

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

RE: CASE 16-C-0122 - Proceeding on Motion of the Commission to Consider the Adequacy of Verizon NY Retail Service Quality Processes and Programs.

**NEW NETWORKS INSTITUTE & IRREGULATORS  
COMMENTS ON JOINT PROPOSAL**

EXCERPT: VERIZON NY 2016 ANNUAL REPORT SHOWING CROSS-SUBSIDIES

Verizon NY Local Service, <i>Source: Verizon NY 2016</i>	
	Local Service
<b>Total Operating Revenues</b>	\$1,211,751,622
<b>Major Operating Expenses</b>	
Constuction & Maintenance	\$1,445,636,286
Marketing	\$165,799,314
Customer Operations	\$268,038,623
Corporate Operations	\$722,877,073
<b>Net Operating Revenues</b>	<b>\$(2,098,768,683)</b>

- We request an extension of the current comment period until July 15<sup>th</sup>, 2018 to examine the Verizon NY 2017 Financial Annual Report to be published May 31, 2018.
- We are calling for a halt to the proposed settlement between Verizon, NY, the NYPSC and parties, which has eliminated all mention of the investigation of the financial cross-subsidies between Verizon NY and Verizon’s other lines of business.
- We are calling for the NYPSC to continue to investigate the billions of dollars in cross-subsidies between Verizon NY and Verizon Wireless and the other Verizon subsidiaries and the harms that have occurred—then fix this ongoing financial shell game.

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April 13<sup>th</sup>, 2018

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**1) Our Requests: Halt the Proposed Settlement and Continue Investigations**

On March 2<sup>nd</sup>, 2018 a settlement was proposed between Verizon New York, and the NY Department of Public Service, Communications Workers of America (CWA) District 1, and Public Utility Law Project, (PULP), to end an investigation which started in 2016.<sup>1</sup> However, this was part of a series of proceedings over the last 5 years at the NY Public Service Commission.

- We are calling for an extension of the current comments period, which ends April 16<sup>th</sup>, 2018, to July 15<sup>th</sup>, 2018. The Verizon NY 2017 Financial Annual Report was originally supposed to be released on March 31, 2018, but Verizon was granted an extension until May 31, 2018. Our requested extension of this settlement comments period will allow us time to examine and detail the billions in cross-subsidies that have been evident in every Verizon NY Report.
- We are calling for a halt to the proposed settlement between Verizon, NY State and parties, which has eliminated all mention of the investigation of the financial cross-subsidies of Verizon Wireless and the other Verizon subsidies, and failed to outline any further actions to be taken to rectify what was laid out by CWA, but moreover what New Networks Institute has been documenting since 2012.
- We are calling for the State to continue to investigate the billions of dollars in cross-subsidies between Verizon NY and Verizon Wireless and the other Verizon subsidiaries and the harms that have occurred—then fix this ongoing financial shell game.

**2) Massive Cross-Subsidies are Clear Based on the Verizon NY 2016 Annual Report**

This is an excerpt taken directly from the Verizon NY 2016 Annual Report.

<b>Verizon NY Local Service,</b>	
<i>Source: Verizon NY 2016</i>	
	<b>Local Service</b>
<b>Total Operating Revenues</b>	\$1,211,751,622
<b>Major Operating Expenses</b>	
Constuction & Maintenance	\$1,445,636,286
Marketing	\$165,799,314
Customer Operations	\$268,038,623
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<b>Net Operating Revenues</b>	<b>\$(2,098,768,683)</b>

Verizon NY’s “Local Service” are mainly the local, copper-based, “POTS”, “Plain Old Telephone Service” and other “intrastate” services.

<sup>1</sup> <http://on.ny.gov/2DOhR4O>

In 2016, Local Service brought in \$1.2 billion in revenues, representing 23% of total revenues. But Local Service was charged

- \$1.4 billion for Construction and Maintenance (Specific and Non-Specific Plant),
- \$166 million for Marketing;
- \$268 million for Customer Operations;
- \$723 million for Corporate Operations

These mostly non-related expenses created losses of \$2.1 billion; Verizon also received a major tax benefit and did not pay most taxes. At the same time, the other lines of business, from Special Access or the Nonregulated services are paying a fraction of these expenses, which makes them highly profitable, as we documented in our reports that have been filed with the State in various proceedings since 2012.

