

A Truly Bold Plan for New York City's Broadband Future

The NYC Mayor's Office of Tech & Innovation has asked for [bold ideas & innovation](#) to "help bring high speed Internet to all New Yorkers", including "more choices among ISPs", and "expanded service to underserved communities", which may require "policy changes".

We applaud the City's recent, long overdue audit of Verizon's commitment for delivering a fiber optic-based series of services under the brand name FiOS to 100% of housing units by July 2014. The real question is, however, whether the City will actually take bold steps to fix what's broken.

Who We Are: New Networks Institute, (NNI), established in 1992, is now a NY City-based market research and consulting consortium and over the last decade we have assembled a team of independent telecommunications and Internet experts, forensic auditors, analysts and lawyers. And we have a plan to help move NYC's agenda forward.

Our goals:

- Get everyone in NYC wired with fiber optics from the incumbent utility company, Verizon.
- Lower the rates of Time Warner Cable's cable and broadband services.
- Get businesses, large and small, even in commercial buildings, wired with fiber optics.
- Open up Empire City Subway's hold on NYC's critical communications conduits.
- Open the incumbent networks to direct competition at all levels, allowing customers to choose which provider offers them broadband, Internet, phone or cable service.
- Help make NYC be a fiber-optic-based-Internet mecca that will attract new business.
- Fix the hold Verizon's wired services have on all wireless competitors.
- Fix egregious and deceptive communications billing practices.

How to Do It? NNI is proposing: A) The creation of a detailed, fact-based analysis that provides an action plan the City can use to accomplish these goals. B) The creation and implementation of a unique survey to ascertain the communications services currently used by consumers and businesses, C) Provide ongoing expertise to make this stick.

Let's put some facts on the table.

Background: Verizon's Fiber Broadband Failures are Historic and Not News.

Verizon has not only failed to complete the upgrade of New York City but has never been held accountable in any meaningful way. In New York, as far back as 1993, Verizon (then NYNEX) claimed it would have over a million lines of fiber optic residential services completed by 1996, as told by their annual reports and press releases. There was even a NY State report, detailing a plan to have around 20% of the entire State upgraded with fiber optics by the year 2000, which was a replacement of the existing copper wires used as part of the State "PSTN", Public Switched Telephone Networks – the State telecommunications utility. And, as we have documented over the last two decades, similar promises were made in every Verizon state, from Massachusetts to Virginia. Thus, the failure to properly upgrade New York City is not surprising, just predictable. What happens next is what matters.

What we Found: (Using Verizon’s own financial reports and statements, filings, etc., as well as state and federal regulatory documents and orders.)

- 1) **Verizon announced the deployment of FIOS in 2004** — **NOTE:** FiOS is not the fiber optic wire but a group of services that travel over this fiber optic wire.
- 2) **Verizon NY customers paid major rate increases for the deployment of FiOS** — In New York, Verizon was able to get rate increases of 84% since 2006 (and 100-300% on added services, such as non-published numbers) from the NY Public Service Commission (NYPSC) for a **‘massive deployment of fiber optics’ and ‘losses’**. This language is taken from the State Orders for the rate increases.
- 3) **The average New Yorker who had Verizon basic phone service paid over \$750.00 extra per line** and around \$300.00 for each added service, since 2006. In New York State, this comes to **about \$5 billion dollars and counting**. Thus, every low income family, senior citizen, residential or small business, paid for a fiber optic upgrade of the state utility network — I.e., customers paid for services most will never get or even use.
- 4) **Broadband coverage was never properly monitored** — At the end of the day, Verizon NY only has about 45%-60% covered in NYC, (it is worse upstate). And the accounting by Verizon is manipulated; this is happening in every Verizon state.
- 5) **Verizon NY claimed massive financial losses and paid no income taxes** — Verizon New York paid no income taxes for the last decade and, in fact, lost \$2.58 billion dollars in just 2014, in just New York. — Isn’t FiOS profitable?
- 6) **FiOS fiber optic wires are a “Title II”, telecom service and part of the State utility** — Verizon was able to have the State grant the rate increases because Verizon’s entire fiber optic deployment is part of the state utility as a telecommunications service (commonly known as “Title II”), with common carriage obligations as told by the Communications Act of 1934. Verizon convinced NY State that the networks the FiOS services use were an extension of the existing utility Public Switched Telephone Network, (PSTN). And the irony, for those who follow the Net Neutrality debate, is that Verizon claimed Title II harmed investment; in this case, Title II is used to secure the investment.
- 7) **Most of Verizon’s other fiber optic deployments are customer-funded** — Verizon also decided that the other fiber optic build outs, like the fiber optic wires-to-the-cell towers and the “special access” wires should also be ‘Title II’. Moreover, it appears that most of the construction expenditures for Verizon Wireless or Verizon FiOS TV was done through rate increases. In fact, the NY Attorney General’s Office specifically said, in 2011, that of the construction budgets for the state utility, 75% had been diverted to cable TV and wireless.
- 8) **The claimed losses were created through a financial shell game** — There has been a massive financial manipulation of the flows of money — revenues and expenses — to make the local service networks look unprofitable. Besides the diversion of the construction budgets, the affiliate companies have been able to not only pay less than market value for using the networks, but because they are ‘vertically integrated’ (meaning that the incumbent phone company’s wires can only be used by Verizon’s other affiliate companies, like Verizon Online, to offer high speed Internet or cable service), the expenses have been manipulated so that local service has paid the majority of expenses, including corporate operations or marketing.
- 9) **The Local Networks are Profitable** — When the flows of money are adjusted to stop the excessive dumping of expenses into the state utility, or the affiliate companies are paying

