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

In the Matter of Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau	WC Docket No. 04-179

REPLY COMMENTS OF VERIZON

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August 11, 2004

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Introduction and Summary

As Verizon explained in its opening comments, the Commission should eliminate a number of significant regulatory burdens, currently imposed on ILECs, that are unnecessary in light of significant intermodal and other competition.[1]

Most importantly, the Commission needs to establish a national, deregulatory policy for *broadband* facilities and services. Competition in the broadband market is flourishing, and the Commission should promptly eliminate regulations that only serve to slow the roll-out of next generation broadband services. *See* Section I, below. First and foremost, this means finishing the job that was started in the *Triennial Review Order* of adopting clear rules governing the unbundling of broadband *facilities*. That requires the Commission to clarify that broadband facilities that are not subject to unbundling under Section 251 also are not subject to unbundling under Section 271. After all, it would do little to promote widespread deployment to remove the unbundling obligations under one provision of the Act only to re-impose them under another provision. It also requires the Commission to set forth a clear national definition of what

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[1] *See* Verizon Comments, WC Docket No. 04-179, at 6-35 (filed July 12, 2004) ("Verizon Comments"). In particular, the Commission should eliminate the regulatory burdens on wireline broadband facilities and services, and reform its TELRIC pricing regime to restore correct investment incentives. *See* Verizon Comments, at 6-35.

customers are part of the "mass market" for purposes of the unbundling rules, so those investing in the facilities necessary to provide next-generation broadband services have a clear understanding of which facilities will be subject to unbundling. Second, this means moving forward to establish a national deregulatory policy for the broadband *services* that will be offered over these broadband facilities.

In addition, the Commission should reform its regulation of *narrowband* services to take into account the competitive realities in today's marketplace. Verizon has produced voluminous evidence regarding the already widespread and steadily growing intermodal competition that characterizes the market today. That competition eliminates any potential justification for continuing the TELRIC regime, which merely served to subsidize other carriers' use of a single network. Given the competition for retail services, it is time for the Commission to seriously reexamine all its economic regulation of telecommunications providers. *See* Section II, below.

Finally, the Commission should reject certain commenters' attempts to use the biennial review proceeding to establish *new* regulatory requirements, or to keep rules that are no longer necessary to achieve a federal purpose. *See* Section III, below.

Argument

I. Competition Is Flourishing in the Broadband Market, and the Commission Should Continue Its Deregulatory Approach to Broadband Services

The Commission unequivocally found, based on the existence of robust intermodal competition in the broadband market, that ILECs "do not have to offer unbundled access" to broadband facilities.[2] Competitive developments since the *Triennial Review Order* confirm the

[2] *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶¶ 7, 23 (2003) (*"Triennial Review Order" or "TRO"*).

wisdom of that decision, and emphasize the need for the Commission to act quickly to create a national, deregulatory environment for broadband facilities and services, to ensure that other unnecessary regulatory constraints do not slow the deployment of next generation broadband services.

As Verizon demonstrated in initial comments, the market for broadband services is vibrantly competitive. *See* Verizon Comments, at 6-10. Verizon has announced plans to spend more than $1 billion during 2004, to deploy fiber-to-the-premises ("FTTP") facilities in selected states.[3] Verizon now is completing work on the deployment of FTTP networks in select markets in Texas, California, and Florida. It also has recently announced the rollout of Verizon Fios, a suite of high-speed Internet services provided over those networks.[4] These new services will facilitate a wide array of voice, data, and video applications, including video chat and conferencing, digital movie downloads, voice over Internet protocol ("VOIP") services, and the quick uploading of multi-megabit emails with photo attachments. They will first be made available in Keller, Texas later this summer, with additional deployment sites in southern California and in the Tampa area of Florida, where Fios will be available to consumers later this year. More generally, Verizon remains on track to pass one million homes and businesses with fiber loops in parts of nine states by the end of the year.

These new deployments in Texas, California, and Florida are proof that market forces, if unhindered by regulatory burdens, will foster innovative technology and services at competitive rates. Indeed, Verizon Fios far exceeds both the upstream and downstream data speeds currently

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[3] *See* Declaration of Jerry Holland, CC Docket No. 01-338, ¶ 11 (filed Mar. 29, 2004) (attached as Exhibit E to Verizon Comments, WC Docket No. 04-179 (filed July 12, 2004)) ("Holland Decl.").

[4] *See* Letter from Edward Shakin, Verizon, to Marlene H. Dortch, FCC, CC Docket Nos. 01-337, 01-338, 02-33, 02-52, and 04-242, at 1 & attachment thereto (filed July 29, 2004) (attached as Exhibit A hereto).

available from cable broadband service providers, and it is available at comparable or lower prices. Current residential broadband speeds offered by cable modem providers range from 2 Mbps/256 kbps to 3.5 Mbps/1Mbps.[5] Comcast and Time Warner Cable recently announced plans to offer customers higher speed tiers of cable modem service in addition to their current offerings. Comcast's higher download speed of 4 Mbps will be available for $52.95 per month later this year, and Time Warner Cable's higher speeds of up to 6 Mbps/512 kbps will be available for between $64.95 and $84.95 starting in August 2004. Brigitte Greenberg, *Cable Revving Up Engines On Internet Service*, Communications Daily, July 28, 2004, at 2. The decision of these companies to offer additional higher speed options further emphasizes the intensely competitive nature of the evolving broadband market.

