Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20544

In the Matter of	)	
	)	IB Docket No. 18-377
2018 Biennial Review of	)	
Telecommunications Regulations	)	ET Docket No. 18-370
	)	
	)	WT Docket No. 18-374
	)	
	)	WC Docket No. 18-378
	)	

VERIZON'S COMMENTS ON THE 2018 BIENNIAL REVIEW OF TELECOMMUNICATIONS REGULATIONS

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February 8, 2019

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VERIZON'S[1] COMMENTS ON THE
2018 BIENNIAL REVIEW OF TELECOMMUNICATIONS REGULATIONS

The Commission has recently taken critical steps to streamline and reduce unnecessary or restrictive legacy regulations,[2] and proceedings to continue this process are ongoing.[3] The 2018 Biennial Review offers another important opportunity for the Commission to continue to weed out regulations that are "no longer necessary in the public interest" and to modernize its regulatory approach to better reflect today's competitive and technological circumstances.[4] As

[1] The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

[2] *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11,128 (2017); *id*., Second Report and Order, 33 FCC Rcd 5660 (2018); *id*., Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018); *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, 32 FCC Rcd 9760 (2017); *id*., Second Report and Order, WT Docket No. 17-79, FCC 18-30 (Mar. 30, 2018).

[3] *See, e.g.*, Petition for Forbearance of USTelecom – The Broadband Association, *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141 (May 4, 2018); *Reform of Certain Part 61 Tariff Rules*, Notice of Proposed Rulemaking and Interim Waiver Order, WC Docket Nos. 18-276 & 17-308; FCC 18-142, ¶¶ 3, 8, 15 (Oct. 18, 2018).

[4] *FCC Bureaus and Offices Seek Public Comment In 2018 Biennial Review of Telecommunications Regulations*, Public Notice, DA 18-1260, CG Docket No. 18-375, EB

we've discussed in recent filings, today's marketplace is far removed from the one-wire, monopoly model that was the focus of the Commission's legacy regulations. Given that evolution, the Commission now should use its statutory mandate to repeal or modify any regulation it determines to be "no longer necessary"[5] to ensure that its regulatory scheme is aligned with today's competitive landscape.

Today, consumers are swiftly adopting VoIP and wireless alternatives to traditional copper landline service. In the three years from June 2014 to June 2017, the number of interconnected VoIP subscriptions in the United States increased from 51 million to 64.5 million,[6] and the number is likely even higher today. During this same time period, the number of retail switched access lines decreased from 76.8 million to 54.7 million.[7] And as of December 2017, 94 percent of Americans had access to 25/3 Mbps fixed broadband, over which they easily can receive VoIP or over-the-top service from multiple providers.[8] Further, as of December 2017 there were about 411 million mobile wireless connections in the United States[9] and about 55 percent of American households had eliminated landline service entirely and receive voice

Docket No. 18-379, IB Docket No. 18-377, ET Docket No. 18-370, PS Docket No. 18-376, WT Docket No. 18-374, WC Docket No. 18-378 (Dec. 17, 2018) ("*Public Notice*").

[5] 47 U.S.C. § 161.

[6] *See* FCC, *Voice Telephone Services: Status as of June 30, 2017*, at Figs. 1, 2 (Nov. 2018), https://docs.fcc.gov/public/attachments/DOC-355165A1.pdf.

[7] *See id*.

[8] *See Communications Marketplace Report*, GN Docket No. 18-231 *et al*., FCC 18-181, ¶ 248 (Dec. 26, 2018).

[9] See id. ¶ 8.

service only over a wireless connection.[10] And among the minority of households that had not yet cut the cord despite having wireless phones, 42 percent received nearly all or all of their calls on their wireless phones.[11] All told, about 70 percent of American households are wireless-only or wireless-mostly.[12]

For business customers, increasing demand for broadband is fueling competition and the move from legacy TDM-based services to IP-based business data services. Rapidly increasing demand for mobile broadband requires more and more backhaul capacity, and many companies compete to provide it. Customers, meanwhile, are moving from legacy TDM-based special access services to the Ethernet services that cable companies and other providers offer, with greater flexibility, ease of implementation, ability to transport multiple types of traffic, higher bandwidth, and improved cost effectiveness.

