Thomas J. Tauke
Executive Vice President
Public Affairs, Policy and Communications

140 West Street, Floor 29
New York, NY 10007
Phone 212 395-1032

1300 I Street NW
Suite 400 West
Washington, DC 20005
Phone 202 515-2404
thomas.j.tauke@verizon.com

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The Honorable John D. Dingell
U. S. House of Representatives
Chairman, Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Dingell:

On behalf of Verizon, I am responding to your September 30, 2008 letter asking questions on a number of telecommunications policy topics that were previously raised at the July 22, 2008 hearing of the Subcommittee on Telecommunications and the Internet of the Committee on Energy and Commerce. If you need additional information on any of these topics, please let me know how Verizon can be of assistance.

Responses to Questions:

Forbearance

- **Are you aware of any provisions of Title II of the Communications Act that include a statutory deadline for Commission action?**

Yes, the Communications Act includes numerous provisions that set statutory deadlines on Commission action including provisions in Title II itself and other provisions that apply with respect to Title II. These provisions include:

  - **Section 7** – Requiring Commission to determine within one year of filing of a petition or application whether a new technology or service is in the "public interest"

  - **Section 8** – Requiring Commission to review schedule of application fees every two years

  - **Section 9** – Requiring Commission to adjust fee schedule "for any fiscal year after fiscal year 1994" to reflect changes in the Commission's activities and requiring annual report to Congress on fees

  - **Section 10** – Requiring Commission to address forbearance petitions within 12 months

- **Section 11** – Requiring Commission to undertake review in each even-numbered year to determine, and modify or repeal, regulations that are no longer "necessary in the public interest"

- **Section 204 –** Requiring Commission to issue orders concluding any review of the lawfulness of a "new or revised charge, classification, regulation or practice" within 5 months

- **Section 208 –** Requiring Commission to rule on complaints against common carriers within 5 months

- **Section 225** – Requiring Commission to rule on complaints related to regulations to ensure services for hearing- and speech-impaired within 180 days

- **Section 252** – Requiring Commission to preempt state commissions for failure to act on arbitration of interconnection agreements within 90 days, and requiring such arbitrations to be completed within 9 months

- **Section 257** – Requiring Commission to identify and eliminate within 15 months barriers to market entry by entrepreneurs and small businesses and to report to Congress every three years concerning regulations that it prescribed to eliminate such barriers and to make recommendations concerning legislation

- **Section 260** – Requiring Commission to address telemessaging complaints within 120 days

- **Section 271** – Requiring Commission to issue decisions within 90 days on applications by Bell operating companies to provide InterLATA services, and to address complaints about such companies compliance with conditions for such services within 90 days

- **Section 273** – Requiring Commission to address within 90 days a petition for sunset of certain manufacturing and standards-setting limitations on Bell operating companies

- **Section 275 –** Requiring Commission to address complaints related to alarm monitoring services within 120 days

- **Section 405 –** Requiring Commission to act within 90 days on petitions to reconsider orders concluding a hearing under Section 204(a) or Section 208(b)

Numerous other provisions of Title II set statutory deadlines for the Commission to adopt regulations, including: Section 224 (pole attachments), Section 225 (hearing-impaired and speech-impaired), Section 226 (telephone operator services), Section 227 (Junk Fax), Section 228 (Pay-Per-Call), Section 251 (unbundling, interconnection, resale and collocation), Section 254 (Universal Service), Section 259 (infrastructure sharing), and Section 276 (payphones).

- **Have you ever been party to any proceedings at the Commission where such a statutory deadline was implicated?**

Yes, Verizon previously has participated in a wide-range of proceedings involving statutory provisions that include deadlines, including a number of such proceedings prior to the passage of the 1996 Act that were factors in Congress's adoption of a forbearance process with a concrete deadline. Among the categories of proceedings in which Verizon previously participated are:

  - Various types of proceedings in which we previously sought authority to introduce innovative new technologies and services, which are subject to Section 7's one year deadline. For example, these have ranged from proceedings prior to the 1996 Act asking for authority to deploy what at the time were cutting-edge, fiber-based video services to serve mass market customers in competition with the monopoly cable providers, to proceedings seeking permission to introduce innovative facilities management and other services for use by our carrier and enterprise customers.

