

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

_____)	
In the Matter of)	
)	
Jurisdictional Separations Reform and)	CC Docket No. 80-286
Referral to the Federal-State Joint Board)	
)	
Communications Assistance for Law)	ET Docket No. 04-295
Enforcement Act)	

COMMENTS OF VERIZON¹

The costs associated with compliance with the Communications Assistance for Law Enforcement Act (“CALEA”) should be treated in accordance with the existing categories currently in place under the interim separations freeze and no new separate category should be created. The Federal-State Joint Board (“Joint Board”) recommended, and the Commission adopted, the freeze in order “to stabilize and simplify the separations process” while the Commission works on “more comprehensive separations reform.”² As changes in technology outpace the regulatory process and provide even more competition in the marketplace, the need for incumbent carriers to track or separate costs between state and interstate jurisdictions becomes increasingly less meaningful. Thus, the Joint Board should add no new categories nor make any changes to the separations process for CALEA related costs. Rather, the Joint Board

¹ The Verizon telephone companies (“Verizon”) are the local exchange carriers affiliated with Verizon Communications Inc. identified in the list attached as Attachment A hereto.

² *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, Report and Order, 16 FCC Rcd 11382, ¶ 1 (2001) (“Order”).

should recommend that the freeze be extended beyond its expiration in June 2006 until the separations process is no longer necessary.

I. The Joint Board Should Retain the Current Treatment of CALEA Costs Under the Interim Freeze.

This is not the first time the Joint Board has considered the appropriate treatment of CALEA costs in the separations process. In 1997, the Commission first referred the issue of CALEA cost recovery to the Joint Board in connection with its referral of the review of the entire separations process.³ At that time, the Joint Board determined not to treat CALEA costs separately from its discussion of the overall freeze nor any differently than it treated other costs. Rather, CALEA costs were simply subsumed in the Joint Board's global recommendation to freeze all separations categories and factors. There is no reason to depart from that determination.

The Joint Board recommended, and the Commission adopted, the freeze of separation factors and relationships for a number of reasons. Both the Joint Board and the Commission recognized that the separations process was part of a system of "outdated regulatory mechanisms that are out of step with today's rapidly-evolving telecommunications marketplace." Order ¶ 1. One goal then was "to stabilize and simplify the separations process" while the Commission worked on "more comprehensive separations reform." *Id.* Another goal was to "reduce regulatory burdens" and provide "regulatory certainty for carriers", particularly for incumbent

³ See *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, Notice of Proposed Rulemaking, 12 FCC Rcd 22120 (1997) ("We seek comment on how to separate the costs a carrier may incur and the reimbursements (revenues) a carrier may receive in establishing the capabilities and capacity necessary to comply with sections 103 and 104 [of CALEA]. Specifically, we seek comment on whether the costs incurred should be allocated to a single category identified as CALEA-related expenses, or whether the costs associated with compliance should be allocated to the existing separations categories or subcategories within them.") *Id.* ¶ 110.

carriers who were required to perform burdensome separations studies, while competitive carriers had no similar requirements. Order ¶¶ 12, 13. Changing the current treatment of CALEA related costs would undermine these important goals in a number of ways.

First, creating a new category for separation purposes would undermine the goal of the freeze in instilling simplicity and stability in the separations process. Today, Verizon has brought its circuit switched facilities into compliance with CALEA in accordance with the terms of a flexible deployment plan it negotiated with the FBI and filed with the Commission. At this time, all 290 of Verizon's circuit switches that were deployed after January 1, 1995 are compliant with CALEA's capability requirements. The costs to Verizon for equipping the circuit switches with CALEA capabilities are not uniquely identified. Rather, those costs are part of the cost of the equipment – the circuit switch, which today comes preconfigured with CALEA capabilities. When the cost of the circuit switch is separated pursuant to existing factors, CALEA compliance costs are included in that allocation as well. Thus, the current allocation of equipment costs under the freeze is simple and defined and adequately addresses the separation of the costs of CALEA compliance as it exists today.

On the other hand, creating a separate category for CALEA compliance costs would require Verizon and other carriers to conduct time consuming cost studies and to measure usage of the service between jurisdictions. In addition, each additional separations category would have ripple effects on other categories and would require carriers to devote additional resources to tracking and allocating these costs among the various existing categories. This would create tremendous burdens and costs for Verizon and undermine the goal of the freeze to relieve carriers of regulatory burdens.

