

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Inquiry Concerning Deployment of)	GN Docket No. 17-199
Advanced Telecommunications)	
Capability to All Americans)	
in a Reasonable and Timely Fashion)	

RE: THIRTEENTH SECTION 706 REPORT NOTICE OF INQUIRY

REPLY COMMENTS OF NEW NETWORK INSTITUTE

Bruce Kushnick, Executive Director
Founding Member, IRREGULATORS

September 22, 2017

**The FCC has Rewritten America's Broadband History and
Covers Up the \$½ Trillion Dollars of Customer Overcharging**

The rewrite of the history of broadband has cost the average American family at least \$5,000-\$7,000 per household. And this is the low number of the overcharging of customers in the name of broadband.

For documentation we put into the record “[The Book of Broken Promises: \\$400 Billion Broadband Scandal & Free the Net](#)”. Published in 2014, it is the 3rd book in a trilogy that started in 1998.¹

We say - *Ignorantia historia et notitia neminem excusat*; roughly translated, ignorance of history and the data is no excuse. Failure to not know the facts and even rewriting history when it suits the corporations who have gamed this process, needs to be exposed and challenged.

The FCC Rewrote America's Broadband History through Vigorous Ignorance

On September 14, 1998—19 years ago— [we filed](#) comments in the “**FIRST SECTION 706 REPORT NOTICE OF INQUIRY**”²

“Inquiry Concerning the Deployment of Advanced
Telecommunications Capability to All Americans in a Reasonable

¹ <http://irregulators.org/brokenpromises/>

² http://newnetworks.com/NNI_FCC_9-98.txt

and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996”

Section 706 of Telecommunications Act of 1996 requires the FCC to answer whether high speed broadband (advanced telecommunications) is being deployed in a timely and reasonable fashion.

And on August 8, 2017, the [FCC released](#) the **“THIRTEENTH SECTION 706 REPORT NOTICE OF INQUIRY”**³

And nothing has really changed. This current FCC has decided to follow the brain-dead analysis of its predecessors, which has been to vigorously ignore the factual history, much less investigate the customer overcharging for broadband.

Worse, their current goal is to help the phone companies at every turn; thus, the FCC has decided that the minimum speed of broadband should be decreased from the current standard of 25 Mbps download and 3 Mbps upload, (which was increased by the previous Wheeler administration) for residential broadband to the home, to 10 Mbps down and 1 Mbps upload, based on wireless smartphones.

Why? Lowering the speed increases the number of broadband users while it also lowers the bar for the companies to deploy wireless in rural areas, especially those who get government subsidies.

To demonstrate just how the FCC distorted broadband data and just how the FCC has worked to help the phone companies, in 1998, in multiple state laws and regulatory decisions, the speed of broadband was set at 45 Mbps in both directions, which we pointed out to the FCC multiple times since 1998.

This excerpt is from the Verizon Opportunity New Jersey Order of 1993.

³ <https://ecfsapi.fcc.gov/file/0808160504329/FCC-17-109A1.pdf>

**Opportunity New Jersey, 1993
Broadband: 45 Mbps in Both Directions
(State Law)**

Broadband Digital Service:

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.

Yet, in the FCC's first Section 706 report, the FCC set broadband speed at 200 kbps (one-fifth of 1 Mbps) in one direction as our national standard. This was done to inflate America's broadband stats as the truth would have been seriously embarrassing.

Since 1998 we filed multiple times to clean up the rewriting of broadband history – and requested that the FCC start serious investigations into customer overcharging which now impacts all services; wireline, wireless, internet, broadband and even cable services.

- **The FCC: Vigorous Ignorance Tied to Regulatory Capture**

Every Section 706 report has failed the public and vigorously ignored primary facts. But most importantly, the FCC and states have not held the companies accountable or enforced basic laws and regulations. And this current FCC is captured by the industry, deciding to help and protect the phone and cable companies over the public.