In order to facilitate the rapid deployment of broadband networks, the Commission should clarify that broadband facilities that are not subject to unbundling under Section 251 also are not subject to unbundling under Section 271. *See* Verizon Comments, at 10-15; Verizon Comments, WC Docket No. 04-245 (filed July 30, 2004). As the Commission has already found, there is no basis in competitive reality for imposing unbundling obligations on broadband facilities. *See* Verizon Comments, at 10-15. The threat of potential unbundling obligations under Section 271 would have the same negative effects on broadband investment and deployment that the Commission correctly concluded would result from the enforcement of similar unbundling obligations under Section 251. The Commission should remove this investment-chilling uncertainty by forbearing from any stand-alone obligations to unbundle broadband elements under Section 271, and preempting any state attempts to unbundle these

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[5] *See* Competition in the Provision of Voice Over IP and Other IP-Enabled Services, IP-Enabled Services, WC Docket No. 04-36, Appendix A, A-5, Table 2 (filed May 28, 2004) (attached as Exhibit D to Verizon Comments). In Keller, Texas, high speed Internet service is currently offered at maximum download speeds of between 384 Kbps and 3 Mbps. *See* Charter Communications, *Get It Now*, at http://www.charter.com/products/highspeed/highspeed.aspx.

services. The Commission also should create a clear definition of "mass market" customers, so that FTTP deployment can occur with clear knowledge as to which facilities must be unbundled.[6]

Moreover, the Commission should eliminate any requirements for broadband services that do not apply to ILECs' cable competitors, such as Title II requirements and obligations imposed under the *Computer Rules*.[7] It is not appropriate to apply the burdensome tariffing, cost-justification, and common-carrier requirements to broadband services, when ILECs are not the dominant providers of such services. As the Commission itself has repeatedly recognized, tariffing and cost-justification requirements affirmatively harm competition if they are imposed in a competitive environment.[8]

II. The Current State of Competition Demonstrates that the Commission Should Eliminate the TELRIC Pricing Regime, and Work to Eliminate All Economic Rate Regulation

In addition, the Commission should reform its rules governing narrowband facilities and services to take into account the competitive realities of today's marketplace. In particular, it should reform the TELRIC regime, which does not compensate ILECs for their costs, and which creates disincentives to facilities-based investment by both incumbents and competitors. Given

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[6] *See* Consolidated Reply of Verizon to Oppositions to Petitions for Reconsideration or Clarification, CC Docket No. 01-338, at 11-18 (filed Nov. 17, 2003).

[7] *See* Verizon Comments, at 10-24; *Petition of Verizon for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises*, WC Docket No. 04-242 (filed June 28, 2004); *Conditional Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises*, WC Docket No. 04-242 (filed June 28, 2004).

[8] *See, e.g., 2000 Biennial Regulatory Review: Policy and Rules Concerning the International, Interexchange Marketplace*, Notice of Proposed Rulemaking, 15 FCC Rcd 20008, ¶ 18 (2000) ("requiring or permitting non-dominant carriers . . . to file tariffs impedes vigorous competition in the market for interexchange services by: (1) removing the incentives for competitive price discounting; (2) reducing or eliminating carriers' ability to make rapid, efficient responses to changes in demand and cost; (3) imposing costs on carriers that attempt to make new offerings; and (4) preventing or discouraging consumers from seeking or obtaining service arrangements specifically tailored to their needs").

the competition for end-user telecommunications services, it also should seriously reexamine all of its economic regulation of these services.

In recent weeks, Verizon has submitted extensive evidence describing the state of competition for high-capacity services in the largest MSAs where Verizon provides service as the incumbent local exchange carrier, and the widespread deployment of competing voice telephone services by cable companies and VOIP providers, as well as increasing competition from wireless and other intermodal providers and competitors that have deployed their own circuit switches.[9] These developments conclusively show that the unbundling standards in the Act are not satisfied with respect to high capacity facilities or switching. In addition, they also reinforce the fact that competition is rapidly increasing throughout the telecommunications marketplace and that, for any elements that are subject to an unbundling requirement going forward, TELRIC reform is long overdue in order to ensure that UNE rates provide correct economic signals to the market, restore efficient investment incentives, and fairly compensate the incumbents.

Among other things, Verizon has demonstrated that:

- By the end of 2003, cable companies already offered circuit-switched voice telephony to 15 percent of homes nationwide, and were rolling out VOIP to many more.
- By the end of 2004, cable companies plan to offer VOIP to more than 24 million homes over their networks, and plan to offer it to at least 20 million more the following year.
- Regardless of whether cable companies themselves offer VOIP, the 85-90 percent of U.S. homes that have access to cable modem service also have access to VOIP from multiple providers, ranging from the major long distance carriers to national VOIP providers like Vonage.

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[9] *See* Verizon Comments, at Exhibit C thereto; *see also*, Letters from Donna Epps, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 03-173, at 1-3 (filed Aug. 9, 2004) ("Verizon August 9 Switching Ex Parte" "Verizon August 9 High-Capacity Ex Parte"); Letter from Dee May, Verizon, to Marlene H. Dortch, FCC, CC Docket Nos. 01-338, 98-147 and 96-98, at 10, 15 (filed June 24, 2004); Letter from Michael E. Glover, Verizon, to Marlene H. Dortch, FCC, CC Docket Nos. 01-338, 98-147 and 96-98, at 19, 29 (filed July 2, 2004).

