



**Information
Technology &
Telecommunications**

**Verizon FiOS Implementation
Final Audit Report**

June 18, 2015

**Bill de Blasio, Mayor
Anne Roest, Commissioner**

FINAL AUDIT REPORT-VERIZON NEW YORK

Objective

The objective of the auditors of the Department of Information Technology and Telecommunications (DoITT) was to determine whether Verizon New York complied with the build-out requirements in Section 5 and other pertinent provisions of its 2008 cable television franchise agreement. The audit gave particular attention to the following requirements, which are subject to exceptions and limitations specified in the franchise agreement:

- Sections 5.1 and 5.4, which require Verizon to pass all residential households in the City with fiber optic cable by June 30, 2014; and
- Section 5.4.2, which requires Verizon to complete non-standard installations within twelve months after requests for such installations are received.

Because of significant scope limitations described below, we could not complete our audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) and had to rely on filtered reports from Verizon and anecdotal evidence to determine Verizon's level of compliance.

Background

On July 15, 2008, Verizon and the City entered into a franchise agreement that required Verizon to make cable television service available to all New York City residences. The franchise agreement thus committed Verizon to bring cable television competition to every residential household in New York City. Furthermore, at a time that the incumbent cable television providers relied primarily on coaxial networks, Verizon contracted with the City to provide an all-fiber optic network.

Based on Verizon's entry into the New York City cable television market, the Federal Communications Commission issued a series of declarations in 2008 and 2009 finding that the New York City cable television market had become sufficiently competitive that, as provided by federal telecommunications law, DoITT would no longer be authorized to regulate consumer rates for cable television.

Section 5.1 of the franchise agreement obligated Verizon to "pass" all residential households in the City with fiber optic cable by June 30, 2014. The requirement of "passing" explicitly did not require entry into the household or building: it did not require that a multiple dwelling be "network enabled" and it did not require that a single family unit have a "drop."

In July of 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. This method would allow direct access from the street to bring fiber optic cable to properties and avoid crossing over private property. Verizon expressed concern regarding its ability to gain access to addresses requesting service because of

issues with private property owners. The City allowed Verizon to start using micro-trenching as part of a pilot in November 2012, and, following assessment of the results of the pilot project, the City allowed the use of micro-trenching by any franchisee “as of right,” effective January 2014. Including the conduits installed as part of the pilot, Verizon has installed microtrenching at a total of 75 locations in the five boroughs.

In 2013, Verizon informed DoITT that they were having difficulties gaining access to “block properties”, properties on a block where telecommunications services were traditionally provisioned in a method that requires 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 contract provided for force majeure exceptions to the June 30, 2014, deadline, and in fact Verizon asserted force majeure 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. The City accepted Verizon’s assertion that the three events fell within the contract provisions for force majeure, but did not agree that Verizon’s delay should be as long as six months; instead, the City believed that Verizon’s delay should be no more than three months, to September 30, 2014.

Subject to some qualifications, section 5.4.2 of the FiOS franchise agreement provides that an order for service received for a residential household after that premises is “passed” with fiber optic cable must be satisfied within six months of the order. But if the order cannot be filled within six months, Verizon must notify the resident, explain the reason for the delay, and state a new deadline not more than six additional months away, for filling the order. This order for the first service to a building is referred to in the contract as a “non-standard installation,” or NSI.

Section 5.5 of the FiOS franchise agreement states three exceptions to Verizon’s obligation to fill NSI orders within six months. One exception applies if Verizon is unable, despite good faith efforts, to obtain access to a multiple dwelling. In that event, Verizon is entitled according to New York State law to petition the state Public Service Commission to order the multiple dwelling owner to allow access to the building. As of June 4, 2015, the website of the Public Service Commission shows that Verizon has filed Order of Entry Petitions for 3,177 multiple dwellings in New York City.

Section 5.5 does not provide for an exception to the six-month deadline where Verizon is unable to obtain access to private property other than the multiple dwelling building from which the NSI order originated. In other words, where Verizon might prefer to gain access to a building by running fiber optic cable through a backyard or driveway, either of the same building or of adjacent buildings, Verizon is not entitled to an extension of the six-month deadline to facilitate that preference. Similarly, where Verizon might prefer to gain access to a building by running fiber optic cable through other buildings, Verizon is not entitled to an extension of the six-month deadline to facilitate that preference. It was presumably for these reasons that Verizon asked the City to allow micro-trenching in the City streets. As a substantially less expensive and less time-

consuming alternative to conventional street trenching, micro-trenching would seem to be especially useful where building access via private property was not timely available.

As 2014 progressed, and Verizon's build-out approached 100 percent, DoITT began to receive anecdotal evidence, largely in the form of consumer complaints, suggesting that Verizon was simultaneously taking credit for "passing" households and declining to accept orders for non-standard service installations from those households.

The anecdotal evidence, in combination with discussions of the particular households involved with Verizon personnel, led DoITT to be concerned that these anecdotes did not reflect occasional irregularities, but possibly broader failures by Verizon to fulfill the obligations it undertook in the 2008 franchise agreement. After Verizon was questioned about a number of complaints about delays in providing service, Verizon 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 DoITT requested, in June of 2014, the addresses of all pending requests and all satisfied requests for service. Verizon never provided the requested data.

Ultimately, on November 28, 2014, Verizon submitted a claim to DoITT that it had "passed" all residential households in the City with fiber optic cable. After that point, Verizon was obligated to accept orders for residential service in all buildings in the City. But the anecdotal evidence continued to show the contrary: Verizon continued to refuse to accept orders from residents, and in some cases told residents that Verizon had no plans to provide cable television service in their buildings.

This audit was initiated by a letter of engagement to Verizon on September 17, 2014 which set forth the basic parameters of the audit and a summary of the books and records DoITT needed access to. Although initially projected to take three to four months, completion of the audit took twice that time, due to Verizon's persistent intransigence and delay – following Verizon's pattern in previous audits. The findings of this audit, detailed below, are that Verizon claimed households as "passed" with fiber optic cable before the necessary fiber connections to the block containing those households were made; that Verizon systematically refused to accept orders for residential service, not only before it had "passed" a household but even well after it claimed it had passed a household; Verizon systemically failed to meet its six-month and 12-month deadlines to fill non-standard installation orders for service to residential buildings; and Verizon broadly provided the public with misleading information with regard to Verizon's obligations.

Scope and Methodology

DoITT attempted to conduct its audit in accordance with GAGAS, subject to serious limitations imposed by Verizon. Throughout the audit, Verizon took the position that DoITT was obligated to prove to Verizon its auditors' need to view documents and databases, and that Verizon held unilateral authority to determine the validity of DoITT's audit requests. Verizon typically staffed its audit meetings with a battery of attorneys, who regularly interceded between DoITT's auditors and Verizon's operational and administrative staff, obstructing and delaying DoITT's ability to obtain answers to questions and access to documentation and electronic systems.

Verizon's attorneys also took the position that a DoITT audit request was the proper context for airing disputes about the meaning of various franchise agreement terms, and Verizon regarded its position in the dispute as dispositive of the contract meaning and determinative of auditors' access to documents and information.

GAGAS standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to establish a reasonable basis for our findings and conclusions based on our audit objectives. Because of limitations imposed by Verizon, the evidence that we were able to obtain was insufficient to determine the extent of non-compliance, but sufficient to establish the findings presented in this audit report.

On September 17, 2014, we e-mailed our request to audit Verizon's books and records relating to compliance with Section 5 of the franchise agreement. The letter advised Verizon that a kick-off conference would be scheduled, and directed Verizon to be prepared at the conference "to identify and describe all documentation and electronic systems supporting Verizon's compliance with section 5 of the franchise agreement, including but not limited to documentation of premises passed, progress reports, installation notices, subscriber lists, service request reports, and service area maps." We held our kick-off conference on September 22, 2014, and although we requested that Verizon be prepared to identify and describe its documentation and electronic systems, Verizon representatives were unprepared to do so. Subsequently, we held our first field visit at Verizon's offices on October 9, 2014, 22 days after our audit request letter was sent, to review the premises passed process.

During the audit, Verizon provided limited access to their database systems on March 5, 2015, 147 days after our initial request on October 9, 2014, and again on March 17, 2015, to verify the accuracy of their households passed numbers and determine whether Non-Standard Installation Service requests (NSIs) were completed within the respective twelve month time period as required by Section 5 of the franchise agreement. Because we could not obtain full and unfettered access to Verizon's source database systems we also had to rely on reports extracted from their database systems. Anecdotal evidence in the form of complaints from potential subscribers revealed that Verizon was taking credit for households passed when reporting compliance with milestones to the City but informing potential subscribers that service was not available at their addresses. Many potential subscribers waited more than one year after Verizon claimed to the City to have passed an address before those potential subscribers could place NSI orders.

We investigated the complainants' assertions by requesting that Verizon send us their outstanding NSI report on December 5, 2014, with outstanding NSIs through November 30, 2014. Verizon agreed to meet with us to review the files on December 22, 2014, after delays associated with Verizon's concerns about the report being in "Verizon Speak" and inaccuracies in the data. We finally were able to view the Excel files on December 22 at Verizon's offices and, after we requested the same files be sent on the same day, Verizon uploaded PDF files to a shared drive. Because the files were in PDF format we could not sort or analyze the data. On December 22, 2014 we requested that Verizon send us the files in Excel format and we received these files in a zip file on January 8, 2015, 47 days after our request. If we accept Verizon's NSI data file report as accurate, received as a zip file in an e-mail dated January 8, 2015, it shows that

72.87% of NSI requests were not completed within 12 months of the of the first NSI being registered at an address, as of November 30, 2014. But, given the delays associated with Verizon claiming that there were functionality issues with NSI reports and finally receiving the outstanding NSI files on January 8, 2015, we projected that, as of December 31, 2014, 74.68% of NSI's were not completed within 12 months of the first NSI being registered.

This audit was conducted in accordance with GAGAS and with section 11.1 of the Franchise agreement, which grants the City the right to inspect the franchisee's books and records for completeness and accuracy to determine compliance with the franchise agreement. It covers the period July 15, 2008, through March 31, 2015, and was conducted in three phases.

During the first phase of the audit we obtained an understanding of the service ordering process including households passed, service availability, and installation notices through review of flow charts and meetings with Verizon representatives on October 9, 2014, November 10, 2014 (teleconference), November 12, 2014, November 19, 2014, November 20, 2014, and December 22, 2014. Additionally, we reviewed Verizon's copies of PowerPoint presentations on Premises Passed Progress Reports, Video Subscriber Complaint Process, and Service Area Maps e-mailed on October 23, 2014 to familiarize ourselves with Verizon's service ordering process and build-out locations. Verizon staff also walked us through the National Telephone Address System (NTAS), Broadband Data Management System (BDMS), Record Search Engine (RSE), and Integrated Computer Graphical (ICGS) systems on November 12 and showed us the screen shots of the CoFFEE system (Verizon was unable to provide the meaning of this acronym), an internal interface for customer service representatives to take service requests, but would not agree to our request on November 20, 2014, to have access to these systems to review and manipulate the data for the audit.

We also reviewed Verizon's copies of a PowerPoint presentation on Standard and Non-Standard Installation notices and customer inquiries on November 3, 2014, which were received as e-mail attachments on the same date. The same e-mail also included attachments of copies of Verizon's 2014 Annual Reports for Standard Installations and Non-Standard Installations sent to DoITT under Section 2.5.3 of Appendix A (Standard Installations) and Sections 5.5.2.1 and 11.2.1 of the franchise agreement (Non-Standard Installations). After review of these documents, on November 10, 2014, we e-mailed a questionnaire of 17 questions and subsequently reviewed Verizon's responses to our questionnaire received on November 20, 2014.

During this first phase, Verizon did not accommodate our requests to provide access to their NTAS, BDMS, RSE, ICGS, CoFFEE database systems covering the period of the audit which prevented substantive testing of property addresses to determine whether NSIs met the six and month requirements described in Section 5 of the agreement. Instead Verizon demonstrated each of the systems and walked us through 10 individual sample addresses during the meeting on November 12, 2014, but this was insufficient to verify the accuracy of the households passed numbers and whether Verizon completed NSIs within the time periods required by Section 5 of the agreement. Unfiltered access to Verizon's databases to test compliance is required by GAGAS and is necessary to determine whether Verizon maintains a complete and accurate set of books and records for compliance with the franchise agreement.

After learning that Verizon offers potential subscribers a package deal that includes Direct TV when an address is deemed “unavailable” for FiOS, we requested access to Verizon’s Direct TV contract to determine whether there existed a contractual obligation to market Direct TV to prospective FiOS customers in buildings without FiOS video service but Verizon refused to comply with our request citing confidentiality provisions in the contract, notwithstanding the plain language of Section 11.1 of the contract entitling Verizon to designate material disclosed as “proprietary or confidential” or “competitively sensitive.”

During the second phase of the audit we attempted to verify the claims brought to DoITT by a certain property manager in New York City that Verizon was not completing NSIs because they wanted exclusive agreements for certain buildings before completion of the NSI. In response to the property manager’s claims, we tested the property address locations from a report provided by the property manager and reviewed and compared these addresses with the property locations provided by Verizon in their outstanding NSI report. The results of our tests found that 26.05 percent of the property manager’s total of 119 addresses with NSI service requests were pending in excess of 12 months and that 31.09 percent of the property manager’s total of 119 addresses with NSI service requests were pending in excess of six months, after identifying the property manager’s addresses in Verizon’s outstanding NSI report.

Verizon’s outstanding NSI report showed that the reasons for delays were due to access issues and that Verizon was petitioning the New York Public Service Commission for access to the property. We requested supporting documentation from Verizon for ten of these properties on January 13, 2015, and Verizon provided supporting documents on a shared drive on January 26, 2015. These documents included internal reports such as pre- and post-survey due diligence forms reporting refusal of access by the property owner, letters to the property owner to provide access in accordance with New York Public Service Law Section 228, and Petitions for Limited Order to the New York Public Service Commission to get access to the property for installation of service.

However, none of the requested documents received provided proof of the initial request for installation. Therefore, the dates of the initial requests are not documented. Furthermore, the property manager represented to the City that he had offered to provide access to all of the buildings.

As a result, we requested access to Verizon’s systems and/or screen shots of the initial service requests for the ten property locations in a letter dated February 5, 2015 for which we did not receive a response by the due date of February 9, 2015. We finally were able to view the 10 property locations within the RSE of Verizon’s database system on March 5, 2015 and received the screen shots on March 9, 2015, 28 days after the due date. The screen shots provided information on the premises passed date, initial request for service date, the network creation date, and in some cases the identity of the prospective customer and the record of the telephone communication between the customer service representative and the prospective customer.

