Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

May 30, 2014

Re: AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Docket No. 12-353; Technology Transitions, GN Docket No. 13-5; Petitions for Rulemaking and Clarification Regarding the Commission's Rules Applicable To Retirement of Copper Loops and Copper Subloops, RM-11358; Letter of US TelePacific Corp. et al. Requesting Commission to Refresh Record and Take Expedited Action to Update Copper Retirement Rules to Promote Affordable Broadband Over Copper, WC Docket No. 10-188; A National Broadband Plan for Our Future, GN Docket No. 09-51; Verizon New York Short-Term Network Change Notifications, NCD-2351, 2353 **EX PARTE COMMUNICATION**

Dear Ms. Dortch:

The Public Utility Law Project of NY, Inc. ("Utility Project") is pleased to submit to the Federal Communications Commission ("FCC"), the report linked here: http://newnetworks.com/publicnn.pdf/. The report is titled "It's All Interconnected: Oversight and Action is Required to Protect Verizon New York Telephone Customers and Expand Broadband Services." The report was authored by Bruce Kushnick of New Networks, with assistance from David Bergmann of Telecom Policy Consulting for Consumers.

The report includes a Utility Project White Paper, "The Future of Telecommunications: Asserting and Regaining the Rights of Customers, Including Low-Income Consumers in New York State," and a New Networks White Paper, "Time to Clean House: Getting New York and America Wired, Opening the Networks to Competition and Protecting the Rights of Customers." The focus of the report is on low-income customers; unfortunately, along with their income-based issues, low-income consumers share the harms and difficulties that the current regulatory environment imposes on all consumers. Those effects have been especially felt in New York

State, which has declined and now ranks near the bottom for telephone subscribership – both wireline and wireless.[1]

The core of the report is the data-driven analysis of Verizon New York's ("VNY's") financial relationships with customers and with VNY's affiliate companies, such as Verizon Online, Verizon Business, and Verizon Services. The analysis uses the most recent data publicly available; its conclusions should not be subject to challenge in the absence of contrary **public** data. Key among those conclusions are:

- Since 2006, VNY has imposed multiple rate increases on residential and business local service, as well as increased the prices for 'ancillary services', such as inside wiring and non-published numbers. The New York Public Service Commission ("NYPSC") allowed these increases in reliance upon Verizon's claims of 'massive deployments of fiber optics' and financial losses, among other reasons.

- Based on Verizon New York's information about the number of telephone access lines in service, from 2006 to 2013, price increases approved by the NYPSC allowed VNY to collect an estimated $2.4 billion more for the 'dial tone' line. There were $1.4 to $2.0 billion more in additional charges for optional or ancillary services, such as Caller ID, inside wiring and non-published numbers. Including estimated taxes, the total added charges since 2006 amount approximately $4.4 billion. The increases to 'basic service' alone added over $500.00 in additional charges per customer from 2006-2013.

- **VNY has Multiple Financial Books that Financial Books Tell Different Stories.**

  - "**Black Hole Revenues"** — The VNY SEC Report indicates billions of dollars of additional revenues in comparison with the state-based PSC Reports. In 2010, there was an extra $2.2 billion VNY revenues in the SEC Report.
  - Significant affiliate transactions payments or expenses to VNY do not reconcile for any affiliate listed in the SEC Report vs the PSC Annual.

- **FiOS Rides over a "Title II", Common Carriage, Telecommunications Network.**

- Verizon's FiOS TV, phone, Internet and broadband service products ride over a Fiber-to-the-Premises (FTTP) network. This FTTP network, as stated in the Verizon New York City FiOS TV franchise, is a "Title II", common carriage, telecommunications network.

[1] FCC Universal Service Monitoring Report (2013), Table 3.8. See *Telephone Subscribership of New York Households Declines Again In 2013 — New York Now 48th of 50 States*, N.Y. Utility Project, May 29, 2014, available at http://bit.ly/1nHVthR.

- "FiOS" is not the fiber optic wire; it is a brand name of a Verizon product that uses the FTTP networks.
- Verizon invokes its powers as a telephone corporation under the NY Transportation Corporations Law to install fiber optic wire over private property, or use the public rights-of-way.
- While VNY's SEC Report showed billions more revenues in 2009 and 2010 compared to the PSC Annual reports, the capital expenditures are almost identical; i.e., in 2010, the SEC books had $2.2 billion in additional revenues but no additional construction budget.

- **How Many Can Get FiOS? How Much is Still Copper?**

  - In New York State, VNY has 'passed' 40% of the potential customers.
  - Verizon's New York City cable franchise covers 3.4 million residential customers and Verizon claims that it is on track to complete the cable franchise requirement of 100% households passed by the required deadline of July 2014.
  - Verizon's Corporate "take up rate" for FiOS service ranges from 35%-40% nationwide for their high-speed Internet service and their cable TV service. If so, this means that VNY has, at most, 1.5 million FiOS customers in New York State and therefore the majority of the VNY customers are probably still copper-based.[2]
  - On November, 27, 2013, Verizon New York claimed that it was in 183 municipalities in NY State and that there were no plans for expansion. Verizon NY covers 90% of the State's 996 municipalities and therefore only 20% of the State's towns and cities are getting upgraded.

- **Missing Data**

  - VNY claims that the company is "losing" lines. From 2009-2012, the company claims it lost 48% of its POTS access lines.
  - However, for the year 2007, the FCC's data showed that switched access lines constituted only 15% of the VNY total lines in service. Other lines, including special access lines, were increasing, not decreasing.
  - There is no accounting of the total number of lines in service — copper or fiber — in the State of New York. This would include all business lines, special access lines, lines with DSL or FiOS, or any other type of circuit.