- Wireless carriers are aggressively competing both for lines and for traffic: during the last two years, the number of wireless lines has grown from 137 million to 155 million while the number of wireline lines has declined; the percentage of users giving up their landline phones has grown from 3-5 percent to 7-8 percent; and wireless traffic has grown from 16 to 29 percent of all voice traffic and to 43 percent of long distance traffic.
- Competing carriers now have some 10,000 circuit switches and packet switches nationwide, and have used their switches to provide voice telephone service in wire centers that contain 86 percent of Bell company access lines nationwide.

See Verizon August 9 Switching Ex Parte, at 1-3; *see also* Verizon Comments, Exhibit B at 9-16.

In addition, Verizon has shown that

- Demand for high capacity services is highly concentrated with 80 percent of the demand for high capacity services in just eight percent of wire centers;
- Competing providers have targeted deployment of their facilities to serve that demand, with an average of 20 competitor networks in the top 50 MSAs in the country;
- At least one competing provider has conceded that it earns the "majority of [its] revenue .. .exclusively through [its] own network facilities ..." and boasts that "[w]hile [RBOCs] have lots of fiber deployed, I don't know that they have more buildings connected than we do in all cases;"
- Competing providers are using fixed wireless and cable to reach customers, with 40 percent of large businesses, 29 percent of mid-sized businesses, and 23 percent of small businesses using fixed wireless for at least some high-capacity services and 41 percent of large businesses, 32 percent of mid-sized businesses, and 44 percent of small business using cable modem service for some high-capacity services.

See Verizon August 9 High-Capacity Ex Parte at 2.

The high capacity evidence shows that competing providers have deployed their own facilities wherever significant demand for high capacity services exists. In addition, other carriers are making extensive use of Verizon's special access, which they purchase at significant volume and term discounts of 35 to 40 percent, to provide their own high capacity services to business customers of all shapes and sizes.[10]

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[10] Letter from Michael E. Glover, Verizon, to the Honorable Michael K. Powell, Chairman, FCC, CC Docket Nos. 01-338, 98-147 and 96-98, at 2 (filed July 19, 2004); Verizon August 9 Switching Ex Parte, Attachment at 10 and tab 4.

Other providers not only are able to compete successfully, but actually dominate key market segments. Competing providers such as AT&T dominate the large enterprise segment of the market, the most valuable segment of the telecom industry and a market that accounts for the vast majority of high-capacity demand. AT&T, MCI, and Sprint account for nearly half of all revenues from larger enterprise customers and are the primary service provider for nearly three-quarters of larger corporate accounts. In contrast, within its region, Verizon accounts for only 9 percent of the $28 billion spent on network-related service by the 400 companies with the highest annual telecommunications expenditures. Accordingly, Royce Holland explains that "[t]he large corporate enterprise market … is all but irrelevant to the debate over competition policy because there are no bottleneck facilities."

Similarly, the switching evidence demonstrates that competing providers are offering voice telephone services to mass market customers at rates that compete directly with traditional telephone service. For each of Verizon's 25 top MSAs (based on number of access lines), Verizon has shown that competitors' voice telephone offerings are very competitive in terms of the services and features included. For example, AT&T offers VOIP service in 100 major metropolitan markets for $34.99 per month. Time Warner offers a bundled package of local and long distance service for $39.95. Cablevision offers a similar package for $34.95. Cablevision also recently introduced a bundled package of local and long distance, high speed Internet access, and digital cable for $89.85 – about the same price it previously charged for high speed Internet access and digital cable alone. The result, according to Cablevision, is that customers "are essentially receiving their voice service for free." Vonage offers an unlimited local and

long distance package for only $29.99. And BroadVoice and Packet8 offer similar packages for $19.95.[11]

In short, there is extensive competition to provide high capacity services to business customers of all shapes and sizes. Similarly, there is extensive competition to provide voice telephone service to mass market customers. Under these circumstances, there simply is no justification for finding that competition is impaired without access to high capacity facilities or UNE switching. Accordingly, the provision of unbundled high capacity loops and transport and of unbundled switching or UNE-P cannot be "required" under section 251(c). Moreover, the evidence that Verizon has provided underscores that, for any elements that incumbents must continue to provide, artificially low UNE rates clearly are not "necessary in the public interest" and the TELRIC rules must therefore be repealed or modified. 47 U.S.C. § 161(b).

Indeed, given the advent of competition for end-user telecommunications services, the Commission should move toward elimination of economic regulation of these services. Due to the existence of competition from wireless carriers, cable companies, VOIP providers, CLECs and other new entrants, competition in the marketplace constrains the rates that carriers can charge for their services. Thus, regulation of carrier rates is no longer necessary. *See* Verizon Comments, at 36-37.

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[11] *See* Verizon Comments, Exhibit B, at 6, 10; *see also* Verizon August 9 Switching Ex Parte, at 2-3, and tabs A-D thereto.