With these changes, legacy regulations "grow increasingly anachronistic as a new world of technologies governs the communications landscape . . . . Our mission is to strip away the outdated and unnecessary while we build a bridge to the new."[13] To achieve that goal, the Commission's biennial review offers "a simple and powerful tool for scrubbing outdated regulations from [the] books and promoting private sector innovation and investment."[14] The

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[10] *See* CDC, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January – June 2018*, at 2 (Dec. 2018), https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201812.pdf.

[11] *Id*. at 3.

[12] *See id*. at 2-3.

[13] *Technology Transitions, et al*., Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283, ¶¶ 2-3 (2016).

[14] *Commission Seeks Public Comment in 2016 Biennial Review of Telecommunication Regulation*s, Public Notice, 31 FCC Rcd 12,166, at Attachment, Statement of Commissioner Ajit Pai (2016).

Commission should be "prompt and bold"[15] in eliminating rules that have outlived their usefulness "given the vast changes in the communications marketplace."[16] We suggest below, organized by bureau, some of the rules the Commission should streamline or eliminate.

I. THE COMMISSION SHOULD REPEAL OR MODIFY THE FOLLOWING RULES ADMINISTERED BY THE WIRELESS TELECOMMUNICATIONS BUREAU.

A. Discontinue the "Enhanced Factor" Evaluation of Transactions Involving Spectrum Below 1 GHz.

The Commission should stop treating acquisition of spectrum below 1 GHz as an "enhanced factor" in transaction reviews.[17] An arbitrary review standard for a single band does not address valid public policy objectives, and risks consumer harm. Special consideration of spectrum below 1 GHz made no sense when adopted and it makes even less sense now that both the Commission and industry have recognized the critical importance of spectrum above 1 GHz, both high- and mid-band spectrum, for next generation 5G services.[18] And even with this recognition of the importance of new, higher frequency bands, in 2017 the Commission rejected as unnecessary (for a second time) a band-specific spectrum holding limit for millimeter wave (mmW) spectrum,[19] and did not even consider adopting an enhanced factor for mmW transaction

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[15] *Id.*

[16] *Id*. at Attachment, Statement of Commissioner Michael O'Reilly.

[17] *Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133, ¶ 267 (2014) ("*Mobile Spectrum Holdings Order*").

[18] *Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, Notice of Proposed Rulemaking, 33 FCC Rcd 6915, ¶ 4 (2018); *see also* CTIA – the Wireless Association, *The Need for More Spectrum*, https://www.ctia.org/positions/spectrum/ (last accessed Jan. 25, 2019); Analysys Mason, *Mid-band Spectrum Global Update* (Nov. 2018), https://api.ctia.org/wp-content/uploads/2018/12/Analysys-Mason-Mid-Band-Spectrum-Global-Update.pdf.

[19] *See Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, Order on Reconsideration, 32 FCC Rcd 10,988, ¶ 162 (2017).

reviews.[20] Yet the Commission still continues its practice of applying an enhanced factor review to spectrum below 1 GHz in any transaction.[21] Such heightened review of one small portion of spectrum is inconsistent with the current spectrum screen[22] and the Commission's acknowledgement that "holding a mix of spectrum bands is advantageous to providers."[23] And today there is more spectrum available – including the AWS-3 spectrum (mid-band spectrum that broke all records for auction proceeds), the 3.5 GHz band, nearly *11 GHz* of mmW spectrum and the 600 MHz band – than there was when the Commission adopted this practice. Whatever purpose the "enhanced factor" review may once have served is outdated.

B. Streamline Approval of Block-for-Block Spectrum Swaps.

The Commission should streamline the approval process and grant *pro forma* treatment for simple block-for-block spectrum swaps within the same markets that do not result in changes to a provider's net depth of ownership in a particular market. Currently providers must file these straightforward and innocuous transactions in accordance with 47 U.S.C. § 310(d). Because they do not qualify for streamlined, *pro forma* treatment, they trigger an unnecessarily burdensome review. These swaps are presumptively competitive, and the Commission should grant them *pro forma* treatment. Further, as discussed in Part G, below, the Commission should reduce filing burdens for pro forma transactions overall.