- The FCC has never examined the broadband commitments made by each incumbent phone company, even when it is part of the state law.
- It never examined the “promises” told to the public in order to pass state laws; this included full reports that were used to change public policies, or sections of the companies’ annual reports, not to mention press releases or media interviews.
- It never examined the billions per state that were paid by local phone customers based on the claims in state laws that this excess was supposed to go to fund the replacement of the copper wires with fiber.
- It never investigated the role of the customer who has become a de-facto investor being charged extra—additional charges, to be used for broadband that were never built or that never reached the majority of these de-facto investors.
- It never audited the commitments made for broadband in the mergers that made the companies larger, even though the “benefits” that were supposed to accrue never showed up.

- It never mentioned or investigated the massive cross-subsidies that have been diverting the construction budgets of the state utilities to fund the wireless business.
- Worse, the FCC never examined the harms caused by the FCC's own now-deformed accounting rules, that are at the foundation of the cross subsidies.

And these failures impact every service. The broadband business services (special access) that are used for wireless have obscene profits through FCC decisions, not competition. Moreover, charging local phone customers thousands of dollars extra over the last 20 years in the name of broadband – which never showed up, then claiming it isn't profitable to upgrade customers, (the same customers that have already been paying extra, even on add-ons like nonlisted numbers), is now the standard in customer harms and corporate hubris.

And what is really annoying is – this is not about history – once the laws went through to increase rates, no state ever went back and got refunds, even when the companies failed to do the upgrades, or even lowered the rates that were increased. Instead, there has been a pile-on of increases, even to rural customers or low income families.

And, the companies' failure to deploy the fiber optic services allowed the cable companies to also continually raise rates – as, in many markets, wired services are either a monopoly or duopoly. And all companies now have an industry policy to just make up fees and stick them on the bill.

The FCC [asks](#)⁴ questions, (then ignores the answers):

“48. We seek comment on whether other actions, in addition to those already under way, might encourage more expansive and rapid deployment of networks that provide advanced telecommunications capability. What additional efforts should we undertake? What market or regulatory obstacles stand in the way of investment, innovation, and entrepreneurship, and how can we eliminate them? Are there additional barriers to infrastructure investment and deployment that can be eliminated?

“What else can we do to eliminate other regulatory barriers to infrastructure investment so that companies can deploy, for example, the small cells, the towers, the fiber, and the new services that consumers demand?”

After almost 20 years of filing at the FCC about broadband, the obstacle to deployment is the FCC. America already gave the companies over \$1/2 trillion dollars—and counting—via state and FCC ignorance. The states removed the barriers to infrastructure investment

⁴ <https://ecfsapi.fcc.gov/file/0808160504329/FCC-17-109A1.pdf>

multiple times, granting price caps, forbearance, tax breaks and incentives, and yet the FCC and states keep doing it, over and over without ever examining how AT&T, Verizon et al. gamed the FCC.

And to keep repeating the same mistakes and ignoring the record – which will happen again, should be confronted.

We say and repeat --*Ignorantia historia et notitia neminem excusat*; roughly translated, ignorance of history and the data is no excuse. Failure to not know the facts and even rewriting history when it suits the corporations who have gamed this process, needs to be exposed and challenged.

Let's go through what was left out of the FCC's reports.

- **The Fiber Optic Scandal: 100% Doesn't Mean 100%**

This excerpt is from the Verizon Opportunity New Jersey Order of 1993. Verizon was supposed to be offering 45 Mbps, bi-directional services, starting in 1996. And again, this was an upgrade of the state utility, Verizon New Jersey, that would replace the existing copper infrastructure with fiber optic wires. And this was the standard definition of broadband in multiple states.

This is the actual timeline from the Order. By 2010, 100% of Verizon NJ would be upgraded to fiber, and this would be at 45 Mbps, in both directions. If you notice there is also a “business as usual” timeline which says – I paraphrase: *If you don't change the laws and give us more profits, tax perks and rate increases, this broadband future will be done in the year 2030.*

New Networks Institute

Verizon New Jersey Time Line of Broadband Deployment, 1992-2010

BAU -- Business as Usual


ONJ -- Accelerated Deployment

		<u>BAU</u>	<u>ONJ</u>
<u>Advanced Intelligent Network (AIN):</u>			
- 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.	Initial: 1992 100%: 2001	1992 1998	--
<u>Narrowband Digital Service:</u>			
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.	Initial: 1992 100%: after 2001	1992 1998	
<u>Wideband Digital Service:</u>			
Switching technologies matched with transmsision 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.	Initial: 1994 95%: undetermined but before 2030	1994 2000	
<u>Broadband Digital Service:</u>			
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 inter-active (<u>i.e.</u> , two way) video signals.	Initial: 1996 100%: 2030	1996 2010	
-74- Docket No. T092030358			

We bring this up because no FCC 706 report mentions that this was the speed in America and these were the plans that the FCC was supposed to be tracking—but didn't.