III. The Commission Should Not Adopt New Regulations, Or Maintain Regulations that Are No Longer Necessary, As Proposed by Some Commenters

A. The Commission Should Reject the Proposal to Adopt Additional Requirements Before Retiring Copper Loops

In the 2002 Biennial Review Notice of Proposed Rulemaking, the Commission asked for comment on the very limited issue of whether current Rule 51.329(c), "which enumerates the specific titles that incumbent LECs must use when providing public notice, or certification of public notice, of network changes," should be modified to "add[] specific titles to identify notices of replacement of copper loops or copper subloops" with FTTP loops.[12] AT&T attempts to convert this limited request for comment into a wholesale revisiting of the notice requirements for retirement of copper loops. In particular, AT&T argues that the Commission should "require that ILEC notices of all copper loop retirements be provided directly to potentially affected CLECs," "provide circuit-specific identification to the individual CLECs potentially affected," and "revise" – *i.e.*, significantly lengthen – "the current notice periods." AT&T Comments, at 2-3 & n.3. The Commission should reject these proposals, which not only go beyond the scope of the biennial review process, but also are completely contrary to the notice requirements recently set forth in the *Triennial Review Order.*[13]

As an initial matter, arguments that the Commission should use the biennial review proceeding to dramatically *increase* the regulatory requirements for retiring copper loops are flatly inconsistent with the Act, and must be rejected on that threshold ground alone. The Commission cannot use the biennial review proceeding to add to existing regulations, as it would be contrary to the purposes of Section 11, which directs the Commission to "repeal or modify"

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12 *See Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, Notice of Proposed Rulemaking, 19 FCC Rcd 764, ¶ 20 (2004) ("2002 Biennial Review NPRM").

13 *TRO,* ¶ 281.

regulations that are no longer necessary. 47 U.S.C. § 161; *see also 2002 Biennial Regulatory Review*, 18 FCC Rcd 4726, ¶ 11 (2003) ("add[ing] or expand[ing]" regulations, "as opposed to modifying or eliminating existing rules," is "beyond the scope" of the biennial review.); *2000 Biennial Regulatory Review,* 16 FCC Rcd 1207, ¶ 19 (2001) ("[A]s a part of the biennial review process, we do not intend to impose new obligations on parties in lieu of current ones, unless we are persuaded that the former are *less burdensome* than the latter and are necessary to protect the public interest") (emphasis added).[14]

Moreover, the Commission correctly rejected the same types of arguments AT&T raises here. Relying on a broad record, in the *Triennial Review Order* the Commission specifically rejected proposals to impose "extensive rules that would require affirmative regulatory approval prior to the retirement of any copper loop facilities." Rather, it determined that making minor modifications to the existing rules regarding notices of network change would "serve as adequate safeguards" against the concerns raised by CLECs. *Id.* In so doing, this portion of the *TRO* comported with the Commission's decision to remove regulatory burdens that would only inhibit incentives by ILECs and CLECs alike to invest in new fiber to the premises deployment. *See TRO*, ¶¶ 273-284, 288-290.

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[14] Moreover, if AT&T disagreed with the policy decisions set forth in the Triennial Review Order, it should have raised its objections in a petition for reconsideration of *that* order. Of course, AT&T could not have filed a petition for reconsideration, as it chose to instead appeal the Triennial Review Order. However, it cannot be allowed to circumvent that limitation on petitions for reconsideration, or escape the time period for filing such petitions (which has long passed), by attempting to revive its arguments in this docket. *See* 47 C.F.R. § 1.429 (petitions for reconsideration must be filed within 30 days); *see also Natural Resources Defense Council v. Nuclear Regulatory Commission*, 666 F.2d 595, 601-602 (D.C. Cir. 1981) ("The issue we face, therefore, is whether NRDC may now do indirectly what it is forbidden by statute from doing directly – that is, whether NRDC may now seek review of the procedure by which the amendments were promulgated, even though it could have but did not seek direct review thereof, by simply raising its objections in a petition for rulemaking and seeking direct review of the order denying the petition. We answer that question in the negative").

The Commission found that CLECs' concerns about retirement of copper loops would be adequately addressed by amending the network disclosure rules to ensure that carriers are provided adequate notice of any network change that would affect CLECs' ability to provide service. *See TRO*, ¶¶ 281-284. As the Commission recognized elsewhere in the *Triennial Review Order*, FTTP deployment "is still in its infancy" and faces "several economic and operational entry barriers." *Id.*, ¶ 274. In accordance with Section 706(a)'s directive to "remove barriers to infrastructure investment," the Commission eliminated requirements (such as unbundling) that would stifle FTTP or other advanced infrastructure investment by both ILECs and CLECs. *Id.*, ¶¶ 286, 288, 290; *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 579 (D.C. Cir. 2004). Nothing has changed that would warrant revisiting that aspect of the *Triennial Review Order*. Indeed, it would be arbitrary and capricious for the Commission to revisit and reverse its position on the proper scope of these requirements in this Biennial Review proceeding, when the Commission made clear its intent to resolve UNE issues in the context of the *Triennial Review Order*.[15] In reliance on the *TRO*'s deregulatory approach to FTTP, Verizon plans to spend $1 billion to pass more than one million homes in 2004, and billions more in future years to further expand its fiber deployment.[16]

Yet the rule changes proposed by AT&T would *add* to the burdens and costs of replacing copper with fiber, thus creating disincentives to both CLECs and ILECs to spend the billions of dollars in necessary broadband infrastructure investment and ultimately hampering FTTP deployment. The Commission should reject proposals that would create unnecessary hurdles to

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[15] *See TRO*, ¶ 6 ("The path to the rules and policies we set forth in this Order has been neither straight nor easy . . . [but] we believe that the certainty that we bring today will help stabilize the telecommunications industry, yield renewed investment in telecommunications networks, and increase sustainable competition in all telecommunications markets for the benefit of American consumers").

