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December 8, 2004

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Federal Communications Commission
Office of Secretary

Ex Parte

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

Re: Biennial Regulatory Review of Regulations Administered by the Wireline
Competition Bureau, WC Docket No. 04-179

Dear Ms. Dortch:

In the *Triennial Review Order* (“TRO”) proceeding, Verizon has submitted extensive evidence of competition in the market for broadband services, as well as for individual narrowband telecommunications services.¹ These competitive developments emphasize that competitors are not impaired without access to unbundled network elements for high capacity services and mass market switching. They also prove that the market for broadband services is robust, and that competitive developments have eliminated the need to impose obligations on ILECs that are not shared by their competitors. By this *ex parte*, Verizon supplements the record in the Biennial Review proceeding to include evidence of competitive developments produced in the TRO docket. Specifically, Verizon is enclosing comments and reply comments filed in the TRO proceeding, along with the exhibits to those materials.² Verizon also is enclosing the UNE Fact Report, filed on behalf of Verizon, BellSouth, SBC, and Qwest, which contains additional evidence of competitive deployment; and two *ex parte* letters supplementing the evidence previously produced.³

¹ See Verizon Comments, WC Docket No. 04-313, CC Docket No. 01-338 (filed Oct. 4, 2004) (“Verizon TRO Comments”); Reply Comments of Verizon, WC Docket No. 04-313, CC Docket No. 01-338 (filed Oct. 19, 2004) (“Verizon TRO Reply”).

² So that this evidence can be made publicly available, Verizon has included only the public versions of filings in that docket.

³ See UNE Fact Report 2004, Submitted by BellSouth, SBC, Qwest, and, Verizon, WC Docket No. 04-313, CC Docket No. 01-338 (filed Oct. 4, 2004) (“UNE Fact Report”); Letter from Edwin Shimizu, Verizon, to Marlene Dortch, FCC, WC Docket No. 04-313, CC Docket No. 01-338 (filed Dec. 8, 2004) (addressing price squeeze claims) (“Price Squeeze Ex Parte”); Letter from Edwin Shimizu, Verizon, to Marlene Dortch, FCC, WC Docket No. 04-313, CC Docket No. 01-338 (filed Dec. 7, 2004) (correcting certain figures regarding percentages of high-capacity facilities purchased as special access compared to unbundled elements) (“December 7 Ex Parte”).

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Verizon has raised these competitive developments in the *TRO* proceeding, and is hopeful that the Commission will address these concerns by removing unbundling requirements for high capacity services and mass market switching.⁴ The Commission recently has clarified that broadband services are not subject to unbundling obligations under either Section 251 or Section 271, which removed a major cause of investment-chilling uncertainty.⁵ However, more is left to be done, because ILECs continue to face regulatory burdens related to broadband deployment that do not apply to their competitors in the cable industry.⁶

Verizon is supplementing this record in this proceeding with evidence produced in these other dockets, because the Commission has an independent statutory obligation in the Biennial Review proceeding to eliminate outdated rules that are no longer necessary due to increased competition. *See* 47 U.S.C. § 161. The statute also allows the Commission to forbear from applying other requirements of the Act when it is in the public interest to do so. *See* 47 U.S.C. § 160.

Specifically, if these issues are not addressed in the pending *TRO* proceeding or broadband proceedings, the Commission should use the Biennial Review proceeding to (1) eliminate all unbundling requirements for high capacity services and mass market switching; (2) to the extent any unbundled elements do remain, reform the TELRIC pricing regime so that ILECs receive cost-based compensation; and (3) remove outdated and outmoded broadband regulations that apply to ILECs but not their competitors.⁷

Regulations requiring the unbundling of network elements related to high capacity services and mass market switching are not necessary

Regarding unbundling, the attached evidence demonstrates that the current regulatory regime – created on the assumption that the only way to achieve “competition” would be to rely on, or duplicate, ILECs’ copper, wireline networks – simply does not work in the current real-world environment. ILECs face significant competition in all segments of the local telephone market from wireless carriers, cable companies, VoIP providers, CLECs, and other new entrants.

Among other things, the evidence for high-capacity services shows that:

⁴ *See Unbundled Access to Network Elements, Order and Notice of Proposed Rulemaking*, 19 FCC Rcd 16783 (2004).