  - Proceedings in which we have proposed to remove various types of outdated regulations that harm the public interest in light of changes to market conditions, competition, and/or technology. For example, these have included proceedings where we requested relief from legacy "dominant" carrier or unbundling regulations – which were designed to apply to a monopoly provider operating in a one-wire world – in areas where we now face stiff competition, and may even have less than half the customers in a particular area. They also have included other proceedings ranging from various biennial reviews where we have urged the elimination of rules that no longer make sense in light of changes in market conditions and technology, to petitions aimed at removing unbundling obligations that undermined the incentives to deploy new broadband facilities. These proceedings are subject to time limits imposed by the 1996 Act; prior to that, there were no time limits on such proceedings.

  - A wide range of Commission reviews or disputes with other parties under Section 204 and 208, often related to the terms of new or changed services to account for changed market conditions or changing technologies. These are subject to a five-month statutory time limit adopted in the 1996 Act.

  - Applications for permission to offer long distance services in competition with other carriers under section 271. Verizon filed applications seeking authority to offer long distance services in each of the states in which it provided local telephone service as a Bell operating company. These proceedings were subject to a 90-day time limit.

- **In those cases, did the Commission act in accordance with the statutory deadline?**

Prior to the passage of the 1996 Act, the Commission missed its deadlines in many instances, and often by a wide margin. In these instances, Commission delay often prevented parties from introducing innovative new services, saddled providers with outdated and misplaced regulatory burdens that increased costs or resulted in the inefficient structuring of services, and resulted in protracted and costly disputes for all concerned.

For example, notwithstanding Section 7's requirement that the Commission decide within one year whether new technologies or services are in the public interest, the Commission routinely failed to do so when providers like Verizon sought to introduce competitive or innovative services like certain innovative video services provided over fiber-based networks – services that would have brought competition to monopoly cable operators and expanded the competitive choices available to consumers. Notwithstanding the one year deadline, Commission approval and the removal of certain regulatory barriers only occurred following several years of consideration. Likewise, when Verizon petitioned to offer its new switched Facilities Management Service to assist our carrier and enterprise customers to manage their complex telecommunications more efficiently, the Commission took 33 months to review that petition until 1997, thus delaying the roll-out of a competitive new choice for customers.

Similarly, in the wake of the 1996 Act, the Commission likewise has previously either construed deadlines that were added by the Act to be largely meaningless or did not meet the new deadlines where the statute did not specify the consequences of failing to do so. For example, although Section 11 contemplated that the Commission would quickly and routinely clear away outdated regulation every two years in order to account for increasing competition and changing technology and market conditions, previous Commissions essentially construed the time limits to make the biennial review process a paper tiger. The Commission interpreted the statutory deadline as only requiring a report discussing whether regulations are any longer necessary, but not Commission action on those determinations within any particular period of time.

Likewise, the 1996 Act reduced the time to resolve tariff investigation to 5 months for any new investigations and 12 months for any investigations pending at the time of the Act's passage. Nonetheless, while the current Commission has made progress in clearing the backlog of investigations that it inherited, prior Commissions allowed investigations to languish years beyond their deadline. To cite just a couple of examples, the Commission's investigation into Verizon's tariff concerning arcane methods for calculating price levels under a subsequently abandoned price cap regime stretched out for more than a decade, even though the statutory deadline was initially 15 months (and later 12 months, following the adoption of the 1996 Act). Similarly, the Commission's tariff investigation into cost recovery related to certain employee benefits stretched for more than a decade before the Commission concluded the inherited investigation in 2005.

Moreover, while Congress changed Section 208 as part of the 1996 Act to place a 5 month deadline on complaints, and 12 months for any complaints pending at the time of the Act, the Commission previously construed this deadline to apply only to a subset of complaints – formal complaints involving the lawfulness of tariffs filed with the Commission. And even in cases where the

FCC construed the deadline in Section 208 to apply, the Commission sometimes has failed to meet it. For example, in the context of a complaint brought by AT&T that was subject to a 15-month statutory deadline when it was filed, the Commission did not issue a decision until 2001 – over four and one half years later.

- **If not, did you seek any remedy in an effort to force the Commission to comply with the statutory deadline? What was the outcome?**

We have in some prior instances challenged the Commission's failure to act in a timely manner. The courts, however, generally treat statutory deadlines as hortatory and non-binding unless the statute itself specifies some specific consequence that will flow from an agency's failure to comply with its deadline. As the Supreme Court has stated, "if a statute does not specify a consequence for noncompliance with statutory timing, the federal courts will not in the ordinary course impose their own coercive sanction." Likewise, the D.C. Circuit has said that "absent a clear indication that Congress intended otherwise, [courts] will deem a statutory deadline to be directory." This also was the conclusion of the 8th Circuit when we and others challenged the Commission's failure to resolve a rate complaint within the time required by the 1996 Act.

