Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau	WC Docket No. 04-179

APPLICATION FOR REVIEW OF THE VERIZON TELEPHONE COMPANIES

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February 5, 2005

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau	WC Docket No. 04-179

To: The Commission

APPLICATION FOR REVIEW

Pursuant to Section 1.115 of the Commission's Rules, the Verizon telephone companies[1] hereby submit this Application for Review of the Staff Report of the Wireline Competition Bureau in the 2004 Biennial Regulatory Review. *See Wireline Competition Bureau, Federal Communications Commission, Biennial Regulatory Review 2004 Staff Report*, DA 05-21 (rel. Jan. 5, 2005) ("*WCB Staff Report*"); *see also* Public Notice, *Commission Staff Releases Reports on 2004 Biennial Review of Telecommunications Regulations*, DA 05-24 (rel. Jan. 5, 2004) ("*Public Notice*"). Full Commission review is necessary because the *WCB Staff Report*, which contains mere "recommendations" and expressly "*does not reflect* formal Commission opinions or binding determinations, *WCB Staff Report*, at 2 (¶¶ 1, 2) (emphasis added), fails to fulfill the Commission's statutory obligation under Section 11 of the Communications Act to review each of its rules that apply to telecommunications carriers and to reach a "determination" as to whether such rules are "no longer necessary in the public interest," 47 U.S.C. § 161(a).

[1] The Verizon telephone companies ("Verizon") are the local telephone companies affiliated with Verizon Communications Inc. These companies are listed in Attachment A.

I. INTRODUCTION AND SUMMARY

In response to the Commission's public notice initiating the "comprehensive 2004 biennial review of telecommunications regulations,"[2] Verizon identified with specificity a number of regulations that are "no longer necessary in the public interest as the result of meaningful economic competition" and are thus ripe for repeal or modification pursuant to the Commission's biennial review mandate under Section 11 of the Communications Act. 47 U.S.C. § 161; *see* Comments of the Verizon Telephone Companies, WC Docket No. 04-179 (filed July 12, 2004); Reply Comments of Verizon, WC Docket No. 04-179 (filed Aug. 11, 2004).[3] Most significantly, Verizon demonstrated in its comments that the current regulatory regime that applies to telecommunications carriers, including the regulatory burdens under the TELRIC rules and those that apply to wireline broadband services under its *Computer Rules* and Title II of the Communications Act, simply does not work in today's real-world environment. These regulatory burdens were imposed on the assumption that the only way to achieve "competition" would be to rely on, or duplicate, LECs' copper, wireline networks. In recent years, however, intermodal and other competition has flourished in both the market for broadband services and the market for local telephone service, rendering moot the question of whether any justification ever existed for the broadband rules or the TELRIC regime. What is more, rather than promoting competition, current regulations are undermining it by inhibiting investment by ILECs and their competitors alike. As a result of the competitive developments that have occurred, Verizon demonstrated that the Commission should eliminate the regulatory burdens that apply to

[2] Public Notice, *The Commission Seeks Public Comment in the 2004 Biennial Review of Telecommunications Regulations*, FCC 04-105, at 1 (rel. May 11, 2004).

[3] Verizon's comments and reply comments in the underlying proceeding are attached as Attachment B to this Application for Review and are fully incorporated herein by reference.

wireline broadband services under its *Computer Rules* and Title II of the Communications Act and reform its TELRIC rules pursuant to its biennial review duties.

On January 5, 2005, the staffs of the various bureaus released a joint public notice and a series of individual staff reports relating to the 2004 biennial review. These documents purport to "fulfill the Commission's statutory responsibility to identify current rules that should be modified or repealed" pursuant to Section 11. *Public Notice*, at 2; *see WCB Staff Report*. But the Staff Reports cannot fulfill that obligation, because they contain mere "recommendations" of the Staff and expressly state that they do not bind the Commission to take any action at all. *E.g.*, *WCB Staff Report*, at 2 (¶¶ 1, 2). Moreover, with respect to the TELRIC issues raised by Verizon in its Comments, the *WCB Staff Report* is completely silent. And, although it does "recommend" certain changes to other rules governing broadband, the *WCB Staff Report* states that the Commission should put off final decision as to whether changes to those rules are appropriate to proceedings that have been pending since before the *last* biennial review, a course of action that the Commission itself has previously admitted does not fulfill its statutory duty under Section 11.

Review of the *WCB Staff Report* by the full Commission is thus warranted because the *WCB Staff Report* conflicts irreconcilably with Section 11 of the Communications Act, is inconsistent with the full Commission's own prior statements regarding the proper scope of its biennial review duties, involves questions of law and policy that have never before been resolved by the Commission and thus are not properly the subject of action on delegated authority, and completely fails to address a number of the arguments that were contained in Verizon's comments and reply comments in this proceeding. *See* 47 C.F.R. §§ 1.115(b)(2)(i), (ii), (iv). As a result of these myriad legal defects, Verizon requests that the Commission consider Verizon's

arguments that the rules that apply to wireline broadband services and the TELRIC pricing rules are "no longer necessary in the public interest," reach a definitive "determination" regarding the questions that Verizon raised in its comments as the Commission is required to do by Section 11, and take steps expeditiously to "repeal or modify any regulation it determines to be no longer necessary in the public interest."

II. THE *WCB STAFF REPORT* VIOLATES SECTION 11 OF THE COMMUNICATIONS ACT, IS INCONSISTENT WITH THE COMMISSION'S OWN STATEMENTS REGARDING ITS BIENNIAL REVIEW DUTIES, AND CONSTITUTES AN IMPROPER EXERCISE OF DELEGATED AUTHORITY.

As Verizon explained in its comments below, the 1996 Act was primarily intended "to promote competition and reduce regulation." 1996 Act, Preamble. The federal courts, including the Supreme Court, as well as the Commission itself, have recognized the 1996 Act's overarching goals of "reduc[ing] regulation"[4] and "promot[ing] competition in the communications industry."[5] As part of the statute's deregulatory program, Congress "directed the Commission to undertake biennial assessments of its rules to determine whether they should be repealed or modified."[6] Section 11 of the 1996 Act—entitled "[r]egulatory [r]eform"—requires the Commission to review, on a biennial basis, its rules governing telecommunications

[4] *Reno v. ACLU*, 521 U.S. 844, 857-58 (1997); *see, e.g., 2000 Biennial Regulatory Review; Policy and Rules Concerning the International, Interexchange Marketplace*, 15 FCC Rcd 20008, 20010 (¶ 1) (2000).

[5] *2002 Biennial Regulatory Review*, 18 FCC Rcd 4726, 4727 (¶ 5) (2003) ("*2002 Biennial Review Report*"); *see, e.g., United States Telecom Ass'n v. FCC*, 359 F.3d 554, 561 (D.C. Cir. 2004) ("*USTA II*"); *see also Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 502-03 n.20 (2002) (noting the "deregulatory and competitive purposes of the [1996] Act"); H.R. Conf. Rep. No. 104-458, at 113 (1996), *reprinted in* 1996 U.S.C.C.A.N. 124, 124 (explaining that the purpose of the Telecommunications Act is "to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services . . . by opening all telecommunications markets to competition").

[6] *Cellco P'shp v. FCC*, 357 F.3d 88, 91 (D.C. Cir. 2004); *see id.* at 90 (noting Congress' "deregulatory purpose" in enacting Section 11); *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1033, *reh'g granted in part*, 293 F.3d 537 (D.C. Cir. 2002) (Congress intended the biennial review to "continue the process of deregulation" that the 1996 Act commenced).

carriers and to determine whether any such rules are no longer necessary in the public interest as the result of meaningful economic competition. 47 U.S.C. § 161(a). In evaluating particular regulations, the Commission must, as it has acknowledged and as the D.C. Circuit has affirmed, "reevaluate rules in light of current competitive market conditions." *2002 Biennial Review Report*, 18 FCC Rcd at 4735 (¶ 21); *Cellco*, 357 F.3d at 98.[7] This obligation, as the D.C. Circuit has made clear, "extends *beyond* [the Commission's] normal monitoring responsibilities." *Cellco*, 357 F.3d at 99 (emphasis added).[8] Under the statute, once the Commission determines that a rule is no longer necessary in the public interest based upon competitive developments, repeal or modification must follow.[9]

A. The *WCB Staff Report* Cannot Constitute The Statutorily Required "Determination" And Was Not Properly Issued On Delegated Authority.

Section 11 expressly requires "the Commission" to "*determine* whether any" of its rules applicable to telecommunications carriers are "no longer necessary in the public interest as the

[7] *See also 1998 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 15 FCC Rcd 11058, 11151 (2000) (Separate Statement of Commissioner Michael Powell) ("I start with the proposition that the rules are *no longer necessary* and demand that *the Commission* justify their continued validity.") (emphases added).

[8] Even under the Commission's "ordinary monitoring responsibilities," *id.*, it is required to "evaluate its policies over time to ascertain whether they work—that is, whether they actually produce the benefits the Commission originally predicted they would," *Bechtel v. FCC*, 957 F.2d 873, 881 (D.C. Cir. 1992); *see, e.g.*, *Am. Trucking Assocs., Inc. v. Atchison*, 387 U.S. 397, 415-16 (1967) ("Regulatory agencies do not establish rules of conduct to last forever; they are supposed, within the limits of the law and of fair and prudent administration, to adapt their rules and practices to the Nation's needs in a volatile, changing economy."); *NBC v. United States*, 319 U.S. 190, 225 (1943) (the Commission cannot retain a rule if "time and changing circumstances reveal that the 'public interest' is not served by application of the Regulation[ ]"); *Bechtel v. FCC*, 10 F.3d 875, 880 (D.C. Cir. 1993) ("[t]he Commission's necessarily wide latitude to make policy based upon predictive judgments deriving from its general expertise implies a correlative duty to evaluate its policies over time to ascertain whether they work—that is, whether they actually produce the benefits the Commission originally predicted they would."). As Verizon pointed out in its comments, the rules that it proposed for repeal or modification are subject to repeal or modification under that basic requirement as well.

[9] *See* 47 U.S.C. § 161(b); *see also Cellco*, 357 F.3d at 94 (the 1996 Act mandates that the Commission identify rules that are no longer necessary "followed by their repeal or modification").

result of meaningful economic competition." 47 U.S.C. § 161(a)(1)-(2) (emphasis added). Relying on this statutory language, the Commission itself previously has acknowledged that it "need[s] to make the statutorily required *determination* about the continued need for [a] particular rule" as part of the biennial review. *2002 Biennial Review Report*, 18 FCC Rcd at 4729 (¶ 10) (emphasis in original). Here, the *WCB Staff Report* does not purport to constitute a "determination" of "the Commission"—or, for that matter, even a "determination" of the Commission's Staff—with respect to any of the rules raised in Verizon's comments (or, indeed, a single rule within the scope of the biennial review). Instead, the *WCB Staff Report*, by its very terms, contains the Staff's mere "recommend[ation]s" to the Commission regarding whether its rules remain necessary, *WCB Staff Report*, at 2 (¶ 1), and expressly states that as a report containing "staff findings and recommendations," it "*does not reflect* formal Commission opinions or binding determinations," *id.* (¶ 2) (emphasis added). A "recommendation" by the Staff that is explicitly "not" a "Commission . . . determination[]" simply cannot be the "determination" by "the Commission" that Section 11 requires. The *WCB Staff Report* therefore fails to satisfy the statutory requirement that the Commission make a "determination" as to the continued necessity of its rules and conflicts with the full Commission's own prior statements acknowledging that very statutory duty. *See* 47 C.F.R. § 1.115(b)(2)(i).

Even apart from its substance, there is no precedent or guideline under which the Staff, acting on delegated authority, could properly have resolved the issues raised in Verizon's comments. The Commission may only delegate authority to its Staff to resolve "matters which are minor or routine or settled in nature." 47 C.F.R. § 0.5(c).[10] Thus, the Wireline Competition Bureau is expressly prohibited from acting on matters that "present novel questions of law, fact

[10] This rule also provides that Bureaus may act on issues "in which immediate action may be necessary." *Id.* This provision is inapplicable to the instant case.

or policy that cannot be resolved under existing precedent and guidelines." *Id.* § 0.291(a)(2). The Commission, of course, has had pending for more than two years proceedings that are geared at addressing the issues relating to the appropriate classification and regulation of wireline broadband services that Verizon raised in its comments.[11] But the Commission has yet to take any action at all in either proceeding, and has accordingly provided the staff with no guidance on these issues. The question whether application of the *Computer Rules* and the other rules that apply to wireline broadband services remains necessary thus simply is not one that can "be resolved under existing precedent and guidelines" and is not properly the subject of action on delegated authority. 47 C.F.R. § 0.291(b)(2). The full Commission's review is thus warranted for this reason as well. *See id.* § 1.115(b)(2)(ii).[12]

B. The *WCB Staff Report* Impermissibly Defers The Commission's Biennial Review Duties To Pending Proceedings.

As just noted, Section 11 expressly requires the Commission to make a "determination" as to whether its rules remain necessary in the public interest. Previously, the Commission had explicitly rejected the suggestion that it could comply with this requirement by simply deferring action to pending rulemaking proceedings. Specifically, the Commission stated:

> [Several commenters] contend that many of the issues raised by commenters are already pending in other dockets and thus are inappropriate for inclusion in the

[11] *See generally Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 17 FCC Rcd 3019 (2002) (comment period closed July 1, 2002); *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, 16 FCC Rcd 22745 (2001) (comment period closed April 22, 2002).

[12] Verizon does not contend that the Commission may not delegate to its Staff the task of reviewing rules that are within the scope of the biennial review, nor that the Commission may not instruct its staff to make recommendations regarding which rules are no longer necessary in the public interest, provided that the Commission reviews the Staff's analysis and recommendations and makes the statutorily required determinations within the biennial year. In this case, however, the Commission itself has taken no action at all in the 2004 biennial review, and has thus failed to satisfy its statutory obligations and allowed the Staff to exercise authority not properly delegated to it.

> biennial review. While we recognize the practical nature of this suggestion, we conclude as a legal matter that the statute does not contemplate any such exemption. . . . [I]f a rule applies to the operations or activities of telecommunications service providers and was promulgated under the Communications Act, it is within the scope of our Section 11 review. This is true regardless of whether it is also the subject of a pending rulemaking proceeding. Even in that case, the Commission would still have to make the statutorily required determination about the continued need for the particular rule.

2002 Biennial Review Report, 18 FCC Rcd at 4729 (¶ 10). The *WCB Staff Report*, however, in action flatly inconsistent with the Commission's express statement, recommends that the question whether a number of rules are no longer necessary in the public interest be definitively "resol[ved]" in pending proceedings outside of the biennial review. *WCB Staff Report*, at 10 (¶ 22).[13] This approach is fundamentally at odds with the Commission's own acknowledgment that a "determination" must be made in the biennial review—rather than in other pending proceedings—and cannot be sustained. *See* 47 C.F.R. § 1.115(b)(2)(i).

C. The Commission Has Violated Section 11's Temporal Requirements.

The plain language of Section 11 requires the Commission to review its rules and to make the statutorily required determination "in every even-numbered year." 47 U.S.C. § 161(a). Both the D.C. Circuit and the Commission itself have found that the "determination[] (that certain rules are no longer in the public interest) . . . must occur within a specified time period, *i.e.*, every even-numbered year." *Cellco*, 357 F.3d at 100 (quoting *2000 Biennial Review Report*, 16 FCC Rcd 1207, 1213 (¶ 13) (2001)); *2002 Biennial Review Report*, 18 FCC Rcd at 4739 (¶ 33). Here, although we are well into the First Quarter of 2005, the Commission has not, as noted above, yet made the statutorily required determinations, although they were supposed to

[13] *See id.* at 29 (stating that issues relating to Part 51 of the Commission's rules, pertaining to broadband unbundling requirements, should be resolved in the Order on Remand in the *Triennial Review Proceeding*, and that issues relating to Part 51's equal access and nondiscrimination requirements should be resolve din the *Equal Access Notice of Inquiry Proceeding*); *id.* at 54 (stating that issues relating to Part 64, subpart G, which contain the *Computer Rules*, should be resolved in the *Computer Inquiry Further Notice* and other related pending proceedings).

occur during 2004. There is no indication, moreover, as to when, if ever, the Commission will actually make the determinations that it was required to make last year.

In addition, although the D.C. Circuit has held that the Commission need not complete the steps to "repeal or modify" all rules found to be no longer necessary in the public interest through the biennial review during the biennial year, the Court did not find that the Commission was free to put off that task forever. To the contrary, the D.C. Circuit has affirmed that the biennial review imposes an obligation on the Commission to take action to eliminate or relax regulations found no longer to be necessary within a "reasonable time." *Cellco*, 357 F.3d at 101. Here, as the *WCB Staff Report* itself acknowledges, many of the rules that it identifies as ripe for repeal or modification were similarly identified in the *2002* biennial review and, even at that time had long been the subject of pending rulemaking proceedings.[14] It is simply not "reasonable" for the Commission to sit idly by without taking any action at all to remove regulatory burdens that the Staff has now twice recommended be eliminated. *See* Transcript of Proceedings, *Cellco P'shp v. FCC*, No. 02-1262 (D.C. Cir. Dec. 15, 2003), at 13 (Judge Garland stating that "if this went over to the next biennial, that is, if the whole process went over, that would be administrative action unreasonably delayed under the APA").[15]

[14] *See, e.g.*, *WCB Report*, at 10 n.51 (¶ 22 n.51) ("We note that the staff also recommended elimination of several outdated rule sections in the 2002 Updated Staff Report, and we renew those recommendations to the extent they have not already been eliminated."); *id.* at 54 (noting that, in the 2002 Staff Report, the *Computer Rules* were identified as rules that "may be no longer necessary in the public interest" and stating that the staff "continues to recommend" that they therefore be modified); *see also Wireline Competition Bureau, Federal Communications Commission, Biennial Regulatory Review 2002*, 18 FCC Rcd 4622, 4693-94 (2002).

[15] Even apart from the Commission's biennial review obligations, the retention of rules that have been shown to be no longer in the public interest, and in many cases rules that are causing affirmative harm, cannot be justified as a pure matter of administrative law. *See supra* n.8.

III. THE STAFF REPORTS DO NOT ADEQUATELY ADDRESS THE ISSUES RAISED IN VERIZON'S COMMENTS.

Verizon demonstrated in its comments and reply comments that the robust intermodal competition that is present in the broadband market has eliminated any justification for continuing to subject the Bell companies to the *Computer Rules* with respect to their broadband offerings and that, quite the contrary, continued application of these rules to broadband services is causing affirmative competitive harm. *Verizon Comments* at 20-24; *Verizon Reply Comments* at 5; *see generally* 47 C.F.R. Part 64, subpart G. Verizon also demonstrated that the competitive developments in the broadband market render it appropriate for the Commission to modify or forbear from the regulations that currently apply Title II retail requirements to wireline broadband offerings. *See Verizon Comments* at 15-20; *Verizon Reply Comments* at 5. In addition, Verizon demonstrated in its comments and reply comments that competitive developments in the local telephone market have eliminated any possible rationale for TELRIC prices or economic rate regulation. *See Verizon Comments* at 24-37; *Verizon Reply Comments* at 5-9; *see generally* 47 C.F.R. §§ 51.501-51.515.

Rather than addressing Verizon's arguments, which were accompanied by detailed market analysis demonstrating the dramatic increase in broadband competition, the *WCB Staff Report* simply brushes them aside. Although the *WCB Staff Report* acknowledges that the presence of competition "*may*" have rendered certain parts of the regulatory regime that applies to wireline broadband services no longer necessary, *WCB Staff Report*, at 54, that recognition rings hollow because of the Staff's further recommendation that the Commission put off any definitive conclusion on this issue to proceedings that have long been pending. Under well-settled principles of administrative law, the Staff was required to provide a reasoned factual and legal basis for its decision. This includes *some* substantive response to significant issues that lie

within the scope of the issue as defined by the agency itself. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

With respect to the TELRIC rules, the *WCB Staff Report* is completely silent. But the biennial review requires consideration of *all* rules applicable to telecommunications carriers and the services they provide. *See* 47 U.S.C. § 161. And, even apart from the Commission's biennial review obligations, it is an elementary principle of administrative law that an agency cannot ignore significant comments advanced in the course of a proceeding. *See, e.g.*, *State Farm*, 463 U.S. at 43, 50-51 (failure to respond to commenters' arguments renders agency decision arbitrary and capricious); *Darrell Andrews Trucking, Inc. v. Fed. Motor Carrier Safety Admin.*, 296 F.3d 1120, 1134-35 (D.C. Cir. 2002) ("substantial" argument "requires an answer from the agency"); *Iowa v. FCC*, 218 F.3d 756, 759 (D.C. Cir. 2000) ("[T]he Commission's failure to address [commenters'] arguments requires that [the Court] remand this matter for the Commission's further consideration."). The Staff's failure adequately to address Verizon's comments constitutes a prejudicial procedural error that warrants full Commission review. *See* 47 C.F.R. § 1.115(b)(iv).

IV. CONCLUSION

The full Commission should consider Verizon's arguments that the rules that apply to wireline broadband services and the TELRIC pricing rules are "no longer necessary in the public interest" to reach a definitive "determination" regarding the questions that Verizon raised in its comments, and take steps expeditiously to "repeal or modify" those rules as "no longer necessary in the public interest."

Respectfully submitted,

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February 5, 2005

ATTACHMENT A

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.

ATTACHMENT B

COMMENTS AND REPLY COMMENTS OF VERIZON

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COMMENTS OF THE VERIZON TELEPHONE COMPANIES

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July 12, 2004

SUMMARY

The current regulatory regime—created on the assumption that the only way to achieve "competition" would be to rely on, or duplicate, LECs' copper, wireline networks—simply does not work in the current real-world environment. In recent years, intermodal competition has flourished in both the market for broadband Internet access service and the market for local telephone service. Cable operators dominate the broadband market with almost a 60% market share and currently boast penetration levels as high as 40% in certain local voice markets. ILECs such as Verizon are faced with significant additional competition in the broadband market from both CLECs and wireless carriers, not to mention burgeoning new technologies, such as fixed wireless, power lines, satellite, and 3G mobile wireless, which are continuing to develop and provide ever-increasing competition. ILECs similarly face significant competition in all segments of the local telephone market from wireless carriers, cable companies, VOIP providers, CLECs, and other new entrants. The advent of VOIP, for example, presents cable companies themselves, as well as other providers who can offer voice telephony to any of the 85-90 percent of U.S. homes with access to cable modem service, to continue and expand their competitive assault on traditional wireline carriers in the voice telephony market. And wireless carriers continue to displace millions of lines, and, just as significantly, billions of minutes that once would have been served by traditional wireline carriers.

Rather than promoting competition, current regulations are undermining it by inhibiting investment by ILECs and their competitors alike. Verizon has announced it plans to spend $1 billion during 2004 to invest in next-generation broadband deployment, in order to compete with the dominant (and largely unregulated) cable providers. However, it still faces the specter of the Title II requirements – including the requirement that ILECs offer services separately under tariff on cost-based terms and conditions, broadband unbundling obligations under Section 271,

uncertainty about definitional rules of "mass market" and "fiber to the home" ("FTTH") that invite CLECs to push for additional unbundling requirements, *Computer Rules,* and growing attempts from state regulators to impose conditions that cable competitors do not face. Similarly, retention of the TELRIC pricing regime for unbundled network elements ("UNEs") will only discourage competitors from investing in their own facilities-based competition in the provision of voice services, or LECs from upgrading existing networks.

The Public Notice in this proceeding kicks off the "comprehensive 2004 biennial review of telecommunications regulations." Public Notice, The Commission Seeks Public Comment in the 2004 Biennial Review of Telecommunications Regulations, FCC 04-105, at 1 (rel. May 11, 2004) ("*Notice*"). At Exhibit B to these comments, Verizon responds to the Commission's request that it "identify with as much specificity as possible the rule or rules that should be modified." *Id.* However, the Commission should not take merely a rule-by-rule approach, but should instead use this process as an opportunity to undertake a more thorough reform of the way that telecommunications carriers will be regulated in this age of unsurpassed intermodal competition. There are a number of significant regulatory burdens imposed by the Commission's existing rules which are unnecessary under current and future market conditions and that should be eliminated under the standards in the Act. In particular, the Commission should act expeditiously to eliminate the regulatory burdens on wireline broadband Internet access services and should forbear from any broadband unbundling obligations that Section 271 may be construed to impose in order to better reflect the realities of today's competitive broadband market. In addition, the Commission should promptly reform its TELRIC pricing regime to restore correct investment incentives and to preserve the constitutional rights of local exchange carriers, who are entitled to non-confiscatory rates for the provision of their services.

The Commission should move toward the elimination of all economic rate regulation, which is not necessary given the state of competition, as market forces effectively constrain the prices carriers can charge for their services.

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In the Matter of Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau	WC Docket No. 04-179

COMMENTS OF THE VERIZON TELEPHONE COMPANIES[1]

The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act"), requires the Commission to eliminate outdated rules that are no longer necessary due to increased competition and allows it 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, 161. The Public Notice asks the public to identify the rule or rules that should be modified or repealed as part of the Commission's "comprehensive 2004 biennial review of telecommunications regulations." *Notice*, at 1. If the biennial review is to have any teeth, the Commission must use it to undertake the kind of thorough changes that are needed in order to reflect the significant developments that have occurred in the competitive landscape over the past several years. Indeed, these reforms are long overdue. Verizon's comments in this proceeding largely echo the proposals that Verizon made in the 2002 biennial review, and involve changes that have been already proposed in several proceedings currently pending before the Commission.[2] There already exists a more than adequate record to eliminate many legacy regulations that are no longer necessary.

[1] The Verizon telephone companies ("Verizon") are the local telephone companies affiliated with Verizon Communications Inc. These companies are listed in Exhibit A.

[2] *See* Verizon Comments, WC 02-313 (filed Apr. 19, 2002).

Specifically, the Commission should eliminate the regulatory burdens on wireline broadband Internet access services, forbear from any broadband unbundling obligations that Section 271 might be construed to impose, and reform its TELRIC rules. These rules fall squarely within the statutory category of regulations that are no longer needed due to competitive developments and are exactly the types of rules that Congress intended for the Commission to repeal or modify as part of its biennial review and forbearance activities.

The rules that currently apply to wireline broadband Internet access services are vestiges of a regulatory regime that was reflexively extended from the narrowband context, without regard to competition in the broadband market. In light of competitive developments, these rules can no longer be justified. Indeed, in the 2002 Biennial Review, the Staff of the Wireline Competition Bureau found that the rules governing wireline broadband services "may no longer be necessary in the public interest as a result of meaningful economic competition," but the Commission has yet to take any action to eliminate or change them.[3] As confirmed by the *Triennial Review Order* and the D.C. Circuit's decision affirming the Commission's decision in that order not to require broadband unbundling under Section 251, broadband unbundling rules under Section 271 also have no place in today's competitive environment. The Commission's TELRIC pricing regime similarly 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.

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[3] *2002 Biennial Regulatory Review*, 18 FCC Rcd 4410, ¶¶ 34-39 (2002) (discussing Part 64, Subpart G, which includes the *Computer Rules*). Although the Staff recommended that changes to the *Computer Rules* be considered in separate proceedings, *see id.* at ¶ 39, the Commission has had a complete record before it in two separate proceedings regarding the appropriate classification and regulation of wireline broadband Internet access services that have been pending for over two years now and has yet to act. *See generally Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 17 FCC Rcd 3019 (2002) ("*Wireline Broadband NPRM*"); *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, 16 FCC Rcd 22745 (2001) ("*ILEC Broadband NPRM*").

The Commission's regulations in the areas of broadband Internet access, any broadband unbundling obligations that Section 271 might be interpreted to impose, and the TELRIC regime are not only no longer *necessary* in the current competitive marketplace, but are affirmatively *harmful* to competition and investment. Indeed, beyond just eliminating the TELRIC regime, the Commission should consider how to eliminate economic regulation altogether. Given the competition wireline carriers face from cable companies, wireless carriers, VOIP providers, and others, the marketplace effectively constrains the prices carriers can charge, and thus economic regulation is no longer necessary. Removal of these onerous regulatory requirements will help to send the correct economic signals to all participants—incumbent carriers, competitive carriers, intermodal competitors, and end-users alike—in the competitive broadband and local exchange markets, thereby helping to remove disincentives to investment and clearing the way for the development of additional competition. Moreover, to the extent that the Commission has committed through this proceeding to simply eliminate needless regulations, it should undertake the specific reforms outlined in Exhibit B.

I. THE COMMISSION BEARS A STATUTORY OBLIGATION TO REPEAL OR MODIFY RULES THAT ARE NO LONGER NECESSARY IN THE PUBLIC INTEREST IN LIGHT OF THE PRESENCE OF MEANINGFUL ECONOMIC COMPETITION.

The 1996 Act was primarily intended "to promote competition and reduce regulation." 1996 Act, Preamble. The federal courts, including the Supreme Court, and the Commission have recognized the 1996 Act's overarching goals of "reduc[ing] regulation"[4] and "promot[ing] competition in the communications industry."[5] As part of the statute's deregulatory program,

[4] *Reno v. ACLU*, 521 U.S. 844, 857-58 (1997); *see, e.g., 2000 Biennial Regulatory Review; Policy And Rules Concerning The International, Interexchange Marketplace*, 15 FCC Rcd 20008, ¶ 1 (2000).

[5] *2002 Biennial Regulatory Review*, 18 FCC Rcd 4726, ¶ 5 (2003) ("*2002 Biennial Review Report*"); *see, e.g., United States Telecom Ass'n v. FCC*, 359 F.3d 554, 561 (D.C. Cir. 2004)

Congress "included provisions to ensure that the agency would monitor the effect of . . . competition . . . and make appropriate adjustments to its rules to modify or eliminate those rules" as competition developed. *2002 Biennial Review Report*, ¶ 5.

Among other things, Congress "directed the Commission to undertake biennial assessments of its rules to determine whether they should be repealed or modified."[6] Section 11 of the 1996 Act—entitled "[r]egulatory [r]eform"—requires the Commission to review, on a biennial basis, its rules governing telecommunications carriers and to determine whether any such rules are no longer necessary in the public interest as the result of meaningful economic competition. 47 U.S.C. § 161(a). In evaluating particular regulations, the Commission must, as it has acknowledged and as the D.C. Circuit has affirmed, "reevaluate rules in light of current competitive market conditions."[7] Under the statute, once the Commission determines that a rule is no longer necessary in the public interest based upon competitive developments, repeal or modification must follow.[8] This obligation, as the D.C. Circuit has made clear, "extends *beyond*

("*USTA II*"); *see also Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 502-03 n.20 (2002) (noting the "deregulatory and competitive purposes of the [1996] Act"); H.R. Conf. Rep. No. 104-458, at 113 (1996), reprinted in 1996 U.S.C.C.A.N. 124, 124 (explaining that the purpose of the Telecommunications Act is "to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services . . . by opening all telecommunications markets to competition").

[6] *Cellco Partnership v. FCC*, 357 F.3d 88, 91 (D.C. Cir. 2004); *see id.* at 90 (noting Congress' "deregulatory purpose" in enacting Section 11); *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1033, *reh'g granted in part*, 293 F.3d 537 (D.C. Cir. 2002) (Congress intended the biennial review to "continue the process of deregulation" that the 1996 Act commenced).

[7] *2002 Biennial Review Report*, ¶ 21; *Cellco*, 357 F.3d at 98; *see also 1998 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 15 FCC Rcd 11058, 11151 (2000) (Separate Statement of Commissioner Michael Powell) ("I start with the proposition that the rules are *no longer necessary* and demand that *the Commission* justify their continued validity") (emphases added).

[8] 47 U.S.C. § 161(b); *see Cellco*, 357 F.3d at 94 (the 1996 Act mandates that the Commission identify rules that are no longer necessary "followed by their repeal or modification").

[the Commission's] normal monitoring responsibilities."[9] Indeed, as the Commission itself has stated, "if we cannot identify a federal need for a regulation, we are not justified in maintaining [it]." *2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2*, 16 FCC Rcd 19911, ¶ 207 (2001) ("*Phase 2 Order*").

Congress also provided a mechanism for forbearance from "any regulation or any provision of th[e Communications] Act." 47 U.S.C. § 160(a)(1)-(3). Section 10 allows a carrier to request forbearance and requires the Commission to justify retention of a regulation or statutory requirement subject to such a request under a specific, three-factor test, which asks: (1) whether the regulation or requirement is "necessary to ensure" just and reasonable charges, practices, classifications and regulations; (2) whether the regulation or requirement is "necessary for the protection of consumers;" and (3) whether forbearance from the regulation or requirement is "consistent with the public interest." *Id.* The statute further specifies that in assessing the public interest, the Commission "shall consider whether forbearance . . . will promote competitive market conditions." *Id.* § 160(b). The D.C. Circuit has made clear that in justifying a refusal to forbear from a particular requirement, the Commission must demonstrate that there is

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[9] *Cellco*, 357 F.3d at 99 (emphasis added). Even under the Commission's "ordinary monitoring responsibilities," *id.*, it is required to "evaluate its policies over time to ascertain whether they work—that is, whether they actually produce the benefits the Commission originally predicted they would," *Bechtel v. FCC*, 957 F.2d 873, 881 (D.C. Cir. 1992); *see, e.g.*, *Am. Trucking Assocs., Inc. v. Atchison*, 387 U.S. 397, 415-16 (1967) ("Regulatory agencies do not establish rules of conduct to last forever; they are supposed, within the limits of the law and of fair and prudent administration, to adapt their rules and practices to the Nation's needs in a volatile, changing economy."); *NBC v. United States*, 319 U.S. 190, 225 (1943) (the Commission cannot retain a rule if "time and changing circumstances reveal that the 'public interest' is not served by application of the Regulation[ ]"); *Bechtel v. FCC*, 10 F.3d 875, 880 (D.C. Cir. 1993) ("[t]he Commission's necessarily wide latitude to make policy based upon predictive judgments deriving from its general expertise implies a correlative duty to evaluate its policies over time to ascertain whether they work—that is, whether they actually produce the benefits the Commission originally predicted they would."). The rules discussed here are subject to repeal or modification under that basic requirement as well.

a "strong connection" between a rule and its purported public interest basis. *Cellular Telecomms. & Internet Ass'n v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003).

Under these prevailing legal standards, the time has long passed for the Commission to eliminate the burdens applicable to wireline broadband Internet access services under the Title II regulations, such as tariffing, cost justification, and common carrier and *Computer Rules*, to forbear from any broadband unbundling obligations that Section 271 may be construed to impose. *See* Section II. It also should and to reform its TELRIC rules, and move toward elimination of economic rate regulation entirely. *See* Section III. The Commission also should undertake the other specific rule change suggestions Verizon has identified in Exhibit B.[10]

II. 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.

A. The Broadband Market Is Vibrantly Competitive And ILECs Are Not Dominant In Any Segment Of That Market.

Early in the development of the broadband mass market, cable companies emerged as the clear market leaders.[11] Today, cable has entrenched itself as the market leader and is such a significant force in the broadband market that the D.C. Circuit recently found that because of the "robust intermodal competition from cable providers[,] . . . even if all CLECs were driven from

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[10] In addition to the broader reforms described in sections II-III below, these include elimination of the continuing property records rules, streamlining of accounting and ARMIS reporting requirements, elimination of the Open Network Architecture ("ONA")/Comparably Efficient Interconnection ("CEI") Reporting requirements, and other miscellaneous changes. *See* Exhibit B.

