

**BEFORE THE
COMMITTEE ON PUBLIC SERVICES AND CONSUMER AFFAIRS**
of the
COUNCIL OF THE DISTRICT OF COLUMBIA
Public Hearing
on

**“Bill 17-0950 Approval of Verizon Washington, DC Inc.’s Cable Television System
Franchise Act of 2008”**

Brief Supporting the Testimony

of

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As the statutory advocate for residential utility consumers the Office is charged with serving the best interests of consumers.¹ This Franchise Agreement has a direct impact on telephone consumers as the infrastructure that will be built to support FiOS will deliver regulated telecommunications services. Therefore, at the end of the day, I must ensure that this Franchise Agreement operates in the best interest of telecommunications consumers. To that end, this brief puts forth recommended amendments to the Franchise Agreement that ensures a vibrant and supportive environment for telecommunications competition in the District of Columbia, ensures that the current and future telecommunications infrastructure is well maintained and most importantly contains fair terms and provisions that allow consumers to have 1) access to local advocacy and complaint resolution, 2) be free from onerous charges and 3) receive fair, just and reasonable service.

¹ The Office of the People's Counsel is the public advocate for natural gas, electric and telecommunications ratepayers in the District of Columbia. By law, the Office represents D.C. utility ratepayers' interests before the Public Service Commission, FERC, FCC, other utility regulatory bodies and the courts. The Office is mandated to conduct consumer education and outreach and may represent individual consumers with complaints related to their utility service and bills.

1. The Franchise Agreement Needs To Ensure that the Deployment of FiOS will not Thwart or Hinder Telecommunications Competition and Customer Choice is Preserved

In 1996, the DC City Council enacted the Telecommunications Statute, codified at DC Code § 34-2002 with the purpose of fostering telecommunications in the District of Columbia.

In pertinent part it reads as follows:

Pursuant to the federal Telecommunications Act of 1996 (Public Law 104-104), the Public Service Commission shall establish a procedure to facilitate entry into the District for providers of all forms of telecommunications service in order to *foster the availability of competitive telecommunications options to consumers in the District...*

In order to continue fostering telecommunications competition in the District of Columbia, the Council cannot pass legislation approving a Franchise Agreement that allows Verizon to engage in a practice of anti-competitive behavior. One such practice is the removal of the copper drop wire when Verizon installs fiber optic service.

Evidence on the public record in proceedings before state public service commissions in Maryland and New York proves that Verizon is engaging in the practice of disconnecting the copper drop wire when the Company installs fiber optic cables to provide FiOS.

Maryland

Currently, there is a proceeding in the state of Maryland examining, among other things, Verizon's practice of disconnecting the copper drop wire when it installs fiber optic service. In a brief dated June 19, 2008, Verizon admitted "when FiOS services are installed today, the copper drop is simply disconnected from the Network Interface Device and capped off, but the copper

loops are left in place.”² The brief goes on to explain that if a customer wants to switch to a competitive provider using the copper drop wire, the competitive provider will have to contact Verizon and request the copper drop wire be reconnected to the NID. Verizon states that it performs this service at no charge to the customer.³

Maryland OPC Witness Michael Starkey explained in his Rebuttal Testimony that Verizon’s policy as described by Ms. Detch is “troublesome for many consumers” and some consumers who requested to have their service returned to copper service had their request denied by Verizon.⁴ Similarly, another OPC witness, Scott Lundquist, explained that while Verizon does not charge for the reconnection of the copper wire, the process of a CLEC ordering and provisioning the reconnection of the copper drop wire is more complicated than if the copper drop wire were left alone.⁵

Elizabeth Balvin of Covad Communications, a CLEC in Maryland, testified that “replacing or reconnecting the copper drop facilities significantly delays and increases the complexity of the installation of the customer’s new services [from a CLEC]” and that “the “[reconnection process will take several days, and introduces unneeded delay and risk of installation problems in the [CLEC] customer’s installation process.”⁶ However, if Verizon were to maintain the copper drop facility connected to the customer’s NID, then the customer would generally be able to replace his or her FiOS service with a simple ‘hot cut’ that is performed in

² *In the Matter of the Commission’s Inquiry Into Verizon Maryland Inc.’s Provision of Local Exchange Telephone Service over Fiber Optic Facilities*, Case No. 9123, Verizon’s Direct Testimony of Margaret Detch, June 19, 2008 at 4.

