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December 8, 2004

**Ex Parte**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW – Portals  
Washington, DC 20554

**Re: Unbundled Access to Network Elements, WC Docket No. 04-313; Review of Section 251 Unbundling Obligations for Incumbent Local Exchange Carriers, CC Docket No. 01-338**

Dear Ms. Dortch:

I am writing to address certain issues raised in a letter from MCI dated December 3, 2004. Nothing in MCI's letter undermines the evidence already in the record that competing carriers are not impaired without access to unbundled switching.

*First*, MCI argues that the Commission should not consider VoIP as intermodal competition unless it is provided by cable providers. But the impairment inquiry does not lawfully turn on the nature of the entity providing the service. Nor is there any factual basis to exclude non-cable VoIP providers. Nearly 90 percent of U.S. homes now have access to cable modem service and, therefore, access to competitively supplied VoIP services, whether provided by their cable operator, by national providers such as Vonage, by major long-distance carriers such as AT&T, or by others. *See* Verizon Comments at 87-88. In Verizon's 50 largest MSAs (measured in terms of the number of local access lines that Verizon provides as an incumbent), cable modem service is available to roughly 92 percent of the population throughout these MSAs. *See* Hassett/Woodbury Decl. ¶ 37 & Exh. 3, attached to Verizon's Comments. These VoIP providers are now offering bundles of voice services that compete directly, in price and quality, with traditional wireline service. *See* Verizon Comments at 85-87.

*Second*, MCI argues that VoIP competition should be ignored in the impairment analysis because it is not uniformly available across the United States. According to a NTIA Report

cited by MCI,<sup>1</sup> over 22% of rural dial-up Internet households report that they have no access to a broadband connection because neither cable modem nor DSL is available in their areas.

As an initial matter, there is no dispute that broadband service and, therefore, VoIP is widely available throughout non-rural areas. The NTIA Report states that only 4.7 percent of urban dial-up Internet households responded to the Census Bureau that broadband service was not available to them. There is, therefore, no impairment in these areas. In addition, the 22% number that MCI relies upon demonstrates that broadband is available to the vast majority of households. In fact, based on these data, competitive deployment of broadband and VoIP services is certainly "possible" in rural areas and competitors are not impaired in these areas either. Additionally, the NTIA Report is based on Census Bureau data from October 2003, which is over a year old. Broadband deployment has been extensive across the country in the last year. More households in rural areas have access to broadband service now than when the Census Bureau data were collected. According to Goldman Sachs, "[r]ural DSL growth [] gained momentum in 1Q2004 and we expect it to continue into 2Q2004."<sup>2</sup>

In any event, other intermodal technologies, such as wireless and satellite also are well suited to providing broadband service in rural areas, and are being used to do so. In fact, the NTIA Report cited by MCI makes this very point:

[W]ireless technologies such as satellite and MMDS are promising technologies for increasing broadband use in rural areas. They are better suited at present than cable or DSL for providing high speed Internet access in areas where population density is low. Even at this early stage of wireless deployment, rural households are slightly more likely than urban households to have satellite or MMDS.

NTIA Report at 15. And the Commission has recently confirmed that these technologies are being deployed rapidly: "Reported high-speed connections to end users by means of satellite or terrestrial wireless technologies increased by 19% during the second half of 2003."<sup>3</sup>

Satellite broadband service is already available throughout the country, including rural areas, and is proving to be an effective way to bring broadband service to rural areas. For example, "StarBand is the first and only company to provide high-speed [satellite] Internet services to Residential and Small Business customers in all 50 U.S. States, Puerto Rico and the U.S. Virgin Islands. StarBand's mission is to provide affordable high-speed Internet service to

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<sup>1</sup> U.S. Department of Commerce: Economics and Statistics Administration and National Telecommunications and Information Administration, "A Nation Online: Entering the Broadband Age," (Sept. 2004) ("NTIA Report").

<sup>2</sup> F. Governali, *et al.*, Goldman Sachs, *2Q2004 Preview: Wireline & Wireless* at 13-14 (July 6, 2004).

