

Dee May
Assistant Vice President
Federal Regulatory



1300 I Street, NW, Floor 400W
Washington, DC 20005

Phone 202 515-2529
Fax 202 336-7922
dolores.a.may@verizon.com

November 7, 2001

Ex Parte

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., S.W. – Portals
Washington, DC 20554

*Re: Deployment of Wireline Services Offering Advanced Telecommunications
Capability, CC Docket No. 98-147; Implementation of the Local Competition Provisions
in the Telecommunications Act of 1996, CC Docket No. 96-98*

Dear Ms. Salas:

The enclosed letter was provided to Chairman Powell yesterday. Verizon is entering the document into the above referenced dockets. Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Dee May".

Enclosure

cc: Chairman Powell
Commissioner Abernathy
Commissioner Copps
Commissioner Martin
D. Attwood



Verizon Communications
1300 I Street NW, Suite 400W
Washington, DC 20005

November 6, 2001

Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Powell:

In your recent public appearances, you reiterated that our country needs a national broadband policy. We wholeheartedly agree, and urge the Commission promptly to undertake a comprehensive review to establish such a policy.

As you noted in your speech, broadband "has become the central communications policy objective today." And for good reason. One recent study estimates that widespread broadband deployment could deliver as much as \$500 billion in benefits annually and provide a strong stimulus for the national economy. But while there are numerous broadband technologies and services that compete head-to-head – and the relevant market includes cable modem, DSL, satellite, and fixed wireless – further deployment of both existing and future generations of broadband will require substantial investment on the part of all providers.

If the broadband promise is to be fulfilled, the regulatory environment must be conducive to the enormous investments that need to be made. This, of course, does not suggest the country needs an "industrial policy," as that term is typically used. But the country does need a national "policy." And, as past experience with other then-emerging technologies such as computers, wireless and the Internet have shown, the right policy is one that allows market forces to drive efficient investment by ensuring that all broadband technologies and services are free of investment-detering regulatory constraints.

The current regulatory environment is very different. Over the past several years, in the absence of a comprehensive broadband policy, a wide body of wholesale and retail regulation designed for traditional voice services has been imposed on our broadband services. In many instances, the requirements have been imposed reflexively through a classic example of "regulatory creep", rather than through conscious or considered policy choices. Even today, the Commission continues to examine a host of broadband-affecting issues in separate and isolated proceedings, examples of which are listed in the attached table, that do not focus on the broader policy implications.

The impact of the current regulatory environment on our broadband services is three-fold: it increases costs; it restricts our ability to enter into innovative marketing and pricing arrangements that could provide a better opportunity to recover our costs; and it magnifies the already substantial risk of investing in broadband technologies and services.

On the one hand, wholesale regulations such as unbundling obligations and collocation outside the central office (such as in remote terminals) inflate operational costs, force expensive network changes, and require costly new operations support system capabilities that are otherwise not needed. At the same time, they require us to turn over any innovations to competitors at cost-based rates (or less under TELRIC). On the other hand, retail regulations limit us to cost-based tariffed transport rates, and subject our retail services to unbundling and other requirements under the so-called *Computer III* rules. This means we are unable to employ innovative marketing and pricing arrangements or to develop alternative revenue sources, such as those that prevail in the cable business and on the Internet. And both wholesale and retail regulations magnify the risk of investing in broadband services and technologies. While the most we can hope to recover is our original costs (and less under TELRIC), our shareholders must bear the cost of any investments that fail. This problem is only compounded, as you note, by "the threatening overhang of future regulation," which fosters additional investment-detering uncertainty.

To make matters worse, while our broadband services have been subjected to creeping regulation, our main competitors – cable operators, satellite operators, and fixed wireless providers – operate without any of the same constraints. As a result, while the Commission has said that its role, "is not to pick winners and losers, or select the 'best' technology to meet consumer demand," by extending regulatory burdens to one and only one broadband competitor, the existing regulatory environment already is doing precisely that. And handicapping only telephone companies, who are the new entrants into the broadband business, jeopardizes the continued development of a competitive market, and risks extending further cable's already sizeable lead.

For all these reasons, we believe it is critical for the Commission promptly to undertake a comprehensive review to establish a national broadband policy. The twin touchstones of that national policy should be to: (i) allow the market to drive efficient broadband deployment by removing artificial regulatory obstacles to investment, and (ii) to the maximum extent possible, treat all broadband providers alike.

