



FILED ELECTRONICALLY

February 1, 2005

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

Re: CC Docket No. 04-440 – Verizon Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to Broadband Services

Dear Ms. Dortch

Verizon's petition for forbearance (04-440) should be refused for the following reasons:

- 1) Verizon clearly does not understand the implications of its petition, as can be shown by its response to 04-405 by William H. Johnson on 1/28/2005 – the last day for submission of comments for 04-405. In their 52 page reply Verizon, as expressed by Mr. Johnson, shows that it does not possess any understanding of the role ISPs play in the internet. Mr. Johnson states in his response *"Forbearance is not an effort to put ISPs, VoIP providers or other content providers out of business"*. Either Mr. Johnson, and by extension Verizon, is ignorant of the actual role of Internet Service Providers, or is intentionally attempting to obfuscate the role they play in order to reach their goal of eliminating the ISP entirely.

The ISP is not a "content provider". The ISP primarily provides IP transport facilities from the end user (residential or commercial customer) to the Internet backbone. The ISP uses the telecommunications infrastructure provided by the ILEC or CLEC to provide physical layer transport for its services – the moving of IP packets from point A to point B.

Most ISPs do not provide content of any sort. Web-hosting providers provide servers on which content resides. Most ISPs are also web-hosting providers, but that is only one of many services an ISP provides. An ISP can also provide email services, content filtering, and many other services – but what makes an ISP an ISP is the ability to provide

IP transport. Without IP transport an ISP does not exist.

- 2) DSL is not an IP level technology, as Verizon, SBC and the other ILECs would have you believe. DSL is like ATM and SONET. It is a physical layer service over which IP packets are moved from point A to point B. Should ISPs lose access to the physical layer, as is proposed by Verizon's and SBC's petitions for forbearance, the ISP will by definition no longer exist. By obfuscating the traditional role the telecommunications company and the ISP play in the Internet, Verizon will cause the failure of an entire Industry segment.

Verizon is attempting to sell the FCC a bill of goods by misrepresenting the basic roles of each side in this process. By filing their comments in 04-405 with as many misrepresentations as are in this document at the last minute, they clearly intended to feed the FCC with false information in such a way that no-one could challenge the falsehoods contained therein. Verizon continues to represent ISPs as content providers, in spite of the clear evidence that they are calling apples oranges because oranges have a higher market value.

The Internet was built by ISPs providing IP transport. The Internet Backbone was created by companies such as UUNet, etc. running on the physical (telecommunications) layer provided by the ILEC. In no way was the ILEC involved in the creation of the internet except by providing the physical layer.

Let me use an analogy here. Think of the Internet as the United States highway system. The telecommunications companies provide the pavement which links the various cities of America – but what good is this? Then along comes trucks (IP). Various trucking companies (ISPs) are competing for the right to transport goods (content) from city to city. By competition, pricing remains low. When fewer trucking companies (ISPs) exist, pricing is higher.

By contrast, the Verizon scenario is as follows. The same company that owns the roads (telecommunications infrastructure) has decided to charge tolls. The company's trucks (IP) are allowed to use the roads free of toll, while all competitors (ISPs) are now required to pay a significant toll in order to utilize the roads. The competitor (ISP) may – at its option – build out an entirely new road system (telephone network), but that is economically unreasonable, as well as cluttering the landscape with many more roads than needed. Fairness indicates that the trucks of all origins must pay the same tolls, regardless of owner, and that the owners of the road not subsidize the trucking company of its choice – this would be called a conflict of interest.

As you can see, the first analogy makes the most competitive sense.

Yet Verizon and its representatives continue to mis-define the relationship between the ILEC and the ISP to their benefit. This is either done through

ignorance or as an intentional strategic plan. If the latter, they are lying to the FCC, and should be held in contempt. If by accident, this proceeding should be denied because they do not know what they are doing.

If Verizon does not possess the simplest information of the roles they play in the Internet equation – or alternatively are lying to the FCC to get their way – they should not receive a federal mandate to continue their strategy. If their lawyers are unfamiliar with the technology they are representing, then Verizon should find new counsel. However, the entire industry represented by Internet Service Providers should not be wiped out by falsehoods and misrepresentations offered by a billion dollar corporation too lazy to get its facts straight.

Please decline the petitioners request for forbearance.

Michael D. Bathrick
President
BerkshireNet, Inc.