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RE: Comments: New Jersey Initial Proposal 5 Year Plan to solve the Digital Divide- has left out basic, material facts, creating distorted and even harmful public policies.

Summary:

We file these comments as the IRREGULATORS, a group of senior telecommunications experts, including forensic auditors, lawyers and former regulators. We have a strong track record of examining Verizon's misdeeds and achieving results in the public interest. We call to your attention the background of the Digital Divide in New Jersey and ask you to take the steps necessary to prevent a repeat of the shortchanging of the State's consumers, as well as the economic harms over the last 3 decades.

Closing the Digital Divide in New Jersey requires that first, the State must recognize that Verizon New Jersey helped to create the Digital Divide by its failure to properly upgrade the primary state telecommunications public utility, starting in 1993.

Second, Verizon has been able to rewrite the history and erase the fact that they had binding commitments, starting in 1993, to replace the existing aging, copper wires with a fiber optic wire and by 2010 --100% of their territory, including rural urban and suburban areas, and all income groups would be served equally.

Third; Negligence by the State for the failure to provide basic, basic, material facts in these 5 year proposed plans about the history, the players, and the current customer overcharging via cross-subsidies, that is ongoing. How is it possible that the State failed to even mention Verizon NJ, the state telecommunications public utility that covers the overwhelming majority of the state, or that had a 100% commitment for fiber to the home?

We are on record (as New Networks Institute and Teletruth) since 1998 that there has been a massive scheme to defraud the public and not provide fiber optic networks, directly to homes and offices, having testified and submitted comments and complaints detailing what we wrote herein. In fact, we predicted this ugly outcome in New Jersey and throughout the US. (See: Bill Moyer's PBS special, "[The Net at Risk](#)"; our segment "The New Digital Divide", featured Verizon and New Jersey.)

See our [New Jersey Broadband Fiber Optic Resources Page](#)

Fourth, Verizon's business strategy to engineer an all wireless future, its concomitant overcharging of local service customers and letting the state telecommunications public utility infrastructure deteriorate, has caused great public harm and calls for immediate investigation.

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Fifth, Verizon has manipulated its accounting and construction budgets to make the state telecommunications utility appear unprofitable, while cross subsidizing its other lines of business, including wireless.

Sixth, the [New Jersey Office of Broadband Connectivity](#), has received a large amount of government subsidies, with the hope that it will solve the Digital Divide.

“The National Telecommunications and Information Administration (NTIA) will be allocating \$263.7 million to New Jersey to help improve access to affordable, high-speed, reliable internet in unserved and underserved communities across New Jersey.

“The funding allocation will essentially be the program budget for developing and deploying the federal Broadband Equity, Access, and Deployment (BEAD) program in New Jersey and ultimately implement the state’s plan.”

Seven, Verizon has over the years collected over \$20 billion from its customers to deploy high speed broadband services throughout New Jersey. Rather than give Verizon even a single dollar of the federal funds, the State should hold the company accountable for its willful failure to upgrade the utility network.

Eight, whether due to a failure of institutional memory or intentional disregard for an uncomfortable truth, current documents, reports and websites in the State do not even mention Verizon New Jersey, or its obligations to build out broadband to the entire state. How is this possible?

And we must make clear, FiOS, the fiber optic wire to the home, started being rolled out around 2007, and this was the second wave of promises made to the State; the first wave of a fiber optic future in New Jersey was called “Opportunity New Jersey”, announced in 1992.-- and it ended around 2011 with the diversion of the construction budgets to wireless.

Nine: This is not a history lesson, however.

The State claims that it is in the middle of creating a 5-year plan “We are currently in the program planning and development phase. The federal deadline for the state's 5-Year Action Plan is August 28, 2023. Then the Initial Proposal for spending is due December 2023, and late 2024 for the Final Proposal. After the Final Proposal is approved by the NTIA, the program is expected to be implemented over the course of four years and is tentative to be completed in 2028.”

And the NTIA states that these plans should include the existing assets, rights of way.

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“3.3.1 Broadband Deployment The following list includes example assets that the Eligible Entity may identify and detail:

- State or Territory owned structures and utility infrastructure that providers could utilize at low- or no-cost for broadband deployment (e.g., towers, water towers, silos, buildings, utility poles).
- State or Territory owned land that providers could utilize at low-or no-cost for broadband deployment.
- Existing rights of way.
- Conduits or dark fiber deployed by the State/Territory or other government entities.
- Current or forthcoming capital projects, which would allow providers to lay new fiber at lower costs (e.g., road construction, water, or sewer projects); and
- Highly skilled workforce available to deploy broadband.