- **Claimed Financial Losses in VNY Reports to NYPSC**

  - PSC Annual reports indicate VNY has been losing money every year since 2004. Over the last five years, 2009 to 2013, Verizon New York PSC Annual reports

[2] In a filing with the New York Public Service Commission, VNY stated, "Where Verizon replaced copper facilities with fiber optics, it did not require consumers to purchase FiOS Internet or Television services. Customers who had no interest in those services could receive regular POTS voice service over fiber at the same tariffed rates as they had previously paid." NYPSC Case No. 10-C-0202, Verizon New York filing (May 15, 2013), fn 4, accessible at http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D4204788-AA2F-4B82-8FFE-7A7AD1F8E824}. As argued in the Report, those "tariffed rates" are inflated by Verizon's largely unregulated accounting.

showed VNY lost $11 billion, with an average loss from 2009-2013 of over $2.1 billion a year. This gave an annual federal income tax benefit to its corporate parent of $1 billion.

- **Expenses Paid by VNY to or for the Benefit of Verizon Communication's (the Holding Company) Affiliates**

    - The losses reported by VNY in its PSC-Annual reports can be attributed to several factors, including the affiliates' dealings with VNY.
    - The SEC-Report for the years 2009 and 2010 indicate that Verizon Services, which provides legal, regulatory, public relations, lobbying and other services, charged Verizon New York $3.7 billion.
    - Are expenses for the benefit of Verizon Wireless charged to VNY wireline services? According to Verizon Executive Vice President and Chief Financial Officer Fran Shammo, Verizon Wireless' "IP backbone, the data transmission, fiber to the cell, that is all on the Wireline books but it's all being built for the Wireless Company".[3]

- **Allocation of Non-Regulated Service and Access Revenues**

    - VNY's non-regulated revenues increased 144% from 2009 through 2012, from $507 million to $1.084 billion. This rapid growth may be from the migration of customers off of POTS copper wires and onto FiOS phone and other services, such as wireless or cable VoIP. But it is not clear cut at all, and there is no specific information about the large increases in VNY revenues from telephone customers for non-regulated services, which are provided over the same lines installed to provide regulated phone service, the costs of which lines are apparently allocated to the regulated side.

- **Verizon Wireless and the Ties to VNY**

    - Wireline facilities are built for the benefit of Verizon Wireless (and other wireless companies) yet appear to be part of the VNY wireline construction budgets.
    - Verizon Wireless appears to be paying VNY a fraction of what other wireless competitors, such as Sprint, would pay for 'special access' fees, based on the SEC Report for 2009 and 2010.
    - VNY appears to be transferring wireline customers to Verizon Wireless without any compensation, when VNY claims that repairing the copper wires is 'uneconomical'.
    - Verizon Wireless has marketing, advertising and other benefits from the wireline company and there are no clear payments or royalties from the wireless company to VNY.

- **Special Access and Access Fees**

[3] Thomson Reuters Edited Transcript, Verizon at Goldman Sachs Communacopia Conference, Sept. 20, 2012, http://www22.verizon.com/investor/DocServlet?doc=goldman_vz_transcript_092012.pdf

- VNY special access revenues eclipsed ‘local service revenues’, but have been paying only 1/3 of the network expenses at least after 2009 (the years data was available).
- The FCC’s data on special access, which ended in 2007, only examined the ‘regulated’ special access services found in the PSC-Annual reports. Additional ‘financial buckets’ of special access revenues may be in the SEC-Report but are ‘black hole revenues’.
- There are no additional construction budgets or payments for these additional special access services ‘buckets’ in the SEC-Report for 2009-2010.
- We estimate that special access revenues on the regulated side, nationwide, were $23 billion; however, the non-regulated revenues that are in these ‘additional buckets’ could bring the total over $40 billion in 2013.

- **Time Warner and Comcast Cable Issues**

  - In 1995, the FCC created the “Social Contract” granting the cable companies financial assistance for upgrades of the cable plant for new services, as well as fixing quality-of-service issues. Time Warner and Comcast, among others, could charge basic cable subscribers up to $5 a month extra on cable bills. The Social Contract was supposed to expire in the year 2000. After 2000, there was no oversight or investigations and the companies never lowered their rates to remove this extra federally-added charge on customers’ bills.
  - In the Social Contract, the companies also committed to bring the high-speed Internet to schools in their franchise areas. Schools were all supposed to be given free cable modem service, a free cable modem, and would even get the inside wiring at cost.
  - By the end of 2013, cable customers nationwide paid about $61 billion from 1996-2013, $49 billion of since 2000. Without audits, it is impossible to tell the exact amount. On average, customers paid about $60 a year or about $771 extra since 2000.
  - According to Time Warner’s 2012 Annual Report, high-speed Internet services’ average price to the customer was $44.07, and the price of Internet-based voice service was $34.06. However, the incremental costs to the company were $1.34 a month to offer the high-speed service, and only $9.46 to offer the voice service, which sells for $34 including long distance and calling features.
  - In a Time Warner Triple Play bundle offered in New York City in 2012, with an advertised price of $99.00, after one year the actual price was 56% higher. The ‘cable set-top box’ was not included in the advertised price and was $9.99, while the Internet modem, also a separate fee, was $5.99 in 2012, it had a rate increase of 140%.

The data, analyses, and views expressed in the report are relevant to all of the FCC proceedings where this ex parte communication is being filed. The Utility Project strongly urges the FCC to consider this information as it deliberates the future of the national telecommunications and information networks, which are becoming increasingly important to all consumers, including low-income consumers.

Respectfully submitted,

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