Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:
Connect America Fund (CAF) WC Docket No. 10-90
A National Broadband Plan for Our future GN Docket No. 09-51
High-Cost Universal Service Support WC Docket No. 05-337

COMMENTS
As well as:

OMNIBUS REGULATORY FLEXABILITY ACT COMPLAINT

OMNIBUS DATA QUALITY ACT COMPLAINT

BY
NEW NETWORKS INSTITUTE AND TELETRUTH

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Opening Statement

Teletruth is requesting the FCC suspend ALL National Broadband proceedings because the FCC’s data is extremely flawed in almost every area of this endeavor; the consequence has been the creation harmful public policies and this will continue to plague future rulemakings.

The FCC does not have accurate data in most important areas, including phone charges, customer-funding of broadband, small business competition and other areas. Thus, the FCC should not be raising rates or the creating of new taxes, such as the proposed Connect America Fund (CAF), until it collects accurate data.

The FCC has continuously ignored the fact that customers, not investors have been and continue to be the primary funding source for broadband.

The FCC should suspend all National Broadband proceedings until it has fixed the marketplace data and analyses in ALL FCC Regulatory Flexibility Act analyses located the appendix of every FCC proposed rulemaking.

The FCC needs to examine and remove AT&T, Verizon and Comcast funded ‘experts’ and consumer and minority groups from its ranks and influence.

This document contains:

- Comments: WC No. 10-90, GN No. 09-51, WC No. 05-337
- Omnibus Data Quality Act Complaint: Filed Separately Against All Broadband Data Since 1999.
- Omnibus Data Quality Act Complaint: Filed Separately Against All Data Since 1999 Used In The Regulatory Flexibility Act Analyses in All Current Dockets in 2010.
- (FILED IN CONJUNCTION WITH ANOTHER DOCUMENT)
- Omnibus Data Quality Act Complaint: Filed Separately Against All Phone, Broadband, Wireless, Cable And Internet Charges Since 1999
PART I: Summary of Issues

1) The Continued Customer-Funding of Broadband has been Ignored for Almost 2 Decades.

The FCC has proposed plans to raise rates, create new taxes and harm customers in five different ways, all in the name of broadband. Unfortunately, the FCC has not investigated ALL monies collected previously and currently in the name of broadband.

Customers, not investors, have been and continue to be the primary funding source for broadband over the last 20 years in the form of customer overcharging. Example: New York State Department of Public Service raised local rates to fund broadband in June 2009. Since 2004, the State commission has raised Verizon’s local rates 90%, (based on actual New York phone bills).

“’We are always concerned about the impacts on ratepayers of any rate increase, especially in times of economic stress,’ said Commission Chairman Garry Brown. ‘Nevertheless, there are certain increases in Verizon’s costs that have to be recognized. This is especially important given the magnitude of the company’s capital investment program, including its massive deployment of fiber optics in New York. We encourage Verizon to make appropriate investments in New York, and these minor rate increases will allow those investments to continue.”

The FCC plans do not have the data to accurately assess whether a new tax should be implemented, much less raising rates. It has no data on the current customer funding for broadband, especially the monies collected on the state level over the last 20 years.

We estimate that America’s phone customers have already paid over $320 billion dollars in excess charges and tax perks --- about $3000.00 per household --- all in the name of broadband.

2) The Data Used in Every FCC Proceeding Is Decades Old and Violates the Regulatory Flexibility Act and the Data Quality Act.

Virtually EVERY FCC current proceeding is using the same, boilerplate, flawed data in its National Broadband Plan. The paragraph below describes the wireless spectrum auctions from 1997. This paragraph is part of the “Small Business Regulatory Flexibility Act Analysis”, essentially an impact study, which is located in the appendix of every FCC proceeding—to describe the competitive marketplace in 2010.
“Wireless Communications Services: This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A “small business” is an entity with average gross revenues of $40 million for each of the three preceding years, and a ‘very small business’ is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, held in April 1997, there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a ‘small business’ entity.”

This almost identical paragraph has been used since 2000 in almost every FCC regulatory proceeding. The FCC failed to update the information about these small businesses since 1997 even though the information is readily available as the FCC is the repository for all wireless spectrum licenses.