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[20] *See Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, Notice of Proposed Rulemaking, 30 FCC Rcd 11,878, ¶¶ 190-192 (2015).

[21] *Mobile Spectrum Holdings Order* ¶ 267.

[22] *Id.* (existing CRMS screen "applies across a number of bands that do not have the same technical characteristics and not on a band-specific basis").

[23] *Id.* ¶ 184.

C. Repeal Current Penalties Related to Interim Build Requirements.

The Commission should repeal its current penalties for failure to meet interim spectrum build requirements. Those penalties merely accelerate the deadline for final build-out requirements.[24] Although these rules aim to ensure that licensees quickly deploy spectrum acquired at auction, in practice they have not deterred speculators from sitting on spectrum. Providers that deploy networks to serve customers almost invariably satisfy the interim deadlines, including filing hundreds of construction notifications with the Commission, while speculators routinely ignore these deadlines and simply hold the spectrum licenses for a shorter but still relatively long time period – for example, 10 years instead of 12 years. If the Commission believes that interim build requirements are necessary to prevent speculation and ensure that licensees deploy spectrum to serve consumers, it should replace the current rules with penalties that are enforceable on their own terms by the Commission.

D. Condense and Reform Rules for Spectrum Lease Approvals.

The Commission should condense and reform its labyrinth of rules on spectrum lease approvals into a simple rule that requires only that the Commission receive prior notification of (and need not approve) a spectrum lease. If the Commission stops short of this threshold reform, there are smaller steps it could take to simplify the existing structure for spectrum lease approvals. For example, the Commission could apply its "immediate approval procedures" for every spectrum lease filing that meets the eligibility requirements specified in the rules.[25] The immediate approval procedures contain detailed eligibility requirements but, in some cases, the Commission still will apply its "general approval procedures" even if the lease application meets

[24] *See, e.g.*, 47 C.F.R. § 27.14(t)(3).

[25] *See, e.g.*, 47 C.F.R. §§ 1.9020(e)(2), 1.9030(e)(2).

the eligibility requirements for immediate approval.[26] Doing so postpones approval of spectrum leases that are relatively straightforward and delays putting the spectrum to use to serve customers.

E. Permit Electronic Filing of Spectrum Subleasing Applications.

The Commission should permit providers to file spectrum subleasing applications electronically on FCC Form 608, just as it does for leases, instead of requiring applicants to file a paper copy. Filing paper copies is burdensome on licensees as well as Commission staff. The delay in delivery can often unnecessarily delay deployment of new services given the additional time that is required for delivery, sorting, and approval of the paper applications. There is no reason to continue paper filings when parties can file other leases electronically.

F. Eliminate Unnecessary and Unused Filings.

The Commission should eliminate the requirement that common carriers and commercial mobile radio service licensees submit an annual report to the Commission of all alleged violations of federal or state equal employment opportunity law filed against the licensee.[27] The report must contain information about the parties involved, the forum, the file number, and the disposition or status of the complaint. This "charge report" requires substantial time and effort to compile, and the Commission does not appear to use the information. The Equal Employment

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[26] *See, e.g.*, *id*. §§ 1.9020(e)(1), 1.9030(e)(1).

[27] *Id*. §§ 1.815, 90.168; FCC Form 395, at Instruction H, https://transition.fcc.gov/Forms/Form395/395instr.pdf; FCC Form 395, at Section IV, https://transition.fcc.gov/Forms/Form395/395.pdf. The Commission recently deleted the reporting requirement formerly at 47 C.F.R. § 22.321 because it was duplicative. *See 2016 Biennial Review of Telecommunications Regulations*, Third Report and Order, 33 FCC Rcd 7017, ¶¶ 13-16 (2018).

Opportunity Commission, and federal and state courts, have jurisdiction over these matters. The Commission should repeal this redundant and unnecessary requirement.