And here’s why this is not history.

Finally, we are expecting Verizon, New Jersey to claim that it is best positioned to build any new networks and ask for most if not all of the funding.

This, however, is the wrong answer: Verizon New Jersey and Verizon and all of the subsidiaries should be held accountable for the failure to upgrade the state.

Billions of dollars that should have been spent on infrastructure went illegally to build out wireless. If 100% of Verizon NJ’s territory which covers 96% of the state, then how can the 5 year plans even entertain giving more money to deal with unserved areas vs examining how Verizon failed to do upgrades and examine where did all the money go?

Worse, the state utility never stopped spending for ‘construction’ of fiber optic networks in the state--it just never went to the homes. Where’s all the money going and this would be in 2023, and will be going in 2024?

Which brings us to three other troubling issues.

Wireless and FWA are a bait and switch and not a substitute for fiber to the home.

There is a serious disconnect that occurred in New Jersey in 2014, when Verizon claimed that there was no previous fiber optic commitments and that the previous law should be modified via a ‘stipulation agreement’ to allow wireless at DSL copper-based slow speeds to substitute the 45Mbps in both direction commitments (as of 1993). The state also allowed Verizon to harvest the customers-- i.e.; continuous rate increases.

As we showed, not only is wireless a bait and switch, but it is being cross-subsidized with funds that should be used to wire homes with fiber optics; and wireless violates laws pertaining to the illegal cross-subsidy of this wired, utility network.

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Cable networks are now colluding with Verizon. Spectrum and Comcast are now reselling Verizon wireless networks as part of their cable package. This collusion means that

- Verizon did not show up to upgrade the State and thus there is a digital divide.
- The cable companies have no direct high speed competition for most of their territory
- The cable companies can also continuously raise rates.
- Verizon NJ's wires are being used for wireless and there have been no investigations
- The bottom line: wholesale prices for cable wireless are all rigged.
- Collusion of the primary players: In every current proceeding, Verizon et al. are now members of the same associations, using the same research and fake-astro turf groups and funding the same non-profits, as well as lobbying for more government subsidies.

All of these items mean that the 'middle' class and everyone else has been harmed with inflated prices that will not go down and customers will not get their competitive fiber service from Verizon to lower rates, and bring high speed to rural and low income areas.

And finally, **the State has been incapable of tracking the fiber optic broadband services for 30 years; it ain't gonna happen now.** The plans laid out in the 5 year plans are well intentioned play-acting and there is no evidence that the state will properly examine and make sure that the work gets done.

Some Links:

We have compiled our filings, articles, posts, etc pertaining to the fiber optic failure of Verizon New Jersey.

NOTE: We created a [case study of broadband in New Jersey](#)

We are available to work with the State to further explain why New Jersey must deny Verizon any federal broadband funding and why the company must be investigated.

But more importantly, the State has an obligation to actually servo the public interest and we have laid out enough material facts that the State has ignored but must act so as to not repeat the same basic core problems with solving the Digital Divide. The regulators failed to properly analyze and then hold accountable those who created this mess.

We put a detailed description of these documents and a timeline of the different proceedings, cable franchise, etc, in this next section.

APPENDIX

Here are the Numbers and Some of the Details.

The Core Basic Points:

- State Laws Were Changed to Pay for a Fully Fiber Optic State, Starting-1993
- In 1991, a plan, “Opportunity New Jersey”, (ONJ) was created by Deloitte & Touche and it laid out a fabulous fiber optic future. The existing copper wires, some of which had been in place since the 1930’s or earlier, would be replaced by a fiber optic wire.
- The new laws and regulations allowed Verizon to raise rates and get tax benefits - - i.e., extra profits, to supposedly be used to do the upgrades.
- But, Verizon left over ½ of the state undone, even though Verizon filed claiming it had completed 99% of the state with a fiber optic upgrade, which was part of the original law of 1993. Never happened; virtually no serious fiber to the home deployment occurred.
- However, there was another scheme for a cable system wide franchise a decade later for FiOS, which started in 2007, and it required 70 cities to be completely done to all residential customers, by 2014.
- And to be blunt, the State, in a brain-dead exchange in 2006, testified that the cable franchise was ‘cable TV’ and not a fiber optic upgrade of the state telecommunications utility, Opportunity New Jersey. And the cable TV division of the state BPU did not know about the previous fiber optic plans. In 2013, Verizon actually testified that there was no previous fiber commitment before FiOS in 2007,
- **Bait and Switch with Wireless:** In 2012, we successfully helped to get 2 small NJ towns upgraded to fiber, using these laws. But, Verizon was able to get Governor Christie’s administration to do a “bait and switch” and claim wireless should be a replacement for the fiber to the home commitments.
- **Holes even in “completed” areas.** The current data from one study claims that 5-7% of the top 5 major cities were not completed, (and that number is low) and it is the low-income areas.