⁵ *See Petitions for Forbearance of the Verizon Telephone Companies, SBC Communications Inc., Qwest Communications International Inc., and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 160(c)*, WC Docket Nos. 01-338, 03-235, 03-260, and 04-48, Memorandum Opinion and Order (rel. Oct. 27, 2004).

⁶ *See Verizon Comments*, WC Docket No. 04-179, at 15-24 (filed July 12, 2004) (“Verizon Biennial Comments”); *Reply Comments of Verizon*, WC Docket No. 04-179, at 5 (filed Aug. 11, 2004) (“Verizon Biennial Reply”).

⁷ *Verizon Biennial Comments*, at 15-38; *Verizon Biennial Reply*, at 5-9.

- Demand for high-capacity services is highly concentrated with 80 percent of the demand for high-capacity services in just eight percent of wire centers that generate special access revenue;
- Competing providers have targeted deployment of their facilities to serve that demand, with more than 86 percent of these wire centers located in the 40 MSAs where demand for Verizon's high-capacity services is greatest;
- Today, competing carriers control one-third or more of the high-capacity market segment as a whole, and account for a majority of the high-capacity services provided to large enterprises that are the most valuable customers within this market segment;
- Competing providers have deployed extensive high-capacity transport facilities, including more than 300,000 route miles of fiber;
- Competing providers are making extensive use of their own facilities or those of other competitive suppliers. For example, competing carriers service more than 30,000 known buildings connected directly to their fiber rings, and an additional 500,000 or more buildings connected indirectly to their fiber rings using facilities leased from alternative providers, including ILEC special access;
- To the extent CLECs do purchase high-capacity facilities from ILECs, they rely primarily on special access, not UNEs. For example, of the high-capacity loops that competing carriers purchase from Verizon, nearly 91 percent of the DS1 loops, more than 98 percent of the DS3 loops, and 94 percent of the loop and transport combinations are purchased as special access service rather than UNEs.

See Verizon TRO Comments, at 42-69; Verizon TRO Reply, at 44-112; UNE Fact Report, at § III; December 7 Ex Parte, at 1-2; Price Squeeze Ex Parte.

Related to switching, the market conditions demonstrate, among other things, that:

- As of the end of 2003, cable companies already offered circuit-switched voice telephony to 15 percent of homes nationwide, and were rolling out VoIP to many more. By the end of 2004, cable companies plan to offer VoIP to more than 24 million homes over their networks, and they plan to offer it to more than 40 million homes by the following year;
- Regardless of whether cable companies themselves offer VoIP, the nearly 90 percent of U.S. homes that have access to cable modem service also have access to VoIP from multiple providers ranging from the major long distance carriers to national VoIP providers like Vonage;
- Wireless carriers are aggressively competing both for lines and for traffic: during the last two years, the number of wireless lines has grown from 129 million to 161 million while the number of wireline lines has declined; the percentage of users giving up their landline phones has grown from 3-5

percent to 7-8 percent; and wireless traffic has grown from 16 to 29 percent of all voice traffic and to 40 percent of long distance traffic;

- Competing carriers now have some 10,000 switches nationwide, including approximately 1,200 circuit switches and 8,800 packet switches. In the top 150 MSAs nationwide, they are being used to serve customers in wire centers that contain approximately 83 percent of the former Bell companies' access lines in those MSAs.

Verizon *TRO* Comments, at 85-109 & Attachment J thereto; Verizon *TRO* Reply, at 112-133; UNE Fact Report, at § II. These competitive developments are particularly pronounced in the top 25 MSAs (based on number of access lines) where Verizon provides local services as the incumbent. Verizon *TRO* Comments, at Attachment J thereto.

Rather than promoting competition, current regulations are undermining it by inhibiting investment by ILECs and their competitors alike. The Commission should eliminate all unbundling obligations for switching and high capacity services, as those rules are "no longer necessary in the public interest as a result of meaningful economic competition." 47 U.S.C. § 161.⁸

The state of competition demonstrates that the Commission should revise TELRIC pricing and work toward the elimination of unnecessary economic regulation

For any elements that incumbents must continue to provide, UNE rates should be based on costs of providing UNEs using the incumbents' real-world networks.⁹ The Commission's TELRIC pricing regime requires reform because competition has developed to an even more robust state than Congress envisioned and because the continued availability of network elements at below-cost rates will only impede further competitive developments. The evidence that Verizon has provided underscores that, for any elements that incumbents must continue to provide, artificially low UNE rates clearly are not "necessary in the public interest" and the TELRIC rules must therefore be repealed or modified. 47 U.S.C. § 161(b).

