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U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Shareholder Proposal of Thomas Van Dyck Submitted to Verizon Communications Inc. for inclusion in the 2007 Proxy materials.

Dear Sir/Madam:

I have been asked by As You Sow Foundation, on behalf of Thomas Van Dyck (hereinafter referred to as the "Proponent"), who is a beneficial owner of shares of Verizon Communications Inc. (hereinafter referred to as "Verizon" or the "Company") common stock, and who has submitted a shareholder proposal (hereinafter referred to as the "Proposal") to Verizon, to respond to the letter dated December 27, 2006 sent to the Office of Chief Counsel by the Company, in which Verizon contends that the Proposal may be excluded from the Company's 2007 proxy statement by virtue of Rules 14a-8(i)(2), 14a-8(i)(3), 14a-8(i)(6), 14a-8(i)(7) and 14a-8(i)(10). Based upon my review, it is my opinion that the Proposal must be included in Verizon's 2007 proxy materials and I respectfully request that the Staff not issue the no-action letter sought by the Company.

Pursuant to Rule 14a-8(k), enclosed are six copies of this letter and exhibits. A copy of these materials is being mailed concurrently to Verizon's Assistant General Counsel Mary Louise Weber.

## **SUMMARY RESPONSE**

Based upon Verizon's no action request letter and supporting materials, and upon a review of Rule 14a-8, it is my opinion that the Proposal must be included in Verizon's 2007 proxy materials for the following reasons:

1. The Proposal is focused on a significant social policy issue that transcends the ordinary business of the Company. In particular, customer privacy concerns related to government and private entities have attracted widespread attention of Congress, the American public, and business interests to name a few. In addition, the Proposal does not delve into the minute details of Company's compliance policies; does not dictate any particular action or conduct related to ongoing litigation; and does not seek an evaluation of a specific legislative proposal.

2. The Proposal, if implemented, would not cause the Company to violate the law. First, the WilmerHale opinion letter is based on the false presumption that our Proposal does not allow Verizon to exclude government classified information. This presumption makes the WilmerHale opinion letter inapplicable to the Staff's analysis. Furthermore, it is evident from the *Hepting* case and other examples, that the Company is capable of discussing these matters without violating confidentiality requirements. Consequently, the Company has not pointed to any decided legal authority that implementation would violate the law.
3. By failing to address the Proponent's core concerns, Verizon has not substantially implemented the Proposal. In particular, the Company's website published privacy policies do not provide the *discussion* of the policy issues raised by the Proposal and are not written to address shareholder (as opposed to customer) concerns.
4. Contrary to Verizon's representations, the Proposal is not so vague that it would be impossible to implement. While the Company tries to confuse matters by questioning the meaning of certain terms, it is evident that their plain meaning provides shareholders and management with a clear understanding about what the Proponent is asking for. In addition, Staff rulings on many other no-action requests indicates that proponents need not provide precise definitions, but only need to use language that is reasonably clear. Under that standard, we believe the Proposal has struck the right balance between specificity and generality.

## **THE PROPOSAL**

### VERIZON -- PRIVACY RIGHTS PROTECTION REPORT

WHEREAS: The right to privacy is a long established value, enshrined in the Constitution and decades of U.S. jurisprudence, and cherished by people of all political persuasions; and Privacy protections serve many important societal purposes: encouraging development of science and knowledge; preventing fraud; and allowing individuals to communicate sensitive information to health care providers, clergy, brokers, etc.; and

The reputation and good standing of Verizon may be placed in jeopardy by reports that its subsidiary MCI may have voluntarily provided customer phone records and communications data to the National Security Agency (NSA); and

We believe this alleged practice is seen by millions of Americans, including customers, shareholders and employees of Verizon, as a violation of our customers' privacy expectations and basic right to have phone and email records kept confidential; and

Verizon management has not confirmed or denied reports that its long-distance carrier MCI released consumer data to the NSA. Multiple class action and other consumer lawsuits have been filed against Verizon which could result in millions of dollars in liabilities and defense fees; and

Our customers have the choice to go to other telecommunications companies if they do not agree with the company's practices and may do so. These events and the potential for legal liability could affect the long-term value of our company; and

We are also concerned about ongoing violations of customer privacy including pretexting. This practice was used by Hewlett-Packard management to obtain data on phone calls made by board members. Verizon President Lawrence Babbio is an HP board member. Shareholders deserve an explanation of how pretexting could have occurred under Mr. Babbio's watch on the HP board. We believe Verizon executives are fully aware of the illegality of pretexting as demonstrated by the Verizon Wireless lawsuit filed against the individuals who obtained its customers' cell phone records as part of the HP investigation; and

These issues pose questions in regard to general respect for the rule of law upon which our democratic system depends. In light of the potentially negative uses of today's technology, we believe it is important that Verizon re-examine the steps it takes to protect the values embodied in an individual's right to privacy.

RESOLVED: The shareholders request that the Board of Directors issue a report to shareholders in six months, at reasonable cost and excluding confidential and proprietary information, which describes the overarching technological, legal and ethical policy issues surrounding the disclosure of customer records and communications content to (1) the Federal Bureau of Investigation, NSA and other government agencies without a warrant and (2) non-governmental entities (e.g. private investigators) and their effect on the privacy rights of Verizon's MCI long-distance customers.

#### *SUPPORTING STATEMENT*

We believe it will benefit society, our customers, shareholders and Verizon's long-term value for the company to take a leadership role as protector of privacy rights and to issue this report. The proponents urge a YES vote.

#### **BACKGROUND**

In December 2005, media reports alleged that President George W. Bush issued an executive order in 2001 (and repeatedly thereafter) that authorized the National Security Agency (NSA) to conduct surveillance of certain telephone calls of individuals in the United States without obtaining a warrant from a "FISA court" either before or after the surveillance. The existence of this program – the Terrorist Surveillance Program – was confirmed by President Bush soon after it was described in the press.

In May, 2006, it was reported in the press that Verizon had provided the NSA and/or other government agencies direct access to its telecommunications facilities and databases, thereby disclosing to the government the contents of its customers' communications as well as detailed communications records about millions of its American customers. This program has been referred to as the Call Records Program.

Public knowledge of these two Programs immediately resulted in a major national controversy directly involving Verizon over significant social policy issues including the right to privacy and the legality of warrantless and/or mass electronic surveillance of American citizens. (See below for documentation of the widespread nature of the controversy).

It also resulted in class action lawsuits seeking damages that could run into the billions of dollars. As a defendant in these suits, it is our opinion that they represent a significant financial risk to the Company.

In September, 2006 the issue of pretexting, the practice of getting an individuals personal information under false pretenses, became the subject of national attention as a scandal erupted at H-P. During that month a steady stream of revelations documented how private investigators hired by H-P management had used pretexting to investigate H-P board members. The furor eventually lead to Congressional hearings, state and federal investigations, and, just last week, President Bush signing the Telephone Records and Privacy Protection Act of 2006. The issue has also resulted in numerous lawsuits with Verizon as both a plaintiff and a defendant.

Due to considerable, and justifiable, concern about the significant social policy and financial implications of the Programs and pretexting, the Proponent has decided to file a shareholder resolution with the Company. This Proposal seeks to focus the attention of management on the implications of these privacy issues on American citizens and the long-term wellbeing of the Company.

Furthermore, the goal of this Proposal is, as is the purpose of Rule 14a-8,<sup>1</sup> to facilitate a discussion between shareholders and management; and amongst shareholders about the significant policy issues facing the Company related to privacy concerns. When a company is faced with questions of such importance, shareholders have a right to communicate with management and other shareholders through the proxy materials. Mr. Van Dyck, as a shareholder, is exercising his rights through this Proposal.