This is not to suggest, of course, that our aim is to adopt a closed cable model for our own broadband services. On the contrary, we believe that there can be significant value in maintaining a wholesale business that allows other providers to reach customers over our network. But it does mean that any wholesale model for broadband – unlike the current wholesale regime for voice services – needs to be one that makes economic sense and creates

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incentives *simultaneously* to invest in new facilities and to provide others with access to customers over the broadband network. We have suggested, for example, that we could deliver a service to other carriers at our central offices so that they can reach their customers over our network in return for receiving a commercially reasonable rate -- a result we believe is fair and helps preserve incentives to invest. Ultimately, as has been the case for cable -- and information services and wireless services before that -- this choice of business model should be driven by the market.

As you pointed out, the establishment of a national policy requires the Commission *both* to "consider expeditiously how to classify the various forms in which these services are provisioned *and* consider what the access obligations will be for them." And when it comes to classifying broadband services under the terms of the Act, it is critical, both as a matter of law and sound policy, that all competing services be classified alike, rather than draw artificial distinctions based on the history or parentage of the entity providing them.

Given all this, we believe that the most logical way to effect a national broadband policy is to declare that broadband networks and services fall under Title I of the Act, regardless of the entity providing them. The Commission previously took this approach with great success for other then-emerging technologies and services. For example, three decades ago in the case of the fledgling computer industry, the Commission classified computers and other customer premises equipment as subject to Title I, allowing the Commission to adopt a preemptively deregulatory policy that left competitive markets to competitive actors. Likewise, by classifying so-called "enhanced" services as subject to Title I, the Commission was able to adopt a similarly deregulatory policy that prompted the growth of what today are known as information services and the Internet. The Commission even took this approach with cable itself in the early days of that industry. The Commission asserted "ancillary jurisdiction" over cable under Title I -- recognizing that it did not fit into any of the then-existing statutory categories (under either Titles II or III) -- and the Supreme Court upheld this approach.

Of course, even if the Commission were to classify broadband as common carriage subject to Title II, it still has authority to remove many of the key regulatory obstacles to investment. On the retail side of the ledger, the Commission may forbear from applying any provisions of the Act or its own rules under section 10 of the Act. *See* 47 U.S.C. §§ 160 (a), (b) & (e). Indeed, because there already are several competing providers offering service over their own facilities, retail regulations are not necessary to ensure reasonable rates or protect consumers, and are affirmatively contrary to the public interest because they skew competition and inhibit investment. Under these circumstances, section 10 not only permits but also affirmatively requires the Commission to forbear (and forbids states from stepping in where the Commission has done so).

On the wholesale side of the ledger, the Commission likewise has authority to eliminate regulatory obstacles to investment. First, it may eliminate unbundling requirements on the grounds that the Act's "necessary and impair" standard is not met. The Act makes clear that this

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standard applies on a service-by-service basis, and that a separate inquiry is needed for broadband services. *See* 47 U.S.C. § 251(d)(2)(B) (defining impairment with respect “the services that [a carrier] seeks to offer”). As the Commission has recognized, the relevant services in this instance should be construed broadly to include cable, satellite, and wireless services. Given the extensive competition for broadband services – including several competing providers operating over their own facilities – there is no basis to impose an unbundling requirement.

Second, the competitive nature of the broadband business provides an independent basis for declining to impose unbundling requirements, separate and apart from the impairment inquiry. The Act itself and the Commission’s prior orders make clear that the impairment standard is the “minimum” that the Commission must consider in deciding whether to impose an unbundling requirement, and that the Commission may rely on other factors in determining that network elements should not be unbundled. Whatever else this means, the fact that the broadband market already is competitive must be a relevant factor, and provides an independent reason not to impose an unbundling requirement. This is especially true given that unbundling requirements in the broadband context deter investment and undermine the continued development of a competitive market.

Third, the Commission may forbear from applying wholesale requirements where sections 251(c) and 271 of the Act “have been fully implemented.” 47 U.S.C. § 160(d). Again, whatever else this means, it is clear that these requirements have been fully implemented where a Bell company has received section 271 authority. Indeed, the 14-point competitive checklist requires a Bell company to demonstrate that it has met all the requirements of both of these sections. *See* 47 U.S.C. § 271(c)(2)(B).

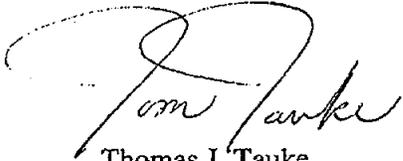
Whichever approach the Commission ultimately decides to take, we believe that it is imperative that it act both quickly and comprehensively. This is particularly important because – as described in the attachment – there are numerous proceedings already underway that continue to fuel industry uncertainty and deter broadband investment.

