

**BEFORE THE
COMMITTEE ON PUBLIC SERVICES AND CONSUMER
AFFAIRS
of the
COUNCIL ON THE DISTRICT OF COLUMBIA**

**Public Hearing
on
“Bill 17-0950, Approval of Verizon Washington, D.C. Inc.’s
Cable Television System Franchise Act of 2008”**

Testimony

of

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INTRODUCTION

Good morning Councilmember Cheh and members of the
Committee on Public Service and Consumer Affairs.

I am Elizabeth A. Noël, People’s Counsel for the District of
Columbia.

Thank you for allowing the Office of the People’s Counsel to appear before you today to present for serious consideration and adoption, the recommendations that we believe protect the interests of District of Columbia telecommunications consumers arising out of the proposed “Verizon Washington, D.C. Cable Television System Franchise Agreement.” The Office’s recommendations are in two formats, 1) this testimony I am presenting and 2) a formal brief supporting my testimony.

The timely, equitable and ubiquitous deployment of any advanced telecommunications technology in Washington, D.C. is an important issue for all DC residents and consumers. The specific proposal to finally deploy FiOS affects telecommunications consumers, Competitive Local Exchange Companies (“CLECs”), the incumbent monopoly provider, Verizon, as well as the Office of the Executive, the Office of Cable Television and this Council.

Why? The residents and consumers of the District of Columbia depend on you to make the appropriate determinations as to

whether the proposed “FiOS Franchise Agreement” is in the public interest, and what additional elements, if any, must be incorporated in the final Franchise Agreement to best ensure that the interests of the District of Columbia, and its residents and consumers, are fairly protected and represented – not only today, but in the future.

I would like to publicly thank the Office of Cable Television for its efforts to negotiate with Verizon to carve out a “Franchise Agreement” that would finally usher the District of Columbia into the 21st century by deploying advanced telecommunications capabilities and, thereby, bring the Fiber Optic System (**FiOS**)¹ to the Nation’s Capital. As I have previously publicly stated, each time the Verizon FiOS commercial is aired, OPC receives telephone inquiries from consumers who want to know “. . . what is in the FiOS guy’s truck.”

¹ **Verizon FiOS**, sometimes simply **FiOS** which stands for "Fiber Optic Service" "...is an Internet, telephone, and TV service that is presently offered in some areas of the United States by Verizon. Verizon has attracted consumer and media attention in the area of broadband Internet access as the first major U.S. carrier to offer such a service. In their rapidly expanding coverage areas, FiOS provides telephone, Internet and digital video services to the subscriber's premises. As of April 2008, FIOS now has approximately 1.2 million television subscribers (ranked 11th nationally) and 1.8 million broadband internet subscribers.[Wikipedia, October 30, 2008]

In short, DC consumers are interested in the “Pretty Amazing New Stuff” that Verizon claims FiOS will bring into our homes and, most relevantly, when D.C. will get FiOS.

Notwithstanding Washington, D.C.’s revered status as the “Nation’s Capital” and the home to the 588,292 residents who have chosen to make D.C. their “home,” the District of Columbia is the 17th jurisdiction in which Verizon has offered to provide FiOS.²

D.C. consumers are fully aware that Maryland “has FiOS” and have demanded an answer as to “Why the District of Columbia does not?” Until now, OPC has responded by telling consumers what Verizon has told to OPC concerning Verizon’s plan to deploy FiOS throughout D.C.:

“Building a network as complex and far-reaching as our FiOS network takes time, and it will take awhile to get to all areas in which we will eventually deploy. The deployment of FiOS in the

². Verizon FiOS is currently available in 16 states: Maryland, Virginia, Delaware, Pennsylvania, New York, New Jersey, Connecticut, Massachusetts, New Hampshire, Rhode Island, California, Florida, Indiana, Oregon, Texas, and Washington state. However, Verizon FiOS is only available in certain areas (all suburban) and is not widely available throughout the state, particularly in densely populated urban areas.

