



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

June 5, 2009

The Honorable Henry A. Waxman  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Waxman:

Thank you for your letter of May 15, 2009, seeking information on the impact on the Commission of Verizon's recent withdrawal of two forbearance petitions shortly before their statutory deadlines and regarding the forbearance process more generally. I welcome the opportunity to provide this information as I have been concerned for some time that for a Commission with limited resources and urgent demands, the forbearance process imposes significant strains on these resources at the discretion of companies seeking forbearance rather than being based on industry-wide rulemakings initiated by the Commission.

Our recent experience with the Verizon forbearance petitions reinforces my concerns about the existing process. To summarize, the two most recent forbearance petitions withdrawn by Verizon on May 12, 2009, occurred after nearly a 15 month review of the petitions by Commission staff and the dedication of over 2000 hours of staff-time at a cost of approximately \$150,000 to the Commission. In addition, substantial private resources of interested parties were expended due to the complexity and importance of the issues raised in the petitions. The record in each docket exceeded 1850 pages, not including Verizon's petitions, which were each approximately 400 pages, including attachments.

Of note, these petitions were not the first time the Commission reviewed substantially similar petitions submitted by Verizon. Just months before the submission of these petitions, the Commission had denied Verizon's request for forbearance involving six Metropolitan Statistical Areas (MSAs) including Providence and Virginia Beach. The review of these earlier petitions imposed greater resource burdens on the Commission due to the number of cities involved. Moreover, the Commission expended additional staff hours as a result of Verizon's appeal of the *6 MSA Order*, which is currently pending in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) and has been throughout the consideration of the most recent Rhode Island and Virginia Beach forbearance petitions.

As is plainly apparent, a considerable amount of resources has been expended on these forbearance petitions, not to mention the resources spent on the many other forbearance petitions that have in recent years been considered by the Commission. Particularly troublesome is the fact that after all that effort and analysis, the Commission did not render a decision because of the petitioners' last minute withdrawal of their petitions.

Given the many important concerns raised with the forbearance process, on May 27, 2009, I circulated to the full Commission a draft Order that includes a number of changes to the Commission's procedural rules to improve the fairness and efficiency of the forbearance process, and in some respects protect the Commission from utilizing its limited resources on forbearance petitions that are incomplete, unclear or retain the possibility of being unilaterally withdrawn by petitioners late in the process. I recognize that changes to the forbearance statute itself are the prerogative of Congress. However, the Commission can play a constructive role by implementing procedural protections that minimize industry's ability to drive the Commission's agenda in this area.

The remainder of this letter describes in greater detail and puts in greater context the efforts made by the Commission in consideration of Verizon's forbearance petitions concerning Rhode Island and Virginia Beach.

By way of procedural background, on February 14, 2008, Verizon filed a petition pursuant to Section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, requesting that the Commission forbear from applying to Verizon certain unbundling requirements, dominant carrier rate regulation, and other obligations in most of its incumbent local service territory in Rhode Island. Upon receipt, the Commission's Wireline Competition Bureau (Bureau) staff conducted an initial review of the petition and released a Public Notice seeking public comment on it. Simultaneously, the Bureau also issued two separate protective orders—the first establishing basic protections for confidential information submitted to the record, and the second adopting greater restrictions for "highly confidential" information submitted to the record. On March 17, 2008, a coalition of parties jointly filed a Motion to Dismiss or Deny this petition, and a separate motion seeking to extend the comment cycle in the underlying proceeding. The Bureau released a Public Notice seeking comment on the Motion to Dismiss or Deny on March 21, 2008. On April 4, 2008, the Bureau extended the reply comment deadline in the underlying proceeding to allow parties more time to create a complete record.

On March 31, 2008—three days after the initial comments were due in the Rhode Island proceeding—Verizon filed a second petition in which Verizon sought forbearance in the Virginia Beach MSA. As in the Rhode Island proceeding, Bureau staff reviewed the initial petition and, on April 15, 2008, issued two protective orders and a Public Notice seeking comment on the Virginia Beach forbearance petition. Also as in the Rhode Island proceeding, on April 29, 2008, a coalition of parties jointly filed a Motion to Dismiss or Deny this petition. On May 2, 2008, Bureau staff issued a Public Notice seeking comment on the Motion to Dismiss or Deny.

On February 2, 2009, and February 27, 2009, the Bureau extended by 90 days the statutory deadlines in the Rhode Island and Virginia Beach proceedings, respectively.

On April 24, 2009, a draft order was circulated to the full Commission. On May 12, 2009, three days before the statutory deadline of the Rhode Island petition, and before the Commission had voted on the draft order, Verizon withdrew its petitions.<sup>1</sup>

For purposes of the substantive review of Verizon's petitions and the other record evidence, a core team of attorneys and economists in the Bureau was organized. These Bureau staff reviewed each record submission, compiled and analyzed the tabular data, and had numerous meetings—internal meetings as well as *ex parte* meetings with interested parties. The Bureau staff also drafted memoranda that analyzed the issues raised in the record and presented options and recommendations for resolving the underlying proceedings and the Motions to Dismiss or Deny. Ultimately, the Bureau staff prepared and circulated a draft Order addressing Verizon's petitions and the Motions to Dismiss or Deny. The Bureau staff also provided briefings for the offices of the Acting Chairman and the Commissioners on the issues raised by the petitions and the analysis in the draft Order.