New Networks Institute

In fact, in 2012 the New Jersey Board of Public Utilities issued a [show cause order](#) – mentioning that Verizon had not fulfilled its obligations: (The “alternative regulation” is deregulation, and this show cause order specifically gives the speed as 45 Mbps.)

-
- 6) On March 31, 1992, Verizon filed a petition with the Board and was later granted a modified plan for alternative regulation (“PAR”) by Order dated May 6, 1993 in Docket No. TO92030358 (“PAR Order”). The petition filed included a plan for accelerated deployment of advanced switching and transmission technologies for its network, known as Opportunity New Jersey (“ONJ”), and provided for the monitoring of Verizon’s progress regarding deployment.
 - 7) Pursuant to the PAR Order, Verizon was required to achieve ONJ in its entirety, including full broadband capability, by the year 2010, specifically, switching technologies matched with transmission capabilities to 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 video signals with complete deployment in 2010.
 - 8) The Board reviewed implementation of ONJ, particularly (1) the status of ONJ and relevant deployment strategies; (2) the business as usual benchmarks established to gauge ONJ’s progress to date; (3) the economic development impacts that ONJ has had on the State; and (4) the impact of the proposed acquisition by Bell Atlantic Corporation of NYNEX Corporation, in a proceeding initiated in 1996, In the Matter of the Board’s Inquiry into Bell Atlantic-New Jersey, Inc.’s Progress and Compliance with Opportunity New Jersey, Its Network Modernization Program, Dkt. No. TX96100707, October 18, 1996.
 - 9) A Stipulation, in Dkt. No. TX96100707 was executed on April 18, 1997, and memorialized by Order dated June 10, 1997. That Order accelerated ONJ through the establishment of Access New Jersey (“ANJ”), a program established to provide advanced communications services to all schools and libraries. Nothing therein disturbed the existing ONJ broadband commitments made by Verizon. 
 - 12) Based upon information and belief, residents of Greenwich and Stow Creek, Cumberland County, are not being provided broadband capabilities consistent with ONJ.
 - 13) To date, full deployment of broadband has not been achieved.

The Board HEREBY ORDERS:

- 1) Verizon to show cause before the Board why the Board should not find that Verizon failed to comply with the PAR Order in providing full broadband capability by 2010.

BPU Docket No. TO12020155

▪ How Many Times Did We Pay for the Wiring of Schools?

Notice that fiber was also supposed to be going in every school and library starting in 1997 in NJ.

The FCC has never mentioned the state broadband commitments to schools or that obligations were built into state law and charged to customers. And yet, Section 706 mandates state and federal incentives.

SEC. 706. ADVANCED TELECOMMUNICATIONS INCENTIVES.

(a) IN GENERAL- The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

▪ Rural Areas – And the Wireless Replacement of Fiber Optics

This show cause order was created because two small towns, Stow Creek and Greenwich NJ were not upgraded. [In 2012, we filed on behalf of the towns](#) and the State required Verizon NJ to upgrade the towns.

However, with the help of [Governor Christie](#), Verizon was able to get a ‘stipulation agreement’ passed to allow wireless at the speed of DSL to replace any more fiber buildouts—even though 1/3-1/2 of the State was never completed.

To summarize:

- State laws and regulations were changed in 1993 to provide a fiber optic future from Verizon—and charge local phone customers.
- In 1997, the State added— all schools and libraries would be upgraded.
- By 2004, nothing had been deployed.
- In 2005, Verizon was granted a cable franchise ‘system wide’ for FiOS – ignoring the previous state commitments.
- By 2010, Verizon announces the plan to stop FiOS.
- In 2012, two towns complain and get upgraded
- Gov. Christie’s appointee creates a ‘Stipulation Agreement’ with Verizon.
- The agreement allows for the substitution of wireless at DSL speeds.

