

**DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS TESTIMONY
BEFORE THE CITY COUNCIL COMMITTEES ON TECHNOLOGY AND OVERSIGHT & INVESTIGATIONS
AND SUBCOMMITTEE ON ZONING & FRANCHISES
OVERSIGHT ON THE VERIZON FIOS FRANCHISE
WEDNESDAY, OCTOBER 14, 2015**

Thank you, Maya. Good afternoon Chairs Vacca, Gentile, and Richards, and members of the committees on Technology and Oversight and Investigations, and subcommittee on zoning and franchises. My name is Anne Roest and I am Commissioner of the Department of Information Technology and Telecommunications (DoITT) and citywide CIO. I am pleased to testify today regarding the compliance of Verizon with the build out requirements of its cable television franchise for its Fiber Optic Service, or "FiOS."

On July 15, 2008, the Verizon FiOS franchise agreement became effective. This landmark agreement represents the first and only citywide cable television franchise in New York City, and establishes the framework for New Yorkers to finally have more than one choice for cable television, Internet, and voice over Internet protocol (VoIP) services, no matter where they live in the five boroughs.

In the initial years of its franchise, Verizon appeared to the City to be making good progress with the build. The company refused to provide maps showing the progress of FiOS build due to confidentiality concerns. But our inspections of locations where Verizon represented that it had fulfilled its premises passed obligation revealed extensive deployment of fiber above and below the City's streets and homes connected to the system, well distributed throughout the five boroughs.

In July 2012, Verizon approached the City requesting approval of a method of laying fiber optic cable in the streets and under the sidewalks of the City in compact micro-conduits via narrow and shallow cuts called micro-trenches. Verizon requested approval of this method due to concerns about its ability to gain access to certain buildings due to issues with private property owners. DoITT and the Department of Transportation allowed Verizon to start using microtrenching as part of a pilot in November 2012.

Then, in 2013, Verizon informed DoITT that it was experiencing difficulties gaining access to "block properties," or locations where telecommunications services were traditionally provisioned in a method requiring permission to crossover multiple properties with facilities. Verizon proposed to divide the City into grids and to then prioritize the grids for building, focusing resources on certain grids to engage the community and get work done and then to move on to the next set of grids. DoITT's response was supportive only to the extent that this approach could be used within the timeframes allowed by the contract.

The FiOS franchise agreement provides for *force majeure* exceptions to the June 30, 2014, deadline, and in fact Verizon asserted such claims for Hurricane Irene in 2011, for a labor strike in 2011, and for Hurricane Sandy in 2012. Verizon claimed that those events would delay its compliance with the June 30, 2014, deadline by six months. DoITT accepted Verizon's assertion but did not agree that Verizon's delay should be as long as six months; instead, we stated our belief that Verizon's delay should be no more than three months, to September 30, 2014.

As 2014 progressed, and Verizon's reports of its FiOS build approached 100 percent, DoITT increasingly received anecdotal evidence, largely in the form of consumer complaints, suggesting that Verizon was simultaneously taking credit for "passing" households while declining to accept orders for non-standard service installations from those same households. While it was conceivable in the earlier years of the franchise that there would be complaints from residents in areas that did not yet have access to FiOS, these complaints became less plausible as Verizon reported close to a complete citywide build.

This evidence, in combination with discussions of the particular households involved with Verizon personnel, led DoITT to be concerned that these anecdotes reflected not occasional irregularities, but possibly broader failures by Verizon to fulfill its obligations. After Verizon was questioned about a number of complaints about delays in providing service, the company again proposed that it focus on getting service installed for potential subscribers in certain neighborhoods – priority to be set by the City – and withdraw its efforts from non-priority neighborhoods. In order to seriously consider this grid proposal, in June 2014 DoITT requested the addresses of all pending requests and all satisfied requests for service. Verizon never provided this data.

Beginning in November 2014, once Verizon claimed that it had passed all residential households with fiber, it was obligated to accept orders for residential service in all buildings across the five boroughs.

The anecdotal evidence, unfortunately, continued to show the contrary: Verizon was refusing to accept orders from residents, and in some cases told residents that Verizon had no plans, or no timeline, to provide cable television service in their buildings.

