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August 12, 2009

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549 -1090

Attention: Ms. Elizabeth M. Murphy, Secretary
Via e-mail: rule-comments@sec.gov

Re: Facilitating Shareholder Director Nominations – Release Nos. 33-9046; 34-60089; IC-28765; File No. S7-10-09 (the "Release")

Dear Ms. Murphy:

Verizon Communications Inc. is one of the world's leading providers of communications services. With approximately 2.84 billion shares outstanding held by approximately 1.6 million beneficial owners, Verizon has a strong interest in ensuring that the interests of all of its shareholders are effectively addressed in the processes used to nominate and elect the company's board of directors. We appreciate the opportunity to comment on the Commission's proposed rules to facilitate shareholder director nominations and require that shareholder nominees be included in the company's proxy statement that are the subject of the Release.

Verizon is committed to enhancing shareholder participation in corporate governance when that participation is likely to be in the best interests of all shareholders. The Commission's one-size-fits-all proxy access approach as expressed in proposed Rule 14a-11, however, would not be in the best interests of shareholders, nor would the proposed rule address the issues that the Commission has identified in the Release, including concerns about oversight and restoring investor confidence in the wake of the financial crisis.

Proposed Amendment to Rule 14a-8(i)(8)

Although Verizon does not believe that proposed Rule 14a-11 will address the concerns articulated in the Commission's release, we would support an amendment to Rule 14a-8(i)(8) that would allow shareholders to determine whether proxy access should be

available to the company's shareholders through the 14a-8 shareholder proposal process.

This "private ordering" of proxy access is more likely to achieve the Commission's stated goal of creating a proxy process that more closely approximates all shareholders participating in an annual meeting than is a single standard imposed by the Commission, because, as Commissioner Paredes has said:

> Simply put, the same corporate governance regime is not necessarily optimal for a struggling Midwest industrial manufacturer, a small-cap biotechnology company in Silicon Valley, and a dominant financial services firm in New York.[1]

There are numerous examples of private ordering successfully addressing a wide range of other corporate governance matters such as:

- In response to concerns over the separation of the roles of chairman and CEO, some companies have formally separated the roles while others have adopted fully empowered lead or presiding director structures that meet their particular governance needs;
- In an effort to permit shareholders to exercise their voting rights, companies have amended their bylaws to permit shareholders to call a special meeting, with the percentage of shareholders required to call the meeting varying depending on particular company circumstances; and
- In addressing concerns over entrenched boards, companies have adopted majority voting standards for uncontested elections, which vary from company to company depending on the needs of the individual company.

Private ordering can result in improved governance while at the same time permitting companies that are vastly different in terms of size, ownership and governance structure to develop solutions that best fit their individual needs.

There is ample evidence that private ordering can also be effective in the proxy access area. Recent changes to Delaware's corporate statute facilitate proxy access bylaws and the reimbursement of proxy solicitation expenses, and recently proposed amendments to the Model Business Corporation Act will also facilitate proxy access.

For these reasons, Verizon supports amending Rule 14a-8(i)(8) to permit shareholder proposals related to director elections if such an amendment is an alternative, not a supplement, to proposed Rule 14a-11. Verizon does not support an amendment to Rule 14a-8(i)(8) to allow shareholders to expand the mandate of proposed Rule 14a-11, but not restrict it. If shareholders have input into how proxy access is structured, they should also have the ability to determine whether and in what form proxy access should be applicable at their company.

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[1] Remarks at Conference on "Shareholder Rights, the 2009 Proxy Season, and the Impact of Shareholder Activism," June 23, 2009.

Rule 14a-11

While Verizon does not believe that a one-size-fits-all approach to proxy access would be in the best interests of its shareholders, if the Commission does take action in this area, the Commission's initial proposal should be revised to address some critical concerns. We are particularly concerned with the issues detailed below regarding which shareholders are eligible to nominate directors, the requirements applicable to the nominees and certain components of the nominating process.

Shareholders Eligible to Nominate

The fundamental question regarding shareholder participation in the director election process is which shareholders are entitled to participate. The Commission's proposal fails to recognize that, in today's financial markets, all "shareholders" do not necessarily have the same economic and voting interests in the company.