None of the state commitments, the failure to deploy, the replacement of the copper wires, the commitments to wire the schools, the bait and switch to provide wireless vs finishing the buildouts, were ever even mentioned by the FCC over the last 20 years of Section 706 reports, much less the customers were defacto investors.

- **Billions Paid by Phone Customers Over the Last 20+ Years**

In June 2009, the NY Public Service Commission (NYPSC) [granted Verizon NY its third rate increase since 2006](#) for residential phone customers. The NYPSC press release explains the rate increase was due to “massive deployment of fiber optics” and because VNY was “in need of financial relief” due to claimed major losses:

“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’.”

Local rates went up 84% and ancillary services went up 50-300% and all increases from this deregulation.

This comes to about \$1500.00 extra per line on everyone with wired service, from 2006-2014—and this includes rural areas, low income families, and seniors who never got a fiber optic upgrade.

And the rate increases were never stopped.

- **Illegal Payments for Wireless Company Construction Over Wiring Cities.**

The Verizon NY rate increases were for building the FiOS fiber to the home service. But in 2010, Verizon decided it would move the capx to build out their wireless networks – but used the utility wireline construction budgets – including that massive deployment of fiber optics.

We’ve [written articles](#) as well as reports and filed them with the FCC over the last 5 years about the massive wireless cross subsidies.

The [report](#):

**“SPECIAL REPORT: HOW MUNICIPALITIES AND THE STATES CAN FUND
FIBER OPTIC & WIRELESS BROADBAND NETWORKS**

Proving Verizon’s Wireline Networks Diverted Capex for Wireless Deployments Instead of Wiring Municipalities and Charged Local Phone Customers for It.”

For just 2010-2012, a three year period, it would appear that Verizon was able to dump \$5.5 billion of construction expenditures for the wireless business into the NY, PA, NJ, and MA state utilities.

Thus, in NY, \$2.8 billion was charged for that “massive deployment of fiber optics” to do wireless instead of wiring upstate NY.

▪ **How Much Money Were We Overcharged?**

In 2014 we published **The Book of Broken Promises** which was based on the two previous books. The FCC stopped requiring basic data from the states in 2007, and New York is the only state we know of that requires Verizon to publish its financials.

We will be detailing how much extra we all spent on broadband in an upcoming report.

However, the opening \$½ trillion is the low number for customer overcharging based on broadband. Besides continuing the \$400 billion finding, (which was also the low number), the book went through 2013, mostly, and did not include many large cross subsidies or the impacts of [special access service overcharging](#) identified by Consumer Federation of America. At \$75 billion, with a reciprocal amount of financial harms, estimated to be an additional \$75 billion, it easily, and legitimately, adds to our previous calculations.

“FA Study Finds Special Access Market Concentration Cost Consumers & U.S. Economy \$150 Billion since 2010, April 5, 2016 –

Taking on one of the most pressing issues facing the current Federal Communications Commission (FCC), the Consumer Federation of America (CFA) today released a study that estimates that large incumbent telephone companies have engaged in abusive pricing practices for high-speed broadband “special access” services, with overcharges totaling about \$75 billion over just the past five years. As a result, CFA estimates that the indirect macroeconomic loss to American consumers doubles that damage to a total in excess of \$150 billion since 2010.

“The analysis, “[The Special Problem of Special Access: Consumer Overcharges and Telephone Company Excess Profits](#)” explores the critical – and often unappreciated – role special access plays in the U.S. telecommunications and broadband marketplace and the impact concentrated market power has on American consumers and the American economy as a whole. Special access services are critical inputs to a wide range of businesses, including mobile broadband services, anchor institutions like hospitals, schools and libraries, public safety offices, ATM networks, and essentially any enterprise that needs access to secure,

New Networks Institute

dedicated high-speed, high-capacity connections to the wireline communications network.”

Bruce Kushnick, Executive Director
Founding Member, IRREGULATORS
bruce@newnetworks.com

September 22, 2017