Based on the interrogatories during the investigation, there was no serious construction for wired copper-based networks in 2016, there is no marketing for ‘POTS’ service and having the local customers pay \$723 million for corporate jets, lobbyists and lawyers—creating these massive losses, needs further investigation and a stop to this massive financial cross-subsidy scheme.

In fact, as told by actual phone bills, local rates increased 84% since 2005 due to “massive deployment of fiber optics” and losses. This shows that the losses are totally artificial and the deployment of fiber optics, as we will discuss, has been diverted to build out Verizon’s wireless networks.

Thus, it is an imperative that this comment period be extended to detail that this pattern of cross-subsidy is still occurring and that billions of dollars are at stake—per year, and just in New York State; the harms include everything from the overcharging of customers, a failure to properly build out the wireline fiber networks as well as the diversion of billions of dollars to other lines of business at the expense of NY State’s economic growth. The current proposed settlement does not address or fix most of these primary, core issues.

### **3) Our Research Was Used to Initiate Some of These Actions.**

**New Networks** and our new addition, the **IRREGULATORS**, are an independent coalition of comprised of senior telecom experts, analysts, forensic auditors, and lawyers who are former senior staffers from the FCC, state advocate and Attorneys General Office lawyers, as well as former telco consultants.

**SEE APPENDIX 1** for selected bios and our reports and research, which has focused on Verizon NY since 2012.

New Networks Institute was one of the initiators of these actions; our research reports, starting in 2010, included “It’s All Interconnected”, published by PULP, with David Bergmann, Esq.,

in 2014, which laid the foundation of the CWA inquiry by identifying massive financial cross-subsidies between Verizon NY and the Verizon affiliates, including Verizon Wireless, where billions of dollars have been diverted improperly to fund these other companies at the expense of wiring NY State with fiber optics. We also filed and testified in various related proceedings over the last 5 years.

NOTE: We did not apply to be a “party” in this proceeding because at least Verizon would have objected and based on our previous experience in other regulatory settings (the FCC), we would have had to spend an inordinate amount of resources and potential legal challenges to make it happen.

#### 4) Summary of the Proposed Settlement Leaves Out Billions in Cross-Subsidies.

This investigation of Verizon New York was divided into two primary tracks:

- **Part 1:** Verizon has left the state copper-based utility networks to deteriorate and there has been a lack of upgrades to broadband or even maintenance of the existing networks.
- **Part II:** There have been massive financial cross-subsidies of the state utility and the other Verizon affiliates.

However, these had been open-sore issues that needed addressing and became evident in 2012 with the advent of Hurricane Sandy and the damage caused to the NY’s State’s primary telecommunications infrastructure controlled by Verizon NY, the state-based utility.

**The Proposed settlement** only covers Part 1 of the investigation and there are only modest conditions imposed on Verizon. It has left out the more critical investigation of the cross-subsidies.<sup>2</sup>

**The Good Part of the Proposed Settlement:** It fixes some parts of networks that have been left to deteriorate, called the “Plant Pride Program”, it adds 11,000 fiber optic lines and it gets rid of 64,000 broken and double poles in 4 years. (**NOTE:** Unfortunately, according to the US Census, (and calculating the Verizon territory coverage), Verizon New York covers about 9 million households and businesses so the fiber deployments are chump change.)

And the part that was eliminated: We call your attention to Randy Barber’s statement, a CWA consultant for the investigation, March, 2017<sup>3</sup>

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<sup>2</sup> <http://on.ny.gov/2DOhR4O>

<sup>3</sup> <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={AFCED24C-A1F5-4969-B156-356702AFBBBD}>

“There are strong indications that Verizon New York, and its parent Verizon Communications, engage in practices which misallocate expenses and revenues to the detriment of the regulated New York operations. I recommend the Commission direct Verizon to submit detailed information on these interaffiliate transactions and allocations...”