Our Omnibus Data Quality Act Complaint has been filed separately as it relates to ALL FCC proceedings using the same data, which, unfortunately, appears in EVERY FCC docket since 2000. (See Part II.)

Had the FCC actually done the proper analysis with accurate data it would have shown that the wireless spectrum auctions, specifically those for ‘small’ and ‘very small businesses’ had failed because AT&T, Verizon et al created “false fronts” to outbid everyone as ‘very small companies’, saving over $8 billion dollars in discounted spectrum. (We filed a complaint over this issue as well.)

3) New Taxes and Rate Increases Should Not Be Added to Already Existing Overcharging of Customers. The FCC’s Data is Atrocious.

When it comes to phone, broadband, Internet or wireless charges, the FCC does not have any clue about the actual costs of service customers are currently paying. We have filed complaints about this multiple times, starting in 1993 when we outlined that the FCC was not (and is still not) using or collecting actual phone bills. The FCC’s phone charges data are essentially made-up industry information with no basis in reality.

Worse, the FCC has never investigated our claims that low and mid-volume users were ignored when the FCC’s data is presented. For example, in one complaint, we outlined how the FCC was claiming that the average cost for a long distance or wireless 1 minute call was $.05 cents; yet, this information uses averages, which biases the data toward high-volume customers. It also leaves out ALL of the associated charges with service
including plan fees, minimum usage fees, additional and questionable (made up) regulatory fees, not to mention the taxes and surcharges. Date from our surveys revealed that low and mid-volume long distance customers can pay $.50-$1.00 a minute, while low volume wireless customers can pay $3.00 or more a minute.

4) There Have Been No Audits Or Investigations, Nor Does the FCC Have Any Accurate Data on the Following Issues:

a) The monies AT&T, Verizon, Qwest et al collected under deregulation in the name of broadband on a state level or by the FCC in any capacity.
b) No audit or investigation about the state broadband commitments; the changes in state laws that gave the phone companies billions to upgrade the networks.
c) No investigation into the outcomes of these commitments, especially when schools, libraries and hospitals were supposed to be upgraded.
d) No investigation into the outcomes of these commitments, especially when homes and offices were supposed to be upgraded.
e) No investigation of the monies collected from customers on phone bills in the name of broadband.
f) No examination of the profits of any company that receives the Universal Service Funding, even though the companies that are receiving this funding have annual reports with exceptionally high profit margins – EBITDAs.
g) No examination of the profit margins on specific mandatory services, including the FCC Line Charge, which the FCC is now discussing to raise.
h) No examination of actual phone, cable, broadband and Internet and even wireless bills for the charges customers actually pay.
i) No examination of the costs-per-minute of services broken out into ‘low’, ‘medium’ or ‘high-volume’ services.
j) No accurate data used in the Regulatory Flexibility Act analyses pertaining to the current marketplace and small business competitors.

With the landscape of exceptionally bad data, we claim that there have been and continue to be harms to customers, small businesses and the economy.

- The FCC is going to throw Aunt Ethel and low and mid-volume customers (the majority of users) under the bus by suggesting 5 different rate increases and new taxes. The FCC does not have accurate data to assess the impacts.
- The FCC has continually failed to examine ALL of the monies being collected in the name of broadband today. Customers, not investors, have been and continue to the major funders of broadband through overcharging. We estimate that
approximately $320 billion dollars –has already been collected and continues to be collected today in the name of broadband.

- The FCC is in violation of the Small Business Regulatory Flexibility Act in every proceeding, which has directly harmed small business competitors, user choice and the economy, and will continue to do so until fixed.
- The FCC is in violation of the Data Quality Act in virtually every docket because its market analysis is based on data from 1997 or 2002. The FCC’s data is also unuseable for issues surrounding phone charges, broadband deployment and investment and other areas.

5) The FCC Needs to Examine and Remove AT&T, Verizon and Comcast Funded ‘Experts’ and Consumer and Minority Groups from its Ranks and Influence

The FCC has continually allowed corporate-funded analysts/economists or co-opted or fake consumer groups to be part of the FCC’s National Broadband Plan or on Advisory Committees and it has biased the decisions in favor of the phone companies over the public interest.