³ *Id.* at 5.

⁴ *In the Matter of the Commission’s Inquiry Into Verizon Maryland Inc.’s Provision of Local Exchange Telephone Service over Fiber Optic Facilities*, Case No. 9123, Rebuttal Testimony of Michael Starkey, pp. 5, July 17, 2008.

⁵ *In the Matter of the Commission’s Inquiry Into Verizon Maryland Inc.’s Provision of Local Exchange Telephone Service over Fiber Optic Facilities*, Case No. 9123, Direct Testimony of Scott Lundquist, pp. 70-71, June 19, 2008.

⁶ *In the Matter of the Commission’s Inquiry Into Verizon Maryland Inc.’s Provision of Local Exchange Telephone Service over Fiber Optic Facilities*, Case No. 9123, Reply Testimony of Elizabeth Balvin, pps. 2-3, July 17, 2008.

Verizon's central office and not involve a technician to make a field visit to reconnect the copper drop.

Steven Nocella, a witness for XO Communications, another CLEC in Maryland testified about the deleterious impact Verizon's policy of copper removal has on consumers. He states in his Reply Testimony that "Verizon should not be permitted to practice 'forced migration' from copper to fiber effectively taking the choice away from consumers and businesses and ultimately denying them competitive choice as well."⁷

New York

Evidence that Verizon is engaging in this same practice in New York can be found in a July 9, 2007, Washington Post article that explains how Verizon is disconnecting the copper drop wire to consumers in New York. The article describes how this practice severely limits consumers' options for competitive service and gives voice to the frustration of consumers who were not notified the copper wire would be removed once they received Verizon's FiOS. The article quotes Mark Cooper of the Consumer Federation of America, who states that "the reason Verizon is doing this is simple – Verizon does not want competition."⁸

The Importance of the Copper Drop Wire to Telecommunications Competition

While it is true that fiber optic technology can deliver a plethora of telecommunications service speeds higher than copper, the copper infrastructure is still relevant in the telecommunications landscape for several reasons. First, the copper telecommunications network is already ubiquitously deployed. Second, as explained by Steven Nocella of XO Communications in his Direct Testimony in Maryland, technological innovations are increasing

⁷ *In the Matter of the Commission's Inquiry Into Verizon Maryland Inc.'s Provision of Local Exchange Telephone Service over Fiber Optic Facilities*, Case No. 9123, Reply Testimony of Steven Nocella, pp. 5, July 17, 2008.

⁸ Deborah Yao, *Verizon's Copper Cutoff Traps Customers*, Washington Post, July 9, 2007.

the bandwidth of copper facilities allowing it to deliver a greater array of services.⁹ In the future, it is likely that these services can be offered at a lower price than Verizon's FiOS service. Third, copper has the ability to conduct electricity which allows telephone service over copper lines to work in a power outage. Fiber optic-delivered service is limited in its ability to provide telephone service during a power outage. Fourth, copper is still a viable conduit for delivering reliable telecommunications services. Therefore, in light of these four factors, regulators and legislators should take steps to preserve the already ubiquitous network of copper telecommunications infrastructure so consumers can have access to a wide array of competitive alternatives.

Given these tough economic times, it is likely that consumers may want to switch to another service if they simply can no longer afford Verizon's FiOS service. OPC submits for a consumer to have to wait for Verizon before it can have service from a competitor at a lower price is both untenable and unnecessary in a jurisdiction that has adopted telecommunications competition!