[11] *E.g.*, *Wireline Broadband NPRM*, ¶ 37; *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, 14 FCC Rcd 2398, ¶ 47 (1999) ("*First Section 706 Report*").

the broadband market, mass market consumers will still have the benefits of competition." *USTA II*, 359 F.3d at 581.

According to the Commission's latest *High-Speed Services Report*, as of December 2003, cable controlled nearly *two-thirds* of all high-speed lines provided to residential and small-business customers,[12] which is the primary segment of the broadband market targeted by cable operators.[13] As of that same date, cable also controlled more than *83%* of the most rapidly growing segment of mass-market broadband lines—those capable of over 200 kbps in both directions.[14] In the top 25 Verizon MSAs, on average, 92% of the population has access to cable modem service.[15]

The Commission has repeatedly recognized that, in addition to cable and DSL, there are numerous additional platforms and technologies already competing in or poised to enter the broadband mass market.[16] Although cable is, as noted above, the market leader, the Commission

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[12] Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *High-Speed Services for Internet Access: Status as of December 31, 2003* at Table 3 & Chart 6 (June 2004), available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/hspd0604.pdf ("*High-Speed Services Report*").

[13] *Compare id.* at Table 3 (Cable provides 16,416,364 high-speed lines to residential and small-business customers) *with id.* at Table 1 (Cable provides a total of 16,446,322 high-speed lines).

[14] *See id.* at Table 4 & Chart 8.

[15] *See* Letter from Dee May, Verizon, to Marlene H. Dortch, FCC, "Technological and Market Developments Since the Triennial Review Further Demonstrate that Competitors Are Not Impaired Without Access to Unbundled Mass Market Switching", CC Docket Nos. 01-338, 96-98, 98-147, at Attachment 2 (filed June 24, 2004) ("*TRO Switching Ex Parte*"), excerpts attached hereto as Exhibit C.

[16] *See, e.g.*, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, 17 FCC Rcd 2844, ¶¶ 79-88 (2002) ("*Third Section 706 Report*"); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, ¶ 263 (2003) ("*Triennial Review Order*") ("[T]he Commission also has acknowledged the important broadband potential of other platforms and technologies, such as third generation wireless, satellite, and power lines.") (citing *Third Section 706 Report*, ¶¶ 79-88); Roy Mark, *Broadband over Power Lines: FCC Plugs In*, Internetnews.com (Apr. 23, 2003), at http://dc.internet.com/news/article.php/2195621 (Chairman Powell: "[t]he development of

has found that both cable and DSL face "significant actual and potential competition from . . . alternative broadband providers"[17] and that "the preconditions for monopoly appear absent" in the broadband market.[18] The federal courts too have acknowledged the presence of "robust intermodal competition" in the broadband market and have found that the significant level of competition is "supported by very strong record evidence."[19]

A variety of technologies compete with cable operators and wireline carriers in the broadband mass market. First, wireless carriers are deploying new fixed wireless broadband services every day and are well-positioned to increase their already significant position as competitors in the broadband market.[20] Second, as Chairman Powell recently noted, "Broadband over Power Line [("BPL")] has the potential to provide consumers with a ubiquitous third broadband pipe to the home,"[21] and recent evidence confirms the near-term promise of this emerging broadband alternative.[22] Third, analysts predict that satellite broadband "will be on the

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multiple broadband-capable platforms—be it power lines, Wi-Fi, satellite, laser or licensed wireless—will transform the competitive broadband landscape").

[17] *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, 15 FCC Rcd 9816, ¶ 116 (2000).

[18] *First Section 706 Report*, ¶ 48; *see Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, 15 FCC Rcd 11857, ¶ 19 (2000) (explaining that "no group of firms or technology will likely be able to dominate the provision of broadband services").

[19] *USTA II*, 359 F.3d at 581; *see United States Telecom Ass'n v. FCC*, 290 F.3d 415, 428 (D.C. Cir. 2002) ("*USTA I*") (emphasizing that "robust competition" exists "in the broadband market").

[20] *See Broadband Competition: May 2004*, originally Appendix A to Competition in the Provision of Voice Over IP and Other IP-Enabled Services, Prepared for and Submitted by BellSouth, Qwest, SBC, and Verizon, WC Docket 04-36, at A-9 to A-13 (filed May 28, 2004) ("*Broadband Competition May 2004*")(attached at Exhibit D).

[21] *Inquiry Regarding Carrier Current Systems, including Broadband over Power Line Systems*, 18 FCC Rcd 8498, 8514 (Separate Statement of Chairman Michael K. Powell) (2003).

[22] *Broadband Competition May 2004, A-13 to A-15.*

upswing again in 2004."[23] And fourth, 3G wireless service has taken another step closer to becoming a full-fledged competitor in the broadband market, with both Verizon Wireless[24] and AT&T Wireless[25] launching 3G wireless networks across the country and other wireless carriers testing various 3G technologies. *Broadband Competition May 2004, at A-17 to A-19.* Nextel also recently announced similar plans.[26] Broadband competition is, moreover, continuing to thrive for small-business customers just as it is for residential customers.[27]

Extensive broadband competition for large business customers also exists.[28] Recent data confirm that it is AT&T and the other large interexchange carriers—not the ILECs—that dominate this segment of the market. *Broadband Competition May 2004, at A-19 to A-21.* In addition, the availability and use of alternative last-mile broadband facilities for large businesses is rapidly increasing, just as it is for other segments of the broadband market, with growing

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[23] *Id.* at 22 (quoting Roger Brown, et al., *Smooth Sailing or the Perfect Storm?*, CED (Jan. 1, 2004)); *see id.* at 22-23.

[24] Verizon Wireless, Press Release, *Wireless Broadband Data Service Introduced in Major Metro Areas* (Sept. 29, 2003), http://news.vzw.com/news/2003/09/pr2003-09-29.html; *Broadband Competition May 2004,* at A-18.

[25] AT&T Wireless, Press Release, *AT&T Wireless Outlines Actions It Will Take to Meet 2003 Goals* (Jan. 28, 2003), http://www.attwireless.com/press/releases/2003_releases /012803_actions.jhtml (announcing plans to rollout W-CDMA in four cities (Dallas, San Diego, San Francisco, and Seattle) by year end 2004); *Broadband Competition May 2004, at A-18.*

[26] *See* Nextel, News Release, *Nextel Expands Successful Broadband Trial to Include Paying Customers and Larger Coverage Area* (Apr. 14, 2004), http://phx.corporate-ir.net/phoenix.zhtml?c=63347&p=irol-newsArticle&t=Regular&id=514459&.

[27] *See* Letter from Dee May, Verizon, to Marlene H. Dortch, FCC, WC Docket Nos. 01-337, 02-33, 98-10, 98-20 at 10-17 (filed Nov. 13, 2003) ("*Verizon November 13, 2003 Ex Parte*"); *see also* Letter from Edward Shakin, Verizon, to Marlene H. Dortch, FCC, WC Docket Nos. 01-338, 96-98, 98-147, 02-33, 01-337 (filed Jan. 15, 2003); *Broadband Competition May 2004,* at A-A-3 to A-5 & Table 3.

[28] The large business segment of the broadband market differs from other segments both because it is more mature, with competitors having first entered the market two decades ago, and because it is national in scope. *Verizon November 13, 2003 Ex Parte* at 17. As the Commission has found, it is comprised of customers that typically demand end-to-end services provided across LATAs, states, and often countries. *See, e.g., Triennial Review Order,* ¶ 302 ("Enterprise market customers . . . prefer a single provider capable of meeting all their needs at each of their business locations which may be in multiple locations in different parts of the city, state or country").

numbers of companies using cable modem service, fixed wireless, and/or satellite technologies in place of or in addition to other alternatives such as high-speed ILEC lines. *Id.* at A-20.

In short, many new technologies are already being used to provide service offerings that compete with DSL and cable modem service for residential customers and business customers of all sizes, and still other new technologies with significant potential to become powerful forces are emerging. *See Broadband Competition May 2004,* at A-8 to A-21 & Tables 5 & 6. Under the Commission's own well-settled precedent, it must take all of these alternatives into account in its analysis of broadband competition,[29] particularly given that that the broadband market is still "in the earliest stages" and is evolving rapidly.[30]

B. The Significant Intermodal Competition In All Segments Of The Broadband Market Makes It Impossible For The Commission To Justify Retention Of Regulatory Restrictions Born Of Concerns Over Bottleneck Control On ILECs, Who Are Distant Second Players In That Market.

1. The Commission Should Complete the Reform of Broadband Regulations Begun in the Triennial Review Order, Including Forbearance From Applying Any Broadband Unbundling Obligations That Section 271 Might Be Construed To Impose.

The Commission should complete the deregulatory approach to broadband services that it started in the *Triennial Review Order*, and clean up a number of issues that were left unresolved

[29] The Commission has held that a proper market analysis must "examine not just the markets as they exist today," but must also take account of "future market conditions," including technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry. *Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent To Transfer Control of NYNEX Corp. and Its Subsidiaries*, 12 FCC Rcd 19985, ¶¶ 7, 41 (1997) ("*Bell Atlantic/NYNEX Merger Order*"); *Applications of Teleport Communications Group Inc., Transferor, and AT&T Corp., Transferee*, 13 FCC Rcd 15236, ¶ 19 n.65 (1998); *Applications for Consent to the Transfer of Control of Licenses from Comcast Corp. and AT&T Corp., Transferors to AT&T Comcast Corp., Transferee*, 17 FCC Rcd 23246, ¶ 27 (2002); *see also Triennial Review Order*, ¶ 263 ("[T]he fact that broadband service is actually available through another network platform and may potentially be available through additional platforms helps alleviate any concern that competition in the broadband market may be heavily dependent upon unbundled access."); *FCC v. RCA Communications, Inc.*, 346 U.S. 86, 96-97 (1953); *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 594-95 (1981).

[30] *Bell Atlantic/NYNEX Merger Order*, ¶¶ 40-41.

in that proceeding. In particular, it should (1) clarify that there are no obligations to unbundled broadband pursuant to Section 271; (2) provide a definition of "mass market" customers; and (3) clarify that fiber to the premises loops built to multi-unit premises ("MUPS") are, like other FTTH deployment, not subject to unbundling obligations.[31]

As both the *Triennial Review Order* and the D.C. Circuit's recent decision in *USTA II* confirm, there is no basis founded in competitive reality for imposing broadband unbundling obligations under Section 271.[32] The Commission unequivocally found, based upon the existence of robust intermodal competition in the broadband market, that ILECs "do not have to offer unbundled access" to broadband facilities. *Triennial Review Order*, ¶¶ 7, 23. This conclusion adopts all of the legal and factual findings needed to justify forbearance from any unbundling obligations that Section 271 might be construed to impose for broadband elements, including fiber-to-the-premises loops, packet-switching, and the packetized functionality of hybrid loops.

In the *Triennial Review Order*, the Commission specifically concluded that "broadband services [] are currently provided in a competitive environment," and that cable companies have "a leading position in the marketplace," while other "important [broadband] platforms and technologies, such as third generation wireless, satellite, and power lines" provide additional competition. *Triennial Review Order*, ¶¶ 262-63, 292. The D.C. Circuit affirmed that the Commission's finding of "robust intermodal competition" in the broadband market was

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[31] *See* Verizon Petition for Forbearance, CC Docket No. 01-338 (filed July 29, 2002); Verizon Response to Petitions for Reconsideration, CC Docket Nos. 01-338, 96-98, and 98-147 (filed Nov. 6, 2003).

[32] *See* Letter from Dee May, Verizon, to Marlene H. Dortch, FCC, WC Docket Nos. 01-337, 01-338, 02-33, 02-52, Attachment 1 (filed March 26, 2004) ("*Verizon March 26 Ex Parte*"); *see also* Letter from Susanne A. Guyer, Verizon, to Chairman Powell and Commissioners, FCC, CC Docket No. 01-338 (filed Oct. 24, 2003); Reply Comments of Verizon on Petition for Forbearance of the Verizon Telephone Companies, CC Docket No. 01-338 (filed Nov. 26, 2003).

"supported by very strong record evidence," and viewed that finding as "*[m]ore important*" than any other factor justifying the Commission's decision not to require unbundling for broadband elements under Section 251.[33]

These conclusions reached by both the Commission and the D.C. Circuit with respect to competition confirm that there is no basis for imposing any broadband unbundling obligations under Section 271 and that forbearance is appropriate. Indeed, the Commission itself has previously determined that "competition is the *most effective means* of ensuring that . . . charges, practices, classifications, and regulations . . . are just and reasonable, and not unjustly or unreasonably discriminatory" in compliance with Section 10(a)(1). *Petition of US West Communications Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, 14 FCC Rcd 16252, ¶ 31 (1999). So, too, is the presence of abundant competition sufficient to ensure that enforcement is not necessary to protect consumers and that forbearance is in the public interest.[34]

In addition to concluding that unbundling was unnecessary due to competition, the Commission found in the *Triennial Review Order* that imposing unbundling obligations in the broadband context was affirmatively harmful, stating that such obligations "would blunt the deployment of advanced telecommunications infrastructure by incumbent LECs and the incentive for competitive LECS to invest in their own facilities." *Triennial Review Order*, ¶ 288. In contrast, the Commission determined that declining to impose unbundling requirements would promote competition by "giv[ing] incumbent LECs the incentive to deploy fiber . . . and develop new broadband offerings" and by "stimulat[ing] competitive LEC deployment of next generation

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[33] *USTA II*, 359 F.3d at 582 (emphasis added); *see id.* at 585 (stating that "intermodal competition from cable ensures the persistence of substantial competition in broadband").

[34] *See* 47 U.S.C. §§ 10(a)(2)-(3); *see also Verizon March 26 Ex Parte*, Attachment 1, at 10-22.

networks, . . . including the deployment of their own facilities necessary for providing broadband services to the mass market." *Id.* at ¶ 290. The D.C. Circuit affirmed the Commission's findings on this score as well, agreeing, for example, that imposing unbundling requirements on hybrid loops "would deter CLECs themselves from investing in deploying their own facilities, possibly using different technology" while declining to impose unbundling requirements would provide ILECs with "greater incentives . . . to deploy the additional electronic equipment needed to provide broadband access over a hybrid loop." *USTA II*, 359 F.3d at 581. The Court reached similar conclusions with respect to the other broadband elements at issue in the *Triennial Review Order*.[35]

Because of the competitive harm that would have been caused by broadband unbundling obligations, the Commission found in the *Triennial Review Order* that such requirements would stand "in direct opposition to the express statutory goals authorized in section 706." *Triennial Review Order*, ¶ 288.[36] The D.C. Circuit agreed in *USTA II*, finding that "an unbundling order's impact on investment" must be considered given Section 706's goal of moving beyond "competition piggy-backed on ILEC facilities . . . [by] removing barriers to infrastructure investment." *USTA II*, 359 F.3d at 579.

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[35] *USTA II*, 359 F.3d at 584 (finding, with respect to FTTH loops, that: An "unbundling requirement . . . seems likely to delay infrastructure investment, with CLECs tempted to wait for ILECs to deploy FTTH and ILECs fearful that CLEC access would undermine the investments' potential return. Absence of unbundling, by contrast, will give all parties an incentive to take a shot at this potentially lucrative market."); *id.* (affirming Commission's conclusion that requiring unbundled access to the high frequency portion of copper loops to provide broadband DSL services had "skewed CLECs' incentives").

[36] The Commission has made clear elsewhere that Section 706 "direct[s] the Commission to use the authority granted in other provisions, *including the forbearance authority under section 10(a)*, to encourage the deployment of advanced services." *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd 24011, ¶ 69 (1998) (emphasis added).

The Commission's conclusion, affirmed in *USTA II*, that unbundling creates severe investment disincentives for both ILECs and CLECs and therefore affirmatively harms competition and conflicts with Section 706 further demonstrates that forbearance from any broadband unbundling requirements that Section 271 might be construed to impose is appropriate. Indeed, given the Commission's findings in the *Triennial Review Order*, a determination that unbundling of broadband elements is necessary to ensure just and reasonable rates and conditions and nondiscrimination, would be arbitrary and capricious. Moreover, the Commission has already affirmatively found that "[t]he end result" of removing unbundling obligations is that "*consumers* will benefit from this race to build next generation networks and the increased competition in the delivery of broadband services,"[37] requiring a conclusion that unbundling is *not* necessary to protect consumers and that removing unbundling requirements is in the public interest.[38]

As Verizon has previously demonstrated, imposing unbundling obligations on next-generation broadband facilities would dramatically increase the costs of deploying those facilities, raise a host of intractable administrative and regulatory problems, and provide disincentives for the widespread deployment of such facilities. In particular, new FTTP networks are not designed for unbundling. The one incentive to deploy these facilities is the increased efficiencies that would result. However, any unbundling requirement would significantly undermine these efficiencies. Verizon does not know how such unbundling would be done, but it would require new operating support systems and other modifications, which

[37] *Triennial Review Order*, ¶ 272 (emphasis added).

[38] *See* 47 U.S.C. §§ 160(a)(1)-(2); *see also Verizon March 26 Ex Parte*, Attachment 1, at 10-22.

would cause delay in deployment and add significant costs, therefore ultimately impacting the incentive to roll out such new networks.[39]

In sum, the Commission's findings in the *Triennial Review Order*, which were affirmed by the D.C. Circuit in *USTA II*, that the broadband market is competitive and that the application of unbundling obligations to broadband elements is detrimental to the development of further competition, establish that forbearance from any broadband unbundling obligations that Section 271 might be construed to impose is appropriate. In order to complete the job the Commission started, it should resolve the remaining issues regarding 271 unbundling, multi-unit premises, and definition of "mass market" customers, to remove the regulatory uncertainty that can act as a disincentive to the extraordinary investment necessary to bring these facilities to customers.

2. The Commission Should Modify, Or Forbear From Applying, Title II Retail Requirements That Currently Apply To Wireline Broadband Offerings Because Wireline Carriers Are Not "Dominant" In The Broadband Market.

Under the Commission's existing domestic common carrier regulations, ILECs are generally treated as dominant carriers, and their broadband transmission services are subjected to the full panoply of common carrier regulations under Title II. *ILEC Broadband NPRM*, ¶ 5. And, absent further Commission action, ILEC provision of broadband services is treated the same. Thus, ILECs are subject to tariff filing, cost support, and pricing requirements in their provision of broadband service—regulations to which *none* of their competitors are subject, particularly the dominant providers of broadband, who continue to be allowed under current

[39] *See* Declaration of Jerome Holland, CC Docket No. 01-338 (filed Mar. 29, 2004); Supplemental Declaration of Jerome Holland, CC Docket No. 01-338 (filed May 18, 2004) (together attached hereto at Exhibit E).

rules to offer service on a private carriage basis under Title I. *See, e.g.*, 47 U.S.C. §§ 201-204, 214.[40]

As the Commission itself has observed, however, "[t]he basic elements of the existing regulatory requirements for the provision of broadband services by incumbent LECs were initially developed in a prior era of circuit-switched, analog voice services characterized by a one-wire world for access to communications" that existed "well before the development of competition between providers of broadband services" and were based upon a perceived need to curb the exercise of anti-competitive market power. *ILEC Broadband NPRM*, ¶¶ 4, 38. As shown above, this "one-wire" world simply does not exist in today's broadband market[41] and, as

[40] The Ninth Circuit's decision in *Brand X Internet Services, Inc. v. FCC*, 345 F.3d 1120 (9th Cir. 2003), presents no obstacle to the establishment of a comprehensive broadband regulatory policy. First, the *Brand X* decision expressly left intact the Commission's authority to classify broadband transmission services as private carriage arrangements under Title I or to waive or forbear from any common carrier regulations that might otherwise apply. *See id.* at 1132 n.14. Indeed, the panel expressly said that it was *not* addressing the ability of cable companies to offer broadband on a private carriage (as opposed to common carriage) basis, leaving those issues for consideration by the Commission on remand. *See id.* Second, the *Brand X* panel relied entirely upon the Ninth Circuit's prior decision in *AT&T v. City of Portland*, 216 F.3d 871 (9th Cir. 2000), to reach its determination, concluding that it was bound to do so, *Brand X*, 345 F.3d at 1129-32, but the Supreme Court will not be so bound. The facts that DSL "is a high-speed competitor to cable broadband" and that the Commission subjects DSL to common carrier obligations had been important to the Ninth Circuit's decision in *City of Portland*. *See* 216 F.3d at 879. By eliminating the regulatory disparity between the broadband services provided by cable operators and wireline carriers, the Commission would remove a primary obstacle to the federal courts' adoption of the Commission's own policy determinations, not only for cable companies, but for telephone companies as well. Indeed, the Commission can help the courts to avoid the mistake made in *City of Portland* by adopting a technologically neutral broadband policy, founded in the competitive realities of the marketplace, that allows cable companies and telephone companies alike to provide broadband services on a private carriage basis.

Moreover, the order is not even effective. The Ninth Circuit stayed the mandate of the order pending July 29, the date on which petitions for certiorari to the United States Supreme Court are due. If the FCC decides to seek certiorari, it also may seek to extend the stay, and may obtain modification of the order.

[41] *See supra* Section II.A.

the Commission has recognized in other contexts, the presence of intermodal competition is sufficient to eliminate any risk of anti-competitive behavior.[42]

In addition, the Commission's refusal to exempt ILEC broadband services from Title II regulations is inconsistent with the repeated recognition of both the federal courts and the Commission that a carrier may appropriately be treated as a common carrier with respect to some services but not others[43] and that, in the absence of a *voluntary* undertaking to serve all customers indiscriminately, common carrier duties may only be imposed upon a service based on a finding that "the public interest . . . require[s] the carrier to be legally compelled to serve the

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[42] *See, e.g., Comsat Corporation, Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, 13 FCC Rcd 14083, ¶ 76 (1998) ("Intermodal competition leads us to believe that fiber-optic cables represent a substitute for satellites in the transmission of switched voice service").

[43] *See, e.g., Southwestern Bell Tel. Co. v. FCC*, 19 F.3d 1475, 1481 (D.C. Cir. 1994) (quoting *Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976) ("*NARUC II*")); *see also Computer & Communications Indus. Ass'n v. FCC*, 693 F.2d 198, 207, 208 (D.C. Cir. 1982) (upholding Title I classification of enhanced services and customer premises equipment ("CPE") because "the market for enhanced services is 'truly competitive'" and "charges for CPE provided by carriers need no longer be regulated ... because of the competitive market conditions now prevailing"); *Licensing Under Title III of the Communications Act of 1934, as amended, of Non-Common Carrier Transmit/Receive Earth Stations Operating With the Intelsat Global Communications Satellite System*, 8 FCC Rcd 1387, ¶¶ 7-19 (1993) (satellite services including mobile voice, data, facsimile); *Loral/Qualcomm P'shp, L.P., for Authority to Construct, Launch, and Operate Globalstar, a Low Earth Orbit Satellite System to Provide Mobile Satellite Services in the 1610-1626.5 MHz/2483/5-2500 MHz Bands*, 10 FCC Rcd 2333, ¶ 22 (1995) (same); *AT&T Submarine Sys., Inc.*, 1¶¶ 6-11 (submarine cables); *Gen. Tel. Co. of the S.W.*, 3 FCC Rcd 6778, ¶¶ 7-11 (1988) (for-profit microwave systems interconnected with public switched telephone network); *Int'l Communications Policies Governing Designation of Recognized Private Operating Agencies, Grants of IRUs in International Facilities and Assignment of Data Network Identification Codes*, 104 FCC 2d 208, ¶¶ 56-57 (1986) (digital optical-fiber cable); *NorLight*, 2 FCC Rcd 5167, ¶¶ 12-19 (1987) (interstate fiber optic systems); *Amendment of the Commission's Rules to Establish New Personal Communications Services*, 6 FCC Rcd 6601, ¶ 7 (1991) (mobile services); *Amendment of Subpart C of Part 90 of the Commission's Rules*, 5 FCC Rcd 3471, ¶¶ 5-7 (1990) (certain paging services).

public indifferently" because an operator "has sufficient market power."[44] Here, the competitive status of the broadband market *precludes such a finding*.

Like the continued application of the *Computer Rules*, the maintenance of Title II common carrier requirements in the age of abundant broadband competition is not just "no longer necessary" but also violates the Commission's statutory duty to promote broadband development and deployment through reduced regulation. *See* 1996 Act, § 706 (*codified at* 47 U.S.C. § 157 note). For example:

- The Title II costing rules contribute significantly to the delay in introducing new broadband services to consumers. Unlike their competitors, ILECs often must develop and file detailed cost support data, provide extensive analyses of charges assessed by their competitors for similar services, develop and file rebuttals to challenges to their filings by third parties, and respond to Commission staff questions.

- Mandatory tariffs reduce carriers' ability to make efficient responses to customer demand and cost; impose substantial administrative costs; limit the ability of customers to negotiate and obtain service arrangements specifically tailored to their needs; and inhibit carriers from introducing new services and responding to new offerings by rivals, who obtain advance notice of tariffed carriers' services and promotions and can respond by undercutting the new offerings even before the tariff becomes effective.

- The requirement that broadband rates be cost-justified or be comparable to traditional narrowband wireline benchmarks prevents ILECs from experimenting with market-based pricing models, such as pricing based on revenue sharing or on the number of visits to a given Web site. These methods are already available to non-telco broadband competitors, and prohibiting ILECs from using them deters innovative pricing arrangements that ultimately would benefit competition.

As the Commission has concluded, "deregulation or reduced regulation may lower administrative costs, encourage investment and innovation, reduce prices and offer consumers

[44] *AT&T Submarine Sys., Inc.*, 13 FCC Rcd 21585, ¶¶ 7-9 (1998), *aff'd*, *Virgin Islands Tel. Corp. v. FCC*, 198 F.3d 921, 925-27 (D.C. Cir. 1999); *Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976) ("*NARUC I*"); *NARUC II*, 533 F.2d at 608.

greater choice."[45] The Commission's maintenance of Title II regulatory requirements for ILEC broadband services is having precisely the opposite effect. Moreover, as is the case with the *Computer Rules*, cable operators, who are the only participants in the broadband market that could conceivably be considered "dominant," remain entirely free from Title II regulatory burdens. *Cable Broadband Ruling*, ¶¶ 34-41, 48-58. The current competitive disparity is only further impeding the development of additional broadband competition.

In sum, competitive developments have rendered the maintenance of Title II requirements for broadband "no longer necessary in the public interest," thus obligating the Commission to repeal or modify those requirements in compliance with its biennial review mandate.[46] By contrast, allowing ILEC broadband services to be offered on a private carriage basis, free from the regulatory strictures of Title II, will enable carriers to offer broadband services that can better compete against their well-financed, entrenched competitors and will encourage investment in next generation broadband networks and services, thereby promoting Congress' statutory goal of fostering broadband competition.

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[45] *ILEC Broadband NPRM*, ¶ 39; *see Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 84 FCC 2d 445, ¶ 12 (1981) (noting that even in a market that is not yet fully competitive, the costs of regulatory compliance "can have profound negative implications for consumer welfare" such that a reduction in regulatory burdens is appropriate).

[46] 47 U.S.C. § 161(b). To the extent that the Commission views the application of Title II requirements to ILEC broadband offerings to be statutorily required (*i.e.*, because wireline broadband transmission service must be classified as a "telecommunications service"), forbearance pursuant to Section 10(a) of the Communications Act, 47 U.S.C. § 160(a), is fully justified based upon the same analysis set forth above.

3. The Commission Should Eliminate The Requirement That The Bell Companies[47] Comply With The *Computer Rules* With Respect To Their Broadband Offerings.

In the late 1990s, without any market analysis at all, the Commission reflexively extended regulatory strictures on wireline providers from the narrowband world of the 1970s and 1980s to broadband services offered by the Bell companies.[48] Thus, under the Commission's *Computer Rules*, the Bell companies are subject to Comparably Efficient Interconnection ("CEI") and Open Network Architecture ("ONA") requirements that force them to unbundle their broadband transmission services, and also to separate out and offer the transmission component of their broadband Internet access services pursuant to tariff, on cost-based terms and conditions. *Wireline Broadband NPRM*, ¶ 42.

The Commission itself has acknowledged that the *Computer Rules* were adopted at a time when "very different legal, technological and market circumstances" existed. *Id.* at ¶ 35. Most relevant to the biennial review inquiry—that is, whether the application of these rules to the broadband offerings of Bell companies remains necessary in light of current levels of competition—"the core assumption underlying the *Computer Inquiries* was that the telephone

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[47] The former structural separation requirements applied only to the former Bell companies and AT&T. The Open Network Architecture requirements initially applied only to the former Bell companies, but they were later extended to GTE, which is now part of Verizon. *Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation*, 9 FCC Rcd 4922 (1994). The Comparably Efficient Interconnection requirements apply to the former Bell companies, but not GTE. *Wireline Broadband NPRM*, ¶ 41 n.85. On the other hand, *all* common carriers owning transmission facilities and providing enhanced services must unbundle and offer transmission capacity to other enhanced service providers pursuant to tariff. *See Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended; 1998 Biennial Regulatory Review—Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Market*, 16 FCC Rcd 7418, ¶ 40 (2001). Verizon uses the term "Bell companies" in this filing to refer to the entities that are subject to the various *Computer Rules*.

[48] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 19237, ¶ 21 (1999); *GTE Tel. Operating Cos.*, 13 FCC Rcd 22466, ¶ 32 (1998); *see also* 47 U.S.C. §§ 202(a), 203.

network is the primary, if not exclusive, means through which information service providers can obtain access to customers."[49] As shown above, no category of competitors in the broadband market, and certainly not the wireline telephone companies, enjoy "bottleneck" control over broadband transmission facilities. *See supra* Section II.A. Thus, that "core assumption" regarding the necessity of the *Computer Rules* simply does not exist for broadband.

In addition, the 1996 Act "introduced a mandate that the Commission promote competition, deregulation and innovation wherever possible in the communications market." *Wireline Broadband NPRM*, ¶ 35. Congress specifically expressed its policy to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans" by, among other things, directing the Commission to utilize "regulatory forbearance" and to "remove barriers to infrastructure investment and promot[e] competition" in the provision of broadband services.[50] The Commission, furthermore, has recognized that "the widespread deployment of broadband infrastructure has become the central communications policy objective of the day."[51] This is at least partially because, as Chairman Powell has stated,

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[49] *Wireline Broadband NPRM*, ¶ 36; *see Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling*, 17 FCC Rcd 4798, ¶ 34 n.139) (2002) ("*Cable Broadband Ruling*") (stating that the *Computer Inquiries* were directed at "*bottleneck* common carrier facilities"). Indeed, in *Computer II*, the Commission expressly found that carriers that had no control over local bottleneck facilities, and therefore "d[id] not have . . . market power," would not be in a position to act anti-competitively. *Amendment of Section 64.702 of the Commission's Rules and Regulations*, 77 FCC 2d 384, 468-69 (1980) ("*Computer II*") (subsequent history omitted); *see California v. FCC*, 39 F.3d 919, 923-24 (9th Cir. 1994) (*Computer Rules* responded to the belief that "the telephone industry could use its monopoly of the [telephone] lines to prevent competition from developing in the enhanced services industry").

[50] 1996 Act, § 706(a) (*codified at* 47 U.S.C. § 157 note); *see* 47 U.S.C. §§ 230(b)(1), 230(b)(2) (stating that the policy of the United States should be "to promote the continued development of the Internet and other interactive computer services and other interactive media" and "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation").

[51] *Wireline Broadband NPRM*, ¶ 1; *see IP-Enabled Services*, 19 FCC Rcd 4863, ¶ 3 (2004) ("*VOIP NPRM*") (recognizing "the paramount importance of encouraging deployment of broadband infrastructure to the American people").

"[w]ith broadband access, worker productivity increases, jobs are created and wages grow."[52] In addition, the Commission has repeatedly acknowledged that a reduction in the regulatory burdens on wireline broadband providers is necessary to "encourage market participants to deploy broadband networks more expeditiously and increase facilities-based competition."[53] Individual members of the Commission also have recognized that excessive regulation only thwarts the development of new services.[54]

The continued application of the *Computer Rules* to the broadband offerings of the far distant second players in the competitive broadband market conflicts directly with Congress's clearly expressed desire to promote broadband development and deployment through reduced regulation. The *Computer Rules* are actually hindering the development of new services and

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[52] Michael K. Powell, Chairman, FCC, *Rural Lands of Opportunity: Broadband Deployment in America's Heartland*, Remarks at the Kansas Rural Broadband and Telemedicine Summit at the University of Kansas, Lawrence, Kansas (Feb. 20, 2004); *see* Kevin J. Martin, Commissioner, FCC, *A New Framework for Broadband Deployment*, Remarks to the TIA Regulatory Session at Supercomm, Atlanta, Georgia (June 3, 2003) (stating that broadband is the Commission's "top priority" and that "broadband deployment will lead to a new period of economic growth.").

[53] *Wireline Broadband NPRM*, ¶ 51; *see VOIP NPRM*, ¶ 1 (noting that the Internet has been able to develop into "one of the greatest drivers of consumer choice and benefit, technical innovation, and economic development in the United States in the last ten years" because it has been "free of many of the regulatory obligations applied to traditional telecommunications services and networks"); *Triennial Review Order*, ¶ 3 ("[E]xcessive . . . [regulation] tend[s] to undermine the incentives . . . to invest in new facilities and deploy new technology. The effect of unbundling on investment incentives is particularly critical in the area of broadband deployment, since incumbent LECs are unlikely to make the enormous investment required if their competitors can share in the benefits of these facilities without participating in the risk inherent in such large scale capital investment").

[54] *VOIP NPRM*, (Separate Statement of Chairman Michael K. Powell) (stating that "[c]ompetitive market forces, rather than prescriptive rules, will respond to public need much more quickly and more effectively than even the best intentioned responses of government regulators," and that the "best hope" for furthering the development of new services is to "limit[] to a minimum the labyrinth of regulations and fees that apply to the Internet" because "these edicts can thwart competition even among traditional telecommunications providers"); *id.* (Separate Statement of Commissioner Kathleen Q. Abernathy) (cautioning against "reflexively extending [] legacy regulations to VOIP providers" and recognizing that those rules may no longer "make sense for *any* providers, including incumbents") (emphasis in original).

network and service arrangements that customers want and leading to unnecessary costs that discourage investment. For example:

- The requirement that the Bell companies separate out and offer separately the physical components of their services hampers the development of new services and applications and forces adoption of less-than-optimal network designs. Manufacturers are designing next generation equipment for other providers that do not face similar regulatory constraints (*e.g.*, cable operators).

- The CEI and tariffing rules render it difficult for the Bell companies to tailor solutions to customer needs. The Bell companies must offer "one-size-fits-all" products and services, impeding their ability readily to respond to ISP requests for more efficient network solutions.

- The *Computer Rules* require the Bell companies to waste resources by mandating that they offer mass-market solutions even when there is no market demand for such products and services. For instance, new technology is available that allows certain enhanced functions to be performed closer to the end user customer, enhancing the ISP's overall service capabilities. However, the *Computer Rules* would require the Bell companies to develop a new generic service offering that could be made available to any other requesting ISP, and potentially create new access points within its network for that service offering, even if only a limited number of ISPs are interested in the configuration, and tariffs would have to be filed in accordance with the Commission's review process. This effectively restricts the Bell companies to offering a limited set of service configurations.