Realizing that our informal attempts to obtain data from Verizon were not being taken seriously, DoITT initiated an audit on September 17, 2014. We announced the results of that audit last June. The following is a summary of its major findings:

First, Verizon is not in compliance with its agreement since it has not truly “passed” all residential households in New York City.

Verizon’s working definition of “passing” a household with fiber optic cable is inconsistent with industry practice and incongruous with Section 5.4 of its own franchise agreement with the City. Since the agreement itself does not define “passed” we turn to the industry for a definition. In its [definition of terms](#), the Fiber to the Home Council states:

“The number of “Homes Passed” is the potential number of premises to which an operator has capability to connect in a service area, but the premises may or may not be connected to the network.

“This definition excludes premises that cannot be connected without further installation of substantial cable plant such as feeder and distribution cable (fiber) to reach the area in which a potential subscriber is located.”

Therefore, at a minimum, the term “passed” must be understood to require sufficient proximity to permit Verizon to comply with its six-month deadline to fill NSIs.

Second, Verizon continues to show that FiOS service is not yet available to residential addresses, despite claiming to have passed all residential households in the City.

Our auditors found that the script on Verizon’s website informed potential customers that service was unavailable at many residential addresses, and instead offered a two-year DirecTV contract rather than Verizon FiOS for many residential addresses. Although Verizon claimed the invitation on its web page to prospective customers to enter their information, so they can be contacted when service is available, is treated as an NSI, nothing on the web page informed prospective subscribers that this action will trigger Verizon’s obligation to provide them with FiOS service within six months or a year. Similarly, many potential customers who call Verizon’s customer service number were told that FiOS is not available at their addresses. In some cases, callers were told that Verizon had no plans to bring FiOS to their addresses.

Next, Verizon has not completed large numbers of non-standard installation service requests within the six-month and 12-month deadlines required by the franchise agreement.

Our review of Verizon's outstanding NSI report, received on January 8, 2015, revealed that approximately 75 percent of the nearly 42,000 NSIs that were outstanding as of December 31, 2014, had been outstanding for more than 12 months.

In this report Verizon does not distinguish among NSIs that are delayed due to an owner of a multiple dwelling refusing to provide access to the building, NSIs for single family homes, and NSIs from tenants in multiple dwellings where provision of access by the landlord is not an issue.

In addition, Verizon's failure to timely fill NSI orders must be considered in conjunction with Verizon's failure to accept NSI orders for all residential premises it claims as "passed," and with its incorrect understanding of the term "passed." In short, the total number of NSIs may still be an underrepresentation of the true demand.

Verizon failed to cooperate with the City's audit of FiOS rollout, in violation of its franchise agreement.

Verizon initially failed to provide access to the systems used in calculating the status of network build, with access granted five months DoITT's initial request. Throughout the course of the audit, and in violation of its franchise agreement, the company significantly delayed or failed to provide access to various other records, reports, and contracts requested by the City to conduct a full assessment of FiOS implementation.

Finally, Verizon does not communicate accurately and effectively with prospective customers.

From the beginning of the audit period to its completion, Verizon did not communicate the status of FiOS availability to prospective customers in a fashion that provided sufficient information. Verizon's continued diversion of potential customers from cable television service to DirecTV / DSL-type bundles mislead prospective cable television subscribers about their rights under the franchise agreement.

Complaints received by DoITT throughout the audit process revealed that Verizon continued to respond to inquiries from residents in New York City that FiOS is "unavailable" in their buildings even though Verizon claimed that all households in the City had been passed by fiber. When reviewing its database with us, Verizon staff explained that a prospective customer who has registered an NSI request is sent two automated emails regarding the status of the request, no matter how long the request has been pending, and that the emails do not provide any actual projected dates for service installation.

Following the issuance of the Verizon FiOS audit, the Counsel to the Mayor's Office and DoITT have been meeting with the company to further discuss their compliance issues. We are hopeful that Verizon will commit the necessary resources to deliver upon the promise it made to all New Yorkers, but also remain prepared to pursue any necessary and appropriate measures to compel its compliance.

Thank you for the opportunity to testify this afternoon. Equality of access to services is a hallmark of the de Blasio Administration, and in the modern age, digital services – including the cable television, Internet, and VoIP services offered through FiOS – have a more profound impact than ever on the New Yorkers who stand to benefit most from them. We will continue to fight on their behalf.

This concludes our prepared testimony and we look forward to answering your questions.

Thank you.