What the Proposal emphatically does not do is attempt to illicit information from the Company that will compromise national security or law enforcement. Rather it seeks a report from the Company that can serve as basis for discussions about the role the Company will take, in broad general policy terms, in its pivotal position of control over customer communication data and content.

## ANALYSIS

### ***I. Rule 14a-8(i)(7): The Proposal is Focused on a Significant Policy Issue that Transcends the Ordinary Business of the Company and Therefore Must be Included in the Company's Proxy.***

Rule 14a-8(i)(7), the ordinary business exclusion, is based on the corporate law principle that particular decisions are best left to management because they are in a better position than shareholders to make those day-to-day decisions. *However*, when a company encounters issues of significant social policy importance, it is no longer the case that management is in a better position than shareholders to evaluate how the company should address the issue. Under these circumstances the shareholders have an appropriate and legitimate role to play. Consequently, pursuant to the ordinary business exclusion, management's role must yield to the rights of shareholders to raise, consider and opine on those matters

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<sup>1</sup> The purpose of Rule 14a-8 "is to provide and regulate a channel of communication among shareholders and public companies." Exchange Act Release No. 34-40018 (May 21, 1998). "The SEC continues to implement Congress's goals by providing shareholders with the right to communicate with other shareholders and with management through the dissemination of proxy material on matters of broad social import such as plant closings, tobacco production, cigarette advertising and executive compensation." *Amalgamated Clothing and Textile Workers Union v. Wal-Mart Stores, Inc.*, 821 F. Supp. 877 (S.D.N.Y. 1993). "In so far as the shareholder has contributed an asset of value to the corporate venture, in so far as he has handed over his goods and property and money for use and increase, he has not only the clear right, but more to the point, perhaps, he has the stringent duty to exercise control over that asset for which he must keep care, guard, guide, and in general be held seriously responsible. As much as one may surrender the immediate disposition of (his) goods, he can never shirk a supervisory and secondary duty (not just a right) to make sure these goods are used justly, morally and beneficially." *Medical Committee for Human Rights v. SEC*, 432 F. 2d. 659, 680-681 (1970), vacated and dismissed as moot, 404 U.S. 402 (1972).

which have significant social consequences.

### ***A. The Proposal Focuses on a Significant Social Policy Issue.***

A proposal cannot be excluded by Rule 14a-8(i)(7) if it focuses on significant policy issues. As explained in *Roosevelt v. E.I. DuPont de Nemours & Company*, 958 F. 2d 416 (DC Cir. 1992) a proposal may not be excluded if it has "significant policy, economic or other implications". *Id.* at 426. Interpreting that standard, the court spoke of actions which are "extraordinary, i.e., one involving 'fundamental business strategy' or 'long term goals.'" *Id.* at 427.

Earlier courts have pointed out that the overriding purpose of Section 14a-8 "is to assure to corporate shareholders the ability to exercise their right – some would say their duty – to control the important decisions which affect them in their capacity as stockholders." *Medical Committee for Human Rights v. SEC*, 432 F. 2d. 659, 680-681 (1970), vacated and dismissed as moot, 404 U.S. 402 (1972).

Accordingly, for decades, the SEC has held that “where proposals involve business matters that are mundane in nature and ***do not involve any substantial policy or other considerations***, the subparagraph may be relied upon to omit them.” *Amalgamated Clothing and Textile Workers Union v. Wal-Mart Stores, Inc.*, 821 F. Supp. 877, 891 (S.D.N.Y. 1993) quoting Exchange Act Release No. 12999, 41 Fed. Reg. 52,994, 52,998 (Dec. 3, 1976) ("1976 Interpretive Release") (emphasis added).

It has been also been pointed out that the 1976 Interpretive Release explicitly recognizes “that all proposals could be seen as involving some aspect of day-to-day business operations. That recognition underlies the Release's statement that the SEC's determination of whether a company may exclude a proposal should not depend on whether the proposal could be characterized as involving some day-to-day business matter. Rather, ***the proposal may be excluded only after the proposal is also found to raise no substantial policy consideration.***” *Id.*

Most recently, the SEC clarified in Exchange Act Release No. 34-40018 (May 21, 1998) ("1998 Interpretive Release") that "Ordinary Business" determinations would hinge on two factors.

Subject Matter of the Proposal: "Certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. Examples include the management of the workforce, such as hiring, promotion, and termination of employees, decisions on the production quality and quantity, and the retention of suppliers. However, ***proposals relating to such matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable***, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." 1998 Interpretive Release (emphasis added)

"Micro-Managing" the Company: The Commission indicated that shareholders, as a group, will not be in a position to make an informed judgment if the "proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." Such micro-management may occur where the proposal "seeks intricate detail, or seeks specific time-frames or methods for implementing complex policies." However, "timing questions, for instance, could involve

significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations."

It is vitally important to observe that the company bears the burden of persuasion on this question. Rule 14a-8(g). The SEC has made it clear that under the Rule "***the burden is on the company to demonstrate that it is entitled to exclude a proposal.***" *Id.* (emphasis added).

We also note that recently the Second Circuit has ruled on a Rule 14a-8 matter in *AFSCME v. AIG*. One of the principles supporting that decision is the following:

Although the SEC has substantial discretion to adopt new interpretations of its own regulations in light of, for example, changes in the capital markets or even simply because of a shift in the Commission's regulatory approach, it nevertheless has a "duty to explain its departure from prior norms." *Atchison, T. & S. F. Ry. Co v. Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973) (citing *Sec. of Agric. v. United States*, 347 U.S. 645, 652-53 (1954)); cf. *Torrington Extend-A-Care Employee Ass'n v. NLRB*, 17 F.3d 580, 589 (2d Cir. 1994) (stating that "an agency may alter its interpretation of a statute so long as the new rule is consistent with the statute, applies to all litigants, and is supported by a 'reasoned analysis'"). *Id.*

Therefore it is apparent that the Second Circuit, noting the lack of "reasoned analysis", has reaffirmed the importance of the SEC staff adhering to the 1976 and 1998 Interpretive Releases.

Consequently, when analyzing this case, it is incumbent on Verizon to demonstrate that the Proposal does not involve any substantial policy or other considerations. Therefore, it is only if Verizon is able to show that the Proposal raises **no** substantial policy consideration that it may exclude the Proposal. Clearly, this is a very high threshold that gives the benefit of the doubt to the Proponent and tends towards allowing, rather than excluding, the Proposal.

It would appear from Verizon's letter that it has implicitly conceded that the Proposal is focused on a significant social policy issue. Verizon's only discussion of the significant social policy question is when it cites to *Phillip Morris Companies, Inc.* (February 4, 1997) on page 5 for the proposition that even a proposal focused on a significant policy issue can still be excluded as relating to ordinary business. However, *Phillip Morris Companies, Inc.* does not apply to this case because it does not represent the current state of Rule 14a-8(i)(7) law. Specifically, that case precedes the 1998 Interpretive Release which made it clear that:

proposals relating to such matters (day-to-day matters such as management of the workforce, such as hiring, promotion, and termination of employees, decisions on the production quality and quantity, and the retention of suppliers) but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.

As the SEC stated in this quote, if a proposal focuses on a significant social policy issue it thereby transcends the day-to-day business matters of the company and is appropriate for consideration by the shareholders. *Phillip Morris Companies, Inc.* represents an application of the Rule that was rejected in the 1998 Interpretive Release and therefore cannot be used as justification to exclude the Proposal.