OPC's Recommendation to Preserve a Competitive Environment

In order to eliminate any incentive on Verizon's part to make an economic decision to delay this process, the Council should impose a financial penalty in the amount of \$10,000 per instance of delay against Verizon and require Verizon pay for six months worth of the consumer's service from the CLEC. This provision will require Verizon to put its purse where its promise is! In light of the fact that Verizon made an **"economic decision"** to make the District of Columbia, the nation's capital, the last jurisdiction in the surrounding area in which to deploy fiber, the Council must make sure that Verizon does not make an economic decision that

⁹ *In the Matter of the Commission's Inquiry Into Verizon Maryland Inc.'s Provision of Local Exchange Telephone Service over Fiber Optic Facilities*, Case No. 9123, XO's Direct Testimony of Steven Nocella, pps. 5-9, June 19, 2008.

yields solely to their benefit -- the effective elimination of competition, at the expense of customer choice when deploying FiOS in the District.

Taken together, OPC's proposed amendments to the FA will preserve the Council's goal of fostering competition as stated in D.C. Code § 34-2002.

2. The Franchise Agreement Needs to be Amended in Order to Prevent Verizon From Imposing an Onerous Deposit on District Consumers

The proposed FA, page 56 in the section entitled Deposits, Refunds & Credits, allows Verizon to charge District consumers a deposit equal to six times the average customer's bill if the customer has 1) a poor credit history or poor payment history, or 2) who refuse to provide credit history.

OPC submits this provision could not be more anti-consumer! First, the language is silent as to the definition of "poor credit history or poor payment history". Therefore, the determination of "poor credit history" or "poor payment history" is left to Verizon's discretion. Second, the provision allows Verizon to impose a deposit on a consumer who has perfect credit but refuses to provide access to their credit history. Third, the provision allows Verizon to charge a deposit that is six times the average customer's bill. Therefore, if the average customer's bill in the District is \$160, this provision would allow Verizon to impose a deposit in the amount of \$960.00 (\$160 x 6). OPC submits this is an outrageous amount of money to pay in the form of a deposit before you even receive service simply because Verizon deems a consumer to have poor credit or because you are a consumer with excellent credit but refuse to provide Verizon with a Social Security number. Fourth, the provision allows Verizon to charge a deposit amount that far exceeds the amount other utility companies are allowed to charge in the District of Columbia pursuant to Commission Rule 307.

To ensure that a reasonable amount of money be charged for a deposit, the Office recommends the language regarding deposits be replaced with a modified version of the recently

adopted Commission Rules 307 and 308 regarding Deposits and Use of a Customer's Social Security number. (See Modified Rules 307 and 308 attached). The modifications would indicate that the maximum amount of deposit would be \$100 that can be paid in three installments with the first installment due prior to connection of service. The modified rule would also prohibit Verizon from obtaining a consumer's Social Security number to determine if a deposit is required of a consumer.

These two rules along with the entire Consumer Bill of Rights were developed through a collaborative working group process that lasted over two years and was recently approved by the DC Public Service Commission. Therefore OPC's proposed amendments addressing deposits and the use of a consumer's Social Security number has been well vetted by three utility companies, the Office of People's Counsel and approved by the DC Public Service Commission. As such, the proposed rule represents a well balanced and fair means of determining whether a deposit is required of a consumer.

3. The Franchise Agreement Needs to be Amended to Include Financial Sanctions Against Verizon for Missed Appointments

The proposed FA, page 51, Section D1 and D6, entitled Installations and Service Appointments, has language establishing an appointment window for service repair of four hours and a requirement for Verizon to confirm the appointment prior to going to the customer's home. However, there is no penalty for Verizon missing the appointment.