market prices, local service is profitable. It is clear that there are massive cross-subsidies of Verizon's other lines of business that need to be addressed— and fixed.

- 10) Opening the Networks** — The massive cross-subsidies and 'vertical integration' demonstrate that Verizon has been able to give financial advantages to its own affiliates over all competitors and is now holding hostage the public networks that customers have been funding.
- 11) Empire City Subway's hold on NYC's critical communications conduits needs fixing.** In 1896, ECS received a franchise for parts of New York City and it is time to revisit this as the era of 'horse & buggy' is over and it has, instead of building this business, used it to harm competitors and slow the growth of fiber optic networks in New York City.
- 12) Time Warner and the Social Contract** — The cable companies must also be dealt with. In 1995, the cable companies, including Time Warner, cut a deal with the FCC, known as the "Social Contract", an actual agreement, which expired in 2001. The companies were granted rate increases, adding up to \$5.00 a month per subscriber, to pay for the upgrading of the cable networks as well as to deliver high speed cable modem service to schools — free of charge. By the end of 2014, Time Warner had collected an additional \$840.00 per subscriber, based on actual bills, as the charge was never removed once the contract expired; nor is there any evidence that Time Warner had actually wired schools. Moreover, as of 2014, Time Warner had an outrageous 97% profit margin on high-speed Internet service. (The City has never audited the books to examine this issue, but Mayor deBlasio's submission to the New York PSC about the Comcast-Time Warner Cable merger quoted our materials.)
- 13) Deceptive Advertising, Combined with Egregious Communications Bills** — Time Warner Cable's basic Triple Play has the advertised price of \$89.99; a price no customer can ever get as it leaves out 20-50% of the actual costs, including basic hard-dollar expenses, and a host of 'made up fees', or taxes that are 'passed through' to the customer. However, after only two years, this basic plan costs \$196.77, as every part of the service can increase at will. Moreover, there are actual mistakes and overcharging in the calculation of various taxes, fees and surcharges, helping to gouge customers further.

While the FCC's new Open Internet Order includes an attempt to clean up the bills and advertising, it does not fix most egregious acts and there are legal and regulatory actions that can be taken to fix some of these issues with the assistance of the Consumer Advocate' Office and the Attorney General's Office, not to mention actions taken at the FCC.

- 14) Overcoming Problems of a Lack of Data** — The current information supplied by the City does not start to detail just how broken the NY City's communications services (and costs) have become. As part of our deliverables, we believe that the City needs to undertake an in-depth survey that actually answers basic questions — what services do business and residential customers have today, and what are they actually paying (not what the advertisement said). And this should not be done with a simple survey (or by placing a Survey Monkey questionnaire at a site).

Our analysis will prove a lack of actual competition, billing issues, including mistakes on the calculation of taxes, as well as 'ramming', 'slamming' and 'cramming' — all of which are added expenses to customers' bills. And it will detail 'unfair and unreasonable' practices. (**Note:** Working with class action law firms, our team has helped to create multiple, successfully settled class actions suits over the last decade. And with our forensic auditors, we have helped to get over \$30 million in refunds and lower rates for customers.)

15) Overcoming Problems with Jurisdictional Issues — Any current communications triple play or even local phone package is covered by multiple laws in multiple jurisdictions, and has multiple affiliate companies offering these services. Verizon has been able to use this multi-jurisdictional morass to help their own affiliate companies get financial perks that are not available to competitors, such as adding the costs of the wires to the cell towers to local service rate increases.

