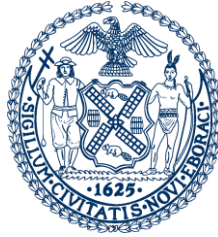


BENJAMIN J. KALLOS
COUNCIL MEMBER, 5TH DISTRICT

244 East 93rd Street
New York, NY 10128
(212) 860-1950 Voice
(212) 980-1828 Fax

BKallous@BenKallous.com



**THE COUNCIL OF THE
CITY OF NEW YORK**

CHAIR
Governmental Operations

COMMITTEES
Courts & Legal Services
Land Use
Landmarks, Public Siting &
Maritime Uses
State & Federal Legislation
Women's Issues

**New York State Public Service Commission (PSC)
Public Hearing and Comment on the State of Telecommunications in New York**

July 15, 2015

We have a rare and overdue opportunity to conduct a comprehensive and thorough analysis of the telecommunications industry in the state of New York. In keeping with the mission of the Public Service Commission (PSC) and the four core principles, this analysis must first and foremost seek areas where regulatory changes can be made that advance the public interest by fairly addressing market failures which have led to a decline in competition, access, and quality of phone, cable, wireless, and Internet service in New York. On behalf of my district and the people of the city of New York, I thank the PSC for holding this hearing and for continuing the process of seeking to improve the state of telecommunications.

We must do whatever it takes to achieve universal broadband to bridge the digital divide; whether through regulation of providers of mobile phone, fiber, or cable, each communications medium is increasingly being used as a method to deliver Internet access. As we move forward, the PSC must ensure that phone service providers do not abandon our more robust copper wire infrastructure that is singularly capable of providing communications during emergencies and through weeks-long blackouts such as those caused by Superstorm Sandy. The PSC must use this opportunity to maintain or improve upon existing telecommunications infrastructure while making universal broadband a reality through universal mobile broadband, universal fiber, and through cable service providers expanding free and affordable broadband.

Executive Summary

Universal Mobile Broadband

Connectivity has become so essential to the functioning of a 21st Century economy that mobile phone adoption has become nearly universal, often in the form of a smartphone with the Internet in our pocket. Google and other developers have already moved toward a "mobile-first" approach to the Internet. Meanwhile unlimited data plans are becoming a thing of the past. Rather than focusing exclusively on terrestrial-based broadband provided through cable, fiber, or wired phones, the PSC must leverage its regulation of wireless providers to bridge the digital divide through universal mobile broadband and ensure that wireless companies extend Lifeline to ensure that low-income smartphone users can afford unlimited access to the Internet, expand the "Library HotSpot" program to allow more New Yorkers without Internet to borrow it for months at a time, expand low-cost unlimited data plans for all wireless customers, and protect consumers from "bill shock" resulting from "phantom data" charges.



Universal Fiber

On June 18, 2015, the New York City Department of Information Technology and Telecommunications (DoITT) concluded an audit of Verizon's implementation of FiOS, the company's state-of-the-art fiber optic network. The audit found that even after seven years, Verizon fundamentally failed to honor a condition in the franchise agreement to extend FiOS, by June 2014, to any household in any of the five boroughs which requested it. Instead of universal coverage as promised, we have anywhere from 45-60% coverage. Residents, including me, are told that FiOS is simply unavailable to them.

If Verizon had honored its commitment to New York City, we would have already achieved universal broadband. Instead, 22% of families — and 36% of those below the poverty line — do not have broadband in their homes. This broken promise is unacceptable. It is imperative that PSC assist in the enforcement of the franchise agreement and hold Verizon accountable for its failure to deliver FiOS service.

Expanding Affordable Broadband Over Cable

Following our comments from the then-proposed Comcast/Time Warner Cable (TWC) merger, and the threat that New Yorkers would not have a second bite at universal broadband for the "Big Apple," the FCC adopted net-neutrality guidelines and Chairman Wheeler has called for Lifeline eligibility for broadband. Now, with the Charter/TWC merger before your body, we request that the proposed merger serve the public interest by: providing free and affordable universal broadband by rolling out "Connect2Compete" program in New York and expanding the program from free and reduced school lunch recipients to those who receive any federal, state, or city benefit; committing to becoming an eligible telecommunications carrier ("ETC") in order to provide Lifeline for phone and eventually broadband service; and eliminating connection fees in urban areas that do not already have connections.