Examples of how significant of a social policy issue consumers' telephone and communications privacy has become are abundant:

- A May 2006 Gallup Poll found that 67% of Americans say that they are very closely or somewhat closely following reports that “a federal government agency obtained records from three of the largest U.S. telephone companies in order to create a database of billions of telephone numbers dialed by Americans” <http://www.galluppoll.com/content/default.aspx?ci=5263>. Exhibit 1. This is consistent with a December 2005 poll by the Rasmussen Report which concluded that “Sixty-eight percent (68%) of Americans say they are following the NSA story somewhat or very closely.” <http://www.rasmussenreports.com/2005/NSA.htm>. Exhibit 2. This clearly demonstrates that the issue has persistent and widespread interest in American society.
- The issue has resulted in numerous reports by print, radio, television and Internet media. Attached in Exhibit 3 is a partial list of more than 40 stories on the issue from media outlets including the New York Times, USA Today, Wired Magazine, CBS, CNN and National Public Radio.
- The issue has been the subject of substantial interest by politicians and regulators. During the 109th Congress, the Senate Judiciary Committee subpoenaed the heads of several telecommunications companies to testify about the program and it was only at the behest of the Vice President of the United States that hearings on this issue were temporarily halted. John Diamond, *Specter: Cheney put pressure on panel*, USA Today, June 7, 2006; John Diamond, *Senators won't grill phone companies*, USA Today, June 7, 2006.
- Senator Patrick Leahy, (D-VT), the incoming chairman of the Senate Judiciary Committee, has expressed concern about the need for the companies allegedly involved to be held accountable if wrongdoing is found. "These companies may have violated the privacy rights of millions of Americans," Leahy said. "Immunity as a general rule in any industry can be a dangerous proposition for it promotes less accountability." Rebecca Carr, *Bush is seeking immunity for telecom industry*, Cox News, November 15, 2006.
- Several key national politicians and regulators have called for investigation into the scandal including Federal Communications Commissioner Michael Copps (Exhibit 4) and Representative Edward Markey (D- MA) (Exhibit 5), the then ranking minority member of the House Subcommittee on Telecommunications and the Internet.
- State utility regulators have also devoted substantial time and attention to the issue. Investigations of the telecommunications companies phone record sharing have been instituted in Vermont, Maine, New Jersey, Connecticut, and Missouri. Exhibit 6. Hearings on the issue have been held in a number of other states including Washington, Delaware, Nebraska, and Pennsylvania. Exhibit 7.
- The possibility that Verizon has shared phone records has also exposed the company to substantial potential liability. Class action lawsuits have been filed seeking damages for tens of millions of customers that could run to billions of dollars.
- A May 2006 Newsweek Poll indicated that “53 percent of Americans think the NSA’s surveillance program 'goes too far in invading people’s privacy,’” The report on the poll specifically discussed the allegation that the “NSA has collected tens of millions of customer phone records from AT&T Inc., Verizon Communications Inc. and Bell-South Corp.”

<http://www.msnbc.msn.com/id/12771821> Exhibit 8.

- At Cisco Systems, Inc.'s November 2006 Annual Meeting, a shareholder proposal asking the company to address “steps the company could reasonably take to reduce the likelihood that its business practices might enable or encourage the violation of human rights, including freedom of expression and privacy . . .” received a noteworthy **29% of the vote**. <http://www.bostoncommonasset.com/news/cisco-agm-111506.html> Exhibit 9. This vote is a clear expression of considerable shareholder concern about the role that technology and communications companies play in the freedom of expression and privacy.

Specifically on the issue of pretexting, the following are additional examples of the widespread concern about the issue, and Verizon's involvement:

- The issue came to national attention when a “public furor” erupted over the use of pretexting in an investigation at Hewlett-Packard. Pete Carey and Therese Poletti *HP's General Counsel Quits, Declines to Testify at Congressional Hearing* San Jose Mercury News September 28, 2006. Exhibit 10.
- Not only did the issue result in criminal investigations, but it also was the subject of closely watched congressional hearings. *Id* and Yuki Noguchi and Ellen Nakashima *House Panel Digs Deep in HP Spy Case* Washington Post, September 29, 2006. Exhibit 11.
- Verizon, specifically, became associated in the business press with the scandal. See Lorraine Woellert *Verizon Caught in HP Pretexting Web* Business Week Online, September 18, 2006. Exhibit 12.
- The issue has also been the subject of Federal Communications Commission (“FCC”) interest pre-dating the HP scandal (Exhibit 13 Statement of FCC Commissioner Adelstein) and, according to Chairman Kevin Martin, the FCC has been “investigating the telecommunications carriers to determine whether they have implemented safeguards that are appropriate to secure the privacy of the personal and confidential data entrusted to them by American consumers.” Pamela Yip *Pretexting the latest identity threat*, Dallas Morning News, January 1, 2007. Exhibit 14.

### ***B. The Proposal Addresses Customer Information Protections and Legal Compliance in a Permissible Fashion.***

Verizon argues that the Proposal is excludable because it involves internal operating policies, customer relations and legal compliance programs – specifically the policies and procedures for protecting customer information. The Company's argument rests on the premise that “Management is in the best position to determine what policies and procedures are necessary to protect customer privacy and ensure compliance with applicable legal and regulatory requirements.” Company Letter at page 4.

First, because of the Company's involvement in the Programs and rising concerns about pretexting, management is no longer in the best position to address customer privacy issues. As discussed earlier, Rule 14a-8(i)(7), is based on the corporate law principle that particular decisions are best left to management because they are in a better position than shareholders to make those day-to-day decisions. *However*, when a company encounters issues of significant social policy importance, it is no longer the case that management is in a better position than shareholders to evaluate how the company should

address the issue. Rather, when the Company is facing a significant social policy issue, the shareholders have an appropriate and legitimate role to play. Consequently, under the ordinary business exclusion, management's role must yield to the rights of shareholders to raise, consider and opine on those matters which have significant social consequences. *Amalgamated Clothing and Textile Workers Union v. Wal-Mart Stores, Inc.*, 821 F. Supp. 877 (S.D.N.Y. 1993) and *Medical Committee for Human Rights v. SEC*, 432 F. 2d. 659 (1970), vacated and dismissed as moot, 404 U.S. 402 (1972).

Second, there is nothing in the Proposal that seeks to delve into the *details* of internal operating policies, customer relations or legal compliance. As the SEC made clear in the 1998 Release, proposals may not “prob[e] too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” The Proposal expressly avoids this pitfall by focusing on the “overarching technological, legal and ethical policy issues.” It is fair to assume that if we had sought a higher level of detail than this, that Verizon would have accused us of attempting to micro-managing the Company. To the contrary, the Proposal strikes the appropriate balance by focusing on the policy level issues while providing sufficient guidance so that the shareholders and management understand what is being requested.

Third, even assuming that the Proposal seeks direct involvement in compliance mechanisms there are many examples where the Staff has determined that it is appropriate for a shareholder proposal to address operating policies and legal compliance issues. In *Dow Chemical Company* (February 28, 2005) the Staff permitted a proposal that sought an analysis of the adequacy and effectiveness of the “company's internal controls related to potential adverse impacts associated with genetically engineered organisms”. The allowed *Dow* proposal is analogous to our Proposal because both proposals seek a discussion about how the company is addressing a significant policy issue – adverse impacts associated with genetically engineered organisms on the one hand and customers' privacy rights on the other.