G. Repeal Remaining Rules Requiring Pre-Closing Authorization and Simplify Post-Closing Authorizations of Pro Forma Transactions.[28]

The Commission should repeal any and all rules that require pre-closing authorization for the transfer of licenses in a *pro forma* transaction, and instead it should allow providers to file a revised and streamlined post-closing notification that does not require license by license updates. Currently, depending on the type of license or authorization, providers may have to seek prior approval from the Commission to make internal *pro forma* transfer or assignments of licenses, even though in these transactions the ultimate owner of the license does not change.[29] For other types of licenses, providers must file post-closing notification of the transaction, within 30 days of closing the internal transaction.[30] For example, under the current rules, when an intermediate entity in a licensee's ownership chain changes its corporate form from a corporation to a limited liability company, the licensee still must file either for approval or a post-closing notification, even if the entity changing form is not a licensee or the direct parent of a licensee. Similarly, if a new holding company is inserted in a licensee's corporate ownership chain – even if that holding company is not the direct parent of the licensee and the ultimate owner of the license remains the same – the licensee still must file. These filings are often both burdensome and senseless,

[28] This request cuts across more than one bureau, including the Wireless Telecommunications Bureau (e.g. non-common carrier business pool licenses), the Office of Engineering and Technology (experimental licenses), and the International Bureau (earth and space stations).

[29] *See* 47 U.S.C. § 310(d); 47 C.F.R. §§ 1.948(c), 5.79, 25.119.

[30] *See Fed. Commc'ns Bar Ass'n's Pet. for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers*, Memorandum Opinion and Order, 13 FCC Rcd 6293, ¶ 2 (1998).

requiring sometimes hundreds of filings if there's an administrative change to non-licensee owning entities well up the ownership chain.

The Commission should revise its rules to make clear that in all instances where the ultimate controlling parent of a license does not change, a provider does not need to seek pre-closing authorization to transfer the license or authorization between its subsidiaries or affiliates. Further, where a post-closing notification is required in these circumstances, the Commission should permit providers to file a single update describing the change in corporate structure, rather than separately file a notification for each license or entity affected.

II. THE COMMISSION SHOULD REPEAL OR MODIFY THE FOLLOWING RULES ADMINISTERED BY THE WIRELINE COMPETITION BUREAU.

A. Allow Providers to Replace Consecutive Blank Tariff Pages With a Single Page.

The Commission should clarify or modify 47 C.F.R. § 61.52(a)'s requirement that "[p]ages of tariffs must be numbered consecutively" so that a provider can replace consecutive blank pages with a single page that refers to the range of blank pages. Allowing providers to replace multiple blank pages with a single page would shorten tariffs, which sometimes have dozens of consecutive blank pages.[31] Shorter tariffs would be easier for parties and the Commission to navigate.

III. THE COMMISSION SHOULD REPEAL OR MODIFY THE FOLLOWING RULES ADMINISTERED BY THE MEDIA BUREAU.

Although the *Public Notice* did not specifically identify rules administered by the Media Bureau, many of the Commission's rules administered by that Bureau have also outlived their

[31] *See* Verizon Tariff F.C.C. No. 11, at 30-195 - 30-210; Verizon Tariff F.C.C. No. 20, at 5-688 - 5-729; Verizon Tariff F.C.C. No. 21, at 12-1 - 12-10.

usefulness and are no longer necessary. The Commission should consider modifying or removing these regulations as a matter of good government.

A. Repeal Network Non-Duplication and Syndicated Programming Exclusivity Rules.

The Commission should eliminate its network non-duplication and syndicated programming exclusivity rules.[32] These outdated rules prevent a video distributor from importing broadcast programming from alternative sources, thus involving the federal government for no reason in enforcing broadcasters' contractual rights and undermining competition for the provision of video services.[33]

These rules are unnecessary, as video distributors and programmers can address these issues in their contracts. A cable company or other MVPD cannot carry a television station without its permission, whether it elects must-carry or retransmission consent rights. The broadcast station may also have territorial rights to network or syndicated programming, which prevent an out-of-market station from authorizing a cable company to carry the programming within the local station's territory. Accordingly, if a broadcast station holds territorial rights to transmit network or syndicated programming, it can still enforce those rights against carriage of an out-of-market station – without the Commission's rules.[34]

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[32] 47 C.F.R. §§ 76.92 *et seq.*

[33] *See Amendment of the Commission's Rules Related to Retransmission Consent*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351 (2014) ("*2014 Retransmission Consent*").