To determine if the complaints from the first property manager were an indication of a larger problem, we decided to conduct telephone interviews with five other property managers. We also reviewed the specifics of a number of complaints filed with DoITT by dissatisfied

prospective customers of Verizon. These complaints related to Verizon's refusal to accept an order for service because service was "unavailable" or failure to provide the status of service availability in the building despite stating that service was available in the neighborhood.

On January 26, 2015, we compared these complainants' addresses with the property locations appearing on Verizon's outstanding NSI report and found that four of the 20 complaint addresses appeared on the report which showed that these addresses had NSIs exceeding twelve months. Eleven of the 20 addresses did not appear on Verizon's outstanding NSI report despite being included by Verizon, on February 13, 2015, in a file listing those households as "passed."

Unless this sample of 20 complaint addresses is exceptionally unrepresentative, it appears that the percentage of NSIs that remain unfilled more than 12 months later is likely higher than the 74.68% shown in Verizon's NSI report since Verizon may not have consistently recorded all service availability requests and may not have notified potential customers that they could make a service request once households were passed. In fact, Verizon stated during the teleconference meeting held on November 10, 2014, that it did not even record service availability requests prior to an address being passed.

We next interviewed five property managers for which two of the interviewees' statements supported the first property manager's statement that Verizon was not completing NSIs because they wanted exclusive agreements for certain buildings before completion of the NSI. For example, one property manager from a well-known firm complained that Verizon would not complete the NSI at a building on Sutton Place unless 100 percent of the apartment dwellers committed to Verizon FiOS. This property manager also said only two of the eleven multiple dwelling properties he managed had Verizon FiOS and that installations took anywhere from six months to two years.

We requested access to Verizon's database systems at our first meeting on October 9, 2014, and in e-mails dated October 23, 2014, November 5, 2014, November 12, 2014, November 17, 2014, December 22, 2014, January 8, 2015, and January 9, 2015. Additional requests for access to Verizon's database systems were made in audit meetings on November 10, 2014, November 19, 2014, November 20, 2014, December 22, 2014, and January 8, 2015 and then formally requested in a letter on January 21, 2015 for which we received Verizon's written response on February 13, 2015 promising to grant us access to their database systems for our visit scheduled for March 5, 2015. In total, we waited 147 days from the first audit meeting on October 9, 2014, to get access to Verizon's database systems which far exceeds the 30 day time period required by Section 11 of the franchise agreement.

This led to the third phase of the audit where we reviewed Verizon's database systems including the NTAS, BDMS, RSE, CoFFEE, FAST, and MDU Management Systems (MMS) database systems and then tested 99 property locations sampled from Verizon's Premises Passed reports, Buildings Open for Sale reports, subscriber reports, and complaints received by DoITT. Verizon staff walked us through the RSE, NTAS, BDMS, CoFFEE, FAST, and MMS databases containing e-mail responses and communications from Verizon's customer service representatives. During our audit meeting we found that Verizon exceeded the 12-month requirement for making service available to customers after households were passed and/or

requesting an NSI for 37 property locations or 37 percent of 99 sampled addresses. We also found database integrity issues since we found that seven property locations had network creation dates which preceded the premises passed dates (a block of buildings must first be passed by fiber before the network can be created), inexact premises passed dates, 40 percent of sampled property locations had premises passed dates of “12/10,” and inconsistent recording of NSIs which resulted in unequal treatment of customers.

We documented our findings through notes taken at our meetings and e-mail documentation which includes Verizon’s responses to DoITT’s 17 questions which were then incorporated into our audit report.

Scope limitations imposed by Verizon included the following:

- 1) Verizon delayed our access to database systems including NTAS, BDMS, RSE, ICGS, CoFFEE, FAST, and MMS to determine compliance with NSI provisions in Section 5 of the franchise agreement, which presents the risk that alteration of information contained in the database systems may have occurred. We were not given access to the database systems until 147 days after our initial request for access.
- 2) Verizon stated in a teleconference meeting with DoITT on November 10, 2014, and formally responded in our questionnaire on November 20, 2014, that they would not accommodate our request to visit the Call Center because they deemed it to be beyond the scope of the audit and Consumer Protection laws and Customer Proprietary Network Information (CPNI) prohibit it.
- 3) Verizon did not provide their route to the households passed numbers and would not allow access to their systems to determine whether 100 percent of households recorded in their system were passed. Without knowing how Verizon determined that an address included a residential household and therefore that the address needed to be passed by fiber, DoITT cannot verify that Verizon passed all residential households in the City. Verizon stated in a letter dated February 13, 2015, that they would not provide the route information because it was not germane to Verizon’s compliance with any of its franchise obligations. During our meeting on March 17, 2015, Verizon claimed that they do not have to provide the route to the numbers because we have this information from DoITT’s field inspections. However, these field inspections, conducted outside of the audit, only verify that Verizon laid fiber where it claimed to lay it. The inspections did not determine whether residential households exist in areas where Verizon did not lay fiber.
- 4) Verizon did not provide us with their Direct TV contract when requested on November 19, 2014. This was requested to determine if there is or was a contractual obligation to market Direct TV to prospective FiOS customers where buildings did not yet have FiOS service. Verizon responded in a letter dated February 13, 2015, that they will not provide us with their Direct TV contract because of confidentiality and non-disclosure provisions in the contract.

- 5) Verizon did not provide us with their pathway vendor contracts that we requested on November 20, 2014. Verizon enters into these contracts with vendors to extend the fiber from the street to the buildings on a block.
- 6) Verizon did not provide us with the summary of staffing that was requested on November 20, 2014, until February 20, 2015, and the summary provided lacks narrative and detail about the roles of staff and contractors which prevented us from knowing whether sufficient resources had been obtained and maintained for the completion of non-standard installation service requests.
- 7) Verizon stated on November 5, 2014, that they could not provide a Manual of Procedures because one does not exist and that maintenance of such a manual is not a franchise requirement. Verizon stated in a letter dated February 13, 2015, that they continue to review their records to determine what materials (if any) are available that are appropriate and responsive to DoITT's request.
- 8) Verizon refused to provide their Internal Review, Audit, and Assessment Report for New York City FiOS build-out because of the privileged and confidential nature of the report per their e-mail dated November 5, 2014, and again in their response to our questionnaire on November 20, 2014.
- 9) Verizon would not provide an electronic map of wire centers because of legal and network security reasons stated in an e-mail dated November 24, 2014.
- 10) Verizon did not provide access to the CoFFEE reporting system until March 5, 2015, 147 days after our initial request on October 9, 2014. We requested access to the CoFFEE database for analysis of complaints for service availability to determine compliance with Section 5 of the franchise agreement. Verizon provided a description of the complaint process (flow chart) and pages from the FiOS TV Ordering and Servicing manual describing the complaint process. Verizon also provided a list of complaint codes but the codes referred to customers rather than those potential customers requesting non-standard installation. We finally reviewed Verizon's database systems and screen shots of customers making initial NSI requests on March 5, 2015, and again on March 17, 2015, to determine Verizon's compliance with Section 5.4.2 of the franchise agreement.
- 11) Verizon provided a glossary of terms on November 11, 2014, which mirrored the exact language in the franchise agreement. Verizon failed to provide an operational interpretation of the contract terms in the glossary which prevented us from fully understanding their operations.
- 12) Verizon did not provide us with the log showing changes in the computer system to the script for prospective customers regarding availability of service. This made it impossible to determine if the system was being updated in a timely manner and for what period of time inadequate information was being provided

Caveat:

Although we rely on Verizon's extracted Excel report and complaints, there exist risks of the integrity and reliability of the data in our findings because of the secondary nature of the NSI report in Excel and the anecdotal nature of evidence found in complaints by property managers and the small sampling of potential subscribers to Verizon FiOS. Also, there exists risk of data accuracy in reports presented for our review on March 5 and March 17, 2015, because we received access to these reports 147 days from our first request on October 9, 2014.

Based on the information available we performed the following limited audit procedures:

- 1) Examined organization charts for determining responsibilities of divisions for build-out of Verizon FiOS.
- 2) Examined flow charts, written narratives, and interviewed staff about aspects of the build-out, including households passed, service availability, non-standard installation service requests, standard installation service requests, and complaints.
- 3) Met with and interviewed Verizon legal, operations, and engineering staff.
- 4) Reviewed and analyzed ten individual sample addresses that Verizon demonstrated using the RSE system to verify premises passed.
- 5) Reviewed Verizon's complaint procedures and definitions of complaint codes.
- 6) Reviewed Verizon's Annual Reports for Non-Standard Installations under the Additional Procedures, Sections 2.5.3, 5.5.2, and 11.2.1.
- 7) Reviewed complaints to DoITT from potential subscribers who inquired about service availability but were not provided service.
- 8) Interviewed six property managers about their experiences with Verizon.
- 9) Reviewed, compared, and analyzed Verizon's outstanding NSI report in Excel format and compared it with a list of property addresses managed by one property management company to verify non-compliance with Section 5 of the franchise agreement based on anecdotal evidence that Verizon did not provide service to its residential buildings because Verizon wanted an exclusive agreement with the property management company.
- 10) Reviewed Verizon's database systems (CoFFEE, RSE, NTAS, BDMS, MMS) used by their customer service representatives and screen shots of NSI requests occurring after the premises passed date and initial requests for service availability occurring before the premises passed date which do not constitute an NSI under the agreement to determine compliance with Section 5.4.2 of the franchise agreement.

FINDINGS

- 1) **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 is inconsistent with Section 5.4 of the franchise agreement. Since the agreement does not define "passed" we turn to the industry for a definition. In its glossary of common 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.*" (emphasis added).

Verizon maintains that "passing" a premises means "going by, past, beyond, or through a place (such as a building), and include[s] no requirement as to how close a place must be approached in order to constitute a 'passage.'" But the argument that "passing" a premises with fiber optic cable includes no requirement of any proximity to that premises is manifestly untenable. At a minimum, the term "passed" must be understood to require sufficient proximity to permit Verizon to comply, at least as a rule, with its six-month deadline to fill NSIs.

Although Verizon claims it "passed" all residential premises, Verizon still does not accept orders from all City residents. In fact, it still informs residents that service is "unavailable" at an address if their network has not been created on the block. For example, we performed two recent inquiries on Verizon's website for service availability for 675 Academy Street and 590 West 204 Street and the website displayed notices that both property locations were unavailable for service on May 7, 2015. Verizon considers all the addresses on a block "passed" if their fiber is in conduit under or on poles over any street that serves as a boundary to that block. Verizon does not deem it necessary for that fiber to have been pulled to a point of entry on the block for the block to be deemed passed. Our understanding is that the cable television industry defines a building as "passed" if it is immediately adjacent to cable facilities and an order for service can be processed by the cable company. Verizon has also reported to DoITT, on March 9, 2015, as part of the field inspection process that is separate from the audit, that 7,089 out of 29,972 or 23.6 percent of the total New York City blocks with residential households that it has deemed "passed" have no buildings with service installed. Field inspections conducted parallel with this audit confirm that a subset of the blocks that Verizon claims to have passed also have no facilities installed on the block.

2) Verizon continues to show residential household addresses as "unavailable" despite claiming to have passed all residential households in the City.

The script on Verizon's website informs potential customers that service is unavailable at many residential addresses and instead offers a two-year Direct TV contract instead of Verizon FiOS for many residential addresses in New York City. Although Verizon claims that their invitation on their 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 informs prospective subscribers that this action will trigger Verizon's obligation to provide them with service within six months or a year. Similarly,

many potential customers who call Verizon's customer service number have been told that FiOS is not available at their addresses. In some cases, callers have been told that Verizon has no plans to bring FiOS to their addresses. For example, Verizon has reported the property located at 675 Academy Street in northern Manhattan as "passed" and reported the initial NSI date as August 9, 2013, but a resident of this building, in March of 2015, told DoITT staff that the Verizon call center representative said that they have no plans to make service available to the building. We performed a recent search of Verizon's website for 675 Academy Street on May 7, 2015 and the website displayed a notice that service was unavailable which means that Verizon is overdue by 636 days from the initial NSI service request date of August 9, 2013.

3) Verizon does not complete all non-standard installation service requests within the six-month and twelve-month deadlines required by Section 5.4.2 of the franchise agreement.

Our review of Verizon's outstanding NSI report, received on January 8, 2015, revealed that 74.68 percent of 41,928 NSIs that were outstanding as of December 31, 2014, had been outstanding for more than 12 months. In this report Verizon does not distinguish between NSIs that are delayed due to an owner of a multiple dwelling refusing to provide access to the building to provide service to a resident from NSIs for single family homes and multiple dwellings where provision of access by the landlord is not an issue. 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," discussed in paragraph 2, above, and in conjunction with Verizon's incorrect understanding of the term "passed," discussed in paragraph 1, above.

4) Verizon's procedure was to not accept and log a request for cable service at a premises that Verizon had not "passed," a violation of Section 2.5 of Appendix A of the franchise agreement.

Verizon did not provide records of requests for cable service from prospective customers when requested by DoITT. During interviews with Verizon staff during our teleconference meeting on November 10, 2014, and in subsequent meetings, Verizon staff admitted that they do not record or track those prospective customers who request cable service before an address is deemed passed. However, we later found on March 5, 2015, that Verizon did record some initial inquiries from prospective customers in the FAST system - but did not follow up with these customers to notify them when premises were passed (for instance, 379 6th Street, Brooklyn). Failure to maintain and provide records of requests for cable service is a violation of Section 2.5 of Appendix A of the franchise agreement.

5) Verizon did not consistently record an NSI with "yes" or "no" indicators and left some NSI indicators blank. Verizon did not communicate to prospective customers when service would be available for the non-standard installation and did not treat inquiries in a consistent manner.

Verizon customer service representatives did not consistently mark the database field NSI with yes or no indicators and left some NSIs blank. Blank fields resulted in no communications being sent to certain prospective customers, who were not informed that their inquiries were officially recorded and when their NSI would be complete. In total we found four property locations (259 East 91st Street in Brooklyn, 41-68 72nd Street in Queens, 5975 Shore Parkway in Brooklyn, and 251 West 19th Street in Manhattan), for which NSI indicators were wrongfully applied. For example, 251 West 19th Street showed an NSI indicator with “yes” even though the request was made before the passed date of December 2010. 5975 Shore Parkway and 1516 Leland Street showed NSI indicators of “blank” for their earliest inquiries respectively on August 26, 2008, and March 25, 2010, when it should have been “no” because the inquiry occurred before the “premises passed” date. 259 East 91st Street showed an NSI indicator with “no” even though the NSI was recorded after the “premises passed” date of December 2010. Additionally, one property location at 5706 Mosholu Avenue in the Bronx was treated as an NSI even though it was an inquiry before the “premises passed” date of August 2014 and Section 5 of the agreement does not provide for an NSI to be recorded prior to a housing unit being passed. Verizon’s records in RSE for this address show three separate inquiries and correspondence on May 8, 2013, June 4, 2013, and March 31, 2014, when the NSI indicator was set to “no.” This shows inconsistent treatment of customers because Verizon followed up with a prospective customer with a “no” NSI indicator in the case of 5706 Mosholu Avenue while failing to follow up on service availability with other prospective customers with NSI’s marked “no” and, in fact, also failed to follow up on service availability with some prospective customers with an NSI indicator of “yes.”