**5) CWA’s analysis continued some of our research, but left out a great deal more.**

**CWA’s Analysis:**

- It detailed that Verizon Communications (the holding company) executives detailed that the wireless construction budgets were being paid for via the New York State wireline utility budgets.
- Cellco Partners (D/B/A Verizon Wireless) was paying a fraction of market prices to use the networks and the interrogatories showed that there was a host of other financial issues with payments to Verizon NY from Verizon Wireless and the other carriers.
- Verizon New York showed losses of over \$1 billion a year annually.
- And both CWA and the State noticed that there are serious accounting anomalies -- but unfortunately did not understand them.

The NNI and reports (with the IRREGULATORS), using Verizon New York’s Annual Reports and other Verizon based data, transcripts and filings, exposed other issues that were not examined and are unresolved.

- Local phone rates had multiple increases of over 84% since 2005 due to “massive deployment of fiber optics” and ‘losses’.
- Customers were charged over \$1000.00 - \$1500.00 per line and the ‘copper networks’ were made to appear unprofitable.
- The State granted Verizon the right to include the “FTTP”, “fiber-to-the-premises” networks as part of the existing utility in 2005, classified as “Title II”; then Verizon extended-co-mingled this grant to their wireless networks as well.
- In 2010-2012 alone, it appears that Verizon NY paid \$2.8 billion dollars for construction for Verizon Wireless—and there are no obvious payments from Verizon Wireless to Verizon New York do this work. However, based on interviews with CWA and IBEW installers, we know that the Verizon NY (and other states) diverted the workforce to do the wireless instead of upgrading and maintaining cities.
- This is an ongoing illegal cross-subsidy as Verizon Wireless is NOT part of the state utility and this transfer of construction is now, ironically, the “massive deployment of fiber optics” and it also created the ‘losses’.
- Low income families, rural customers, seniors, small businesses, and everyone with wired network services paid for wireless networks, and did not get the benefit of their defacto investments.
- Verizon announced it had stopped FiOS deployment in 2010 and this meant that cities throughout the state were not properly upgraded to fiber.

- The “losses” of Local Service and thus the state utility, Verizon New York, are based on completely manipulated accounting—which the State has never audited or investigated fully.

In short, this situation is out of control and we estimate that \$1-3 billion is being illegally cross-subsidized annually in just New York via a scheme of cost allocation rules that have run amok, and which this current investigation touched on but didn’t have the expertise to understand.

In fact, we submitted, in this proceeding, a full report about these accounting horrors – based on Verizon New York’s own 2016 Financial Report.<sup>4</sup>

### **5) Fix the Accounting Anomalies: The FCC’s Cost Accounting Rules Distortions.**

One critical issue that CWA’s consultant as well the State failed to identify is that the core-source of the accounting anomalies that have caused this massive cross-subsidy scheme is the use of the FCC’s deformed cost accounting rules.

The State relies on the FCC’s cost accounting rules and they have become toxic. The FCC’s rules are based on the allocation of expenses reflecting the year 2000, literally, when Local Service was 65% of revenues and paid 65% of the expenses. By 2016, Local Service is only 23% of revenues but still pays 60% of all expenses. Thus, literally 60% of the “Corporate Operations” expense, was dumped into Verizon NY and expensed as part of Local Service.

We wrote a separate report, [The Hartman Memorandum](#), created with Paul Hartman, (one of the leading experts in the US on the FCC cost accounting rules and their applications to state commission financial accounting). The report proves that the FCC’s own cost allocation rules created massive financial cross subsidies between and among the state-based wired utilities, and the companies’ other lines of business, such as Special Access, or the wireless service.<sup>5</sup>

### **6) Why are these Critical Issues Now? The Wrong Direction for NY State.**

#### **Analysis:**

Verizon, with the help of the FCC, is dismantling the state utilities and making the publicly-funded copper and fiber networks, (including the FiOS FTTP networks) private property for the wireless company by declaring these networks “interstate” as well as other financial shell games.

The plan underway is to shut off the working copper networks and replace them with inferior wireless, but use the state utility fiber optic wires to fund the build out and dump the expenses.