The Bureau's team dedicated to these petitions consulted extensively with other attorneys and economists both within the Bureau and in other Offices. In particular, given the breadth of issues raised by Verizon's petitions, over a dozen members of the Bureau were involved in these proceedings, comprised of members from all four of the Bureau's divisions and the Bureau's Front Office. In addition, the Bureau staff sought the assistance of the Commission's Office of General Counsel and Office of Strategic Planning and Policy Analysis.

The Acting Chairman and Commissioners and their staffs (8<sup>th</sup> Floor Offices) also were actively engaged in these proceedings, including through *ex parte* meetings with interested parties, internal meetings, and review of the draft Order.

In an effort to quantify the impact on the Commission of its consideration of Verizon's Rhode Island and Virginia Beach petitions, we conservatively estimated both the number of hours expended by the Commission in considering these petitions prior to their withdrawal, as well as the associated financial impact:<sup>2</sup>

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<sup>1</sup> See Letter from Dee May, Vice President - Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 08-24, 08-49 (filed May 12, 2009).

<sup>2</sup> The number of hours worked was based on each of the relevant staff conservatively estimating the number of hours he or she individually spent on these matters. The associated financial impact was determined by multiplying the hourly rate associated with an individual's pay schedule times the number of hours estimated by that individual. The estimates do not attempt to quantify the limited impact on the Office of the Secretary or the Reference Information Center to process and manage the filings associated with these proceedings.

<u>Commission Level</u>	<u>Hours</u>	<u>Financial Impact</u>
Division Staff	1248	\$89,377
Division Managers	627	\$44,011
Front Office	150	\$11,186
8 <sup>th</sup> Floor Offices	71	\$5,197
Total	2,096	\$149,772

Significant private resources also were expended because Verizon’s petitions raised complex issues of great concern to the telecommunications services industry. Over three dozen separate entities participated in these proceedings, comprised of competitive carriers, telephone company investors, business telecom service customers, local governments, and public interest organizations. According to the Commission’s Electronic Comment Filing System (ECFS), the substantive record in each docket exceeded 1850 pages, not counting Verizon’s petitions, each of which was approximately 400 pages in length, including attachments.<sup>3</sup>

Moreover, to provide further context, the tally of resources devoted to the forbearance petitions Verizon withdrew on May 12, 2009, does not fully reflect the significant total public and private resources that have been expended to address Verizon’s requests for forbearance in areas including Rhode Island and Virginia Beach. Verizon first sought forbearance in Rhode Island and Virginia Beach, including all the areas at issue in its latest petitions, on September 6, 2006, when Verizon filed six separate petitions seeking forbearance in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach MSAs (Verizon 6 MSA proceeding). On December 5, 2007, after a proceeding similar to that described above, the Commission released the *Verizon 6 MSA Order*, which explained the Commission’s decision not to grant Verizon any of the forbearance it sought in those six MSAs.

Although the Commission cannot at this time estimate with any specificity the number of hours it expended to address the Verizon 6 MSA petitions, given the greater number of cities at issue, and a larger record, more public and private resources were expended to address those six petitions than were expended addressing the more recently filed Rhode Island and Virginia Beach petitions. Over 100 separate entities participated in the Verizon 6 MSA proceeding, including competitive carriers, trade groups, telephone company investors, large business telecom service customers, hundreds of small business customers individually signing two joint filings, multiple state regulatory commissions, local governments, and numerous consumer advocates and public interest organizations. The record in the Verizon 6 MSA proceeding exceeded 5200 pages, which is significantly larger than the combined records in the Verizon Rhode Island and Virginia Beach proceedings.

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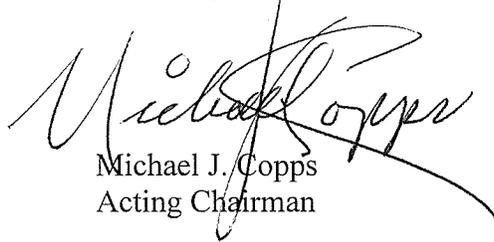
<sup>3</sup> The estimate from ECFS also excludes letters from parties acknowledging their duty to comply with the provisions of the protective orders adopted in the proceedings and any Orders or Public Notices released by the Commission. In addition, ECFS will tend to understate the page count for certain ex parte filings with confidential attachments. In particular, where attachments to ex parte filings were confidential, in some cases ECFS only includes a single page noting that an attachment was redacted, although the attachment itself might be multiple pages in length.

In addition, on January 14, 2008, Verizon appealed the *Verizon 6 MSA Order* to the D.C. Circuit. At Verizon's request, Bureau Staff issued modifications to 5 of the Commission's existing protective orders to allow litigants in the appeal of the *Verizon 6 MSA Order* to use certain confidential and highly confidential information from prior proceedings. The Commission's Office of General Counsel (OGC) likely spent hundreds of hours on Verizon's appeal. In addition, over two dozen other parties participated as intervenors in this litigation.

As evident from the above, Verizon's attempts to obtain forbearance from certain statutory and regulatory obligations in Rhode Island and Virginia Beach have consumed significant Commission and other resources.

I appreciate your interest in this important matter. Please do not hesitate to contact me if I can be of any further assistance.

Warm regards,

A handwritten signature in black ink, appearing to read "Michael J. Copps". The signature is fluid and cursive, with a long, sweeping underline that extends to the right and then loops back down.

Michael J. Copps  
Acting Chairman