For example, how did 61 “concerned” economists, many funded directly by AT&T, Verizon and Comcast, have their ‘opinion paper’ added to this Federal agency’s Notice of Inquiry in this docket?
PART II: Complaints and Links

4) OMNIBUS DATA QUALITY ACT COMPLAINT: FILED SEPARATELY AGAINST ALL BROADBAND DATA SINCE 1999.

REQUEST: Customer-Funding of Broadband; Follow the Money for All Revenues Collected in the Name of Broadband since 1990.

This Data Quality Act complaint requests the FCC suspend all FCC National Broadband Plan proceedings until it has created a mechanism to collect an accurate assessment of ALL monies paid by customers in the name of broadband, including all state funding through deregulation (alternative regulations) that have been passed over the last 20 years, as many of the changes in the name of broadband were created directly because now-AT&T and Verizon made commitments to rewire entire states, or in some states, all schools, libraries and hospitals.

Before the FCC increases the rates of customers, this first task in an imperative for basic consumer protections.

The FCC needs to refute the fact that local phone utility ratepayers are funding broadband or investigate our claims. Fact: New York State Department of Public Service raised local rates to fund broadband in June 2009.

“’We are always concerned about the impacts on ratepayers of any rate increase, especially in times of economic stress,’ said Commission Chairman Garry Brown. ‘Nevertheless, there are certain increases in Verizon’s costs that have to be recognized. This is especially important given the magnitude of the company’s capital investment program, including its massive deployment of fiber optics in New York. We encourage Verizon to make appropriate investments in New York, and these minor rate increases will allow those investments to continue.’”

The FCC should answer these basic questions in their data reply:

a) How much money has been collected from customers – by state, as well as per customer – for changes in state regulation that were specifically design to use excess profits to upgrade the Public Switched Telephone Networks with fiber optics, replacing the old copper wiring? This investigation should start using the changes in state laws as the beginning point.
b) How much money is being collected today in the name of broadband, as highlighted in the NYDPS quote?

c) How much money is being collected for every tax and surcharge that is related to phone service or broadband, such as the FCC Line charge, state Universal Service Fund taxes, including all high-cost funding, etc?

d) How much money is being diverted out of the Public Switched Telephone Networks to fund the companies’ “Interstate Information Services” and non-utility services not related to “intra-state telecommunications services”?

e) How many households, businesses, schools, libraries and hospitals were supposed to be upgraded and by what year?

f) What is the actual ratio Customer-funding of broadband vs actual investor contributions? --- I.e. tracking construction budgets and where the money is coming to pay those budgets.

Unless the FCC can answer these basic questions, then it should not proceed with the National Broadband Plan as it does not have basic data; moreover, rate increases and new taxes would be adding insult to injury.

Background:

Teletruth and New Networks Institute have submitted over 15 different comments and complaints to the FCC since 1999 pertaining to the fact that based on thousands of state documents and regulatory proceedings, annual reports, and articles, etc., phone customers, not investors, have been and continue to be the largest investor in the networks.

And yet, the common belief is that the phone companies’ investors are the funding sources and that the companies should be able to hold building broadband hostage if they don’t get their way.

Commissioner Bakers’ dissenting remarks in “Framework for Broadband Internet Service”, GN Docket No. 10-127, clearly shows the impacts of ignoring the basic state-based broadband data that is out there. She writes:

“This is the rare case where opening a proceeding creates so much regulatory uncertainty that it harms incentives for investment in broadband infrastructure and makes providers and investors alike think twice about moving forward with network investments under this dark regulatory cloud. This outcome can only harm consumers who need better, faster, and more ubiquitous broadband today.”
The harms have already occurred because there has been no investigation of all of the money collected. By 2010, virtually ALL of the US should have already been rewired with a fiber optic wire to homes, offices, schools, and libraries, America already paid about $320 billion dollars.

I note that the FCC’s findings that it would cost $350 billion to upgrade America to very high-speed. Ironically, this figure, of course, dovetails with our analysis of customer overcharging for fiber optic-based broadband services. If the phone companies had only kept their commitments, (and the regulators actually did the proper oversight), by 2010 America would have been completed and we would have been the envy of the world – not 15th in the world in broadband.