References:

- New Networks Institute-Teletruth New Jersey Resources:
- <https://newnetworks.com/verizonnjbroadbandresources/>
- NJ Group report showing the holes and harms of speed.
- https://www.newarktrust.org/speak_to_us
- The Benton Story of NJ gives some of the links and the storyline -- never mentioning Verizon NJ
- <https://www.benton.org/blog/new-jersey-relying-federal-broadband-investments-make-state-more-equitable>
- 2020 Cable franchise renewal
- <https://www.nj.gov/bpu/pdf/boardorders/2020/20200505/5-5-20-3A%20-%20Revised.pdf>

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Let's Start at the Beginning.

In order to understand the enormous size and scope of how New Jersey did not become a fiber optic state, and the discrepancies in what was filed with the State, or told to the public, verses actual holes and redlining in the current deployment of Verizon's fiber optic networks, we need to go through the last 30 years if we are attempting to close the Digital Divide.

State Laws Were Changed to Pay for a Fully Fiber Optic State, 1991-1993

In 1991, a plan, "Opportunity New Jersey", (ONJ) was created by Deloitte & Touche and it laid out a fabulous fiber optic future. The existing copper wires, some of which had been in place since the 1930's or earlier, would be replaced by a fiber optic wire. And since everyone had a copper wire, this was just a technology swap.

100% of Verizon NJ Was to be Completed by 2010 with 45 Mbps Speeds in Both Directions.

Taken from the original Order, the box marked in red shows that in 2010, 100% would be completed under the "ONJ" plan with speeds of 45 Mbps in both directions, as opposed to 'business as usual', "BAU", which shows that the networks would be done by the year 2030 if the laws were not changed.

See the next page for the chart.

And there was a realization of a problem from the start. Below is a quote from a NY Times article interviewing the NJ Consumer Advocate in 1997, who filed a complaint about the failure of Bell Atlantic (now Verizon) New Jersey to bring fiber optic services to low-income areas, starting in 1993 and eliminate the redlining. Yes, that was three decades ago.

"In the five years since Bell Atlantic promised to wire every home and business in New Jersey with fiber optic cable, the company has hooked up suburban business parks and large corporations and set a schedule for suburban neighborhoods, but has not yet made specific plans for the thousands of poor people who live in the state's largest cities... Those people have paid for the fiber optic lines through their monthly bills, she said, but they have not yet benefited."

This ONJ plan was used to create "Access New Jersey", which was supposed to bring fiber optic networks to all schools and libraries in the state, starting in 1997.

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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>		
Initial:	1992	1992
100%:	2001	1998
<p>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.</p>		
<u>Narrowband Digital Service:</u>	Initial: 1992	1992
	100%: after 2001	1998
<p>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.</p>		
<u>Wideband Digital Service:</u>	Initial: 1994	1994
	95%: undetermined but before 2030	2000
<p>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.</p>		
<u>Broadband Digital Service:</u>	Initial: 1996	1996
	100%: 2030	2010
<p>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.</p>		

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Did Verizon Commit Fraud and Was the State Complicit?

From 1996 to 2005 Verizon did virtually no fiber to the home buildouts but had collected billions extra from customers because the extra profits were never returned to the customers.

However, Verizon NJ was required to supply an annual report to make sure that the deployment was on schedule. In its 2001 [annual infrastructure report](#), Verizon claimed it had completed 55% of the entire territory with 45Mbps in both directions. This service did not exist in 2001. This is an excerpt of that report (page 29). We marked the areas of interest in red.

APPENDIX B

Service Capability & Enabling Technology Deployment

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

Verizon Announced FiOS and Got a System-Wide Cable Franchise in 2006

In 2004-2005, Verizon announced it would be deploying its FiOS, its fiber optic-based services, via a 'system-wide' franchise which would only serve a partial list of municipalities, creating a new 'have' and 'have not' future.

