

Dear FCC Chairman Wheeler, Commissioners, cc: Congress

**RE: Verizon's Fiber Optic Networks are "Title II" -- Here's What the FCC Should Do.**

**DOCKET:** Open Internet Proceeding, (GN No.14-28)

This quote is from a Verizon New York cable franchise agreement and it is similar, if not identical to language that appears in hundreds of Verizon's municipality, city and system-wide franchise agreements in multiple states. (See Appendix 1 for other examples.)



**LEGAL AUTHORITY TO CONSTRUCT FIBER TO THE PREMISES**

Verizon New York Inc. ("Verizon"), as a common carrier under Title II of the Communications Act of 1934 (the "Act"), constructed its *Fiber To The Premises* (FTTP) network as an upgrade to its existing telecommunications network.

[To read the full letter](http://newnetworks.com/fcctitleiiletter/) (<http://newnetworks.com/fcctitleiiletter/>) with appendixes.

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**1. The Request**

We, the undersigned, request that the FCC:

Acknowledge the fact that Verizon's entire Fiber-to-the-Premises (FTTP) networks are currently classified as "Title II," common carriage, telecommunications networks. There is no need for reclassification of Verizon's networks; -- They are already Title II. Investigate Verizon's failure to disclose this essential fact to the FCC, to the courts or to the public in any documents, filings, comments, public statements, etc.

Investigate "Title Shopping," where Verizon has used different classifications to get regulatory benefits in different state and federal proceedings for the same wires.

Investigate Verizon's current use of the Title II classification to receive multiple benefits as part of state-based utility telecommunications networks, including utility rights-of-way as well as various financial benefits.

To resolve Net Neutrality issues, it is time to require open access to these Title II networks so that customers can choose their own competitive broadband, Internet, cable and phone providers, regardless of whether the network wires are copper or fiber.

The FCC needs to be 'data-driven' and must reinstate the financial and business data for the incumbent wireline telco and cable carriers. For example, the "Statistics of Common Carriers", first published in 1939, was discontinued in 2007

## **2. The Basis for the Request:**

Compare Verizon's Open Internet comments below with the previous quote. (Appendix 2 supplies other, similar quotes from Verizon.)

Verizon [Comments](#), Open Internet Remand Proceeding, July 15th, 2014

"Imposing a Title II common carriage regime on broadband providers would be a radical change in course that would only chill, not spur innovation. Title II is a regulatory dinosaur, crafted eighty years ago - and based on 19th-Century laws regulating railroads - to address the one-wire world of rotary telephones...."

This contrast is most distinct with Verizon, but other incumbent phone and cable companies take equivalent conflicted positions.

## **The FCC Needs to Investigate Verizon's Failure to Properly Disclose Essential Facts about Their Use of Title II and "Title Shopping".**

Wikipedia defines "[polycephaly](#)" as "a condition of having more than one head." In this case, Verizon's entire Net Neutrality case at the FCC and in the courts hinges on the claim that federal law was changed by

a series of FCC and court decisions to combine broadband and Internet into one category -- an "information service" under Title I. Among other things, this allows Verizon to block competitors from using these FTTP networks. And in every Verizon statement, filing, comments, legal and regulatory action at the FCC and with the courts, Verizon has continually claimed Title II is detrimental to investments, innovation and a host of other harms.

Yet, the fact is -- Verizon's own cable franchise agreements in hundreds of locations are based on Title II transmission facilities. While the Net Neutrality issue extends well past Verizon's FTTP networks, Verizon has been the leader in legal actions against the FCC's decisions about the use of Title II -- and their at best disingenuous actions need investigation.

### **"Title Shopping"**

Verizon's use of different classifications in different state and federal proceedings needs investigation.

"Title Shopping is the use of different regulatory classifications for the same product or service in different local, state and federal regulatory or legal proceedings. It is designed to maximize the 'regulatory' benefits that would not be available if only one classification was applied."

### **Verizon's Use of Title II Raises Many Other Financial and Regulatory Concerns.**

In May of 2014, the Public Utility Law Project of New York, Inc. ("the Utility Project") released a report written by New Networks Institute, with the assistance of David Bergmann, which outlined how Verizon New York uses the Title II classification to get the utility-based rights-of-way as a telecommunication service. The report, "[It's All Interconnected](#)," showed how Verizon also receives financial benefits from using Title II, which included rate increases on basic rate phone customers for the 'massive deployment of fiber optics' that then

supported the FiOS product, fiber-to-the-cell towers for Verizon Wireless and Verizon's special access services to business.