[16] Holland Decl. ¶ 6.

the replacement of copper with fiber, such as burdensome notification processes or longer periods for CLEC notification/opposition. The Commission's current rules give CLECs an opportunity to comment on any planned retirement, and it can take up to 90 days after the public notice before such objections are deemed denied. *TRO*, ¶¶ 282-83. As others have pointed out, if anything, the delays resulting the public notice requirement already are too long. *See* BellSouth Reply Comments, WC Docket No. 02-313, at 2-6 (filed Nov. 4, 2002).

B. Hypothetical Concerns About State Uses for Uniform Accounts Are Not An Appropriate Basis for Maintaining Accounts that are Not Necessary for a Federal Purpose

The Commission also should reject Kansas Corporation Commission's arguments that all accounting and reporting regulations be maintained, because some of them *might* be useful for state needs. *See* Kansas Corporation Commission Comments, WC Docket 04-179, at 2-4 (filed July 12, 2004). The articulation of hypothetical state uses should not stand in the way of the Commission's statutory obligation to eliminate unnecessary federal regulation.

Moreover, Kansas' comments appear to misunderstand the nature of the Uniform System of Accounts. The accounting rules at issue are targeted to meet regulatory purposes, and are separate from the financial accounting rules at issue in the "accounting scandals" to which Kansas alludes. *See* Kansas Comments, at 3.[17]

Likewise, Kansas's arguments about the usefulness of these accounts in assisting state regulators to "monitor the state of competition" for purposes of determining whether to designate additional eligible telecommunications carriers ("ETCs") for universal service support, also miss the mark. Kansas Comments, at 3. As an initial matter, the Commission is undertaking a proceeding to determine whether to reform the ETC process, and Verizon and other commenters

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[17] *See also* Verizon Reply Comments, CC Docket No. 00-199, at 6-7 (filed May 7, 2002).

have noted that the purported benefits to "competition" should not be a basis for granting ETC status in high cost areas. *See* Verizon Comments, CC Docket No. 96-45, at 9-14 (filed Aug. 6, 2004). Even if the state of competition were relevant to granting ETC status, that evidence exists in the marketplace, not in the regulatory accounts of certain ILECs.[18]

In the Commission's 2000 biennial review of accounting issues, the Commission ordered or proposed several measures designed to streamline the accounting rules, and properly noted that, "if we cannot identify a federal need for a regulation, we are not justified in maintaining [it]."[19] However, it later convened a Federal-State Joint Conference, and suspended implementation of several previously adopted changes while the Joint Conference considered "initiatives that will improve the collection of adequate, truthful, and thorough accounting data for regulatory purposes."[20] Unfortunately, what the Joint Conference suggested was that the Commission largely *undo* much of the regulatory reform it adopted or proposed in the 2000 biennial review. The Commission wisely rejected many of these proposals.[21]

The Commission should once again turn to examining ways to repeal or modify many of the accounting and ARMIS reporting requirements that are "no longer necessary in the public interest as a result of meaningful economic competition." 47 U.S.C. § 161. The existing accounting and ARMIS reporting requirements are a relic of rate of return regulation, imposed on the local exchange carriers in an era prior to significant local entry, before their rates were

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[18] Similarly, states can monitor the "receipt and use of [universal service] funds," Kansas Corporation Commission Comments, at 3, through data requests to the carriers receiving such funds. That limited need for data certainly does not justify Kansas' assertion that the Commission should maintain *all* current accounting rules and regulations.

[19] *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2*, 16 FCC Rcd 19911, ¶ 207 (2001) ("*Phase 2 Accounting Order*").

[20] *Federal-State Joint Conference on Accounting Issues*, 17 FCC Rcd 17025, ¶ 4 (2002).

[21] *See Federal-State Joint Conference on Accounting Issues*, Report and Order, WC Docket No. 02-269, FCC 04-149 (rel. June 24, 2004).

under price caps, and before the Commission provided for pricing flexibility. In the Phase II and Phase III proceedings, commenters pointed out a number of rules that could be eliminated or streamlined, and the Commission should look to the comments in those proceedings to identify regulations that are no longer necessary. *See* Verizon Comments, Exhibit B at 2-6.

CONCLUSION

The Commission should eliminate the regulatory burdens on wireline broadband facilities and services, and reform its TELRIC pricing regime and economic regulation of retail services. It should not expand the requirements for network notification of retirement of copper loops. It also should reject suggestions to retain regulations that are no longer necessary to support federal needs.

Respectfully submitted,

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August 11, 2004

EXHIBIT A

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July 29, 2004

Ex Parte

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Re: Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services CC Docket No. 01-337; Review of the Section 251 Unbundling Obligations of Incumbent LECs CC Docket No. 01-338; Appropriate Framework for Broadband Access to the Internet over Wireline Facilities CC Docket No. 02-33; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities CC Docket No. 02-52 and Verizon's Petition for a Declaratory Ruling or, Alternatively, Interim Waiver and Verizon's Conditional Petition for Forbearance under 47 U.S.C. Section 160(e) with Regard to Broadband Services Provided via Fiber to the Premises WC Docket No. 04-242

Dear Ms. Dortch:

I am writing to update the Commission on recent developments concerning Verizon's deployment of fiber-to-the-premises ("FTTP") facilities in selected states, and to provide additional authority in support of Verizon's petition for forbearance from the application to such facilities of any stand-alone section 271 unbundling obligations.