6) Verizon does not communicate accurately and effectively with prospective customers.

From the beginning of the audit period to the present, Verizon has not communicated the status of FiOS availability to prospective customers in a fashion that provides sufficient information. Complaints received by DoITT in 2015 reveal that Verizon continues to respond to inquiries from residents in New York City that FiOS is “unavailable” in their buildings even though Verizon claims that all households in the City have been passed by fiber. When reviewing their database with us, Verizon staff explained that a prospective customer who has registered an NSI request is sent two automated e-mails regarding the status of the request, no matter how long the request has been pending, and the e-mails do not provide any actual projected dates for service installation. Recently, DoITT received a complaint about FiOS work initiated on a block in Brooklyn without notice being provided to residents despite the fact that the residents had been working cooperatively with Verizon to arrange access to properties. Throughout the period of the audit Verizon’s communications with prospective customers have been less than welcoming to those where standard installations are not yet possible. Details about current and future availability are not provided either by customer service representatives or by information on the web site. Furthermore, Verizon’s continued diversion of potential customers from cable television service to Direct TV-DSL bundles misleads prospective cable television subscribers about their rights under the franchise agreement.

7) Verizon failed to cooperate fully and timely with DoITT's audit in violation of Section 11.1 of the franchise agreement.

During the first phase of the audit, Verizon failed to provide access to the database systems used in calculating premises passed numbers and NSI request data from initial request to completion until March 5, 2015, 147 days after our initial request on October 9, 2014. Verizon also did not provide documents in a timely fashion, often exceeding the time frames allowed in the contract. In a number of instances, specifically the requests for the Direct TV contract, the map of the wire centers and the Internal Review, Audit and Assessment Reports, Verizon violated the terms of Section 11.1 of the franchise agreement by refusing to provide copies of or access to the documents. The requested records are required by GAGAS and are necessary to determine whether Verizon maintains a complete and accurate set of books and records as required by the franchise agreement, and whether Verizon complied with Section 5 of the franchise agreement.

In particular, Verizon refused to allow DoITT access to its contract with Direct TV. Verizon's stated reason for refusing access to the Direct TV contract was that the contract contained non-disclosure provisions that precluded its disclosure to DoITT. However, Section 11.1 of the franchise agreement gives DoITT the right to inspect Verizon's books and records as necessary to ensure compliance with the terms of the franchise agreement, subject to the confidentiality protections set forth in that section.

To the extent that Verizon did provide DoITT with documents and information requested, but did not respond to such requests 15 and 30 days after such requests, Verizon did not comply with its timeliness obligations under Section 11.1 of the franchise agreement.

8) Verizon's complaint process focuses only on paying subscribers, and Verizon generally does not accept complaints or inquiries from prospective customers

Review of Verizon's complaint procedures, glossary, and interviews revealed that Verizon only records and tracks complaints of actual paying subscribers rather than potential subscribers who request service availability in their neighborhood. This is a violation of Section 11.3.1 of the franchise agreement which requires Verizon to maintain records of all written complaints for a period of six years. This section does not distinguish between complaints from subscribers and complaints from non-subscribers.

9) Anecdotal evidence shows that Verizon, in some instances, does not provide timely service unless the management company enters into a bulk agreement for the building.

The review of correspondence between Verizon and one complainant residing at 1612-1614 York Avenue indicated that Verizon asked for an exclusive agreement for the property owner's building before Verizon would complete the NSI. A Verizon representative stated in an e-mail dated June 19, 2014 that "bulk properties receive priority regarding the FiOS build" and in an earlier e-mail dated May 31, 2013 that Verizon could expedite the build if the property owner agreed to a "bulk agreement".

Also interviews with two property managers further confirmed that Verizon favored bigger buildings over smaller buildings for bulk agreements.

When we spoke with the complainant at 1612-1614 York Avenue to get an update on the status of completion of the NSI, the complainant informed us that Verizon completed the NSI in April of 2015 but the complainant rejected cable service for the building because Verizon doubled the price per apartment unit from \$100 in May of 2013 to \$200 in April of 2015.

10) Verizon does not maintain a manual of procedures.

Verizon states that a manual of procedures does not exist and maintenance of such a manual is not required. We believe that, consistent with any large customer focused company, that Verizon must maintain a training manual for customer service representatives which describes the procedures for communicating with prospective customers and subscribers. Customer service representatives should be familiar with the requirement that NSIs be recorded for any household that has been passed and should never tell a prospective customer that service is unavailable. We requested to review the manual to review the procedures as a baseline to determine whether Verizon followed the procedures in the manual when examining the information in the RSE, CoFFEE, and FAST database, and if no manual exists we have no basis to determine that Verizon consistently trains customer service staff.

11) Data integrity issues exist within Verizon's database systems.

We found seven property addresses for which "network created" dates fell before the "premises passed" dates in the RSE system. In addition, 40 percent of "premises passed" dates in our sample were given as "12/10," without an exact date for passing. For example, we found that 2483 West 16th Street in Brooklyn had a network creation date of March 24, 2010, and a premises passed date of December 2010; 1823 Madison Avenue in Manhattan had a network creation date of February 27, 2008, and a premises passed date of December 2010; 340 East 93rd Street in Manhattan had network creation date of July 30, 2008, and a premises passed date of December 2010; 106 Central Park South had a network creation date of March 26, 2009, a premises passed date of December 2010, and a discrepancy in the database with IVAPP date of January 31, 2009, for network creation and an NSI date of January 16, 2009; 201 East 83rd Street in Manhattan had a network creation date of August 31, 2010, and a premises passed date of December 2010; 340 East 80th Street in Manhattan had a network creation date of November 20, 2009, and a premises passed date of December 2010; and 5975 Shore Parkway had a network creation date of November 29, 2011, and a premises passed date of January 2011. Because of the inexact dates for premises passed and the abundance of "12/10" premises passed dates, the integrity of this data is uncertain.

These data integrity issues are in addition to the concern addressed above, regarding Verizon's long delays in providing DoITT with access to databases, in violation of Verizon's contractual obligations. Such long delays create undue opportunities for

alteration of data, to the detriment of DoITT's ability to verify Verizon's compliance with its other contractual obligations.

Verizon's Response:

Verizon responded to DoITT's findings on June 12, 2015. The full text of the response is included as an addendum to this report. Verizon's responses did not materially alter the facts stated in the findings.

Recommendations and Conclusions:

- 1) Verizon must build facilities on every residential block in the City to comply with its households passed obligations.**
- 2) Because Verizon claims to have passed 100 percent of residential premises in the City, Verizon must no longer indicate that cable television service is "unavailable" at any premises. Instead, Verizon must inform all prospective subscribers that they can place NSIs.**
- 3) Verizon must ensure that sufficient staff and resources are deployed in order to complete NSIs not related to refusal of access by landlords of multiple dwellings within the six-month and 12-month deadlines. Verizon should also consider adding staff to handle petitions to the Public Service Commission for orders of access to multiple dwellings.**
- 4) Verizon must accept requests for cable service from any resident in New York City regardless of the status of the network creation on the subject block.**
- 5) Verizon must consistently record every request for an NSI and the date that the request is made and must not divert inquiries about cable television service to Direct TV service without first clearly and accurately explaining the availability of cable television service and stating an estimated time within the six-month and 12-month contractual deadlines by which the customer can expect to obtain FiOS service.**
- 6) Verizon must instruct customer service representatives and agents to communicate clearly and consistently with all prospective customers and provide customer service representative with up-to-date data on the status of network creation builds associated with every residential address where service has yet to be established.**
- 7) Verizon must immediately provide DoITT with access to all records (including contracts) and databases requested by but not yet provided to DoITT . In the event of future audits, Verizon must respond to DoITT's requests for access to**

records and databases in compliance with the terms of Section 11.1 of the franchise agreement.

- 8) Verizon must maintain records of all written complaints.**
- 9) Verizon must not give preference to buildings that agree to bulk agreements, and must not seek bulk agreements with promises or intimations of preferential treatment.**
- 10) Verizon should create and maintain a manual of procedures that is consistent with the franchise agreement.**
- 11) Verizon must review its databases and correct all data errors.**

ADDENDUM:
VERIZON'S RESPONSE

RESPONSE OF VERIZON NEW YORK INC.
TO THE DRAFT AUDIT REPORT OF THE NEW YORK
CITY DEPARTMENT OF INFORMATION
TECHNOLOGY AND TELECOMMUNICATIONS

June 12, 2015

TABLE OF CONTENTS

| | | |
|-------------|---|-----------|
| I. | INTRODUCTION..... | 1 |
| II. | THE DEPLOYMENT OF AN ALL-FIBER OPTIC NETWORK THROUGHOUT THE CITY HAS BEEN A PROJECT OF ENORMOUS SCALE AND SCOPE..... | 6 |
| III. | VERIZON FULLY COOPERATED WITH DoITT’S INVESTIGATION..... | 6 |
| A. | Background/Timeline | 6 |
| | 1. The September 22, 2014 Conference..... | 6 |
| | 2. The October 9, 2014 Conference and Subsequent Information Requests | 7 |
| | 3. The November 5-10, 2014 Discussions | 9 |
| | 4. The November 12, 2014 Conference..... | 9 |
| | 5. The November 19-20, 2014 Conferences..... | 10 |
| | 6. The December 22, 2014 Conference and Subsequent Requests | 10 |
| | 7. The March 5, 2015 Conference..... | 11 |
| | 8. The March 17, 2015 Conference and DoITT’s Termination of the Review | 12 |
| B. | DoITT’s Rights Under § 11.1 of the Agreement | 12 |
| | 1. Information Must Relate to Verizon’s Provision of Cable Service | 12 |
| | 2. Requests Must Be “Reasonably Necessary” to Ensure Compliance | 13 |
| | 3. Timing for Responses to Records Requests..... | 14 |
| C. | Verizon Properly Declined to Provide Documents That Were Beyond the Authorized Scope of DoITT’s Review..... | 15 |
| | 1. Access to Database Systems | 15 |
| | 2. Call Centers | 16 |
| | 3. Routes..... | 16 |
| | 4. DirecTV..... | 17 |
| | 5. Pathway Vendors | 17 |

| | |
|---|-----------|
| 6. Staffing Summary | 17 |
| 7. Manual of Procedures..... | 18 |
| 8. Internal Audits | 18 |
| 9. Electronic Maps | 18 |
| 10. Timing/Access..... | 19 |
| 11. Glossary | 19 |
| 12. Software Logs | 19 |
| IV. RESPONSES TO SPECIFIC PRELIMINARY FINDINGS | 19 |
| A. Finding No. 1: “Passage” of Households..... | 19 |
| B. Finding No. 2: DoITT’s Claims of Unavailability of Service to Certain Households..... | 23 |
| C. Finding No. 3: Timing Requirements for NSIs | 24 |
| D. Finding No. 4: Requests for “Non-Passed” Residents | 27 |
| E. Finding No. 5: NSI Recordation/Communications..... | 28 |
| F. Finding No. 6: Verizon’s Communication with Subscribers | 28 |
| G. Finding No. 7: Section 11.1 Compliance | 28 |
| H. Finding No. 8: Complaint Procedures for Non-Subscribers..... | 28 |
| I. Finding No. 9: Bulk Agreements | 29 |
| J. Finding No. 10: Manual of Procedures | 29 |
| K. Finding No. 11: Data Integrity..... | 29 |
| V. CONCLUSIONS | 29 |

RESPONSE OF VERIZON NEW YORK INC. TO DRAFT AUDIT REPORT

I. INTRODUCTION

The “Draft Audit Report” released on June 9, 2015 (the “Report”) by the New York City Department of Information Technology and Telecommunications (“DoITT”) presents a distorted view of Verizon New York Inc.’s performance under its cable television franchise agreement with the City (the “Agreement”), ignores the company’s truly significant accomplishments in implementing that Agreement.

When Verizon entered into the Agreement in July of 2008, it became the first cable operator to commit to offer cable service throughout all five boroughs of the City. Through its implementation of the Agreement, Verizon has brought the benefits of video competition — consumer choice, competitive pricing, and continued innovation — to the residents of the City by posing, for the first time, a formidable challenge, City-wide in scope, to the incumbent cable monopolies of Time Warner Cable and Cablevision. Through its innovative FiOS video services, delivered over an advanced all-fiber-optic network, Verizon offers residents of the City a best-in-class cable television service that is also the cornerstone of a variety of multi-service bundles. No other provider is ready, willing, or able to provide the competitive challenge to the incumbents that Verizon poses. Certainly the incumbents themselves — isolated in their non-overlapping service areas in the City — pose no such challenge to each other.

The deployment of Verizon’s fiber to the premises (“FTTP”) network has been the largest and — given the unique challenges inherent in such a construction effort in a city such as New York — the most ambitious, fiber-optic deployment in United States history. Since 2008, Verizon has worked diligently and tirelessly to complete its fiber-optic network in the City, and the company is proud of what it has achieved.

It is therefore deeply disappointing to Verizon that the Report not only fails to recognize these important achievements, but also repeatedly sets forth a variety of irresponsible, inaccurate, and unsupported factual and legal claims about Verizon’s compliance with the Agreement. On the very first page of the Report, DoITT admits that the audit was “not complete,” not conducted in accordance with any recognized, professionally accepted — or even stated — auditing standards, and relies upon “anecdotal evidence.” The Report then seeks to utilize this limited information as a basis from which to extrapolate to seemingly authoritative findings and conclusions about alleged “systemic” issues concerning Verizon’s compliance with § 5 of the Agreement. In short, DoITT begins the Report by effectively admitting that what is to follow is fundamentally unsound and incomplete, and then suggests that these acknowledged flaws be ignored and that the resulting conclusions be accorded the substantive weight a legitimate audit ordinarily merits.