Boards have fiduciary duties to their common shareholders, because the common shareholders' economic interest in the corporation is the residual value of the corporation after the corporation has satisfied all of its other obligations. Other parties, such as preferred shareholders, bondholders and other creditors, may negotiate with the company to protect their economic rights, but holders of common stock must rely on the board of directors to secure their investment. The reason that state law gives the common shareholders the right to vote in the election of directors is so that they can choose the individuals they believe are most likely to act in the shareholders' best interests and maximize the residual value of the corporation.

The structure of corporate governance is based on the assumption that the people voting in the election of directors are in fact those with a residual economic interest in the company. If a shareholder does not bear the economic risk of an investment in the company, there is no reason as a policy matter that the shareholder should have the right to determine the management of the company. Accordingly, it is critical that any proxy access initiative recognize that the nomination process must be open only to those shareholders who have and intend to retain an economic interest in the company.

Derivative instruments, share lending arrangements and other now-common market innovations allow market participants to separate the economic and voting interests associated with a company's common stock. These arrangements have significantly expanded over the last several years and have created an environment in which the holder of the voting power does not necessarily have any economic stake or other interest in the future performance of the company. The Commission's July 21, 2009, settled administrative proceeding against Perry Corp. ("Perry") graphically illustrates the effect that decoupling economic and voting interests can have in an election. In that case, Perry was a significant investor in King Pharmaceuticals, which agreed to be acquired by Mylan Laboratories ("Mylan"). Perry purchased shares of Mylan in order to vote in favor of the merger. Perry fully hedged its economic exposure to the Mylan shares it purchased, with the result that it effectively held only voting rights in Mylan shares. Perry had every incentive to vote for a merger that was detrimental to Mylan, because Perry had no economic exposure to Mylan but retained a long position in King

Pharmaceuticals and would thereby benefit economically if Mylan overpaid in the merger.

Decoupling voting and economic rights is a common market practice, yet the Commission's proxy access proposal fails to address even the possibility that it may occur. If a shareholder is able to nominate candidates for director without regard to whether the shareholder has an economic interest in the success of the company, there is no reason to think that there is any identity of interests between the persons nominating director candidates and those shareholders bearing the traditional economic risks of an investment in the company. That identity of interests underpins the argument that there is a need for or benefit to be derived from proxy access. In fact, without that identity of interests, the Commission's proxy access rule may be viewed as simply creating a tool to be used by people whose interests may differ significantly from those shareholders who have an economic stake in the company.

Accordingly, it is critical that the ownership and holding requirements of any proxy access rule require that only those shares that are fully exposed to the economic risk of an investment in the company throughout the relevant period be considered. In addition, the rule should also require that the nominating shareholder provide disclosures concerning holdings of derivative and other instruments or arrangements related to the issuer's stock that are consistent with modern advance notice bylaw provisions.[2]

A number of other requirements of the proposed rule are also inconsistent with the ultimate goal of providing that those with a significant economic interest in the company have the opportunity for an increased role in determining the company's leadership:

Ownership Threshold. The proposed ownership threshold required for a nominating shareholder depends on the size of the company, with a lower threshold for larger companies. As a policy matter, the level of required ownership should indicate that a shareholder has a significant stake in the ongoing operations of the company and accordingly is justified in having access to the company's proxy ballot that other shareholders do not have. There is no reason that this level of ownership on a percentage basis should vary by size of company. Indeed, the use of a percentage threshold reflects a determination as to the meaning of a "significant" ownership position and automatically accounts for the size and number of outstanding shares of any company. Verizon believes that a uniform 5% minimum threshold ensures an appropriate level of investment in the future of the company. As discussed above, the shares used to satisfy this requirement must be fully exposed to the economic risks of an investment in the company.

Holding Period. In addition to having a significant economic stake in the company, it is also important that any nominating shareholder have an interest in the future performance of the company. Commentators have suggested that

[2] We note that this is an area where private ordering has been effective. Many companies have revised the advance notice provisions of their bylaws to require reporting of derivative and other instruments by shareholder proponents in response to market developments and in the absence of regulation.

a significant contributor to the financial crisis was that shareholders and companies were focused on short-term results at the expense of long-term stability at certain financial institutions. It is important that the holding period required by any Commission proxy access rule encourage a focus on the long-term success and stability of issuers, rather than short-term results.