1. Verizon is completing work on the deployment of FTTP networks in select markets in Texas, California, and Florida. It has recently announced the rollout of Verizon Fios, a suite of high-speed Internet services provided over those networks. *See* Verizon News Release (July 19, 2004) (attached). These new services will facilitate a wide array of voice, data, and video applications, including video chat and conferencing, digital movie downloads, voice-over-IP services, and the quick uploading of multi-megabit emails with photo attachments. They will be available first in Keller, Texas later this summer, with additional deployment sites in southern California and in the Tampa area of Florida, where Fios will be available to consumers later this

year. More generally, Verizon remains on track to pass one million homes and businesses with fiber loops in parts of nine states by the end of the year.

2. These new deployments in Texas, California, and Florida underscore the tendency of market forces, if unhindered by regulatory burdens, to foster innovative technology and services at competitive rates. Indeed, Verizon Fios far exceeds both the upstream and downstream data speeds currently available from cable broadband service providers, and it is available at comparable or lower prices. Current residential broadband speeds offered by cable modem providers range from 2 Mbps/256 kbps to 3.5 Mbps/1 Mbps.[1] By contrast, Verizon Fios will offer residential broadband speeds ranging from 5 Mbps/2Mbps to 30 Mbps/5Mbps. Moreover, Verizon's service will be offered at a starting price of $34.95, substantially lower than the $39.95 to $44.95 price range for the slower broadband services offered by cable modem providers in many areas.[2]

3. Verizon's deployment of these faster and cheaper broadband services confirms that, as Verizon has explained in detail in prior submissions, the Commission is fully justified in relying on market forces to yield "just and reasonable" rates and terms in the competitive market for broadband services. *See* 47 U.S.C. § 160(a)(1).[3] Courts and agencies have long recognized the

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[1] *See* Competition in the Provision of Voice Over IP and Other IP-Enabled Services, *IP-Enabled Services*, WC Docket No. 04-36, Appendix A, A-5, Table 2 (filed May 28, 2004) ("Broadband Competition: May 2004"). In Keller, Texas, high speed Internet service is currently offered at maximum download speeds of between 384 Kbps and 3Mbps. *See* Charter Communications, *Get It Now*, at http://www.charter.com/products/highspeed/highspeed.aspx. Comcast and Time Warner Cable recently announced plans to offer customers higher speed tiers of cable modem service in addition to their current offerings. Comcast's higher download speed of 4 Mbps will be available for $52.95 per month later this year, and Time Warner Cable's higher speeds of up to 6 Mbps/512 kbps will be available for between $64.95 and $84.95 starting in August 2004. Brigitte Greenberg, *Cable Revving Up Engines On Internet Service*, Communications Daily, July 28, 2004, at 2. The decision of these companies to offer additional higher speed options further emphasizes the intensely competitive nature of the evolving broadband market.

[2] *See* Broadband Competition: May 2004, A-5, Table 2. In Keller, Texas, providers currently offer high speed Internet service at prices of $29.99 and $39.99 for maximum download speeds of 384 Kbps and 3Mbps, respectively. *See* Charter Communications, *Get It Now*, at http://www.charter.com/products/highspeed/highspeed.aspx.

[3] The "just and reasonable" standard originates from the Interstate Commerce Act, *see, e.g.*, Interim Decision and Order, *AT&T and the Associated Bell System Companies Charges for Interstate and Foreign Communication Service*, 9 F.C.C. 2d 30, ¶ 67 (1967), and appears in numerous state and federal statutes, including sections 10(a)(1) and 201(b) of the Communications Act. *See* 47 U.S.C. § 160(a) (requiring the Commission to "forbear from applying any regulation or any provision of this chapter . . . if the Commission determines

"wide discretion" that the "just and reasonable" standard confers upon agencies. *See, e.g., Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 721 (D.C. Cir. 2000) (observing that Federal Power Act confers "wide discretion" on FERC to determine whether rates are "just and reasonable" or "undu[ly] discriminat[ory]"). The phrase "just and reasonable rates" has "no intrinsic meaning applicable alike to all situations[.]" *Chicago v. FPC*, 458 F.2d 731, 750 (D.C. Cir. 1971).

In particular, the Supreme Court has "consistently rejected any thought that costs should be the controlling factor in rate making."[4] Instead, the "just and reasonable" standard "accommodate[s] rates designed . . . to reflect the value of a service rather than its cost . . . [and] to reflect competitive market factors[.]"[5] Courts have accordingly determined that agencies "may rely upon market-based prices in lieu of cost-of-service regulation to assure a 'just and reasonable' result." *Consumers Energy Co. v. FERC*, 367 F.3d 915, 922-23 (D.C. Cir. 2004) (citation omitted).[6] Likewise, the Commission has found that "market forces will generally ensure that the rates, practices, and classifications . . . are just and reasonable and not unjustly or

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that," inter alia, "enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are *just and reasonable* and are not unjustly or unreasonably discriminatory") (emphasis added); 47 U.S.C. § 201(b) ("All charges, practices, classifications, and regulations for and in connection with such communication service, shall be *just and reasonable*, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful.") (emphasis added).

4 *Alabama Great S. R.R. v. United States*, 340 U.S. 216, 223 n.4 (1951) (holding that Interstate Commerce Commission was entitled to consider relevant factors other than cost when setting differential between all-rail rate and joint rail-barge rate, including necessity for maintaining competition).