- The requirement that the transmission component of Bell company broadband services be separated and offered under tariff at cost-based rates is interfering with the development of innovative and beneficial arrangements for ISPs to deliver content and applications to consumers.

The Commission has, moreover, determined that these rules should *not* apply to cable operators, who are, as noted above, by far the market leaders in broadband. *Cable Broadband Ruling*, ¶¶ 42-47. The continued maintenance of rules that inhibit the Bell companies' ability to compete in the broadband market while the dominant players in that market are free from similar regulatory requirements simply cannot be justified under *any* standard of review, whether the "necessary in the public interest" test of the biennial review or the "arbitrary and capricious" test of the Administrative Procedure Act.

Because the application of the *Computer Rules* to the broadband offerings of wireline telephone companies is "no longer necessary in the public interest as the result of meaningful economic competition," and because the continued maintenance of these rules is affirmatively harming competition and impeding achievement of the 1996 Act's goal of encouraging broadband development and deployment, the Commission should act promptly to free the Bell companies from these regulatory requirements. *See* 47 U.S.C. §§ 161(a), 161(b). Time is, moreover, of the essence in this area. As Chairman Powell has stated: "There is no greater threat to an entrepreneur, or any business, than uncertainty. A key government decision that hangs in suspended animation will kill the best-laid business plan." Michael K. Powell, Chairman, FCC, Remarks at the Association for Local Telecommunications Services, Crystal City, Virginia (Nov. 30, 2001).

III. COMPETITIVE DEVELOPMENTS IN THE LOCAL TELEPHONE MARKET HAVE ELIMINATED ANY POSSIBLE RATIONALE FOR TELRIC PRICES OR ECONOMIC RATE REGULATION.

A. Current Market Conditions Demonstrate That Economic Regulation Is Both Unnecessary And Affirmatively Harmful.

The Commission has justified pricing rules either as a way to keep end-user consumer prices reasonable, or, in the case of TELRIC, as a way to jump start local telephone competition. Regardless of whether such economic price constraints were ever necessary, under current market circumstances it is clear that those rules are both unnecessary and harmful. Indeed, as in other investment-intensive industries such as transportation, competition has developed in the telephone industry from intermodal competitors with their own extensive infrastructure expanding into the local telephone business. As a result, ILECs face significant (and increasing)

competition from alternative providers of local telephone service.[55] Wireless telephone service has become a viable substitute for wireline telephone service, and competes both for millions of minutes of traffic that previously traversed the local telephone network and for lines as well.

Wireless has already replaced over 19 million wireline access lines, and that number is expected to reach 34 million by 2007.[56] According to one analyst, "the higher losses [of ILEC primary access lines] are due to an acceleration in the movement toward wireless services and away from wireline telephony."[57] Indeed, as the Commission itself noted in its most recent *CMRS Competition Report*, "wireless substitution [is] a significant factor" in the ILECs' substantial decline of both business and residential lines. *Eighth Annual CMRS Report*, WT Docket No. 02-379, FCC 03-50, ¶ 103 (rel. July 14, 2003). There are now 85 providers of wireless telephone service and 147.6 million wireless telephone subscriptions in the United States, up 13% since June of 2002.[58] This number is closely approaching the total number of telephone landlines in service—182.8 million—and a growing number of Americans consider

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[55] Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, Local Telephone Competition: Status as of June 30, 2003 at Tables 14, 15, 16 (Dec. 2003), *at* http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/lcom1203.pdf ("*Local Competition Report*"); *TRO Switching Report*, at 1-2.

[56] *See* Letter from Michael E. Glover, Verizon, to Marlene H. Dortch, FCC, CC Docket Nos. 01-338, 96-98, and 98-147, "Technological and Market Developments Since the Triennial Review Further Demonstrate That Competitors Are Not Impaired Without Access To Unbundled Mass Market Switching", at 13 (filed July 2, 2004) ("*Verizon July 2 Ex Parte*"); *Id.*, Declaration of Michael K. Hassett and Vincent J. Woodbury, ¶ 52, Att. 7; *see also* S. Ellison, IDC, *U.S. Wireless Displacement of Wireline Access Lines, Forecast and Analysis, 2003-2007* at 16, Table 9 (Aug. 2003) (cumulative lines displaced since 1995).

[57] Statement of Michael J. Balhoff, CFA, Legg Mason Wood Walker, Inc., before the House Committee on Energy and Commerce Subcommittee on Telecommunications and the Internet, "In the Matter of 'The Current State of Competition in the Communications Marketplace'" 5 (Feb. 4, 2004), http://energycommerce.house.gov/108/Hearings/02042004hearing1164/Balhoff1850print.htm.

[58] *Local Competition Report* at Table 13. Data from the Cellular Telecommunications & Internet Association indicates that wireless subscribership is, in fact, much higher, at nearly 159 million. *See* CTIA, *Semi-Annual Wireless Industry Survey Year End 2003*, http://www.wow-com.com/pdf/CTIA_Semiannual_Survey_YE2003.pdf.

their wireless phone to be their primary phone. Michelle Kessler, *18 % See Cellphones as Their Main Phones*, USA Today, Feb. 1, 2002, at B1. At least 6% of consumers in the top 35 markets have canceled landline service at some point, up from 3.4% in 2002. Dow Jones News Service, *Americans Cut Their Wires, Threatening Carriers*, Sept. 24, 2003. Approximately 2 to 3 million additional wireless subscribers are now giving up their phone each year. In addition, 14% of U.S. consumers now use their wireless phones as their primary phones.[59]

Wireless services also compete directly with the local voice telephony offerings of wireline telephone companies in terms of pricing and package offerings. Indeed, the significant competition provided by wireless carriers has caused ILECs to introduce and competitively price their own package services to compete with wireless service offerings. In eastern Massachusetts, for example, wireless carriers offer bundled voice packages ranging from $39.99 to $49.99 per month, which include up to 700 minutes of local and long distance calling as well as voicemail. *Verizon July 2 Ex Parte,* Declaration of Michael K. Hassett and Vincent J. Woodbury. In response to competition from wireless, wireline carriers and cable telephony providers are now offering unlimited local, toll, and long distance calling plans for $48.95 to $55.99 per month, and Vonage—a VOIP provider—is offering its "Premium Unlimited" service for $29.99 per month. *See Verizon July 2 Ex Parte,* Declaration of Michael K. Hassett and Vincent J. Woodbury, Attachment 2.

There also is significant and rapidly growing competition from competing voice telephone services offered over cable networks. As an initial matter, there has been rapid growth

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[59] *See Verizon July 2 Ex Parte*, "Technological and Market Developments Since the Triennial Review Further Demonstrate That Competitors Are Not Impaired Without Access To Unbundled Mass Market Switching" at p.13, Declaration of Michael K. Hassett and Vincent J. Woodbury at ¶ 52, Att. 7; see also S. Ellison, IDC, *U.S. Wireless Displacement of Wireline Access Lines, Forecast and Analysis, 2003-2007* at 16, Table 9 (Aug. 2003) (cumulative lines displaced since 1995).

in the availability of circuit-switched cable telephony. That technology is currently available to more than 20 million homes[60] and half a million businesses[61] and has captured between 25% and 40% of the local telephone market where it is available.[62] Cable operators are, moreover, adding tens of thousands of new telephone subscribers each month.[63]

These figures do not even take into account the dramatic impact that the rollout of VOIP by cable operators and other providers will have on competition for local voice telephony. Every customer of cable modem service can now receive local telephone service over their cable modem connection, either because their cable operator itself has rolled out VOIP, or because

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[60] Bernstein Research Call, *U.S. Telecom & Cable: Faster Roll-out of Cable Telephony Means More Risk to RBOCs; Faster Growth for Cable* Exhibit 1 (Dec. 17, 2003) ("*Risk to RBOCs*").

[61] *See, e.g.*, Charter Communications, Press Release, *Charter Announces 2002 Operating Results and Restated Financial Results for 2001 and 2000; Company Will Extend Filing of Form 10-K* (Apr. 1, 2003), http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=CHTR&script=460&layout=-6&item_id=396550; RCN, Press Release, *RCN Announces Fourth Quarter and Year-End 2002 Results* (Mar. 13, 2003), http://www.rcn.com/corpinfo/earnings.php?id=145; Comcast, Press Release, *Comcast Full Year and Fourth Quarter Results Meet or Exceed All Operating and Financial Goals* (Feb. 27, 2003), http://www.cmcsk.com/phoenix.zhtml?c=118591&p=irol-newsArticle&t=Regular&id=445837&; Insight Communications, Press Release, *Insight Communications Announces Fourth Quarter and Year-End 2002 Results* (Feb. 25, 2003), http://www.insight-com.com/PR/read_releases.asp?Year=2003&rID=39; Cox Communications, Press Release, *Cox Communications Announces Fourth Quarter Financial Results for 2002; Strong Demand for Cox's Digital Services Builds Solid Foundation for Continued Growth in 2003* (Feb. 12, 2003), http://www.cox.com/about/NewsRoom/; Cablevision Systems, Press Release, *Cablevision Systems Corporation Reports Fourth Quarter 2002 Financial Results* (Feb. 11, 2003), http://www.cablevision.com/index.jhtml?id=2003_02_11.

[62] *See, e.g.*, Dan Somers, President and CEO, AT&T Broadband, *Operational Overview*, AT&T Broadband, Investor Presentation, at 16-17 (July 2001) ("Some [Chicago] suburbs have 40 % penetration."); James Granelli, *Expanding Cable Telephony Is New Kid on SBC's Block*, L.A. Times (Jan. 21, 2003) ("As of the end of September, Cox provided telephone service for 30% of the 304,000 households it has wired in 14 south Orange County cities, where nearly all the homes are hooked up. It has a similar share in the San Diego County communities it serves."); AT&T, News Release, *AT&T Broadband -Comcast Merger Will Create More Competitive Marketplace* (Apr. 23, 2002), http://www.att.com/news/item/0%2C1847%2C10302%2C00.html (reporting that AT&T chairman C. Michael Armstrong said in testimony before Congress that "AT&T Broadband has already gained 25 % or higher cable telephony penetration in 55 communities").

[63] *See* Reply to Comments and Petitions to Deny Applications for Consent to Transfer Control of AT&T Corp. and Comcast Corp., MB Docket No. 02-70, at 11 (filed May 21, 2002) ("AT&T Broadband is capable of serving approximately seven million households, has enrolled over 1.15 million cable telephony customers, and is adding approximately 40,000 customers per month").

they can receive service over their broadband connection from one of the numerous alternative providers of VOIP such as Vonage. Or, to put it another way, every household that now has cable modem service available to it also has available an alternative source of voice telephone service.

First, with respect to the cable companies themselves, every major cable operator has either deployed IP telephony or is in final testing of that service, with firm plans to roll out the technology in 2004.[64] The cable companies' IP telephony plans are so aggressive that at least one industry analyst has "revis[ed its] joint long-term consumer cable telephony forecast to reflect the intentions of all the major MSOs to offer cable telephony to nearly 100% of their in-franchise homes over the next two-to-three years." *Risk to RBOCs*, at 1. Cable companies now offer voice telephone service to millions of additional homes using VOIP, and have announced plans to offer VOIP to more than 24 million homes by the end of 2004 and at least 20 million more the following year. And the number of lines is even greater because many homes have more than one line. The result is that, within two years, "roughly 82% of total US households" will have access to voice telephone service from their cable operators."[65]

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[64] *See, e.g.*, Matt Richtel, "Time Warner Deal Raises Ante in Cable's Bid for Phone Market," *New York Times*, Dec. 9, 2003, at A1, C7; *Risk to RBOCs* at 5; Peter Grant and Shawn Young, *Time Warner Cable Expands Net-Phone Plan*, Wall St. J., Dec. 9, 2003, at A19; *Cox Communications Delivers Cox Digital Telephone to 12th Market; Roanoke, Va. Marks Cox's First Market Launch of VoIP Technology*, Business Wire, Dec. 15, 2003; P. Bernier, *Cablecos Set Sights on VoIP*, Xchange Mag., Feb. 1, 2004; Charter Communications, Presentation at the Smith Barney Citigroup Entertainment, Media & Telecommunications Conference 22 (Jan. 7, 2004); Comcast, Presentation at the UBX 31st Annual Media Week Conference (Dec. 11, 2003), http://media.corporate-ir.net/media_files/irol/11/118591/presentations/cmcsk_121103c/sld016.htm.

[65] *See Verizon July 2 Ex Parte*, "Technological and Market Developments Since the Triennial Review Further Demonstrate That Competitors Are Not Impaired Without Access To Unbundled Mass Market Switching" at 2 and 6, Declaration of Michael K. Hassett and Vincent J. Woodbury at ¶ 17; see also Bernstein Research Weekly Notes, *US Telecom and Cable:Faster Rollout of Cable Telephony Means More Risk for RBOCs, Faster Growth for Cable*, at 4 (Jan. 9, 2004).

Second, VOIP deployment is not limited to cable companies. Anyone with a broadband connection (including both cable modem and DSL subscribers) can obtain VOIP capabilities from a wide range of competitors, none of whom needs a carriage agreement with the underlying platform owner. AT&T is currently offering VOIP to consumers in approximately 72 metropolitan markets throughout the country and, in addition, recently announced plans to expand deployment of IP telephony to the top 100 metropolitan areas within the next three months.[66] AT&T projects that it will have at least one million mass market customers by 2005.[67] There are currently a number of other VOIP providers, including Vonage, 8x8, VoicePulse and Pulver.com, among others, who offer cheap calling over any broadband connection.[68] These competitive VOIP providers can take advantage of new broadband platforms as quickly as they emerge, because customers may connect to a voice-over-broadband server as easily as they may browse the Internet on any platform. And, as discussed in Section II.A., *supra*, the underlying market for broadband transport is vibrantly competitive.

Text-based Internet services such as e-mail and instant messaging also compete directly against traditional voice telephony services in both the residential and business sectors.

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[66] Bernstein Research Note, Jan. 9, 2004, at 6. AT&T has announced plans to make its VOIP network available through "Bring Your Own Access," wireless, BPL, and municipal fiber to the home. *See AT&T Plans a Vonage-style Consumer VoIP Service*, Converge! Network Digest, http://www.convergedigest.com/Bandwidth/newnetworksarticle.asp?ID=8669 (last visited Apr. 14, 2004) , AT&T, *CallVantage Market Availability*, https://www.usa.att.com/callvantage/order/upcoming_markets.jsp (last visited Apr. 14, 2004); Tim McElligott, *AT&T Steals Show With VoIP Launch*, Telephony Online, Apr. 5, 2004; *Verizon July 2 Ex Parte*, "Technological and Market Developments Since the Triennial Review Further Demonstrate That Competitors Are Not Impaired Without Access To Unbundled Mass Market Switching" at 10, Declaration of Michael K. Hassett and Vincent J. Woodbury at ¶ 33.

[67] *Verizon July 2 Ex Parte*, "Technological and Market Developments Since the Triennial Review Further Demonstrate That Competitors Are Not Impaired Without Access To Unbundled Mass Market Switching" at 10, Declaration of Michael K. Hassett and Vincent J. Woodbury at ¶ 33; see also AT&T News Release, *AT&T's CallVantage Service Expands To Serve the Western United States* (May 17, 2004).

[68] *See* Will Wade, *A Game of Phone Catch-Up on the Net*, New York Times, Dec. 18, 2003, at E8; Jesse Drucker, *Vonage, TI Plan a Web Phone Deal*, Wall St. J., Jan. 9, 2004, at A8.

Customers are sending approximately 25 billion person-to-person email messages and IM messages per day.[69] If only two percent of the 25 billion daily e-mail and instant messages substitute for a voice call, that is equivalent to about 900 billion minutes per year, or roughly one-third of all voice traffic that passes through the incumbents' networks.[70]

In sum, ILECs face substantial competition from a broad variety of alternative providers of local voice telephony services or substitutes for such services. And that competition is on an upward trajectory. The Commission cannot continue to conduct its analysis of whether its TELRIC pricing regime remains appropriate with blinders on to the competitive realities of the marketplace.

B. Real-World Market Developments Since 1996 Demonstrate That TELRIC Must Be Reformed.

In response to the development of significant competition in the market for local telephone service, the Commission should abandon the assumption of a hypothetical network with efficiencies that no real-world carrier can match that underlies the TELRIC pricing regime for UNEs. As the Commission itself recognized in the *TELRIC NPRM*, the core problem with the TELRIC rules is directly traceable to the fact that they are not tethered to *any* real-world network, but instead are based on a hypothetical network construct that assumes false

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[69] *Verizon July 2 Ex Parte*, "Technological and Market Developments Since the Triennial Review Further Demonstrate That Competitors Are Not Impaired Without Access To Unbundled Mass Market Switching" at 15, Declaration of Michael K. Hassett and Vincent J. Woodbury at ¶ 68; see also AXS-One News Release, *MONY Group Implements SEC and NASD Compliant Instant Messaging and E-mail Archival Solution from AXS-One and EMC* (Jan. 26, 2004).

[70] *Verizon July 2 Ex Parte*, "Technological and Market Developments Since the Triennial Review Further Demonstrate That Competitors Are Not Impaired Without Access To Unbundled Mass Market Switching" at 15, Declaration of Michael K. Hassett and Vincent J. Woodbury at ¶ 68; see also Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Trends in Telephone Service* at Table 10.1 (Aug. 2003) (Total 2001 Dial Equipment Minutes of 4.8 trillion divided by 2 yields 2.4 trillion conversation minutes; 913 billion/2.4 trillion = 38%).

efficiencies that no actual carrier can achieve. *Review of the Commission Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Services by Incumbent Local Exchange Carriers*, 18 FCC Rcd 18945, ¶¶ 49-50 (2003) ("*TELRIC NPRM*"). The theoretical nature of the rules also results in a standardless "black box" approach to setting prices that can be manipulated to produce any desired result. *Id.* at ¶ 7. That process has produced rates well below any rational measure of the incumbent's, or any other carrier's, real-world costs, forward-looking or otherwise.[71]

The Commission's current TELRIC pricing rules were adopted shortly after the passage of the 1996 Act with the avowed purpose of "jump start[ing]" competition.[72] When the Commission adopted the rules, it committed to review them after states had implemented the first round of pricing decisions. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶ 620 (1996) ("*First Local Competition Order*"). More than seven years have passed without any action, and as Chairman Powell has noted, "[s]even years is a long time in the telecommunications industry." *TELRIC NPRM*, (Separate Statement of Chairman Michael K. Powell). As discussed above, there has been an explosive growth in intramodal and intermodal competition in the local voice telephony market in recent years. *See* Section III.A, *supra*. In view of the significant competition that now exists in the market for local telephone service, artificially low UNE rates clearly are not "necessary in

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[71] *See, e.g.*, *Triennial Review Order*, ¶ 517 n.1581 (stating that "the costs of self-providing . . . elements [are] likely much higher than obtaining them from the incumbent priced at TELRIC"); David M. Mandy and William W. Sharkey, Dynamic Pricing and Investment from Statis Proxy Models 17, 40 n.48 (Sept. 2003) (FCC OSP Working Paper Series, No. 40) (concluding that successive repricing based on a hypothetical network results in rates that understate costs); Jeremy Pelofsky, *FCC Chief Denies Leaving, Outlines Media Agenda*, The Star-Ledger, Aug. 19, 2003 (noting that Chairman Powell has stated that TELRIC produces UNE rates that are "subsidized and below costs").

[72] *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 488 (2002) (quoting 141 Cong. Rec. 15572 (1995) (Statement of Sen. Breaux)); *AT&T Corp. v. Iowa Utlis. Bd.*, 525 U.S. 366, 371 (1999).

the public interest" and the TELRIC rules must therefore be repealed or modified. 47 U.S.C. § 161(b).

In the context of the competition that has already developed, the TELRIC pricing rules not only make no sense, but are causing damage. TELRIC affirmatively discourages new investment by ILECs and other facilities-based providers, on the one hand, and eliminates any incentive for CLECs to construct their own networks altogether, on the other. *See* Comments of the Verizon telephone companies, WC Docket No. 03-173, at 8-18 (filed Dec. 16, 2003) ("*Verizon TELRIC Comments*"). The Commission itself recognized this in the *Triennial Review Order*, stating that "unbundling requirements tend to undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology." *Triennial Review Order*, ¶ 3.

Indeed, between 2000 and 2003, as previously prescribed TELRIC rates were further slashed, overall investment by wireline telecommunications carriers declined by more than $70 billion in three years (from $104.8 billion to $33.4 billion).[73] One analyst has estimated that total capital expenditures by the Bell companies declined by approximately 35 % from 2001 to 2002 alone.[74] It has long been recognized that "[i]f the incumbent LEC, the putative owner of the local network, no longer can recover the costs of investments that it would make on a forward-looking basis—let alone keep any economic rents accruing to such investments—then entrants become free riders and the incumbent LEC's incentive to make further investment in the local

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[73] Skyline Marketing Group, CapEx Report: 2002 Annual Report, Carrier Data Sheet 1, Summary Overview (June 2003); Skyline Marketing Group, CapEx Report: 2003 Annual Report, Carrier Data Sheet 1, Summary Overview (April 2004).

[74] *See id.* (citing UBS Warburg, Fixed-Line Communications, Are the Bells Growing Less Profitable? 41 (Apr. 16, 2003)). Moreover, Verizon's own investments are consistent with this industry trend. From 2000 to 2003, Verizon's capital expenditures for its domestic wireline business dropped from approximately $12.1 billion to approximately $6.8 billion, a decline of over 40 percent. Verizon Communications Inc., Form 10-K 17 (filed Mar. 12, 2004).

exchange network evaporates." J. Gregory Sidak and Daniel F. Spulber, *The Tragedy of the Telecommons: Government Pricing of Unbundled Network Elements Under the Telecommunications Act of 1996*, 97 Columbia L. Rev. 1081, 1161 (1997).

The availability of UNEs at TELRIC rates also eliminates any incentive that CLECs might have had to construct their own networks. In point of fact, capital expenditures by facilities-based CLECs reportedly declined by 19% from 2000 to 2001, and by 56% from 2001 to 2002.[75] Industry analysts have explained that the incentives created by TELRIC for CLECs are clear: "[n]o company will deploy and scale facilities if it can achieve similar economics immediately by renting network elements from the ILECs—all with little up-front investment."[76] CLECs themselves have admitted that the availability of UNEs at TELRIC rates allows them to avoid any need to make investments to construct their own networks. Z-tel, for example, a company that admittedly was "formed around UNE-P," has told investors that its "UNE-P-based business model allows [it] to avoid significant capital investments in network facilities."[77] Simply put, TELRIC pricing provides CLECs with such substantial profit margins and windfall returns that it makes no sense for CLECs to invest in their own facilities.[78]

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[75] Association for Local Telecommunications Services, *The State of Local Competition 2003*, at 10 (Apr. 2003), http://www.alts.org/Filings/2003AnnualReport.pdf.

[76] *Verizon TELRIC Comments* at 10 (quoting McKinsey & Co. and JP Morgan H&Q, Industry Analysis: Broadband 2001, A Comprehensive Analysis of Demand, Supply, Economics, and Industry Dynamics in the U.S. Broadband Market 18 (Apr. 2, 2001)).

[77] Z-Tel Communications Inc., 2001 Annual Report ii, http://media.corporate-ir.net/media_files/NSD/ZTEL/reports/ztel_2001.pdf; *see* eLEC Communications Corp., Form 10-Q 7 (filed July 17, 2000) (stating that it "ha[s] chosen . . . [UNE-P] to grow our customer base *because* it allows us to rapidly enter new markets with *minimal capital expenditures*") (emphases added); *Verizon TELRIC Comments* at 11 (noting that CLEC Talk America stated that it "can now lease the necessary elements of the Bell network—without the need for costly network infrastructure, which allows us to earn attractive gross margins" and that it is "deploying very little capital" to provide UNE-P service) (quoting Talk America, 2000 Annual Report 7).

[78] *See Verizon TELRIC Comments* at 11-13. Attractively low TELRIC rates have, moreover, caused CLECs to curtail the use of their *existing* facilities in favor of the UNE platform. *See id.* at 13-14.

The decreased investment in the telecom industry that is caused by TELRIC not only harms the communications industry and consumers, but also threatens the entire U.S. economy. One analyst has estimated that TELRIC pricing of UNEs has contributed to an annual decline in economic output and national income equivalent to $101 per household.[79] Indeed, the "reduced incentives to invest in telecommunications infrastructure and services" that are caused by TELRIC have the potential to "result in considerable economic harm."[80]

Even apart from the Commission's obligation under the biennial review to update the TELRIC regime to reflect competitive developments, other sections of the Communications Act, as well as the Constitution, require the Commission to abandon TELRIC in favor of pricing rules that are based on the incumbents' actual forward-looking costs. The Communications Act requires that UNE rates be "just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(3). UNE rates that are below the ILEC's actual forward-looking costs cannot meet this standard because they provide the CLECs with an artificial cost advantage and thus discriminate against the ILEC in its provision of retail services. Accordingly, the statutory standard of Section 251(c)(3) *requires* that UNE rates recover the ILEC's actual forward-looking costs.

The Constitution mandates the same result. The UNE regime gives competitors the right to the use and enjoyment of a portion of the incumbent's network and, thus constitutes a taking of property within the meaning of the Fifth Amendment and gives rise to a constitutional

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[79] Stephen B. Pociask, The Effects of Bargain Wholesale Prices on Local Telephone Competition: Does Helping Competitors Help Consumers? 20 (June 2003), http://www.newmillenniumresearch.org/ archive/wholesale-report-061603.pdf.

[80] *Verizon TELRIC Comments* at 16 (quoting Kenneth Arrow, Gary Becker, Dennis Carlton and Robert Solow, Report On Behalf of Verizon 12 (Nov. 18, 2003), http://lexecon.com/documents/Publications/1/9/5/VZTECH_Report_Nov_18.pdf).

requirement to provide just compensation.[81] Just compensation, in the context of a governmental requirement that a business provide a good or service to third parties, must, at a minimum, cover the unavoidable costs of producing the good or service the government has requisitioned—*i.e.*, the actual forward-looking costs of production—and not force the entity to operate at a loss.[82] Because TELRIC calculates compensation due the ILECs based upon numerous assumptions that are divorced from the actual costs of providing, operating, and maintaining those facilities, it does not compensate ILECs for their actual forward-looking costs[83] and thus violates the Takings Clause.

In sum, the Commission must reform its TELRIC rules to reflect the current state of competition and to ensure that the pricing methodology for UNEs does not affirmatively *decrease* competition by undermining the investment incentives for all facilities-based competitors and, in particular, handicapping the ability of facilities-based wireline carriers to be vigorous competitors in the world of intermodal competition. An approach that takes into account the abundant competition in the voice telephony market and the investment incentives of market participants is the only approach to UNE pricing that will send correct economic signals to all market players and thereby remove disincentives to investment and the development of

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[81] *See Bell Atlantic Tel. Co. v. FCC*, 24 F.3d 1441, 1443-46 (D.C. Cir. 1994); *GTE Northwest, Inc. v. Public Util. Comm'n,* 900 P.2d 495, 501-07 (Or. 1995); *see also First Local Competition Order*, ¶ 740 (assuming that "unbundled facilities requirements do result in a taking"); *Verizon TELRIC Comments* at 31-34.

[82] *United States v. Pewee Coal Co.*, 341 U.S. 114, 117-18 (1951) (plurality opinion) ("When a private business is possessed and operated for public use, no reason appears to justify imposition of losses sustained on the person from whom the property was seized."); *United States v. General Motors Corp.*, 323 U.S. 373, 379-83 (1945) (holding that when property is occupied by government mandate, the owner is entitled to recover his actual costs based on his particular circumstances).

[83] *Verizon TELRIC Comments* at 34; Declaration of Patrick A. Garzillo, ¶¶ 37-38 (demonstrating that TELRIC rates in Massachusetts and New York have not compensated Verizon for its actual forward-looking costs) (attached to *Verizon TELRIC Comments*).

facilities-based competition. In addition to being required under the biennial review, this result is mandated by the Communications Act and the Constitution.

C. The Commission Should Work To Eliminate Economic Rate Regulation Pursuant to Its Authority Under Sections 10 and 11

The Commission already has before it evidence that there exists substantial competition for end-user customer services. As Verizon has demonstrated above, and in recent filings in the *Triennial Review Order* docket, there already exists widespread competition for end-user telephone services, which constrains the rates that carriers can charge for these services. Wireless has already replaced over 19 million wireline access lines, and that number is expected to reach 34 million by 2007. Cable companies now offer voice telephone service to millions of additional homes using VOIP, and have announced plans to offer VOIP to more than 24 million homes by the end of 2004 and at least 20 million more the following year. *See* Section III.A, supra. Competitors in various markets offer services that compete with Verizon's voice telephone offerings, at rates that are comparable or below Verizon's voice telephone package rate. *See TRO Switching Ex Parte*, at Attachment 4 thereto.

Given the advent of competition for end-user telecommunications services, the Commission should move toward elimination of economic regulation of these services, as it is no longer necessary. The Commission has the authority to remove such regulations pursuant to its powers under the biennial review, 47 U.S.C. § 161, or may forbear from applying them pursuant to Section 10. *See* 47 U.S.C. § 160.

As the Commission properly noted when deregulating mobile wireless services, "[c]ompetition, along with the impending advent of additional competitors, leads to reasonable rates." *Implementation of Sections 3(n) and 332 of the Communications Act, Second Report and Order*, 9 FCC Rcd 1411, ¶ 174 (1994) ("Wireless Deregulation Order"). The Commission's

rationale was a simple one: "in a competitive market, market forces are generally sufficient to ensure the lawfulness of rate levels, rate structures, and terms and conditions of service set by carriers who lack market power." *Id.* at 173. *See also Policy and Rules Concerning the Interstate, Interexchange Marketplace*, *Second Report and Order*, 11 FCC Rcd 20730, ¶ 42 (1996) ("Just as we believe that competition is sufficient to ensure that nondominant interexchange carriers' charges for interstate, domestic, interexchange services are just and reasonable, and not unreasonably discriminatory, and to protect consumers, we believe that competitive forces will ensure that nondominant carriers' non-price terms and conditions are reasonable."); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities*, *First Report and Order*, 85 F.C.C.2d 1, ¶ 88 (1980) ("firms lacking market power simply cannot rationally price their services in ways which, or impose terms and conditions which, would contravene Section 201(b) and 202(a) of the Act").

The same rationale applies today to end-user telephone 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 carriers rates is no longer necessary. The Commission should use its authority under Sections 10 and/or 11 to begin eliminating such regulation.

IV. CONCLUSION

As set forth above, the Commission should use the opportunity presented by the biennial review to: (1) finish the deregulatory approach to broadband started in the *Triennial Review Order*, by clarifying several outstanding issues in that docket, and forbearing from any unbundling obligations Section 271 may be construed to impose; (2) eliminate Title II obligations and *Computer Rules* requirements that currently apply to wireline broadband Internet access services; (3) reform TELRIC so that UNE rates are based on the incumbent's actual

forward-looking costs rather than unverifiable hypotheses; and (4) move toward elimination of economic regulation. It also should repeal or modify the specific rules outlined in Exhibit B, including the continuing property record rules, the ONA/CEI requirements, and various accounting and ARMIS reporting requirements.

Respectfully submitted,

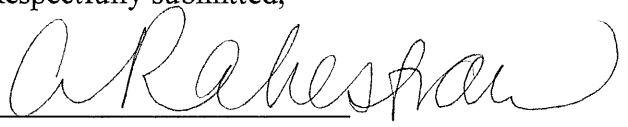

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Exhibit A

EXHIBIT A

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.

Exhibit B

EXHIBIT B TO VERIZON'S COMMENTS
RULE PARTS CONTAINING REGULATIONS ADMINISTERED BY THE WIRELINE COMPETITION BUREAU (WCB)
WC Docket No. 04-179

LIST OF SPECIFIC RULES THAT SHOULD BE MODIFIED OR REPEALED

Rules addressed in more detail in Verizon's Comments:

- **Broadband**. The Commission should eliminate or forbear from applying Title II regulations to telco-provided broadband services. In particular, with respect to broadband services, it should eliminate the requirement that the Bell Companies comply with the Computer Rules, modify or forbear from applying Title II retail requirements that apply to "dominant" services, and forbear from applying any unbundling obligations that Section 271 may be construed to impose. *See* Verizon Comments, Section II.

- **TELRIC**. Competitive developments in the local telephone market have eliminated any possible reason for requiring ILECs to make network elements available at TELRIC pricing. The Commission should reform TELRIC, and allow ILECs to recover their actual forward-looking costs. *See* Comments, Section III.B.

- **Economic regulation**. Given the state of local competition, the Commission should explore ways to eliminate or forbear from applying rate regulation of telecommunications services. *See* Comments, Section III.C.

Other specific rule change proposals:

Parts 32, 36, 43, and 64: Accounting and ARMIS reporting

In the Commission's 2000 biennial review of accounting issues, the Commission ordered or proposed several measures designed to streamline the accounting rules, and properly noted that, "if we cannot identify a federal need for a regulation, we are not justified in maintaining [it]." *2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2*, 16 FCC Rcd 19911, ¶ 207 (2001) ("*Phase 2 Order*"). However, it later convened a Federal-State Joint Conference, and suspended

implementation of several previously adopted changes while the Joint Conference considered "initiatives that will improve the collection of adequate, truthful, and thorough accounting data for regulatory purposes." *Federal-State Joint Conference on Accounting Issues*, Order, 17 FCC Rcd 17025, ¶ 4 (2002). Unfortunately, what the Joint Conference suggested was that the Commission largely *undo* much of the regulatory reform it adopted or proposed in the 2000 biennial review. The Commission wisely rejected many of these proposals. *See Federal-State Joint Conference on Accounting Issues*, Report and Order, WC Docket No. 02-269, FCC 04-149 (rel. June 24, 2004).

The Commission should once again turn to examining ways to repeal or modify many of the accounting and ARMIS reporting requirements that are "no longer necessary in the public interest as a result of meaningful economic competition." 47 U.S.C. § 161. The existing accounting and ARMIS reporting requirements are a relic of rate of return regulation, imposed on the local exchange carriers in an era prior to significant local entry, before their rates were under price caps, and before the Commission provided for pricing flexibility. In the Phase II and Phase III proceedings, commenters pointed out a number of rules that could be eliminated or streamlined, and the Commission should look to the comments in those proceedings to identify regulations that are no longer necessary. In particular, the Commission should:

- **Eliminate the continuing property record rules.** The Commission should repeal its detailed continuing property records rules.[1] These regulations, as the Commission has already recognized, "include rigid rules for recording property" and "impose substantial burdens on incumbent LECs." *Phase 2*

[1] 47 C.F.R. § 32.2000(f).

Order, ¶ 212 (footnote omitted). As Verizon has shown previously, these rules are wholly unnecessary because: (1) these records always were separate from the financial records that record the cost of equipment for rate-of-return calculations; (2) regardless, price cap regulation has eliminated any need for regulators to require detailed documentation of costs that make up their plant asset base and contribute to the calculation of depreciation expenses; (3) even for those few states that have retained rate-of- return regulation for large telephone companies, carriers' obligations to maintain standard records for financial reporting pursuant to GAAP ensures that costs for physical plant are accurately stated as inputs for revenue requirements; (4) elimination of the continuing property record rules will not result in the elimination of any property records, as some parties have alleged, because private market incentives ensure that parties will retain records of their physical assets;[2] and (5) as the Commission has concluded, "[i]ncumbent LECs are [already] subject to a number of other regulatory constraints and appear to have ample incentives to maintain a detailed inventory of their property."[3] Because the detailed continuing property records are "no longer necessary in the public interest," the Commission should repeal them. 47 U.S.C. § 161(b).