In addition, there are steps that can be taken immediately to remove at least some of the current investment-detering uncertainty while the broader review proceeds. For example, the Commission currently is considering whether to require unbundling of line cards in remote terminals that can be used jointly for voice and broadband DSL services, and whether to require collocation of other providers’ line cards. The resulting uncertainty is one of the key reasons that Verizon to this point has significantly constrained deployment of DSL capability in our remote terminals. Consequently, resolving these issues alone would reduce the current regulatory overhang, and promote the deployment of DSL to additional consumers.

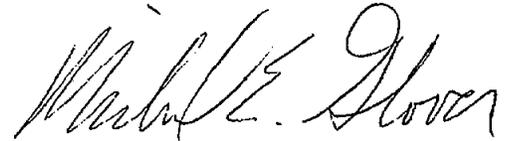
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In sum, we share your view that it is critical for the Commission to act quickly to formulate a new national broadband policy that encourages broadband investment. We believe the nation's current policy has the opposite effect, and we look forward to working with you to help formulate a new policy, and in doing our part to ensure that consumers receive the enormous benefits that widespread broadband deployment will make possible.

Sincerely,



Thomas J. Tauke
Senior Vice President -
External Affairs & Public Policy



Michael E. Glover
Senior Vice President &
Deputy General Counsel

cc: Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Ms. Attwood

Proceeding	Issue	Impact on Broadband
CC Docket 98-147	Whether ILEC broadband services can be classified as "telephone exchange service" or "exchange access" under the Act.	Relevant to the legal classification of broadband services for regulatory purposes.
FCC 01-26 CC Docket 98-147 Third FNPRM	Installation of CLEC line cards, either virtually or physically, in ILEC-owned DLCs/remote terminals.	Creates ongoing uncertainty related to equipment capacity and OSS requirements; creates concern over recovery of investment; increases security challenges.
FCC 01-26 CC Docket 98-147 Third FNPRM	Collocation of CLEC equipment at ILEC-owned remote terminals. May include DSLAMs or other CLEC-owned equipment.	Creates ongoing uncertainty related to additional space requirements; increases security issues at RTs, increase investment and revenue requirements.
FCC 01-26 CC Docket 98-147 Third FNPRM	Extending unbundling to include new network elements for packet transport services such as SBC's Project Pronto.	Additional unbundling requirements, including TELRIC pricing, will discourage the deployment of new technology. There is no incentive to deploy a costly technology with the knowledge that there is no way to recover costs. OSS obligations are increased.
FCC 01-26 CC Docket 98-147 Third FNPRM	Creation of new UNEs and new combinations of UNEs to develop a UNE-data platform, much like the existing voice UNE platform, that will allow CLECs to provide packet services from the ILEC's remote terminal.	Places all risk of investment on ILECs; creates an increased reliance on ILEC facilities; does not foster facilities-based competition.
FCC 01-26 CC Docket 98-147 Third FNPRM	Modify collocation rules to facilitate subloop unbundling. Modify/retrofit RTs with smaller equipment.	Additional, unnecessary rules, will create burdens on Broadband deployment. Modification of RTs with smaller equipment is extremely costly and burdensome. Technological innovation and development will be stifled. A new level of uncertainty is added to all planning activities.
FCC 00-297 CC Docket 98-147 Second FNPRM	FCC seeks to ensure that adjacent collocation is an acceptable substitute for physical collocation at remote terminals.	Uncertainty of Final Order; however, a ruling requiring Verizon to make adjacent space available in a comparable manner to space in the RT could result in burdensome rules with no assurance of cost recovery.
FCC 00-297 CC Docket 98-147 Second FNPRM	A specific amount of space needs to be available at remote terminals to accommodate collocation.	FCC Order requiring that a certain amount of space be made available for collocation at all RTs will require a physical survey of all RTs and potential rearrangements of existing services with no assurance of cost recovery or use of the space by CLECs.
FCC 00-297 CC Docket 98-147 Second FNPRM	Collocation of equipment needs to be in increments smaller than a single rack of equipment, such as a quarter rack.	Increases security challenges and concerns.
FCC 00-297 CC Docket 98-147 Second FNPRM	Adoption of National Space Reservation Policies	Similar to above and if rules are promulgated like CO reservation, will require business to ensure that needs of collocator are taken into account when building new RTs and subject RT space reservations (documented need for space) to state commission scrutiny. Added burden of obtaining permission for space on public or private properties.
FCC 00-297 CC Docket 96-98 Fifth FNPRM	Copper loop plant should remain available for CLEC use even if ILEC plans to retire or remove the copper loop plant.	The maintenance of copper loop plant parallel with fiber plant is costly, inefficient, burdensome, and impedes network technology innovation.