It would therefore be unwarranted to conclude from the Report that Verizon has failed to comply with the Agreement. In numerous important respects, the Report’s conclusions are based on factual errors, incorrect interpretations of Verizon’s obligations under the Agreement, mischaracterizations and skewed descriptions of Verizon’s interactions with DoITT in the

conduct of its review, and an “audit” process that fails to meet fundamental standards of fairness, accountability, and objectivity.

Indeed, although it repeatedly described its review as an “audit,” DoITT failed to follow either the letter or the spirit of recognized auditing standards.¹ The irregularities in the review process persisted from its beginning, when DoITT apparently informed the press about its intention to initiate a review of Verizon’s performance before it informed Verizon²; to the end, when DoITT suddenly and unexpectedly terminated the review, with no prior notice to Verizon, thus preventing Verizon from providing additional information in response to DoITT’s requests. In an exchange at one point during one of Verizon’s early substantive meetings with DoITT, the lead official of the DoITT team asserted, in a manner that indicated no doubt whatsoever over the issue, that DoITT *would* conclude that Verizon had failed to “pass” all of the households in the City as required by § 5 of the Agreement. There is no place in a fair and proper compliance review for such pre-determined outcomes.

The Report’s assertions, findings, and recommendations do not withstand scrutiny. In particular, as detailed below:

- ***Cooperation with the Review.*** Verizon devoted considerable effort to meeting with DoITT and facilitating its review, and it fully cooperated with DoITT’s attempts to obtain legitimate information relevant to the company’s performance under the Agreement. Any unwillingness to provide requested information was attributable to DoITT’s overreaching in its attempt to obtain information beyond that which Verizon was required to provide under § 11 of the Agreement. DoITT undertook a freewheeling approach to its investigation — one that demanded direct, unmediated access to databases and systems that hold confidential customer information relating to Non-Cable Services, as well as numerous categories of collateral information that were unrelated to the obligations imposed by the Agreement and therefore outside the scope of verifying Verizon’s

¹ While the Agreement merely allows DoITT limited access to certain records, DoITT purported to “audit” Verizon’s compliance with the Agreement. In that connection, the Report incorrectly says that DoITT attempted “to conduct its audit in accordance with GAGAS,” Generally Accepted Government Auditing Standards, and would have done so but for “limitations” that were purportedly “imposed by Verizon.” Report at 3. (This is contradicted at page 5 of the Report where DoITT erroneously asserts that the “audit was conducted in accordance with GAGAS.”) The suggestion that DoITT intended to conduct a GAGAS audit and was prevented from doing so by Verizon is false. To begin with, nothing in the U.S. General Accounting Office’s “Government Auditing Standards” (2011) (known as the “Yellow Book”), which memorializes GAGAS, entitles auditors to excuse a failure to follow GAGAS through an after-the-fact attempt at blaming the subject of the audit. *See, e.g.,* Yellow Book §§ 2.24(b), 7.12. DoITT actually ignored GAGAS from the outset. For example, while GAGAS states in no uncertain terms that “[a]uditors must prepare a written audit plan for each audit” (Yellow Book § 6.51), even before Verizon purportedly “imposed” “limitations,” DoITT informed Verizon that DoITT had no audit plan, much less a written one. At page 4 of the Report, DoITT admits that “GAGAS standards require that we plan . . . the audit,” but offers no explanation as to why DoITT prepared no audit plan. For this and other reasons, DoITT’s report is not the product of any “audit” that would satisfy any reasonable standard of reliability.

² Verizon first learned of DoITT’s intention to conduct this review on September 16, 2014, from a reporter for a well-known business news publication. It did not receive formal notice from DoITT until the following day.

compliance with its contractual obligations. (These included, for example, information on Verizon's relationship with DirecTV and on the vendors it used to create "pathways" for the placement of its cable in buildings.) These requests by DoITT improperly sought information well beyond what was authorized by or relevant to the Agreement, and Verizon was well within its rights in declining to provide the requested information. There is absolutely no evidence supporting DoITT's insinuations that delays that resulted from such disputes somehow created the possibility of alteration of Verizon's records, and such insinuations are completely unfair and unwarranted.

- ***Passage of Households.*** Perhaps the most surprising aspect of the Report is its conclusion that Verizon has failed to comply with its obligation to "pass all households served by [its] wire centers within the Franchise Area" — particularly because DoITT specifically recognized Verizon's compliance with the passage obligation by approving reductions in the amount of the Agreement's performance bond for the years of 2008-11; reductions that under the Agreement were triggered by Verizon's passage of specific numbers of premises in the City.³ DoITT's eleventh hour reversal on this issue is based on its misinterpretation of what Verizon is required to do in order to "pass" a household within the meaning of the Agreement.

Specifically, DoITT asserts that Verizon is required to run cable directly in front of a building in order to "pass" it, and bases that assertion on a definition of "Homes Passed" that is set forth in a 2015 "definition of terms" prepared by the Fiber to the Home ("FTTH") Council for purposes of its "market research."⁴ In fact, as we show below, the Agreement manifests a clear intention to employ a very specific standard of "passage" that differs from both the FTTH Council definition and the standard that had been set forth in the City's prior cable television franchise agreements with other companies. The agreed-to standard gave Verizon discretion as to how and where it would place its fiber-optic facilities in order to meet its obligations to make cable service available to the City's residents. The parties to the Agreement recognized and agreed that Verizon would generally place its FTTP network along the same routes as had been used for its copper network, and would use similar strategies for accessing individual buildings — strategies that did not necessarily involve running cable immediately in front of each building in which it offered service. The Report's

³ See Agreement § 15.9.2.1.

⁴ Despite its claim that the parties intended to incorporate the FTTH Council definition into the Agreement, DoITT did not mention that definition in the earlier version of the Report dated April 7, 2015, which relied solely on its understanding of how the "cable industry" viewed the term. DoITT's belated reliance on the FTTH Council definition — seven years after the franchise was negotiated and approved by the City, and years after multiple previous acknowledgments of milestones Verizon achieved — makes it clear that far from being part of the parties' original understanding, it was simply an afterthought offered to shore up the interpretation of the Agreement that it would now prefer.

conclusion and recommendation that Verizon should “build facilities on every residential block in the City to comply” with its passage obligation (Report at 16) are inconsistent with the Agreement, and would deprive Verizon of the flexibility that it bargained for in deploying its FTTP network.

- ***Timeframes for Non-Standard Installation Requests.*** The Report incorrectly concludes that Verizon has not completed non-standard installation service requests within the deadlines required by Section 5.4.2 of the franchise agreement.⁵

Initially, we note that this conclusion is apparently based in part on its incorrect understanding that the Agreement requires Verizon to complete NSI’s within six months, and that only under specified circumstances would the company be “entitled to an extension” of the six-month “deadline.”⁶ In fact, § 5.4.2 of the Agreement states that “Franchisee shall perform all Non-Standard Installations of Cable Service within six (6) months after any such request is received by the Franchisee, unless either a later date is agreed to with the requesting potential residential Subscriber *or Franchisee advises the requesting potential residential Subscriber of the current unavailability of Cable Service at the location as set forth in Subsection 5.4.2.1.*” (Emphasis supplied.) Thus, even absent consent of the prospective customer, the only prerequisite to extending the six-month NSI period to twelve months is compliance with the notice requirements of § 5.4.2.1.

Moreover, the NSI deadlines are subject to the provisions of § 5.5(C) of the Agreement, which creates an exception for “periods of delay caused by [Verizon’s] inability, after good faith efforts, to obtain valid legal authority to access any MDU [Multiple Dwelling Unit] in the Franchise Area for the purpose of providing Cable Service to units within such MDU on other than commercially unreasonable terms and conditions with respect to each such MDU.” Such inability to “access” MDUs can arise from two causes. One would be Verizon’s inability to obtain consent to extend its facilities *into* a building (*e.g.*, due to intransigence on the part of the owner or manager); the other would be its inability to obtain consent to extend its facilities *to* the building (*e.g.*, through a neighboring building’s consent to permit building-to-building connections).⁷ As DoITT is well aware (and as has been publicly reported by some media outlets) such access problems are a significant cause of the delays that have been

⁵ A “non-standard installation” (“NSI”) is essentially one arising from a request for service in a building that has not yet been network created. *See* Agreement §§ 1.35, 1.45.

⁶ This, too, appears to be an afterthought on DoITT’s part; this view of Verizon’s obligations under § 5.4.2 is not set forth in DoITT’s original draft of the Report.

⁷ Since “access” covers both of those circumstances, DoITT is incorrect in arguing that § 5.5 does not apply “where Verizon is unable to obtain access to private property other than the multiple dwelling building from which the NSI order originated.” Obtaining consent to attach Verizon’s facilities to such other adjacent building(s) (or to place the facilities in the building) is part of the process of obtaining “access” to the target building.

associated with NSIs. Moreover, DoITT repeatedly ignored Verizon's multiple requests for assistance in resolving access issues — assistance that was explicitly contemplated by the Agreement.⁸

- ***Public Communications.*** The Report claims that Verizon “broadly provided the public with misleading information with regard to Verizon’s obligations.”⁹ That statement is simply false. It is also worth noting that DoITT does not claim that Verizon is in violation of the contractual terms of the Agreement with respect to communications, but rather asserts that Verizon has somehow failed to meet DoITT’s unilaterally imposed and undefined conception of how Verizon should, in DoITT’s opinion, communicate with potential subscribers. Notwithstanding DoITT’s supposed business judgment about how Verizon interacts with potential subscribers, the reality is that Verizon has a business interest in transparently and comprehensively informing all potential subscribers of the steps — often beyond Verizon’s control — that need to be completed before Verizon can install service to the requesting subscribers.

Other DoITT findings are addressed, and the above matters are discussed in greater detail, in Section IV of this Response.

Aside from its erroneous conclusions and procedural flaws, the Report’s lack of balance and its clear agenda is also disturbing. One would expect a performance review to include an assessment of both the positives and the (perceived) negatives of Verizon’s performance. In stark contrast, however, the Report makes no positive findings, despite the fact that Verizon’s submissions during the review provided DoITT with several opportunities to do so. For example, Verizon provided data that demonstrated that its practice of network-creating entire buildings (rather than only the unit or apartment that had requested service, which is all that the Agreement requires) enabled over 588,000 City residents who had not yet requested Verizon’s service to obtain service more rapidly in response to a later request. DoITT’s failure to note such accomplishments raises important questions about the objectivity and fairness of its review.

In fulfilling its responsibilities under the Agreement, DoITT must ensure that any conclusions that it expresses about Verizon’s performance are balanced, supported by substantial evidence and thorough legal analysis, and reached through proper procedures. Moreover, those conclusions and the recommendations that flow from them must be supported by and consistent with a proper interpretation of the obligations imposed by the Agreement. The Report, unfortunately, fails to meet those requirements.

⁸ Agreement § 5.5.2.1.4.

⁹ Report at 3.

II. THE DEPLOYMENT OF AN ALL-FIBER OPTIC NETWORK THROUGHOUT THE CITY HAS BEEN A PROJECT OF ENORMOUS SCALE AND SCOPE

With a total population of over 8.4 million people, the City is the most populous metropolis in the United States. Moreover, with an area of approximately 303 square miles, it is also one of the most densely populated. Both the sheer number of potential customers, and the density with which they are clustered in the City, have posed considerable challenges for an FTTP deployment. Verizon has spent in excess of \$3.5 billion to build a robust fiber-optic network throughout the five boroughs of the City, a project that entailed the installation of over 15,000 *miles* of fiber-optic distribution cable, much of it underground.

Moreover, in order to make service available, residential units not only need to be passed by FTTP cable, but also must be “network created.” In other words, outside plant facilities must be extended into the building from the street (or backyard) in which those facilities are located, in-building wiring and terminating electronics must be installed, and the outside plant must be connected to the in-building facilities.

The challenges of deploying a ubiquitous new network are magnified by the fact that construction work in the City that involves the opening of streets requires a permit from the City’s Department of Transportation (“DOT”), and DOT permits typically contain a variety of stipulations that restrict the time, place, or manner of the construction activity that may be conducted in particular locations.

III. VERIZON FULLY COOPERATED WITH DoITT’S INVESTIGATION

The detailed history of Verizon’s interactions with DoITT demonstrates that Verizon fully and promptly complied with DoITT’s reasonable and authorized request for information. Limitations or delays in the provision of information were due primarily to requests that exceeded DoITT’s authority under the Agreement. Unfortunately, the process was considerably complicated, and Verizon’s task was made more difficult, by the seemingly random and haphazard timing of DoITT’s requests, as well as the lack of an audit plan by DoITT.

In the following discussion, we lay out that history (Section II(A)); describe exactly what the Agreement does (and does not) require Verizon to provide to DoITT in a performance review, and on what schedule (Section II(B)); and show that Verizon was justified in declining to provide certain types of information to DoITT (Section III(C)).

A. Background/Timeline¹⁰

1. The September 22, 2014 Conference

On September 17, 2014, DoITT sent Verizon a letter stating that DoITT was invoking the provisions of § 11.1 of the Franchise (“Reports and Records”) to inspect Verizon’s books and

¹⁰ Additional detail concerning the history discussed in this Section is included in Appendix A.

records related to Verizon's compliance with § 5 of the Franchise.¹¹ In that letter, DoITT's Assistant Commissioner stated that he would "contact [Verizon] shortly to schedule an audit conference."

Verizon and DoITT met for the initial conference on September 22, 2014. During that conference, DoITT and Verizon discussed the general timing, format, and scope of DoITT's review. Verizon requested a formal audit plan, which is a fundamental component of a proper audit and should be provided to an audit subject. DoITT informed Verizon that no such plan had been prepared. Ultimately, the parties' understanding was that the process would proceed essentially as follows:

- a series of presentations by Verizon on its processes, systems, sources, protocols, and data associated with the deployment and tracking of Cable Service; and
- a review of a random sampling of addresses selected by DoITT, which DoITT could then validate against Verizon's systems and other sources to determine both whether such addresses were passed and whether cable service was available.

Within that process, there was an understanding that the initial focus of the review would be on the premises-passed requirement, followed by the service availability obligations. The parties agreed to work cooperatively to schedule meetings, to conduct document production, interviews, and systems reviews, and otherwise to facilitate the review.

2. The October 9, 2014 Conference and Subsequent Information Requests

On October 1, 2014, Verizon sent DoITT a letter summarizing the process discussed at the initial conference and proposing that the parties schedule the next meeting for the week of October 13, 2014.¹² DoITT indicated that it wished to meet instead on October 9, 2014, and Verizon accommodated that request. Verizon and DoITT agreed that the purpose of the October 9th meeting would be to begin to educate DoITT on the process for determining how and whether a premises is "passed" for purposes of § 5.1 and Appendix F of the Agreement.