- **Streamline or eliminate Class A accounts.** The Commission should move toward a unified, streamlined level of accounting, so that carriers that currently are required to keep "Class A" accounting requirements can

[2] Verizon Comments, WC Docket No. 02-269, at 20-21 (filed Jan. 30, 2004).

[3] *Id.* at 21 (quoting *Phase 2 Order*, ¶ 212).

transition to keeping their accounts at the "Class B" level of detail. *See* Verizon Reply Comments, CC Docket No. 00-199, at 6-7 (filed January 30, 2001); United States Telecom Association Reply Comments, CC Docket No. 00-199, at 7-10 (filed January 30, 2001). The Class A accounts serve no regulatory purpose. There is no schedule for updating the universal service proxy model's cost inputs, and doing so does not require reliance on the local exchange carriers' actual costs. To the extent that the Commission uses the carriers' costs for inputs such as overhead loading factors and expense ratios, these can be developed from Class B accounts and special studies. Ultimately, the goal should be to move away from regulated accounts and allow LECs to maintain their accounting consistent with GAAP. In the interim, unless commenters can show particular need for particular accounts to be maintained at the Class A level of detail, the Commission should, at a minimum, streamline the accounting requirements so that the LECs who must comply with Class A level of reporting can move to the Class B level used for other carriers. *See* Joint Comments of BellSouth, SBC, Verizon, Qwest, Frontier, and CBT, CC Docket 00-199 (filed Apr. 8, 2002) ("Joint ILEC Comments"); Verizon Comments, WC Docket 02-269, at 13-15 (filed Jan. 31, 2003).

- **Eliminate many of the Automated Reporting Management Information System ("ARMIS") reporting categories**. The information that Class A carriers must report in ARMIS is far more than is needed for regulatory purposes. Indeed, much of what is still reported in ARMIS either is not

required, or is available from other publicly available sources. *See* Joint ILEC Comments, at 3-5, 14-18. The Commission should not require ILECs to systematically continue to report information that is no longer necessary for federal regulatory needs, or to stick with an outmoded system of accounting that is not necessary for tracking such information. Some states have previously stated that they do not use certain ARMIS reports, and many are duplicative of data that is otherwise available to regulators. Because only certain ILECs are required to abide by ARMIS reporting, the information is also incomplete. The ARMIS reports track information from only a small segment of the industry: namely, a handful of incumbent LECs. Given the intermodal nature of competition, and the rapid deployment of facilities by cable providers, wireless carriers, and others, tracking information on LEC networks becomes less and less relevant. The Commission should explore instances in which data that is being reported in ARMIS can be streamlined and/or moved to other, industry-wide information-gathering efforts, such as the Form 477 (Local Telephone Competition and Broadband Reporting). In instances where data already is available through other sources, it is not necessary to require it to be reported in ARMIS.

- **Eliminate CAM Reports.** In the 2000 Biennial Review, the Commission eliminated the requirement that mid-size carriers file Cost Allocation Manual ("CAM") filings, or be subject to an attest audit every two years. *See Phase 2 Order*, ¶¶ 190-91. In lieu of the CAM report, it allowed such carriers to annually certify that they are complying with § 64.901 requirements re

separating regulated and non-regulated costs, and be prepared to produce supporting documentation if required by regulators. *Id.* The Commission should allow the BOCs to comply with the same, streamlined requirements, which would eliminate the preparation and submission of these time-consuming and burdensome reports. With the advent of price cap regulation and intermodal competition, the original rationale for tracking and auditing cost allocations is no longer necessary.

- **Revise Section 64.901(b)(4): Forecasting requirements for nonregulated usage of central office and outside plant.** Commenters have long urged the Commission to either eliminate the central office and equipment outside plant forecast rule, or to streamline the requirements of 47 C.F.R. § 64.901(b)(4) to allow for a one-time three year forecast for allocating usage, rather than a three-year forecast every year. *See, e.g.*, USTA Reply Comments, WC Docket 02-313, at 8-9 (filed Nov. 4, 2002); Verizon Comments, WC Docket 02-269, at 17-18 (filed Jan. 31, 2003). Because the rules require that the higher of either actual or forecasted nonregulated amounts be used, the first forecast should be sufficient for all three years. If actual usage increases above the forecasted amount, actual usage would be used; if actual usage falls below the three year forecast, the higher (forecasted) amount still would be used. Indeed, Verizon and Qwest pointed out in earlier comments that 95-97% of nonregulated central office and outside plant accounts resulted from direct assignment and not from the forecasting process. *See* Verizon Comments, WC Docket 02-269, at 18 n.17.

Part 51: Interconnection

Open Network Architecture ("ONA")/Comparably Efficient Interconnection ("CEI") Reporting. As stated in Verizon's comments, the ONA/CEI requirements unquestionably should not apply to broadband services. *See* Verizon Comments, at Section II B. However, the Commission should go even further, and eliminate the ONA and CEI reporting requirements altogether. It has now been almost twenty years since the Commission eliminated structural separation for provision by former Bell companies of enhanced or information services and replaced it with ONA nonstructural requirements. *See Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 104 FCC 2d 958, ¶¶ 98-100 (1986) ("*Computer III Order*").[4]

When it replaced structural separation with non-structural requirements, the Commission sought to provide assurance that the former Bell companies could not use their supposed local bottleneck for traditional narrowband telephony to monopolize the then-emerging information service business and prevent fair competition. *Id.*, at ¶ 77. However, the regulatory assumptions that formed the basis for the ONA/CEI nonstructural requirements no longer are valid, as competition for information services – and the various intermodal platforms over which they now travel – is undeniably robust. *See* Verizon Comments, at . The ONA/CEI rules are no longer "safeguards" for competition, but regulatory millstones that tie down only one set of carriers (BOCs) with

[4] Under the CEI requirements, when a BOC offers an enhanced service, it also must offer network interconnection opportunities to competitive enhanced service providers that are comparably efficient to the interconnection that its own enhanced service operation enjoys. *See Computer III Order*, ¶ 112. The ONA rules require the BOC to design its network to allow unbundled access to specific basic network functions and interfaces. *Id.*, ¶ 113.

needless regulation, and serve no real purpose. These burdensome and costly requirements are no longer necessary from a public policy perspective, and are actually in conflict with the goals elicited in Section 706 of the Act which provides incentives for timely deployment of advanced telecommunications capability. *See* Verizon Comments, CC Docket Nos. 95-20 and 98-10, at 16 (filed Apr. 16, 2001).

Notice of network changes, network disclosure rules, 47 C.F.R. §§ 51.325 – 335. The Commission should amend the public notice requirements to allow them to be satisfied by Internet posting, rather than formal notice to the Commission. In implementing Section 251(c)(5), the Commission established network disclosure rules that establish procedures to provide public notice before an ILEC implements a network change. The standard public notice period is twelve months; a shorter period of time is permitted if the change can be made within six months of the "make/buy point" (*i.e.*, the time the ILEC decides to make or procure a device that affects or relies on a new or different network interface). The Commission already has proposed streamlining the rules, to delete the section 51.329(c)(3) requirement that requires that paper and diskette copies of the incumbent LEC's public notice or certification be sent to the Chief of the Bureau, finding that "this requirement is no longer necessary to the public interest." *Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, 19 FCC Rcd 764, ¶ 20 (2004). However, the Commission did "not extend this tentative conclusion to remove all obligations to notify the Commission, as some commenters have suggested," because it believed that, due to the "importance we placed in the *Triennial Review Order* on the modifications to our network disclosure rules, we do not believe that Internet posting is a sufficient method of disclosure." *Id.*

The Commission should reconsider that tentative conclusion, and adopt the BellSouth proposal to allow carriers to satisfy the public notice requirement through Internet postings. *See* BellSouth Comments, WC Docket 02-313, at 2-6 (filed Nov. 4, 2002). Since the time when these rules were enacted, Internet usage has become ubiquitous; Verizon has a public website that makes these public disclosures available to any carrier that interconnects with Verizon. *See* http://www22.verizon.com/regulatory/reg_ntw_dscl.html. Because Internet postings are a much faster and more effective way of communicating network changes, the Commission's costly and time-consuming public notice system has become no longer necessary. Moreover, due to the rapid deployment of new products and services, the time it takes for the Commission to process and put out any proposed network changes for public comment delays such deployment.

If the Commission does not entirely eliminate the need for Commission filings, it should at least revise the rules regarding certification regarding the short-term notice rules. 47 C.F.R. § 51.333(a). Currently, the short term notification rules require that a carrier send out a notice to all potentially affected carriers at least five days before its filing the public notice with the Commission. 47 C.F.R. § 51.333(a). The Commission should change the rule to require that carriers instead certify that they have posted the notice on a publicly available website that lists proposed network changes, and since no mail delay would exist, should also eliminate the five day lag time between when the carrier posts the notice and when it files its certification with the Commission. This would provide actual notice to affected carriers, while eliminating the unnecessary delay and expense associated with mass mailings. It also would provide notice to persons who

may be interested in the proposed network change, even if they are not ones that the carrier had identified as being potentially affected. Objections to the change would continue to be due within ten business days from the date the Commission's public notice was published.

Part 53 – Special Provisions Concerning Bell Operating Companies

The Commission recently – and correctly – eliminated the rules that prohibited a Bell Operating Company (BOC) from sharing operating, installation, and maintenance (OI&M) functions with its Section 272 affiliate. *See Section 272(b)(1)'s "Operate Independently" Requirement for Section 272 Affiliates*, 19 FCC Rcd 5102 (2004). It should allow the remaining rules to sunset three years after a BOC has obtained 271 authority, in accordance with the statutory presumption. *See* 47 U.S.C. § 272(f)(1). Congress was aware that Section 272's structural separations requirements impose inefficiencies and restrain competition, so it chose to employ this mechanism on only a temporary basis, relying on other safeguards that would continue after three years, including the non-discrimination requirements of sections 202 and 272(e)(1), the requirement for reasonable rates under section 201, and the requirement in section 272(e)(3) that the BOCs impute to their own long distance services the same access charges that they apply to non-affiliated interexchange carriers. Delaying the sunset, or requiring BOCs to demonstrate that some other criteria are met before sunset occurs, would be inconsistent with the congressional scheme. *See* Comments of Verizon, WC 02-112, at 2-11 (filed Aug. 5, 2002); Reply Comments of Verizon, WC 02-112, at 2-7 (filed Aug. 26, 2002).

The Commission has allowed the 272 requirements to sunset in several states. *See e.g. Verizon Massachusetts 272 Sunset*, 19 FCC Rcd 7588 (2004), *SBC Kansas and Oklahoma 272 Sunset*, 19 FCC Rcd 1747 (2004). The Commission should continue to allow such 272 requirements to sunset for other states, and allow long distance services to continue to be offered on a non-dominant basis without imposing new burdens. *See* Comments of Verizon, WC 02-112, (filed Aug. 5, 2002); Reply Comments of Verizon, WC 02-112, (filed Aug. 26, 2002), Letter from Dee May, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 02-112 (filed May 19, 2004).

Part 61--Tariffs

Withdrawal of tariffs not yet in effect. The Commission should revise the rules regarding the effective date of tariff filings, to allow carriers to withdraw entire tariff filings, without FCC permission, any time before they go into effect. Under current rules, "[c]hanges to rates and regulations that have not yet become effective, *i.e.*, are pending, may not be made unless the effective date of the proposed changes is at least 30 days after the scheduled effective date of the pending revisions." *See* 47 C.F.R. § 61.59(b). However, if a carrier files a new tariff or files a tariff revision, and subsequently wishes to withdraw the proposed tariff or tariff revision in its entirety, it should be allowed to do so on one day's notice, without FCC permission. Such a rule would simply revert back to the status quo before the proposed tariff filing was made, so there is no need for additional notice requirements. It also would relieve carriers from having to seek special permission from the Commission every time such a withdrawal is made on less than thirty days notice.

Miscellaneous technical rules. The Commission should eliminate or revise several technical requirements of the tariffing rules, as set forth below. Without these rule changes, carriers must routinely seek special permission or waivers of the rules. Although these requests are almost always granted, seeking special permission or waivers is costly and generates needless labor-hours and filing fees, and requiring staff to handle these requests on a case-by-case basis creates an unnecessary drain on FCC resources. Eliminating the need to obtain waivers avoids these unnecessary costs, and speeds up the deployment of new products and services.

- 47 C.F.R. § 61.74(a) states that no tariffs may make reference to any other tariff publication, "[e]xcept as otherwise provided in this and other sections of this part." Given the ability to quickly and easily access all other tariffs via electronic databases, the rule should be modified to allow a carrier to reference its other tariff publications that are currently in effect and on file with the Commission. The Commission could accomplish this through either eliminating § 61.74(a), or adding another part, § 61.74(f), which states "(f) A carrier's tariff may reference any other tariff of that same carrier that is in effect and on file with the Commission." To date, during 2004 alone, Verizon has filed more than a dozen requests for a waiver of this rule, with resulting tariff fees exceeding $12,000.

- 47 C.F.R. § 61.54(c)(2) allows pages to be inserted between numbered pages. For example, if carriers wish to insert a page between 44 and 45, the page would be numbered 44.1. Verizon proposes that the rule be amended to allow "double-dot" pages. For example, the new rule should specifically allow a page between 44.1 and 44.2 to be numbered 44.1.1. Without such a rule change, Verizon often must ask for a waiver of this rule when new tariffs are issued.

- 47 C.F.R. § 61.52(b)(1) requires that the name of the issuing carrier be included on the upper right-hand corner of each tariff page. Verizon must ask for a waiver of this rule when new tariffs are issued so that the name "The Verizon Telephone Companies" may be used instead of listing all the issuing carriers on each tariff page. The Commission should amend the rule to require tariff pages to show, "the name of the issuing carrier*(s) or the entity filing on behalf of the issuing carrier(s)*."

Exhibit C

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	**CC Docket No. 01-338**
Implementation of the Local Competition Provisions of the Telecommunications Act of Act	)	**CC Docket No. 96-98**
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	**CC Docket No. 98-147**

EX PARTE

Technological and Market Developments Since the *Triennial Review* Further Demonstrate that Competitors Are Not Impaired Without Access to Unbundled Mass Market Switching

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June 2004

Technological and Market Developments Since the *Triennial Review* Further Demonstrate that Competitors Are Not Impaired Without Access to Unbundled Mass Market Switching

During the course of the *Triennial Review* proceeding, Verizon and others submitted voluminous evidence demonstrating the extensive deployment of competitive switching and the emergence of intermodal alternatives.

Since that time, as outlined below, the widespread deployment of competing voice telephone services by cable companies and VoIP providers, as well as increasing competition from wireless and other intermodal providers, has rendered much of the debate at the time of the *Triennial Review* proceeding academic. These developments conclusively show that competition is not impaired without access to unbundled mass market switching.

First, as a general matter, developments since the time of the *Triennial* further demonstrate that competition is not impaired without unbundled switching nationwide.

- 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 plan to offer it to at least 20 million more the following year; and of course the number of lines is even larger.

- Regardless of whether cable companies themselves offer VoIP, the 85-90 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: since the time of the *Triennial*, the number of wireless lines has grown from 137 million to 155 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 43 percent of long distance traffic.

- Competing carriers now have some 10,000 circuit switches and packet switches nationwide, and have used their switches to provide voice telephone service in wire centers that contain 86 percent of Bell company access lines nationwide.

Second, these developments are particularly pronounced in the areas served by Verizon, as demonstrated below and in the accompanying maps for the top 25 MSAs

(based on number of access lines) where Verizon provides local services as the incumbent.

- Cable companies already offer voice telephone service, either circuit-switched or VoIP, to more than 12 million homes in Verizon's service areas.

- Regardless of whether the cable companies themselves offer VoIP, approximately 92 percent of the population in Verizon's top 25 MSAs now have access to cable modem service, and therefore also have access to VoIP from numerous alternative VoIP providers at competitive prices.

- Wireless service is available from multiple competing providers in Verizon's top 25 MSAs at prices that are directly competitive with wireline voice telephone service.

- Competing carriers are using their own switches to serve at least 2.1 million mass market lines in Verizon's top 25 MSAs, and, as demonstrated in the accompanying maps, are capable of and are serving mass market customers throughout these MSAs.

- This evidence is summarized in the attached maps and attachments.

Background

In the *Triennial Review Order*, the Commission imposed a nationwide unbundling obligation for mass market circuit switching. In doing so, the Commission made five key determinations:

- *First*, the Commission predicated its nationwide impairment finding on the need to obtain "hot cuts" to connect unbundled loops to competitive switches. *See, e.g., TRO* ¶ 422.

- *Second*, the *Order* established "triggers" for removing unbundling obligations for mass market switching where there are multiple providers in a given market, and delegated to the states the responsibility to define the relevant market and to determine where the triggers are met (and where carriers therefore are not impaired). *See, e.g., TRO* ¶¶ 498-505.

- *Third*, the *Order* recognized that there are other instances where, even though the triggers are not satisfied, competition is possible (and therefore there is no impairment), and it delegated to states the task of determining where that is the case. *See, e.g., TRO* ¶¶ 424, 294.

- *Fourth*, the *Order* downplayed the significance of competition from intermodal competitors such as cable companies and wireless on the grounds that, at the time, it was "difficult to predict at what point cable telephony will be deployed on a more widespread basis," and on the grounds that it lacked evidence at the time showing that wireless "act[ed] broadly as an intermodal replacement for traditional circuit switches." *See, e.g., TRO* ¶¶ 444-45.

- *Fifth*, the *Order* concluded that there is no impairment (and therefore no unbundling obligation) with respect to circuit switching to serve enterprise level customers, or with respect to packet switching or the packet switching capabilities of hybrid loops. *See, e.g., TRO* , ¶¶ 537-541, 451-458.

In *USTA II*, the D.C. Circuit vacated the rules requiring unbundling of mass market switching. 359 F.3d at 658-571. The Court reached six key conclusions that are relevant to switching facilities.

- *First*, the Court held that issues related to hot cuts did not provide a lawful predicate for the Commission's impairment finding, and that any such issues could be addressed directly through more narrowly tailored alternatives that did not impose all the costs associated with unbundling. 359 F.3d at 568-71.

- *Second*, the Court "vacate[d] the Commission's scheme for subdelegating mass market switching determinations" to the states, including "crucial decisions regarding market definition and application of the FCC's general impairment standard to the specific circumstances of those markets." 359 F.3d at 567, 568.

- *Third*, the Court specifically noted that as to "mass market switching . . . the evidence indicated the presence of many markets where CLECs suffered no impairment in the absence of unbundling." 359 F.3d at 587.

- *Fourth,* the Court reiterated that the critical impairment inquiry is whether competing providers are *capable* of competing without UNEs – that is, whether "competition is possible," not whether one or more competitors are already competing in a given market *see* 359 F.3d at 575 – and that the Commission must consider competitive deployment in one market in determining whether competition is impaired in a "similarly situated" market where competitors have not yet deployed (or have deployed to a lesser extent), *id.* *See also id.* at 571 (issue is "whether a market is suitable for competitive supply").

- *Fifth*, the Court expressly noted that "we reaffirm *USTA I's* holding that the Commission "cannot ignore intermodal alternatives," and found that it "need not decide" whether the Commission had assigned appropriate weight to this factor because it vacated the rules on other grounds. *Id.* at 572-73.

- *Sixth*, the Court affirmed the Commission's determinations that there are no unbundling obligations for enterprise level switching or for the packet switching capabilities of hybrid loops (which is the only aspect of the Commission's packet switching determinations that was challenged).

Cable Company Deployment of Competing Voice Telephone Services Has Expanded Exponentially Since the *TRO* Proceeding

At the time of the *Triennial Review* proceeding, cable companies already offered circuit-switched voice telephone services to approximately 10 million homes across the country. Since that time, the deployment of competing telephone services by cable companies has expanded exponentially as cable companies roll out VoIP service over their cable networks.

A. Cable companies initially began providing voice telephone service using traditional circuit switches, and are now aggressively rolling out VoIP service to their customers.

- As of the end of 2003, cable companies already offered circuit-switched voice telephone services to approximately 15 percent of homes nationwide.

- In addition, cable companies now offer voice telephone service to millions of additional homes using VoIP, and have announced plans to offer VoIP to more than 24 million homes by the end of 2004 and at least 20 million more the following year.

  -- The number of lines is even greater because many homes have more than one line.

- Within two years, roughly 82 percent of US households will have access to voice telephone service from their cable operator.

B. While cable companies are aggressively competing for mass market customers across the country, this competition is particularly advanced in the areas where Verizon provides local telephone services.

- Cable companies already offer voice telephone service to more than 12 million homes in Verizon's service areas, either circuit-switched or VoIP, and have announced that they will offer service on a much wider basis by the end of this year.

- Each of the major cable companies has major concentrations of customers in Verizon's service areas, and either already is offering or is in the process of rolling out voice telephone service to large numbers of customers. *See* Attachment 1.

- *Cablevision* was the first cable operator to offer VoIP service throughout its service area in New York and New Jersey.

  -- Cablevision now offers VoIP to the 4 million homes it passes in the New York metropolitan area and in New Jersey, and it is now adding 3,200 VoIP customers per week.

- -- Cablevision offers unlimited local and long distance telephone service for $34.95.

- -- Cablevision also recently rolled out a new bundled offering that includes unlimited local and long distance telephone calls plus digital cable and high speed Internet access for $89.85, about the same amount many of its customers already pay just for digital cable and high speed Internet access. Customers "are essentially receiving their voice service for free," according to Cablevision.

- *Time Warner* now offers VoIP service in 16 markets and will deploy VoIP to "essentially all" of its markets nationwide by the end of 2004, where it passes a total of 19 million homes.

  - -- Time Warner's systems pass at least 8 million homes in Verizon's service territories.

  - -- Time Warner has introduced a package of unlimited local and long distance telephone service for $39.95, when purchased with other services.

  - -- Time Warner has entered into deals with the major long distance carriers who will assist Time Warner with "provisioning . . . , termination of IP voice traffic to the public switched network, delivery of enhanced 9-1-1 service, local number portability and carrying long distance traffic."

- *Comcast* already offers circuit-switched voice service to more than nine million homes nationally and will offer VoIP to half of the 40 million homes it passes by the end of 2005 and to all of the homes it passes by the end of 2006.

  - -- In Verizon's service areas, Comcast already offers circuit-switched voice telephone services to approximately 6 million homes throughout eastern Massachusetts and in Pittsburgh, Richmond and Alexandria, Portland, Dallas, Seattle, Los Angeles and Orange County.

  - — Comcast offers local and long distance telephone service for $49.99 or less.

  - -- If its VoIP roll out in Verizon's service areas reflects the national average, Comcast also will offer VoIP to 7.5 million of the homes it passes in Verizon's service areas by the end of next year and to the approximately 15 million homes it passes by the end of 2006.

- *Cox* already offers circuit-switched voice service to more than half of the 10 million homes it passes nationally, and is now moving to roll out VoIP service in additional markets.

  -- In Verizon's service areas, Cox already offers circuit-switched voice telephone service to approximately 1.7 million homes, including the entire state of Rhode Island and in its service areas in the Tidewater region of Virginia and Orange County California, and Cox recently added service in Fairfax County, Virginia.

  -- Cox offers local and long distance telephone service for $49.95

  -- Cox also offers VoIP to approximately 77,000 homes in Roanoke, Virginia, and has announced plans to offer VoIP in additional markets this year.

- *Charter* has announced that it plans to offer VoIP services to at least one million of the homes that it passes nationally in 2004.

  -- In Verizon's service areas, Charter has announced that it plans to offer VoIP in Massachusetts, where it passes 284,000 homes, this year.

- *Starpower/RCN* offers circuit-switched voice telephone service in its service areas in eastern Massachusetts and in the metropolitan Washington DC area.

  -- For example, RCN offers its Megaphone service with unlimited local and long distance service for $55.00 or less.

C. Cable companies are aggressively targeting both residential and business customers.

- "[Cablevision] Lightpath provides voice, data, and Internet communications services over a state-of-the-art fiber-optic network to the New York, New Jersey, and Connecticut business market . . . with . . . more than 140,000 access lines and 18,000 Internet circuits."

- Cox Business Services provides data, voice, and transport services to more than 100,000 customers. More than 320,000 businesses lie within 100 feet of Cox's network, providing Cox a "significant opportunity."

- RCN has "signed several agreements to expand its business" to provide "voice, video, data, business cable, Internet access, transport," to "customers including universities, hospitals, and the financial and legal industries."

- Time Warner: "We've got an infrastructure there that is just ripe for commercial services . . . . We pass 1.2 million businesses . . . ."

VoIP Is Now Widely Available To Any Customer That Has Access to Cable Modem or Other Broadband Services

Regardless of whether the cable companies themselves offer voice telephone service in a particular area, any customer who has access to cable modem or other broadband services also has access to VoIP from multiple providers.

A. Any customer who has access to broadband service also has access to multiple providers of VoIP.

- VoIP expands the number of competitors that can offer mass market telephone service because they can offer VoIP over any type of broadband facility provided by any other company.

- VoIP is either already available from or is now being deployed by a wide range of companies, including major long distance companies, such as AT&T and MCI, national VoIP providers such as Vonage, and numerous other national or regional providers.

- For long distance carriers, VoIP appears to be the chosen method for serving the mass market.

  -- AT&T is offering consumer VoIP in 46 metropolitan markets, plans to expand to 100 metropolitan markets by the end of this year, and expects to have at least one million customers by 2005.

  -- MCI plans to launch a consumer VoIP initiative in 2004. Sprint is also looking to partner with cable companies to support VoIP, similar to its arrangement with Time Warner.

  -- Level 3 recently launched a wholesale service that provides carriers with all the building blocks needed to provide residential VoIP service. This service is currently available in 50 U.S. markets, and will reach over 300 markets by the end of this year.

B. Cable modem service and other broadband services are widely available both nationally and in Verizon's service areas in particular.

- Between 85 and 90 percent of U.S. homes have access to broadband service from a provider other than the incumbent local telephone company, principally cable modem service.

- In the top 25 MSAs where Verizon provides local telephone service as an incumbent, cable modem service is available to roughly 92 percent of homes. *See* Attachment 2.

-- The attached maps labeled "Map A" show that cable modem service is now generally available throughout these MSAs. *See* Attachment 12.

- In the states where Verizon provides local telephone service as an incumbent, there already were nearly 10 million cable modem subscribers by the end of 2003 – a 44 percent increase since the previous year alone. *See* Attachment 3.

C. VoIP competes directly with traditional telephone service and reflects the future of voice telephone service.

- Attachment 4 contains a series of charts that compare the prices and features of the voice telephone service offerings of several leading competitors, including VoIP providers, in each of Verizon's top 25 MSAs. *See* Attachment 4.

- The attached charts show that VOIP offerings are very competitive and are typically priced 30-40 percent or more below comparable narrowband (circuit-switched) offerings.

  -- In New York, for example: AT&T offers VoIP service for $34.99 per month, compared to $54.95 per month for its comparable UNE-P-based offering.

  -- Time Warner offers a bundled package of local and long distance service for $39.95. Cablevision offers a similar package for $34.95.

  -- Cablevision also recently introduced a bundled package of local and long distance, high speed internet access, and digital cable for $89.85 – about the same price it previously charged for high speed access and digital cable alone.

  -- And Vonage offers an unlimited local and long distance package for only $29.99. BroadVoice and Packet8 offer similar packages for $19.95.

- For customers who have not yet subscribed to broadband service, the combination of broadband service and VoIP is competitive with what customers pay for a narrowband bundle of local, long distance and dial up internet access.

  -- As shown in Attachment 5, the price for cable modem service plus VoIP typically is in the range of $70 to $95 per month; this is comparable to the price for dial up internet access plus a bundled local and long distance plan.

-- This shows that VoIP offerings are competitive for the 32 percent of U.S. households that still use dial up access.

- Even at these low rates, VoIP providers are reporting spectacular profit margins. For example:

  -- Cablevision estimates that its margins are 40-45 percent, and that it has a capital payback of 10 months.

  -- Vonage reports margins of 70 percent, headed to 80 percent.

  -- Kagan estimates that a voice-over-cable-broadband provider will have cash flow margins of 40 percent.

- And VoIP has rapidly gained acceptance as a replacement for traditional local telephone service.

  -- For example, 86 percent of Time Warner's VoIP customers keep their old phone number as do 50 percent of Vonage customers.

  -- In addition, consumer surveys indicate that "[r]oughly 34% of respondents that do not have VoIP [said they] would switch from their existing landline service to VoIP for cost savings."

Wireless Carriers and Other Intermodal Competitors Are Competing Extensively Both For Lines and For Minutes

A. Wireless carriers compete with incumbent wireline carriers both for local access lines and, even more extensively, for local and long distance calls.

- Since the time of the *Triennial Review* proceeding, wireless carriers are competing to an increasing degree to replace wireline access lines, as summarized in Attachments 6 and 7.

  -- Since the *Triennial Review* proceeding, the number of wireless customers has grown from 137 million to 155 million, and the number is continuing to grow at 20 million customers per year, while the number of wireline access lines has declined.

  -- Wireless service has already replaced over 19 million wireline access lines, and that number is expected to reach 34 million by 2007.

  -- Since the *Triennial Review* proceeding, the percentage of wireless customers that have given up their primary wireline service has grown from 3-5 percent to 7-8 percent.

  -- Approximately 2-3 million additional wireless customers are now giving up their wireline phones each year.

  -- At least 14 percent of U.S. customers now use their wireless phone as their primary phone.

- In addition, wireless carriers are competing even more extensively to displace telephone calls (thereby displacing revenue producing minutes) that previously used the switched wireline network, as summarized in Attachments 8 and 9.

  -- Wireless service packages include unlimited long distance calling, which has directly contributed to wireline traffic substitution and increasing average minutes of use among the wireless carriers.

  -- Merrill Lynch estimates that approximately 23 percent of all voice minutes were wireless in 2003 and that wireless could make up approximately 29 percent of all voice minutes in 2004.

  -- The increase in wireless long-distance calls is even greater. The Yankee Group estimates that 43 percent of long-distance calls are now made on wireless phones.

  -- By contrast, the FCC's own data show that toll minutes have declined rapidly for the wireline segment of the industry – from an

average of 149 minutes per month in 1997, down to only 90 in 2002.

-- In total, consumers have reduced the number of long-distance minutes of use on landline phones by 40 percent over the past five years.

-- Wireless carriers also now offer a variety of data services that compete for data traffic as well.

B. Wireless service is available from multiple providers throughout Verizon's service areas.

- The maps labeled "Map B" show that wireless service is widely available from multiple providers throughout the top 25 MSAs where Verizon provides local telephone services as the incumbent. *See* Attachment 12.

- Attachment 4 consists of a series of charts that compare the prices and features of the voice telephone service offerings of several leading competitors, including wireless offerings, in each of the top 25 MSAs where Verizon provides local telephone service as the incumbent.

  -- Wireless carriers were the first to offer rate packages that included local and long distance calls, and wireline and cable companies have introduced their own bundled offering to respond to those wireless rate packages.

  -- As these charts show, wireless service is now fully competitive with wireline service with respect to price. One Wall Street analyst notes that "[w]ireless pricing dropped below wireline pricing in 2003 for the first time."

  -- The FCC itself and many other analysts have reached the same conclusion. In its 2003 CMRS Competition Report, the FCC said that "[t]he long distance, local, and the payphone segments of wireline telecommunications have all been losing business to wireless substitution . . . due to the declining cost and widespread use of wireless service."

- In addition to competitive pricing, consumers now report high levels of satisfaction with the quality of their wireless service. For example:

  -- A GAO survey found that 83 percent of wireless users were satisfied with the call quality of their cell phone, while only 9 percent were dissatisfied.

-- Analysts similarly report that "[c]ultural awareness and acceptance of wireless as an acceptable/preferred communication medium is growing."

C. Other sources of intermodal competition such as e-mail and instant messaging (IM) also now substitute for a large amount of traffic on switched wireline networks.

- A large and growing fraction of this traffic originates and/or terminates on competitive networks, but even when carried over the incumbents' network, such traffic displaces significant usage-sensitive (*e.g.*, per-minute or per call) revenues that incumbents otherwise would earn.

  -- There are over 900 million e-mail accounts in the U.S. and over 60 million IM users.

  -- Customers are sending approximately 3.2 billion e-mail messages and approximately 1 billion IM messages per day.

  -- If only 10 percent of the 4.2 billion daily e-mail and instant messages substitute for a voice call, that is equivalent to about 650 billion minutes per year, or roughly one-third of all voice traffic that passes through the incumbents' networks.

Competition from Competitors with Their Own Switches

Competing carriers also continue to use their own switches to provide competitive voice telephone service to mass market customers without using the incumbent carriers' unbundled switching. This is true both as a general matter and particularly in Verizon's top 25 MSAs.

A. As of year-end 2003, competing carriers have deployed 10,000 switches nationwide, including approximately 1,200 circuit switches and 8,700 packet switches.

-- These switches already have been used to serve local customers in wire centers that contain approximately 86 percent of the Bell companies' access lines.

B. In Verizon's service areas, competitive switches also have been widely deployed and, as shown below and in the accompanying maps, these switches are being used extensively to serve mass market lines.

- In Verizon's top 25 MSAs, competitors are serving at least 2.1 million mass market lines using at least 133 of their own switches. *See* Attachment 10.

  -- These numbers include only lines that competitors serve using their own switch and an unbundled DS-0 loop, plus lines that they serve using their own switch and loop and for which they have a residential E911 listing.

  -- In the New York MSA, for example, competitors are serving approximately 415,000 mass market lines using at least 28 of their own switches within the MSA.

  -- In the Philadelphia MSA, competitors are serving approximately 119,000 mass market lines using at least 14 of their own switches within the MSA and one switch located outside the MSA.

  -- In the Buffalo-Niagara Falls MSA, competitors are serving approximately 51,000 mass market lines using at least 4 of their own switches within the MSA.

- As shown in the maps labeled "Map C," these switches are capable of and are being used to serve customers located throughout Verizon's top 25 MSAs.

  -- The maps depict the individual wire centers in each of these MSAs where competitors are using their own switches to serve mass market lines.

- In Verizon's top 25 MSAs, competitors are using their own switches to serve lines in wire centers that contain the vast majority of Verizon's access lines. *See* Attachment 11.

  -- In the New York MSA, for example, competitors are serving lines in Verizon's wire centers that contain 93.3 percent of all access lines in the MSA.

  -- In the Providence MSA, competitors are serving lines in Verizon's wire centers that contain 99.7 percent of all access lines in the MSA.

  -- In the Virginia Beach MSA, competitors are serving lines in Verizon's wire centers that contain 88.9 percent of all access lines in the MSA.

- In addition, the maps labeled "Map D" depict the extensive geographic reach of competitive switches. *See* Attachment 12.

  -- For each switch deployed by a competitor in one of Verizon's top 25 MSAs, Verizon determined the most distant mass market lines served by that switch and used that distance as the radius for a circle drawn around each switch to show the geographic area that could be served by that switch.