In July 2014, the [Connect New York Coalition](#) (consisting of AARP, Common Cause, Consumer Union, Communications Workers of America (CWA)-District 1, mayors of New York cities and other politicians and groups) filed a petition with the New York State Public Service Commission to investigate these financial issues. The FCC needs to do the same investigations about the financial benefits of 'Title II' to Verizon, as these problems appear to exist in all Verizon states.

### **Opening the Networks to Direct Competition Would Solve Net Neutrality Issues.**

The Connect NY's petition and the Utility Project report point directly to the ability of the companies' own affiliates, Verizon Online, Wireless and Business, to receive multiple business and financial advantages from the ties to the State utility's wires over all competitors -- through the use of Title II. This has allowed Verizon and Verizon's affiliate subsidiaries to create new 'bottlenecks,' on the end-user side, as well as on the business side for competitors and content providers.

The FCC has already started a [proceeding on Special Access](#) services but it is time to understand and investigate Verizon's use of Title II and the other Titles in federal and state proceedings, as well as how the affiliates can and will 'vertically integrate' and work together to block, degrade, filter, slow down or other interfere with a customer's service.

The solution is simple -- return direct competition to these Title II networks. The FCC may be reluctant to take this path. However, it is clear from former Chairman Michael Powell's reasoning for closing the networks, during the Triennial Review, that it is time to reconsider. Powell's decision was based on a 'commitment' of AT&T (then SBC) to deploy fiber-to-the-home, capable of 100 Mbps services in 2004 -- which never happened.

Powell wrote, in October 2004:

"In my separate statement to the Triennial Review Order and in countless other statements during my seven years at the Commission, I have emphasized that 'broadband deployment is the most central communications policy objective of our day'. Today, we take another important step forward to realize this objective.... By removing unbundling obligations for fiber-based technologies, today's decision holds great promise for consumers, the telecommunications sector and the American economy. The networks we are considering in this item offer speeds of up to 100 Mbps and exist largely where no provider has undertaken the expense and risk of pulling fiber all the way to a home.

SBC has committed to serve 300,000 households with a FTTH network while BellSouth has deployed a deep fiber network to approximately 1 million homes. Other carriers are taking similar actions."

AT&T (then SBC and BellSouth) instead deployed U-Verse over their original, legacy copper utility networks. (Ironically, a decade later, AT&T again claims it will deploy fiber optic services with speeds of over 100 Mbps -- and is using these deployments as a means to 'sweeten' the merger of AT&T-Direct TV and push through AT&T's IP transition trials), Verizon, meanwhile, was able to game the regulatory system by keeping competitors off its fiber networks using the federal rulings, while simultaneously invoking Title II in the states to get regulatory and financial favors. There have been no audits or oversight about these issues.

### **The FCC Needs to be 'Data-Driven' with Actual Data.**

Finally, we focused on Verizon specifically because of the documentation and financial information that has been found, as shown in the New Networks/Utility Project report. AT&T benefits from not publishing SEC-filed state reports and a lack of state commission-required information, but most importantly the FCC has erased obligations for AT&T to provide, by state, basic business and

financial information that was part of the "Statistics of Common Carriers" that had been published since 1939, as well as the FCC's "ARMIS" reports, and the requirement to supply basic, fundamental information was halted in 2007. And the FCC has a current proceeding to "[streamline telephone company accounting rules](#)," which is a euphemism for erasing more obligations to provide basic data.

We request that the FCC reinstate all data collection that has erased the ability for the public to act as watchdog to help the FCC create policy that is 'data-driven'.

**Conclusion:** To be blunt, Verizon has gamed the entire regulatory process via "Title Shopping" in the Open Internet docket and in many other ongoing proceedings that impact all of America's communications. Verizon has repeatedly invoked the Title II status of its fiber networks when it benefits them, but then adamantly complains about alleged (but untrue) burdens flowing from Title II such as investment deterrence. The continuing common carrier status of the fiber network must be recognized and fully taken into account through immediate investigations and initiatives to restore data collection.

Opening these "Title II" networks, which have been funded through utility customers, not only solves Net Neutrality, but also brings needed, direct competition to networks that were closed through misrepresentation by the incumbent phone companies for way too long.

Verizon promised a Title II, open fiber-based platform that would be available to all. It received Title II benefits, but has do date avoided the concomitant burdens. The open platform is closed to competition and available only to affiliates on secret, favorable and below-cost terms. The FCC should finally force a telephone company to keep the promises it has made.