On October 1, 2014, DoITT requested a "flow chart of the FiOS installation process for our review prior to meeting with Verizon staff and an organization chart showing the reporting relationships of the key staff in this Verizon division."¹³ The following day, DoITT followed up by requesting the foregoing documents by no later than close of business on October 6th. Verizon provided those documents on October 6th.

¹¹ Letter from Stanley Shor, Assistant Commissioner, Franchise Administration, DoITT, to Monica Azare, Vice President & Deputy General Counsel, Verizon, dated September 17, 2014.

¹² Letter from Monica Azare, Vice President & Deputy General Counsel, Verizon, to Stanley Shor, Assistant Commissioner, Franchise Administration, DoITT, dated October 1, 2014.

¹³ Email from Stanley Shor, Assistant Commissioner, Franchise Administration, DoITT, to Monica Azare, Vice President & Deputy General Counsel, Verizon, dated October 1, 2014.

During the October 9th conference, Verizon made a detailed presentation regarding the process for qualifying a premises as “passed” for purposes of the Agreement. Verizon attendees at the conference included representatives of several Verizon departments involved in the engineering process in New York City, including the engineer responsible for the premises-passed process in the City, who responded to numerous questions from the DoITT audit team. The session was constructive and amicable. Verizon provided DoITT with a copy of a PowerPoint presentation so that DoITT could review the materials and develop follow-up questions.¹⁴

At the conclusion of the meeting, DoITT asked Verizon to provide certain documents. Specifically, as summarized in an October 10, 2014 email, DoITT requested: 1) a Glossary of Terms; 2) Verizon’s Complaint Handling Process and Records From 2012-2014 (“internal procedures for troubleshooting”); 3) Service Request Reports (2012-2014); 4) Subscriber List (2012-2014); 5) Premises Passed Reports (2012-2014) with route and reconciliation to premises passed numbers by borough; 6) Progress Reports (2012-2014); 7) Installation Notices (2012-2014); 8) Service Area Maps (2012-2014); and 9) Manual of Procedures.¹⁵

On October 20, 2014, DoITT requested that Verizon provide the requested glossary on that same day, and asked for an update on the dates on which Verizon anticipated that it would be submitting the other items.¹⁶ Verizon responded that same day by (i) transmitting the requested glossary (clearly noting that if there were additional terms for which DoITT would like definitions, DoITT could provide Verizon with a list of such terms); (ii) requesting clarification on one of the items (Premises Passed Reports); (iii) explaining that one of the items requested, the vaguely described “Manual of Procedures,” should have already been satisfied by the Premises Passed presentation on October 9th and would be further addressed during the upcoming Service Availability sessions; and (iv) proposing the dates on which the remaining items would be provided.

On October 23rd, Verizon provided DoITT with timely information in response to four of the remaining eight open items, and communicated that it was in the process of compiling the other information.

On November 3, 2014, Verizon made a timely submission of the remaining information from the original list of nine information requests, with the exception of the Manual of Procedures.¹⁷ Verizon had previously explained that “the nature and purpose of the request was vague.” The email again explained that “[w]ith regard to item Number 9 below, please be advised that no

¹⁴ The parties also agreed at this meeting that the audit would cover the period beginning on January 1, 2012, rather than July 1, 2008, as the September 17, 2014 letter had indicated.

¹⁵ Email from Wayne Kalish, Director of Franchise Audit and Revenue, Franchise Administration, DoITT, to Monica Azare, Vice President & Deputy General Counsel, Verizon, dated October 10, 2014.

¹⁶ Email from Wayne Kalish, Director of Franchise Audit and Revenue, Franchise Administration, DoITT, to Monica Azare, Vice President & Deputy General Counsel, Verizon, dated October 20, 2014.

¹⁷ Email from Monica Azare, Vice President & Deputy General Counsel, Verizon, to Wayne Kalish, Director of Franchise Audit and Revenue, Franchise Administration, DoITT, dated November 3, 2014.

‘Manual of Procedures’ exists. The earlier provided flow charts address the Processes followed, but as noted, we are available to walk through and explain questions which may arise.”¹⁸ With this submission, Verizon noted that it believed it had satisfied, on-time and in full, DoITT’s October 10th document request.

3. The November 5-10, 2014 Discussions

On November 5, 2014, (notwithstanding Verizon’s previous explanations concerning this request), DoITT sent an email to Verizon stating that it had not yet received the Manual of Procedures. The email also asked for clarification on certain other items, and requested a description of service availability procedures. With respect to the latter, the email specifically requested a “[d]escription of the request for service process (both non-standard and standard installations) and the names and descriptions of the computer systems used to record and track service request calls. We would like to schedule time with you to review these computer systems used to record and track service request calls on November 13, 2014.”¹⁹

It should be noted that — despite the Report’s claim that DoITT first made a request to “access” Verizon’s database systems on October 9th — this November 5th request and several others to follow over the course of the next several months merely sought names and descriptions of such systems and sought to schedule time in the future to review them. In any event, the parties agreed to meet on November 12, 2014, and at that meeting Verizon provided DoITT with access to Verizon’s relevant databases and DoITT did in fact conduct some real-time sampling of property addresses.

In response to a November 7, 2014 request, Verizon agreed to participate in a teleconference with DoITT one business day later, on November 10, 2014. During this teleconference, Verizon responded to a wide range of questions from DoITT regarding, among other things, the premises passed process, complaint process, and installations.

During that call, DoITT also emailed Verizon a list of 17 additional questions related to those discussed during the teleconference. DoITT received the responses and incorporated them (in part) into the Report.

4. The November 12, 2014 Conference

At DoITT’s request, the parties met again on November 12th to review the database systems that Verizon used in connection with the premises-passed process. At this meeting, Verizon allowed DoITT to select random addresses to sample in each applicable data system in order to determine whether the systems were accurate and, with DoITT observing, Verizon pulled the requested information from relevant systems in real time. Despite DoITT’s claim that it was only able to review ten individual addresses and that this sample was insufficient to verify addresses for

¹⁸ *Id.*

¹⁹ Email from Wayne Kalish, Director of Franchise Audit and Revenue, Franchise Administration, DoITT, to Monica Azare, Vice President & Deputy General Counsel, Verizon, dated November 5, 2014.

accuracy, Verizon expressly offered additional access to review more addresses during this meeting or after, and DoITT declined that offer.

Following the November 12th conference, Verizon and DoITT agreed to additional face-to-face meetings for the following week (on November 17th and November 19th) to discuss service availability issues under § 5.4 of the Franchise, having concluded the premises-passed portion of the review. The meetings were rescheduled at DoITT's request, and the parties met on November 19th and 20th.

5. The November 19-20, 2014 Conferences

The sessions on each of these days lasted approximately three hours and appeared to be highly productive. As Verizon and DoITT discussed and agreed upon in advance, during the first session on November 19th, Verizon made a comprehensive presentation demonstrating the step-by-step procedure by which Verizon processes requests for Standard and Non-Standard Installations both at Verizon call centers and via the Verizon website. DoITT spent much of the time rehashing vague personal anecdotes about their associates' experiences. DoITT declined, however, to name the individuals involved in the anecdotes, which obviously eliminated any ability Verizon might have had to investigate the alleged problems. Thus, other than to provide information about Verizon's general policies and procedures, Verizon's ability to respond to these anecdotes was limited.

The following day, Verizon gave a detailed presentation on the process for responding to NSI requests and the physical installation process. The parties spent considerable time discussing the challenges associated with obtaining access to MDUs when the owners or managers deny Verizon access to the property as well as the challenges of securing needed rights of way from adjacent buildings. Members of the DoITT team repeatedly acknowledged those challenges and at one point queried whether Verizon had considered seeking legislative or regulatory relief in order to streamline the access process.

6. The December 22, 2014 Conference and Subsequent Requests

On December 12, 2014, DoITT asked if it could meet on December 18th in order to "view the Non-Standard Installation Request data through November 30."²⁰ DoITT later rescheduled this meeting to December 22nd. At the meeting, Verizon provided DoITT with the NSI report and all of the supporting raw data, and discussed the source validation procedure. The parties mutually agreed to meet next in January.

That same day, Verizon received an email from DoITT noting that the report data on NSIs it had received the day before through the shared drive²¹ was in PDF format, and asking that it be re-

²⁰ Email from Wayne Kalish, Director of Franchise Audit and Revenue, Franchise Administration, DoITT, to Monica Azare, Vice President & Deputy General Counsel, Verizon, dated November 12, 2014.

²¹ In order to facilitate the efficient production of documents, and for DoITT's convenience, Verizon set up and maintained a share drive which aggregated all documents and information produced in connection with the review. DoITT had 24/7 access to the drive.

sent in Excel format.²² Verizon was unable to immediately send the document in the specific format requested, but offered (by email that day and repeatedly thereafter)²³ to allow DoITT to come to Verizon's offices and review and filter the information from a terminal. Verizon provided the report in Excel format on January 8, 2015.

On January 13, 2015, DoITT requested, by January 15, "all correspondence and supporting documentation" for ten addresses it had previously selected.²⁴ On January 26, 2015, Verizon provided documentation associated with the properties, as well as letters sent to any properties that Verizon needed to traverse with its fiber in order to deliver service to the requesting parties. Verizon supplemented that response with additional related documents on January 30, 2015.

On January 28, 2015,²⁵ DoITT sent its list of outstanding documents and records, and asked Verizon to provide them within a week. Among the documents included in the list was a Manual of Procedures. As Verizon had (on two separate occasions) previously advised DoITT, it does not maintain such a Manual in the form requested. On February 13, 2015, Verizon responded to DoITT's letter, providing updates and/or objections to each requested item. Notably, Verizon indicated that it would again provide DoITT with access to Verizon's database systems as early as February 23, 2015. Verizon was prepared to provide the requested database access on February 25th, but DoITT cancelled the meeting, and it was rescheduled for March 5, 2015.

7. The March 5, 2015 Conference

The purpose of March 5, 2015 conference was to allow DoITT to source-validate a sampling of selected addresses to confirm the premises-passed and service-availability status in each of the relevant systems. During this session, DoITT selected 18 addresses to review and Verizon provided access to all pertinent information in each data system with respect to each such address. At the conclusion of the meeting, DoITT indicated it would like to sample a total of 1,600 total addresses over the course of the next meetings in order to ensure a statistically significant sample size. The parties agreed to meet again on March 10th, but DoITT subsequently rescheduled the meeting to March 17th.

²² Email from Wayne Kalish, Director of Franchise Audit and Revenue, Franchise Administration, DoITT, to Monica Azare, Vice President & Deputy General Counsel, Verizon, dated December 22, 2014.

²³ Emails from Monica Azare, Vice President & Deputy General Counsel, Verizon, to Wayne Kalish, Director of Franchise Audit and Revenue, Franchise Administration, DoITT, dated December 22, 2014 and January 5, 2015.

²⁴ Email from Wayne Kalish, Director of Franchise Audit and Revenue, Franchise Administration, DoITT, to Michael Morano, Assistant General Counsel — Northeast Operations, Verizon, dated January 13, 2015.

²⁵ While DoITT initially claimed this correspondence was emailed on January 21, 2015, none of the Verizon recipients received it on that date. It was only when DoITT followed up on the correspondence that this issue was identified, and DoITT re-sent the letter on January 28.

8. The March 17, 2015 Conference and DoITT's Termination of the Review

DoITT and Verizon met again on March 17th for what, unknown to Verizon at the time, would be the last review session. The purpose was to allow DoITT to continue sampling addresses in Verizon's systems, as had been done at the previous meeting. The parties reviewed approximately 80 addresses during this session. At the close of the meeting, Verizon requested scheduling dates for the next meeting and asked how many properties DoITT wanted to review during that session. DoITT responded that they had reviewed "enough" properties and would be back in touch with Verizon. DoITT did not in any respect indicate at that point that it was prematurely terminating the audit (nor did it indicate that it was dissatisfied with the access it had received to the information). Verizon was therefore shocked to learn later that DoITT had chosen to forego any further address reviews after it had viewed only 6% of what it had characterized as the sample size it needed to conduct a valid audit.

Verizon received no further correspondence from DoITT regarding the audit until April 7th, the day it received the Report.

B. DoITT's Rights Under § 11.1 of the Agreement

As DoITT acknowledged in its September 17, 2014 letter, this review is being conducted pursuant to rights granted by § 11.1 of the Agreement. That section, entitled Open Books and Records, permits DoITT to inspect Verizon's books and records subject to certain important, negotiated, and binding obligations and limitations. Despite DoITT's repeated description of its review as an "audit," the scope of that review, and the extent of DoITT's access to information, are governed and limited by the Agreement. It is therefore important to clarify exactly what § 11.1 does, and does not, require and permit in connection with an inspection of books and records such as this one.

1. Information Must Relate to Verizon's Provision of Cable Service

Section 11.1 provides that "[u]pon reasonable notice to [Verizon] and consistent with § 11.1.1 below, the City shall have the right to inspect Franchisee's books and records *pertaining to [Verizon's] provision of Cable Service in the Franchise Area* at any time during Normal Business Hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of the Franchise"²⁶ Similarly, and more emphatically, the last sentence of § 11.1 provides that "[n]otwithstanding anything to the contrary set forth in this Agreement, *[Verizon] shall not be required to disclose* information (including its books and records and books and records of an Affiliate) that, in [Verizon's] reasonable determination, *does not relate to the provision of Cable Service* in the Service Area."²⁷

²⁶ Agreement § 11.1 (emphasis supplied).

²⁷ *Id.*

The purpose of these provisions is to ensure that any record inspections conducted by DoITT pursuant to the Franchise be limited exclusively to matters directly related to Verizon's provision of Cable Service, which is the service governed by the Agreement. The Agreement sets forth this language because, as a large company with numerous lines of business, Verizon is subject to a diverse array of legal, regulatory, and contractual requirements for its different service offerings. Residential Cable Service is only one of those offerings. This language is intended to make clear that DoITT may not use the Agreement as a vehicle through which to conduct an inspection of books and records of Verizon's Non-Cable Services, and indeed confers upon Verizon an affirmative *right* to decline to provide such records if it makes a "reasonable determination" that requested records fall outside of the scope of the Agreement.

Section 11.1 is relevant because on several occasions during its review, DoITT requested access to records that would disclose information pertaining to Verizon services that are not governed by the Agreement, such as voice and data services.²⁸ For instance, in the Report, DoITT objects to the fact that it was not granted the ability to independently (*i.e.*, without Verizon assistance) manipulate Verizon's database systems to verify premises-passed and service-availability accuracy. However, while Verizon did provide DoITT with unfettered access to the information in those database systems that concerned Verizon's provision of Cable Service, it would have been impossible for Verizon to fully exclude from those integrated databases information related to Verizon's voice and data services and customers, as well as other proprietary information that fell outside of the scope of the compliance review, and outside the scope of the Agreement. Moreover, Verizon's database systems are live operating systems used around the clock to provide service; giving untrained third parties unmediated access to those systems raises obvious security and data-integrity concerns.