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<sup>4</sup> <http://irregulators.org/wp-content/uploads/2017/06/NYrteportjune22FINAL.pdf>

<sup>5</sup> <http://newnetworks.com/hartmanmemorandum/>

Verizon and AT&T have declared that they are ‘wireless only’ companies and are doing everything they can to get rid of any regulations or obligations – as if the utility no longer exists. However, all of the fiber optic wires for FiOS or for fiber for wireless have been classified as Title II and the state agreed that they were part of the existing utility—so that they could charge local phone customers and others who use the networks ‘exorbitant fees’. At the same time, this FCC has created a plan to dismantle the state utilities and privatize the publicly funded networks as private property for the wireless companies – and to shut off the existing ‘retail networks’, and got rid of requirement to rent these networks.

They will price them on a per-gig-wireless plan to make more money. Moreover, 5G, which requires a fiber optic wire every block or two, is a bait and switch to remove the remaining regulations through the promise of ‘new technology’, which is also removing city and states’ rights.

Finally, New York State is the only state that requires a financial annual report and this settlement could help shape the entire US telecommunications landscape.

#### **7) What We Filed**

- Verizon New York 2016 Financial Report Analysis, IRREGULATORS
- <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={BA59B336-0160-4801-BF28-D29B58108C95}>
- Summary of our work in this proceeding and area.
- <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={216BD7A7-BF2D-40C0-B181-F986E50CBDBA}>

#### **8) Grant an Extension to Examine the Verizon NY 2017 Annual Report**

The State has continually granted extensions to Verizon New York to deliver the Verizon New York Annual Reports late every year for at least the last 4 years. This is the letter granting Verizon an extension to submit the Verizon NY 2017 report on May 31, 2018.<sup>6</sup>

“Re: Matter No. 10-01709 - In the Matter of Telecommunication Company Filings of Financial Reports for Verizon New York Inc.

“I received your letter dated February 20, 2018 on behalf of Verizon NY (Verizon), requesting an extension to May 31, 2018 to file Verizon's 2017 Annual Report with the Commission. The 2017 Annual Report is due March 31, 2018.

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<sup>6</sup><http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={34EF5A83-AD88-4BFD-9431-D711AEAD3B17}>



“In your letter, you state that Verizon’s regulatory team is responsible for preparing, reviewing and filing over 300 reports annually in New York and in other states between Public Service Commission John B. Rhodes January 1 and April 15. You explain that the financial data that provides the basis for the reports is not available until January 21 at the earliest, therefore, making it difficult to meet the March 31, 2018 filing date. Further, you state that extending the deadline provides the necessary time to complete the required data collection, analysis, compilation, reconciliation, and review prior to filing the Annual Report, and will ensure the quality of the Annual Report. Based upon the information you have provided, an extension until May 31, 2018 is granted to Verizon New York Inc. to file its 2017 Annual Report with the Commission. This extension is granted in order to promote the fair, orderly and efficient conduct of this proceeding.”

We note that we previously filed in 2016 to not grant Verizon an extension;<sup>7</sup> and in 2016, CWA filed to question the extension of delivering the Verizon NY 2015 Annual Report.<sup>8</sup>

We support the need for dealing with the extensive rot that has occurred in New York and every Verizon state, but this settlement is simply covering-up the most egregious issues that directly impact all Verizon customers, and it is time that the NY State address and fix these issues going forward.

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April 13<sup>th</sup>, 2019

CC:

Tom Allibone  
David Bergmann, Esq.

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<sup>7</sup><http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D6AE3B4E-3042-4AD3-BA38-833313AF6F20}>

<sup>8</sup><http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={EF403824-9219-4A65-903F-0677745F0D47}>

Paul Hartman  
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Kenneth Levy, Esq

## APPENDIX 1

**New Networks** and our new addition, the **IRREGULATORS**, are an independent, expert team comprised of senior telecom experts, analysts, forensic auditors, and lawyers who are former senior staffers from the FCC, state advocate and Attorneys General Office lawyers, as well as former telco consultants.<sup>9</sup> It includes:

- **David Bergmann, Esq.** worked as an attorney and then Assistant Consumers' Counsel for the Office of the Ohio Consumers' Counsel, the state's residential utility consumer advocate, for almost 30 years. David is currently one of the telecommunications lawyers working with NASUCA, the National Association of State Utility Consumer Advocates (NASUCA), a non-profit, national organization of state offices in more than 40 states and the District of Columbia designated to represent consumers in state and federal utility proceedings in filings at the FCC.
- **Paul M. Hartman** is retired from the Federal Communications Commission and worked as Assistant Chief, of the Pricing Policy Division (PPD) Wireline Competition Bureau, as well as working in the Office of Inspector General, as part of the Universal Service High Cost Oversight by the commission. Paul was also on the FCC's Jurisdictional Separations Federal-State Joint Board and has been involved in regulatory cost studies since working for the Bell System in 1973.
- **Tom Allibone** is the President of LTC Consulting, and the Director of the IRREGULATORS Auditing Division. He has been a telecommunications professional with over 38 years of experience. Prior to founding LTC Consulting in 1989, Tom worked for New Jersey Bell and AT&T as a systems consultant and National Account Manager, starting in 1970. LTC's auditing capabilities has resulted in the settlement of multiple class action suits as well as telecom auditing resulting in over \$40 million in refunds. Tom was a member of the FCC Consumer Advisory Committee in 2003.

New Networks Institute was one of the initiators of these actions; our research reports, starting in 2010, included "It's All Interconnected", published by PULP, with David Bergmann, Esq., in 2014, which laid the foundation of the CWA inquiry by identifying massive financial cross-subsidies between Verizon NY and the Verizon affiliates, including Verizon Wireless, where billions of dollars have been diverted improperly to fund these other companies at the expense

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<sup>9</sup> <http://irregulators.org/who-we-are/>

of wiring NY State with fiber optics. We also filed and testified in various related proceedings over the last 5 years.

### **Verizon State Based Reports and Analysis**

- **2012** [“Verizon’s State-Based Financial Issues & Tax Losses: The Destruction of America’s Telecommunications Utilities”](#) where we called for an investigation of Verizon’s financials and the cross-subsidies of its affiliate companies.
- **2013** [Verizon Wireless and the Other Verizon Affiliate Companies Are Harming Verizon New York’s \(The State-based Utility\) Customers & the State.](#)
- **2013** [Investigation of Verizon Wireline and Wireless Companies Business Relations by the New York State Commission](#) — COMMENTS filed by Common Cause–NY, Consumer Union, CWA and the Fire Island Association use Data from New Networks research reports.
- **2014** [“It’s All Interconnected”](#) published by Public Utility Law Project, PULP, with David Bergmann, Esq.
- **Full Report:** [Follow the Money](#): Verizon NY 2016 Annual Report Financial Analysis and Implications

### **REPORTS: Fixing Telecom Series**

In December, 2015, we released the first two reports in a new series, “Fixing Telecom” a project that started seven years ago. They are based on mostly public, but unexamined, information, the findings impacts all wireline and wireless phone, broadband, Internet and even cable TV/video services in America.

### **REPORTS:**

- [Report 1: Executive Summary: Verizon’s Manipulated Financial Accounting & the FCC’s Big “Freeze”](#)
- [Report 2: Full Data Report](#)
- [Report 3: SPECIAL REPORT](#) How Municipalities and the States can Fund Fiber Optic Wireline and Wireless Broadband Networks.
- [REPORT 4: Data Report](#) Proving Verizon’s Wireline Networks Diverted Capex for Wireless Deployments Instead of Wiring Municipalities, and Charged Local Phone Customers for It.
- [Report 5: The Hartman Memorandum](#) proves that the FCC’s own cost allocation rules created massive financial cross subsidies between and among the state-based wired utilities, and the companies’ other lines of business, such as special access, or the wireless service.
- [Report 6: The History & Rules of Setting Phone Rates in America](#) —The FCC’s ‘Big Freeze’ details that the FCC has set basic cost accounting expenses to based on the year 2000 and the FCC has never audited or investigated the impacts for 18 years.

- Report 7: [SUMMARY REPORT](#): Verizon Massachusetts & Boston: Investigate the Wireless-Wireline Bait-n-Switch, January 17th, 2017
- Report 8: [Full Report](#): Verizon NY 2016 Annual Report Analyzed, June 2017.