  -- These maps provide further evidence that competitive switches are capable of serving customers throughout Verizon's top 25 MSAs.

Cable Telephony Deployment in Verizon's Service Areas
in States in Verizon's Top 25 MSAs

Provider	State	Homes Passed in Counties Served by Verizon*	Cable Telephony Currently Available in Counties Served by Verizon by Numbers of Homes Passed*
Comcast	California	3.1 million	Circuit-Switched (1.2 million in Los Angeles Co., 84,000 in Orange Co.)
	District of Columbia	289,000	
	Delaware	206,000	
	Florida	267,000	
	Massachusetts	2.2 million	Circuit-Switched (1.6M in Boston MSA)
	Maryland	1.8 million	
	New Hampshire	n/a	Circuit-Switched
	New Jersey	1.6 million	
	Oregon	730,000	Circuit-Switched (648,000 in Portland MSA)
	Pennsylvania	2.4 million	Circuit-Switched (730,000 in Pittsburgh MSA)
	Texas	660,000	Circuit-Switched (660,000 in Dallas MSA)
	Virginia	523,000	Circuit-Switched (170,000 in Richmond MSA, 348,000 in Northern VA)
	Washington	1.2 million	Circuit-Switched (689,000 in Seattle MSA)
	West Virginia	58,000	
Time Warner	California	771,000	
	Florida	56,000	
	Maine	157,000	VoIP (145,000 in Portland MSA)
	Massachusetts	34,000	
	New Hampshire	22,000	
	New Jersey	77,000	
	New York	3.5 million	VoIP (367,000 in Albany MSA, 82,000 in Rochester MSA, 257,000 in Syracuse MSA)
	North Carolina	169,000	VoIP (55,000 in Charlotte MSA, 104,000 in Durham MSA)
	Pennsylvania	236,000	
	Texas	2.6 million	
	West Virginia	34,000	
Cablevision	Connecticut	232,000 (Fairfield Co.)	VoIP (232,000 in Fairfield Co.)
	New Jersey	1.2 million	VoIP (1.2 million statewide)
	New York	2.4 million	VoIP (2.4 million statewide)
Charter	California	1.2 million	
	Delaware	9,200	
	Maryland	55,000	

Provider	State	Homes Passed in Counties Served by Verizon*	Cable Telephony Currently Available in Counties Served by Verizon by Numbers of Homes Passed*
	Massachusetts	284,000	
	New Hampshire	6,900	
	New York	37,000	
	North Carolina	95,000	
	Oregon	111,000	
	Texas	560,000	
	Vermont	25,000	
	Virginia	109,000	
	Washington	143,000	
	West Virginia	279,000	
Cox	California	537,000	Circuit-Switched (306,000 in Orange Co.)
	Massachusetts	1,300	
	North Carolina	800	
	Rhode Island	356,000	Circuit-Switched (356,000 statewide)
	Texas	317,000	
	Virginia	1.1 million	VoIP (77,000 in Roanoke MSA) Circuit-Switched (377,000 in Northern VA, 621,000 in Virginia Beach MSA)
	Total for 5 MSOs	**nearly 32 million**	**more than 12 million**

*Homes passed in counties served by Verizon. Data for MSAs where cable telephony is available also reflect only counties served by Verizon.

Sources: Media Business Corp., *Top 10 MSOs by County* (Mar. 2004) (homes passed). ***Comcast.*** Media Business Corp., *Top 10 MSOs by County* (Mar. 2004) (states); Kagan, *Future of Cable Telephony* at 13 (Oct. 2003) (telephony availability) ("*Kagan Future of Cable Telephony*"); Comcast State Tariffs, *available at* http://www.comcast.com/Products/Telephony/Policies.ashx?LinkID=63 (telephony availability); Financial Tables *attached to* Comcast Press Release, *Comcast Reports First Quarter 2004 Results* (Apr. 28, 2004) (cable modem availability). ***Time Warner.*** Time Warner Cable, *About Us*, http://www.timewarnercable.com/corporate/aboutus/?menu=Aboutus (states); Time Warner Cable News Release, *Time Warner Cable Launches Phone Service in Charlotte* (June 4, 2004) (telephony availability); Time Warner Cable Raleigh-Durham-Fayetteville, *Digital Phone: New Residential Phone Service*, http://www.twcnc.com/digital_phone/index.cfm (telephony availability); Time Warner Cable, *Time Warner Cable Albany Plan Details*, http://www.twcdigitalphone.com/albany/friendlies/plandetails.htm (telephony availability); Time Warner Cable, *Time Warner Cable Rochester NEW Residential Phone Service*, http://www.twcdigitalphone.com/rochester/ (telephony availability); Time Warner Cable, *Digital Phone: Time Warner Cable NEW Residential Phone Service*, http://twcny.com/digitalPhone/index.cfm?ThankYou=One (telephony availability); J. Halpern, *et al.*, Bernstein Research Call, *Broadband Update: DSL Share Reaches 40% of Net Adds in 4Q . . . Overall Growth Remains Robust* at Exh. 6 (Mar. 10, 2004) (cable modem availability) ("*March 2004 Bernstein Broadband Update*"). ***Cablevision.*** Cablevision Systems, *Corporate: Cable and Communication*, http://www.cablevision.com/index.jhtml?pageType=cable_comm. (states); *March 2004 Bernstein Broadband Update* at Exh. 6 (cable modem availability). ***Charter.*** Charter Communications, *Our Markets*, http://www.charter.com/aboutus/ourstory/markets.asp (states); Charter Communications, Form 10-K (SEC Filed Mar. 15, 2004) (cable modem availability). ***Cox.*** Cox Communications, *Cox Communications*, http://www.cox.com; Cox Communications, Form 10-K (SEC Filed Feb. 27, 2004) (states); *Kagan Future of Cable Telephony* (telephony availability); *March 2004 Bernstein Broadband Update* at Exh. 6 (cable modem availability).

Broadband Service Availability in Verizon's Top 25 MSAs

Broadband service is widely available throughout Verizon's top 25 MSAs. Table No. 1 shows the percentage of the population in each MSA for which cable modem service is available. This information was obtained from Warren Communication's Cable Factbook and supplemented with publicly available information. In these areas, customers have access to VoIP from an independent supplier, such as AT&T or Vonage.

Cable Modem Service Availability by MSA in Verizon's Top 25 MSAs

MSA	Percentage of the Population Within the MSA That Has Access to Cable Modem Service
New York-Northern New Jersey-Long Island, NY-NJ-PA	95-100%
Washington-Arlington-Alexandria, DC-VA-MD-WV	85-89%
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	90-94%
Boston-Cambridge-Quincy, MA-NH	95-100%
Los Angeles-Long Beach-Santa Ana, CA	90-94%
Baltimore-Towson, MD	85-89%
Tampa-St. Petersburg-Clearwater, FL	95-100%
Riverside-San Bernardino-Ontario, CA	75-79%
Pittsburgh, PA	90-94%
Providence-New Bedford-Fall River, RI-MA	90-94%
Virginia Beach-Norfolk-Newport News, VA-NC	75-79%
Richmond, VA	55-59%
Dallas-Fort Worth-Arlington, TX	90-94%
Buffalo-Niagara Falls, NY	95-100%
Seattle-Tacoma-Bellevue, WA	85-89%
Worcester, MA	85-89%
Sarasota-Bradenton-Venice, FL	85-89%

MSA	Percentage of the Population Within the MSA That Has Access to Cable Modem Service
Albany-Schenectady-Troy, NY	95-100%
Springfield, MA	95-100%
Allentown-Bethlehem-Easton, PA-NJ	95-100%
Portland-Vancouver-Beaverton, OR-WA	85-89%
Trenton-Ewing, NJ	95-100%
Lakeland-Winter Haven, FL	95-100%
Syracuse, NY	95-100%
Portland-South Portland, ME	95-100%
Weighted Average	**92%**

Cable Modem Subscribers in States Served by Verizon in Verizon's Top 25 MSAs

State	YE 2000	YE 2001	YE 2002	YE 2003
California	476,544	786,789	1,179,204	1,706,217
Connecticut	78,234	137,003	192,155	260,415
Delaware	*	*	*	*
Dist. of Columbia	*	*	*	*
Florida	255,978	486,977	741,426	1,050,062
Maine	*	*	*	*
Maryland	65,668	143,174	241,264	385,408
Massachusetts	210,019	339,244	453,473	638,441
New Hampshire	*	*	*	118,456
New Jersey	*	375,362	578,337	781,898
New York	377,521	780,473	1,185,233	1,597,556
North Carolina	73,092	239,107	406,024	559,276
Oregon	*	*	165,343	233,737
Pennsylvania	85,104	190,915	376,611	621,381
Rhode Island	*	*	*	*
Texas	227,070	427,324	740,469	1,019,623
Vermont	*	*	*	*
Virginia	78,585	182,591	320,154	517,924
Washington	*	*	246,627	367,321
West Virginia	*	*	65,542	78,018
Total	1,927,815	4,088,959	6,891,862	9,936,733

* Data withheld by FCC to maintain confidentiality.

Source: Industry Analysis & Technology Division, Wireline Competition Bureau, FCC, *High-Speed Services for Internet Access: Status as of December 31, 2003* at Table 10 (June 2004).

Competitive Prices for Mass Market Voice Telephone Service

There are many competitors offering mass market voice telephone service in Verizon's top 25 MSAs without using unbundled local switching and their offerings are priced at levels that are comparable to or below Verizon's voice telephone package rate. For each of these MSAs, Verizon has prepared a table that compares the prices and features of the voice telephone service offerings of several leading competitors, including VoIP offerings, wireless offerings and circuit switched offerings. Verizon prepared these tables by examining the competitors' websites. These comparisons show that mass market customers can obtain voice telephone service from several competitors at rates that are comparable to or lower then Verizon's rates.

NEW YORK

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched			VoIP[1]						Wireless			
	Verizon Freedom	AT&T One Rate USA	MCI Neighbor-hood Complete	Cablevision Optimum Voice	Vonage Premium Unlimited	AT&T CallVantage	voiceglo Unlimited	VoicePulse America Unlimited	Packet8 Freedom Unlimited	Verizon Wireless America's Choice 400 mins.	Cingular Nation 600 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$59.95	$54.95	$49.99	$34.95[2]	$29.99	$34.99	$29.99	$34.99	$19.95	$39.99	$49.99	$49.99	$39.99
Local Calling	Unlimited									Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited									Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited									Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	4	5	6	13	9	6	16	6	4	5	4	4
Relies on UNE-P	No	Yes		No									

[1]Requires broadband connection at additional cost.

[2]Cablevision also offers this package bundled with high-speed Internet and digital cable service for $89.85 a month. Customers "are essentially receiving their voice service for free," according to Cablevision.

WASHINGTON, DC

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched							VoIP[1]				Wireless			
	Verizon Freedom	StarPower Ultra Unlimited Long Distance	Cox Unlimited Connections (Fairfax)	Comcast Connections Any Distance	AT&T One Rate USA	MCI Neighbor-hood Complete	Cavalier Unlimited	Vonage Premium Unlimited	Phonom	voiceglo Unlimited	Packet8 Freedom Unlimited	Verizon Wireless America's Choice 400 mins.	Cingular Nation 600 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$49.95	$51.80	$49.95	$48.95	$49.95	$49.99	$44.95	$29.99	$34.99	$29.99	$19.95	$39.99	$49.99	$49.99	$39.99
Local Calling	Unlimited											Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited											Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited											Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	5	11	3	4	5	10	13	11	6	6	4	5	4	4
Relies on UNE-P	No				Yes		No								

[1]Requires broadband connection at additional cost.

PHILADELPHIA

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched					VoIP[1]					Wireless			
	Verizon Freedom	RCN Megaphone	AT&T One Rate USA	MCI Neighbor-hood Complete	Cavalier Unlimited	Vonage Premium Unlimited	Phonom	VoicePulse America Unlimited	Packet8 Freedom Unlimited	voiceglo Unlimited	Verizon Wireless America's Choice 400 mins.	Cingular Nation 600 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$54.95	$50.00	$49.95	$49.99	$44.95	$29.99	$34.99	$34.99	$19.95	$29.99	$39.99	$49.99	$49.99	$39.99
Local Calling	Unlimited										Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited										Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited										Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	4	4	5	10	13	11	16	6	6	4	5	4	4
Relies on UNE-P	No		Yes		No									

[1]Requires broadband connection at additional cost.

BOSTON

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched					VoIP[1]					Wireless			
	Verizon Freedom	RCN Megaphone	Comcast Connections Any Distance	AT&T One Rate USA	MCI Neighbor-hood Complete	Vonage Premium Unlimited	AT&T CallVantage	voiceglo Unlimited	VoicePulse America Unlimited	Packet8 Freedom Unlimited	Verizon Wireless America's Choice 400 mins.	Cingular Nation 600 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$54.95	$55.00	$48.95	$49.95	$55.99	$29.99	$34.99	$29.99	$34.99	$19.95	$39.99	$49.99	$49.99	$39.99
Local Calling	Unlimited										Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited										Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited										Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	4	4	4	5	13	9	6	16	6	4	5	4	4
Relies on UNE-P	No			Yes		No								

[1]Requires broadband connection at additional cost.

LOS ANGELES

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched				VoIP[1]					Wireless			
	Verizon Freedom	Comcast Connections Any Distance	AT&T One Rate USA	MCI Neighbor-hood Complete	Vonage Premium Unlimited	AT&T CallVantage	voiceglo Unlimited	VoicePulse America Unlimited	Packet8 Freedom Unlimited	Verizon Wireless America's Choice 500 mins.	Cingular Nation 600 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$59.95	$48.95	$54.95	$49.99	$29.99	$34.99	$29.99	$34.99	$19.95	$49.99	$49.99	$49.99	$39.99
Local Calling	Unlimited									Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited									Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited									Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	4	4	5	13	9	6	16	6	5	5	4	4
Relies on UNE-P	No		Yes										

[1]Requires broadband connection at additional cost.

BALTIMORE

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched			VoIP[1]				Wireless			
	Verizon Freedom	AT&T One Rate USA	MCI Neighbor-hood Complete	Vonage Premium Unlimited	voiceglo Unlimited	VoicePulse America Unlimited	Packet8 Freedom Unlimited	Verizon Wireless America's Choice 400 mins.	Cingular Nation 600 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$49.95	$49.95	$55.99	$29.99	$29.99	$34.99	$19.95	$39.99	$49.99	$49.99	$39.99
Local Calling	Unlimited							Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited							Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited							Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	4	5	13	6	16	6	4	5	4	4
Relies on UNE-P	No	Yes		No							

[1]Requires broadband connection at additional cost.

TAMPA

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched		VoIP[1]					Wireless			
	Verizon Freedom	Z-Tel Z-Line HOME Unlimited	Vonage Premium Unlimited	AT&T CallVantage	VoicePulse America Unlimited	Packet8 Freedom Unlimited	voiceglo Unlimited	Verizon Wireless America's Choice 500 mins.	Cingular Nation 500 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$49.95	$64.99	$29.99	$34.99	$34.99	$19.95	$29.99	$49.99	$54.99	$49.99	$39.99
Local Calling	Unlimited							Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited							Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited							Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	7	13	9	16	6	6	4	5	4	4
Relies on UNE-P	No	Yes	No								

[1]Requires broadband connection at additional cost.

RIVERSIDE

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched				VoIP[1]					Wireless			
	Verizon Freedom	AT&T One Rate USA	MCI Neighbor-hood Complete	Z-Tel Z-Line HOME Unlimited	Vonage Premium Unlimited	AT&T CallVantage	VoicePulse America Unlimited	Packet8 Freedom Unlimited	voiceglo Unlimited	Verizon Wireless America's Choice 500 mins.	Cingular Nation 600 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$59.95	$49.95	$49.99	$49.99	$29.99	$34.99	$34.99	$19.95	$29.99	$49.99	$49.99	$49.99	$39.99
Local Calling	Unlimited									Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited									Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited									Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	4	5	7	13	9	16	6	6	5	5	4	4
Relies on UNE-P	No	Yes			No								

[1]Requires broadband connection at additional cost.

PITTSBURGH

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched					VoIP[1]			Wireless			
	Verizon Freedom	Comcast Connections Any Distance	AT&T One Rate USA	MCI Neighbor-hood Complete	Z-Tel Z-Line HOME Unlimited	Vonage Premium Unlimited	Packet8 Freedom Unlimited	VoicePulse America Unlimited	Verizon Wireless America's Choice 500 mins.	Leap Cricket Unlimited	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$54.95	$49.95	$49.95	$49.99	$49.99	$30.00	$19.95	$35.00	$49.99	$49.99	$49.99	$39.99
Local Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	4	4	5	7	13	6	16	4	3	4	4
Relies on UNE-P	No		Yes			No						

[1]Requires broadband connection at additional cost.

PROVIDENCE

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched				VoIP[1]			Wireless			
	Verizon Freedom	Cox Unlimited Connection	AT&T One Rate USA	MCI Neighbor-hood Complete	Vonage Premium Unlimited	voiceglo Unlimited	VoicePulse America Unlimited	Verizon Wireless America's Choice 400 mins.	Cingular Nation 600 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$54.95	$49.95	$54.95	$55.99	$29.99	$29.99	$34.99	$39.99	$49.99	$49.99	$39.99
Local Calling	Unlimited							Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited							Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited							Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	6	4	5	13	6	16	4	5	4	4
Relies on UNE-P	No		Yes		No						

[1]Requires broadband connection at additional cost.

VIRGINIA BEACH

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched					VoIP[1]			Wireless			
	Verizon Freedom	Cox Connection Unlimited (Hampton Roads)	AT&T One Rate USA	MCI Neighbor-hood Complete	Cavalier Unlimited	Vonage Premium Unlimited	Phonom	Packet8 Freedom Unlimited	Verizon Wireless America's Choice 400 mins.	ALLTEL National Freedom 600 mins.	SunCom UnPlan	T-Mobile Get More (National) 600 mins.
Price	$49.95	$49.95	$49.95	$49.99	$44.95	$29.99	$34.99	$19.95	$39.99	$45.00	$50.00	$39.99
Local Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	6	4	5	10	13	11	6	4	5	5	4
Relies on UNE-P	No		Yes		No							

[1]Requires broadband connection at additional cost.

RICHMOND

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched					VoIP[1]			Wireless			
	Verizon Freedom	Comcast Connections Any Distance	AT&T One Rate USA	MCI Neighbor-hood Complete	Cavalier Unlimited	Vonage Premium Unlimited	Phonom	Packet8 Freedom Unlimited	Verizon Wireless America's Choice 400 mins.	ALLTEL National Freedom 600 mins.	SunCom UnPlan	T-Mobile Get More (National) 600 mins.
Price	$49.95	$49.95	$49.95	$49.99	$44.95	$29.99	$34.99	$19.95	$39.99	$45.00	$50.00	$39.99
Local Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	4	4	5	10	13	11	6	4	5	5	4
Relies on UNE-P	No		Yes		No							

[1]Requires broadband connection at additional cost.

DALLAS

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched		VoIP[1]						Wireless			
	Verizon Freedom	Comcast Connections Any Distance	Vonage Premium Unlimited	AT&T CallVantage	voiceglo Unlimited	VoicePulse America Unlimited	Packet8 Freedom Unlimited	BroadVoice Unlimited U.S.A.	Verizon Wireless America's Choice 500 mins.	Cingular Nation 600 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$54.95	$49.99	$29.99	$34.99	$29.99	$34.99	$19.95	$19.95	$49.99	$49.99	$49.99	$39.99
Local Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	4	13	9	6	16	6	17	4	5	4	4
Relies on UNE-P	No											

[1]Requires broadband connection at additional cost.

BUFFALO

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched				VoIP[1]				Wireless			
	Verizon Freedom	AT&T One Rate USA	MCI Neighbor-hood Complete	Z-Tel Z-Line HOME Unlimited	Vonage Premium Unlimited	VoicePulse America Unlimited	Packet8 Freedom Unlimited	BroadVoice Unlimited U.S.A.	Verizon Wireless America's Choice 500 mins.	Cingular Nation 600 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$59.95	$54.95	$49.99	$49.99	$29.99	$34.99	$19.95	$19.95	$49.99	$49.99	$49.99	$39.99
Local Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	4	5	7	13	16	6	17	4	5	4	4
Relies on UNE-P	No	Yes			No							

[1]Requires broadband connection at additional cost.

SEATTLE

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched		VoIP[1]						Wireless			
	Comcast Connections Any Distance	MCI Neighbor-hood Complete	Vonage Premium Unlimited	AT&T CallVantage	voiceglo Unlimited	VoicePulse America Unlimited	Packet8 Freedom Unlimited	Nuvio Unlimited	Verizon Wireless America's Choice 500 mins.	Cingular Nation 600 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$49.99	$55.99	$29.99	$34.99	$29.99	$34.99	$19.95	$34.99	$49.99	$49.99	$49.99	$39.99
Local Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	4	5	13	9	6	16	6	7	5	5	4	4
Relies on UNE-P	No	Yes	No									

[1]Requires broadband connection at additional cost.

WORCESTER

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched				VoIP[1]					Wireless			
	Verizon Freedom	AT&T One Rate USA	MCI Neighbor-hood Complete	Z-Tel Z-Line HOME Unlimited	Vonage Premium Unlimited	AT&T CallVantage	voiceglo Unlimited	VoicePulse America Unlimited	Packet8 Freedom Unlimited	Verizon Wireless America's Choice 400 mins.	Cingular Nation 600 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$54.95	$49.95	$55.99	$55.99	$29.99	$34.99	$29.99	$34.99	$19.95	$39.99	$49.99	$49.99	$39.99
Local Calling	Unlimited									Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited									Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited									Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	4	5	7	13	9	6	16	6	4	5	4	4
Relies on UNE-P	No	Yes			No								

[1]Requires broadband connection at additional cost.

SARASOTA

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched		VoIP[1]						Wireless			
	Verizon Freedom	Z-Tel Z-Line HOME Unlimited	Vonage Premium Unlimited	AT&T CallVantage	VoicePulse America Unlimited	voiceglo Unlimited	BroadVoice Unlimited U.S.A.	Nuvio Unlimited	Verizon Wireless America's Choice 500 mins.	Cingular Nation 500 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$49.95	$64.99	$29.99	$34.99	$34.99	$29.99	$19.95	$34.99	$49.99	$54.99	$49.99	$39.99
Local Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	7	13	9	16	6	17	7	4	5	4	4
Relies on UNE-P	No	Yes	No									

[1]Requires broadband connection at additional cost.

ALBANY

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched				VoIP[1]					Wireless			
	Verizon Freedom	AT&T One Rate USA	MCI Neighbor-hood Complete	Z-Tel Z-Line HOME Unlimited	Time Warner Cable Digital Phone[2]	Vonage Premium Unlimited	VoicePulse America Unlimited	Packet8 Freedom Unlimited	BroadVoice Unlimited U.S.A.	Verizon Wireless America's Choice 500 mins.	Cingular Nation 600 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$59.95	$54.95	$49.99	$49.99	$39.95	$29.99	$34.99	$19.95	$19.95	$49.99	$49.99	$49.99	$39.99
Local Calling	Unlimited									Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited									Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited									Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	4	5	7	2	13	16	6	17	4	5	4	4
Relies on UNE-P	No	Yes			No								

[1]Requires broadband connection at additional cost. [2]Reflects the $10 discount for customers subscribing to Digital Cable and High-Speed Internet service.

SPRINGFIELD

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched				VoIP[1]				Wireless			
	Verizon Freedom	AT&T One Rate USA	MCI Neighbor-hood Complete	Z-Tel Z-Line HOME Unlimited	Vonage Premium Unlimited	voiceglo Unlimited	VoicePulse America Unlimited	Packet8 Freedom Unlimited	Verizon Wireless America's Choice 400 mins.	Cingular Nation 600 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$54.95	$49.95	$55.99	$55.99	$29.99	$29.99	$34.99	$19.95	$39.99	$49.99	$49.99	$39.99
Local Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	4	5	7	13	6	16	6	4	5	4	4
Relies on UNE-P	No	Yes			No							

[1]Requires broadband connection at additional cost.

ALLENTOWN

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched					VoIP[1]					Wireless			
	Verizon Freedom	RCN Megaphone	AT&T One Rate USA	MCI Neighbor-hood Complete	Z-Tel Z-Line HOME Unlimited	Vonage Premium Unlimited	AT&T CallVantage	voiceglo Unlimited	VoicePulse America Unlimited	Packet8 Freedom Unlimited	Verizon Wireless America's Choice 400 mins.	Cingular Nation 600 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$54.95	$55.00	$49.95	$49.99	$49.99	$29.99	$34.99	$29.99	$34.99	$19.95	$39.99	$49.99	$49.99	$39.99
Local Calling	Unlimited										Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited										Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited										Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	4	4	5	7	13	9	6	16	6	4	5	4	4
Relies on UNE-P	No		Yes			No								

[1]Requires broadband connection at additional cost.

PORTLAND, OR

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched		VoIP[1]						Wireless			
	Comcast Connections Any Distance	MCI Neighbor-hood Complete	Vonage Premium Unlimited	AT&T CallVantage	voiceglo Unlimited	Packet8 Freedom Unlimited	BroadVoice Unlimited U.S.A.	Nuvio Unlimited	Verizon Wireless America's Choice 500 mins.	Qwest Choice Wireless Cross Country 500 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$49.99	$55.99	$29.99	$34.99	$29.99	$19.95	$19.95	$34.99	$49.99	$44.99	$49.99	$39.99
Local Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	4	5	13	9	6	6	17	7	5	4	4	4
Relies on UNE-P	No	Yes	No									

[1]Requires broadband connection at additional cost.

TRENTON

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched				VoIP[1]					Wireless			
	Verizon Freedom	AT&T One Rate USA	MCI Neighbor-hood Complete	Z-Tel Z-Line HOME Unlimited	Vonage Premium Unlimited	AT&T CallVantage	VoicePulse America Unlimited	BroadVoice Unlimited U.S.A.	Nuvio Unlimited	Verizon Wireless America's Choice 400 mins.	Cingular Nation 600 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$54.95	$49.95	$49.99	$49.99	$29.99	$34.99	$34.99	$19.95	$34.99	$39.99	$49.99	$49.99	$39.99
Local Calling	Unlimited									Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited									Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited									Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	4	5	7	13	9	16	17	7	4	5	4	4
Relies on UNE-P	No	Yes			No								

[1]Requires broadband connection at additional cost.

LAKELAND

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched		VoIP[1]						Wireless			
	Verizon Freedom	Z-Tel Z-Line HOME Unlimited	Vonage Premium Unlimited	AT&T CallVantage	VoicePulse America Unlimited	voiceglo Unlimited	BroadVoice Unlimited U.S.A.	Nuvio Unlimited	Verizon Wireless America's Choice 500 mins.	Cingular Nation 500 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$49.95	$64.99	$29.99	$34.99	$34.99	$29.99	$19.95	$34.99	$49.99	$54.99	$49.99	$39.99
Local Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	7	13	9	16	6	17	7	4	5	4	4
Relies on UNE-P	No	Yes	No									

[1]Requires broadband connection at additional cost.

SYRACUSE

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched				VoIP[1]				Wireless			
	Verizon Freedom	AT&T One Rate USA	MCI Neighbor-hood Complete	Z-Tel Z-Line HOME Unlimited	Time Warner Cable Digital Phone[2]	Vonage Premium Unlimited	VoicePulse America Unlimited	Packet8 Freedom Unlimited	Verizon Wireless America's Choice 500 mins.	Cingular Nation 600 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$59.95	$54.95	$49.99	$49.99	$39.95	$29.99	$34.99	$19.95	$49.99	$49.99	$49.99	$39.99
Local Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	4	5	7	2	13	16	6	4	5	4	4
Relies on UNE-P	No	Yes			No							

[1]Requires broadband connection at additional cost. [2]Reflects the $10 discount for customers subscribing to Digital Cable and High-Speed Internet service.

PORTLAND, ME

Comparison of Competitive Calling Bundle Prices and Features

	Circuit-Switched				VoIP[1]				Wireless			
	Verizon Freedom	AT&T One Rate USA	MCI Neighbor-hood Complete	Z-Tel Z-Line HOME Unlimited	Time Warner Cable Digital Phone[2]	voiceglo Unlimited	VoicePulse America Unlimited	BroadVoice Unlimited U.S.A.	Verizon Wireless America's Choice 400 mins.	Sprint PCS Free & Clear Nationwide 700 mins.	AT&T Wireless (National) 600 mins.	T-Mobile Get More (National) 600 mins.
Price	$54.95	$54.95	$49.99	$59.99	$39.95	$29.99	$34.99	$19.95	$39.99	$49.99	$49.99	$39.99
Local Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Local Toll Calling	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Long Distance	Unlimited								Included within Plan Minutes (plus unlimited nights and weekends)			
Calling Features	5	4	5	7	2	6	16	17	4	4	4	4
Relies on UNE-P	No	Yes			No							

[1]Requires broadband connection at additional cost. [2]Reflects the $10 discount for customers subscribing to either Digital Cable or High-Speed Internet service.

Price Comparison of Voice Service Bundles (Broadband v. Narrowband)

	Narrowband	Broadband (VoIP)
Unlimited local and long distance voice services plus vertical features	$55-$60/month[1]	$30-$40/month[1]
Internet Access	$10-$22/month[2]	$42-$50/month[3]
Taxes, fees, surcharges, etc.	$5-$13/month[4]	$0-$5/month[4]
Total	$70-$95/month	$72-$95/month

[1] *See* Attachment 4 containing price comparisons of leading voice service competitors in Verizon's top 25 MSAs.

[2] MSN, EarthLink, and SBC Yahoo! charge $21.95 per month for dial-up service. MSN, *MSN 9 Dial-Up*, http://join.msn.com/?page=dept/dialup&pgmarket=en-us&ST=1&xAPID=1983&DI=1402; Earthlink, *Earthlink Dial-Up Internet Access*, http://www.earthlink.net/home/dial/; SBC Yahoo! Dial, *SBC Yahoo! Dial: Getting Started*, http://promo.sbcglobal.net/sbcyahoo_myhome/. AOL charges $23.90 for dial-up service. AOL, *Price Plans*, http://www.aol.com/price_plans/index.adp. United Online (which includes NetZero, Juno, and BlueLight) charges $9.95, with $14.95 for high-speed dial-up service. United Online, *United Online Home*, http://www.unitedonline.net/. Netscape, *Netscape FAQ*, http://www.getnetscape.com/more_info.adp?promo=NS_2_11_8_2003_12_1; PeoplePC, *PeoplePC Online Details*, http://www.peoplepc.com/connect/ppc_online.asp; *Bernstein March 2004 Broadband 2004 Update* at Exhibit 5.

[3] *See* J. Atkin, RBC Capital Markets, *Cable/RBOC/DBS: Telephony, Data, and Video Pricing Comparisons*, at Exhibit 2 (Feb. 3, 2004) (estimating $50 for cable broadband and $42 for DSL). Cable companies routinely offer broadband for less.

[4] Taxes, fees and surcharges are approximate. *See Goldman Sachs Cable Telephony/VoIP Analysis* at 24 (estimating "avoided connection fees for VoIP providers" at $5.45, which includes federal USF contribution, LNP, E911, state telecommunications relay, federal excise tax, and utility user tax); *see UBS Vonage Story* at 3 (voice over broadband providers benefit from having "much lower taxes," whereas "regulatory fees and other taxes [] typically increase the price for the Bells by $10-$15."); Vonage, *Top Questions*, http://www.vonage.com/learn_center.php (Vonage subscribers incur no more than $2.55 to cover the Federal excise tax and regulatory recovery fee; customers in New Jersey are also charged a state sales tax); Optimum Voice, http://www.optimumvoice.com/index.jhtml (VoIP service is priced at "$34.95, all inclusive").

Wireless Substitution for Landline Voice Telephone Lines – Then and Now

	Then	Now
Wireless Subscribers	137 million[1]	155 million[2]
Total Cumulative Wireline Lines Displaced*	15.7 million (2002)[3]	23.2 million (2004E)[3]
% of users with Wireless as their only phone	3-5 percent[4]	7-8 percent[5]
Wireless voice traffic as a % of all voice traffic	16 percent (2002)[6]	29 percent (2004)[7]
Wireless long distance traffic as a % of all long distance traffic		43 percent (2003)[8]
Average Wireless Minutes of Use (per Month)	384 (2002)[9]	525 (2004E)[10]

*Primary and secondary access lines displaced since 1995.

[1]Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Local Telephone Competition: Status as of December 31, 2003* at Table 13 (June 2004).

[2]*Id.*

[3]S. Ellison, IDC, *U.S. Wireless Displacement of Wireline Access Lines, Forecast and Analysis, 2003-2007* at 16, Table 9 (Aug. 2003).

[4]*Triennial Review Order* ¶ 445.

[5]Adam Quinton, Managing Director & First VP, Co-Head of Global Telecom Services Research, Merrill Lynch, prepared witness testimony before the Subcommittee on Telecommunications and the Internet of the House Energy and Commerce Committee, Washington, DC (Feb. 4, 2004); Michael Balhoff, Managing Director, Telecommunications Group, Legg Mason, prepared witness testimony before the Subcommittee on Telecommunications and the Internet of the House Energy and Commerce Committee, Washington, DC (Feb. 4, 2004).

[6]D. Janazzo, *et al.*, Merrill Lynch, *The Next Generation VIII: The Final Frontier?* at 42, Table 33 (Mar. 15, 2004).

[7]*Id.*

[8]Yankee Group News Release, *U.S. Consumer Long Distance Calling Is Increasingly Wireless, Says Yankee Group* (Mar. 23, 2004).

[9]N. Zachar, *et al.*, Thomas Weisel Partners, *Wireless Carrier Consolidation: Setting the Record Straight for the Tower Industry* at 3, Fig. 1 & at 4, Fig. 2 (Apr. 6, 2004).

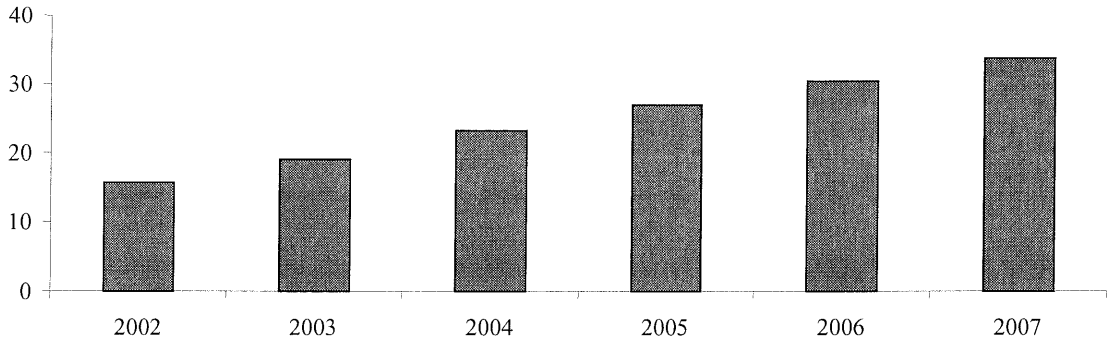
[10]*Id.*

U.S. Household Voice Telephone Lines Displaced by Wireless
(in millions)

	2002	2003	2004	2005	2006	2007
Secondary Access Lines Displaced	11.1	13.4	16.1	18.5	20.7	22.9
Primary Access Lines Displaced	4.6	5.7	7.2	8.5	9.8	10.9
Total Access Lines Displaced	15.7	19.1	23.2	27.0	30.5	33.9

Source: S. Ellison, IDC, *U.S. Wireless Displacement of Wireline Access Lines, Forecast and Analysis, 2003-2007* at 16, Table 9 (Aug. 2003) (cumulative lines displaced since 1995).