Supporting "Legacy" Copper Networks to Prepare for the Next Disaster

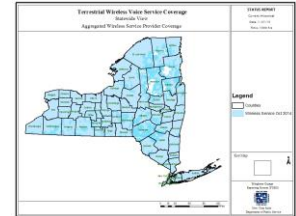
The "Legacy" copper networks that New Yorkers rely on for voice and data services are in poor condition in many areas of New York City. Citing high maintenance costs, Verizon has pushed to retire these networks, limiting consumer choice. Alarming, the massive power outages caused by Superstorm Sandy showed that VoIP and fiber systems are not as resilient as copper during outages. Making matters worse, soon after the storm, Verizon replaced copper cables with fiber, instead of repairing them. Verizon must maintain and repair copper networks to ensure that New Yorkers have access to reliable phone systems during emergencies.



I. Universal Mobile Broadband and the “Mobile First” Internet

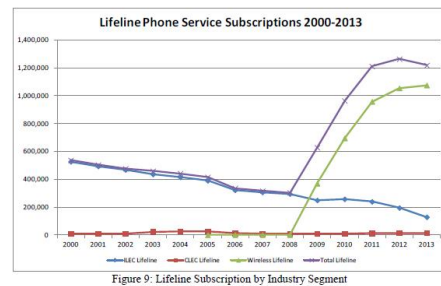
Connectivity has become so essential to the functioning of a 21st Century economy that mobile phone adoption has become nearly universal, often in the form of a smartphone with the Internet in our pocket. Google and software developers have already moved toward a “mobile first” approach to the Internet. Rather than focusing exclusively on terrestrial based broadband provided through cable, fiber, or wired phones, the PSC must leverage its regulation of wireless providers to bridge the digital divide through universal mobile broadband.

Ninety-five percent of New Yorkers have wireless devices they use for voice calls. With 19.4 million residents, there were approximately 20.7 million customers in 2012.¹ The ubiquity of mobile has come with a shift away from landlines, as 41% of American homes now only have wireless phones,² with 7% of Americans using only their smartphone to access the Internet.³



Last year, Americans used mobile apps more than personal computers to access the Internet.⁴ Americans use their smartphones to learn about a health condition, bank, find a place to live, find and apply for jobs, get government services, and take classes.⁵

Recognizing this near-universal wireless adoption, we can get closer to universal broadband by improving the FCC’s Lifeline program, which offers eligible telecommunications carriers (ETC) Federal Universal Service Funding of up to \$9.25 per low-income customer for both terrestrial and wireless phones.⁶ Of note, multiple carriers provide this \$9.25 credit directly to consumers on their monthly bills and provide low-cost Android smartphones for as little as \$19.99. Wireless Lifeline phone service subscriptions exceeded 1 million subscribers in 2011, to which the PSC credits active promotion by carriers such as Tracfone, I-Wireless, and Virgin Mobile.⁷ Disappointingly,



¹ “Telecommunications Assessment,” In the Matter of a Study on the Study on the State of Telecommunications in New York State, Case 14-C-0370, New York State Department of Public Service, June 23, 2015, at 8-10.

² *Id.* at 13 citing National Health Interview Survey on Wireless Substitution, commissioned by the Centers for Disease Control and Prevention, dated July 2014.

³ Anderson, Monica. "6 Facts about Americans and Their Smartphones." Pew Research Center RSS, April 2015.

⁴ “Mobile apps overtake PC Internet usage in U.S.,” CNN Monday, February 28, 2014 available at <http://money.cnn.com/2014/02/28/technology/mobile/mobile-apps-internet/>

⁵ Smith, Aaron. "U.S. Smartphone Use in 2015." Pew Research Centers Internet American Life Project RSS, April 2015.

⁶ “Telecommunications Assessment,” In the Matter of a Study on the Study on the State of Telecommunications in New York State, Case 14-C-0370, New York State Department of Public Service, June 23, 2015, at 29.