In *Bank of America Corp.* (February 23, 2006) the Staff denied a no-action request for a shareholder proposal which requested that this company's board “develop higher standards for the securitization of subprime loans to preclude the securitization of loans involving predatory practices” (an illegal practice). The company challenged the proposal on the grounds that the proposal dealt with “a general compliance program” because it sought to ensure that the company did not engage in an illegal practice. The Staff rejected that reasoning and we respectfully submit that the Staff should do so again. See also *Conseco, Inc.* (April 5, 2001) and *Assocs. First Capital Corp.* (March 13, 2000).

In *3M* (March 7, 2006) the Staff allowed a proposal that asked “the Board of Directors to make all possible lawful efforts to implement and/or increase activity on each of the principles named above in the People's Republic of China” including principles that addressed compliance with “China's national labor laws.” See also *V.F. Corp* (February 14, 2004) and *E.I. du Pont de Nemours* (March 11, 2002). Similarly, in *Kohl's Corp.* (March 31, 2000) the Staff allowed a proposal that sought a report on the company's vendor standards and compliance mechanisms in the countries where it sources.

In *Dillard Department Stores, Inc.* (March 13, 1997) the company failed to persuade the Staff to exclude a proposal that asked for a report which described the company's actions to ensure that it would not do business with foreign suppliers who manufacture items using forced labor, convict labor or illegal child labor or fail to satisfy other applicable laws and standards.

In *Citigroup Inc.* (February 9, 2001) the Staff permitted a proposal that requested a report to shareholders describing the company's relationships with any entity that conducts business, invests in or facilitates

investment in Burma. It also sought specific information about the company's relationship with Ratchaburi Electricity Generating Co. of Thailand, as well as *explaining why these relationships did not violate U.S. government sanctions*.

What all of these proposals have in common with the Proposal is that they were addressing significant social policy issues confronting the company. Consequently, they were appropriate issues for shareholder consideration even if, arguably, they involved compliance issues. Whether they addressed genetic engineering, sweatshop/forced labor or predatory lending, the Staff concluded that those proposals were not concerned with mundane company matters, but were focused on how the company should address the issues which transcended the day-to-day affairs of the company.

With respect to the cases cited by the Company it is clear that the following do not apply because they all expressly involved making explicit changes to specific compliance mechanisms or policy at the company: *H&R Block Inc.* (August 1, 2006); *Bank of America Corporation* (March 3, 2005); *Deere & Company* (November 30, 2000); *Associated First Capital Corporation* (February 23, 1999);<sup>2</sup> *Chrysler Corp.* (February 18, 1998); *Citicorp* (January 9, 1998); and *Consolidated Edison Inc.* (March 10, 2003). In contrast, the Proposal is focused on a policy level discussion of technological, legal and ethical issues and does not direct the Company to adopt any specific compliance mechanism or policy.

As for *CVS Corp.* (February 1, 2000), that excluded proposal is distinguishable because it was a very broad proposal that was not limited to a specific significant policy issue, but rather related to “this company preparing for shareholders an annual strategic plan report describing its goals, strategies, policies and programs, and detailing the roles of its corporate constituents.” The Proposal is not open ended like *CVS Corp.* and therefore is not analogous to that proposal.

*Bank of America Corp.* (February 21, 2006) and (March 7, 2005) are different than the Proposal because they simply requested a mere cataloging of existing policies and procedures for ensuring confidentiality. This Proposal, in contrast, goes beyond such a day-to-day issue, and requests a discussion of overarching policy issues which necessarily implies a discussion of potential additional policies. Our Proposal does not simply focus on a mundane matter like describing existing policies or mere procedural issues, but rather focuses on the significant policy issues of the societal and business concerns facing the Company as the result of the public and legal allegations relating to the Programs.<sup>3</sup> The same analysis applies as well to *Citicorp* (January 8, 1997).

Finally, it is also evident that the issue of telecommunications privacy has already been well established as a significant social policy issue. See, *Cisco Systems Inc.* (July 13, 2002). In *Cisco*, the proposal focused on the freedom of expression, association and privacy – specifically requesting that Cisco report to shareholders on the capabilities of its hardware and software products that allow monitoring and/or recording of Internet traffic. Like *Cisco*, the current Proposal focuses on how the company will address the central role it plays as a gatekeeper of individual's private information. Both proposals also addressed the issue in terms of privacy rights and we respectfully request the Staff to apply consistent reasoning by denying Verizon's no-action request.

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2 Contrary to Verizon's description it is evident that the proposal was not limited to monitoring and reporting but related “to this company forming an independent committee of outside directors to develop and enforce a policy of preventing predatory lending practices which may violate federal or state law and report to shareholders.”

3 We also observe that in both *Bank of America* cases the proponent did not offer any discussion or analysis of Rule 14a-8(i)(7), but made a few conclusory statements in response to the no-action request. Consequently, that proposal did not generate a full consideration of the issues.

***C. Litigation: The Proposal does not implicate the ordinary business litigation exclusion because it does not seek to dictate the results of any litigation.***

The Company also asserts that the Proposal is excludable as affecting its litigation strategy and the discovery process of numerous proceedings. First, it should be noted once again that the Proposal allows the Company to exclude "confidential information," which includes matters of litigation strategy and discovery related issues. Nowhere does the Proposal, expressly or implicitly, require a report on how the Company plans to argue the procedural or substantive aspects of any legal case or how it expects to resolve the cases. Instead what is contemplated by the Proponent is reporting on the overarching policy issues. Finally, we note that the Company does very little to flesh out its general assertions that the Proposal interferes with litigation and essentially does little more than make the bald assertion and cite cases that support the general rule without making an effort to analogize those cases to this Proposal.

*Reynolds American Inc.* (February 10, 2006). In that case, the proposal requested the company "undertake a campaign aimed at African Americans apprising them of the unique health hazards to them associated with smoking menthol cigarettes" while at the same time the company was a defendant in a lawsuit in which the Company was disputing "the use of menthol cigarettes by the African American community poses unique health risks to this community." In other words, if the proposal was enacted, the Company would have directly conceded the central point of the litigation and essentially mooted the litigation. Examining the Proposal in light of this case, an analogy would exist only if the Proposal sought the Company make some sort of statement that it has (as it characterizes the lawsuits) "violated consumer privacy rights". This is not what the Proposal does. Our Proposal requests an overarching policy discussion of the issues surrounding privacy rights and does not request the Company come to any particular conclusion regarding those rights and does not seek thereby to dictate the results of the lawsuits. Consequently, *Reynolds* cannot provide a basis for exclusion. See also *Loews Corporation* (March 22, 2006).

*R.J. Reynolds Tobacco Holdings, Inc.* (February 6, 2004). In this example, the proposal asked that:

RJR stop all advertising, marketing and sale of cigarettes using the terms "light," "ultralight," "mild" and similar words and/or colors and images until shareholders can be assured through independent research that light and ultralight brands actually do reduce the risk of smoking-related diseases, including cancer and heart disease

At the same time the Company was arguing that it was entitled to advertise and market cigarettes using the terms "light," "ultralight," "mild" and similar words. That is, if the proposal had passed the result would have been to moot the litigation because the litigation would have been resolved. Consequently, it is evident that *R.J. Reynolds Tobacco Holdings, Inc.* (February 6, 2004) is not dispositive in this case because there is nothing in our Proposal that would resolve the litigation that the Company refers to. For the Company's argument to be valid, the Proposal would need to somehow result in the litigation being resolved. Clearly a request for an overarching policy discussion of privacy issues as they relate to cooperating with local, state and federal authorities does not directly or indirectly dispose of any litigation the Company is engaged in.

