

New Networks

To: Chris Eicher, Chief Counsel for the House and Christina Fisher, Chief Counsel for the Senate, The Massachusetts Legislature's Joint Committee on Telecommunications, Utilities and Energy

From: Bruce Kushnick, Executive Director, New Networks

RE: Proposed Telecommunications Bill, H2930

Date: November 1, 2013

There are three reasons that the Committee should not vote any time soon on the Telecommunications deregulation bill, H.2930. Instead, the legislature should start immediate investigations into two areas.

- Failure by Verizon to properly upgrade the state's infrastructure with fiber-optics, even though the company collected billions of dollars in excess phone charges and tax perks.
- Massive cross-subsidization between Verizon wireline and wireless divisions. It appears that Verizon has been able to essentially game the states regulatory system to use wireline revenue to build out both wireless and FiOS infrastructure.
- This proposed legislation is part of a massive state and federal plan by Verizon and AT&T to remove regulations, obligations and oversight, not about economic development and jobs or bringing more broadband to citizens and municipalities.

1) Failure to Provide Fiber Optic Based 45 Mbps Services

In 1999, New Networks filed a complaint¹ with the Massachusetts Department of Telecommunications and Energy pertaining to the billions of dollars now Verizon New England collected from customers to pay for fiber optic upgrades that never happened.

We wrote:

"In statement after statement, before consumers, advocates, regulators and the press, employees and executives at the top echelon of New England Telephone made repeated and unambiguous representations that NYNEX would spend over \$500 million to build the fiber optic network in Massachusetts, commencing in 1995. On July 15, 1994, New England Telephone Chairman Paul O'Brien announced that NYNEX was....putting

¹ <http://www.newnetworks.com/MASSDTEFINAL.pdf>

New Networks

its money behind its beliefs. We recently announced plans to build what is essentially a new....state-of-the-art broadband network.... capable of providing video-on-demand and interactive information services.” O’Brien went on to promise that construction would begin late that year, 1994, in eastern Massachusetts.”

"A few months later, the Patriot Ledger quoted NYNEX spokesman Kenneth Horne describing a very specific plan: .In Massachusetts, NYNEX plans to begin the new service in Somerville, Revere and Winthrop, then move to Brookline, Cambridge and neighborhoods in Boston, including Roxbury, Brighton, Beacon Hill and the Back Bay.....”

"In its testimony before the Department as it considered the alternate regulation plan, NYNEX agreed to .deploy a fiber-based broadband network, with initial deployment to approximately 330,000 access lines, by year-end 1995..”

"NYNEX made essentially the same promise to the FCC in 1994: .On July 8, 1994, NYNEX filed two (Section 214) applications for authority to provide video dialtone service in certain areas of Massachusetts and Rhode Island. The application to provide video dialtone service in Massachusetts proposes a system that will pass approximately 334,000 homes and businesses.” [FCC 95-50 Order and Authorization, released 3/6/95]

Here are the pages from the original filing, outlining how the company would have 330,000 lines of fiber optics installed as well as make sure that fiber optics went to hospitals.

- <http://newnetworks.com/massfiberfailurepage1.htm>

In 1995 the state granted deregulation and the company immediately took an \$800 million dollar tax deduction claiming that it was to replace the copper wiring for fiber optics.

Never happened -- It was all make believe:

"Today, more than four years later, there are no fiber-optic, full-motion-video-with-eight-hundred-channels services being offered in the region by Bell Atlantic or anyone else. The promises: digital delivery of hundreds of channels, at speeds one hundred times faster than current high-speed internet services, made by NYNEX were broken and they have not, as yet, been held accountable.”

New Networks

And Verizon pulled a bait and switch – claiming it was deploying fiber optics when in fact it simply rolled out ADSL a service that was considered inferior even in 1994.

“Currently new products are being offered via ADSL – a service that is deployed over the copper network—the original twisted pair of wires that was to be replaced by fiber to every home.”

In the end, Verizon simply was allowed to pocket their financial incentives -- and in 1999, we testified about this -- the complaint was ignored.

We estimate that by the end of 2013, Verizon New England collected about \$12 billion dollars-- and counting.

We need to make clear— As far as we can tell, there was never any audit of the monies collected in the name of broadband, never any rate reductions or refunds. And yet since the time of the passage of the alternative regulation plans passed in 1995, there were even rate increases.

This situation is not unique to Massachusetts as we outlined in other states, including New Jersey.²

What about FiOS? The company claims passes 1 million 'premises'.