As of December 2013, Verizon's cable TV franchise was up. ([Read our testimony.](#)) The 2006 franchise only required 70 towns would be completely upgraded. Verizon had another 352 municipalities that were partially done - but there was NO obligation to finish these towns. Out of 526 towns in the Verizon NJ territory, this means that at least 1/3 of all municipalities are never getting cable competition while the number of customers who can actually receive the service may be 50%, as most towns are 'partially' done.

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There have been Continuous Rate Increases on All Services.

In order to fund these network upgrades, there has been a continuous series of rate increases on wireline phone service, but in fact, it was on every service offered by Verizon. Known as Harvesting, there has been no mention that customers were charged for the upgrades of the state utility networks all through this process, where the premise was to fund upgrades of the state utility to fiber optics, which never happened.

Verizon and Cable are Not Competitors.

Without serious competition for cable and high-speed broadband, the cable companies were able to also continuously raise rates, but also add a series of made-up fees that are not government mandated, such as the Sports and Broadcast Fees.

Worse, the cable companies, Comcast and Charter, are reselling Verizon wireless service under their own name.

This 5 year plan has presented only lip service as to prices and affordability, and offers no plan to bring in direct competition to lower prices, or the removal of made up fees on the cable companies or anything related to harvesting or charging customers for broadband.

The Stipulation Agreement to Close Down the Fiber Commitments Was Based on Fraud and Data Manipulation.

The State Issued a Show Cause Order in 2012.

In 2012, the State issued a '[show cause order](#)', which claimed that two small towns, Stow Creek and Greenwich, NJ had not been properly upgraded. We helped the towns get Verizon to put in fiber – and we were too successful, it would appear.

Stipulation Agreement to Erase the Fiber Optic Obligations, 2014

In January 2014, the State and Verizon NJ issued a '[stipulation agreement](#)' to essentially erase any fiber optic commitments – (Verizon claimed it had fulfilled its obligations) – and this agreement slowed down the buildout and squashed the hopes of ½ the state from receiving a fiber-to-the-home 1 Gig service to the speed of DSL over the existing copper wires which was considered inferior in 1992. Where there was no wireline buildout the customer can only receive spotty wireless service.

But, these agreements were not changes in laws or regulations and it is clear that Verizon presented data that was fraudulent. According to the submission, Verizon claimed that 99% of all the state had a fiber optic broadband service and that they had put in 3.7 million miles of fiber. (Notice that this means they put in 800,000 miles of fiber in 1 year.

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From Testimony: Verizon claimed that 99 % of all the state had a fiber optic broadband service and that they had put in 3.7 million miles of fiber -- (notice that this means they put in 800,000 miles of fiber in 1 year.).

2009 Infrastructure Report:

- 2.9 million miles of fiber
- 94% broadband availability
- 74 Fast Packet Switches
- 72 ATM Switches
- 2.0 million premises passed with FiOS network

2010 (Final) Infrastructure Report":

- 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

But fast forward to 2023 and we find that a new study in NJ shows that the territories for FiOS were never properly upgraded and left scars-- giant holes that were never revealed. Worse, this case, these 70 cities were all supposed to be upgraded to fiber 100% but that didn't happen, and there have been no actual audits of what was put in NJ under the FiOS franchise.

“The table above shows the average download speed for each of New Jersey’s five largest cities alongside metrics related to infrastructure and high-speed provider availability. Average download speed figures for each city have been calculated by weighting Mbps averages for zip codes wholly contained in each city by the zip codes of respective population totals. Data, covering residential fiber availability and access to multiple wired providers, has been retrieved from BroadbandNow.com.”

Chart Showing 5 Largest NJ Cities. -- Residential Fiber Availability

Internet Access In NJ's Five Biggest Cities			
City	Average Download Speed (Mbps)	% Of Households With Access To:	
		Residential Fiber Availability	Multiple Wired Providers
Newark	79.5	93%	96%
Jersey City	106.4	95%	98%
Paterson	92.3	99%	100%
Elizabeth	93.7	98%	99%
Toms River	164.7	93%	94%

Average Download Speed: NJ's Five Largest Cities (Mbps)

FiOS and the 70 Cities

“Under the amended State Act, out of the 526 towns located in Verizon’s local exchange telephone service territory, Verizon’s deployment of its FiOS cable service was required in the residential areas of only 70 of the municipalities, consisting of the county seats in which it provides local exchange service, and those with greater than 7,111 residents per square mile.”