<sup>3</sup> Industry Analysis and Technology Division Wireline Competition Bureau; *High-Speed Services for Internet Access: Status as of December 31, 2003*, at 2 (June 2004).

those not served by other means such as DSL or cable modem broadband.”<sup>4</sup> In addition, WildBlue Communications plans to introduce broadband satellite service in the Ka-band in early 2005.<sup>5</sup> The National Rural Telecommunications Cooperative (“NRTC”) has agreed to a distribution partnership with WildBlue, and members of NRTC will offer WildBlue’s service across the country.<sup>6</sup> According to Bob Phillips, NRTC President and CEO, “[NRTC is] confident that WildBlue is the best solution to deliver affordable high-speed satellite Internet access to rural America,” and that “virtually every home and small business in the continental United States will finally have access to the most advanced telecommunications services available.”<sup>7</sup> WildBlue “expects to beat its predecessor [satellite companies] on both speed and price.”<sup>8</sup>

Fixed wireless also continues to be a viable broadband alternative for many rural customers, and is likely to grow significantly in the future. As the Chairman of the national trade association for fixed wireless providers has noted, “[w]ireless ISPs have rolled out broadband service in virtually every state of the union – and in hundreds of rural and metropolitan markets.”<sup>9</sup> Wireless Internet Service Providers “already are providing service to approximately 600,000 subscribers in the U.S., with subscribership expected to double by the end of 2003 and reach nearly 2,000,000 by the end of 2004.”<sup>10</sup> Similarly, the Commission has estimated that residential fixed wireless Internet access is available in counties that contain approximately 62 million people, or 22 percent of the U.S. population.<sup>11</sup> And Dr. Robert Pepper of the Commission’s Office of Strategic Planning and Policy Analysis testified before Congress that the Commission “estimate[s] that there’s between 1,500 and 2,000 small wireless internet service providers, many of them using unlicensed bands and

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<sup>4</sup> StarBand, *Who Is StarBand?*, <http://www.starband.com/whatis/index.asp>.

<sup>5</sup> WildBlue Press Release, *WildBlue Status Update* (Dec. 6, 2004). WildBlue launched its Telesat Anik F2 satellite in July 2004. A second satellite will be ready for launch “as the market demands.” *\$50 Broadband Beams from the WildBlue Yonder*, *Broadband Business Forecast* (Aug. 10, 2004) (quoting Brad Greenwald, WildBlue Vice President of Sales and Marketing).

<sup>6</sup> WildBlue Communications Press Release, *NRTC to Offer WildBlue Satellite Broadband Services* (Aug. 25, 2003).

<sup>7</sup> *Id.*

<sup>8</sup> R. Poe, *WildBlue’s Satellite Launch, America’s Network* (July 26, 2004).

<sup>9</sup> *WISPs Buck Investment Trends*, *ISP-Planet* (Nov. 12, 2002), [http://www.isp-planet.com/research/2002/vc\\_trends\\_021112.html](http://www.isp-planet.com/research/2002/vc_trends_021112.html) (quoting Doug Keeney, Chairman of the License Exempt Alliance of the Wireless Communication Association, and US Wireless Online CEO).

<sup>10</sup> Comments of the License-Exempt Alliance at 3, ET Docket No. 03-122 (FCC filed Sept. 3, 2003) (“*LEA Comments*”) (citing Alvarion, Inc., *The License-Exempt Wireless Broadband Market* at 8 (Apr. 2003)). See also Comments of the PART-15 Organization at 8, ET Docket No. 02-381 (FCC filed Feb. 2, 2003) (estimating that there are approximately 8,000 WISPs nationwide, and that more than 1.5 million customers will be served by small WISPs’ use of license-exempt spectrum).

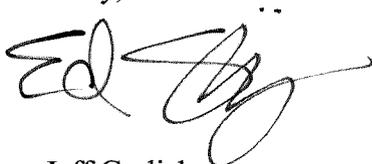
<sup>11</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Eighth Report, 18 FCC Rcd 14783, A-4 at n.709 (2003).

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unlicensed devices to provide broadband in rural communities that don't have DSL or cable modem service available."<sup>12</sup>

Please place this letter in the record of the above proceedings.

Sincerely,

A handwritten signature in black ink, appearing to read "Russ Hanser". The signature is stylized with a large, sweeping initial "R" and a long, horizontal flourish extending to the right.

c: Jeff Carlisle  
Michelle Carey  
Tom Navin  
Pam Arluk  
Gail Cohen  
Ian Dillner

Russ Hanser  
Marcus Maher  
Jeremy Miller  
Carol Simpson  
Tim Stelzig

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<sup>12</sup> Testimony of Dr. Robert Pepper before the Administrative Law Subcommittee of the House Judiciary Committee, Federal News Service at 12 (July 23, 2004).