Since many of a board's decisions focus on long-term strategies and business development, they will only impact the company's operations and results months or years after the decision is made. As a result, if a nominating shareholder is unlikely to have a future interest in the company, there may not be any identity of interest between the nominating shareholder and the long-term shareholders who will be required to live with the consequences of the nominee's decisions.

Under the proposed rule, a nominating shareholder must meet the ownership threshold for one year prior to the nomination and hold the required shares through the date of the shareholder meeting. We believe that the proposed holding period is insufficient to demonstrate that the shareholder has a long-term and continuing interest in the success of the company.

Verizon believes that two approaches could realistically serve the goal of a proxy access holding period. First, the holding period could be forward-looking and require that the shareholder continue to hold the required shares for a designated period, such as a year, *after* the election of the director if the nominating shareholder's nominee is elected. This approach would most directly address the purpose of a holding period. Alternatively, a longer pre-nomination holding period could be established that would make it easier to conclude that the nominating shareholder had a long-term investment interest in the company and was likely to continue to do so. For this purpose, we believe that a 3-year holding period would be necessary.

Aggregation. As a general principle, if the Commission allows shareholders to aggregate their holdings to reach the required ownership threshold, it is important that the issuer be able to treat the shareholder group as a single entity and all of the requirements should apply to that group as if it were a single shareholder. Accordingly, if any member of the group reduces its ownership and the group therefore ceases to maintain the required ownership percentage, then the group and its nominee should be ineligible to continue to participate in the proxy access process. After the notice is provided, the group should not be permitted to substitute another shareholder or shareholders to bring the group's ownership to the required threshold. In addition, the issuer should be able to rely on instructions and information from any member of the shareholder group as if that shareholder were the sole shareholder in the group, and members of the group should be jointly and severally liable to the company for material misstatements or omissions in the information provided to the issuer about the group or its members.

Nominees

The goal of any proxy access rule should be to encourage better qualified and better functioning boards of directors. The Commission's proposed proxy access rule could actually work against that goal. A shareholder nominee for director would only be required to meet the objective independence requirements of the national securities exchange on which the issuer is listed. Shareholder nominees would be expressly exempt from any other objective or subjective qualifications – which are often more specific and more demanding – that a company imposes on all other nominees for director.

Verizon does not believe that this exemption is appropriate or ultimately workable. A nominating committee typically considers and evaluates a broader spectrum of factors in determining whether to nominate a candidate for election as a director. These include company-specific qualitative considerations, such as substantive expertise, competition issues, diversity of background and experience and additional legal requirements such as those imposed by the Clayton Antitrust Act and specific laws and regulations related to the company's particular industry and activities.

Any proxy access rule should require that *all* nominees for director, including shareholder nominees, meet and be evaluated on the same publicly available objective and subjective requirements. Exempting shareholder nominees from these requirements could put the company in an untenable legal position or at a competitive disadvantage and result in lower quality boards.

Nomination Process

Verizon also believes that the procedures imposed by any proxy access rule must take into account the goal of better functioning boards and be workable in the context of the proxy process. To this end, any final rule should address the factors discussed below with respect to the number of nominees that may be advanced by shareholder proponents, the process for selecting among nominees, and the liability of the company for information provided by nominating shareholders or their nominees for inclusion in documents filed by the company with the Commission.

> *Number of Nominees.* The proposed proxy access rule allows shareholders to nominate up to 25% of the directors. Verizon believes that this percentage is too high and could significantly interfere with the ability of the board to function effectively.
>
> When determining which candidates to nominate for election to the board, nominating committees carefully weigh the desire for new perspectives in the board room with the need to maintain expertise and continuity on the board. Even with comprehensive director orientation programs and diligent study, it takes time for new board members to fully understand a company's industry, its business, the risks it faces and the influences on its long-term strategy and success. The proxy access proposal removes the ability of the board and

nominating committee to strike the careful balance that facilitates a board's ability to function effectively. Accordingly, Verizon believes that a company should only be required to include one shareholder nominee per year in its proxy materials.