“Verizon was required to start providing service to the noted 70 municipalities within three years of obtaining a system-wide franchise, and subject to certain exceptions, was required to make cable television service available throughout the residential areas of the noted 70 municipalities within six years of the date it first provided cable television service on a commercial basis.

“Regarding deployment in the 70 required municipalities, as noted in the Board’s 2014 Order renewing Verizon’s franchise, Verizon furnished information to the Board via its quarterly deployment reports that it had achieved full availability of FiOS service in each of the 10 towns that were required for completion as of December 2012.

“Verizon was due to complete an additional 25 municipalities by year-end 2013, with the remaining half of the 70 required towns to be completed by year-end 2015. Verizon stated in its comments that it had satisfied its obligations under the above noted requirements by October of 2015.

“Following Verizon’s completion of its build out to the 70 required municipalities, Verizon’s deployment of services slowed to a halt. Since the State Act does not require that Verizon provide service outside of the 70 required municipalities, it is within Verizon’s discretion as to where they will deploy service outside of its statutory deployment commitments. While the Board has continued to receive requests for extension of Verizon’s service from residents outside of the 70 required municipalities, Verizon has chosen to not extend its deployment beyond the areas currently served at this time.

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Verizon NJ FiOS 70 Core Municipalities to have 100% Completion, 2014

	Municipality	County		Municipality	County	
1	Asbury Park	Monmouth		36	Lake Como	Monmouth
2	Audubon Park	Camden		37	Lodi	Bergen
3	Bayonne	Hudson		38	Maywood	Bergen
4	Belleville	Essex		39	Middle Twp	Cape May
5	Bergenfield	Bergen		40	Morristown	Morris
6	Bloomfield	Essex		41	Mount Holly	Burlington
7	Bogota	Bergen		42	New Brunswick	Middlesex
8	Bradley Beach	Monmouth	X	43	Newark	Essex
9	Bridgeton	Cumberland		44	North Bergen	Hudson
10	Camden	Camden		45	North Plainfield	Somerset
11	Cliffside Park	Bergen		46	Nutley	Essex
12	Collingswood	Camden		47	Orange	Essex
13	Dumont	Bergen		48	Palisades Park	Bergen
14	East Newark	Hudson		49	Passaic	Passaic
15	East Orange	Essex	X	50	Paterson	Passaic
16	Edgewater	Bergen		51	Perth Amboy	Middlesex
17	Elizabeth	Union	X	52	Plainfield	Union
18	Elmwood Park	Bergen		53	Princeton Boro	Mercer
19	Fairview	Bergen		54	Prospect Park	Passaic
20	Fort Lee	Bergen		55	Ridgefield Park	Bergen
21	Freehold Boro	Monmouth		56	Roselle	Union
22	Garfield	Bergen		57	Roselle Park	Union
23	Guttenberg	Hudson		58	Salem	Salem
24	Hackensack	Bergen		59	Shrewsbury Twp	Monmouth
25	Haledon	Passaic		60	Somerville	Somerset
26	Hamilton Twp	Atlantic	X	61	Toms River	Ocean
27	Harrison	Hudson		62	Trenton	Mercer
28	Hasbrouck Heights	Bergen		63	Union City	Hudson
29	Highland Park	Middlesex		64	Victory Gardens	Morris
30	Hillside	Union		65	Wallington	Bergen
31	Hoboken	Hudson		66	Weehawken	Hudson
32	Irvington	Essex		67	West New York	Hudson
33	Jamesburg	Middlesex		68	Winfield	Union
34	Jersey City	Hudson	X	69	Woodbury	Gloucester
35	Keansburg	Monmouth		70	Woodlynne	Camden

In the end, even the later FiOS plans have major holes, especially in low income areas. The state telecommunications public utility budget was illegally diverted to wireless, and customers never got the services they paid for.

Finally, the State failed to actually examine any of these issues in the 5-year plan -- and the State's agencies have been manipulated to believing that they do not control broadband and the fiber optic deployments. The state also never audited the financial books to see the cross-subsidies, and it is clear that if the Newark survey is correct, Verizon was deceptive in claiming that they had fulfilled the obligations of for FiOS in the largest NJ cities.

There is nothing stopping the state from starting investigations of what we presented in this and the last two decades of work that the State ignored.

We believe we present enough material facts that are missing from the 5-year plan to warrant a full investigation of our claims and then the state agency should be required to

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actually be held accountable for information that is missing-- deliberately or otherwise, as what is being presented is not a fair representation and it will create the same bad public policies that led to the Divide.

Bruce Kushnick, Managing Director.