District will be based on whether it is a prudent business decision for Verizon . . . ”³

I want to make it abundantly clear that the Office of the People’s Counsel supports the equitable, timely and ubiquitous deployment of advanced telecommunications services throughout the District of Columbia. In this instance, we are talking about FiOS.⁴ Indeed, advanced telecommunications services, like FiOS, could serve as an economic engine for the District of Columbia. As a long-time resident of this city, I am personally excited, and indeed curious, about the benefits FiOS will bring to DC and its residents and consumers. As a subscriber of Verizon’s DSL service and Comcast cable service, I am looking forward to “choosing” a program that best meets my family’s needs, and most important, learning how this “Pretty Amazing New Stuff” is better than the “old stuff” I already have. Like many consumers, we at OPC also wonder:

³ Verizon’s Response to OPC’s inquiry dated September 17, 2007

⁴ See, OPC’s Letter to the Editor of the Washington Business Journal, entitled: “D.C.’s Low-Fiber Diet,” March 21-27, 2008.

- Whether FiOS, when fully deployed, will be offered in all neighborhoods, and if not, which neighborhoods will be excluded and why are they being excluded? ;
- Will FiOS be so costly that many consumers will be “priced out,” particularly in this recessionary period?
- What happens when consumers have a problem?
- Are adequate consumer protections in place?
- Will Verizon have a workforce in DC, that can serve consumers in a timely manner?
- Will consumers have to take time off from work, only to suffer the consequences of a “missed appointment?” If so, are there penalties to Verizon?
- What happens should a consumer, for whatever reason, decide to do without FiOS?”
- Will consumers retain “choice” options, or is the decision to install FiOS in the home a *de facto* elimination of a consumer’s future choice to “choose something else?”

- Will Verizon be allowed to impose unreasonable or onerous customer deposit requirements?
- Are provisions in place that will ensure that Verizon will feel the financial pain for its failure to comply with the provisions of the Franchise Agreement that protects the consumers' interest in receiving this service?

OPC's recommended proposals, as will be discussed, are aimed at addressing these concerns. OPC implores the Committee to give serious consideration to these concerns and the recommended proposals.

Having said this, OPC does not say that FiOS is the answer to all of our prayers, or that it is the "*Best thing since sliced bread.*" OPC does not represent that once installed, FiOS will be "problem free," or that it will remain the "best technology" on the market. It is what it is: Verizon's answer to broadband service by delivering telephone, internet and TV over a fiber optic network instead of existing, and paid for, copper telephone lines. Yes, experts say that

the fiber optic network allows for a faster delivery of service than Verizon's own DSL, or even other advanced broadband technology. But, then there is always the even "*prettier amazing newer stuff*" that tomorrow always seems to bring in the field of technological wonders.

While progress is desired, OPC submits that the final FiOS Franchise Agreement must ensure that deployment of FiOS is done right: timely, equitably, ubiquitously, and with benefits to all stakeholders and no undue detriment to any consumer.

As the statutory advocate for District of Columbia telecommunications consumers, I would be remiss in my statutory responsibility if I did not prudently and reasonably use the authority and the expertise of this Agency to ensure that those provisions of the Franchise Agreement which are pertinent to OPC's statutory mandate, in fact, serve the best interest of District telecommunications consumers.

The imminent deployment of FiOS must be consistent with public policy priorities. As People's Counsel, I am obligated to advocate for provisions that best protect the interests of DC consumers. In this regard, the consumers of the District of Columbia rely on OPC-DC to inform the Executive and this Council of such concerns affecting consumers' interests. And, in turn, OPC relies on the Executive and the Council to ensure that the final Franchise Agreement respects those interests and concerns.

The "stakeholders' interests" in the deployment of this technology are broad and diverse. The proposals outlined in OPC's submission today highlight those issues that are important to the telecommunications consumers, your constituents, that the law requires us to represent and serve.

The proposals I am recommending focus on consumer protections and the equitable, ubiquitous, and timely deployment of FiOS.