- **If the deemed granted language were removed from Section 10, could companies still seek regulatory relief under Section 10? If the deemed granted language were removed, would the Commission still be operating under a statutory deadline to act on forbearance petitions?**

Yes, companies could still seek regulatory relief, but the statutory deadline effectively would cease to have any binding effect on the Commission and the forbearance process would become less effective. As discussed above, if a statute fails to assign a consequence for an agency's failure to meet a statutory deadline, the courts will not supply one. As a result, the forbearance process – which has been highly effective at prompting Commission action within at least 15 months – would become much less so and the result would be harm to competition and consumers. In a fast-paced, competitive, and quickly-evolving marketplace like the one for communications services, allowing outdated rules and regulations to remain in effect for extended periods of time distorts competition and inhibits innovation and investment, all to the detriment of consumers.

- **From November 2008 well into 2009, it is highly likely that the Commission will operate with only four Commissioners. Does Verizon have any forbearance petitions currently pending at the Commission that could come due during that time?**

Yes. Verizon currently has three forbearance petitions pending that could come due during that time period. These petitions fall into two categories. First, Verizon filed a petition for forbearance from certain antiquated recordkeeping and reporting requirements. The Commission has already addressed most aspects of that petition in prior orders adopted earlier this year, but the twelve-month deadline for action on the remaining issues in the petition is November 26, 2008. Second, Verizon filed two petitions requesting relief from certain unbundling requirements in two locations (Rhode Island and Virginia Beach) where competing providers have already won a large share of the retail telephone business. The twelve-month deadlines for those two petitions are February 14, 2009 and March 31, 2009. All of these

petitions have already been the subject of a complete notice and comment cycle and could be decided by the Commission in advance of the statutory deadlines. Their deadlines could also be extended by an additional 90 days each.

- **If the Commission is again operating with only four Commissioners, do you think it is appropriate for the Commission to allow a petition to be deemed granted without an accompanying written order? Please explain. Do you think it is appropriate for the Commission to allow a petition to be deemed granted without a vote? Please explain.**

As an initial matter, the Commission has routinely voted on orders addressing forbearance petitions, rather than allowing them to be deemed granted. Of the 102 forbearance petitions decided since enactment of the 1996 Telecommunications Act, 98 have been decided on the basis of a majority vote of Commissioners (20 were granted, 37 were denied, and 41 were granted in part and denied in part). The remaining four were approved under the "deemed granted" provision of Section 10, but three of those involved entirely noncontroversial matters and the fourth (Verizon's forbearance petition for enterprise broadband services) occurred as a result of a tie vote among the four sitting commissioners at the time. Many other petitions over the years have been withdrawn by parties faced with the likelihood that the Commission was prepared to deny their petitions before the deadline. This track record shows that the Commission has voted on orders addressing forbearance petitions rather than allowing petitions to be deemed granted. It also shows that, precisely as a result of the "deemed granted" clause, and unlike some its other statutory deadlines, the Commission has decided forbearance petitions and adopted orders within the time prescribed by Congress.

The experience of the last 12 years also shows that most orders addressing forbearance petitions have garnered more than a simple majority of commissioners. Indeed, the overwhelming majority of orders addressing forbearance petitions have been free from controversy – more than 70 percent of petitions have been addressed through orders adopted unanimously or decided by a bureau on delegated authority. And this statistic does not even take into account all of the petitions that have been withdrawn by parties faced with the likely denial of their forbearance requests.

These facts show that even if the Commission were to have less than a full complement of commissioners for some period of time, that does not mean that a flood of forbearance petitions are likely to be deemed granted during that time. That has not been the case previously, and the congressional and public scrutiny that the forbearance process has received makes it unlikely to become a common practice in the future.

Moreover, while we agree it generally would be beneficial for the Commission to vote on a forbearance petition and for the commissioners supporting forbearance to set out their reasoning in writing, we also believe that the deemed granted provision performs an important function. As Congress recognized at the time that it adopted this provision in 1996, growing competition and rapid developments in the communications marketplace result in many regulations – often designed decades ago to address monopoly providers in a one-wire world – causing affirmative harm to competition and consumers. Some effective mechanism is needed to ensure that outdated rules are reviewed in a timely fashion, and, if warranted, either repealed or modified to conform to the world of today. The deemed granted provision

serves this function by ensuring that, if after 15 months of scrutiny a majority of commissioners have not concluded that there is a current justification to retain such regulations, the regulation is removed.