5 Win Whittaker, *A Price-Level (Incentive) Regulation Proposal for Oil Pipelines,* 46 Okla. L. Rev. 415, 429-30 (1993) (citing *Assoc. Gas Distrib. v. FERC,* 824 F.2d 981, 1010-11 (D.C. Cir. 1987) (recognizing that "value of service ratemaking . . . has an established place" in rate regulation); *Consol. Rail Corp. v. United States*, 812 F.2d 1444, 1454 (3d Cir. 1987) (affirming ICC pricing plan "rely[ing] primarily on market forces"); *Houston Lighting & Power Co. v. United States*, 606 F.2d 1131, 1148 (D.C. Cir. 1979) (holding that rates which exceed fully distributed costs are "neither arbitrary nor forbidden by the Act")).

6 *See also Ting v. AT&T,* 319 F.3d 1126, 1145 (9th Cir. 2003), ("in contrast to 1934, when Congress enacted §§ 201(b) and 202(a) to protect customers for whom AT&T was the only option, the FCC now defers to the market unless the market is seriously flawed or not competitive"), *cert. denied*, 124 S. Ct. 53 (2003); *see also Elizabethtown Gas Co. v. FERC*, 10 F.3d 866, 870 (D.C. Cir. 1993) ("it is rational to assume that the terms of their voluntary exchange are reasonable") (citation omitted).

unreasonably discriminatory."[7] And the D.C. Circuit has held that the "generality of these terms" permits the Commission "to value the free market, the benefits of which are well-established," and entitles the Commission to reject any stricter reading of these terms that "would harm consumers and would be contrary to Congress' clearly articulated policy in favor of competition in telecommunications services." *Orloff v. FCC*, 352 F.3d 415, 420-21 (D.C. Cir. 2003) (internal quotations omitted), *cert. denied*, 124 S. Ct. 2907 (2004).

4. Of particular relevance to Verizon's broadband forbearance petition, the flexibility inherent in the "just and reasonable" standard accommodates rates designed to provide *non-cost incentives* to carriers. In *Permian Basin*, for example, the Supreme Court held that a regulatory agency's "responsibilities [in applying the 'just and reasonable' standard] include the protection of *future*, as well as present, consumer interests." *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 798 (1968) (emphasis added). And the Court further held that, in applying this standard, the agency may discharge its responsibilities to future consumer welfare by "provid[ing] a *useful incentive*" for risky research and development projects that will bear fruit only in the longer term. *Id.* (emphasis added). The D.C. Circuit has similarly concluded "that in setting rates within a just and reasonable range," a regulatory agency "may consider what future activities it wishes to encourage." *Natural Gas Pipeline Co. of Am. v. FERC,* 765 F.2d 1155, 1168 (D.C. Cir. 1985).[8]

Here, too, in considering whether Verizon's forbearance petition meets the standards of section 10(a)(1), the Commission should place significant weight on the longer term consumer benefits of creating investment incentives for the deployment of innovative new technologies.

5. Finally, the discretionary nature of the services at issue is yet another factor that supports the Commission's reliance on market forces to ensure "just and reasonable" rates. Broadband Internet access is a new service option that consumers are free to purchase or not, depending on whether the service and its price suit them. The introduction of such new services is thus fundamentally a competitive phenomenon, as Verizon has explained in detail in its prior submissions.[9] As a result, the justness and reasonableness of rates is properly "established by

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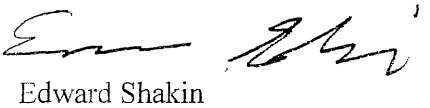
7 Second Report and Order, *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 11 FCC Rcd 20730, ¶ 21 (1996) (finding tariffs unnecessary to ensure just and reasonable rates); *see also* Memorandum Opinion and Order, *Orloff v. Vodafone Airtouch Licenses*, 17 FCC Rcd 8987 (2002) (finding that "haggling" practices did not violate section 201(b)'s "just and reasonable" requirement given market's competitive nature), *aff'd, Orloff v. FCC, supra.*

8 *See also American Pub. Gas Ass'n v. FPC*, 567 F.2d 1016, 1056 (D.C. Cir. 1977) (holding that an agency must consider incentives in establishing just and reasonable rates).

9 *See, e.g.,* Declaration of Alfred E. Kahn and Timothy J. Tardiff at ¶ 13 (Dec. 18, 2001), filed as Exh. B to the Comments of Verizon Communications, *Request for Comments on Deployment of Broadband Networks and Advanced Telecommunications*, Docket No. 011109273-1273-01 (Nat'l Telecomm. & Info. Admin. Dec. 19, 2001).

what customers are willing to pay for such non-essential services."[10] In sum, given the discretionary nature of broadband services, the competitive market for those services, and the public benefit of encouraging innovative new technology like FTTP and Fios, the Commission is more than justified in relying on market forces to yield "just and reasonable" rates and terms.

Sincerely,



Edward Shakin

Attachment

cc: Christopher Libertelli
Matthew Brill
Scott Bergmann
Jessica Rosenworcel
Daniel Gonzalez
John Rogovin
John Stanley
Michelle Carey
Thomas Navin
Jeffrey Carlisle
William Maher

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[10] Order, *Investigation into Regulatory Alternatives for NYNEX,* 1995 Me. PUC Lexis 19, at *131 (1995); *see* Notice of Proposed Rulemaking, *Revisions to the Price Cap Rules for AT&T,* 8 FCC Rcd 5205, ¶¶ 3-4 (1993) (concluding there was "substantial reason to consider moving [optional calling plans] from [price caps] to streamlined regulation," as had "already [been] done for [other] services subject to effective competition," and noting that "[b]ecause the current rates for their optional plans already appear to be determined by market forces, not the price cap limits, customers are unlikely to be harmed by streamlined regulation"); Order, *Appropriate Regulatory Plan to Succeed Price Cap Regulation for Verizon Massachusetts' Intrastate Retail Telecom. Svcs.*, 2003 Mass. PUC Lexis 17 (2003) (maintaining pricing flexibility for "discretionary," or "non-basic," residential services, such as Directory Listing Service, Busy Line Verification and Busy Line Interrupt, Ringmate Ring ID Service, and Integrated Services Digital Network ("ISDN"), because market forces had yielded "just and reasonable rates for these services").