Succinctly, the proposed amendments are designed to ensure:

1) the Franchise Agreement does not allow the process of FiOS deployment to thwart or eliminate telecommunications competition and consumer choice,

2) consumers have access to adequate and reasonable consumer protections and a complaint resolution process that is clear and fair,

3) FiOS will be equitably, ubiquitously, and timely deployed throughout all wards of the city, and finally,

4) consumers continue to have access to safe, adequate and reliable service.

DISCUSSION:

1. The Franchise Agreement Needs To Ensure that the Deployment of FiOS Does Not Thwart Telecommunications Competition and Preserves Customer Choice

The issue of telecommunications competition and customer choice is very important to the District of Columbia. Indeed, this

Council recognized the importance of telecommunications competition and consumer choice when it enacted the “*Telecommunications Competition Act of 1996*,” now codified as D.C. Code § 34-2002. This Act was intended to bolster the District’s interest in providing a level playing field in the telecommunications arena and, in so doing, to pave the way for a “vigorous and vibrant” competitive telecommunications marketplace and consumer choice.

OPC submits it is imperative that the Council remain committed to these ideals— fostering telecommunications competition and guarding against any practice that will thwart telecommunications competition and eliminate customer choice. While FiOS is a service that promises to deliver a plethora of benefits, a consumer’s ability to exercise choice must not be constrained or compromised as a result of FiOS deployment. To the contrary, District consumers **must retain** the ability to choose among a variety of telecommunications providers.

There are certain reality checks that should be kept in mind. **First**, given the hard economic times people are facing, consumers are making economic choices based on their budgets. For example, consumers who choose FiOS may later be forced to readjust their budgets and choose a lower priced telecommunications service. **Second**, there may be technological advances utilizing copper facilities that provide a lower cost alternative to FiOS. Under either scenario, it is important for consumers to have the ability to easily and timely switch to a competitive provider in a timely and efficient manner.

OPC urges the Council to ensure that the current ubiquitously deployed copper network is not compromised as to eliminate a consumer's ability to choose alternative providers.

The other 16 states which currently have FiOS creates a “working laboratory” that enables DC to “see” what has happened upon FiOS deployment, and what DC can do now to better protect

its residents and consumers. For example, in Maryland and New York, Verizon, and CLECs, along with consumer advocates, are engaged in a “pitched battle” over whether Verizon should or should not remove or disconnect the copper drop wire when Verizon installs its fiber optic network. On one hand, Verizon claims that it has to “disconnect or remove” the copper drop wire *“to prevent lightning from harming the consumer’s internal wiring.”* On the other hand, CLECs and many consumer advocates note that Verizon’s practice of “disconnecting or removing” the copper drop wire hinders competition and customer choice.

Personally, I am not persuaded by Verizon’s argument about “lightning strikes,” but, in my capacity as People’s Counsel, I must err on the side of public safety and consumer protection. Thus, OPC has chosen not to focus on the debate about whether the wire should or should not be “disconnected or removed.” Rather than jump into the fray about the removal or disconnection of the copper wire *(an issue that requires an engineering evaluation and analysis)*,

OPC's recommendation is aimed at addressing the real issue: Regardless of what Verizon does to deploy FiOS, consumers' rights to a competitive environment and effective customer choice must be maintained.

To this end, Verizon's practice in other jurisdictions is problematic. For example, in Maryland, once Verizon installs its fiber facilities to provide FiOS, the Company disables the current copper network from delivering telecommunications service to the customer's premise. Therefore, if the customer wants to switch from Verizon to a CLEC, that CLEC will have to contact Verizon and ask for restoration of the copper connection. And then, Verizon will, on its own time, reconnect the copper connection. Therein, lies the rub.

OPC wants to ensure that Verizon is not in the position to use its "market power" and control over the reinstallation of the copper connection to delay the consumer's choice of switching to another provider, or the CLEC's desire to serve a consumer.

In short, OPC urges this Committee to include a provision in Verizon's Franchise Agreement that requires Verizon to restore access to the copper network within 48 hours of being contacted by a CLEC requesting access to the copper network.

Here I must note that Verizon promises to restore the copper network and not charge for reconnection.

