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REDACTED – FOR PUBLIC INSPECTION

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: Section 251 Unbundling Obligations for Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147

Dear Ms. Dortch:

Last week, Verizon submitted extensive evidence graphically depicting the scope of competition for mass-market customers and high-capacity services in the largest MSAs where Verizon provides service as the incumbent local exchange carrier. That evidence demonstrated that competitors can — and are — competing without mass-market switching and high-capacity facility UNEs (including dark fiber) and, therefore, are not impaired without unbundled access to those network elements.

Today, Verizon supplements that filing with the attached white papers, declarations, and other supporting material. This material provides further, detailed evidence regarding the widespread competition that exists today. Today's filing also addresses in more detail the current, binding legal standards that must guide the Commission as it undertakes the tasks of developing permanent and interim rules to replace those vacated by the courts.

As with the prior filing, we believe that this additional information will be of material assistance to the Commission as it considers interim or permanent rules. Updated information will allow the Commission to take into account current market facts so that the rules can be tailored to address the Court's decision in light of current market conditions.

Moreover, as a purely legal matter, the Commission must take into account such market information whether undertaking either permanent or interim rules. As the D.C. Circuit has explained on several occasions, even interim rules must adhere to the "letter [and] spirit of the mandate.'" *Coal Employment Project v. Dole*, 900 F.2d 367, 368 (D.C. Cir. 1990) (quoting *Mid-Tex Elec. Coop v. FERC*, 822 F.2d 1123, 1130 (D.C. Cir. 1987)). Consistent with that requirement, the Commission simply cannot ignore market facts that demonstrate that carriers can, and are, competing without the need for unbundled elements.

In particular, in light of this evidence and the applicable legal standards as set forth by the Supreme Court and the D.C. Circuit, the Commission cannot adopt rules, whether permanent *or interim*, that simply reinstate the same unbundling requirements that have now been vacated three times by the federal courts. To take but one example, as part of its impairment analysis, the D.C. Circuit made clear that the Commission must consider the fact that competing carriers are making extensive use of special access services to successfully provide high capacity services to their own end user business customers. The evidence that Verizon has presented demonstrates conclusively that competitors have been successful in — and therefore necessarily are capable of — serving both large and small business customers using Verizon's special access, either alone or in combination with their own and other competitors' facilities.

Indeed, the evidence shows that competing carriers are successfully providing high-capacity services to business customers located throughout the MSAs that Verizon serves, wherever there is demand for those services. To the extent these carriers do use facilities obtained from Verizon, they obtain those facilities overwhelmingly in the form of special access services, not UNEs. In fact, 93 percent of the DS-1 loops that competing carriers obtain from Verizon are purchased as special access, rather than UNEs, and 95 percent of the DS-1 loops that they obtain in combination with transport are purchased as special access, rather than UNEs. And competing carriers are using these special access circuit to successfully serve business customers ranging from the enterprise segment of the market, which they dominate, to a host of smaller business customers including antique dealers, book stores, dry cleaners, florists, gas stations, and hair dressers, to name just a few. Any rules the Commission adopts must reflect this fact as well as the many other market realities that are described in this and Verizon's previous submission.

Please let me know if you have any questions.

Sincerely,

Attachments