NEWS RELEASE

FOR IMMEDIATE RELEASE
July 19, 2004

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Verizon Poised to Deliver First Set of Services to Customers Over Its Fiber-to-the-Premises Network

'Verizon Fios' Initially Will Offer Three High-Speed Data Options Including Speeds 10 Times Faster Than Current Consumer Broadband Services and Prices as Low as $34.95

Additional Fiber Deployments Under Way in California and Florida

NEW YORK – Verizon customers in Keller, Texas, soon will be the first to receive groundbreaking high-speed Internet services over Verizon's fiber-to-the-premises (FTTP) network. The company is raising the bar on consumer broadband today by introducing data speeds of up to 30 megabits-per-second (Mbps) in Keller later this summer and in other markets later this year. Prices start at $34.95 per month.

The company also announced additional fiber deployments that are under way in California and Florida.

The new suite of fiber-optic services will be called Verizon Fios[sm] (FYE-ose). FTTP technology utilizes fiber-optic connections – instead of copper wire – directly into homes and businesses to enable a broad array of voice, data and video applications.

Fios consists of three consumer Internet access services. At 30 Mbps, the fastest data service is ten times faster than consumer broadband speeds typically available today. Entry and mid-level services at speeds of 5 Mbps and 15 Mbps also beat the speeds and prices of today's consumer broadband.

"Fios will set the new standard for consumer broadband services in America," said Bob Ingalls, president of Verizon's Retail Markets group. "Our customers will be amazed at the online world that Fios opens to them, as it can make applications like video chat and conferencing, digital movie downloads, and interactive multi-player games a part of their daily lives."

Ingalls added that Verizon is using the most advanced technology to deliver downstream and upstream speeds that will give customers truly interactive, two-way broadband capabilities.

"The Internet is an increasingly interactive place where quickly sending information is just as important as quickly receiving it," he said. "From uploading multi-megabit e-mails with photo attachments, to using voice-over-IP services or interacting with the office from home, Fios will give customers unprecedented speed, efficiency and productivity at very competitive prices."

Each Fios service is available either as part of a bundle of local and long-distance calling services from Verizon or as a stand-alone Internet access service. The company plans a Fios video offering to give consumers an alternative to cable TV in 2005.

Maximum connection speeds and pricing for Fios consumer services are:

- 5 Mbps/2 Mbps for $34.95 a month as part of a calling package, or $39.95 a month stand-alone
- 15 Mbps/2 Mbps for $44.95 a month as part of a calling package, or $49.95 a month stand-alone
- 30 Mbps/5 Mbps at pricing to be announced later

"In addition to an outstanding array of high-speed access options, we will provide our customers with a first-class installation experience, where a Verizon technician visits the home, sets up the connection and configures the service for you," said Ingalls.

Each consumer data offer includes the suite of services currently available to Verizon Online DSL customers at no additional charge, including: MSN Premium content; Verizon's new Broadband Beat entertainment portal optimized for high-speed access featuring news games, streaming video and more; up to nine e-mail accounts with 30 megabytes (MB) of storage for the primary account and an additional 10 MB for each sub-account; address book and calendar; 10 MB personal Web space and a Web site building tool; and access to newsgroups.

Verizon Expands FTTP Deployment in California and Florida

Verizon also has begun building its FTTP network in parts of California, Florida and Texas:

- In California, Verizon plans to pass about 100,000 homes and businesses with FTTP technology in the Huntington Beach area and in other parts of Southern California.
- In Florida, Verizon plans to pass about 100,000 homes and businesses with FTTP technology in the Tampa area and other parts of Hillsborough County.
- In Texas, Verizon plans to pass 100,000 homes in part of the Dallas-Fort Worth metroplex, including Keller, which was announced by the company in May.

Verizon intends to pass 1 million homes and businesses in parts of nine states with fiber by the end of the year.

"Thousands of people can now see for themselves that fiber from Verizon is coming down their streets and heading straight for their doors, and the excitement in these communities is building," said Paul Lacouture, president of Verizon's Network Services group.

"Our approach to FTTP recognizes that broadband is a truly interactive technology, with upstream capabilities playing just as key a role in consumers' online activities as downstream speeds," Lacouture added. "This is in contrast to other providers' plans that focus primarily on one-way entertainment applications that meet more limited, short-term customer needs. Our FTTP deployment will help ensure that our network meets customers' needs today and supports any imaginable requirement that could evolve tomorrow. It will transform the way customers think about and use communications, information and entertainment services."

A Dow 30 company, Verizon Communications (NYSE:VZ) is one of the world's leading providers of communications services, with approximately $68 billion in annual revenues. Verizon companies are the largest providers of wireline and wireless communications in the United States. Verizon is also the largest directory publisher in the world, as measured by directory titles and circulation. Verizon's international presence includes wireline and wireless communications operations and investments, primarily in the Americas and Europe. For more information, visit *www.verizon.com.*

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