Further, OPC proposes that the Council, in order to eliminate any incentive on Verizon's part to make an economic decision to delay this process, **should impose a financial penalty in the amount of \$10,000 per instance of delay against Verizon and require Verizon pay for six months worth of the consumer's service from the CLEC.**

Such a provision will require Verizon "to put its purse where its promise is!" In light of the fact that Verizon made a business decision to make the District of Columbia, the last jurisdiction in the surrounding area in which it would deploy fiber, the Council must

make sure that Verizon does not make another decision based solely for its benefit -- at the expense of customers' interest.

I will now outline a few more specific recommendations.

2. The Franchise Agreement Needs to be Amended in Order to Prevent Verizon From Imposing an Onerous Deposit on District Consumers

PROPOSAL: The Office recommends the language regarding deposits be replaced with a modified version of the recently adopted Commission Rules 307 and 308 regarding Deposits and Use of a Customer's Social Security Number. The modified rules outline the criteria when a consumer can be charged a deposit and establishes the maximum amount of deposit would be \$100 that can be paid in three installments with the first installment due prior to connection of service. The modified rule would also prohibit Verizon from obtaining a consumer's Social Security Number to determine if a deposit is required of a consumer.

The proposed Franchise Agreement allows Verizon to charge a deposit equal to **six times (6x)** the average customer's bill if the customer has 1) a poor credit history or poor payment history, or 2) refuses to provide credit history.

These two modified rules, along with the entire Consumer Bill of Rights, were vetted by the three utility companies, including

Verizon, the Office of People's Counsel and approved by the DC Public Service Commission. As such, the proposed rules represent a well balanced and fair means of determining whether a deposit is required of a consumer.

3. The Franchise Agreement Needs to be Amended to Include Financial Sanctions Against Verizon for Missed Appointments

PROPOSAL: In order to ensure that Verizon keeps its repair appointments, the Office recommends the Council include a provision in the Franchise Agreement that requires Verizon to issue a credit in the amount of \$100 per late appointment to the affected consumer. This credit would not apply when the Franchisee provides the customer with 24 hour notice of its inability to keep the appointment. The expense incurred by the Franchisee as a result of a missed appointment shall not be recovered in rates.

The issue of missed appointments is one that is familiar to this Committee. As you recall, at the quality of service hearings held before this Committee in February this year, several witnesses testified about the frustration they experienced when Verizon failed to show up for repair appointments. When one considers that many

of Verizon's customers will now receive a bundled service package consisting of telephone, cable and internet service, a missed repair appointment means that the consumer will be without three vital forms of communications. Therefore, it is critically important that Verizon keep their scheduled appointments to repair service.

4. The Franchise Agreement Needs to be Revised to Remove Verizon's Authority to Decide When Billing Disputes Are Resolved

PROPOSAL: Verizon should not have unilateral authority to determine when a billing dispute is resolved.

The Franchise Agreement explains what criteria is necessary for a consumer to withhold a disputed amount of their bill without having their service disconnected or being assessed a late fee. One of the four (4) criteria is that Verizon determines when the billing dispute is resolved.

OPC proposes the criteria allowing Verizon to determine when the billing dispute is resolved be removed from the Agreement as it

is wholly unfair to the consumer. Once that criteria is removed, the remaining criteria require the consumer to:

- 1) pay the amount not in dispute,
- 2) contact Verizon about the dispute 5 days prior to the bill due date and
- 3) cooperate in the process of determining the accuracy or appropriateness of the charges in dispute.

These three criteria create an environment in which the dispute can be resolved between the consumer and Verizon or handled by the appropriate agency to resolve the dispute.

5. The Franchise Agreement Needs Language to Clarify How Complaints Are to Be Handled

PROPOSAL: The section of the Franchise Agreement entitled “Customer Complaints” needs language to clarify where consumers can lodge their complaints for the three different services to be provided by Verizon -- telephone, cable and internet.

The amended language would state that consumers with local telephone complaints should contact the D.C. Public Service Commission or the Office of the People’s Counsel. Consumers with complaints about cable service should contact the DC Office of Cable Television and consumers with complaints about long distance, and internet service should contact the FCC.