*R.J. Reynolds Tobacco Holdings, Inc.* (March 6, 2003). Here, the resolution was designed to resolve the pending litigation against the company regarding its smuggling practices. In particular, the resolution required the company to "determine the extent of our Company's past or present involvement directly or indirectly in any smuggling of its cigarettes throughout the world." The litigation pending against the company was seeking precisely these outcomes. So implementation of the resolution could have effectively meant resolving the

litigation. In other words, this resolution fit into the ordinary business precedents “when the subject matter of the proposal is the same or similar to that which is at the heart of litigation in which a registrant is then involved.” That is far from the situation in our resolution. The Proposal does not request, directly or even indirectly, any assessment about the litigation nor require any outcome to the litigation.

Similar conclusions must also be reached upon thorough review and analysis of the two other cases cited by the Company on pages 5 and 6 of its letter. As the Company made very clear in its brief descriptions of the cases, they were both examples of proposals requesting certain actions to be taken by the company that were expressly and directly linked to specific actions in specific pending or contemplated litigation. *NetCurrent, Inc.* (May 8, 2001) (requiring the company **to bring an action in court**) and *Microsoft Corporation* (September 15, 2000) (asking the company **to sue the federal government**). The Proposal, however, does not expressly, let alone impliedly, request the Company to bring an action in court, to sue anyone or do anything that could be said to involve whether or how the Company will litigate the cases.

In essence the Company is arguing that if there is a lawsuit on the matter then the Company is per se allowed to exclude any shareholder proposals on the matter. Clearly that is not the case. Consider for example the following examples which are more analogous to the Proposal:

In *RJ Reynolds* (March 7, 2000) the company had to include a resolution that called for the company to create an independent committee to investigate retail placement of tobacco products, in an effort to prevent theft by minors. The company argued that due to two current lawsuits (against FDA and the state of Massachusetts) the proposal, if implemented, would interfere with litigation strategy by asking the company to take voluntary action in opposition to its position in the lawsuits. The proponent prevailed by arguing that it addressed a significant policy issue (tobacco and children) and that the proposal is unrelated to litigation. “[L]itigation strategy has been interpreted to encompass matters ranging from the decision whether to institute legal proceedings, to the conduct of a lawsuit, to the decision whether to settle a claim or appeal a judgment.” That proposal, as the present one now being considered, deals with none of the above.

In *Philip Morris* (February 14, 2000), the proposal called for management to develop a report for shareholders describing how Philip Morris intends to address “sicknesses” caused by the company’s products and correct the defects in the products that cause these sicknesses. The company argued that the proposal requested the company to issue a report on matters that are prominently at issue in numerous lawsuits. The proponent prevailed by arguing that the proposal neither requests information about litigation nor tells the company how to handle the litigation. Similarly, because our Proposal does not request any information about litigation (due to the confidentiality provision) and does not direct any litigation action, our Proposal will not interfere with any litigation strategy.

In *Bristol-Myers Squibb Company* (February 21, 2000), the resolution called for implementation of a policy of price restraint on pharmaceutical products for individual customers and institutional purchasers to keep drug prices at reasonable levels and report to shareholders on any changes in its current pricing policy by September 2000. The company argued that the proposal sought to have the company take action in an area of its business currently subject to litigation: its pricing practices. The proponent prevailed -- arguing that as a matter of good public policy a proposal raising a broad policy issue should not be automatically excluded if the company has at sometime, somewhere, been sued in connection with a related matter. Our Proposal is analogous to this case because it raises a broad policy issue that happens to be implicated in a number of settings, including litigation.

Further, the mere mention of a lawsuit in a shareholder resolution does not render the resolution excludable as ordinary business. In *RJR Nabisco* (February 13, 1998), the resolution called for the company to implement in

developing countries the same programs for prevention of smoking by youths as voluntarily proposed and adopted in the US. The company mentioned that proponents refer to lawsuits against subsidiaries in France and Philippines dealing with alleged violations of marketing regulations as a basis for extending the US policy abroad. The proponent prevailed by pointing out that the company has already implemented these programs in the US and therefore the resolution has nothing to do with lobbying/litigation strategies.

In sum, this analysis demonstrates that the Proposal does not interfere with any litigation the Company is, or may be, engaged in. It does not direct any particular result nor does it require the Company to divulge its strategies. Rather it is properly focused on the broad yet very significant social policy issue confronting the Company at this time.

***D. Political process: the Proposal is proper because it does not seek an evaluation of a specific legislative proposal.***

Finally, the Company makes the specious argument that the Proposal involves the Company in the political or legislative process by asking the Company to evaluate the impact that the Programs would have on Verizon's business operations. It is evident from a number of previous Staff decisions that it is permissible to file a proposal that would involve a company in the political or legislative process. Consider *Coca-Cola Company* (February 2, 2000), in which the SEC staff denied a no-action request. In that case, the resolution asked the company to promote the retention and development of bottle deposit systems and laws. It also requested the company cease any efforts to replace existing deposit and return systems with one-way containers in developing countries or countries that do not have an effective and comprehensive municipal trash collection and disposal system. And in *Johnson and Johnson* (January 13, 2005) the shareholder requested the company to, inter alia, "Petition the relevant regulatory agencies requiring safety testing for the Company's products to accept as total replacements for animal-based methods, those approved non-animal methods described above, along with any others currently used and accepted by the Organization for Economic Cooperation and Development (OECD) and other developed countries." That proposal was deemed permissible in the face of a "political process" objection. See also, *RJR Nabisco Holdings Corp* (February 13, 1998) (proposal requesting "management to implement the same programs that we have voluntarily proposed and adopted in the United States to prevent youth from smoking and buying our cigarettes in developing countries" was held permissible.)

Turning to the cases cited by Verizon, it is evident that they do not apply because they sought an evaluation, expressly or implicitly, of specific legislative or regulatory proposals. *Microsoft Corporation* (September 29, 2006), as the Company pointed out, was excluded because it sought a report that evaluated the costs and benefits to the company of the "Net neutrality" legislative proposal. Similarly *Verizon Communications Inc.* (January 31, 2006) was excluded because it sought an evaluation of the impact of the flat tax proposal on the company. Our Proposal is distinct from these two proposals because it does not ask Verizon to evaluate the impact of any legislative proposal on the Company.

The proposal in *International Business Machines Corp.* (March 2, 2000), cited by the Company, requested:

the Board of Directors to establish a committee of outside directors to prepare a report at reasonable expense to shareholders on the potential impact on the Company of pension-related proposals now being considered by national policy makers, including issues under review by federal regulators about the legality of cash balance pension plan conversions under federal anti-

discrimination laws, as well as legislative proposals affecting cash balance plan conversions and related issues.

As this makes clear, that proposal expressly sought a direct evaluation of specific legislative and regulatory proposals concerning cash balance plan conversions. Our Proposal is quite distinct from the *International Business Machines Corp.* type proposal because it does not seek an evaluation, expressly or implicitly, of *any* legislative or regulatory proposals let alone a specific proposal comparable to “cash balance pension plan conversions under federal anti-discrimination laws”.

This analysis is borne out in *Pepsico, Inc* (March 7, 1991), *Dole Food Company* (February 10, 1992) and *GTE Corporation* (February 10, 1992) all three of which requested the evaluation of the impact on the company of various federal health care proposals. Those proposals were all properly excluded because they sought an evaluation the specific impact of a legislative proposal on the company. The current Proposal, in contrast, does not do this even impliedly and therefore these three cases cannot provide the grounds for exclusion.