16) Throwing more money at the broadband problem is not the solution — Gov. Cuomo's NY State plan, instead of investigating these claims, has been to simply throw more money at the problem. And some solutions, like the FCC's plan of giving customers a broadband 'subsidy', means nothing when the set top box, cable modem or other added fees will just make the offer meaningless as it doesn't cover these expenses or fix the problems.

Conclusion: There are no market forces at play. We believe we know how to fix this.

Verizon's current plan is to 'shut off the copper' utility networks and force customers onto their own more expensive wireless service instead of properly replacing these wires with fiber optics, even though Verizon was able to get rate increases to do these upgrades. Verizon was also able to manipulate the financials to create massive losses (and not pay income taxes) but also fund and cross-subsidize their other lines of business.

Simply put: Go after the money: Customers have been 'defacto investors' for decades. Verizon has failed to fulfill its commitments under the FiOS cable franchise to have 100% of New York City wired by July 2014 — And yet, Verizon was able to charge local phone customers over \$750.00 or more for network upgrades they will never get. And since business customers also paid rate increases for the '**massive deployment of fiber optics**'— Verizon should also properly upgrade the commercial spaces.

And regardless of Verizon hype, the local networks are profitable, but using a massive financial shell game, Verizon made the networks look 'uneconomical'. Go after the cross-subsidies of the wireless and special access networks, and find out how Verizon NY lost \$2.58 billion in just 2014. Also, this analysis will prove the harms caused and can be used to open the networks.

Time Warner may have overcharged customers about \$840.00 for the wiring of schools, which appears to have never happened. When a contract ends, the billing of customers should have stopped. Audit the books and investigate whether the schools were wired, or the added fees were removed.

Billions of dollars are at stake and these are but a few areas that have directly impacted the fiber optic upgrades of the City New York over the last decade. And this impacts all of New York State's cities' as well, as many of these issues fall back to the State Commission.

"Bold" would be doing something extraordinary like holding the companies accountable and actually auditing the companies' books, or even doing a substantial survey to collect accurate data to ascertain just how bad the communications bills have become. It would also be 'bold' to 'do the right thing' and fix the problems, not simply pointing them out as if 'business-as-usual' is OK.

New Networks Institute

Pricing & Fees for Our Services: To be discussed.

Current New Networks Institute activities include:

- <http://newnetworks.com/nniactive2015/>
- NNI Report for *Public Utility Law Project*. It was used as part of the Connect NY Coalition's Petition with the State of New York over Verizon's cross-subsidies. <http://newnetworks.com/2014/07/connectnypetition/>
- Complaint and Call for investigation of Comcast and Time Warner Cable, quoted by Mayor deBlasio's merger filing with NY State.
- <http://newnetworks.com/complainttimewarnercomcast>

A Partial List of the Independent Team: (Full bios available.)

- **Bruce Kushnick**, Executive Director of New Networks Institute, (NNI) has been a telecom analyst for over 33 years. In 1992, Kushnick helped to create the first 3-digit information service "511", with Cox Newspapers.
- **Tom Allibone**, formerly an AT&T systems consultant and National Account Manager, is the President of LTC Consulting, and the Director of Teletruth's Auditing Division.
- **David Bergmann, Esq.**, was the Assistant Consumers' Counsel for the Ohio Consumers' Counsel, the state's utility consumer advocate, for almost 30 years.
- **Alex Goldman, Esq.**, recently graduated with his JD from Brooklyn Law School and was part of the well known telecom-Internet-based "BLIP" project. Alex also worked for the legendary ISPplanet, documenting the rise and fall of the independent ISP.
- **Fred Goldstein** is a Principle at Interisle and advises companies on technical, regulatory and business issues related to the telecommunications, cable and Internet industries. Previously, he worked at Arthur D. Little and Economics & Technology.
- **Kenneth Levy, Esq.**, held several supervisory positions at the FCC, including Deputy Chief, Operations of the Common Carrier Bureau and Chief of the Tariff Division, and served as General Counsel of the National Exchange Carrier Asc.
- **W. Scott McCollough, Esq.** is an attorney whose practice focuses on communications, competition, computer and Internet law and regulation. Past activities included 10 years as an Assistant Texas Attorney General.
- **Chuck Sherwood** serves as a member of the Alliance for Community Media's Public Policy Working Group and the Policy and Legal Committee of the National Association of Telecommunications Officers and Advisors (NATOA).
- **David Solomonoff** is the President of the Internet Society of New York and is the CEO of Zoetic Networks.
- **Dana Spiegel** is the Executive Director of NYCwireless, which has been the leader in getting public spaces wired up for wireless service. He is also the Founder and Chief Code Therapist at FounderTherapy, where he helps early stage startups bring their software products to market.

We look forward to working with NYC and stand ready to answer any questions you might have.

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