There is even less reason to separate CALEA costs associated with the newer technology of packet mode and broadband services. Indeed, it would be premature to determine any unique separation rules for CALEA compliance costs on a going forward basis because the scope of and solutions to CALEA issues for packet-mode and broadband services have not yet been determined. As evidenced by the FBI's request last year for expedited rulemaking concerning CALEA,⁴ the scope of CALEA and the obligations of telecommunications carriers that arise under CALEA are still unsettled.

Verizon has made considerable progress in providing CALEA capabilities on the network-based voice over IP services that it plans to roll out, including working with a standards committee for CALEA-compliance for voice over packet technologies in wireline communications networks. The costs associated with providing CALEA capabilities on those services, however, are still being evaluated. With respect to other packet-switched or broadband access services to which CALEA is determined to apply, the development of software and equipment with "CALEA solutions" is still at an earlier stage than for voice over IP service. To begin with, the industry has not yet approved a set of standards for use in the development of these solutions. Verizon continues to work with law enforcement, standards organizations, and the industry in determining what CALEA's provisions mean in the context of these services and defining some of the relevant standards. However, there remains significant uncertainty concerning complex issues such as the scope of CALEA's capability requirements with respect to broadband access services and what the requirements mean when applied to such services.

Consequently, the costs associated with such compliance remain largely unknown, much less quantifiable. It would thus be burdensome, wasteful and contrary to the goals of the freeze

⁴ *Communications Assistance for Law Enforcement and Broadband Access Services*, Notice of Proposed Rulemaking and Declaratory Ruling, 19 FCC Rcd 15676 (2004).

to attempt to determine some unique separations rules for CALEA costs when the bounds of such costs are as yet undefined. In addition to reinjecting regulatory burdens and costs into the separations process, a change in the current separations treatment of CALEA costs under the freeze would also undermine the freeze's goal of providing "more predictable separations results," which would encourage the deployment of "new services and technologies in the marketplace." *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, 15 FCC Rcd 13160, ¶ 17 (2000) ("Recommended Decision"). Because of the challenges in incorporating CALEA capabilities into packet-mode and broadband services,⁵ the Joint Board must not allow potential impacts on separation results to stifle the innovation in services and solutions that are being developed for CALEA. Once solutions are identified and costs quantified, the separations process should not limit carriers from seeking recovery of those costs from law enforcement or customers using whatever legal means they may choose.

Finally, because the real debate around CALEA costs will center on CALEA capabilities over packet mode and broadband technologies, any discussion of the need for separation of CALEA compliance cost may soon become obsolete as competition in broadband eliminates any need for pricing regulations altogether. Verizon has urged the Commission to deregulate broadband in this and in numerous other proceedings,⁶ and the Commission is poised to address

⁵ See generally Reply Comments of Verizon on Commission's Notice of Proposed Rulemaking and Declaratory Ruling, ET Docket No. 04-295, RM 10865 (filed Dec. 21, 2004) at 15-17.

⁶ See Comments of Verizon on Joint Board "Glide Path" Paper, CC Docket No. 80-286 (filed Jan. 22, 2002) at 1, 5-6; See 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); See Conditional Petition of the Verizon Telephone Companies 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); See Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C 160 (c) from Title II and

those issues. As competition increases and regulation decreases, there is increasingly no justification to continue cost-based rate regulation in any jurisdiction or to impose any regulatory accounting burdens on incumbent carriers, including jurisdictional separations. The path to such a goal is the gradual phasing out of regulations that require jurisdictional separations, not the fashioning of new standards, particularly for piecemeal services. There is simply no need to create yet another category for CALEA-related costs. The ultimate goal should be the complete abolishment of the separations process and cost-based rate regulation in all jurisdictions.

II. The Current Freeze Should Be Extended Until the Commission Is Ready To Phase Out Separations.

Not only should the existing treatment of CALEA costs under the freeze be retained, the overall freeze should be extended beyond its current June 2006 expiration until the separations process is no longer needed. As stated above, the freeze was implemented to address obsolescence of the separations rules in a rapidly-changing market and to instill simplicity and reduce regulatory burdens, particularly on incumbent carriers who are the only carriers subject to Part 36. The freeze also was intended to encourage the deployment of “new services and technologies in the marketplace.” Recommended Decision, ¶ 17. By providing a stable environment under the freeze, carriers are able to make decisions regarding new investments without having to factor in changes in arbitrary cost rules, which could impact how costs may be recovered and whether regulatory calculations would suddenly render otherwise economically viable investments infeasible.