As noted above, however, we agree that it is generally beneficial for the Commission to vote and adopt a written order rather than allowing a petition to be deemed granted. A written order benefits the public by explaining the reasons why forbearance was appropriate and clarifying the parameters of the relief granted. For these reasons, even in the extremely rare case of a deemed grant, it would generally be helpful for those commissioners supporting the granted relief to issue written statements explaining the reasons why they supported forbearance (as happened in the case of the deemed grant of Verizon's forbearance petition for enterprise broadband services).

- **What steps can the Commission take to ensure that no other forbearance petitions are permitted to be granted with no accompanying written order that clearly sets forth the scope of the relief granted?**

There are two steps that the Commission can take to improve the forbearance process and increase the likelihood of timely written orders instead of "deemed grants."

First, one of the best ways to avoid a "deemed grant" and to ensure timely written orders would be for the Commission to vote on orders well in advance of the statutory deadline. An earlier vote on orders would leave time before a deemed grant for additional discussion and public scrutiny in the event that the Commission lacks a majority in favor of an order on a petition, whether because of a 2-2 tie or otherwise. The practice established in the wake of the 1996 Act of routinely extending the statutory deadline and taking a full 15 months to rule even on uncontroversial forbearance petitions increases the chances that the Commission will be unable to reach a majority vote on an order before the "deemed grant" clause takes effect. If the Commission instead were to adopt the practice of deciding forbearance petitions within a reasonable period of time following the close of the public comment cycle, the Commission would both further Congress's goals in enacting Section 10 while also preventing the chances of additional deemed grants.

A Commission vote earlier in the process would also improve the forbearance process in other ways. One of the problems with the forbearance process has been that decisions often lag substantially behind the comment cycle, thus rendering some record evidence dated and necessitating additional submissions later in the process. Addressing forbearance petitions earlier would mean that parties would have less need to submit ex parte filings to update data that had grown stale during the course of a 12- or 15-months-long proceeding, eliminating complaints about supposedly late-filed data. Voting earlier in the process, rather than at the statutory deadline, would also further the underlying goal of ensuring that the regulatory regime keeps pace with the fast-moving marketplace, while minimizing the chances of petitions being deemed granted.

Second, the Commission could improve the process and decrease the chances of future "deemed grants" by taking a more proactive approach to forbearance petitions. Recognizing that petitioners will not always have access to the most probative data that could support a forbearance petition and necessarily will have to base their petitions on the best data readily available to them, the Commission should take steps to collect relevant data from third parties during the comment cycle on a petition. In particular, competing providers have unique access to information concerning the scope and success of their competitive endeavors, but have little incentive to make that information available to the

Commission so that it can make the most informed decisions. The Commission also should compel production from recalcitrant third parties, as those parties may have an interest in withholding relevant data in an effort to maintain legacy regulations that benefit a narrow class of companies, even as those regulations impede competition and thereby harm consumers. Proactively collecting data from third parties will ensure that the Commission has the best information possible so that it can make an informed and timely decision whether to grant the forbearance petition.

- **In Congress, if a vote on a bill results in a tie, the bill is rejected. Should the Commission adopt the same rule for forbearance petitions? If not, please explain how allowing forbearance petition to be deemed granted in the event of a tie promotes the public interest.**

No. As Congress recognized when it adopted the forbearance provision 12 years ago, the communications marketplace is undergoing rapid change both with respect to the level of competition and advances in, and convergence of, technologies. The marketplace of today shares little in common with the one-wire, monopoly world that existed when many telecommunications regulations were written, and the continued application of these ill-fitting, antiquated rules distorts competition, inhibits investment and innovation, and harms consumers. In light of these circumstances, an effective mechanism – such as the forbearance statute with its deemed granted provision – is necessary to ensure that outdated rules do not inhibit new competition, new services, and new investment.

To the extent Congress nonetheless has concerns about the operation of the "deemed granted" provision in the context of a tie vote by a Commission that is down a commissioner, several alternatives to striking the "deemed granted" provision would better serve the underlying goals of Section 10 and the public interest.