Finally, *Pacific Enterprises* (February 12, 1996) was properly excluded because it directed the regulatory, legislative and legal departments to undertake highly specific steps related to deregulation. Specifically, the proposal stated:

Pacific Enterprises and Southern California Gas Company will dedicate the full resources of their regulatory, legislative and legal departments to the task of ending California utility deregulation. This effort will include lobbying in favor of laws (such as California Assembly Bill 1914 by Assembly Member Martha Escutia) mandating that any company transporting, distributing, storing or selling natural gas in the state of California must furnish the high standard of safety related services to the general public as has been provided by related public utilities before CPUC required implementation of utility deregulation.

Our Proposal is completely different from *Pacific Enterprises* because it does not direct any particular legislative result. Rather the Proposal seeks a discussion of the issues without a predetermined finding let alone a predetermined legislative result. Furthermore, the Proposal does not advocate for any specific legislation or set any criteria for legislation that Verizon should or must support. As a result, *Pacific Enterprises* does not apply to this case.

Finally, we note that significant social policy issues inherently have a political aspect to them. Because such issues are important to society and have a high public profile, they attract the attention of politicians and legislators. Consequently, any ordinary business analysis must take this inherently political characteristic of significant policy issues into account. Thus when we see that the privacy of customer telephone records and communication content is, not surprisingly, a political issue we should recognize that it is not fatal to our Proposal. Therefore, we urge the Staff not to conclude the Proposal is excludable as ordinary business.

## ***II. The Proposal, if Implemented, Would Not Cause the Company to Violate Federal Law***

The Company argues that if it implemented the Proposal, that it would cause the Company to disclose government-classified information or material in violation of federal law. This argument fails for a number of reasons.

First, the WilmerHale letter incorrectly assumes that the term “confidential” does not mean government-classified information and therefore is asking for the Company to disclose information that could jeopardize the nation’s security and violate federal law. Because the WilmerHale letter is entirely based on this assumption, its analysis is extraneous to the issues before the Staff. As WilmerHale puts it “nor does this Letter address this possible interpretation” (i.e. the exclusion of government-classified information). Since the letter does not address the correct meaning of the Proposal it is not applicable to this case and the Company's entire Rule 14a-8(i)(2) argument is unsupported.<sup>4</sup> Therefore, because our Proposal specifically allows Verizon to exclude confidential information, it will not cause the Company to disclose classified information or materials and will not cause a violation of the law.

It is not at all clear why WilmerHale interprets the term “confidential” to only refer to intellectual property and trade secrets. The plain meaning of “confidential” includes government classified information and there is no reason to assume that the Proponent did not intend that meaning. For example, The American Heritage Dictionary of the English Language Fourth Edition, 2000 at page 386 defines “confidential” as inter alia “Containing information, the unauthorized disclosure of which poses a threat to national security.” See also Merriam-Webster.com which defines “confidential” as “containing information whose unauthorized disclosure could be prejudicial to the national interest”. Given this analysis the Company's fall back position appears to be (on page 11) that “the result would be an entirely abstract study” that is vague and indefinite. As argued fully below, that contention fails because the Proposal has struck the appropriate balance by avoiding being too general and too specific.

We would like to take this opportunity, however, to point out that the subject matter of the Proposal is clearly within the range of information that can be discussed legally. While the WilmerHale letter claims that there is a broad ban on any discussion of the Programs, it is clear that this is not the case. The Hon. Judge Vaugh T. Walker, the judge assigned by the Judicial Panel on Multidistrict Litigation to hear the consolidated lawsuits related to claims against the telecommunications companies including Verizon, has concluded

***AT&T and the government have for all practical purposes already disclosed that AT&T assists the government in monitoring communication content.*** As noted earlier, the government has publicly admitted the existence of a “terrorist surveillance program,” which the government insists is completely legal.

*The Hon. Judge Vaugh R. Walker's July 20, 2006 Order in Hepting v. AT&T Corporation* at p. 29 (emphasis added) Exhibit 15. While this order in *Hepting* applies only directly to AT&T, the Hon. Judge Walker will be making a determination regarding Verizon in February or March and the order gives a very clear indication about how he views these issues.

The court goes on to state that “[c]onsidering the ubiquity of AT&T telecommunications services, it is unclear whether this program could even exist without AT&T’s acquiescence and cooperation.” *Id* at p. 30. Therefore, “AT&T’s assistance in national security surveillance is hardly the kind of “secret” that the . . . state secrets privilege were intended to protect . . .” *Id* at p. 3. Finally, the Hon. Judge Walker observed that “[w]hile this case has been pending, the government and telecommunications companies have made substantial public disclosures on the alleged NSA programs.” *Id* at p. 42. Please see pages 28 – 42 of The Hon. Judge Walker's Order for a fuller discussion of his findings.

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<sup>4</sup> We note that on page 8, the Company concedes that the request regarding pretexting “would not result in a violation of law”.

The Hon. Judge Walker also made the following point:

Based on these public disclosures, the court cannot conclude that the existence of a certification regarding the “communication content” program is a state secret. If the government’s public disclosures have been truthful, revealing whether AT&T has received a certification to assist in monitoring communication content should not reveal any new information that would assist a terrorist and adversely affect national security. And if the government has not been truthful, the state secrets privilege should not serve as a shield for its false public statements. In short, the government has opened the door for judicial inquiry by publicly confirming and denying material information about its monitoring of communication content.

*Id* at pages 39 – 40.

Consequently, the issue whether or not the Company provided customer telephone records to the Government can hardly be called a state secret and is something that can be discussed in general terms.

In addition, it is evident that the Company is capable of discussing the issues raised in the Proposal in a public forum. In fact, this very proceeding before the Staff is a discussion of the legal issues surrounding Verizon’s alleged cooperation with government agencies. The WilmerHale memo provides a perfect template for how such a discussion could take place even assuming Verizon cannot confirm nor deny participation in the Programs. The third paragraph on page 2 reads as follows:

Nothing in this Letter should be construed as an admission or denial of Verizon's involvement in the Alleged Programs. For the purposes only of responding to your request, we accept at face value the facts asserted in the media reports. No inference regarding the truth of the reports can be drawn from these assumptions, nor should anything in this Letter be construed as an admission or denial of Verizon's involvement in the Alleged Programs.

It is assumed that any report to shareholders would contain the same or similar language making clear that the Company cannot (absent permission from the government) discuss the *details* of an intelligence program or disclose its existence. However, the parameters of such a discussion – the importance of privacy versus national security and the responsible role of a corporation in weighing those two values – is clear. There is nothing confidential about the law surrounding the sharing of telephone information.

We note, however, that it is odd that the Company has stated that it cannot admit or deny Verizon's involvement in the Alleged Programs because Verizon has made a public declaration denying any involvement in the Programs. See FoxNews: *Verizon- We Didn't Give Customers' Call Records to NSA Either*, May 16, 2006 <[http://www.foxnews.com/printer\\_friendly\\_story/0,3566,195745,00.html](http://www.foxnews.com/printer_friendly_story/0,3566,195745,00.html)>. Exhibit 16.

As the Hon. Judge Walker observed:

BellSouth, Verizon and Qwest have publicly denied participating in the alleged communication records program . . . . Importantly, the public denials by these telecommunications companies undercut the government and AT&T’s contention that revealing AT&T’s involvement or lack thereof in the program would disclose a state secret.

*Walker Order* at page 41.