Some of the data in this Complaint:

A) The FCC Failed to Investigate the Findings in Our Broadband Report


The FCC tasked the Columbia Institute for Tele-Information (CITI) to do "an analysis of the public statements of companies as to their future plans to deploy and upgrade broadband networks as well as an historical evaluation of the relationship between previous such announcements and actual deployment". The FCC adds that the focus is on data analysis of "investment plans and deployment figures of upgraded broadband infrastructure in this century."

CITI's historical evaluation only goes back to 2004. After talking to CITI we decided to create a separate report to cover fiber optic promises for the period of 1990-2004 because, in many states, the changes in state laws are still on the books for deployments and there have been current rate increases based on the previous fiber optic based-broadband deregulation.

Our primary findings are summarized: [http://www.newnetworks.com/FCCCITIbroadband.htm](http://www.newnetworks.com/FCCCITIbroadband.htm)

As the opening quote from the New York State Department of Public Service clearly states, broadband is being funded through raising of “intrastate” phone rates. That means that low income, low volume families, such as seniors and Lifeline customers, or rural
customers, many of whom will never benefit from any network upgrades, are being overcharged.

And when we say ‘overcharged’, as we show in the report, state laws were changed to give the phone companies ‘financial incentives’ that were to be used to upgrade the Public Switched Telephone Networks, which were not upgraded, even though billions per state was already collected.

Let’s be clear: None of the FCC’s reports for the last 2 years even discusses the changes in state laws nor do they it include any of the thousands of documents represented in our report. Most importantly, it does not recognize the current monies being collected ‘in the name of broadband’.

B) The FCC Ignored Our Call for a Workshop to “Follow the Broadband Money”.

How much money is involved? We called on the FCC to do a workshop to “follow the money” in 2009 – We were denied. We also filed broadband comments which highlighted the data.

- Request for a new FCC workshop “Follow the Broadband Money”
- We filed broadband comments at the FCC in 2009

C) We’ve have been Filing with the FCC Since 1999 Pertaining to Broadband Deployment and Customer Investments.

Since 1999 we have filed comments and complaints because the FCC’s Advanced Network Report (required by Section 706 of the Telecom Act) never investigated the funding by customers for broadband on the state level – even though this happened in virtually every state in America.

- http://www.newnetworks.com/broadbandscandals.htm
- Fiber Optic Promises, States and Documents:
  - http://www.newnetworks.com/fiberopticstates.htm
- Broadband Filings, 1998-2004
  - http://www.newnetworks.com/Collected%20Broadband%20Information.htm
If the FCC does not know how much money is being collected today or even in the past in the name of broadband, then how can it raise rates 5 different ways? How can it make any decisions that require “investments” when it does not even know who the real investors are?

Or, most importantly, how can the FCC throw every telephone ratepayer and Public Switched Telephone Network customers under the bus to allow state rate increases for broadband when the FCC is also going to raise those rates?

5) OMNIBUS DATA QUALITY ACT COMPLAINT: FILED SEPARATELY AGAINST ALL DATA SINCE 1999 USED IN THE REGULATORY FLEXIBILITY ACT ANALYSES IN ALL CURRENT DOCKETS IN 2010.

We have previously filed about the FCC’s violation of the Regulatory Flexibility Act and the Data Quality Act. However, we write this now to summarize an omnibus complaint against all FCC proceedings since 2000 filed separately, as well as part of this docket.

The reason is clear; The FCC has never taken the Regulatory Flexibility Act’s requirement to do essentially a small business impact study properly, or collect even mildly accurate marketplace data.

The fact that virtually every FCC docket had a paragraph pertaining to wireless small business spectrum competitors from 1997, even though the FCC is the agency of record to deal with spectrum licenses is at the heart of our complaint.

We need to put our Data Quality Act complaint in context. We have filed multiple times pertaining to the FCC’s data specifically used in the Regulatory Flexibility Act analyses. And this is the same data used in ALL of the current FCC National Broadband proceedings.

First, we have just filed an Omnibus Data Quality Act Complaint against ALL marketplace data and analyses created in the Regulatory Flexibility Act, found in virtually all FCC National Broadband Proceedings. As the data is almost identical and the problem is systemic, spanning over a decade, we feel it is appropriate to file against all proceedings since 2000.