U.S. Household Voice Telephone Lines Displaced by Wireless
(in millions)



Wireless Use

	Analyst	2000	2001	2002	2003	2004E
Wireless MOUs (in billions)	Thos. Weisel Partners (Apr. 2004)	259	457	620	803	1,052
	Merrill Lynch (Mar. 2004)	259	456	620	837	1,054
Monthly MOUs per Subscriber	Thos. Weisel Partners (Apr. 2004)	221	320	384	444	525

Sources: N. Zachar, *et al.*, Thomas Weisel Partners, *Wireless Carrier Consolidation: Setting the Record Straight for the Tower Industry* at 3, Fig. 1 & at 4, Fig. 2 (Apr. 6, 2004); D. Janazzo, *et al.*, Merrill Lynch, *The Next Generation VIII: The Final Frontier?* at 42, Table 33 (Mar. 15, 2004).

Average Wireline Residential Monthly Toll Minutes (excluding wireless)

1995	1996	1997	1998	1999	2000	2001	2002
143	143	149	144	131	116	105	90

Source: Industry Analysis & Technology Division, Wireline Competition Bureau, *Statistics of the Long Distance Telecommunications Industry* at Table 20 (May 2003) (includes: IntraLATA-Intrastate, InterLATA-Intrastate, IntraLATA-Interstate, InterLATA-Interstate, International, Others (toll-free mins. billed to residential customers, 900 mins., and mins. for calls that could not be classified)).

Attachment 10

Mass Market Lines Served By CLEC Switches
In Verizon's Top 25 MSAs

MSA	NO. OF CLECs SERVING MASS MARKET CUSTOMERS IN VZ'S PORTION OF THE MSA	NO. OF CLEC SWITCHES IN VZ'S PORTION OF THE MSA SERVING MASS MARKET CUSTOMERS IN VZ'S PORTION OF THE MSA	NO. OF CLEC SWITCHES OUTSIDE VZ'S PORTION OF THE MSA SERVING MASS MARKET CUSTOMERS IN VZ'S PORTION OF THE MSA	NO. OF MASS MARKET LINES SERVED BY CLEC SWITCHES
New York-Northern New Jersey-Long Island, NY-NJ-PA	10	28	0	415,000
Washington-Arlington-Alexandria, DC-VA-MD-WV	6	8	0	108,000
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	10	14	1	119,000
Boston-Cambridge-Quincy, MA-NH	10	12	5	392,000
Los Angeles-Long Beach-Santa Ana, CA	8	2	9	91,000
Baltimore-Towson, MD	5	6	0	52,000
Tampa-St. Petersburg-Clearwater, FL	6	6	0	28,000
Riverside-San Bernardino-Ontario, CA	*	1	1	*
Pittsburgh, PA	6	5	1	178,000
Providence-New Bedford-Fall River, RI-MA	7	6	2	179,000
Virginia Beach-Norfolk-Newport News, VA-NC	4	6	0	177,000
Richmond, VA	3	3	0	81,000

Attachment 10

MSA	NO. OF CLECs SERVING MASS MARKET CUSTOMERS IN VZ'S PORTION OF THE MSA	NO. OF CLEC SWITCHES IN VZ'S PORTION OF THE MSA SERVING MASS MARKET CUSTOMERS IN VZ'S PORTION OF THE MSA	NO. OF CLEC SWITCHES OUTSIDE VZ'S PORTION OF THE MSA SERVING MASS MARKET CUSTOMERS IN VZ'S PORTION OF THE MSA	NO. OF MASS MARKET LINES SERVED BY CLEC SWITCHES
Dallas-Fort Worth-Arlington, TX	6	1	8	42,000
Buffalo-Niagara Falls, NY	4	4	0	51,000
Seattle-Tacoma-Bellevue, WA	3	3	1	6,000
Worcester, MA	6	4	2	27,000
Sarasota-Bradenton-Venice, FL	*	1	0	*
Albany-Schenectady-Troy, NY	4	4	0	26,000
Springfield, MA	4	4	0	13,000
Allentown-Bethlehem-Easton, PA-NJ	5	5	1	67,000
Portland-Vancouver-Beaverton, OR-WA	5	5	1	28,000
Trenton-Ewing, NJ	*	2	0	*
Lakeland-Winter Haven, FL	0	0	0	0
Syracuse, NY	4	4	0	21,000
Portland-South Portland, ME	4	4	0	8,300
TOTAL		**133**		**2,122,350**

* Data withheld to maintain confidentiality.

Mass Market Lines Served By CLEC Switches
In Verizon's Top 25 MSAs

MSA	Percentage of Verizon Wire Centers in MSA that have one or more CLEC switches serving mass market lines	Percentage of access lines contained within Verizon Wire Centers in MSA that have one or more CLEC switches serving mass market lines
New York-Northern New Jersey-Long Island, NY-NJ-PA	81.7%	93.2%
Washington-Arlington-Alexandria, DC-VA-MD-WV	56.9%	84.8%
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	70.7%	88.4%
Boston-Cambridge-Quincy, MA-NH	81.9%	93.1%
Los Angeles-Long Beach-Santa Ana, CA	83.8%	92.0%
Baltimore-Towson, MD	43.2%	72.5%
Tampa-St. Petersburg-Clearwater, FL	65.3%	77.4%
Riverside-San Bernardino-Ontario, CA	*	45.9%
Pittsburgh, PA	67.7%	90.3%
Providence-New Bedford-Fall River, RI-MA	97.7%	99.7%
Virginia Beach-Norfolk-Newport News, VA-NC	71.2%	88.9%
Richmond, VA	51.9%	76.5%
Dallas-Fort Worth-Arlington, TX	57.4%	87.5%

MSA	Percentage of Verizon Wire Centers in MSA that have one or more CLEC switches serving mass market lines	Percentage of access lines contained within Verizon Wire Centers in MSA that have one or more CLEC switches serving mass market lines
Buffalo-Niagara Falls, NY	50.0%	86.5%
Seattle-Tacoma-Bellevue, WA	51.9%	77.7%
Worcester, MA	50.0%	80.8%
Sarasota-Bradenton-Venice, FL	*	47.9%
Albany-Schenectady-Troy, NY	42.5%	85.2%
Springfield, MA	41.3%	83.3%
Allentown-Bethlehem-Easton, PA-NJ	65.2%	85.5%
Portland-Vancouver-Beaverton, OR-WA	74.2%	94.7%
Trenton-Ewing, NJ	*	80.1%
Lakeland-Winter Haven, FL	0%	0%
Syracuse, NY	50.0%	86.9%
Portland-South Portland, ME	25.0%	58.3%
Weighted Average	**63.0%**	**85.8%**

* Data withheld to maintain confidentiality.

Maps Showing Competition in Verizon's Top 25 MSAs

Maps A. Broadband service is widely available throughout Verizon's top 25 MSAs. Map A for each MSA shows the geographic areas where cable modem service is available in each of Verizon's top 25 MSAs. This information was obtained from Warren Communication's Cable Factbook and supplemented with publicly available information. In these areas, customers have access to VoIP from an independent supplier, such as AT&T or Vonage.

Maps B. Nearly all areas in Verizon's top 25 MSAs have wireless service from multiple wireless providers and the vast majority of areas in these MSAs have wireless service from five wireless competitors. Map B for each MSA shows the geographic areas in each MSA where wireless phone service is available and the number of carriers serving particular areas. These areas have been color-coded to show the number of wireless competitors that are serving each area in the MSA. The availability of wireless service was determined from the wireless carriers' websites and other publicly available sources.

Maps C. In Verizon's top 25 MSAs, competing carriers are serving at least 2.1 million mass market lines using at least 130 of their own switches. Verizon reviewed its wholesale records to identify the unbundled analog DS-0 loops provided to competitors in each of Verizon's top 25 MSAs and the competing carrier's switch associated with each such loop. Verizon also reviewed E911 data to identify the mass market lines deployed by competing carriers using their own switch and loop in each of Verizon's top 25 MSAs and the competing carrier's switch serving each such line. For each of Verizon's top 25 MSAs, Verizon has prepared maps (Maps C) showing the number of competitive switches, the number of mass market lines served by each switch and the wire center area where those mass market customers are located. (These figures show the competing carriers' lines as disbursed throughout that wire center, and do not represent the exact customer location.). Map C for each MSA is a composite showing all competing carriers' switches serving the MSA and all mass market lines served by those switches.

Maps D. Verizon also analyzed the geographic areas in which each of these competitive switches is serving or could reasonably be used to serve mass market customers in each MSA. Map D for each MSA shows the location of each competitive switch that is serving or could reasonably serve mass market customers in each MSA. For each of these switches in Verizon's top 25 MSAs, Verizon determined the most distant mass market lines served by each switch. Verizon used that distance as the radius for a circle drawn around each switch. That circle represents the geographic area that could be served by that competitive switch based upon the furthest distance currently served by that switch. The geographic areas that could be served by each competitive switch on Maps D have been color-coded to show the number of competitors that are or could reasonably serve each area in the MSA.

For switches located outside the MSA that do not serve any lines within the MSA, Verizon only considered those competitive switches that are located within 20 miles of the MSA border and that serve at least 10 percent of their customers at a greater distance than their location to the MSA border. For example, if a switch was located 15 miles from the border of the MSA and 20 percent of the lines served by that switch were more than 15 miles away, that switch would be shown on the map because it could reasonably serve mass market lines in the MSA.

This is a conservative analysis in at least two respects. First, Verizon based the radius for each switch on the furthest mass market lines actually served by that competitive switch, rather than the furthest mass market lines of any switch in serving the MSA. For example, in the Washington MSA, there is a competitive switch that is serving mass market lines that are 50 miles away. All of the other competitive switches serving the Washington MSA could likewise serve mass market lines that are 50 miles away. However, in order to provide a conservative analysis, Verizon only considered the furthest mass market lines served by each particular switch to show the area that could be served by that switch.

Second, Verizon's analysis does not include many competitive switches outside Verizon's top 25 MSAs that are not currently serving mass market customers within the MSA, but could easily do so. For example, there is a switch located 57.4 miles outside the Washington MSA border (near Philadelphia). That switch is serving over 3,000 mass market lines that are more than 57.4 miles away within the Philadelphia-Camden-Wilmington, PA-NJ-DE MSA. That switch could therefore serve mass market lines in the Washington MSA, but is not included in Verizon's analysis.

Exhibit D

APPENDIX A
BROADBAND COMPETITION: MAY 2004

This appendix provides an overview of competition in the provision of broadband services. It demonstrates that cable companies continue to dominate the provision of mass-market broadband service, while at the same time competition is also increasing from a number of other technologies. As a recent study finds, this is true not only for residential customers, but also for small-business customers for whom cable has become the most used broadband technology and who also rely heavily on alternative technologies such as fixed wireless and satellite. Moreover, competing carriers also dominate the provision of broadband services to large business customers, which likewise enjoy increasing access to alternative technologies.

A. Cable Operators Dominate the Broadband Mass Market

Recent data show that cable continues to dominate the broadband mass market. According to the Commission's latest *High-Speed Services Report*, as of June 2003, cable controlled more than *two-thirds* of all high-speed lines provided to residential and small-business customers,[1] which is the segment of the broadband market that cable operators target.[2] As of that same date, cable also controlled more than *83 percent* of the most rapidly growing segment of mass-market broadband lines – those capable of over 200 kbps in both directions.[3] In both cases, cable has increased its lead in the most recent six-month period for which the Commission reports data.[4]

Although the Commission's data are current only as of June 2003, more recent data show that cable has continued to maintain its lead over DSL through the first quarter of 2004, despite significant price decreases by DSL providers.[5] *See* Table 1. In the past nine months, cable added just over 3.3 million new subscribers, compared to only 2.9 million added by DSL. *See* Table 1.

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[1] Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *High-Speed Services for Internet Access: Status as of June 30, 2003* at Tables 3 & 4 (Dec. 2003) ("*High-Speed Services Report*").

[2] *Compare High-Speed Services Report* at Table 3 (Cable provides 13,660,541 high-speed lines to residential and small-business customers) *with High-Speed Services Report* at Table 1 (Cable provides a total of 13,684,225 high-speed lines).

[3] *See High-Speed Services Report* at Table 4. Residential and small-business high-speed lines capable of over 200 kbps in both directions represented 85 percent of all residential and small-business high-speed lines added between June 2002 and June 2003, and 78 percent of all high-speed lines added during that same period. *See id.* at Tables 1, 3 & 4. Verizon introduced a symmetrical xDSL service capable of over 200 kbps in both directions in July 2003. *See* Letter from Richard Ellis, Verizon, to Marlene Dortch, FCC, Transmittal No. 343 (July 22, 2003).

[4] *See High-Speed Services Report* at Table 3 (Cable share of all residential and small-business high-speed lines grew from 65 to 66 percent from December 2002 to June 2003); *High-Speed Services Report* at Table 4 (Cable share of residential and small-business high-speed lines with over 200 kbps in both directions grew from 79 to 83 percent from December 2002 to June 2003).

[5] *See, e.g.*, J. Hodulik, *et al.*, UBS, *High-Speed Data Update for 1Q04: DSL Net Adds Greater Than Cable for First Time Ever* at 1 (May 21, 2004) ("Cable continues to control the market for broadband with 60% share."); G. Campbell, *et al.*, Merrill Lynch, *Everything over IP* at 2 (Mar. 12, 2004) ("Thanks to price-cutting, DSL made modest inroads into cable's dominant position in the U.S. market.") ("*Merrill Lynch, Everything over IP*").

Table 1. Cable Modem and DSL Subscriber Growth: 3Q 2003-1Q 2004					
DSL			**Cable**		
	Net Adds 3Q 2003-1Q 2004	**Total Subs. 1Q 2004**		**Net Adds 3Q 2003-1Q 2004**	**Total Subs. 1Q 2004**
SBC	1.2 million	4.0 million	Comcast	1.3 million	5.7 million
Verizon	733,000	2.7 million	Time Warner	600,000	3.6 million
BellSouth	393,000	1.6 million	Cox	475,000	2.2 million
Qwest	208,000	744,000	Charter	304,000	1.7 million
Sprint	126,000	349,000	Cablevision	208,000	1.1 million
Other*	236,000	1.1 million	Other*	449,000	1.7 million
Total	**2.9 million**	**10.4 million**	**Total**	**3.3 million**	**15.9 million**
*Other DSL providers are ALLTEL, Citizens Communications, Cincinnati Bell, CenturyTel, Commonwealth Telephone, and Covad. Other cable modem providers are Adelphia, Mediacom, and Insight Communications. *Source: See* Appendix D.					

Cable also continues to lead DSL in terms of availability and penetration. Cable modem service is now available to more than 85 percent of all U.S. households,[6] and by the end of 2004 will be available to 90 percent of U.S. households.[7] Four of the largest cable companies (Comcast, Time Warner, Cox, and Cablevision) now make cable modem service available to between 95 and 100 percent of their homes passed,[8] and between 25 and 36 percent of these companies' video subscribers now take cable modem service.[9] The Bell companies, by contrast, currently make DSL available to about 75-80 percent of their homes passed,[10] and only between 7 and 15 percent of their residential voice subscribers take DSL.

Cable modem service is available in virtually all of the same markets where DSL is provided. JP Morgan has estimated that no more than 5 percent of U.S. households would be able to receive DSL but not cable modem by the end of 2003.[11] The actual number may well be even lower today, given that JP Morgan assumed that cable modem service would be available to

[6] *See* NCTA, *Broadband Services*, http://www.ncta.com/Docs/PageContent.cfm?pageID=37; *see also* J. Halpern, *et al.*, Bernstein Research Call, *Broadband Update: DSL Share Reaches 40% of Net Adds in 4Q . . . Overall Growth Remains Robust* at Exhibits 1 & 6 (Mar. 10, 2004) ("*Mar. 2004 Bernstein Broadband Update*") (cable broadband available to 92.3 percent of total cable homes passed).

[7] *See id.* at 7.

[8] *See, e.g., id.* at 7 & Exhibit 6 (reporting cable modem availability at 98.5% for Time Warner, 97.7% for Cox, 100% for Cablevision, and 87% for Comcast, which is adding almost 3.5 million homes passed in 2004).

[9] A. Bourkoff & J. Hodulik, UBS, *High-Speed Data Update for 4Q03: Getting Ready for Cable Telephony* at 8, Chart 6 (Mar. 11, 2004) ("*UBS 4Q03 High-Speed Data Update*").

[10] *See Mar. 2004 Bernstein Broadband Update* at 7, Exhibit 7 (reporting DSL availability at 75% for SBC, 80% for Verizon, 74% for BellSouth, and 45% for Qwest).

[11] *See* J. Bazinet, *et al.*, JP Morgan, *Broadband 2003* at Figure 9 (Dec. 5, 2002).

only 76 percent of all U.S. households as of year-end 2003, whereas the actual total today is somewhere between 85 and 90 percent.[12]

Broadband competition is thriving for small-business customers just as it is for residential customers.[13] Cable companies have moved rapidly to provide cable modem services to small-business customers. Five of the six largest cable system operators (which, collectively, represent over 90 percent of consumer cable modem subscribers) already offer broadband services specifically tailored to small businesses.[14] These cable operators have acknowledged that they can readily reach most small-business customers with their existing infrastructure, and that it makes sense to serve them.[15] Indeed, these cable operators already have been very successful in attracting small-business subscribers.[16]

Several recent studies confirm that small businesses are increasingly turning to cable modem service for their broadband needs.[17] A March 2004 study commissioned by the Small Business Administration, which the CLECs' own trade association has praised as a "well-researched report,"[18] separately analyzed small businesses according to three different segments (those with 0-4 employees, those with 5-9 employees, and those with revenues less than $200,000), and found that "for all three segments penetration was higher for cable modem service than for DSL."[19] A December 2003 study by In-Stat/MDR analyzes small businesses with 5 to 99 employees and finds that, as of year-end 2003, there were 2.1 million such

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[12] *See id.*

[13] *See* Letter from Dee May, Verizon, to Marlene H. Dortch, FCC, WC Docket Nos. 01-337, 02-33, 98-10, 98-20 at 10-17 (Nov. 13, 2003) ("*Verizon November 13, 2003 Ex Parte*"); *see also* Letter from Edward Shakin, Verizon, to Marlene H. Dortch, FCC, WC Docket Nos. 01-338, 96-98, 98-147, 02-33, 01-337 (Jan. 15, 2003).

[14] *See* J. Shim, Credit Lyonnais Securities, *The U.S. Cable Industry – Act I* at 196-202 (Nov. 20, 2002); Time Warner, *Time Warner Cable*, http://www.aoltimewarner.com/companies/time_warner_cable_index.adp.

[15] *See, e.g.*, A. Figler, *Turning Businesses into Customers*, Cable World (Dec. 9, 2002) (Ken Fitzpatrick, senior vice president of commercial services for Time Warner Cable: "We've got an infrastructure there that is just ripe for commercial services. . . . We pass 1.2 million businesses."); Jason Livingood, Director of Comcast Commercial Internet Services, *Overview of Cable Modem Offerings for Businesses in Maryland* (Aug. 15, 2002) (Comcast targets "SMBs with 1-100 employees," "Non-profit orgs, schools, government," and "SMBs and Enterprises with telecommuters.").

[16] *See, e.g., A Snapshot of the Cox Business Strategy*, Interview with Coby Sillers, Vice President and General Manager for Cox Business Services, Xchange Mag. (June 1, 2003) ("Cox Business Services now serves more than 65,000 business customers, and the company's business efforts have grown in the past three years from less than 1 percent of Cox's overall revenue to just more than 5 percent of Cox's consolidated revenue."); J. Barthold, *Small Business, Big Money, No Guarantees*, TelephonyOnline (Aug. 12, 2002) (Kevin Curran, senior vice president of marketing and sales for Cablevision Lightpath: Cablevision "can't keep up with demand" for Cablevision's Business Class Optimum Online service for small businesses).

[17] S. Pociask, Telenomic Research, LLC, *A Survey of Small Businesses' Telecommunications Use and* Spending (Mar. 2004) ("*Small Business Administration Study*"); K. Burney, In-Stat/MDR, *The Data Nation: Wireline Data Services Spending and Broadband Usage in the US Business Market; Part Three: Small Businesses (5 to 99 Employees)* (Dec. 2003) ("*In-Stat/MDR Small Business Study*").

[18] ALTS Press Release, *ALTS Applauds SBA's Survey of Competition for Small Business Customers* (Mar. 11, 2004) (statement of ALTS president John D. Windhausen, Jr.).

[19] *See Small Business Administration Study* at 44, 47 (Fig. 32), 48 (Fig. 33), 50 (Fig. 35).

businesses using cable modems compared to 1.4 million using DSL.[20] A November 2003 study by In-Stat/MDR finds that small offices and home offices (businesses with fewer than 5 employees) subscribe to cable modem service more than twice as often as they subscribe to DSL.[21]

These studies also demonstrate that small businesses use cable modem service far more often than the T-1 services the local telephone companies provide. The Small Business Administration study finds that the penetration of T-1 services among small businesses is only 4 percent, compared to 26 percent for cable modem services.[22] In-Stat/MDR likewise reports low penetration rates of T-1 service among the small-business customers it studied.[23]

The most recent competitive offerings and promotions from DSL and cable operators also demonstrate that there is extensive head-to-head competition across all geographic markets and for all segments of the mass market. In recent months, each of the Bell companies has cut their national DSL prices considerably. *See* Tables 2 & 4. Cable operators have responded with promotional and targeted price reductions, and, more broadly, by increasing data speeds that effectively offer consumers more bandwidth at a lower price than those operators' previous offerings. *See* Table 4.[24] And because these price wars began *after* the *Triennial Review Order*, they also vindicate the Commission's recent decision to phase out line sharing.[25]

Tables 2 and 3 show current broadband offerings over DSL and cable to residential and small-business customers, respectively. The tables reflect the standard prices for high-speed Internet access service – that is, Internet access bundled together with broadband transport. In Table 2, the bottom of the price range reflects prices when the lowest-speed broadband service is purchased together with at least one other service – voice service (local and long-distance) in the case of DSL, and video or voice service in the case of cable.[26] The higher prices in the range are

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[20] K. Burney, In-Stat/MDR, *The Data Nation: Wireline Data Services Spending and Broadband Usage in the US Business Market; Part Three: Small Businesses (5 to 99 Employees)* (Dec. 2003).

[21] *See* K. Burney & C. Nelson, In-Stat/MDR, *The Business Hot Wire!: Data Access in the Commercial and Residential Environments of US Businesses; Part One: Cable Modem Services* at 26, Table 11 (Nov. 2003) (48.5% of SOHO businesses subscribe to cable modem; 17.8 percent subscribe to DSL).

[22] *See Small Business Administration Study* at 44 (Fig. 30); *see also id.* at 47 (Fig. 32), 48 (Fig. 33), 50 (Fig. 35).

[23] *See* K. Burney & C. Nelson, In-Stat/MDR, *The Business Hot Wire!: Data Access in the Commercial and Residential Environments of US Businesses; Part One: Cable Modem Services* at 20, Table 11 (Nov. 2003) (8.5% of SOHO businesses and 25.6% of small businesses use Full T-1 in their main office; 5.9% and 17.3%, respectively, use Fractional T-1; and 48.5% and 43.7%, respectively, use cable modem).

[24] *See also* G. Campbell, *et al.*, Merrill Lynch, *3Q03 Broadband Update: The Latest on Broadband Data and VoIP Services in the U.S. and Canada* at 2 (Nov. 3, 2003) (cable operators "are increasingly moving 'off the rate card,' with market-specific pricing and increased use of promotional and bundled-price discounts specific to certain markets") ("*Merrill Lynch 3Q03 Broadband Update*").

[25] *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 263 (2003) ("*Triennial Review Order*"). Of course, competitive providers of DSL service have traditionally accounted for a only a small fraction of the broadband market, particularly for mass-market customers. *See, e.g., High-Speed Services Report* at Table 5.

[26] *Merrill Lynch, Everything over* IP at Table 2.

for broadband service purchased without one of those other services, or for higher-speed service. In Table 3, the bottom of the price range reflects prices under a one-year contract for the lowest-speed broadband service (with dynamic IP addresses, where available); the higher prices in the range are for higher speeds under a one-year contract.[27] The prices do not factor in the promotional discounts that, as demonstrated in Table 4, both DSL and cable modem providers are now routinely offering their customers.

Table 2. Current Residential Offerings by DSL and Cable Modem Providers

Technology	DSL				Cable Modem			
Provider	**Verizon**	**SBC**	**BellSouth**	**Qwest**	**Comcast**	**Cablevision**	**Cox**	**Time Warner**
Downstream Bandwidth	1.5 Mbps	384 kbps-3 Mbps	256 kbps-3 Mbps	256 kbps-1.5 Mbps	3 Mbps	3.5 Mbps	3 Mbps	2 Mbps
Upstream Bandwidth	384 kbps	128-384 kbps	128-384 kbps	256-896 kbps	256 kbps	1 Mbps	256 kbps	384 kbps
Monthly Price	$29.95-$34.95	$26.95-$59.99	$26.95-$54.95	$15.00-$44.99	$42.95-$57.95	$44.95-$49.95	$39.95-$49.95	$44.95-$59.95

Sources: See Appendix D.

Table 3. Current Small Business Offerings by DSL and Cable Modem Providers

Technology	DSL				Cable		
Provider	**Verizon Business DSL**	**SBC Symmetric DSL**	**Covad TeleSpeed Business DSL**	**AT&T Business Class DSL**	**Time Warner Road Runner Business Class**	**Comcast Business Comm. Comcast Workplace**	**Cablevision Business Class Optimum Online**
Downstream Bandwidth	384 kbps-7.1 Mbps	144 kbps-1.5 Mbps	144 kbps-1.5 Mbps	144 kbps-1.5 Mbps	1-4 Mbps	4-5 Mbps	10 Mbps
Upstream Bandwidth	384-768 kbps	144 kbps-1.5 Mbps	144 kbps-1.5 Mbps	144 kbps-1.5 Mbps	256 kbps-2 Mbps	384-512 kbps	1 Mbps
Monthly Price	$39.95-$204.95	$89.99-$289.95	$125.95-$289.95	$149.95-$399.95	$79.95-$399.95	$145-$200	$109.95

Sources: See Appendix D.

[27] The one exception to this is for Covad. The low-end for Covad reflects pricing under a two-year contract; the high-end reflects pricing under a one-year contract; and both exclude a one-time rebate of $150-$584. AT&T also offers a one-time rebate which is not reflected here.

Table 4. Recent Changes in Cable/DSL Competitive Offerings and Promotions		
DSL		
Verizon	May 2003	Lowered monthly rate by 30% to $34.95 ($29.95 when bundled with phone service); increased maximum download speeds to 1.5 Mbps from 768 kbps
	May 2004	Raised maximum upstream speeds for the 1.5 Mbps service from 128 kbps to 384 kbps. Announced plans to offer a 3.0 Mbps/768 kbps service in the summer
SBC	Feb. 2003	Lowered monthly rate to $34.95 with a one-year contract
	1H 2003	Lowered monthly rate with bundled service to $24.95 in San Diego and Orange County, Cal.; Kansas City, Mo., and Wichita, Kan., with one-year commitment
	June 2003	Lowered $34.95 monthly rate to $29.95 for new customers
	Sept. 2003	Lowered prices by 10% to $26.95 across its region to customers who sign-up online or purchase DSL within a bundle with a one-year commitment
	Feb. 2004	Replaced a $99.95 high-end offering with 3.0 Mbps/384 kbps service for $44.99
	Apr. 2004	Reduced price for 3.0 Mbps/384 kbps service to $36.99 when purchased with local, long-distance, and wireless service. Reinstated promotion of $26.95 per month for download speeds of up to 1.5 Mbps.
BellSouth	2Q 2003	Offered introductory rate of $19.95 for first three months
	July 2003	Implemented tiering and selective discounts, including $5/month reduction in its more competitive DSL markets
	3Q 2003	Began offering free first and third months of service
	3Q 2003	Reduced monthly rates to $29.95 and $39.95, when DSL is purchased with unlimited local and long-distance calling
Qwest	2003	Reduced monthly rate by 30 percent to $34.99 when purchased as part of a bundle
	3Q 2003	Reduced monthly modem rental fees from $5 to $2; monthly rate with bundled service is now $29.95
CABLE		
Comcast	Sept. 2003	Launched aggressive promotional trial, offering $19.95 for one year to a select group of DSL customers in California, Illinois, and Maryland
	3Q 2003	Offered $19.99 per month (effective for 3 or 6 months) for video customers, or $33.99 per month for non-video customers, in most markets.
	Oct. 2003	Announced increased download speed to 3 Mbps from 1.5 Mbps
Time Warner	Oct. 2003	Increase download speed to 3 Mbps from 2 Mbps
	Dec. 2003	Lowered monthly rate in Kansas City, Mo. from $44.95 to $26.95 for one year
	4Q 2003	Currently testing faster upload speeds (512 kbps)
Charter	Sept. 2003	Increased download speeds to 2.0 Mbps at no extra charge
Cablevision	Aug. 2003	Began limited promotion of $29.95 for the first six months
Cox	3Q 2003	Reduced monthly modem rental rate from $15 to $10
	4Q 2003	Rolling out a reduced-priced data product in 7 markets – Northern Va., Kan., New Orleans, Humboldt and Santa Barbara, Cal., Phoenix, and Ga.
	4Q 2003	Plans to add a higher-speed service as part of its tiering strategy
Adelphia	Oct. 2003	Increased download speed to 3 Mbps; doubled upload speed to 256 kbps
RCN	Oct. 2003	Increased top download speed to 5 Mbps; doubled download speed of lower-priced tier to 3 Mbps
Mediacom	Jan. 2004	Announced it will double download and upload speeds to 3 Mbps and 256 kbps, respectively, at no extra charge
Sources: See Appendix D.		

Finally, the fact that cable and DSL providers are engaging in aggressive comparative advertising provides additional confirmation that they are competing head-to-head for the same customers in the same markets. For example, Time Warner boasts that its "High Speed Online . . . leaves DSL in the dust."[28] Comcast claims "download speeds up to 2x faster than 1.5 Mbps DSL."[29] Cablevision claims its service "is more than twice as fast as the lowest-priced DSL."[30] BellSouth points out that DSL "provides a dedicated connection to your home to the [] DSL network. Cable modem service shares a connection with other cable modem subscribers."[31] A recent SBC print ad encourages customers to "stop throwing money away on cable and sign up for SBC Yahoo DSL." A recent Verizon television ad boasts service "that's 13 bucks less than Comcast," and, unlike Comcast includes a pop-up blocker, antivirus software, and modem. Within several weeks of airing this spot, Comcast aired a copycat advertisement – using the same set, format, and body double.[32] According to MINTEL's Comperemedia, telephone companies have also boosted their direct-mail marketing efforts "primarily due to cable companies' more aggressive marketing of packages with cable modem and cable TV services and most recently, phone service."[33]

Analysts expect all of these trends to continue, and for the broadband market to become increasingly competitive, for the foreseeable future. Prices are expected to continue to drop even further.[34] Deutsche Bank, for example, expects the cable industry "to lower basic pricing very close to the $30 level in reasonably short order."[35] Broadband penetration is expected to increase apace, from 22 percent of U.S. households today, to 30 percent by the end of 2004, and almost 40 percent by the end of 2005. *See* Figure 1.[36]

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[28] Time Warner Cable, *Products & Services: High Speed Online from Time Warner Cable*, http://www.timewarnercable.com/dispatcher/products;jsessionid=0000LZJGUTC4AGS3LJ0T3J34NUY:-1?category=10056&expand=Y&rootCategory=10050&src=0homeHS0.

[29] Comcast, *Features*, http://www.comcast.com/Benefits/CHSIDetails/Slot3PageOne.asp.

[30] Optimum Online, *What Is It?*, http://www.optimumonline.com.

[31] BellSouth, *Common Questions*, http://www.fastaccess.com/content/consumer/common_questions.jsp.

[32] Transcript of Verizon Online DSL advertisement aired on Feb. 4, 2004 at 5:58 AM on WNBC in New York, NY. The Comcast ad was subsequently pulled off in the air, in response to copyright and other challenges made by Verizon.

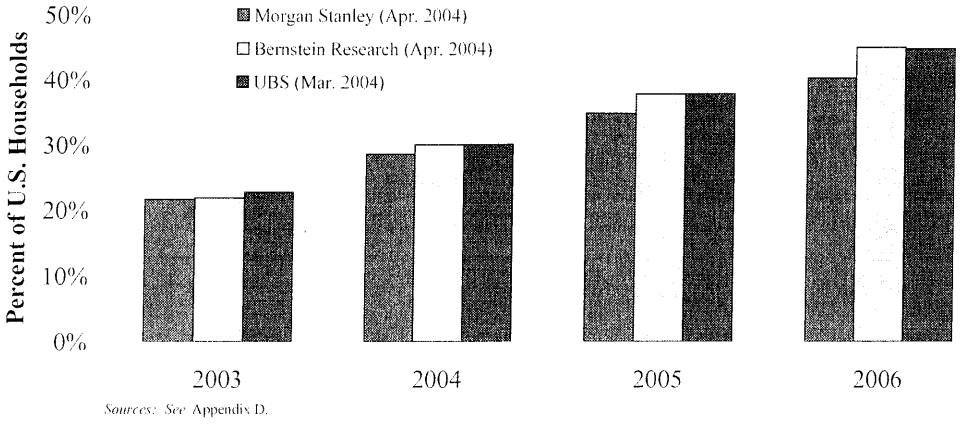
[33] *MINTEL's Comperemedia: Telecom Companies Push Bundled Services Packages*, Business Wire (Mar. 9, 2004).

[34] *See, e.g.*, R. Bilotti, *et al.*, Morgan Stanley, *Broadband Update – Tiering Strategies* at 4 (Apr. 12, 2004) ("[O]ur forecasts assume that cable modem pricing declines from an average of $40 in 2003 to approximately $34-36 longer term.").

[35] V. Shvets, *et al.*, Deutsche Bank Securities Inc., *Wireline Services; DSL – A Reversal of Fortune* at 4 (May 4, 2004).

[36] As of year-end 2003, there were approximately 24 million households subscribing to broadband service. *See Mar. 2004 Bernstein Broadband Update* at Exhibit 1. *See also* Cathy Martine, SVP Internet Telephony & Consumer Product Management, AT&T, *Voice over IP* at 5 (Feb. 25, 2004) (justifying AT&T's VoIP strategy to investors based on estimates of Residential Broadband Subscribers increasing to more than 45 million by 2007).

Figure 1. Residential Broadband Subscribers



Sources: See Appendix D.