Similarly, DoITT's request for an on-site visit to a call center would have resulted in the disclosure of information related to Verizon's Non-Cable Services, as those call centers handle customer service calls with respect to a wide range of non-cable matters, such as voice and data. Verizon's decision to restrict DoITT's access to information concerning Non-Cable Services was necessitated by its obligation to protect the privacy of its customers' information, and was within its rights under § 11.1. That restriction did not in any way impair DoITT's ability to assess Verizon's compliance with the Agreement using the information that Verizon had provided over the course of several months.

2. Requests Must Be "Reasonably Necessary" to Ensure Compliance

Even if a records inspection satisfies the first prong of § 11.1 with respect to its pertinence to the provision of Cable Service, § 11.1 requires that such request be "reasonably necessary to ensure Franchisee's compliance with the terms of [the] Franchise." This provision makes clear that the Agreement requires that records inspections be limited in scope ("reasonabl[e]") to that which is

²⁸ Further underscoring the fact that requested information must be pertinent to Verizon's provision of Cable Service pursuant to the Agreement, § 11.1 mandates that all written requests for information (*i.e.*, all valid requests) "specifically reference the section or subsection of the Franchise which is under review . . ." This provision makes clear that not only must all requests for information pertain to Verizon's Cable Service-related obligations, but that DoITT must also expressly identify the specific provision to which each such request relates.

required (“necessary”) to ensure Verizon’s compliance with its obligations under the Agreement. § 11.1 is not a boundless license for DoITT to investigate issues unrelated to Cable Service or to review any records it simply views as informative or helpful.

Throughout its review, DoITT failed to meet its burden of establishing that all of its requests met this standard of reasonable necessity. For instance, in Finding No. 7, DoITT states that Verizon violated § 11.1 by, among other allegations, declining to provide access to Verizon’s DirecTV agreement and wire center maps. However, as discussed below and as repeatedly explained to DoITT, that information bears no reasonable relation, let alone necessity, to Verizon’s compliance with the Agreement’s terms, and DoITT never attempted to articulate a theory for why it would be relevant.

3. Timing for Responses to Records Requests

Section 11.1.1 prescribes the periods within which Verizon must provide information in response to record requests. Three such periods are specified, a *fifteen-day* period, a *thirty-day* period, and an *extended* period. Verizon:

- “shall, within fifteen (15) days of Franchisee’s receipt of such written request, provide the City with access to any information Franchisee is reasonably able to collect in response to such request” and
- “shall, within thirty (30) days from receipt of such request make available to the City all pertinent information in response to such request, consistent with Section 11.1 above,” but
- “provided, however, that to the extent there is additional information which Franchisee is unable to reasonably collect in such thirty (30) day period, Franchisee shall provide the City with a written notice setting forth the nature of such additional information and the date on which Franchisee shall provide access to such information.”

Thus, § 11.1 requires that in response to a written records request from DoITT, (a) Verizon must provide information that it can reasonably collect within 15 days, and (b) provide all other properly requested information within 30 days, *unless* (c) it cannot reasonably collect all reasonable information within that period, in which case Verizon can so inform DoITT and schedule a later date for delivery of the information.

As is evident from the discussion in Section II(A), above, Verizon timely responded to virtually every relevant records request that DoITT provided in writing pursuant to § 11.1, as well as to its informal oral requests (which are beyond the scope of § 11.1). DoITT concedes as much in its Finding No. 7, where the only instances it cites as violations of the timeframes of § 11.1 relate to documents that Verizon declined to provide on the grounds that they were not reasonably necessary to ensure compliance with the Agreement. DoITT cites no request for which Verizon did not meet either the fifteen-day window, the thirty-day window, or the extended time period pursuant to written notice from Verizon as contemplated under § 11.1.1.

Despite the clear terms of § 11.1, DoITT frequently attempted, arbitrarily and unilaterally, to impose shorter deadlines on Verizon. For example, the Report states that DoITT

requested access to Verizon’s systems and/or screen shots of the initial service requests for the ten property locations in a letter dated February 5, 2015 for which we did not receive a response by the due date of February 9, 2015. We were finally able to view the 10 property locations within the [Verizon system] on March 5, 2015 and received the screen shots on March 9, 2015, 28 days after the due date.²⁹

In fact, DoITT requested access to Verizon’s “systems *and/or* screen shots” (emphasis added) on February 5th and Verizon provided the requested access to its systems on March 5th — 28 days from the initial written request, and within the 30-day timeframe established by Section 11.1. Having already satisfied the records request on a timely basis by providing access to the systems “and/or” screen shots within 30 days, Verizon also took the additional step of providing the screen shots four days later. DoITT repeatedly imposed arbitrary and unreasonable deadlines that were not consistent with the Agreement (four days in this case), and then declared Verizon in violation of those fictitious “requirements.”

C. Verizon Properly Declined to Provide Documents That Were Beyond the Authorized Scope of DoITT’s Review

The Report includes a list describing certain alleged “limitations” on DoITT’s ability to conduct a proper and complete audit. As explained above, Verizon has at all times complied with the Agreement’s requirements to provide all information “reasonably necessary to ensure compliance with the Franchise,” and has provided such information in a timely manner. Verizon’s responses to each of the purported limitations follow.

1. Access to Database Systems

The Report repeatedly asserts that Verizon “delayed” access to Verizon’s database systems for a period of 147 days, starting from October 9, 2014. This claim is perhaps the most egregious misstatement in the entire Report.

- It presumes that DoITT expressly requested access to all of Verizon’s relevant databases when in fact nothing in DoITT’s early correspondence requested specific documents or access.
- DoITT could not have requested access to those systems at that time because it did not even know what these systems were, how they operate, or how they were relevant to this review.

²⁹ Report at 6.

- As stated above, Verizon provided DoITT with system access as early as November 12, 2014 — five days after DoITT submitted its first generic request to schedule an appointment to review Verizon’s databases.
- Verizon’s website is a *publicly accessible and constantly available* resource and DoITT could easily have used it to test service availability and customer messaging issues. But it never did so, instead choosing to rely on anecdotal data. Similarly, DoITT could have called into Verizon’s call centers at any time to test the messaging and communications from Verizon’s representatives relating to Cable Service, but chose not to do so.
- DoITT’s concession that Verizon *did* provide DoITT with access to the requested sources flies in the face of its claim that it “could not complete” the audit because it could not obtain necessary information.

2. Call Centers

The Report accurately notes that Verizon declined to provide DoITT representatives with access to Verizon’s call center because such access is beyond the scope of the review. Call center representatives respond to customer requests relating to a wide range of Non-Cable Services (*e.g.*, voice, data, and business services), and allowing DoITT to review such communications and operations would create significant concerns with respect to customer privacy. Of course, as noted above, DoITT chose not to call into Verizon’s call centers to test the messaging and communications related to Cable Service availability.

3. Routes

The Report states that DoITT could not fully conduct the audit because Verizon did not provide it with access to Verizon’s fiber routes throughout the City, which DoITT claimed it needed to determine whether Verizon had complied with its obligation to “pass” households in the City. Verizon does not maintain its outside plant records in a manner that would conform to what DoITT apparently wants, nor is it required to do so, by the Agreement or otherwise. But fiber route maps are not necessary for verifying compliance and most important, Verizon provided DoITT with ample means to make such a determination.

To enable verification of Verizon’s compliance with the passage obligation, Verizon: provided DoITT with a list of all of the addresses in the City that Verizon claimed as passed; enabled DoITT staff to conduct a physical field verification of the premises passed by Verizon’s fiber network; and gave DoITT access to Verizon’s database systems to verify that addresses had been passed. DoITT had the ability to verify compliance using these tools. In fact, DoITT has conducted field verifications every year since 2008.³⁰

The notion that full and detailed route maps are needed to assess compliance with the passage obligation is without merit. While Verizon firmly believes it has provided DoITT with ample

³⁰ Agreement § 15.9.2.1.

means to verify Verizon's compliance, it is willing to discuss reasonable and feasible alternative means.

4. DirecTV

Verizon legitimately declined to provide DoITT with a copy of its agreement with DirecTV, as this is a perfect example of DoITT attempting to extend its review well beyond the boundaries set forth in the Agreement. DoITT does not need it to ensure Verizon's compliance with the Agreement, and it includes confidentiality and non-disclosure provisions that preclude Verizon from legally disclosing the agreement to third parties, such as DoITT. Nor has DoITT articulated any reason why the agreement would be reasonably necessary to review Verizon's performance of its obligations under the Agreement; a burden DoITT must meet based on the clear terms of Section 11.1 of the Agreement, as discussed above.

5. Pathway Vendors

Verizon sometimes uses third-party vendors to create "pathways" for its cables within buildings that it needs to network-create, once it has obtained the consents or orders necessary to gain access to those buildings. Verizon declined to provide DoITT with copies of its contracts with such vendors. Again, DoITT never provided an explanation of why this information was relevant to its review, and Verizon reasonably concluded that access to such information was not needed to ensure Verizon's compliance with the Agreement. In fact, nothing in the Agreement either requires Verizon to use, or prohibits it from using, vendors to carry out such functions as pathway creation; nor does the Agreement specify the terms and conditions of its dealings with such vendors. The presence or absence of such vendors is therefore irrelevant to Verizon's compliance with the obligations imposed by the Agreement.³¹

6. Staffing Summary

Contrary to the Report's claim, Verizon did provide DoITT with a detailed staffing summary in response to this request in addition to arranging face-to-face meetings with the Verizon personnel in each relevant Verizon organization. Prior to the Report, DoITT never expressed the view that this staff summary or the informational meetings were inadequate and never requested additional detail. Moreover, DoITT contradicts itself on this issue in the Report where it acknowledges that it "examined organization charts for determining responsibilities of divisions for build-out of Verizon FiOS" and interviewed various Verizon employees engaged in such work.³² Staffing, like other issues that DoITT sought to pursue, is not relevant to the question of whether Verizon complied with its obligations under the Agreement.

³¹ To the extent that § 17.4 of the Agreement requires Verizon to give preference to vendors located in the City, Verizon would be willing to identify its vendors without providing copies of its contracts. There is no evidence, however, that DoITT's review was intended to check Verizon's compliance with that section.

³² Report at 9.

7. Manual of Procedures

On November 5, 2014, DoITT requested a “Manual of Procedures for Premises Passed rather than the framework of premises passed procedures provided in the PowerPoint presentation on October 9, 2014. This manual should be the actual procedural documentation provided to Verizon FiOS employees. If this manual does not exist then please confirm.”³³

Verizon responded — in a complete, accurate, and timely fashion — by explaining that a “Manual of Procedures for Premises Passed,” as such, does not exist. Verizon explained that it did, of course, adhere to specific internal procedures for constructing, tracking, and reporting the construction of its FTTP Network consistent with Appendix F and § 5 of the Agreement. However, compiling its diverse methods and procedures into a single manual would not be useful or practical in light of the multi-layered, multi-organizational effort involved in this process, and so it never sought to do so. Moreover, the creation and maintenance of such a manual is not a requirement of the Agreement.

Although Verizon did not produce the non-existent Manual, it did provide DoITT with documentation relating to its process for passing, tracking, and reporting its premises-passed metrics, and it indicated that it would be happy to share any additional information on this issue that is reasonably necessary for DoITT to conduct this document inspection consistent with § 11.1 of the Franchise Agreement.³⁴

8. Internal Audits

DoITT correctly notes that Verizon declined to provide access to any internal audit of its operations. Verizon concluded that DoITT does not need any such information to ensure Verizon’s compliance with the Agreement. It also concluded that disclosure of such internal reviews would chill the internal review process and thus undermine efforts by companies such as Verizon to identify problems, potential remedial measures, areas for improvements, and refinements to its processes and procedures. Verizon concluded that even if DoITT needed Verizon’s internal reviews (and it does not), such material is protected from disclosure.

9. Electronic Maps

The Report correctly notes that Verizon declined to provide an electronic map of Verizon’s wire-center boundaries because of network security concerns. However, it fails to note that Verizon *did* provide DoITT with an electronic copy of a citywide deployment map. That map comports with the requirements of § 11.3.8 of the Agreement, which requires that Verizon maintain a “map showing the area of coverage for the provisioning of Cable Service . . .” Nowhere does the

³³ Email from Wayne Kalish, Director of Franchise Audit and Revenue, Franchise Administration, DoITT, to Monica Azare, Vice President & Deputy General Counsel, Verizon, dated November 5, 2014.

³⁴ See email from Marie Lasota, Assistant General Counsel, Verizon, to Linda Mercurio, Director — Risk Management, Franchise Administration, DoITT, dated November 20, 2014.

Agreement require Verizon to provide maps of its wire center boundaries. More important, electronic maps are not “reasonably necessary” to ensure compliance.

10. Timing/Access

As already discussed, there is no basis for the notion that there were any delays by Verizon, let alone for 147 days, in responding to DoITT’s proper requests.

11. Glossary

DoITT objects to the fact that when it requested a glossary of terms, the list provided by Verizon was limited to terms that were defined in the Agreement. Yet, when DoITT initially asked for a glossary, it did not identify any specific terms; nor did it do so later when Verizon asked for clarification of the request.³⁵ Of course, Verizon would have been willing to explain terms as they came up in conferences or in written exchanges between the parties (and it frequently did so), but it is unreasonable for DoITT to have expected Verizon to guess in advance which terms for which DoITT needed an explanation.

12. Software Logs

The Report claims that Verizon declined to provide computer software logs indicating when and how (if at all) the scripts used by customer service representatives to discuss service availability were changed. Nothing in the Agreement imposes obligations with respect to such logs, and DoITT does not need such logs to ensure Verizon’s compliance with the Agreement. The Agreement does require Verizon to provide prospective customers with certain information when they are requesting service, and Verizon fully adheres to those requirements. Indeed, Verizon provided DoITT with access to both its relevant customer service scripts for online and telephone communications, along with a presentation regarding process from the Verizon manager who oversees this aspect of the business.

IV. RESPONSES TO SPECIFIC PRELIMINARY FINDINGS

A. Finding No. 1: “Passage” of Households

Section 5.1 of the Agreement requires Verizon, subject to certain exceptions, to “pass all households served by Franchisee’s wire centers within the Franchise Area in accordance with the table attached hereto as Appendix F, with final completion no later than June 30, 2014.” Verizon has met that deadline and complied with its obligations under § 5.1. DoITT’s contrary conclusion is based on its own — unfounded — view of what it means to “pass” a household under the Agreement.

