

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Comment Sought on Benefits and Burdens of
Requiring Commenters to File Cited Materials
in Rulemaking Proceedings as Further Reform
to Enhance Record-Based Decisionmaking

GC Docket No. 10-44

COMMENTS OF VERIZON¹

Requiring parties to submit copies of materials they cite in rulemakings² would increase the burden of participating in Commission proceedings and would make filings harder to navigate, and therefore less useful. The Commission recently improved the transparency of its processes by reforming the Part 0 rules of organization, the Part 1 rules of practice and procedure, and the *ex parte* rules. But unlike those worthy reforms, this proposal would conflict with the President's 2011 Executive Orders mandating that federal agencies remove or lessen regulatory burdens. There are less burdensome ways to ensure cited information is available to the Commission and the public. The Commission should not adopt the proposal.

¹ The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc., and Verizon Wireless.

² See Public Notice, *Comment Sought on Benefits and Burdens of Requiring Commenters to File Cited Materials in Rulemaking Proceedings as Further Reform to Enhance Record-Based Decisionmaking*, GN Docket No. 10-44, DA 11-1950 (Nov. 29, 2011) ("Public Notice").

DISCUSSION

As the President recognized in January 2011 and reaffirmed in July 2011, the regulatory system should “promot[e] economic growth, innovation, competitiveness, and job creation . . . [and] use the best, most innovative, and least burdensome tools for achieving regulatory ends.”³ Executive Order 13579 requires independent regulatory agencies to review their processes and procedures to determine whether current requirements could be “modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.”⁴ And, federal agencies must “adopt a regulation only upon a reasoned determination that its benefits justify its costs” and “tailor its regulations to impose the least burden on society.”⁵

The proposed new procedural requirement that parties submit full copies of any materials cited in their pleadings or *ex parte* submissions fails this test, and runs afoul of the Obama Administration’s goal of “getting rid of absurd and unnecessary paperwork requirements that waste time and money”⁶ and “cutting down on the paperwork that saddles businesses with huge administrative costs.”⁷ Even with the Commission’s improved electronic filing processes, the

³ President Barack Obama, Executive Order 13563 (Jan. 18, 2011), 76 FR 3821 (2011); *and* President Barack Obama, Executive Order 13579 (July 11, 2011), 76 FR 41857 (2011).

⁴ Executive Order 13563, at Sec. 6(b); Executive Order 13579, Sec. 2(b).

⁵ Executive Order 13563, Sec. 1(b)(1), (2); *see also* Executive Order 13579, Sec. 1(b).

⁶ President Barack Obama, “Toward a 21st Century Regulatory System,” Wall Street Journal, <http://online.wsj.com/article/SB10001424052748703396604576088272112103698.html> (Jan. 18, 2011).

⁷ Remarks by the President to the Chamber of Commerce, U.S. Chamber of Commerce Headquarters, Washington, D.C., <http://www.whitehouse.gov/briefing-room/speeches-and-remarks> (under “Archives” follow “February 2011”) (Feb. 7, 2011). Cass Sunstein, the Administrator for the Office of Information and Regulatory Affairs, similarly emphasized in a memorandum to the Chief Information Officers of the federal agencies that “[p]aperwork and reporting requirements impose significant burdens on the American people, including those who

proposed requirement would increase the cost and burden of participating in Commission proceedings. At a minimum, filers would have to download or print and scan documents that can be extraordinarily lengthy, and then upload them back to the Commission's system. Oftentimes a pleading may cite dozens (or even hundreds) of materials, all of which a party would have to compile and submit. And multiple parties that cite the same documents would be required to submit duplicate copies. This process would be time-consuming and potentially expensive for participants – and it would dramatically increase the demands placed on the Commission's electronic filing system. For lengthy pleadings, this requirement would be overwhelming and would require filers to devote many hours to paperwork assembly – even as the substantial majority of all source material cited by filers is publicly available on the Internet. There is no basis for the Commission to engage in a massive new data collection triggered every time an individual or an entity desires to submit something to the agency.

Most of the materials to which Verizon and other parties cite are available on the Internet – including Commission orders, judicial decisions, orders from other state and federal regulatory agencies, prior filings with the Commission, and web-based publications – and encouraging filers to indicate where those materials can be found, through citations to URL addresses or other legal publications, would be a reasonable step that would increase agency transparency. Citing to URL addresses would provide a much more efficient way of accessing materials than would scanned or downloaded copies affixed as attachments to a filing.

run businesses, both large and small.” “Minimizing Paperwork and Reporting Burdens; Data Call for the 2011 Information Collection Budget,” Memorandum for Chief Information Officers, http://www.whitehouse.gov/sites/default/files/omb/inforeg/icb/2011_ICB_Data_Call.pdf, at 1 (Feb. 23, 2011).

Not only does the proposed requirement create a considerable burden, it could actually make matters worse, by requiring parties to file unneeded attachments that could increase the burden on Commission staff and other parties to review. In the relatively uncommon event that cited materials are available in paper only, scanning the materials for submission can be even more burdensome – if the publishers do not restrict copying in the first place. And if a filer chooses to file by paper, the new requirement would create an undue paperwork burden.

Also, there are some documents to which parties may cite (and to which the Commission already has access), but which private entities are not permitted to copy or submit, including some analyst reports. Parties could be forced to exclude helpful citations to relevant information if they were required to provide copies of these materials. Similarly, some documents to which parties cite may themselves be subject to confidentiality provisions, and the Commission would have to enact protective orders to encompass situations of mandatory filing in accordance with the new proposal.

There has been no showing that the proposed requirement to file every source material cited in with the Commission has any utility, much less that such a change in policy is actually necessary for the Commission to perform its functions. Moreover, the burden to comply with this requirement would be extraordinary in many cases. Paradoxically, the requirement could have the unintended effect of discouraging full participation in Commission proceedings, either by creating a disincentive to participate at all, or by creating an administrative burden on a commenter that so outweighs the perceived benefit of citation that the commenter chooses not to cite to the material at all. In that regard, the proposal undermines Executive Order 13563 – and therefore Executive Order 13579 – which promote public participation in the regulatory process and requires agencies to “endeavor to provide the public with an opportunity to participate in the

regulatory process.”⁸ As a result, although the Public Notice suggests this requirement could improve transparency and efficiency in Commission proceedings, it would have the opposite effect. The proposed rule would create inefficiencies by requiring filers to expend resources unnecessarily, and it may yield less complete comments and records than the Commission’s existing rules. To the extent the Commission requires a particular document that a party cites and that is not otherwise available through the Internet, the Commission could request a copy of that material from the filing party, without a change to its procedural rules. This would fully address any transparency concerns.

The Commission therefore should not adopt a rule that requires commenters to file materials they cite in pleadings submitted in rulemaking proceedings. The proposal fails the test of Executive Orders 13563 and 13579, and in fact would increase, instead of minimizing, the burdens associated with the regulatory process, without commensurate benefits to justify its costs.

⁸ Executive Order 13563, Sec. 2(b).

Respectfully submitted,

/s/ Curtis L. Groves

Of Counsel:
Michael E. Glover

Edward Shakin
Curtis L. Groves
VERIZON
1320 North Courthouse Road
Ninth Floor
Arlington, Virginia 22201
(703) 351-3084

Attorneys for Verizon and Verizon Wireless

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