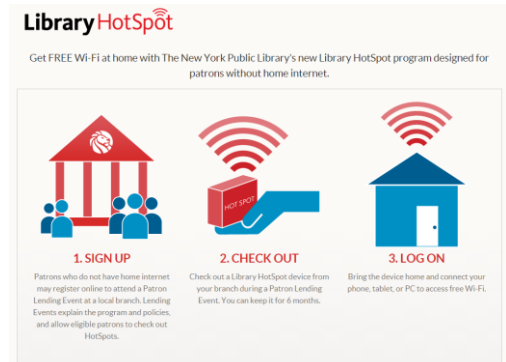
⁷ *Id.*



Verizon Wireless, our state’s largest phone provider, only offers wireless Lifeline in eight of New York’s 62 counties. The PSC must require Verizon to expand this option to all service areas. While FCC Chairman Tom Wheeler’s May 28, 2015 proposal to expand Lifeline to broadband will take years, the PSC has an opportunity now through wireless Lifeline service to deliver broadband at LTE speeds to millions of low-income New Yorkers who already have wireless phones.

Libraries in New York City launched the “Library HotSpot” program last year to allow patrons without Internet in their homes to check out one of 10,000 4G Sprint mobile WiFi hotspots for up to six months at a time. The PSC should work with wireless providers to expand this program throughout the state.

Similarly, since each Android smartphone can also serve as a hotspot providing other computers and devices with an Internet connection, mobile phones can provide broadband to homes throughout New York, a further reason to spur their proliferation through Lifeline.



As mobile smartphone adoption has increased, however, so has the use of mobile data, leading major providers, starting with AT&T in 2010 and Verizon in 2012, to eliminate unlimited data plans. T-Mobile and Sprint soon followed by placing limitations on unlimited data by throttling customer download speeds after they consume a certain amount of data.⁸ The consumer cost for unlimited data averages about \$1.68 per gigabyte, while capped mobile data plans cost nearly twice as much at \$3.02 per gigabyte.⁹ With the trend away from unlimited data, customers are exceeding their data allowance, with one customer receiving a \$555 bill for 55 gigabytes of “phantom data” used by apps without the customer’s knowledge.¹⁰

⁸ Anick Jesdanun, “What 'unlimited' data plans really mean at T-Mobile, Sprint, AT&T and Verizon,” Associated Press, February 4, 2015 available at http://www.mercurynews.com/business/ci_27457734/what-unlimited-data-plans-really-mean-at-t

⁹ Brian Fung “Here’s how data caps really affect your Internet use, according to data,” Washington Post, July 14, 2015, available at <https://www.washingtonpost.com/blogs/the-switch/wp/2015/07/14/heres-how-data-caps-really-affect-your-internet-use-according-to-data/>

¹⁰ Rick Folbaum, “Data Usage Leading To Big Bills Due To ‘Phantom Usage,’” CBS Miami, July 8, 2015 available at <http://miami.cbslocal.com/2015/07/08/data-usage-leading-to-big-bills-due-to-phantom-usage/>



Mobile phone towers have proliferated our City and State. Many municipalities and individuals have sought to challenge them citing health and aesthetic concerns.¹¹ Conversely, in New York City, Mayor Michael Bloomberg made it a mission to eliminate “dead spots” by tasking the DoITT and the Department of Consumer Affairs to collect and map locations with little to no service through 311.¹² In 1993, the New York State the Court of Appeals in *Cellular Telephone Co. v. Rosenberg*, 82 N.Y.2d 364, 604 N.Y.S.2d 895, held that mobile phone companies were public utilities. In 1996, the Federal Telecommunications Act brought about sweeping reforms including setting general criteria for the siting of telecommunication facilities, such as mobile phone towers providing authority for siting to state or local governments. Local governments are unable to simply say “No,” but must overcome evidentiary hurdles or in most cases find alternative locations or create a well-regulated plan to facilitate the proliferation of mobile phone towers.¹³ It is clear that government through Federal, State and City laws have facilitated the expansion of mobile providers through placement of infrastructure on public and private lands.

The State of New York, having supported the proliferation of wireless infrastructure, must use its authority through the PSC to regulate wireless providers ensuring:

- Extension of Lifeline to all low-income wireless customers coupled with phones and plans that provide unlimited Internet access and enabled WiFi hotspots,
- Expansion of “Library HotSpot” program to allow more New Yorkers without Internet to borrow it for months at a time,
- Expansion of low-cost unlimited data plans for all wireless customers, and
- Consumer protections from “bill shock” resulting from overages such as “phantom data” downloaded by apps without the knowledge of consumers.