B. There Is Significant Mass-Market Broadband Competition from Other Sources

The Commission has already recognized that, in addition to cable and DSL, there are numerous additional platforms and technologies already competing in or poised to enter the broadband mass market, including power lines, fixed wireless, 3G mobile wireless, and satellite.[37] Indeed, many of these technologies are already being used to provide service offerings that are competitive with DSL and cable modem services, both for residential and small-business customers. *See* Tables 5 & 6. Under well-settled precedent, all of these alternatives must be taken into account in the analysis of broadband competition,[38] particularly given that that the broadband market is still "in the earliest stages" and is evolving rapidly.[39]

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[37] *See, e.g., Inquiry Concerning the Deployment of Advanced Telecommunications Capability*, Third Report, 17 FCC Rcd 2844, ¶¶ 79-88 (2002); *Triennial Review Order* ¶ 263 ("[T]he Commission also has acknowledged the important broadband potential of other platforms and technologies, such as third generation wireless, satellite, and power lines.") (citing *Third Section 706 Report 2002*, 17 FCC Rcd 2844, ¶¶ 79-88 (2002)); R. Mark, *Broadband over Power Lines: FCC Plugs In*, Internetnews.com (Apr. 23, 2003), http://dc.internet.com/news/article.php/2195621 (Chairman Powell: "[t]he development of multiple broadband-capable platforms – be it power lines, Wi-Fi, satellite, laser or licensed wireless – will transform the competitive broadband landscape.").

[38] The Commission has held that a proper market analysis must "examine not just the markets as they exist today," but must also take account of "future market conditions," including "technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry." *Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent To Transfer Control of NYNEX Corp. and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19985, ¶¶ 3, 7, 41 (1997) ("*Bell Atlantic/NYNEX Merger Order*"); *Applications of Teleport Communications Group Inc., Transferor, and AT&T Corp., Transferee, For Consent To Transfer of Control of Corporations Holding Point-to-Point Microwave Licenses and Authorizations To Provide International Facilities-Based and Resold Communications Services*, Memorandum Opinion and Order, 13 FCC Rcd 15236, ¶ 19 n.65 (1998); *Applications for Consent to the Transfer of Control of Licenses from Comcast Corp., Transferor, and AT&T Corp. to AT&T Comcast Corp., Transferee*, Memorandum Opinion and Order, 17 FCC Rcd 23246, ¶ 27 (2002); *see also Triennial Review Order* ¶ 263 ("The fact that broadband service is actually available through another network platform and may potentially be available through additional platforms helps alleviate any concern that competition in the broadband market may be heavily dependent

Table 5. Typical Residential Offerings by Alternative Broadband Providers				
Technology	**BPL**	**Satellite**		**Fixed Wireless**
Provider	**Prospect Street Broadband**	**DIRECWAY**	**StarBand**	**NTELOS Portable Broadband**
Downstream Bandwidth	200-300 kbps	500 kbps	200-500 kbps	1.5 Mbps
Upstream Bandwidth	200-300 kbps	50 kbps	40-60 kbps	550 kbps
Monthly Price	$26.95	$59.99-$99.99	$49.99-$99.99	$49.95-$69.95
Availability	Manassas, VA	Continental U.S.	Nationwide	VA Cities
Sources: See Appendix D.				

Table 6. Typical Small-Business Offerings by Alternative Broadband Providers			
Technology	**Satellite**		**Fixed Wireless**
Provider	**DIRECWAY**	**StarBand Small Office**	**NTELOS Portable Broadband**
Downstream Bandwidth	200 kbps-1.5 Mbps	150 kbps-1 Mbps	1.5 Mbps
Upstream Bandwidth	n/a	40-100 kbps	550 kbps
Monthly Price	$75.99-$189.99	$119.99-$149.99	$49.95-$69.95
Sources: See Appendix D.			

1. Fixed Wireless

Recent evidence confirms that fixed wireless continues to be a viable broadband alternative for many customers, and is likely to grow significantly in the future. 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.[40] The national trade association for fixed wireless providers has stated that "approximately 1,500-1,800 [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."[41] As the Chairman of that association has noted,

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upon unbundled access."); *FCC v. RCA Communications, Inc.*, 346 U.S. 86, 96-97 (1953); *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 594-95 (1981).

[39] *Bell Atlantic/NYNEX Merger Order* ¶¶ 40-41; *see also Inquiry Concerning the Deployment of Advanced Telecommunications Capability*, Third Report, 17 FCC Rcd 2844, ¶¶ 79-88 (2002) ("preconditions for monopoly appear absent" in the broadband market).

[40] *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).

[41] Comments of the License-Exempt Alliance at 3, *Revision of Parts 2 and 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, ET Docket No. 03-122

"[w]ireless ISPs have rolled out broadband service in virtually every state of the union – and in hundreds of rural and metropolitan markets. . . . Wireless has boldly become the nation's third pipe for last-mile access."[42]

In just the past few months, there have been a number of new deployments of fixed wireless broadband service. In May 2004, NextNet announced the launch of non-line-of-sight broadband wireless service in conjunction with three regional ISP partners: W.A.T.C.H. TV in Ohio, SpeedNet in Michigan, and Gryphon Wireless in Nebraska.[43] Earlier this year, NextNet reported a successful trial with America Connect in Granville County, N.C.[44] In January 2004, NTELOS "announced initial commercial deployment of 'Portable Broadband, high speed-Internet access to go" in Charlottesville, Stuarts Draft, and Waynesboro, Va. "for business and residential users."[45] In December 2003, SR Telecom announced that its fixed wireless access product was selected by Southwest Texas Telephone Company "to deliver voice and broadband data services to previously difficult to serve areas in the state."[46] WindChannel Communications announced in December 2003 its roll-out of fixed wireless broadband in downtown Durham, N.C.[47] In November 2003, Adams NetWorks deployed fixed-wireless non-line-of-sight

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(FCC filed Sept. 3, 2003) (citing Alvairon, Inc., *The License-Exempt Wireless Broadband Market* at 8 (Apr. 2003)) ("*LEA Comments*"). The Commission's own *High-Speed Services Report* counts only 309,006 high-speed lines provided through "satellite or fixed wireless" as of June 2003, but this is likely due to the fact that the many fixed wireless lines are provided in rural areas by small providers. As the Commission notes, "we do not know how comprehensively small providers, many of which serve rural areas with relatively small populations, are represented in the data summarized here." *High-Speed Services Report* at 2.

[42] *WISPs Buck Investment Trends*, ISP-Planet (Nov. 12, 2002), http://www.isp-planet.com/research/2002/vc_trends_021112.html.

[43] NextNet Wireless News Release, *NextNet and Regional Service Providers Launch NLOS Broadband Wireless Services in Ohio, Michigan and Nebraska* (May 17, 2004). W.A.T.C.H. TV is an MMDS provider with over 10,000 customers in Ohio. SpeedNet holds MMDS licenses covering 500,000 households in northeast and mid-Michigan. Gryphon Wireless is an ITFS carrier "targeting 87,000 residential and SOHO subscribers in underserved markets" in Kearney, Neb. and the surrounding area. *Id.*

[44] NextNet Wireless News Release, *America Connect and NextNet Announce Successful Launch of Non-Line-of-Sight Broadband Wireless Trial at 2.3 GHz* (Jan. 21, 2004). The NextNet system has also been deployed by ISPs in Arizona, Iowa, Minnesota, and New Mexico. NextNet Wireless News Release, *NextNet and Regional Service Providers Launch NLOS Broadband Wireless Services in Ohio, Michigan and Nebraska* (May 17, 2004). NextNet was recently acquired by an organization backed by Craig McCaw. *See NextNet Bought by Cell-Phone Tycoon*, Minneapolis St. Paul Bus. J. at 1 (Apr. 23, 2004).

[45] NTELOS Press Release (Jan. 6, 2004), http://www.wcai.com/pdf/2004/mds_ntelosJan6.pdf. Portable Broadband will be available to approximately 50,000 households in these three cities. *Id.* NTELOS plans to expand the system later this year "to Lynchburg, VA, as well as fill out coverage in Charlottesville, and Waynesboro." *Id.* The service offers "download speeds up to 1.5 Mbps, and upload speeds up to 550 Kbps" with prices starting at $49.95 per month. Consumers can use the service to receive high-speed connection both from their homes, but also from "anywhere within the coverage area" using the "added flexibility of un-tethered non-line-of-sight access" that is "truly plug-and-play, requiring no external antenna." *Id.*

[46] SR Telecom News Release, *SR Telecom's Stride2400 Selected for Voice and Internet Project in U.S.* (Dec. 11, 2003) (Its last-mile access technology is used both for voice services as well as broadband and "provides excellent performance over long spans (11 miles) . . . resulting in reduced infrastructure deployment costs.").

[47] *WindChannel Expands; Brings Fixed Wireless Broadband Access to the EPA and Others in Durham and the Research Triangle Park*, Business Wire (Dec. 22, 2003).

broadband services to four communities in Illinois and Missouri, and has plans to expand its networks into an additional twelve communities in 2004.[48]

A number of recent fixed wireless roll-outs and trials – including by NTELOS, W.A.T.C.H. TV, Gryphon Wireless, and America Connect – have been targeted at business customers as well as residential ones.[49] According to In-Stat/MDR, more small businesses are now using fixed wireless (22 percent of SOHO businesses and 23 percent of small businesses) than ADSL (18 percent and 23 percent, respectively).[50] In-Stat/MDR also expects 35 percent of small businesses and 39 percent of SOHO businesses to begin using fixed wireless within the next 12 months.[51]

As these deployments make clear, there has been a recent surge of investment in fixed wireless. Fixed wireless providers are now "attracting significant amounts of financing from venture capital private capital investments."[52] There has likewise been significant investment by equipment suppliers.[53] For example, Intel and Nokia have begun aggressively promoting the technology.[54] Established telecom firms like Nextel also have recently invested in fixed

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[48] WaveRider Communications, Inc. News Release, *Adams NetWorks, Inc. Expands Its NetVelocity Service With WaveRider's Last Mile Solution* (Nov. 24, 2003). The WaveRider system boast speeds of up to 2.0 Mbps in a two-mile range in non-line-of-sight conditions with indoor antennas. With outdoor antennas, WaveRider's products delivers speeds of 2.0 Mbps at a range of up to five miles in non-line-of-sight conditions, and up to 25 miles with a line-of-sight connection. *See id.*

[49] *See, e.g.,* NTELOS Press Release (Jan. 6, 2004) (announcing "initial commercial deployment of 'Portable Broadband,' high speed-Internet access to go" "for business and residential users."); NextNet Wireless News Release, *NextNet and Regional Service Providers Launch NLOS Broadband Wireless Services in Ohio, Michigan and Nebraska* (May 17, 2004) (W.A.T.C.H. TV launched broadband wireless services "for business and residential subscribers in Lima, Ohio on May 1;" Gryphon Wireless offers "a broadband alternative to SOHO and residential subscribers."); NextNet Wireless News Release, *America Connect and NextNet Announce Successful Launch of Non-Line-of-Sight Broadband Wireless Trial at 2.3 GHz* (Jan. 21, 2004) (reporting the success of a fixed wireless trial in Granville County, N.C. NextNet and America Connect are working "toward the goal of creating new opportunities for business and residential populations in the Southeast.") (quoting NextNet president and CEO Guy Kelnhofer).

[50] *In-Stat/MDR December 2003 Study* at 19, Table 10.

[51] *Id.*

[52] *WISPs Buck Investment Trends*, ISP-Planet (Nov. 12, 2003), http://www.isp-planet.com/research/2002/vc_trends_021112.html; K. Beckman, *WorldCom MMDS Assets Go to BellSouth*, RCR Wireless News (May 19, 2003) ("Several fixed-wireless vendors have received investments during the past several months."); C. Nolter, *BellSouth Bids for WorldCom Unit*, Daily Deal (May 13, 2003) ("Since December, IPWireless, Aperto Networks and Soma Networks have received infusions from venture capital firms, [Yankee Group's Linda] Schroth wrote."); C.D. Marsan, *AirBand Attracts Venture Capital Largesse*, Network World ISP News Report Newsletter (Sept. 24, 2003) (AirBand, a WISP using fixed wireless technology to deliver broadband services in the Southwest, raised $10.5 million from a group of venture capital firms in the first half of 2003).

[53] *See, e.g., Motorola Canopy(TM) Wireless Broadband Portfolio Expands with New 2.4GHz Product*, PR Newswire (Dec. 15, 2003); *Athena Semiconductors Closes Series B $10 Million Funding Round Led by Samsung*, Business Wire (Dec. 17, 2003); *Trango Broadband M900S 900MHz System Gains FCC Approval; Low Cost, Non-Line-of Sight Wireless Broadband Solution is Ready for Market*, Business Wire (Jan. 7, 2004); *Airspan Announces New Range of 802.16 OFDM Products*, Business Wire (Oct. 31, 2003).

[54] *See, e.g.*, M. Angell, *Techs Again Tout Fixed Wireless*, Investor's Business Daily at A06 (May 7, 2003) ("Now a group of tech companies, including Intel Corp. and Nokia Corp., wants to revive fixed wireless technology."); *Intel, Nokia, Proxim, Others Launch WiMax*, TMCnet.com News (Apr. 11, 2003) ("Intel, Nokia,

wireless.[55] According to one recent estimate, the U.S. market for broadband wireless access services is expected to grow to $3.7 billion within five years.[56] Not surprisingly, the stocks of both fixed wireless providers and equipment suppliers have risen steadily over the past year.[57]

This renaissance in fixed wireless is due to the fact that its underlying technology and economics have improved considerably. One major development is the adoption of an industry-wide standard for fixed wireless broadband – IEEE 802.16a (commonly known as WiMax)– that is designed to provide "a wireless alternative to cable, DSL and T1/E1 for last mile broadband access," and that can "also be used as complimentary technology to connect 802.11 [*i.e.*, Wi-Fi] hot spots to the Internet."[58] The new standard enables fixed wireless to be used for high-speed data transmission over much greater distances than previous standards – "up to 30 miles, with a typical cell radius of 4-6 miles."[59] It also "allows users to get broadband connectivity without needing direct line of sight with the base station," a major limitation of previous generations of

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Proxim, and a host of other companies yesterday launched WiMax, a non-profit group formed to certify and promote the developing wireless broadband standard 802.16."); M. Hachman, *Intel To Ship WiMAX Products in 2004*, EWeek (Sept. 18, 2003) ("Intel Corp. will produce integrated products that meet the 802.16 WiMAX specification by mid-2004."); R. Kay, *WiMax*, Computerworld (Dec. 1, 2003) ("Intel has now promised WiMax versions of its Centrino chip set for 2004, whereas Nokia says it will have battery and other technical issues solved in time to launch a WiMax cell phone in 2005.").

[55] Nextel recently purchased MMDS spectrum from WorldCom and Nucentrix, and has already moved well into trials of WiMAX technology. Nextel cited two potential applications for WiMAX: as an enterprise solution for offering integrated Wi-Fi, cellular and WiMAX systems; and as a parallel data network, which would allow Nextel to reach remote areas. *See* C. Nolter, *Nextel Wins Nucentrix Spectrum*, Daily Deal (Nov. 7, 2003); G. Williams, *Nextel Communications Acquires Wireless Assets*, World Markets Analysis (Nov. 10, 2003); *Nextel May Be First Major WiMAX Operator*, Blueprint Wi-Fi (Nov. 26, 2003), http://www.rethinkresearch.biz/free_page_view.asp?crypt=%B3%9C%C2%97%8C%84%86%AF%BC%C2%88%97kvn%91; *see also* V. Lipset, *Operators Wary of WiMax, Study Says*, Wi-Fi Planet (Nov. 19, 2003), http://www.wi-fiplanet.com/news/article.php/3111361. Nextel is testing a wireless broadband service using the 802.20, "Mobile Fi" standard, across a coverage area of approximately 1,300 square miles in North Carolina's Research Triangle. Nextel News Release, *Nextel Expands Successful Broadband Trial To Include Paying Customers and Larger Coverage Area* (Apr. 14, 2004).

[56] Senza-Fili Consulting Press Release, *WiMAX Poised To Dominate US$3.7bn Market for Broadband Wireless Access* (Apr. 21, 2004) (citing a new study by BWCS and Senza-Fili Consulting). *See also* R. Kay, *WiMax*, Computerworld at 34 (Dec. 1, 2003) ("Visant Strategies Inc., a market research firm in Kings Park, N.Y., predicts that WiMax product sales will reach $1 billion by 2008. According to Oyster Bay, N.Y.-based ABI Research, the market for long-range wireless products based on 802.16 and the forthcoming 802.20 standard will reach $1.5 billion by 2008.").

[57] For example, the stocks of fixed wireless equipment providers Alvarion (ALVR), California Amplifier (CAMP), Proxim (PROX), Endwave (ENWV), and Stratex Networks (STXN) rose 492 percent, 163 percent, 104 percent, 718 percent, and 65 percent, respectively, between January 2, 2003 and December 31, 2003. *See* Yahoo! Finance, *Historical Prices* and *Company Profile*, http://finance.yahoo.com (closing prices).

[58] *See* WIMAX Forum, *WIMAX Overview* at 1, *available at* http://www.wimaxforum.org ("*WIMAX Overview*"). The standard was approved by the IEEE and released January 29, 2003. WIMAX Forum, *WIMAX FAQs* at 1, *available at* http://www.wimaxforum.org ("*WIMAX FAQs*"). Initial vendor tests are scheduled for the third quarter of 2004, *WIMAX Overview* at 2, and certified equipment is expected in the market by the second half of 2004, *WIMAX FAQs* at 2.

[59] *LEA Comments* at 4; D. Pescovitz, *10 Technologies To Watch in 2004*, CNN.com (Dec. 25, 2003), http://www.cnn.com/2003/TECH/ptech/12/23/bus2.feat.tech.towatch ("802.16: WiMax enables wireless networks to extend as far as 30 miles and transfer data, voice, and video at faster speeds than cable or DSL. It's perfect for ISPs that want to expand into sparsely populated areas, where the cost of bringing in DSL or cable wiring is too high.").

fixed-wireless technology.[60] The adoption of a common standard and the fact that the technology is maturing also have caused the costs of deploying fixed wireless to drop.[61] As one industry observer notes, "[f]irms like Winstar and Teligent 'used nonstandard gear,' . . . 'Once it becomes standardized, that brings down the cost.'"[62] The new standard also enables operators to build scale more easily.[63] It is now estimated that these advances could make "last-mile WiMAX connections cheaper than cable and DSL solutions."[64]

2. Broadband over Power Lines

According to Chairman Powell, "Broadband over Power Line [BPL] has the potential to provide consumers with a ubiquitous third broadband pipe to the home."[65] Recent evidence confirms the near-term promise of this emerging broadband alternative. At least two commercial BPL rollouts are currently underway – one in Manassas, Va., the other in Cincinnati, Ohio.[66]

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[60] *WIMAX Overview* at 2; *Strategy Analytics: Fixed Wireless Broadband Heads Home*, M2 Presswire (Nov. 19, 2003) ("'Advances in the underlying technology have relaxed the line-of-sight constraints that used to make residential installations an expensive and uncertain proposition,' says Tom Elliott, Vice President of Consulting with Strategy Analytics."); *see also id.* (A single base station "provides total data rates of up to 280 Mbps . . . which is enough bandwidth to simultaneously support hundreds of businesses with T1/E1-type connectivity and thousands of homes with DSL-type connectivity."); Intel Corp., White Paper, *IEEE 802.16 and WiMAX – Broadband Access for Everyone* at 3 (2003) ("a single 'sector' of an 802.16(a) base station . . . provides sufficient bandwidth to simultaneously support more than 60 businesses with T1 connectivity.").

[61] M. Angell, *Techs Again Tout Fixed Wireless*, Investor's Business Daily at A06 (May 7, 2003) ("'With a standard in place, that makes for a better selection of chips and should bring down the price of the technology,' said Margaret LaBrecque, president of the newly established WiMax Forum. LaBrecque also serves as marketing manager for Intel's broadband wireless group."); D. Molta, *[News Without the Noise] – 802.16a: Sedan or Mack Truck?* Network Computing (Aug. 7, 2003) ("As IEEE standardizes on a metropolitan wireless MAC interface and WiMax pushes the OFDM physical-layer interface, it's predictable that the cost of base-station equipment and subscriber modems will come down."); *Fixed Wireless as Residential Access Sees Renewed Life*, Electronic News (Nov. 24, 2003) ("Reduced equipment costs, improved performance, and an aggressive set of vendors and wireless ISPs are making fixed wireless a serious broadband contender in rural towns and urban fringes.") (quoting Tom Elliott, VP, Strategy Analytics).

[62] M. Angell, *Techs Again Tout Fixed Wireless*, Investor's Business Daily at A06 (May 7, 2003) (quoting Roger Marks, Chair, 802.16 Working Group); *see also* M. Hogan, *To the WiMAX: A New Protocol Spices Up the 802.X Alphabet Soup*, Entrepreneur (Dec. 1, 2003) ("WiMAX equipment could cost less than a quarter of current technology, with prices starting under $ 2,000.") (citing Intel marketing manager Margaret LaBrecque).

[63] *WiMAX Overview* at 3 ("Easy addition of new sectors supported with flexible channels maximizes cell capacity, allowing operators to scale the network as the customer base grows.").

[64] M. Hogan, *To the WiMAX: A New Protocol Spices Up the 802.X Alphabet Soup*, Entrepreneur (Dec. 1, 2003) (citing Intel marketing manager Margaret LaBrecque); *see also* M. Stone & D. Chang, *Great Expectations for WiMAX*, Wireless Data News (Dec. 17, 2003) ("It's true that WiMAX infrastructure likely will be less expensive than existing infrastructure, and the lower entry costs will encourage new market entrants.").

[65] *Inquiry Regarding Carrier Current Systems, including Broadband over Power Line Systems*, Notice of Inquiry, 18 FCC Rcd 8498, Separate Statement of Chairman Michael K. Powell (2003); *see also Broadband*, National Journal's Technology Daily (Dec. 16, 2003).

[66] *See Plug into the Internet via Prospect Street Broadband*, Utility Connection at 2 (Feb. 2004), http://www.manassascity.org/documents/Utilities/Utility%20Connection/Utility%201_04.pdf (Prospect St. Broadband's "Zplug" service "was activated in portions of the Wellington and Battery Heights neighborhoods [in Manassas, Va.] in January, and will soon be available in other areas."); D. Kumar, *Utilities Revise Broadband-over-Power-Line Rollout Schedules*, Comm. Daily (Dec. 9, 2003) ("[O]nce the [network build-out] is completed in mid-

Other commercial BPL rollouts are planned or will be considered in the coming months.[67] BPL trials have been conducted in at least eight states by some of the nation's largest utility providers.[68] It is estimated that "one-third of electric utility companies are considering or already using BPL."[69] The Power Line Communications Association estimates that "broadband over power line will reach between 750,000 and 1 million customers by the end of 2004."[70] Independent industry analysts estimate that "BPL will encompass six million power lines by 2006, promising revenues of $3.5 billion."[71]

2004, [the city] expects to provide service to all 15,000 electric customers."); S. Kreiger, *Innovative Web Access To Shock Manassas*, Potomacnews.com (Oct. 18, 2003); *Cinergy and Current Communications To Offer Broadband Services over Power Lines*, Business Wire (Mar. 2, 2004) (announcing that companies "are beginning to offer broadband over power line (BPL) services in the greater Cincinnati, Ohio area"); D. Kumar, *Utilities Revise Broadband-over-Power-Line Rollout Schedules*, Comm. Daily (Dec. 9, 2003) ("Under current plans, Cinergy will pass 30,000-40,000 homes in Ohio in the first year and 250,000 in 3 years.").

[67] *See, e.g.*, *Muni in Upstate New York Views BPL Project as Plan with Little Risk, Plenty of Potential*, Electric Utility Week (Dec. 1, 2003) ("DVI intends to . . . begin sales to Penn Yan's 3,000 customers, which include 355 commercial customers, in January, said Marc Burling, CEO of DVI."); D. Kumar, *Utilities Revise Broadband-over-Power-Line Rollout Schedules*, Comm. Daily (Dec. 9, 2003) ("[IdaComm] CEO Chris Britton said the technical trials would take another 2-3 months to complete, after which a market trial, which was larger in scope, was planned: 'So we will make a decision on going commercial probably in the summer of 2004.'"); *Cinergy and Current Communications To Offer Broadband Services over Power Lines*, Business Wire (Mar. 2, 2004) (BPL "expansion is planned for Northern Kentucky and Indiana").

[68] D.T. Dang, *Utilities Test Potentially Revolutionary High-Speed Data Transmission System*, Baltimore Sun (May 11, 2003) ("such as Ohio's American Electric Power, New York's Consolidated Edison and Pennsylvania Power and Light"); Amperion, Inc. Press Release, *Amperion, Inc. Announces Powerline Communications Testing Agreement with PPL Electric Utilities* (Sept. 23, 2002); Amperion, Inc. Press Release, *Amperion Announces High-Speed Powerline Trial with Progress Energy* (May 1, 2003); Current Technologies, LLC Press Release, *Cinergy and Current Technologies Conduct 100-Home Test Market of the Current Technologies Powerline Communications in Ohio* (June 24, 2002); Current Technologies, LLC Press Release, *FCC Chairman Powell Visits Current Technologies Broadband over Power Line Network in Potomac, Maryland* (April 9, 2003); *Comments of Ameren Energy Communications, Inc. at 2*, Inquiry Regarding Carrier Current Systems, including Broadband over Power Line Systems, ET Docket No. 03-104 (FCC filed July 7, 2003); IDACOMM Press Release, *Amperion and IDACOMM Launch Broadband Over Powerline (BPL) Pilot in Boise, Idaho* (Jan. 6, 2004); Comments of Main.net Communications, Ltd. at 3, *Inquiry Regarding Carrier Current Systems, including Broadband over Power Line Systems*, ET Docket No. 03-104 (FCC filed July 7, 2003); Comments of Hawaiian Electric Company, Inc. at 1, *Inquiry Regarding Carrier Current Systems, including Broadband over Power Line Systems*, ET Docket No. 03-104 (FCC filed July 2, 2003); Wall Street Transcript Corp., Investext Rpt No. 8707372, CEO Interview: Joan Freilich – Consolidated Edison Inc. – Company Report at *4 (May 2, 2003); *Muni in Upstate New York Views BPL Project As Plan with Little Risk, Plenty of Potential*, Electric Utility Week (Dec. 1, 2003). *See also Inquiry Regarding Carrier Current Systems, including Broadband over Power Line Systems*, Notice of Inquiry, 18 FCC Rcd 8498, Separate Statement of Chairman Michael K. Powell (2003) ("Power line networks are being tested today in a dozen states around the country and are a testament to the incredible innovations taking place in broadband network technologies.").

[69] J. Breen, *et al.*, Thomas Weisel Partners, *Broadband over Power Lines: Finally . . . After All Those Years* at 2 (May 3, 2004) ("*Thomas Weisel BPL Report*").

[70] W. Rodgers, *Power To Interfere?*, Tampa Tribune, MoneySense at 10 (Jan. 5, 2004). In February 2004, EarthLink invested $500,000 in BPL provider Ambient; EarthLink had teamed with Ambient in its BPL pilot with Con Edison. *See* Comm. Daily (Feb. 23, 2004).

[71] *At CompTel Fall 2003: What's The Next Big Thing*, Comm. Today (Oct. 13, 2003) (citing Gartner Group research).

The economics of deploying BPL are now very favorable, and technological hurdles have been overcome. The core infrastructure – power lines that extend to virtually every home and business in the nation – is already in place. Beyond that, "the cost for additional equipment ranges from about $50 to $250 per home passed, depending on housing density," which is "substantially less than the cost of introducing cable modem or DSL service in new areas."[72] Installation is inexpensive and quick. "A utility worker can connect a piece of communications equipment to a medium-voltage line in about 10 minutes."[73] And, "[i]n most cases, there is no need to send a truck or utility worker to each home to set up equipment. A consumer needs only to plug in a $70 power line modem, typically used for home networking."[74] Technological hurdles "also have now been economically cleared."[75] For example, transmitting a signal through power transformers, "one of the biggest obstacles to making power line communications work,"[76] can now be circumvented by no fewer than three different methods.[77]

BPL can be used to provide high-speed access at speeds comparable to or faster than DSL and cable, and at comparable prices.[78] Cinergy noted that its "[h]igh-speed Internet access in the trials achieve[d] speeds over 2 megabits/second."[79] Companies plan to sell BPL service at

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[72] C. Berg, *PPL Tests Broadband Internet Service*, Morning Call at A1 (Apr. 27, 2003); *see also* P. Davidson, *High-speed Net Coming to a Plug Near You?*, USA Today (Apr. 14, 2003) ("Costs recently have fallen to $50 to $160 per home passed, suppliers say. 'The breakthrough is that cheaper silicon has made this possible on a large scale,' says Amperion CEO Philip Hunt. This is much cheaper than what cable and phone giants had to spend beefing up their networks with fiber or copper, as well as adding broadband gear. At first, they spent $750 to $1,000 per home passed, though costs lately have fallen to $200 to $400, Jupiter's Joe Laszlo says.").

[73] *Tampa, Fla.-Area Electric Utility May Offer New Outlet for Broadband*, Tampa Tribune (Oct. 6, 2003); *id.* ("BPL is cheap to install.").

[74] D.T. Dang, *Utilities Test Potentially Revolutionary High-Speed Data Transmission System*, Baltimore Sun (May 11, 2003).

[75] Comments of Current Technologies, LLC. at 4, *Inquiry Regarding Carrier Current Systems, including Broadband over Power Line Systems*, ET Docket No. 03-104 (FCC filed July 7, 2003); *see also* J. Mears, *Broadband over Power Lines Closer to Reality*, Network World (June 2, 2003) ("Today, companies . . . have developed technology to move bits across medium- and low-voltage lines.").

[76] C. Berg, *PPL Tests Broadband Internet Service*, Morning Call at A1 (Apr. 27, 2003); *see also* P. Davidson, *High-speed Net Coming to a Plug Near You?*, USA Today (Apr. 14, 2003) ("The biggest roadblock, however, is the transformer that converts medium-voltage current (10,000 to 69,000 volts) to the low voltages (220/110) that enter your home. It can swallow data signals whole.").

[77] *See* P. Davidson, *High-speed Net Coming to a Plug Near You?*, USA Today (Apr. 14, 2003) ("Ambient and Current Technologies bypass the transformer with a special wire that carries the data, while only electric current passes through the transformer. Main.Net relies on packet-chopping technology to slip the data intact through the trash-can-sized transformer. And Amperion's Wi-Fi antennas wirelessly link the Internet signal to the customer before it gets to the transformer."); *see also* C. Berg, *PPL Tests Broadband Internet Service*, Morning Call at A1 (Apr. 27, 2003).

[78] *See* D. Kumar, *Utilities Revise Broadband-over-Power-Line Rollout Schedules*, Comm. Daily (Dec. 9, 2003) ("symmetrical speeds of 1.5 Mbps to 2 Mbps"); C. Berg, *PPL Tests Broadband Internet Service*, Morning Call at A1 (Apr. 27, 2003) ("[Main.net President Joe] Marsilii said Main.net's system can achieve speeds up to 1.8 megabits per second – faster than DSL and about as fast as the best cable modems. And, he said, the next generation of technology will be five times faster than that.").

[79] Comments of Cinergy Corp. at 1-2, *Inquiry Regarding Carrier Current Systems, including Broadband over Power Line Systems*, ET Docket No. 03-104 (FCC filed July 7, 2003).

rates comparable to or less than those of other access services.[80] For example, Prospect Street Broadband, the company with which the City of Manassas has partnered in the nation's first commercial BPL rollout, offers residential high-speed Internet access for only $26.95 per month.[81]

3. Satellite

Satellite is another broadband alternative that has begun a resurgence. As one industry observer has noted, "satellite broadband will be on the upswing again in 2004."[82]

One of the two main broadband satellite providers – Hughes Network Systems – reported 180,000 customers for its DIRECWAY service as of year-end 2003.[83] The recently approved merger between General Motors/Hughes and News Corp.[84] will allow News Corp. to "work aggressively to ensure that broadband services are available to as many American consumers as possible. . . . News Corp. believes it is critical that consumers have a vibrant set of broadband choices that compete with cable's video and broadband services on capability, quality, and price."[85] In October 2003, MCI began reselling Hughes's DIRECWAY service to "small-to-medium businesses and enterprises."[86] MCI notes that "with today's broadband satellite technology . . . you can connect remote employees and offices wirelessly while experiencing the

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[80] *See, e.g., Muni in Upstate New York Views BPL Project as Plan with Little Risk, Plenty of Potential*, Electric Utility Week (Dec. 1, 2003) ("[DVI] plans to offer basic Internet service to residents for $29.95/month, with business customers paying $89.95/month at speeds that are comparable to digital subscriber line and cable Internet service"); S. Strangmeier, *Consumers to Surf Power Lines*, Natural Gas Week (Dec. 5, 2003) ("BPL proponents claim it costs less than major cable and telephone services at about $29.95/month."); C. Berg, *PPL Tests Broadband Internet Service*, Morning Call at A1 (Apr. 27, 2003) ("[P]ower line communications will be significantly cheaper than its competitors."); A. Szoke, *Electric Utilities Try to Plug in to High-Speed Internet in Peoria, Ill., Area*, Journal Star (Apr. 22, 2003) ("Some utilities have said they may be able to offer [BPL] at a cost of $30 to $40 a month for residential users compared to the $40 to $50 average monthly charge for broadband.").

[81] *See* Prospect Street Broadband, *Products and Services*, http://www.prospectstreet.com/psb/Products/ResidentialServices.htm; D. Kumar, *Utilities Revise Broadband-over-Power-Line Rollout Schedules*, Comm. Daily (Dec. 9, 2003).

[82] R. Brown, *et al., Smooth Sailing or the Perfect Storm?*, CED (Jan. 1, 2004); *see also ISCE Panelists See Big Satellite Broadband Growth*, Satellite Week (Aug. 25, 2003) ("Michael Agnostelli, SES Americom vp-business strategy, said that for the first time DBS TV services cost less...than cable TV. 'There's no reason satellite broadband can't cost less than [DSL or cable modem],' he said: 'The technology is well positioned to hit the cost point and performance point that consumers are looking for.'").

[83] DirecTV Group Inc., Form 10-K (SEC filed Mar. 17, 2004) (residential and small office/home-office customers in North America).

[84] *General Motors Corp. and Hughes Electronics Corp., Transferors, and The News Corp. Ltd., Transferee*, Memorandum Opinion and Order, MB Docket No. 03-124, FCC 03-330 (rel. Jan. 14, 2004).

[85] Consolidated Application for Authority to Transfer Control at 31, *Application of General Motors Corp. and Hughes Electronics Corp., Transferors, and The News Corp. Ltd., Transferee*, MB Docket No. 03-124 (FCC filed May 15, 2003).

[86] MCI, *Enterprise, Internet Broadband Satellite*, http://global.mci.com/us/enterprise/internet/broadbandsat/.

same advantages that many terrestrial options offers, such as speed, security and reasonable costs."[87]

The other main satellite provider – StarBand – emerged from bankruptcy in November 2003 with most of its customer base intact.[88] The company has introduced new hardware and service offerings targeted at mass-market customers that offer lower prices and higher speeds than were previously available.[89] StarBand's residential service begins at $50 a month. *See* Table 5.