The need for a financial penalty against Verizon for a missed appointment is premised on two factors. First, most consumers are likely to subscribe to Verizon's bundled service whereby they receive their telephone, cable and Internet service. Therefore, if the consumer's service is out and Verizon fails to show up for a repair appointment, it will leave the consumer without three vital means of telecommunications. Second, credible evidence exists that missed appointments is an issue for Verizon in the District of Columbia. During the Quality of Service

hearings held before this very Committee in February of this year, several witnesses testified about the frustration they experienced when Verizon missed repair appointments.

OPC submits the Council needs to include language in the FA to ensure Verizon's bad habit of missing appointments for voice telecommunications service, a service they have been providing in the District since 1883, does not migrate over to this new Verizon FiOS service that consumers will be relying on to provide all of their telecommunications services.

Examples of other states that have imposed a financial sanction in the form of a credit to the consumer when the company misses a repair or installation appointment are listed below:

In Ohio, the rule reads as follows:

Your local phone company must also give you a four-hour appointment window for a technician to install service if you need to be present at the premises. If the company misses your scheduled installation appointment, without giving you 24 hours notice, you may be eligible for a waiver of a least one-half of the installation charges for the affected regulated local services.¹⁰

In Iowa, the rule reads as follows:

Repair -- missed appointments. When a utility makes an appointment for installation or repair within a given range of time, and misses that appointment by over an hour, the customer will receive one month's primary local service free of charge. This is applicable to each missed appointment. The expense incurred as a result of a missed appointment in providing free primary local service shall not be included in rates.¹¹

In Illinois, the rule reads as follows:

If a carrier fails to keep a scheduled repair or installation appointment when a customer premises visit requires a customer to be present, the carrier shall credit the customer \$ 50 per missed appointment. A credit required by this subsection (c) does not apply when the carrier provides the customer with 24-hour notice of its inability to keep the appointment.¹²

After reviewing these rules, the Office submits the following proposed amendment to be included in Section 3 to provide for a credit to consumers when Verizon misses an appointment:

¹⁰ OAC Ann. 4901: 1-5-03 Appendix

¹¹ 199 IAC 22.6(476)

¹² 83 Ill. Adm. Code 732.30

If the Franchisee fails to keep a scheduled repair or installation appointment when a customer premises visit requires a customer to be present, the Franchisee shall issue a credit to the consumer in the amount of \$100 per missed appointment. This credit does not apply when the Franchisee provides the customer with 24 hour notice of its inability to keep the appointment. The expense incurred by the Franchisee as a result of a missed appointment shall not be recovered in rates.

4. The Franchise Agreement Needs to be Revised to Remove Verizon's Authority to Decide When Billing Disputes Are Resolved

Section 6, page 54 entitled Billing subsection G, explains the criteria necessary for a consumer who has a billing dispute to withhold the disputed portion of bill without having their service disconnected, being assessed a late fee or having their account sent to a collection agency. One of the criteria is that it is in Verizon's discretion to determine when the dispute has been resolved. The provision reads as follows:

Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed, or notification of collection agencies until five (5) days after the dispute is resolved or such other applicable date as provided by federal law and the D.C. Cable Law, whichever is later, provided that:

- (1) The Subscriber pays all undisputed charges;
- (2) The Subscriber provides notification of the dispute to Franchisee within five (5) days prior to the due date; and
- (3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.
- (4) It shall be within the Franchisee's sole discretion to determine when the dispute has been resolved.

OPC submits that criteria number 4 should be eliminated because the consumer will be disadvantaged by having Verizon, one of the parties involved in the dispute, being the entity responsible for determining when the billing dispute is resolved. Therefore, in order to ensure that there is fairness and equity in the process of determining how a consumer can withhold a disputed bill amount, criteria number 4 needs to be eliminated. Eliminating criteria number 4 will make this process equivalent to Commission Rule 311.2 which prohibits the utility from

terminating service when a dispute has been lodged with the Commission and all undisputed charges are paid.

5. The Franchise Agreement Needs Language to Clarify Where Complaints Are to be for the Three Different Services are to Filed

The Franchise Agreement, page 53 Section 5 entitled Customer Complaints, needs language to clarify where consumers can lodge their complaints for the three different services, telephone, cable and Internet, to be provided by Verizon.