See: (SENT SEPARATELY)
Previously:

- In May 2002, Teletruth filed a Regulatory Flexibility Act challenge as part of doockets CC Docket No. 01-337, CC Docket No. 01-338, CC Docket 02-33, GN Docket No. 00-185, CS Docket No. 02-52, CC Docket No. 02-39
  
  http://www.newnetworks.com/teletruthrfacomments.html
- Teletruth, New Networks Institute and others filed comments and complaints pertaining to the FCC’s application of the Regulatory Flexibility Act, as well as a related use of the Data Quality Act in WC Docket No. 08-190, WC Docket No. 07-139, WC Docket No. 07-204, WC Docket No. 07-273, and WC Docket No. 07-21.
  
  http://www.teletruth.org/docs/Teletruthforbearance.doc
- Teletruth has an existing Regulatory Flexibility Act challenge and Data Quality Act challenge that was filed in 2008 as part of Docket FCC 08-203.
  
  
  Full Comments and Case Study: http://www.teletruth.org/docs/TeletruthRFA.pdf

As we documented, the FCC’s failure to take the Regulatory Flexibility Act (RFA) obligations seriously since 1998, combined with an overwhelming disregard for accurate data, removed America’s telecommunications, broadband, Internet, wireless and even media competition. It has cost America trillions of dollars in potential economic growth, harmed innovation and slowed America’s technological edge, not to mention closing down thousands of competitors. It also resulted in higher prices, slower broadband speeds, and a lack of choice for customers.

In short, the outcome of the FCC ignoring the basic tenets of the RFA has been to create harmful rules that eliminated competition --- the very competitors it was supposed to protect.

The data we are outlining in this complaint was used specifically for the Regulatory Flexibility Act analyses which are 8-13 years old and does not represent the current or even previous marketplaces for the last decade. And because our filings extend over the last decade, we will incorporate our other previous work.
6) OMNIBUS DATA QUALITY ACT COMPLAINT: FILED SEPARATELY AGAINST ALL PHONE, BROADBAND, WIRELESS, CABLE AND INTERNET CHARGES SINCE 1999

The FCC is discussing raising rates, but does not have enough accurate data on the current charges to customers for broadband, taxes, et al, but also it does not have a clue about the actual costs of services, from wireless service to even phone service.

We have filed multiple times since 1993 on the fact that the FCC does not use actual phone bills as the primary source of information.

More importantly, the FCC does not have breakouts of user groups so ALL data is about the high-volume customers who represent only 1/3 of users. The majority are low and medium users and their price per minute; their costs of services, when all the fees and charges are accounted for are impacted the hardest by any increases. Especially hit hard by the proposed FCC increases will be low volume customers, typically seniors, and low income families, including Life Line customers, and rural customers – many of whom will most likely never get broadband.

We’ve written about the FCC’s proposed increases for Harvard Nieman Foundation Watchdog Project:
http://www.niemanwatchdog.org/index.cfm?fuseaction=background.view&backgroundid=00461

And about the already existing phone bill overcharging "Why Aunt Ethel Hung Up on AT&T: The Great Telecom Rip-Off“
http://www.counterpunch.org/rosen05282010.html

However, in 2009 we published a new report using a survey of actual phone, cable, broadband, wireless and Internet bills, with the San Diego-based Consumer Advocacy group, UCAN. This report was funded by a grant from the California Consumer Protection Fund.

http://www.newnetworks.com/ucanstudy.htm

It is clear that the FCC’s data not only doesn’t match what we found on phone bills, but some of the areas are outrageous. For example, when examining the cost-per-minute of customers’ wireless bills, including ALL charges, we found that the average customers’ per minute charge was over $3.00 a minute because many customers have 3 minutes of calls but are on plans costing $20-$40.00 a month.
http://www.newnetworks.com/ucanstudy.htm
We also compared the FCC’s wireless phone bill data to the phone bills we collected and the conclusion – the FCC’s data does not represent the current marketplace, and does not include most of the charges. Thus, the FCC’s cost per minute is weighted only towards high-volume customers.


