

We filed a Data Quality Act Complaint and Report over the FCC's phone charges information, outlining some of the problems.
http://www.newnetworks.com/dataqualityharvest.htm

Unfortunately, our recent survey of local, long distance, cable, broadband, DSL and wireless bills in San Diego California, published in 2009, and conducted with UCAN and funded by the California Consumer Protection Fund, has caused a stir as the findings seriously question the FCC's analysis abilities.

Attempting to examine the low, medium and high volume usage by household, the survey examined the cost-per minute for wireline long distance and wireless calling. We calculated each customer's cost per minute first, taking the total cost of service and dividing it by the total number of minutes a cell phone customer used. When we averaged all cell phone users, the average customer had a $3.02 cost per minute.

Why? Because there's a large population of callers who make little or no calls but can have cell phone bills of $25-$50.00 a month.

The FCC's data, based on industry stats, claims the cost per minute is only $.06 cents. The FCC's stats have a cardinal sin – averaging all calls customers make weights the results to only high-end users as the 80%-20% applies – 20% of the callers make 80% of calls. Thus, the FCC's $.06 a minute is a myth. It is not based on phone bills and the FCC has no information on low or medium volume users.

To see the report: http://www.newnetworks.com/ucanstudy.htm

Conclusions and Next Steps

1) The FCC's workshops have no slot for addressing the fundamental issues surrounding current and past public broadband funding. One workshop covers "Capital investment patterns", "Venture capital patterns" , "Projected investment patterns", which are pie in the sky, unpredictable and we believe has little, if any, basis in the reality of current customer funding. Therefore, we ask the FCC to create a new, investigative workshop that addresses customer-funded-networks.
2) The FCC's approach and data has to change and the workshop should be used to come to grips with:

a. The past and current intra-state funding of interstate information services.
b. The flaws with the FCC's data on phone bill charges, and reverse engineering the information into the funding used for broadband. --- Are seniors and low volume users being taken advantage of through rate increases being used to fund broadband?
c. The FCC's data on competition needs to be revamped. How can prices continue to increase if there is serious competition?
d. Utility vs interstate information services/corporate-controlled, deregulated networks, including current regulations.
e. All funding sources for broadband should include current cross-subsidization of the utility construction and expense budgets with the non-regulated service expenses, including FIOS, DSL, long distance and wireless.
f. All customer funded services, including special access revenues and expenses should be examined, as wireless broadband depends on special access.

3) Jurisdictional issues need multi-dimensional approaches. State laws that are funding broadband need to be examined and applied and merged into a national federal analysis and plan. To date, the FCC has ignored ALL of the state alternative regulation plans, or the intrastate funding of broadband. There has been no inter-twining of analysis; the FCC simply ignored the states' plans even though they were directly tied to federal initiatives. This failure to cross-analyze the market has had severe consequences, including making the US 15th in the world in broadband.
4) Accurate data for competition and all services needs to be a commitment, not an afterthought. With the forbearance of requiring information on multiple topics that were previously required, whole areas of incumbent data is now missing on critical areas from infrastructure to the number of special access lines. We've filed multiple Data Quality Act complaints, including a current complaint that outlined how the FCC has used data from 1992, 1993 etc. to discuss the current level of competition in ALL of the FCC's Regulatory Flexibility Act analyses. http://www.teletruth.org/forbearance.htm

5) Redo the FCC's history of broadband to reflect the commitments, funding and outcomes. As we laid out in our ebook, all phone companies, (now combined into AT&T, Verizon and Qwest), made commitments to deploy broadband in everything from alternative regulation plans to annual reports, press releases, etc. --- all done, it now appears, to make more profits and enter long distance and other markets. We've filed multiple times on the fact that the FCC's data never included this information in the "Advanced Services" analysis, as part of the

Section 706 obligation. It distorted the entire policy on broadband because it never held companies accountable for their stated commitments. http://www.newnetworks.com/NNI_FCC_9-98.txt

Broadband Reading Room. We created a series of links of our previous filings, comments, and complaints: http://www.newnetworks.com/broadbandreading.htm

Harvard Nieman: The new FCC chairman is making all the right promises. Can he fulfill them?
http://www.niemanwatchdog.org/index.cfm?fuseaction=Ask_this.view&askthisid=419