Further, since the goal is shareholder involvement, as opposed to radical restructuring, we believe that if a shareholder is soliciting proxies for its own candidate outside the proxy access process, there should not be a proxy access nominee. The traditional proxy contest provides the desired shareholder involvement for that election cycle. Similarly, if a shareholder nominee is elected, that director should count as a shareholder nominee if he or she is re-nominated in any following year by the board's nominating committee. Failure to count the re-nominated shareholder director for purposes of the proxy access rule would simply discourage boards from re-nominating the individual and lead to more turnover and a less efficient board.

Choice of Nominees. The Commission's proposed rule establishes a first-in-time standard to determine which nominees must be included in the company's proxy statement if more nominees are received than those permitted to shareholders under the rule. We do not believe that the first-in-time rule will achieve the Commission's goals. It will almost certainly lead to a race to nominate, with the result that shareholders will have the incentive to select candidates more on the basis of expediency than on their qualifications. In addition, because nominations may be submitted in a variety of ways (by fax, mail, hand delivery, etc.), it may be difficult or impossible for companies to determine which nomination is received first.

In the event of a surplus of nominees, Verizon believes that the nominee should be selected by determining which nominating shareholder has the largest shareholding. The determination would be made based on the representation of each nominating shareholder at the time their nomination is submitted.

We also believe that the rule should not prohibit agreements between companies and nominating shareholders. Restricting the ability of corporations to reach agreements with nominating shareholders would limit the dialogue between companies and investors and would thereby mute the ability of shareholders to have a voice in the process.

Liability for Information. Any proxy access rule should clearly provide that an issuer will have no liability for any information about a nominating shareholder or shareholder nominee that is provided by the nominee or the nominating shareholder and is included by the issuer in any of its filings with the Commission. As part of the nominating committee process, boards assemble and review significant amounts of information about prospective director candidates. The proposed proxy access rule eliminates the involvement of the board and nominating committee in selecting shareholder nominees. Accordingly, it must also eliminate the company's liability for information provided by the nominating shareholder or nominee. It is unreasonable to

impose any explicit or implicit duty of the company to investigate, verify or correct this type of information. Any such duty is inconsistent with the board's lack of involvement and would place the burden squarely on the party least able to ensure compliance.

In addition, the nominating shareholder should be required to indemnify the company for any costs the company may incur in connection with any misstatements or omissions in any such information.

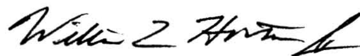
* * *

Thank you for the opportunity to comment on the proposal. In light of the broad scope of the proposal, we have focused on specific areas of concern. Verizon also shares the concerns that have been articulated in many of the other comment letters, including those related to the Commission's authority to adopt the rule, the advisability of federal involvement in an area traditionally reserved to the states, the impact of special interest directors on the functioning of the board, the lack of triggers in the rule, the mechanics of how the rule would operate and other reforms to the proxy solicitation process that are necessary to accomplish the Commission's stated goals.

As indicated in this letter and the many that the Commission has and will receive regarding this proposal, there are a large number of significant issues that require careful attention before any proxy access mandate should be adopted. The proposal's 171 requests for comment, and multiple sub-questions, attest to the complexity of the proxy access proposal the Commission is considering. We do not believe that it will be possible for the Commission to carefully and fully consider all of the comments it receives and promulgate a version of Rule 14a-11 that thoughtfully addresses those comments in time for the 2010 proxy season. Though the concept of proxy access has been debated for years, this is the first time that this particular proposal has been considered and commented on, so many of the issues associated with this proposal have not been raised until now.

In light of the significant restructuring of the director nomination process that the rule proposes, Verizon strongly urges the Commission to carefully and completely consider all comments that it receives on the proposal before taking any action.

Sincerely,



William L. Horton, Jr.

cc: Hon. Mary L. Schapiro, Chairman
Hon. Luis A. Aguilar, Commissioner
Hon. Kathleen L. Casey, Commissioner
Hon. Troy A. Paredes, Commissioner
Hon. Elisse B. Walter, Commissioner
Meredith B. Cross, Director, Division of Corporation Finance