In *The Quaker Oats Company* (April 6, 1999) the Staff wrote “neither counsel for you nor the proponent has opined as to any **compelling** state law precedent. In view of the lack of any **decided legal authority** we have determined not to express any view with respect to the application of rules 14a-8(i)(1) and 14a-8(i)(2) to the revised proposal.” (emphasis added). We observe that the Company has not cited to any example of any law being applied to shareholder proposals or other provisions of the proxy rules. Furthermore, they have not established any decided legal authority on this issue. In fact, the Hon. Judge Walker's Order indicates that the Company's assertions of the law are misplaced and that the decided legal authority runs contrary to their position. Consequently, the Company has not met its burden and we respectfully request the Staff conclude that Rule 14a-8(i)(2) does not apply to this Proposal. In the alternative, and in light of *The Quaker Oats Company*, we request that the Staff not express any view with the respect to the application of Rule 14a-8(i)(2).

### **III. Verizon's privacy policies for customers are not substantial implementation of the Proposal because the Proposal seeks a *discussion* of privacy issues with *shareholders*.**

The Company claims that the Proposal's request has been substantially implemented through the privacy policies it publishes on its websites. However, based on a review of the websites and the applicable no-action letters issued by the Staff it is clear that the Verizon has not met the Rule 14a-8(i)(10) standard because the websites:

- do not address the technological, legal or ethical issues raised by the Proposal;
- are excessively vague;
- are conclusory and therefore do not contain a discussion of the issues; and
- are not presented in a uniform fashion for a shareholder audience as requested.

Consequently, we believe the Proposal cannot be excluded as substantially implemented.

First, the content of those websites clearly do not address the concerns raised by the Proponent. For example, the [www.verizon.com](http://www.verizon.com) privacy policy link makes only cursory and conclusory mention of when Verizon would disclose customer information and makes no mention about disclosing communications content. On that website the only statements that could be said to be covered by the Proposal are the following:

However, we do release customer information without involving you if disclosure is required by law or to protect the safety of customers, employees or property.

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When you dial 911, information about your location may be transmitted automatically to a public safety agency.

\*\*

Verizon must disclose information, as necessary, to comply with court orders or subpoenas. Verizon also will share information to protect its rights or property and to protect users of its

services and other carriers from fraudulent, abusive or unlawful use of services.

\*\*

We may, where permitted by law, provide information to credit bureaus, or provide information and/or sell receivables to collection agencies, to obtain payment for Verizon billed products and services.

This is far removed from a discussion of “the overarching technological, legal and ethical policy issues surrounding the disclosure of customer records and communications content to (1) the Federal Bureau of Investigation, NSA and other government agencies without a warrant and (2) non-governmental entities (e.g. private investigators) and their effect on the privacy rights of Verizon’s MCI long-distance customers.” In fact there is no discussion of the technological or ethical policy issues surrounding disclosure. While the words “law”, “court orders” and “subpoenas” appear in the policy, this is clearly not a discussion of the policy issues at stake. Given that this website is representative of the other websites identified by the Company it would appear that all of Verizon's statements fail to address the Proposal's requests. See Exhibit 17 for additional excerpts from the websites.

What we have requested is a *discussion* and that implicitly calls for a presentation of differing ideas and approaches. It means offering up for consideration what other companies have done in the past or are proposing to do. This Proposal does not ask for a specific result or policy, but an exploration of the issues as they apply to Verizon's policies and future as a profitable and responsible company. Clearly Verizon's privacy policies do not do that

Furthermore, these websites are intended to communicate information to *customers* while the Proposal requests information for *shareholders*. This is not a minor distinction. The concerns of shareholders can be very different than the concerns of our customers. For example, it would be nonsensical to discuss the merits of a variety of privacy protection technologies or policies in a customer privacy policy statement published on a website. But given the widespread concern over these issues, it is important to shareholders to see that management has explored the technological, legal and ethical policy issues surrounding the disclosure of customer records and communications content.

Second, the websites do not present the information in the same form as we request. The Proposal asks for a single report that contains the discussion. This would provide shareholders with documentation of management's discussion in a unified manner, rather than over multiple websites often containing duplicative and conclusory statements. In this regard consider *Newell Rubbermaid Inc.* (February 21, 2001) in which the Staff required inclusion of a proposal requesting that the board prepare a report on the company's "glass ceiling" progress, including a review of specified topics. The company claimed that it had already considered the concerns raised in the proposal and that it had publicly available plans in place. Despite those arguments, it was beyond dispute that the company had not prepared a report on the topic. Similarly, while the Company may argue that it has indirectly done what we ask, it has not provided documentation in a single report that substantially covers the issues.

Finally, it is important to observe that while Verizon is correct to cite many cases for the conclusion that companies are required to “substantially implement” proposals rather than “fully implement” proposals, what is critical is that it must, at the very least, address the core concerns raised by the proposal. See *Dow Chemical Company* (February 23, 2005); *ExxonMobil* (March 24, 2003); *Johnson & Johnson* (February 25, 2003); *ExxonMobil* (March 27, 2002); and *Raytheon* (February 26, 2001). In all of these cases the

Staff rejected company arguments and concluded that the company's disclosures were insufficient to meet the substantially implemented standard. The case of *Wendy's International* (February 21, 2006) provides a particularly comparable example of the Staff rejecting a company's argument that information provided on a website was sufficient. In *Wendy's* the company argued that it had provided the requested sustainability report on its website and that the information contained on the website was sufficient. The proponent successfully demonstrated that the website contained no documentation that a discussion of the issues, as requested, had occurred and that the website only contained "vague statements of policy." Similarly, the company has not demonstrated that it has engaged in the discussion requested and the information on Verizon's privacy policy websites is very general, i.e. does not address the numerous core issues raised in the Proposal. Consequently, we respectfully request that the Staff not concur with the Company and not permit it to exclude the Proposal on Rule 14a-8(i)(10) grounds.

***IV. Vagueness: The Proposal has struck the proper balance between specificity and generality, therefore the Company has the power, authority and ability to implement it.***

Verizon argues that the Proposal is so vague that it is impossible to implement. In particular the Company argues

- that the Proposal fails to define the terms "confidential" and "technological" and
- exclusion of classified information and the request for a discussion of "overarching" policy issues would result in an entirely abstract study that is not suited for a corporate report to shareholders.<sup>5</sup>

Under Rules 14a-8(i)(3) and 14a-9, proposals are not permitted to be "so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (September 15, 2004) ("SLB 14B") However, the SEC has also made it clear that it will apply a "case-by-case analytical approach" to each proposal. Exchange Act Release No. 34-40018 (May 21, 1998) ("1998 Interpretive Release"). Consequently, the vagueness determination becomes a very fact-intensive determination in which the Staff has expressed concern about becoming overly involved. SLB 14B. Finally, the Staff stated at the end of its SLB 14B vagueness discussion that "rule 14a-8(g) makes clear that *the company bears the burden* of demonstrating that a proposal or statement may be excluded." *Id* (emphasis added).

Addressing Verizon's first argument, previous Staff letters indicate that there is no requirement that proposals define specific terms in a proposal so long as the concept was readily understandable. For example, in *Kroger Co.* (April 12, 2000) the proposal called for the company to adopt a policy of removing "genetically engineered" products from its private label products, labeling and identifying products that may contain a genetically engineered organism, and reporting to shareholders. The company challenged the proposal on many grounds including the argument that the term "genetically engineered" was not defined in the proposal and was the subject of competing definitions. Despite the lack of a definition or a consensus on the meaning of the terms, the Staff rejected the lack of definition argument and concluded that the proposal was permissible. The company also claimed that because state law required that labeling not be untrue, deceptive or misleading that if it labeled its products as sought by the proposal it could be subject to potential liability due to the fact that the company did not have the

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<sup>5</sup> We observe that the first and fourth bullets on pages 11 and 12 do not provide any reasoning as to why they would be the basis for exclusion. Rather they attempt to characterize, inaccurately, the intention of the Proposal in an apparent attempt to cast aspersions on the Proponent's intentions.

basic information that might be required on the label. The proponent in that case argued that the labeling issue could be overcome by placing a label stating that a product did — or did not — contain any genetically engineered material.