³⁵ The only exception was a request to re-define a term already defined in the Agreement, and another single additional definition which Verizon provided. Email from Wayne Kalish, Director of Franchise Audit and Revenue, Franchise Administration, DoITT, to Monica Azare, Vice President & Deputy General Counsel, Verizon, dated November 5, 2014.

The term “pass” is not defined in the Agreement. General dictionary definitions of the term refer to going by, past, beyond, or through a place (such as a building), and include no requirement as to how close a place must be approached in order to constitute a “passage.” Thus, there is nothing inherent in the word itself that would require Verizon to run cable directly in front of every building in the City in order to “pass” those buildings. Nevertheless, in both its original (April 7, 2015) draft Report and in the latest (June 9) version of the Report, DoITT has attempted to add an additional requirement to the Agreement by relying on a supposed “[cable] industry practice” of using the term to describe facilities that are “immediately adjacent” to a building. However, DoITT has offered no evidence of the practice itself — other than to set forth its own new “understanding” — or of the circumstances and contexts in which it is used. Even assuming the cable industry uses the term in that way, DoITT fails to explain why that usage should govern the unique undertaking that is described in the Agreement. In fact, it should not.

Tacitly conceding that the supposed “cable industry practice” was not a proper basis for its interpretation of this term, DoITT revised its Draft Report to assert that the passage obligation, for some reason, must be based on a definition of the term “Homes Passed” that is set forth in a “definition of terms” that was prepared by the FTTH Council for purposes of its “market research,” and that is in no respect connected to the Agreement. Although this contention is at least more specific than DoITT’s earlier vague claim of a cable industry usage, it is no more relevant to the interpretation of this specific Agreement. As a threshold matter, the fact that the parties did not intend to incorporate a definition akin to the FTTH Council definition into their Agreement — and that the argument based on the definition is an afterthought on DoITT’s part — is confirmed by the fact that the definition was not even mentioned in the prior version of the Report. More important, the parties had a very specific understanding of how the term would be applied under the Agreement — an understanding that was not based on any definition similar to the FTTH Council definition, and that intentionally deviated from the understanding adopted in DoITT’s prior agreements with the cable incumbents Cablevision and Time Warner Cable.³⁶

³⁶ Even assuming that it would be appropriate to ignore the Agreement’s plain meaning, the parties’ negotiations, and their course of conduct — and instead to accept DoITT’s claim, raised seven years after the execution of the Agreement, that the Agreement is governed by a supposed custom and usage — the FTTH Council definition would not help DoITT. DoITT has no evidence that the definition reflects a usage of the trade today, let alone that it was an established, unvarying usage of the trade that governed industry parlance when the parties began their discussions years ago. On page 1 of the document that DoITT cites, the Council acknowledges the “proliferation of terms and acronyms,” which it notes are “useful to individual organizations for their specific purposes,” but that “lack precise definitions” recognized in the trade. The Council explains that it developed its definitions for use in its own “market research.” DoITT cites no evidence suggesting that the Council’s definition of “homes passed” was consistently used in the trade in 2008. Indeed, the definition itself reveals the flexibility intended by the Council by incorporating the word “[t]ypically,” thus making it clear that parties could choose to deviate from the definition if it was not suited to their purposes. To the extent that either Verizon or the City gave any thought to the Council’s glossary when the Agreement was negotiated — and there is no evidence that they did so — they clearly decided to adopt their own definition instead.

Although the parties did not intend to adopt a definition similar to the FTTH Council definition, it is worth noting that that definition in any event depends on whether serving the target location from facilities already in place would or would not require “further installation of *substantial* cable plant” (emphasis supplied). This generic definition is thus flexible enough to accommodate a wide variety of strategies for serving a target location from facilities installed nearby.

Those agreements — although very similar to the Verizon Agreement in numerous other respects — used significantly different language in describing passage requirements. They stated that:

a household is “passed” when functioning System facilities have been installed *in the street fronting the building* in which the household is located, such that Cable Service could be provided to such building in conformance with the provisions of Section 5.3 (assuming no delays in gaining lawful access to any private right-of-way).³⁷

This narrow and specific definition of “passed” in the incumbent agreements is not found in the Verizon Agreement, in part because during negotiations with the City, Verizon had concerns — which it explicitly raised during the negotiations — about the phrase “in the street fronting the building.” Verizon recognized that it serves many MDUs from an adjacent MDU or from a chain of such MDUs. Accordingly, the FTTP Network is not described in the Agreement in terms of any particular path, but more generally as “transport connections and equipment . . . established and . . . operational to the fiber distribution terminal serving the residence requesting fiber-enabled services . . .” (*See* Verizon Agreement §1.25.) And, while the Agreement states that the “FTTP Network will pass all households” in accordance with a deployment schedule, in explaining the term “pass” it provides only that “‘pass’ or ‘passage’ of a household shall mean MDU’s whether or not network created and single family units whether or not a drop is installed” — which of course does not constitute a definition of the term.

Verizon’s commitment under the Agreement was a unique one. It had not agreed to build a conventional (*i.e.*, hybrid fiber/coax) cable network. Nor was it undertaking a “greenfield” deployment in an area that the company had not previously served. Rather — as was made clear in the discussions leading up to the Agreement, and as was memorialized in the Agreement itself³⁸ — Verizon intended to deploy an all-fiber network as an *upgrade* to its existing copper outside plant, and therefore to deploy fiber along the same routes as it had used historically to serve the buildings in the City, and to obtain access to individual buildings using strategies similar to those it had used in the past. Those strategies included not only the use of public rights-of-way, but also, in many cases, the use of building-to-building connections. The word “pass” was understood and used by the parties in that context.

Because of the lack of an explicit, restrictive definition, either in the Agreement or in the dictionaries, the term “pass” must take its meaning from two key facts. The first is the *omission* from the Verizon Agreement of the specific requirement of the prior incumbent agreements that cable be installed “in the street fronting” each building — an omission that is explained by the negotiating history described above. This omission speaks volumes as to the intentions of the parties.

³⁷ Language from 2011 incumbent agreements (emphasis supplied).

³⁸ *See, e.g.*, Agreement at 2 (“WHEREAS, the Franchisee is in the process of upgrading its existing Telecommunications Services . . . and Information Services . . . network through the installation of the FTTP Network . . .”).

Second, Verizon’s “passage” obligation must be interpreted with reference to the role that that obligation plays in the context of § 5 as a whole. Under the Agreement, passage is one of the “gating” factors that triggers Verizon’s obligation to provide Standard Installations and NSIs within the time frames set forth in § 5.4. This is because § 5.5(A) establishes an exception to those time frames and the related installation obligations where “the FTTP Network has not been deployed” — *i.e.*, where the building or buildings in question have not yet been passed within the meaning of § 5.1.

In this context, with passage generally triggering the obligation to meet § 5.4’s installation timelines, Verizon’s facilities should be considered to “pass” a building when their location would enable Verizon to accept orders for service and to fulfill them within the time frames established for Standard Installations and NSIs (whichever may be applicable based on the definitions set forth in the Agreement), provided that none of the other § 5.5 exceptions applies.³⁹ When Verizon places its facilities at the ends of a block on which a household is located, and then moves on, Verizon’s network has “passed” that household.

Aside from providing the word “pass” with a meaning appropriate to § 5 as a whole, that interpretation avoids treating the Agreement as a source of specific mandates concerning exactly where and how Verizon must deploy its fiber-optic cable. Such micromanagement by the City of Verizon’s network engineering decisions would be inconsistent with the parties’ clear understanding that Verizon would be able to deploy its FTTP network along existing routes and pathways, and to access buildings in the same ways as it had in the past. Moreover, § 5.1.4 of the Agreement expressly recognizes Verizon’s discretion with respect to the deployment of facilities by stating that “nothing herein shall be construed to limit Franchisee’s discretion with respect to the order of geographic areas to be wired,” subject to the equitable deployment assessment (which Verizon has satisfied).

This understanding of the passage obligation is confirmed by DoITT’s course of conduct, including its express approvals on four separate occasions (2008-2011)⁴⁰ of reductions in the amount of Verizon’s performance bond pursuant to Agreement § 15.9.2.1. Under that section, Verizon’s right to such reductions was based on the percentage of premises that it had passed, and DoITT in fact found in each case that Verizon had either “met” or “exceeded” its obligation

³⁹ These other exceptions include periods of force majeure and inability, despite good faith efforts, to obtain valid legal authority to access an MDU. As noted previously, “access” in this context means not only an inability to get *into* a specific building, but also an inability to use intervening buildings to get *to* a building.

⁴⁰ Letter from DoITT Commissioner Paul Cosgrave to Darian Gill, Verizon Franchise Manager, dated November 23, 2009; Letter from DoITT Commissioner Carole Post to Darian Gill, Verizon Franchise Manager, dated October 8, 2010; Letter from DoITT Commissioner Carole Post to Darian Gill, Verizon Franchise Manager, dated September 16, 2011; and Letter from Rahul N. Merchant, DoITT Chief Information and Innovation Officer to Darian Gill, Verizon Franchise Manager, dated May 29, 2013. It should be noted that, notwithstanding DoITT’s newly adopted position on this issue, in each of the foregoing letters, DoITT acknowledged its satisfaction with Verizon’s method for determining “passage” and its willingness to certify passage on that basis.

Subsequent requests for reduction of the performance bond were not made by Verizon on a regular basis because of force majeure issues raised by Hurricane Sandy.

to pass households in accordance with Appendix F of the Agreement. In determining whether to grant its approval on those occasions, DoITT personnel reviewed Verizon's plant at specific locations, including locations in which Verizon's "passage" of a block was based on the existence of facilities at either end of the block (but not along its entire length). Had it believed at the time that the premises on such blocks had not been "passed," it presumably would have withheld its approval. But it did not do so. Thus, even if Verizon's definition of passage had not been established by the parties' original intent — and, as described above, it was — it was established by their course of performance under the Agreement. Verizon is now being whipsawed between DoITT's previous and repeated affirmations that Verizon "passed" households even in areas where its facilities did not run along an entire block⁴¹ and the contrary theory now set forth in the Report. DoITT provides no explanation of this striking about-face on its part.

In short, in some cases, Verizon has met its passage obligation by running its facilities along the entire length of the block on which a building is located. In other cases — and with equal validity under the Agreement — Verizon has met the obligation by having facilities at the ends of the block, but not along its length, with a view towards accessing individual buildings through building-to-building connections, which in most instances require building approval. Through either of these authorized means, Verizon had passed every household in the City by November, 2014, and thus now complies with its passage obligation under the Agreement. The Report's recommendation that Verizon be required to "build facilities on every residential block in the City" in order to comply with that obligation is inconsistent with the Agreement and, if adopted, would rob Verizon of the flexibility for which Verizon bargained, and to which the parties agreed.

B. Finding No. 2: DoITT's Claims of Unavailability of Service to Certain Households

The Report claims that Verizon "show[s] residential household addresses as 'unavailable' despite claiming to have passed all residential households in the City." This claim is equally baseless.

Because Verizon has fulfilled its passage obligation, every household in the City (subject to the exceptions negotiated and agreed upon in § 5.5 of the Agreement) is eligible for either an NSI or a Standard Installation, and can receive service within the timeframes prescribed in the Agreement for such installations. In either case, Verizon describes the options available to the inquiring customer in a manner that is consistent with the obligations imposed by the Agreement.

⁴¹ Before DoITT decided to come up with a new, seven-years-after-the-fact definition of "passed," it rejected allegations similar to those set forth in the Report, and told the public: "Virtually all New York City households have access to broadband connectivity today, and the ongoing, on-schedule deployment of Verizon fiber (known as FiOS), now estimated at 80% across the five boroughs, will bring additional competition to the broadband market[.]" (See http://www.huffingtonpost.com/steve-rosenbaum/ny-tech-scene-rising_b_3177242.html). The parties' course of conduct is dispositive proof that DoITT's new interpretation of the passage provision amounts to an impermissible re-write of the Agreement.

When a building is already network-created for FiOS (and requesting customers are thus eligible for a Standard Installation), Verizon’s website responds to inquiries by stating that FiOS is available at the specified address, and there is no mention of DirecTV. By contrast, when a building is not yet network-created (meaning that the six- or twelve-month timeframe for an NSI is generally applicable), an inquiring customer is provided with two options. The first option, set forth at the top of the page in bright red capital letters in the largest font that appears on the entire page, says “LOOKING FOR VERIZON FIOS?” — and then instructs the customer to click immediately below to place a request to bring FiOS to their location. On the same page, below the FiOS language, Verizon also indicates that bundled DirecTV/Verizon products are available. Including information on the DirecTV option recognizes that many residents may not be in a position to wait six to twelve months for Cable Service due to MDU access issues, and gives such residents the ability to obtain Cable Services in the short term, at a lower rate than if they were purchased separately from Verizon and DirecTV. Finally, with respect to the website scripting concerning NSIs, the language below (which appears after clicking below the “LOOKING FOR VERIZON FIOS?” language) clearly conveys to the resident that he/she can request FiOS at their location:

FiOS service is available in your neighborhood just not in your building right now. Equipping your building with FiOS may take up to 6-12 months to complete. Fill out the information below and we'll tell you when FiOS is ready to order. Don't worry, your information is only used to notify you about FiOS — so go ahead and put yourself on the list!

Importantly, § 5.4.2.1 of the Agreement provides that the six-month NSI period can be extended to twelve months if the company notifies the potential customer of “the *current unavailability* of Cable Service at the location.” (Emphasis supplied.) Thus, the Agreement specifically recognizes that service is “unavailable” in situations in which an NSI is not completed within six months.

C. Finding No. 3: Timing Requirements for NSIs

DoITT contends that Verizon does not complete all NSIs⁴² to MDUs within the time prescribed in the Agreement. However, § 5.5(C) of the Agreement creates an exception from the prescribed times for “periods of delay caused by [Verizon’s] inability, after good faith efforts, to obtain valid legal authority to access any MDU [Multi-Dwelling Unit] in the Franchise Area for the purpose of providing Cable Service to units within such MDU on other than commercially unreasonable terms and conditions with respect to each such MDU.” Such “periods of delay” are therefore not instances of non-compliance. Verizon’s inability to obtain access to buildings

⁴² NSIs involve the process of bringing fiber that is in the city streets (frequently, underground) into an MDU, upon the request of a resident in such MDU. These installations often involve bringing fiber from a manhole to a point of entry on the block, and often times then traversing multiple properties within that block until reaching the building in which service was requested.

despite its good faith efforts has been a significant cause of NSIs not being completed within the six- or twelve-month timeframes set forth in § 5.4 of the Agreement.⁴³

The Report attempts to minimize the significance of § 5.5(C) by stating that the section “does not provide for an exception to the six-month deadline where Verizon is unable to obtain access to private property other than the multiple dwelling building from which the NSI order originated.” Initially, it is important to note that the reference to a “six month deadline” is inaccurate. Section 5.4.2 of the Agreement makes it clear that completing NSIs within six months is *not* required either if “a later date is agreed to” by the potential customer, or if Verizon advises the potential customer “of the current unavailability of Cable Service at the location as set forth in Section 5.4.2.1.” Verizon’s general practice is to issue that notice, and as a result, the relevant NSI period is twelve months, not six months.