The FCC states that it uses an estimate of minutes against an estimate of the revenue per minute, not through actual bills but through 3rd party data, in this case the CTIA, the wireless industry association.

“Some analysts believe average revenue per minute (‘RPM”) is a good proxy for mobile pricing. This is calculated by dividing a provider’s estimate of average monthly revenue per subscriber (often referred to as average revenue per unit, or “ARPU”) by its estimate of MOUs (minutes of use), yielding the RPM that the provider is receiving. Using estimates of industry-wide ARPU and MOUs from CTIA’s survey, (the wireless association) we estimate that RPM was $.06 in December of 2007, which is a decrease of one percent from December of 2006."

Here is the methodology we used as compared to the FCC’s data. http://www.newnetworks.com/Methodteletruthsurvey.htm

We’ve previous filed about the FCC’s data pertaining to phone bills

- Full Complaint: Teletruth filed a formal "Data Quality Act" challenge against the FCC’s data on phone rates, statistics and other related data, claiming that the information products are seriously flawed and in need of immediate revision. Teletruth claims that the data fails in being objective, lacks quality and is not reliable, lacks utility, and is not reproducible, thus in violation of the Act. http://www.teletruth.org/docs/Dataqualityactharvesting.doc
- Separate Report "AT&T and MCI (Verizon) Are Harvesting Customers" http://www.teletruth.org/docs/ATTMCIharvest.doc

Specifically referenced in the complaint are FCC reports: "Trends in Telephone Service", February 2007, "Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service", testimony presented by Chairman Martin,
press releases, and every other document that uses the FCC phone rate information.

This Data Quality Act complaint is based on Teletruth's report "AT&T and MCI (Verizon) Are Harvesting Customers" and outlines how bad data has created bad and harmful policies. As we show, Teletruth found that over 1/3 of US households have been harmed because the data is so inaccurate that it has covered over major rate increases and other harms to mostly low volume users and especially seniors.

The flawed data was also being used as part of new proposed plans, such as the "Missoula Intercarrier Compensation" plan to raise the FCC Line Charge (on every local bill) to (a cap of) $10.00, increase Universal Service and add new fees. http://www.teletruth.org/FCCMissoulaletter.htm

This matter is extremely important as the FCC’s new plans calls for the same bad analyses and mistake – to raise the FCC Line Charge in the name of broadband, harming the low and mid-volume customers through unwarranted price increases.

- FCC Line Charge Data Quality Act and Truth in Billing Challenge:
  http://www.teletruth.org/RemoveFCCLineCharge.html
- Re: Request for Correction of Information: Petition to Investigate and Remove the FCC Line Charge, Pursuant to the Federal Data Quality Act

"As we will demonstrate, the data that has been used in the calculations for the FCC Line Charge, including the phone company supplied data, the models presented to justify the charge, and the FCC’s unjustified inclination to accept such data uncritically from such interested parties in meetings not open to the public are by their very nature the definition of regulatory capture by industry interests. We therefore are left with no other option but to conclude that both the data and the decisions that have resulted from the use of such data are biased in the extreme. The public deserves a more open process and a regulatory body more respectful of their duties and responsibilities under the Data Quality Act.

  http://www.teletruth.org/docs/FCCLineChargeTIB.pdf
"Over the last decade, the FCC has repeatedly brought up the issue that phone bills are unreadable and that something should be done about it. In March of 2000, the FCC set up new guidelines and rules about the country’s phone bills known as “Truth-In-Billing”. The guidelines include basic principles about the information to be supplied to customers. And yet, phone bill information, as well as all accompanying information has major errors or omissions.

"The FCC Line Charge is mislabeled and deceptive. The common belief is that it funds the FCC, which is wrong.

FCC RULE:” …accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered;"

And finally, the ultimate truth about this name of this charge is that customers believe that the “FCC Line Charge” was created to fund the FCC, which is patently not true – It is direct, unmarked revenue, stuck in the ‘Taxes & Surcharges” section so customers would never know it’s real purpose--- to fund the local telco.

5) The FCC Needs to Examine and Remove AT&T, Verizon and Comcast Funded ‘Experts’ and Consumer and Minority Groups from its Ranks and Influence

We will be addressing this in another document.