In our Proposal's use of the word “confidential” we are confronted with a similar argument. First, even in the context of a heated debate about the meaning of the words “genetically engineered”, the Staff did not require a definition of the term, but allowed common sense to guide shareholders. Second, as explained at length earlier, it is evident from court proceedings and the plain language of the Proposal that the Company will be able to provide a general level discussion of the privacy issues raised by the media reports and lawsuits without violating the law. We have pointed to language already used by the Company and have provided our own suggestions about how to strike a reasonable balance between confidentiality concerns and the needs of shareholders to engage management on this significant social policy issue.

Also, in *Bristol-Myers Squibb Company* (April 3, 2000) the proposal asked the board to implement a policy of price restraint on pharmaceutical products for individual customers and institutional purchasers to keep drug prices at reasonable levels and prepare a report to shareholders on any changes in its current pricing policy. The company argued that it was unable to implement the proposal because the proposal did not define the term "reasonable levels". It also claimed that even if the company implemented the proposal, it could not determine when a "reasonable level" would be reached. The proponent responded by arguing that the proposal simply sought a policy of price restraint, and that such a concept was readily understandable. The Staff concurred with the proponent concluding that Rule 14a-8(i)(3) could not be a basis for exclusion. As in *Bristol-Myers Squibb Company*, the Proponent in this case now before the Staff has addressed the issue in a reasonable fashion. There is no need to create ambiguities where none exist.

Finally, consider *Microsoft Corporation* (September 14, 2000) in which the Staff required inclusion of a proposal that requested the board of directors to implement and/or increase activity on eleven principles relating to human and labor rights in China. In that case, the company argued “phrases like 'freedom of association' and 'freedom of expression' have been hotly debated in the United States” and therefore the proposal was too vague. Similarly, Verizon's claim that our Proposal is meaningless because it seeks to address large issues like the right to privacy should not succeed.

As discussed earlier, the plain meaning of the term “confidential” includes classified information and there is no reason to conclude this will confuse or mislead shareholders. Furthermore, to suggest that shareholders can not understand the confidentiality requirements that would be necessary to implement the Proposal is to vastly underestimate the intelligence of shareholders. In addition, the Proposal makes clear that it is not seeking a high level of specificity or intricate detail. In fact, Verizon's shareholders will understand that the Proposal requests a general discussion of the issues and does not seek to elicit confidential information. As stated in the Proposal, shareholders request a report “excluding confidential and proprietary information”.

With respect to the term “technological” we believe Verizon is trying to create confusion where none exists. The word is defined by The American Heritage Dictionary of the English Language Fourth Edition, 2000 at page 1777 as “relating to or involving technology”. See also [www.merriam-webster.com](http://www.merriam-webster.com) “of, relating to, or characterized by technology”. Applying this definition it is understandable that the Proposal is requesting a discussion of the technology issues related to the disclosure of customer records and communications content. We think it is abundantly clear that telephone and internet communications are completely reliant on technology and therefore the report would necessarily include a discussion of

technology. How this concept will confuse shareholders and therefore make the Proposal impossible to implement it not at all apparent. Again, Verizon is trying to create confusion where there is none.

Turning next to the claim that the Proposal will result in an abstract report that is not appropriate for a corporate report to shareholders we demonstrate below that the report would not be a meaningless intellectual exercise. Rather, it would provide shareholders with useful information, would document management's consideration of these significant social policy issues and provide the basis for a meaningful dialogue between Verizon and its shareholders.

If the Company were to implement the Proposal, there are many subjects it could discuss without disclosing classified information and still provide relevant information to shareholders. For example, Verizon, under the subject of the legal issues surrounding the disclosure of customer records and communications content, could discuss the necessary trade offs the Company will have to consider in light of the societal benefits of strong privacy protections and the needs for homeland security. In that discussion it could discuss the various ways different companies such as Qwest, AT&T, Cisco, Microsoft, Yahoo, or AOL have handled such trade offs. By considering the business practices of other companies, Verizon shareholders and management will be better able to decide how Verizon should address this significant policy issue and from a policy perspective discuss how to chart the Company's future. None of that discussion would require any disclosure of classified information whatsoever and yet would be very useful information for shareholders as they evaluate the Company's future, its commitment to responsible behavior and their investment in Verizon.

Another possibility would be a discussion of the feasibility of the Company contributing to technological advancements which would allow the company to assist law enforcement more effectively and do so with even stronger protections of civil liberties. Similarly, Verizon could report on technological advancements that would cut down on pretexting. Such developments would give the company a business advantage as customers would be attracted to such protections and it would serve to improve the Company's standing as a defender of American security and liberty. It could also bring with it other technological advances that may offer other business opportunities. This is information that would be useful for shareholders as they discuss these issues with the Company and evaluate how the Company, at a broad policy level, proceeds.

Also, there is nothing confidential about the laws themselves that apply to Verizon. The Company could readily discuss the contours and various interpretations of the Electronic Communications Privacy Act, the Foreign Intelligence Surveillance Act of 1978, the Telephone Records and Privacy Protection Act of 2006, the Telecommunications Act of 1996 and the Electronic Communication Transactional Records Act. This discussion would not need to be an abstract law review, but could easily involve a discussion of the business implications and alternatives for the Company under these laws. Such an analysis could also serve as documentation that management has evaluated the feasibility of different ways to negotiate its relationship with the government. In light of the public furor and ensuing litigation, shareholders are right to ask whether the Company has struck the right balance and what will be necessary to do so in the future.

It is clear that excluding confidential information will not result in a meaningless and abstract "white paper." The challenges posed by privacy issues are significant, and ask shareholders, in the words of one court, to fulfill their "duty (not just a right) to make sure these goods are used justly, morally and beneficially." *Medical Committee for Human Rights v. SEC*, 432 F. 2d. 659, 680-681 (1970), vacated and dismissed as moot, 404 U.S. 402 (1972). Furthermore, they offer the Company an opportunity to become

a better, more efficient and more competitive company.

Therefore, it is apparent that Verizon has not met its significant burden of proving that under Rules 14a-8(i)(3) and 14a-9 the Proposal should be excluded. The above discussion demonstrates that the plain meaning of the words in the Proposal will not create confusion for shareholders, directors or management and that the requested report would provide a meaningful and useful report that would be appropriate for shareholders. Consequently the Proposal would not be impossible to implement.

### CONCLUSION

In conclusion, I respectfully request the Staff to inform the Company that Rule 14a-8 requires denial of its no-action request. As demonstrated above, the Proposal is not excludable under any of the criteria of Rules 14a-8 or 14a-9. In the event that the Staff should decide to concur with the Company and issue a no-action letter, I respectfully request the opportunity to speak with the Staff. Please call me at (971) 222-3366 with any questions in connection with this matter, or if the Staff wishes any further information.

Sincerely,



Jonas Kron  
Attorney at Law

Enclosures

cc: Mary Louise Weber, Assistant General Counsel, Verizon Communications Inc.  
As You Sow Foundation  
Thomas Van Dyck