The amendment would state that consumers with telephone complaints should contact the D.C. Public Service Commission to file a complaint and that the Office of the People's Counsel is available for legal representation. Consumers with complaints about cable service should contact the DC Office of Cable Television. Consumers with complaints about Internet service should contact the FCC.

6. The Franchise Agreement Should be Amended to Require Verizon to Have Trained Personnel Based in DC to Handle System Outages

The Franchise Agreement, page 13 Section 5.1.10, requires Verizon to have sufficient trucks, tools, testing equipment and *trained and skilled personnel* to handle system outages and maintenance. The provision reads as follows:

Franchisee must have sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and trained and skilled personnel required to enable the Franchisee to substantially comply with the D.C. Cable Law, and applicable customer service standards including requirements for responding to System Outages.

OPC submits the language of this provision needs to be modified to clarify that the trained and skilled personnel must be based in the District of Columbia. The basis for OPC's proposal is the testimony given to this Committee during the Quality of Service Hearings in February of this year by the Communications Workers of America, the union that maintains the

current telecommunications infrastructure. CWA testified that several members of its union were removed from the District to install fiber in Maryland and Virginia. OPC submits, the District of Columbia needs to ensure that there is sufficient personnel based here in the District to deal with system outages.

Therefore, OPC proposes the following amendment to Section 5.1.10:

Franchisee must have sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and trained and skilled personnel *based in the District of Columbia* to enable the Franchisee to substantially comply with the D.C. Cable Law, and applicable customer service standards including requirements for responding to System Outages.

7. As the Statutory Advocate for Telecommunications Consumers, OPC Should Be a Participant in the Status Meetings Regarding the Deployment of Verizon's Service to Ensure that FiOS is being Equitably and Ubiquitously Deployed

The proposed FA, at page 26 Section 9.8, entitled Status Meetings, requires Verizon to inform District representatives about the status of cable deployment on an annual basis. The provision reads as follows:

Franchisee agrees that, upon request and with no less than thirty (30) days' notice, but no more than once per year, a representative of the Franchisee will meet with representatives of the District to provide additional information on the status of Franchisee's deployment of Cable Services in the Franchise Area. During these meetings, the Franchisee representative will show the District representatives, for viewing only, a map showing the availability of Cable Services in the Franchise Area.

OPC submits this provision is crucial because it provides the District with an opportunity to be briefed on the status of the deployment of a critical infrastructure that will deliver advanced broadband services. As broadband service is a major economic engine in the country, the District needs to ensure that the deployment of the network is both equitable and ubiquitous. Therefore, this status meeting needs to have representatives from the District present who have a stake in ensuring the equitable and ubiquitous deployment of this network and that the meetings occur every six months. OPC submits that its role as the statutory advocate for residential

telephone consumers, uniquely qualifies it to be one of the participants in this meeting to ensure that the deployment is fair and equitable and that the practice of redlining or cherry picking is not occurring.

Another reason the Office should be participant in this annual meeting is because the Office through its participation in Formal Case No. 990, the Quality of Service proceeding, is aware of the need for infrastructure upgrades throughout the city. If certain areas of the city that are plagued with quality of service issues are not going to be served by fiber optic service, the Office can raise this point at this meeting to make sure that all consumers receive the benefit of the latest technology.

Additionally, the representatives at this meeting need to understand not only where the service is deployed at the time of the annual meeting, the representatives also need to understand Verizon's future plans for deployment.