“At year’s end, FiOS services were available to more than 1 million Massachusetts homes and businesses.”³

This means that Verizon has ‘passed’ 1/3 to 1/2 of the state as there are 2.4 million households and about 600,000 businesses according to the Census⁴; that would mean that there are business and households passed: 3.1 million --- 32%

2) **Massive Cross-Subsidization between Verizon Wireline and Wireless Divisions**

However, there is a much deeper issue – First FiOS is a product brand and it was not a replacement of the copper wiring of the state PSTN, Public Switched Telephone Network – the state-based utility—which customers were charged for. Moreover, Verizon may be dumping expenses from its affiliates, including Verizon wireless’s fiber-to-the towers, or cable expenses into the state utility and may have also moved parts of the cable networks

² http://www.huffingtonpost.com/bruce-kushnick/broadband-wars-the-battle_b_1541089.html

³ <http://newscenter.verizon.com/corporate/news-articles/2013/03-07-ma-infrastructure-investment/>

⁴ <http://quickfacts.census.gov/qfd/states/25000.html>

New Networks

into separate subsidiaries where the expenses stay but some of the revenues go into a different bucket. On top of this, Verizon's affiliates appear to be less than competitors would pay, making the state utility look like it's losing money.

In 2009-2010, Verizon New England, (MA and RI) claimed to have lost \$1.2 billion dollars, with an income tax benefit of \$477 million dollars.

In New York, Common Cause, Consumer Union, Communications Workers of America and the Fire Island Association filed comments and a FOIL with the New York State Department of Public Service in a docket pertaining to Verizon's request to no longer provide phone service over a wire, but to replace it with a 1990's styled wireless product called Voice Link.

They wrote:

"We assert that there is evidence that the reported losses are substantially the result of misallocation of revenues and expenses as between the landline and wireless systems. The evidence is strong enough to require the Commission to consider it, and seek such additional information as will prove or disprove the existence of systematic and intentional misallocation by the Company, with consequences for customers/ratepayers of both systems, the tax payments due to federal, state and local jurisdictions, and policy decisions made by the Commission."

It was based on our report of Verizon New York and the affiliate transactions. It would appear that these same issues are identical to the situation with Verizon Massachusetts.

According to Verizon's own Massachusetts's press release⁵, they freely outline how the 'wireline budget in Massachusetts is paying for fiber to the cell tower.

"Verizon Invested More Than \$545 Million in Massachusetts Wireline Communications, IT Infrastructure in 2012, March 7, 2013 - Press Release.

"Continued deployment of fiber-optic links to wireless providers' cell sites throughout Massachusetts as these carriers expand their infrastructure to meet ever-growing demand for wireless broadband and advanced 4G

⁵ <http://newscenter.verizon.com/corporate/news-articles/2013/03-07-ma-infrastructure-investment/>

New Networks

services. In 2012, Verizon deployed fiber optics to connect 358 of these sites in the state.”

And let me be clear, Verizon’s Fran Shammo has said that the wireline networks were essentially funding the wireless build out.

Fran Shammo, Verizon's EVP and CFO⁶ stated that the wireline construction budgets have been diverted to charge wireline 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."

Missing Data:

There has never been an audit of the affiliate transactions in Massachusetts that we are aware of – or any Verizon or AT&T state since the 1990s. The FCC has stopped requiring any data about these areas since 2006 and Verizon stopped publishing their state-based SEC reports since 2010. Therefore getting any actual accounting of just how much money customers paid for fiber optic networks since the 1990’s or how much customers have been overcharged through the cross-subsidization is unknowable.

3) The Plan: Close Down the ‘Copper Wiring’ and Force Customers onto Wireless

There is a massive state and federal campaign by all of the wireline companies, AT&T, Verizon and Centurylink, and the AT&T and Verizon wireless companies to create model legislation that is directed to remove all regulations and obligations of the phone companies – and get rid of oversight.

AT&T filed a petition with the FCC to “sunset” the PSTN,⁷ and on the state level, the companies create “Model” legislation⁸ written together via an organization called ALEC, the American Legislative Exchange Council. 25 States (or more) have been able to dupe whole legislatures into thinking that giving these companies new deregulation or believing the garbage of ‘technological advances like VOIP – an internet phone service that requires a broadband connection (thus a double bill) is a good idea.

⁶ http://www22.verizon.com/investor/DocServlet?doc=goldman_vz_transcript_092012.pdf

⁷ http://www.huffingtonpost.com/bruce-kushnick/att-alec-fcc-part-2-the-a_b_3316702.html

⁸ http://www.huffingtonpost.com/bruce-kushnick/alec-your-communications-_b_3287860.html

New Networks

Most of copper wiring in the State should have already been upgraded over the last two decades – and wasn't. The companies have been able to overcharge customers in multiple ways – and all of this is because of deregulatory policies that were nothing more than schemes to get rid of regulation, oversight and obligations.

The proposed bill in front of the Committee, H. 2930, just needs to be compared to the ALEC bills to prove whose hand writing has drafted these odious attempts to fool the legislature and the public.

Instead, -- You should ask how much money was collected in the name of broadband or how many hundreds of billions of dollars was lost in economic development and job creation due to a failure to give Massachusetts the 'best' networks – instead, the phrase in Massachusetts is – Please Sir, May I Have Another.

The Joint Committee on Telecommunication, Utilities and Energy should investigate before the Committee votes to move the bill out of Committee and to the floor so that the Legislature could vote to deregulate Verizon state utility. New Networks would request that should be the next step of the Committee.

Bruce Kushnick, Executive Director
New Networks
bruce@newnetworks.com