Indeed, given the advent of competition for end-user telecommunications services, the Commission should move toward elimination of economic regulation of these services. Due to the existence of competition from wireless carriers, cable companies, VoIP providers, CLECs and other new entrants, competition in the marketplace constrains the rates that carriers can charge for their services. Thus, regulation of carrier rates is no longer necessary. See Verizon Biennial Comments, at 36-37.

⁸ Verizon Biennial Comments, at 24-37; Verizon Biennial Reply, at 5-9.

⁹ Verizon Biennial Comments, at 24-37; Verizon Biennial Reply, at 5-9.

Unnecessary broadband regulations should be eliminated

The evidence also conclusively demonstrates that competition in the broadband market is flourishing. Among other things, the market realities are that:

- as of the end of last year, cable controlled nearly two-thirds of all high-speed lines provided to residential and small-business customers;
- cable also leads DSL in terms of availability and penetration, with cable modem service available to between 85 and 90 percent of all U.S. households;
- small-business customers rely heavily on cable modem providers, with penetration rates that typically exceed DSL subscribership;
- competitive offerings and promotions from cable modem and DSL providers also demonstrate that there is extensive head-to-head competition across all geographic markets and for all segments of the mass markets, as cable operators have responded to DSL price reductions by offering their own promotions, targeted price reductions, or increased data speeds.

See UNE Fact Report, at Appendix A thereto; *see also* Verizon TRO Comments, at 141-156; Verizon TRO Reply, at 170-174. In light of the dominant position that cable operators occupy in the broadband market, the continued imposition of Title II regulations uniquely on telco-provided broadband services is not only unnecessary, but affirmatively harmful.

In order to facilitate the rapid deployment of broadband networks, the Commission should clarify that fiber to the premises (“FTTP”) networks are exempt from unbundling, regardless of the identity of the customer. Such clarification is needed so that FTTP deployment can occur without the overhang of a potential unbundling obligation for some business customers.¹⁰ Moreover, the Commission should eliminate any requirements for broadband services that do not apply to ILECs’ cable competitors, such as Title II requirements and obligations imposed under the *Computer Rules*.¹¹ It is not appropriate to apply the burdensome tariffing, cost-justification, and common-carrier requirements to broadband services, when ILECs are not the dominant providers of such services. As the Commission itself has repeatedly recognized, tariffing and cost-justification requirements affirmatively harm competition if they are imposed in a competitive environment.¹²

¹⁰ See Consolidated Reply of Verizon to Oppositions to Petitions for Reconsideration or Clarification, CC Docket No. 01-338, at 11-18 (filed Nov. 17, 2003).

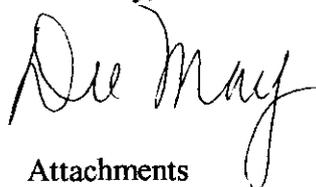
¹¹ See Verizon Biennial Comments, at 10-24; *Petition of Verizon for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises*, WC Docket No. 04-242 (filed June 28, 2004); *Conditional Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises*, WC Docket No. 04-242 (filed June 28, 2004).

¹² See, e.g., *2000 Biennial Regulatory Review: Policy and Rules Concerning the International, Interexchange Marketplace*, Notice of Proposed Rulemaking, 15 FCC Rcd 20008, ¶ 18 (2000) (“requiring or permitting non-

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Please place this notice in the record of the above proceeding.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dee May".

Attachments

dominant carriers . . . to file tariffs impedes vigorous competition in the market for interexchange services by: (1) removing the incentives for competitive price discounting; (2) reducing or eliminating carriers' ability to make rapid, efficient responses to changes in demand and cost; (3) imposing costs on carriers that attempt to make new offerings; and (4) preventing or discouraging consumers from seeking or obtaining service arrangements specifically tailored to their needs").