Therefore, Section 9.8 of the FA needs to be revised to specify 1) which District representatives will be included in the status meeting concerning the deployment of Verizon's fiber network, 2) the fact that there needs to be a status meeting every six months and 3) language needs to be added to require Verizon to also discuss its future deployment plans. The Office proposes the following edits to Section 9.8:

Franchisee agrees that, every six months, starting from the date Franchisee begins deploying FiOS, representatives of the Franchisee will meet with representatives of the District to provide additional information on the status of the Franchisee's deployment of Cable Services in the Franchise Area. ***The representatives who will attend this meeting include: [list representatives here]*** During these meetings, the Franchisee representatives will show the District representatives, for viewing only, a map showing the availability of Cable Services in the Franchise Area ***and the Franchisee will also discuss its deployment plans for the upcoming six months.***

CONCLUSION

OPC submits the aforementioned recommendations will serve the public interest by ensuring there is an environment that supports competition and has customer service provisions that are reasonable.

Revised Deposit Rules

Franchisee shall not require a Deposit from a person who has never been a Customer of the Franchisee.

Franchisee shall not require a Deposit as a condition of new or continued Franchisee service on the basis of income level, home ownership, residence location, race, color, creed, sex, age, or national origin.

Franchisee shall not require a Deposit as a condition of new service to a person who has been a Customer of Franchisee before, except under the following circumstances:

- (a) The service of the Customer has been disconnected for nonpayment of a past due balance not in dispute within the previous twelve (12) months; or
- (b) The Customer has in an unauthorized manner, used, diverted or interfered with the service of the Franchisee situated or delivered on or about the Customer's premises within the twelve (12) months immediately preceding the Customer's request for new service; provided, that the following requirements are met:
 - (1) The Customer's service was last disconnected for this reason within the last five (5) years and that the Franchisee had so notified the Customer in writing, either by U.S. mail or electronically, to this effect; or
 - (2) The Customer either did not file a Complaint with the Commission regarding the Disconnection; or, if a Complaint was filed, final administrative action was taken thereon unfavorable to the Customer.
- (c) The Customer's Account has been delinquent in excess of sixty (60) Days within the previous twelve (12) months.

When a Deposit is required as a condition of new service to a former Customer, the Customer shall be notified in writing of the reason therefore and the amount of Deposit required.

Franchisee shall not require a Deposit as a condition of continued service to a Customer, except under the following circumstances:

- (a) Franchisee service at the Customer's residence has been used, interfered with, or diverted in an unauthorized manner within the previous twelve (12) months; or

(b) The Customer's Account has been delinquent in excess of sixty (60) days within the previous twelve (12) months.

When a Deposit is required of a Customer with service connected, the Customer shall be notified in writing of the reason therefore, the amount of Deposit required, the date due (not less than fourteen (14) days from the date of the first written notice), and that it may be paid in installments.

No Deposit for Franchisee service shall exceed \$100. The Franchisee shall notify the Customer in writing of the reason for the Deposit, the amount, date by which it must be paid, the fact that it may be paid in installments, and the payment options for the Deposit.

Franchisee shall be liable for interest on Deposits held from the date the Deposit is made until the date the Deposit has been refunded, or until an effort has been made to refund the Deposit. Each Franchisee shall pay simple interest on deposits with the rate being established not later than January 15th of each year, equal to the average annual yields of one-year Treasury bills for September, October, and November of the preceding year.

The Deposit with accrued interest shall be credited to any final Bill and any remaining balance shall be returned to the Customer.

A Deposit and accrued interest shall be refunded promptly or credited to the Customer's account by the Franchisee upon payment by the Customer of all proper Charges for Franchisee service for twelve (12) consecutive months.

Franchisee shall maintain a record of all Deposits, showing the customer's name and address or other identifying data, the amount of the Deposit, the date it was paid, and the interest earned and paid thereon.

Each Customer posting a Deposit shall receive confirmation containing, at a minimum, the following information:

- (a) The Customer's name;
- (b) The date of the payment;
- (c) The amount of payment; and
- (d) A statement of the terms and conditions applicable to Deposits.

When a customer is entitled to a return of a Deposit it shall be paid upon presentation of proper identification or verification of the account information.

Franchisee is prohibited from obtaining a consumer's Social Security to determine if a deposit is required of a consumer.