[34] *See Sports Blackout Rules*, Report and Order, 29 FCC Rcd 12,053, at Statement of Commissioner Ajit Pai (2014) ("It is not the place of the federal government to intervene in the private marketplace to help sports leagues enforce their blackout policies") ("*Sports Blackout Rules*").

These rules also harm competition by allowing a local broadcast station to usurp the bargaining rights of an out-of-market broadcast station that may be willing to sell its programming to an MVPD. Eliminating the rules would permit the MVPD to offer subscribers a competitive alternative or at least a partial substitute when a local broadcaster blacks out its station and retransmission consent negotiations break down. Maintaining the exclusivity rules impedes normal market functions by eliminating any competitive negotiation process for alternative sources of programming. As the Commission has explained, "'any effort to stifle competition through the negotiation process would not meet the good faith negotiation requirement'" imposed by Congress in Section 325(b) of the Communications Act.[35]

And these rules are contrary to the public interest because they limit consumer choice. An MVPD that declines to pay increased retransmission consent fees may find itself without desired programming, thereby handicapping its ability to offer a competitive choice to consumers. Or, the MVPD may pay the increased fees, resulting in higher cable rates for consumers, perhaps providing a less attractive option for new subscribers.[36] Either way, by limiting MVPDs to a single source of programming, the rules stifle options available to consumers.

Eliminating the exclusivity rules "will serve the public interest by removing unnecessary regulations and removing regulatory reinforcement of" whatever contractual rights a broadcaster

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[35] *2014 Retransmission Consent* ¶ 20 (*quoting Implementation of the Satellite Home Viewer Improvement Act of 1999*; *Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, First Report and Order, 15 FCC Rcd 5445, ¶ 58 (2000).)

[36] *Cf. Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992*, Report on Cable Industry Prices, 31 FCC Rcd 11,498, ¶ 28 (2016) (finding the "average annual total amount paid for retransmission consent by a cable system was nearly $7.8 million in 2013 and $12.7 million in 2014, an increase of 63.2 percent").

may have with network or other programmers.[37] Broadcasters will still be able "to rely on the same processes available to any other entities that wish to protect their distribution rights in the private marketplace."[38]

B. Repeal Unnecessary Public File Collections.

Two years ago the Commission eliminated two cable system public inspection file requirements[39] but other pointless requirements remain.[40] The Commission requires that cable systems collect and retain for public inspection information that is of no use or interest to consumers, including information on performance tests, policies regarding indecent leased access programming, availability of must carry signals, operator interests in video programming, omissions of sponsorship identification, and compatibility with consumer electronics equipment. As a practical matter, very few people ever access this information, and in a competitive marketplace for video services such haphazard "public file" requirements have outlived their usefulness. The Commission should eliminate these categories of information from the public file requirement and associated rules requiring placement in the public file.[41] If needed, the Commission can ask for this information upon reasonable notice and time for production.

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[37] *Sports Blackout Rules* ¶ 6.

[38] *Id*.

[39] *Revisions to Public Inspection File Requirements*, Report and Order, 32 FCC Rcd 1565, ¶¶ 11, 18 (2017) (eliminating the requirements that "commercial broadcast stations retain letters and emails from the public in their public inspection files" and that "cable operators retain information about the designation and location of the system's principal headend in the public inspection file").

[40] 47 C.F.R. § 76.1700(a)(4)-(9).

[41] *See id*. §§ 76.1705, 76.1707, 76.1709-1710, 76.1715, 76.630.

Respectfully submitted,

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Dated: February 8, 2019