Computer Inquiry Rules with Respect to their Broadband Services, WC Docket No. 04-440 (filed Dec. 20, 2004).

Nothing has changed in the time since the implementation of the freeze to obviate the need for the freeze or to militate the burdens and costs and effects on investment if the freeze were not extended. To the contrary, technology today is advancing at an even more rapid pace, particularly in broadband deployment. Since 2001, when the freeze was first implemented, the number of residential and small business subscribers to high speed internet services has more than tripled, from 7.8 million lines in June 2001 to 26 million lines in December 2003.⁷

In addition to the rapid growth in subscribers, new technologies have also rapidly grown to add more and intermodal competition to the broadband market. In addition to continuing to invest in DSL, Verizon began a massive investment in fiber to the premises (“FTTP”) technology last year and plans to pass 3 million homes with FTTP by the end of this year. Although cable is still the undisputed market leader at this time, the Commission has found that both cable and DSL face “significant actual and potential competition from . . . alternative broadband providers.”⁸ The growing list of competitive, broadband platforms includes fixed

⁷ *Availability of Advanced Telecommunications Capability in the United States*, Fourth Report to Congress, 19 FCC Rcd 20540, ¶ 2 (2004) (“Fourth Section 706 Report”).

⁸ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, Memorandum Opinion and Order, 15 FCC Rcd 9816, ¶ 116 (2000); *see also* Fourth Section 706 Report, ¶ 3; *Review of the 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, ¶ 263 (2003) (“[T]he Commission also has acknowledged the important broadband potential of other platforms and technologies, such as third generation wireless, satellite, and power lines”).

wireless, Broadband over Power Lines, satellite, and 3G wireless.⁹ As Chairman Powell and Commissioner Abernathy recently noted, competition from multiple technological platforms has changed things dramatically from “[j]ust a few short years ago, [when] critics argued that competition for the ‘last mile’ would never become a reality because no one could duplicate or bypass the telephone line that ran from the curb into the home.”¹⁰

In light of this intense competition, it would be inappropriate to impose disproportionate regulatory requirements on any broadband providers and hinder their investment in emerging technologies, especially when other competitors are not likewise burdened. In instituting the freeze, the Joint Board and Commission recognized that the separations process was part of a system of “outdated regulatory mechanisms that are out of step with today’s rapidly-evolving telecommunications marketplace.” Order ¶ 1. It has become even more “out of step” in today’s newer telecommunications technology. *Id.*

⁹ See Mass-Market Broadband Competition: September 2004, originally Appendix A to UNE Fact Report 2005, Prepared for and Submitted by BellSouth, SBC, Qwest, and Verizon, WC Docket 04-313, CC Docket No. 01-338, at A-3 to A-5, A8 to A-19 & Tables 3, 5 & 6 (filed Oct. 4, 2004); see also Letter from Dee May, VP, Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 01-337, 02-33, 98-10, 98-20 at 10-17 (filed Nov. 13, 2003); see also Letter from Edward Shakin, VP and Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 01-338, 96-98, 98-147, 02-33, 01-337 (filed Jan. 15, 2003).

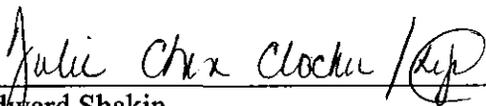
¹⁰ Joint Statement of Chairman Michael K. Powell and Commissioner Kathleen Q. Abernathy, *Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems; Carrier Current Systems, including Broadband over Power Line Systems*, Report and Order, 19 FCC Rcd 21265 at 81 (2004).

Conclusion

The Joint Board should recommend that the Commission retain the current treatment of CALEA costs under the interim freeze and that no new categories should be created. In addition, the Joint Board should recommend that the freeze be extended beyond its current expiration in June 2006.

Respectfully submitted,

Of Counsel:
Michael E. Glover



Edward Shakin
Julie Chen Clocker
VERIZON
1515 North Court House Road
Suite 500
Arlington, VA 22201-2909
(703) 351-3071

Counsel for the Verizon telephone companies

April 1, 2005

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.