First, here again, Congress could require the Commission to vote well in advance of the statutory deadline, thus leaving a period of time after the vote but before the petition would be deemed granted at the statutory deadline. This period of time would allow for further discussions, compromise, and public scrutiny in the event that there is no majority in favor of an order. In addition to improving the forbearance process in other ways described above, this modest step would dramatically reduce the chances of a deemed grant.

Second, in the unlikely event that a 4-person Commission has split 2-2 at the time of the statutory deadline, Congress could permit the Commission to grant a single, additional 90 day extension beyond the current 15-month maximum before the deemed grant would take effect. This approach would respond to the concern about an evenly divided Commission by allowing additional time during which a commissioner could be added to the Commission. Moreover, as in the case of requiring an earlier vote, this approach would allow time for additional discussion and compromise among the sitting commissioners, as well as oversight by Congress. If Congress were to provide for this type of extension, however, it should be narrowly constrained to the situation of a Commission with an even number of sitting commissioners and should only permit a single extension. Otherwise, the goal of ensuring timely consideration of the need for outdated regulations would suffer.

Third, as noted above, Congress could require those commissioners who supported the relief granted through a deemed grant to issue written statements explaining why. Moreover, to the extent that Congress has concerns about judicial review in this context, it could provide that these written statements favoring relief be made subject to judicial review under traditional standards for reviewing agency action.

Each of these proposals would decrease the likelihood of future "deemed grants" and respond to the concerns expressed about such grants, without upsetting the fundamentally successful process established by Section 10. With these changes, carriers would retain a viable method for receiving timely relief from outdated regulation, even in the event of an evenly divided (or otherwise ossified) Commission.

Retention Marketing

- **Please explain how Verizon's retention marketing practices, as described by the Commission's order in the *Bright House Networks v. Verizon* matter, are consistent with Section 222(b) of the Communications Act, which provides that a "telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts."**

Verizon's retention marketing practices parallel those the cable companies continue to use today to try to retain departing customers. When customers cancelled service, Verizon sent mailings to them to inform them of the best deals available. If the customer decided to stay, Verizon would take steps to ensure that the customer's service was not disrupted. If not, the customer's cancellation and number port would proceed as scheduled, without any delays caused by Verizon's marketing.

Verizon's retention marketing program was fully consistent with Section 222(b). First, that section applies to another carrier's proprietary information. Verizon did not use another carrier's information for its marketing; rather, it used its own customer's request to cancel service and to retain his or her number. Moreover, Section 222(b) only applies when one carrier provides wholesale "telecommunications services" to another carrier. Verizon provides no telecommunications service to the carrier that submits the port request on behalf of the customer. As the Commission previously held, local number portability is a service Verizon provides to its customer – not other carriers.

In the order cited in the question, the Commission majority agreed that Verizon is permitted to engage in retention marketing directed to all cancelling customers. It nonetheless concluded that Verizon may not send retention marketing materials only to those customers who have requested to keep their existing telephone number, which had served to avoid sending those materials to customers for whom they are not relevant (such as customers who were cancelling service and relinquishing their number because they were moving to a new area). That decision is the subject of an ongoing appeal. In the meantime, cable companies remain free to market to all or a subset of their departing video customers.

Verizon's retention practices were designed so that customers could enjoy the full benefits of competition by choosing to purchase services from the provider with the best offerings and deals. By prohibiting Verizon's marketing, the Commission has denied customers the full benefits of vigorous competition that the Telecommunications Act was intended to provide.

- **Do you believe that the Committee should consider revising Section 222 or other provisions of the Communications Act concerning consumer privacy and retention marketing practices? If so, how?**

As discussed above, Verizon's retention marketing program was fully consistent with Section 222(b). Nevertheless, it is critical that all competing providers are subject to the same rules. Although Verizon competes with cable providers to provide customers with bundles of services, cable providers are

permitted to attempt to retain their cancelling customers, but Verizon is not. There is no justification for this disparity.

In March 2008, Verizon petitioned the Commission to declare that the same rules for cancelling service should exist in the voice and video contexts. The Enforcement Bureau recommended in April that the Commission open a rulemaking to address that issue as well as others involving parity among telephone and cable companies. The Commission has yet to act on this recommendation. As a result, cable companies continue to enjoy an artificial regulatory advantage when competing for customers of bundled service offerings.