Given the near universal use of mobile phones throughout New York State the PSC must use this opportunity to bridge the digital divide now through universal broadband over mobile.

¹¹ Thomas A. Wikle, “Cellular Tower Proliferation in the United States,” *The Geographical Review* 92(1): 45-62, January 2002 available at http://www.geo.hunter.cuny.edu/courses/geog347/articles/cellular_states.pdf

¹² Mayor Michael Bloomberg, “Mayor Michael R. Bloomberg, DoITT Commissioner Gino Menchini, and Consumer Affairs Commissioner Gretchen Dykstra Announce Program to Track Cell Phone “Dead Spots” Citywide,” Mayor of the City of New York: News from the Blue Room, PR-303-03, October 27, 2013 available at http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2003b%2Fpr303-03.html&cc=unused1978&rc=1194&ndi=1

¹³ “Planning and Design Manual for the Review of Applications for Wireless Telecommunications Facilities: A Practical Guide for Communities Managing Wireless Telecommunications Facilities Siting in New York State,” New York State Department of State, Division of Local Government, March 2001 available at http://www.dos.ny.gov/lg/publications/Wireless_Telecommunications_Facilities_Manual.pdf



II. Universal Fiber

On June 18, 2015, the New York City Department of Information Technology and Telecommunications (DoITT) concluded an audit of Verizon's implementation of FiOS, the company's state-of-the-art fiber optic network. The audit found that even after seven years, Verizon fundamentally failed to honor a condition in the franchise agreement to extend FiOS, by June 2014, to any household in any of the five boroughs which requested it. Despite Verizon's claims that it finished the build out of its FiOS network in New York City in November 2014, the audit found that not only did Verizon not run enough fiber to meet existing demand at the time of its agreement with the City, but that residents were routinely denied FiOS broadband service. An additional 40,000 requests for service currently remain outstanding, the vast majority for over one year. Instead of universal coverage as promised, we have anywhere from 45-60% coverage. Residents, including me, are told that FiOS is simply unavailable to them.

Among the worst of Verizon's violations of the franchise agreement include:

- Claiming to run fiber on certain blocks, that field inspections revealed were false;
- Consistently failing to respond to community requests let alone fulfill them;
- Not tracking service requests for six years;
- Failed to maintain records of all complaints, specifically from prospective customers; and
- Refused access to its system and records used to track progress for five months.

If Verizon had honored its commitment to New York City, we would have already achieved universal broadband. Instead, 22 percent of families — and 36% of those below the poverty line — do not have broadband in the home. This broken promise is unacceptable. It is imperative that PSC assist in the enforcement of the franchise agreement and hold Verizon accountable.

III. Expanding Affordable Broadband Over Cable

Over the past year, the PSC reviewed a proposed merger between Comcast and TWC, to determine whether it was in the public interest. In that time, we advocated on behalf of the City of New York, seeking the preservation of network neutrality, expansion of Lifeline eligibility to broadband, and other requests aimed at bridging the digital divide, while expressing overall concerns with anti-competitive elements of the proposed merger. Many initially thought the merger could not be stopped and if it was stopped, that we would never have another bite at universal broadband for the "Big Apple."

Following our comments on the Comcast/TWC merger, the Federal Communications Commission ("FCC") adopted net neutrality and Chairman Wheeler has called for Lifeline eligibility for broadband. On a local level, Mayor Bill de Blasio has announced Link NYC which will provide free gigabit wireless Internet using old payphones throughout the City of New York. The Mayor's office estimates that about one in five (22%) of New York City families do not have access to broadband at home a number that jumps to about one in three (36%) for families below the poverty line. On April 24, 2015, following reports that the Antitrust division of the United States Department of Justice was preparing to challenge the merger, it was called off in a statement by Comcast. On May 26, 2015, Charter Communications announced a \$78.7 billion



deal to acquire TWC, along with a \$10.1 billion deal to acquire Bright House Networks. With the July submission of the Charter/TWC petition before your body, we continue where we left off and welcome another chance to see a deal involving TWC serve the public interest by providing free and affordable universal broadband, as follows:

- The Bright House Network's "Connect2Compete" program or a similar program must be made available to all New Yorkers and should be expanded from free and reduced school lunch recipients to include family and individual recipients of income-qualifying federal, state, and city subsidies. This means including those individuals who already qualify for the FCC's Lifeline program, while removing existing loopholes that deny services,
- Cable providers should commit to becoming an eligible telecommunications carrier ("ETC") in order to provide Lifeline services for phone services. On May 28, 2015, FCC Chairman Wheeler, proposed that Lifeline be expanded to include broadband, and Charter must also commit to providing Lifeline services for broadband services once they are included by the FCC, and
- Cable providers should eliminate connection fees in urban areas that do not have existing cable services, including all of New York City.

The PSC must only find a merger of TWC to be in the "public interest" if it is coupled with the above referenced and previously requested improvements to provide free and low-cost high speed universal broadband for all New Yorkers.

IV. Supporting "Legacy" Copper Networks to Prepare for the Next Disaster

Millions of New Yorkers rely on "legacy" copper networks for voice and data services. Yet, as noted in PSC's *Study on the State of Telecommunications in New York*, "Legacy" networks in many areas of New York City are in poor condition. Citing high maintenance costs, Verizon and others have aggressively pushed to retire existing copper networks, further limiting consumer choice. However, as New Yorkers discovered during Hurricane Sandy, these VoIP and fiber systems do not have the same ability as copper lines to maintain service indefinitely when the power goes out, generally lasting only eight hours. In emergencies, eight hours is not enough time to assess the situation, make emergency calls and follow up calls, and contact loved ones. Additionally, as further noted in PSC's study, when Verizon began offering Voice Link as a permanent service replacement for copper wire, the majority of customers had a negative opinion of Voice Link, criticizing the service for its inferior sound quality and limited functionality.

According to a post-Sandy assessment by the City of New York, in the City alone, nearly two million people lost power at some point during the storm, including roughly 35,000 units in over 400 New York City Housing Authority buildings. In coastal areas, the flood damage caused long-term outages in telecommunications equipment. Wireless service was heavily affected when backup batteries ran down within eight hours after grid power was lost, which reduced and even eliminated service to over 1 million customers in New York City. Making things worse, Verizon used this opportunity to replace, rather than repair copper cables with fiber. In a survey



of 172 commercial buildings in part of southern Manhattan, nearly 60% did not have service fully restored 60 days after Sandy, and 12% lacked service after 100 days.¹⁴

“Ready New York” Guides published by the New York City Office of Emergency Management (OEM) suggest assembling an emergency supply kit that include a “phone that does not require electricity,” which is only useful if phone service itself can remain up for the days or weeks it may take for power to be restored.¹⁵

Maintaining and repairing the existing copper network is essential to ensure that customers are not cut off during emergency situations and are also able to have access to a quality system. The PSC’s concern that legacy networks are money losers does not justify allowing telecommunications companies to continue to abandon these networks without providing alternatives to consumers that are comparable in both quality and price.

Conclusion

The PSC must hold Verizon and the telecommunications industry accountable for promises made in franchise agreements, by committing to a truly robust and transparent review of the state of telecommunications in our state. New Yorkers are being overcharged and underserved for telecommunications services, widening the digital divide, and leaving our telecommunications infrastructure vulnerable, as we saw after Superstorm Sandy.

The PSC can take a stand for all New Yorkers, and bring our state into the 21st Century, by:

- Ensuring universal mobile broadband and taking a “Mobile First” Internet approach to future franchise agreements;
- Enforcing the 2008 franchise agreement between Verizon and the city of New York, making fiber universally available to all New Yorkers;
- Expanding affordable, reliable, high speed broadband; and
- Supporting “Legacy” copper networks to shore up telecommunications infrastructure and to prepare for the next disaster.

¹⁴ City of New York. Mayor's Office on Sustainability. Mayor's Office of Recovery and Resiliency. *Sandy And Its Impacts*. City of New York, July 2015.

¹⁵ City of New York. Office of Emergency Management. *Ready New York: Preparing for Emergencies*.