Second, § 5.5(C) covers inability to obtain authority to “access” the MDU to be served. As noted above, “access” includes both the ability to get *into* a building (due to opposition by the owner or manager of the building itself), and inability to get *to* a building (due to the refusal of owners or managers of adjacent buildings to permit building-to-building connections). Thus, a lack of consent or authorization from the owners of *other* buildings on the block to which Verizon needs to attach its facilities would amount to an inability to obtain access to the building in which the NSI request originated, and thus would trigger § 5.5(C).

Verizon has for several years now been transparent about the challenges associated with delivering service within the NSI timeframes, and has on numerous occasions requested DoITT’s assistance with these issues in accordance with the Agreement, but to date, those requests have largely been ignored. Moreover, DoITT has ignored the fact that when Verizon is provided access to buildings, it has over-delivered on its Franchise obligations by enabling service at every unit in the entire building, rather than just at the particular unit that requested service. This approach has accelerated access to the network for over 588,000 units that had not yet requested Verizon’s service.

Because Verizon was the first cable-service over-builder that agreed to cover the entire City, both the City and Verizon anticipated difficulty in gaining access or delayed access to MDUs in which cable service already existed and which at times were subject to exclusive marketing agreements with incumbent providers. Section 5.5.2.1 of the Agreement, commencing on July 1, 2012, calls for a series of procedures for gaining access to MDUs via the State’s mandatory access law, Publ. Serv. Law § 228. Section 5.5.2.1 calls for Verizon to seek the help of the Commissioner of DoITT and/or the Public Service Commission if Verizon has difficulty gaining access to MDUs. In addition, if Verizon finds that the Additional Procedures outlined in § 5.5.2.1 were not working efficiently, it can request that the DoITT Commissioner waive the process (or extend the timing requirements of the Additional Procedures) outlined in § 5.5.2.2 upon a showing of good cause. Section 11.2.1 of the Franchise further requires Verizon to report to DoITT regarding Verizon’s use of the Additional Procedures on an annual basis. Those

⁴³ As noted previously, § 5.5(C) covers both inability to get *into* a building (due to opposition by the owner or manager of the building itself), and inability to get *to* a building (due to the refusal of owners or managers of adjacent buildings to permit building-to-building connections).

reports provide significant data on the number of outstanding NSIs, how long they have been outstanding, and Verizon's use of the Additional Procedures to try to gain access to MDUs.

On multiple occasions (including, without limitation, each Additional Procedures report filed with DoITT since the initial filing was first required in 2013), Verizon has informed DoITT of substantial burdens and delays associated with gaining access to MDUs in a competitive cable environment. On February 15, 2013, Verizon wrote to the Commissioner of DoITT noting that the "current processes do, however, present significant challenges for efficient network creation in a timely fashion . . . Further the current processes do not adequately address the MDU's that require traversing adjacent properties to reach them . . . Verizon would welcome the opportunity to discuss alternative solutions to establishing the priority of MDU construction based on these and other factors . . ." Finally, some seven months after Verizon's original request, DoITT met with Verizon on MDU access issues on September 16, 2013. At the September 16th meeting, Verizon presented an alternative approach to DoITT for MDU access. However, on October 11, 2013 DoITT met with Verizon again and rejected the approach as a substitute for Verizon's current obligations.

On February 15, 2014, Verizon submitted its Annual MDU Additional Procedures Report to DoITT. In that report, Verizon notes that "[a]s we have previously discussed with DoITT, access issues continue to be the largest obstacle to network creating many of these properties (MDUs). More specifically, Verizon encounters the greatest resistance when seeking to gain access to those properties that it must traverse with fibers — but which are not subject to an NSI request — in order to reach a single property with an outstanding NSI request." In the same report, Verizon (as it had done a year earlier), explicitly requested assistance from DoITT pursuant of §§ 5.5.2.1.4 and 5.5.2.2 of the Franchise (requesting a waiver on Additional Procedures or to extend the timeline on Additional Procedures), and requested a meeting with DoITT to discuss the MDU issues. Verizon never received a response to its request for assistance and its request to meet with DoITT.

Once again, in February 2015, Verizon wrote to DoITT seeking its assistance in gaining more timely access to MDUs, stating:

As was done in the 2012 and 2013 Additional Procedures Reports, Verizon, in the interest of furthering our mutual interest of obtaining access to as many MDU's as possible and consistent with Section 5.5.2.1.4 of the Agreement, requests a meeting with DoITT to obtain its input and assistance regarding MDU access issues. Additionally, Verizon would like to discuss with the Commissioner and Staff, consistent with Section 5.5.2 of the Agreement, the process involved in the Additional Procedures and the use of Section 228 of the New York Public Service Law.⁴⁴

⁴⁴ 2014 MDU Additional Procedures Report, February 13, 2015.

As was the case with the request submitted in 2014, Verizon never received a response from DoITT concerning this issue.⁴⁵

Verizon actually expected this audit to present yet another opportunity to discuss the challenges with the existing processes and requirements with DoITT. To that end, Verizon, in painstaking detail, demonstrated to DoITT the efforts of Verizon’s engineering and legal personnel in order to gain access to MDUs. This included a discussion of the complexities involved in negotiating access to a building or in many cases, multiple buildings on a block in order to satisfy a single service request. It also highlighted that multiple factors can contribute to delays associated with delivering service (many of which are not in Verizon’s control), among them:

- uncooperative or apathetic property owners;
- MDU property boards that meet on limited schedules;
- multiple rounds of negotiations prior to formalizing Verizon’s access and/or design documents;
- the need for access to MDUs on two occasions (first to survey and create a design plan, then to actually install the network facilities in accordance with the approved plan) and the potential for resistance from property owners at both stages; and
- the challenges of obtaining accurate property owner information.

Verizon’s hope was that DoITT would finally see the need for alternative procedures and assistance in gaining access to MDUs. Instead, all Verizon received from DoITT was a baseless claim of non-compliance that ignored three years of attempts by Verizon to communicate with DoITT and to improve and increase the pace of access to MDUs.

Equally baseless is DoITT’s recommendation that Verizon ensure it has “sufficient staff and resources” to address NSIs within twelve months. Setting aside the fact that it is based on an incorrect and factually unsupported assumption that Verizon does not maintain sufficient staff and resources, this recommendation, if adopted, would vitiate the Agreement’s allowance of additional time to address NSIs where such additional time is needed in a particular situation.

D. Finding No. 4: Requests for “Non-Passed” Residents

While this issue is moot because Verizon has now passed all households in the City with its FTTP Network, it should be noted that § 5.5 of the Agreement sets forth, as the first enumerated exclusion to Verizon’s Cable Service availability obligations, circumstances where “the FTTP Network has not been deployed or a VSO is not yet open for sales.” As discussed above, this

⁴⁵ On October 21, 2013 then DoITT Commissioner Raul Merchant sent the New York Public Service Commission (“NY PSC”) a letter requesting quick action on Orders of Entry Request. The letter does not mention Verizon or any other cable television provider.

exclusion would have applied to those households the Report references where Verizon had not yet passed the property from which the request derived. However, again, because Verizon has now passed all households in the City, this issue is in any event no longer relevant.

E. Finding No. 5: NSI Recordation/Communications

Contrary to the Report’s finding, Verizon does not treat customers inconsistently and accurately tracks customer requests for service in its systems. Had DoITT completed its review instead of relying on the negligibly small sample size as the basis for this finding, the review would have demonstrated that while there may be some expected anomalies in Verizon’s tracking system from time to time,⁴⁶ Verizon’s systems and communications with Subscribers and potential Subscribers are consistently accurate and appropriate. Notwithstanding the foregoing, Verizon recognizes the importance of providing clear communications concerning FiOS availability in New York City. To that end, Verizon has conducted training sessions with its call center representatives concerning the specific protocols and scripts for FiOS availability in New York City and has also issued reminder notices to the call centers of these procedures.

F. Finding No. 6: Verizon’s Communication with Subscribers

As noted immediately above, Verizon stands by its Subscriber communications policies and is proud of its record in that regard. However, as a business, Verizon is constantly reviewing those policies and practices to identify areas in need of enhancement and will continue to do so. Verizon appreciates DoITT’s role in conveying Subscriber feedback on an ongoing basis, as Verizon wants to ensure that City residents receive accurate and comprehensive information regarding Verizon’s Cable Service offerings. As a result, Verizon is in the process of modifying its existing communications protocols with NSI requesters to provide more transparency about the process of bringing FiOS to buildings in New York City, and to also provide more communications touch points during that process.

G. Finding No. 7: Section 11.1 Compliance

This issue has already been addressed; *see* discussion in Section II(B) and II(C), above.

H. Finding No. 8: Complaint Procedures for Non-Subscribers

Consistent with § 11.3.4 of the Agreement, Verizon maintains records of “installation/reconnection and requests for service extensions.” This would include requests for Cable Service by prospective Subscribers.

While DoITT cites § 11.3.1 of the Agreement to suggest that Verizon has an obligation to track “complaints” from any person irrespective of whether they are a Subscriber, that Section must be read in conjunction with § 7 of Appendix A, entitled “Subscriber Complaints,” which establishes in great detail the manner in which Verizon responds to and tracks complaints. As the title of

⁴⁶ No systems — not Verizon’s, not the City’s, not anyone’s — are perfect. Perfection is an impossible goal, among other reasons because these systems are dynamic databases with information being updated on a regular basis.

that Section indicates, Verizon’s obligations with respect to the handling of complaints is appropriately limited to actual Subscribers (as defined in § 1.46 of the Agreement) with whom Verizon is in contractual privity. Accordingly, a non-Subscriber could not register a “complaint” with Verizon pursuant to the Agreement. To adopt DoITT’s interpretation that any person — without regard to their status as a subscriber or any other stated limitation, including whether or not the person currently lives in the City of New York — may submit a “complaint” would lead to absurd results if taken to its logical conclusion (*e.g.*, a resident of a West Coast City complaining that Verizon does not carry its local programming in New York City).

I. Finding No. 9: Bulk Agreements

This finding is particularly troubling for several reasons. First, it is based strictly on limited anecdotal evidence. Second, DoITT never raised this issue with Verizon during the review. Had DoITT approached Verizon about the issue, Verizon would have responded that as a policy, it does not offer preferential build treatment to buildings based on their willingness to enter into a bulk agreement. Moreover, Verizon would have informed DoITT that upon learning of the correspondence with the complainant at 1612-1614 York Avenue, Verizon reinforced its policies with the employee involved in the miscommunication. Verizon would also have responded that general messaging concerning these matters was distributed throughout that sales organization to ensure this would not be an issue going forward. With respect to DoITT’s two unidentified informants, Verizon was never afforded the opportunity to investigate and/or respond to the allegations. Finally, it should be noted that in a City of over 3.5 million households and over 8.4 million people, a single complainant at one address and the unsubstantiated opinions of two unidentified informants apparently constituted the entire basis for this finding.

J. Finding No. 10: Manual of Procedures

This issue has already been addressed. *See* Section III(C)(7), above.

K. Finding No. 11: Data Integrity

As DoITT is well aware, Verizon is the first and only cable provider to enter into a cable-television franchise agreement that offers service throughout all five boroughs of the City. That Agreement imposed a unique and challenging obligation to complete construction of an advanced, all-fiber network. With well over 3.5 million households, the City is the largest municipal franchise area in the entire country. In an undertaking of such a vast size and scale, some data reporting errors and challenges can be expected. Verizon recognizes that the audit uncovered some limited data irregularities, and will be further investigating their root cause to limit their occurrence in the future. These efforts remain a work in progress. Verizon will also be reviewing its data maintenance processes with an eye towards improving data accuracy generally — these efforts will include regular reviews of Verizon’s data systems to limit future occurrences of data issues.

V. CONCLUSIONS

The construction of Verizon’s FTTP network and the deployment of Cable Service throughout New York City has been a project of unprecedented scope and scale. Verizon stands behind its efforts, and is proud of its many accomplishments under the Agreement to date. Clearly, this is

an ongoing effort, and Verizon recognizes that in some cases, there may be opportunities for process improvements. Indeed, Verizon and DoITT share the mutual goal of ensuring that all City residents have the opportunity to avail themselves of the benefits of the competitive, innovative, and high-quality services Verizon's entry into the market has made available for the first time.

Unfortunately, the Report does a disservice both to Verizon's unprecedented commitment and achievements and to DoITT's legitimate role as an agency overseeing Verizon's implementation of the Agreement. Its findings and conclusions are in numerous respects flawed, misleading, and baseless. And, the entirety of the Report is the product of a fundamentally unfair and arbitrary process that was initiated in the press, unprofessionally conducted, and abruptly terminated before DoITT could collect information that it had conceded would be necessary to its review.

Contrary to the Report's conclusions, Verizon cooperated fully with the review process, declining only to provide information that was beyond the scope of review as set forth in the Agreement. Substantively, the review was based on erroneous factual conclusions and incorrect interpretations of the Agreement. In particular, the Report's conclusion that Verizon has not complied with its obligation to "pass" all households in the City is based on a clear and significant misinterpretation of what that obligation entails. Its conclusion that Verizon has not met the timeframes for NSIs ignores § 5.5(C) of the Agreement, which creates an exception to those timeframes in cases where Verizon is unable, despite good faith efforts, to obtain access to buildings. Indeed, DoITT ignored Verizon's multiple requests to provide assistance with building access issues, despite the fact that such assistance was explicitly contemplated by the Agreement.

Despite the Report's many flaws, Verizon has attempted to identify opportunities for process improvements, both independently and in response to the limited areas of constructive insight provided by the Report. Moreover, it believes that there may be further opportunities for Verizon and DoITT to partner in order to address some of the challenges that Verizon has faced in the implementation of the Agreement, with a view towards enabling more City residents to enjoy sooner the benefits of Verizon's fiber-optic network. But such partnering efforts will be hindered, not facilitated, by the sort of factual errors and misinterpretations of the Agreement that permeate the Report.