Fiber Deployment

- **A *Communications Daily* article from July 15, 2008, suggested that Verizon does not intend to maintain the copper infrastructure in neighborhoods where it deploys fiber to the home. . . . Is Verizon considering such action? If a customer has fiber optic service (FiOS) installed and then elects to cancel the service, how does Verizon reconnect the customer to a copper line? What expense does the customer bear with respect to such reconnection?**

As I explained last year when I testified before the Subcommittee, Verizon was not retiring copper facilities in areas where it is deploying FiOS, and it did not have any definitive plans to do so. That remains true today, and Verizon still has not retired any copper loops as a result of its FiOS deployment.

I also explained last year that Verizon will continue to evaluate this issue on an ongoing basis and that at some point in the future, it will not make sense for Verizon to incur the expense of maintaining a redundant copper network that it does not need in order to serve its customers. That also remains true today.

The article mentioned in your questions – which refers to an analyst's assessment that Verizon "eventually" will retire copper that is no longer needed to serve Verizon's customers because of the "operational expense" of maintaining those facilities – does not address any change in Verizon's plans. It does, however, confirm Verizon's consistent statements that in the long run, maintaining a redundant network would be wasteful and would undermine the incentives to invest in next-generation broadband networks like FiOS. We have consistently noted that when enough customers have migrated to fiber, maintaining a redundant copper network would be uneconomical and inefficient, and it also would interfere with the opportunity for increased energy efficiency from operating one network instead of two. It would be much like requiring a taxi company to keep and maintain gas-guzzlers that it no longer needs even after it has invested in a fleet of energy-efficient hybrids. A requirement for a provider to incur the expenses of maintaining a network that it does not need in order to serve its customers would harm the overall business case for fiber deployment by depriving the provider of the opportunity to realize operational expense savings.

In the meantime, given that Verizon has not yet retired copper in FiOS areas, those loops remain available to provide customers with copper-based services.[1] Therefore, if a customer being served over the FiOS network decides to switch to a competitive carrier that uses Verizon's copper network, Verizon switches the customer back to a copper loop in order to receive the competing provider's service. Moreover, Verizon handles this switch at no additional cost for the customer or the competitor, and subject to the same time intervals. Of course, Verizon's largest competitors – the cable incumbents – generally do not rely on Verizon's network, and instead provision their services over their own network. And notwithstanding the near ubiquity of these large facilities-based providers and their success in the marketplace, these competitors are not subject to the same network-sharing obligations as Verizon.

In addition to the situation of a FiOS customer switching to a competitor, it is possible that a customer being served by FiOS could ask to return to copper, but still receive Verizon's services. Verizon's current policy is to switch any such customer back to the copper network at no cost.

Although Verizon is not yet retiring copper, the FCC has already considered issues surrounding copper retirement and established a process to be followed when Verizon or others retire copper loops that have been replaced by fiber. That process will ensure that the competitors, the Commission, and the public at large have notice when the time comes to retire copper facilities in areas where fiber networks have been deployed. The Commission's carefully calibrated rules concerning fiber deployment and copper retirement strike an appropriate balance and have created incentives for investment in next-generation broadband networks, such as Verizon's $23 billion investment in its FiOS network.

Pole Attachments

- **Should the Commission set a uniform rate for pole attachments? If so, what rate formula should the Commission use to arrive at that rate? Should the Commission take steps to shorten so-called "make ready" periods, or time it takes to prepare a pole so that a competitor can attach fiber or other equipment?**

Yes. In the interest of achieving competitive parity amongst broadband providers, the Commission should set a uniform rate formula for broadband capable pole attachments. Under existing rules, the rates that pole owners charge attachers distort competition in broadband services by forcing some broadband providers to pay pole attachment rates that are substantially higher than other competitors providing the same services.

In its November 20, 2007, Notice of Proposed Rulemaking, the FCC tentatively concluded that it should promote national broadband deployment through the adoption of a uniform rate specifically for broadband-related pole attachments. The Commission is considering several different proposals for setting a uniform rate for broadband capable pole attachments. Verizon and AT&T recently filed with the Commission a joint proposal to address this issue. The proposal provides for a uniform broadband rate

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[1] Some parties have tried to create confusion on this point by blurring the distinction between copper "drops" – the last few feet of wire from a pole to the side of a house – and copper "loops" – the wire running all the way from the central office to a customer's residence. Verizon's current policy is to take down copper drops only at the request of a customer or in a limited number of lightning-prone areas, although that policy has changed over time. In any event, if the customer seeks to switch to a competitor, Verizon replaces the copper drop and re-attaches the full copper loop with no added costs to the customer or the provider and subject to the same service intervals.

formula that achieves the Commission's goals of competitive parity and a single uniform rate for broadband capable attachments. Moreover it would do so in a way that would result in the pole owners remaining whole.