Adding this language will remove any consumer confusion about where to file complaints.

6. The Franchise Agreement Should be Amended to Require Verizon to Have Trained Personnel Based in DC to Handle System Outages

PROPOSAL: Verizon should be required to have trained personnel based in DC to handle system outages and repairs.

Section 5.1.10 of the Franchise Agreement requires Verizon to have sufficient trucks, tools, testing equipment and trained and skilled personnel to handle system outages and repairs. This requirement is reasonable, but should also require that personnel be based in DC. As you may recall, during the Quality of Service hearings held in February of this year before this Committee, testimony was provided by the Communications Workers of America that Verizon personnel had been removed from the District and taken to Maryland and Virginia to install fiber in those jurisdictions. Therefore, the Council needs to amend section 5.1.10 to ensure that there is sufficient skilled personnel **based here in the District** to deal with system outages and routine maintenance issues.

7. As the Statutory Advocate for Telecommunications Consumers, OPC Should Be a Participant in the Status Meetings Regarding the Deployment of Verizon's Service to Ensure that FiOS is Being Equitably and Ubiquitously Deployed

PROPOSAL: In order to ensure the important public policy goal of equitable and ubiquitous deployment of FiOS, I recommend the Council modify section 9.8 of the Franchise Agreement to: 1) specify the District representatives who will be in attendance at the status meeting, 2) list OPC as one of the District representatives to be in the status meeting, 3) hold these meetings once every six months and 4) require that Verizon not only disclose where it has deployed FiOS, but also reveal where it intends to deploy FiOS over the next six months.

Section 9.8 of the Franchise Agreement requires Verizon to provide a status on the progress of its deployment to District representatives on an annual basis. OPC submits this provision is crucial because it provides the District with an opportunity to be briefed on the status of the deployment of a critical infrastructure that will deliver advanced telecommunications services. As broadband service is a major economic engine in the country, the District needs to ensure that the deployment of the network is both equitable and ubiquitous. A failure on the District's part to ensure equitable

deployment will leave sections of the city in a technological wasteland; an untenable result. Therefore, this status meeting needs to have representatives from the District present who have a stake in ensuring the equitable and ubiquitous deployment of FiOS and should occur twice a year. OPC submits that its role as the statutory advocate for residential telephone consumers, uniquely qualifies it to be one of the participants in this meeting to ensure that the deployment is fair and equitable and that the practice of redlining or cherry picking is not occurring.

Another reason the Office should be a participant in this annual meeting is because the Office, through its participation in Formal Case No. 990, the Quality of Service proceeding, is aware of the need for infrastructure upgrades throughout the city. If certain areas of the city that are plagued with quality of service issues are not going to be served by fiber optic service, the Office can raise this point at the meeting to make sure that all consumers receive the benefit of fiber optic technology.

In closing, the Office's proposals are summarized as follows:

1. The Franchise Agreement Needs To Ensure that the Deployment of FiOS will not Thwart or Hinder Telecommunications Competition and Customer Choice is Preserved.
2. The Franchise Agreement Needs to be Amended in order to Prevent Verizon From Imposing an Onerous Deposit on District Consumers
3. The Franchise Agreement Needs to be Amended to Include Financial Sanctions Against Verizon for Missed Appointments
4. The Franchise Agreement Needs to be Revised to Remove Verizon's Authority to Decide When Billing Disputes Are Resolved
5. The Franchise Agreement Needs Language to Clarify Where Complaints for the Three Different Services Are to be Filed
6. The Franchise Agreement Should be Amended to Require Verizon to Have Trained Personnel Based in DC to Handle System Outages
7. As the Statutory Advocate for Telecommunications Consumers, OPC Should Be a Participant in the Status Meetings Regarding the Deployment of Verizon's Service to Ensure that FiOS is being Equitably and Ubiquitously Deployed

Conclusion:

Thank you for this opportunity to appear before you today.

OPC urges the Committee to give serious consideration to these recommendations and to incorporate these protections into the Final Franchise Agreement.

Respectfully Submitted,

Elizabeth A. Noël, Esq.
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for the District of Columbia

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