The Commission should not, however, take steps to shorten so-called "make ready periods." The type of make ready work required and applicable safety regulations vary from pole site to pole site. As a result, a codified shortened time frame for completing make ready work would be unworkable. Moreover, under the existing regulatory regime, attachers already have the enforceable right to reasonable, non-discriminatory access to poles.

Telephone Number Porting

- **Can Verizon complete an intramodal port in approximately 48 hours? If not, please explain why Verizon cannot meet a 48-hour intramodal porting interval when Verizon Wireless can complete a wireless-to-wireless port in about four hours.**

The issue of shortening the standard interval for simple ports is one that has been invented by Verizon's competitors – not customers. Notably, there is no concrete evidence that *consumers* are unhappy with the current four business day standard interval and wish that it be shortened. At the same time, there is substantial evidence that competing providers themselves require more than today's standard interval to begin providing service to a new customer, and they therefore routinely request *longer* intervals than are available. In fact, around 95% of all simple port requests Verizon receives select a later due date. As a result, shortening the standard interval is unnecessary at this juncture.

Theoretically, Verizon could complete its porting tasks within 48 hours for most of the simple port requests that "flow through" its automated process and require no manual intervention. However, if a simple port request "falls out" of the automated process, completion of all the required steps in 48 hours would be difficult due to the manual steps that would be required. Verizon does not incur the considerable expense of employing staff around-the-clock to manually complete porting tasks, and in some instances, 48 hours may be insufficient time for Verizon to verify that all porting tasks are done correctly – by both the old service provider and new service provider – to avoid errors that may leave a customer without service.

The shorter porting interval for wireless-to-wireless ports is irrelevant because wireline providers are required to take additional steps in the porting process due to the inherent differences between their networks and wireless networks. Wireline providers must update records in the E911 database and directory listings, physically disconnect the wire from the switch, and establish a 10-digit trigger to ensure that calls are routed correctly.

- **Do you think that consumers would be well-served if the Commission established a two-day porting interval for the three largest incumbent phone companies?**

No. There should not be a different standard for some providers, but not others. The same rules should apply to all.

In fact, the three largest incumbent telephone companies are already held to a higher standard than their competitors. State Performance Assurance Plans (PAPs) require that incumbents submit metrics regarding their porting-out performance and subject incumbents to substantial payments should their performance fall below certain levels. States do not require similar reporting by other providers.

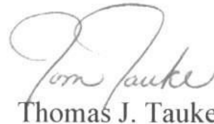
Nor has the Commission ever enforced the existing porting interval when competitive local exchange carriers (or their cable clients) fail to comply – which at times, has resulted in delayed ports to Verizon.

Further tilting the playing field by mandating a shorter porting interval for the three largest incumbent telephone companies makes no sense when competition is based on bundles of services. To switch to a shorter interval, incumbents would face considerable costs to modify their networks, switches, and software and to employ additional personnel to manually handle port requests that fall out. With a higher cost per bundle, an incumbent's ability to offer lower bundled prices than cable would therefore be jeopardized. This market distortion could impede the ability of incumbent telephone companies, which have only recently begun entering the video segment, to establish themselves as significant competitors to cable.

- **At the Subcommittee hearing on July 22, 2008, Jonathan Banks of USTelecom testified that several of USTelecom's members routinely receive port requests from competitors that are longer than the standard four-day interval. Is that true for Verizon? What percent of the intramodal port requests received by Verizon fall within the four-business day standard?**

Yes. While Verizon cannot distinguish between intermodal and intramodal ports when VoIP providers submit port requests through third-party carriers, around 95% of *all* simple port requests received by Verizon in 2007 selected a due date after the first available date. For the first five months of 2008 (the most recent data available), the percentage was around 93%.

Sincerely,



Thomas J. Tauke

cc: The Honorable Joe L. Barton
Ranking Member, Committee on Energy and Commerce

The Honorable Edward J. Markey
Chairman, Subcommittee on Telecommunications and the Internet

The Honorable Cliff Stearns
Ranking Member, Subcommittee on Telecommunications and the Internet