Finally, WildBlue Communications plans to introduce broadband satellite service in the Ka-band during 2004.[90] 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.[91] According to NRTC President and COO Bob Phillips, "[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."[92]

4. 3G Mobile Wireless

In recent months, third-generation ("3G") wireless services have taken another step closer to becoming a full-fledged competitor in the broadband market. These new 3G networks rely on IP in place of traditional communications protocols used on wireless networks,[93] enabling

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[87] *Id.*

[88] *Starband to Emerge from Bankruptcy Protection by Month's End*, Satellite Week (Nov. 24, 2003) ("Starband is expected to emerge from bankruptcy protection late this month with a revamped sales staff. . . . Starband has 38,000 subscribers, having lost 2,000 since filing for bankruptcy protection in U.S. Dist. Court, Wilmington, Del., in May 2002.").

[89] *See, e.g., StarBand Unveils Faster Modem*, Satellite News (Aug. 4, 2003) ("StarBand . . . has introduced a modem designed to provide peak download speeds of up to one megabit per second (Mbps) and upload speeds of 100 kilobits per second (Kbps)."); *Starband to Emerge from Bankruptcy Protection by Month's End*, Satellite Week (Nov. 24, 2003) ([Starband] recently introduced model 480 Pro satellite modem that's designed for small-business market . . . will be priced at $899 with a one-year contract carrying a $149 monthly fee; $599 with 2- and 3-year pacts that have $149 and $139 monthly charges. On the consumer side, Starband will continue with the model 360 satellite modem and price ranging from a starter kit at $699 with a one-year contract and a $39 monthly fee that provides download speeds up to 250 kbps to $199-$699 standard plans that are based on 2- and 3-year contracts. The 2- and 3-year agreements charge $99 a month for the first year, then drop to $59 and $49, respectively.).

[90] WildBlue Communications Press Release, *NRTC to Offer WildBlue Satellite Broadband Services* (Aug. 25, 2003) ("WildBlue will deliver affordable two-way wireless broadband services via satellite, direct to homes and small offices, throughout the continental United States in 2004. WildBlue is expected to be the first to launch the Ka-band spot beam satellite technology designed to lower the cost of providing consumers high-speed Internet access via satellite. The WildBlue system also will leverage proven terrestrial cable modem technology, resulting in lower customer equipment and installation costs; a critical requirement in satellite-based consumer services."); R. Brown, *et al., Smooth Sailing or Perfect Storm?*, CED (Jan. 1, 2004).

[91] WildBlue Communications Press Release, *NRTC to Offer WildBlue Satellite Broadband Services* (Aug. 25, 2003).

[92] *Id.*

[93] *See, e.g., Internet Protocol Phone: Communication is a Necessity*, BusinessWorld (Jan. 27, 2004) ("IP is

providers to offer advanced wireless features. One new feature that wireless providers hope to provide is Push-To-Talk,[94] which is a service that one wireless provider – Nextel – currently dominates.[95] These new wireless networks also are expected to greatly increase the use of wireless networks for data transmission,[96] and to compete directly with fixed broadband services such as cable modem and DSL in the provision of high-speed Internet access.[97]

In September 2003, Verizon Wireless launched a 3G wireless network in Washington, DC and San Diego.[98] Verizon's 3G service using EvDO technology provides Internet access at speeds of 300-500 kbps, with bursts up to 2 Mbps.[99] As one analyst notes, the download speeds of EvDO networks are "comparable to those of DSL and cable modems."[100] In January 2004, Verizon announced that it will spend over $1 billion deploying its EvDO network over the next two years, allowing it to reach many major metropolitan areas across the country.[101] This puts pressure on other wireless providers to follow suit.

AT&T Wireless has announced plans to deploy next-generation W-CDMA technology capable of providing download speeds of 384 kbps in four cities by the end of 2004.[102] Sprint

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the basis of the internet, and the standard that will eventually be used for most wireless 3G (third generation) network infrastructure.").

[94] *See, e.g.*, S. Flannery, *et al.*, Morgan Stanley, *Nextel: Quick Comment: Mixed Quarter, Churn Ticks Up* at 2 (Apr. 22, 2004) ("Cingular plans to become the fourth national carrier to offer [Push To Talk] with a launch this quarter."); R. Prentiss, *et al.*, Raymond James, *AT&T Wireless* at 4 (Apr. 26, 2004) ("[AT&T Wireless] is rethinking when to launch [Push to Talk] . . . . The reason behind the delay is not just to save capital but also to have a coordinated effort for inter (non-iDEN) carrier capability (i.e., push-to-talk calls between customers from other carriers).").

[95] *See, e.g.*, B. Bath, Lehman Brothers, *Wireless Services Industry Update: CTIA – Carriers Bullish on 04 Data* at 1 (Mar. 25, 2004) ("Nextel currently retains a significant lead over its competitors").

[96] *See, e.g.*, 10 Downing Street Press Release, *Strategy To Deliver Best Outcomes for Consumers from the Competition in Electronic Networks* (Dec. 2, 2002) ("New wireless networks, including 3G, are expected to complement wired networks for data transmission, but not to replace them."); *At Last, 3G Rollouts Show More Boom Than Bust*, Wireless Data News (Dec. 17, 2003) ("'The next generation of CDMA architecture will be driven by person-to-person communications,' said Adam Gould, CTO of CDMA for Nokia Mobile Phones. 'We'll see an evolution of voice services first, then higher-quality packet switching and then music. Data will go from downloads to more person-to-person without a fixed, PC-like IP address.'").

[97] *Merrill Lynch, Everything over IP* at 36 ("Pressure [from IP wireless] is likely to be felt in two directions, with fixed broadband and VoIP services (such as WiFi) cutting into the mobile opportunity, and mobile broadband services potentially taking some of the [High-Speed Data] market opportunity.").

[98] Verizon Wireless Press Release, *Wireless Broadband Data Service Introduced in Major Metro Areas* (Sept. 29, 2003).

[99] Verizon Wireless Press Release, *Verizon Wireless Announces Roll Out of National 3G Network* (Jan. 8, 2004).

[100] B. Richards, *et al.*, CIBC World Markets, Investext Rpt. No. 7305232, Sierra Wireless Inc. – Company Report at *2 (Mar. 6, 2003).

[101] Verizon Wireless Press Release, *Verizon Wireless Announces Roll Out of National 3G Network* (Jan. 8, 2004); V. Mamelak, Netaxis Bleichroeder, *Verizon* at 3 (Dec. 1, 2003).

[102] AT&T Wireless Press Release, *AT&T Wireless Outlines Actions It Will Take to Meet 2003 Goals* (Jan. 28, 2003) (announcing plans to rollout W-CDMA in four cities (Dallas, San Diego, San Francisco, and Seattle) by year end 2004); G. Lynch, *Dropping EDGE Could Regain Edge for AT&T*, America's Network (Feb. 1, 2001).

has begun conducting trials of EvDO.[103] Nextel is conducting a trial of Flarion's next-generation wireless platform, which provides bandwidth of between 1-3 Mbps.[104]

C. There Is Extensive Broadband Competition for Large Business Customers

Recent evidence also confirms that there is extensive competition for broadband services provided to large business customers. As Verizon has previously explained, this segment of the broadband market differs from other segments both because it is more mature, with competitors having first entered the market two decades ago, and because it is national in scope.[105] As the Commission has found, it is comprised of customers that typically demand end-to-end services provided across LATAs, states, and often countries.[106]

A January 2004 report by Schwab Soundview Capital Markets provides further confirmation of this, and shows that it is AT&T and the other large interexchange carriers – not the ILECs – that dominate this segment of the market. As the report notes, "ATM and frame relay services constitute the majority of telecom spending by businesses and nearly 85% of revenue opportunity within ATM and frame relay services is in long distance service offerings."[107] This analyst notes that, as of January 2004, AT&T, MCI, and Sprint together controlled 79 percent of the Frame Relay market and 60 percent of the ATM market.[108] And because the Frame Relay market is much larger than the ATM market, these companies' share of the combined market for broadband services provided to large businesses is approximately 75 percent.[109] AT&T's Chairman has boasted that his company is the nation's "largest private line/frame relay/ATM provider."[110]

Although some parties have argued that the IXCs often provide Frame Relay and ATM services using facilities obtained from ILECs, the fact that these carriers have nonetheless come to dominate the retail market is definitive proof that they are able to compete effectively. For example, as the D.C. Circuit recently found in analogous circumstances, the fact that IXCs may

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[103] *See, e.g.*, K. Fitchard, *Rollout Kicks Off 3G's Amazing Race*, Telephony (Oct. 6, 2003) (Sprint ran a trial of EvDO in Boise, Idaho); S. Marek, *U.S. Spotlight Shines on EV-DO*, Wireless Week (Apr. 15, 2003), http://www.wirelessweek.com/article/CA292170 (Sprint PCS affiliate Ubiquitel has been testing its own EvDO network).

[104] C. Larsen, *et al.*, Prudential Equity Group, LLC, *Wireless Services: CTIA Trade Show Take-Aways* at 3 (Mar. 24, 2004).

[105] *Verizon November 13, 2003 Ex Parte* at 17.

[106] *See, e.g.*, *Triennial Review Order* ¶ 302 ("Enterprise market customers . . . prefer a single provider capable of meeting all their needs at each of their business locations which may be in multiple locations in different parts of the city, state or country.").

[107] M. Bowen, *et al.*, Schwab Soundview Capital Markets, *AT&T Corp.* at 2 (Jan. 21, 2004).

[108] *See id.* at 3.

[109] IDC estimated total frame-relay revenues of $7.44 billion for 2003, while total ATM revenues were estimated at $1.98 billion. *See* R. Kaplan, IDC, *U.S. Frame Relay Services Forecast, 2002-2007* at Table 2 (Mar. 2003); R. Kaplan, IDC, *U.S. ATM Services Forecast, 2002-2007* at Table 2 (Mar. 2003).

[110] David Dorman, Chairman and CEO, AT&T, *Presentation for Credit Suisse First Boston Media and Telecom Week* at 6 (Dec. 11, 2003) ("*Dorman/AT&T Presentation*").

be using special access services as an input in the broadband data services they provide to end-user customers has not changed the fact that the retail market for broadband services provided to large businesses is "rapidly expanding and prosperous," with competition "not only . . . surviv[ing] but . . . flourish[ing]."[111] In any event, these parties greatly exaggerate the limitations on the availability of competitive facilities. Time Warner Telecom has recently stated that "[w]hile [RBOCs] have lot of fiber deployed, I don't know that they have more buildings connected than we do in all cases. In certain markets they may; in others they may not.[112] In December 2003, AT&T noted that its network now "touches virtually all Fortune 1,000 companies."[113]

Moreover, the availability and use of alternative last-mile broadband facilities for large businesses is rapidly increasing, just as it is for other segments of the broadband market. A recent study by In-Stat/MDR found that 41 percent of "enterprises" (businesses with 5,000 or more employees) were using cable modem service, 40 percent were using fixed wireless, and 21 percent were using satellite, in place of or in addition to other alternatives such as high-speed ILEC lines.[114] With respect to the "middle market" (businesses with between 500 and 5,000 employees), 32 percent were using cable modem, 29 percent fixed wireless, and 9 percent were using satellite.[115] In addition, the study finds that 40 percent of enterprise businesses and 38 percent of middle-market businesses plan to use cable modem in the next 12 months, and that 54 percent and 44 percent, respectively, plan to use fixed wireless within that time.[116]

These findings are consistent with the fact that both cable operators have increasingly been going after large businesses. Cox Business Services "provides a range of advanced communications services, including high-speed Internet access . . . for companies of all sizes."[117] Cox's Business Services division estimated that it has already garnered 10-13 percent of the market (based on revenue) in areas where its services are currently available.[118] Comcast boasts that it provides "best in class fiber-based Metropolitan Area Network (MAN) services by utilizing thousands of miles of existing fiber infrastructure."[119] As the Yankee Group notes, "[t]he focus of Comcast Business Communications . . . is fiber-to-the-building and passive optical networking (PON)."[120] Time Warner Cable is "delivering cost effective, high capacity

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[111] *United States Telecom Assn. v. FCC*, No. 00-1012, Slip. Op. at 30-31 (D.C. Cir. Mar. 2, 2004).

[112] E. Gubbins, *A Conversation with Time Warner Telecom's Mike Rouleau*, TelephonyOnline (Oct. 29, 2003), http://telephonyonline.com/ar/telecom_conversation_time_warner/index.htm (quoting Mike Rouleau, Time Warner Telecom senior vice president of business development).

[113] *Dorman/AT&T Presentation* at 6.

[114] *In-Stat/MDR December 2003 Study* at 19, Table 9.

[115] *Id.*

[116] *Id.* at 19, Table 10.

[117] Cox Communications, Form 10-K (SEC filed Mar. 31, 2003).

[118] Cox Communications, presentation before the UBS Media Week Conference (Dec. 2003), http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irol-presentations.

[119] Comcast Commercial Services, *Data Services*, http://www.comcast-ccs.com/frames.asp?section=products_and_services&page=data_description.

access solutions to several Fortune 500 customers."[121] Charter is moving "'up-market' to compete in Enterprise RFP environment;"[122] it reports that 9 percent of its business subscribers are medium or large businesses.[123]

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[120] M. Lauricella, *et al.*, The Yankee Group, *Cable MSOs: Ready to Take Off in the Small and Medium Business Market* at 7 (Mar. 2002).

[121] Road Runner Business Class, *High Speed Internet*, http://www.twcbroadband.com/products/hsd.php (Jan. 13, 2004).

[122] T. Cullen, senior vice president, Advanced Services, Charter Communications, presentation before the Smith Barney Citigroup Entertainment, Media & Telecommunications Conference, at 23 (Jan. 7, 2004).

[123] Charter Communications, presentation before the UBS Media Week Conference, at 19 (Dec. 11, 2003) (reporting that 91% of business customers are small businesses).

Exhibit E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Forbearance of the Verizon Telephone Companies	)	CC Docket No. 01-338
	)	

DECLARATION OF JEROME HOLLAND

1. My name is Jerome Holland. I am the Vice President, Fiber Network Service for Verizon Network Services ("Verizon"). I submit this declaration in support of Verizon's Petition for Forbearance in the above-captioned matter. I am responsible for managing the implementation of Verizon's Fiber to the Premises ("FTTP") deployment. I have had this position since July 2003. I have been with Verizon for sixteen years. I have a bachelor's degree in engineering, and a master's degree in business administration.

2. Verizon's petition seeks forbearance from any obligations that section 271 may impose to unbundle the next-generation broadband facilities that the Commission has decided should not be unbundled under section 251. As discussed below, and in Verizon's previous submissions in this proceeding, enforcing such obligations would dramatically increase the costs of deploying those facilities, would raise a host of intractable administrative and regulatory problems, and would provide strong disincentives for the widespread deployment of such facilities by Verizon and the other Bell companies.

I. Background.

3. Relying on the de-regulatory promises made when the Commission announced its Triennial Review Order last year, Verizon has significantly increased the reach of its broadband services. Verizon invested more than $600 million since the beginning of last year to increase the availability of our DSL services, including the addition of more than 10 million additional DSL-qualified lines by year's end. At the end of 2002, 62% of our lines were DSL loop qualified; within one year, we had increased that number to 80%. We plan to continue this expansion of DSL availability, with the goal of adding another 7 million DSL-qualified lines in 2004.

4. Verizon also increased the number of DSL lines in service from 1.7 million in 2002 to 2.3 million by the end of 2003. This largely was accomplished through our actions, in May 2003, in slashing DSL prices by 30% to $34.95 per month (or $29.95 when bundled with phone service), and increasing the speed of our basic DSL offering (download speeds of now have more than doubled, from 768 kbps to 1.5 Mbps). In response to the needs of small business customers, we also introduced a symmetric DSL service in July 2003. *See* Letter from Richard Ellis, Verizon, to Marlene Dortch, FCC, Transmittal No. 343 (July 22, 2003). We are continuing to increase DSL penetration in the marketplace during 2004, by developing new products and services and marketing attractive alternatives to cable competitors' offerings. For example, we recently conducted a marketing trial of iobi, a resource that allows users to manage communications from their wireline and wireless phones, computers, laptops and PDAs, and have plans to

deploy it in certain markets starting at the end of the second quarter of 2004. We have presented customers with various bundling options, including video offered through our partnership with DirecTV.

5. These actions benefit not only our customers, but also increase competitive pressure on the dominant cable providers. In fact, Verizon's actions have prompted several of the major cable companies to respond in kind, by increasing the speed of their own broadband offerings, reducing prices, or both. For example, just a few months after we offered higher speeds at lower prices, Time Warner increased its download speeds from 2 Mbps to 3 Mbps in October 2003. In advertisements, Time Warner has been claiming that its service "leaves DSL in the dust." In third quarter 2003, Comcast announced a promotion offering cable modem service for $19.99 per month (effective for three or six months) for video customers, or $33.99 per month for non-video customers, in most markets.

6. Verizon also has moved ahead aggressively with plans to roll out the second generation of broadband networks, making a major commitment to deploying fiber to customers' premises sooner, rather than later. Rather than simply upgrading to fiber as part of our routine maintenance, we are accelerating the Fiber to the Premises ("FTTP") deployment, working toward the goal of passing one million homes by the end of 2004. We have already completed the process of issuing requests for proposals and selecting vendors for the equipment and facilities that will make up these advanced networks. In November 2003, we selected several primary vendors to provide various aspects of the FTTP technology, such as the fiber-optic cabling and other outside plant equipment. In

February 2004, we announced the signing of a multi-year contract with Advanced Fibre Communications Inc. ("AFC") to provide the "active" elements of the network – the central office and premises electronics to run the FTTP technology. Field trials of that technology, called FiberDirect, are scheduled to begin this summer. We have already completed the engineering design work for about 400,000 of the million homes we intend to pass this year.

7. This FTTP deployment fundamentally will be a new network. Even in "brownfield" areas, in most instances the new FTTP facilities will completely overlay the existing circuit-switched feeder and distribution network over an entire central office serving area. The new network will enable Verizon to provide a broad range of important benefits to the public, including enormous bandwidth and better quality of service capable of providing seamless and simultaneous voice, data, multimedia, and video services.

8. Specifically, Verizon's new FTTP network will provide customer applications, products, and data speeds unattainable via existing technologies. The FTTP network will be capable of transmitting up to 622 megabits of data per second and receiving 155 megabits of data per second (shared by the customers on each fiber), which is in addition to a separate path on the same fiber for video. By comparison, our DSL service transmits data to our residential customers at speeds of up to 1.5 megabits per second. While Verizon is still working on the parameters of its service offerings, we are contemplating offering a service that would provide FTTP customers with speeds that are ten to twenty times faster than current DSL or cable modem offerings. Thus, rather than taking

approximately 24 hours to download a feature-length film using DSL at speeds of 768 kbs, or 11 to 13 hours for DSL or Cable operating at 1.5 mbps, if the FTTP operates at speeds up to 30 mbps, such a download would take only 7 to 8 minutes.

9. FTTP also will give Verizon the capability to provide customers with access to a broad variety of real-time applications and data-rich services, including innovative new video services and HDTV quality video, very high-speed Internet access, interactive video, video telephony and telecommuting support, network-based personal video recording, backing up of data to secure and centralized servers, and premises surveillance. The widespread deployment of such new networks thus presents the potential to provide a range of advanced services for consumers, and also provide facilities-based competition in markets currently dominated by the cable incumbents.

10. In addition to the greater speeds and innovative services it will make possible, FTTP is also more reliable than copper-based technologies and, once installed, less expensive to maintain. Verizon's current business plan is to build FTTP facilities not only in newly developed "greenfield" areas, but also to overlay fiber on its existing networks throughout an entire wire center serving area, transitioning customers to the new network over time.

11. Even apart from its direct consumer benefits, deployment of advanced broadband networks will bring substantial benefits to the U.S. economy. First, it will stimulate the development of high-speed work-at-home and other business-oriented applications that will greatly enhance efficiency and productivity in a

range of industries. Second, some analysts have predicted that the very deployment of more advanced broadband technologies is expected to generate billions of dollars in new investment over the next several years and create countless permanent new jobs. Indeed, Verizon is prepared to devote some $1 billion in investment capital to achieve its goal of passing over 1 million homes with new fiber throughout one hundred central offices in nine states by the end of this year. Within five years, Verizon hopes to make FTTP available to a significant portion of its subscriber base.

12. Despite its indisputable benefits, however, deployment of FTTP in the U.S. has barely begun. At present, only approximately 180,000 homes are passed by such fiber facilities, and only approximately 65,000 of those homes subscribe to fiber services. This slow growth results from the enormous expense and complexity of deploying FTTP and other "last mile" facilities. Widespread deployment of FTTP entails massive upfront investment and risk.

II. The Need for Forbearance.

13. Verizon has based its plans to build next-generation broadband networks on the assumption that there will be no unbundling requirements for such networks under any provision of the 1996 Act. It bases that assumption on the logic and promise of the *Triennial Review Order,* in which the Commission explained that compelled access to broadband elements was not only *unnecessary* for broadband competition, but also affirmatively *harmful to competition* because it "tend[s] to undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology." *Triennial Review Order* ¶ 3.

14. As discussed below, the threat of potential unbundling obligations under section 271 would have the same negative effects on broadband investment and deployment that the Commission correctly concluded would result from the enforcement of similar unbundling obligations under section 251. The Commission should act promptly to remove this investment-chilling uncertainty by forbearing from any stand-alone obligations to unbundle broadband elements under section 271.

A. FTTP network design does not accommodate intermediate points of interconnection.

15. New FTTP networks are neither designed nor built to accommodate access by multiple carriers. Verizon's FTTP network uses passive optical network ("PON") technology, which provides a seamless fiber connection between the central office to a customer's premises. Unlike the existing narrowband copper-based network, FTTP loops cannot be split into discreet elements, such as loops, subloops, and separate network interfaces devices. Thus, the network technology that is being deployed does not permit intermediate points of access. In addition, there is not a one-for-one transmission path between the central office and the end user, as is the case, for example, with copper loops terminating on a main frame. A single fiber on the FTTP network may be used to serve up to thirty-two different customers and at any one given time, and the central office equipment may be processing a combination of data and voice traffic from multiple locations. Construing section 271 to require unbundled access to Verizon's FTTP network would require a significant redesign of this new integrated fiber network

architecture to create new and artificial points of access to individual components of the network architecture. Any unbundling requirement would thus require a costly redesign of the network and associated systems, not only by Verizon but by its equipment suppliers as well. That redesign would eliminate many of the inherent efficiencies that help drive broadband deployment. Unbundling requirements would therefore result in sub-optimal technology, as well as add substantial cost and inefficiency. All of these factors would delay and possibly deter deployment of these already risky new technologies. If Verizon were required to unbundled its FTTP, it would have to stop deployment, redesign network and active elements, and request its equipment manufacturers to redesign equipment such as the optical network terminal ("ONT") and optical line terminal ("OLT"). Although it is difficult to predict how much the cost or burdens of unbundling would be, I predict that unbundling requirements would set back Verizon's FTTP deployment by a year or more.

16. Another critical aspect of deploying next-generation networks is the development and deployment of Operations Support Systems ("OSS") necessary to operate these new networks. As is the case with the fiber networks themselves, Verizon is designing and building entirely new systems to support the FTTP deployment that will provide customers with new and enhanced service capabilities. Of the approximately $1 billion being spent in for 2004 FTTP deployment, more than 10% (approximately $120 million) is budgeted for the development of OSS to support FTTP. For example, Verizon intends to offer the capability for "real time" provisioning of FTTP, which would allow an existing FTTP customer to

change their data product (*e.g.*, ordering greater bandwidth speeds) almost instantaneously via website or calling a Verizon customer representative.

17. OSS are essential to providing services as efficiently and at as high a quality as possible to benefit customers. They are also one of the major cost components of deploying these new networks. Imposing an unbundling obligation under section 271 would require the design and development of still new systems to cope with the complex requirements of unbundled access to piece parts of next-generation technology—with all the attendant costs of "the tangled management inherent in shared use of a common resource." *USTA v. FCC*, 290 F.3d 415, 429 (D.C. Cir. 2002).

18. Specifically, if unbundling were required, OSS would have to provide support for provisioning, billing, order-processing, maintenance and other functions for multiple providers using these various individual broadband elements. Verizon alone already has spent hundreds of millions of dollars in modifying existing systems to handle unbundling requirements for narrowband network elements. For broadband, we would essentially have to duplicate these systems, and incur the same types of costs, all over again. The requirements would both increase the costs of new systems and reduce their benefit by sacrificing efficiency and quality, all of which would further undermine incentives to deploy.

19. Some parties have suggested altering the Commission's definition of "new-build" FTTP loops so that it would include only fiber that was "newly constructed in its entirety by the incumbent LEC on or after October 2, 3003 (Effective Date of the UNE Triennial Review Order)." *See* Ex parte letter of ACN Communication

Services, Inc., et al, CC Docket Nos. 01-338, 96-98, and 98-147, at 3 (Jan. 8, 2004). While the vast majority of Verizon's FTTP deployment will not use fiber feeder in existence before October 2003, it is possible we will use spare fiber in existing feeder plant in some cases for our FTTP deployment if it is economical to do so. Present planning suggests that less than 5% of fiber needs for this new network would be met with existing fiber. However, regardless of whether fiber feeder is used, such FTTP deployment would still constitute a new network. Such fiber is not being used today, and is not currently part of services being provided by the copper loop. If existing fiber feeder is used for new FTTP deployment, it still would provide a new path from the central office to the end user that did not exist before. Thus, precluding Verizon from using existing fiber, where it is available, could needlessly increase the costs of its FTTP build-out. Verizon should not be restricted in its ability to deploy what it believes to be the most efficient network design in extending fiber from central offices directly to customer locations.

B. Broadband unbundling obligations would become increasingly unmanageable over time.

20. A separate concern with potential unbundling costs is the expense and uncertainty of new obligations over time. As demonstrated by Verizon's experience in the context of its section 251 obligations, any unbundling requirement evolves over time as it is interpreted and applied, thereby requiring carriers to continually modify both their underlying networks and the accompanying OSS in order to comply with the changing regulations.

21. First, CLECs in particular are likely to argue for complex and onerous variations on any underlying unbundling requirement, regardless of whether they have realistic plans to avail themselves of the regulatory results. One instructive case in point is the economic waste that CLECs inflicted on Verizon in New York in connection with the implementation of line-splitting requirements in 2000 and 2001. At the CLECs' instigation, the New York PSC ordered Verizon to make major alterations to its OSS to accommodate specific "scenarios" to facilitate CLECs and DLECs splitting a Verizon line to provide a combination of voice and DSL service. And it directed Verizon to accelerate its work on accommodating these scenarios. Verizon spent many months and millions of dollars on this effort, all on the basis of forecasts by CLECs that they would soon need to submit thousands of line-splitting orders to Verizon per month. In fact, that demand never materialized, and the total number of such in-service lines in New York is still dramatically lower than CLECs' projections, years after the fact. The prospect of similar economic waste on a much larger scale poses strong

disincentives to any company contemplating enormous capital investments that trigger ill-defined regulatory obligations.

22. Second, although the Commission clarified in the *Triennial Review Order* that TELRIC does not apply to section 271-only unbundling obligations, the potential for intrusive state pricing rules remains. Indeed, CLECs have already argued to state regulators that they have a right to oversee—*i.e.*, comprehensively regulate—these federal obligations.[1/] While that argument is misplaced, because any remaining obligation under section 271 is purely federal, it nonetheless makes clear that the pricing of any elements under section 271 would remain the subject of additional rounds of litigation. The prospect of such litigation would undermine investment by increasing its projected costs and, even more important, prolonging uncertainty about the nature of the regulatory obligations applicable to an ILEC's network design.

23. Third, even if (contrary to initial indications) all states agreed that pricing for section 271-only elements is a purely federal issue within the exclusive jurisdiction of this Commission, there would still be significant uncertainty as to how that standard should be applied. While the Commission has made clear that negotiated, market-based rates will satisfy the section 201 pricing standard, history has shown that other parties will nonetheless try to game the regulatory

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[1/] *See* Summary of TRIP Triennial Review Meeting Discussions, Washington, D.C. at 2 (Oct. 10, 2003) ("CLECs say states do have a role" in "setting prices under §§ 201 and 202 for UNEs required under § 271"). Covad, for example, is currently seeking to assert indefinite line-sharing rights under California law at a prescribed rate of $0 for the high-frequency portion of the loop, even though the Commission has ordered the removal of the HFPL from the list of elements to be unbundled.

process, either to pre-empt private negotiations entirely or to obtain extra leverage. This concern is borne out by Verizon's own experience in offering federally tariffed broadband services. In 2002, Verizon reluctantly withdrew its tariff for a wholesale DSL service, which was theoretically subject to evaluation only under a section 201 "reasonableness" standard, once the Commission required Verizon to offer proof of why a "UNE pricing methodology"—*i.e.*, TELRIC—should not apply to that service.[2/] In short, the prospect of rate regulation even under the pricing standards of sections 201 and 202 would generate substantial uncertainty and further pointless litigation so long as the underlying unbundling obligations remain in place.

24. Verizon, and other telephone companies, should be permitted to voluntarily negotiate wholesale service offerings, meeting the rapidly fluctuating demands of a free market. In contrast, government-imposed unbundling mandates would require major alterations in an ILEC's systems and network architecture, and they would inject additional costs, complexities, and regulatory uncertainty into an already risky undertaking.

[2/] *See, e.g., Verizon Telephone Companies Tariff FCC Nos. 1 & 11, Transmittal No. 232 (PARTS)*, 17 FCC Rcd 23598, ¶ 8 (2002).

I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.

Jerome Holland

Executed on March 29, 2004

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Forbearance of the Verizon Telephone Companies	)	CC Docket No. 01-338
	)	

SUPPLEMENTAL DECLARATION OF JEROME HOLLAND

1. My name is Jerome Holland, and I am Vice President, Fiber Network Service for Verizon Network Services ("Verizon"). On March 29, 2004, I submitted a declaration in support of Verizon's Petition for Forbearance in the above-captioned matter. I submit this further declaration in response to AT&T's April 15 *ex parte* letter[1/] responding to that declaration and to the accompanying declaration of Scott Mollica.[2/]

2. AT&T's response provides no real answer to the concerns raised in my original declaration. Rather, AT&T first suggests that, because my declaration focused primarily on Verizon's new Fiber to the Premises ("FTTP") network, "Verizon is conceding that unbundling of existing hybrid fiber-copper loops . . . can easily be accomplished." AT&T Ex Parte at 1. AT&T is wrong. As I explained in my initial declaration, every unbundling obligation inevitably raises a host of regulatory and operational problems and escalating costs that will

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[1/] Ex Parte Letter from C. Frederick Beckner III, Sidley Austin Brown & Wood, LLP, to Marlene H. Dortch, FCC, WC Docket Nos. 01-338, 03-235, 03-260 (Apr. 15, 2004) ("AT&T Ex Parte").

[2/] Declaration of Scott Mollica (attached to AT&T Ex Parte) ("Mollica Decl.").

lead to strong disincentives for deployment.[3/] In the case of hybrid fiber-copper loops, Verizon must still invest in a significant amount of infrastructure in order to expand the availability of DSL to consumers. This year alone, Verizon plans to expand the availability of DSL to an additional 7 million lines, many of which are hybrid loops. In order to do so, Verizon will still need to invest in packet switching on the loops and in additional fiber -- both to create hybrid loops where no fiber currently exists and to extend the reach of existing hybrid fiber-copper loops. If Verizon were forced to unbundle its hybrid loop facilities, to provide access to packet switched capabilities for example, Verizon would be subject to significant added costs and operational complexities in order to develop and implement the systems and operational processes necessary to provide unbundled access to these facilities and correspondingly lesser incentive to deploy at its currently planned rate. Moreover, such unbundling would hardly be "easy" as Verizon would face greater complexities and costs associated with providing Operational Support Systems ("OSS") as well as with training technicians to support the unbundled portions. Thus, forced unbundling of the hybrid fiber-copper loop would not only deter investment, it could not easily be accomplished.

3. AT&T's arguments about FTTP unbundling are equally misplaced. AT&T suggests that Verizon has stated that it is "technically impossible" to unbundle FTTP. AT&T Ex Parte at 2. That is, of course, not Verizon's claim. Rather, Verizon's concern is that any requirement to unbundle our FTTP network would substantially increase the cost and operational complexity of this new network, undermine the economics of this risky new investment and delay deployment. These problems are compounded in this context because, at present, we

[3/] Declaration of Jerome Holland ¶¶ 2, 20 (attached to Letter from Ann D. Berkowitz, Verizon, to Marlene H. Dortch, FCC, WC Docket Nos. 01-337, 01-338, 02-33, 02-52 (Mar. 29, 2004)) ("Holland Decl.").

5. Finally, AT&T's claims that it would neither be costly nor difficult to provide OSS to support unbundled FTTP are also inaccurate in several ways. AT&T Ex Parte at 4. First, as I explained in my original declaration, Verizon is building entirely new systems to support the FTTP deployment. Holland Decl. ¶ 16. Thus, contrary to AT&T's claim, Verizon cannot simply build on the existing OSS in place for narrowband network elements to support the new FTTP product. See AT&T Ex Parte at 4. As further explained in my declaration, in order to provide OSS to support multiple carriers if unbundling were required, Verizon would have to redesign its network, duplicate the complicated systems currently in place for narrowband, sacrifice efficiency and quality and incur enormous delays and costs. See Holland Decl. ¶¶ 16-18. Second, AT&T is likewise wrong in equating the OSS needed to manage unbundled access to various network elements with OSS that would be needed to accommodate a requirement to make retail services available for resale because the two are fundamentally different. The OSS needed to provide and manage access to various individual network elements is vastly different (and more complicated) than the OSS needed to permit other carriers to resell a retail service. In order to provide OSS on a multi-carrier unbundled network, Verizon would have to develop and implement OSS to first unbundle the piece parts of the FTTP network to allow for multiple points of entry and then provide the physical as well as operational support for each of those unbundled elements. These include operational support, provisioning, billing, order-processing, maintenance, tracking systems and other functions for each of the unbundled piece parts. The differences in tracking, systems, support and costs, much like the differences between selling a car to a dealer instead of unbundling, tracking, maintaining, supporting and selling each component of the car, are vast and simply cannot be compared.

I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and to the best of my knowledge, information, and belief.

Jerome Holland

Executed on May 18, 2004

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau	WC Docket No. 04-179

REPLY COMMENTS OF VERIZON

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August 11, 2004

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau	WC Docket No. 04-179

REPLY COMMENTS OF VERIZON

Introduction and Summary

As Verizon explained in its opening comments, the Commission should eliminate a number of significant regulatory burdens, currently imposed on ILECs, that are unnecessary in light of significant intermodal and other competition.[1]

Most importantly, the Commission needs to establish a national, deregulatory policy for *broadband* facilities and services. Competition in the broadband market is flourishing, and the Commission should promptly eliminate regulations that only serve to slow the roll-out of next generation broadband services. *See* Section I, below. First and foremost, this means finishing the job that was started in the *Triennial Review Order* of adopting clear rules governing the unbundling of broadband *facilities*. That requires the Commission to clarify that broadband facilities that are not subject to unbundling under Section 251 also are not subject to unbundling under Section 271. After all, it would do little to promote widespread deployment to remove the unbundling obligations under one provision of the Act only to re-impose them under another provision. It also requires the Commission to set forth a clear national definition of what

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[1] *See* Verizon Comments, WC Docket No. 04-179, at 6-35 (filed July 12, 2004) ("Verizon Comments"). In particular, the Commission should eliminate the regulatory burdens on wireline broadband facilities and services, and reform its TELRIC pricing regime to restore correct investment incentives. *See* Verizon Comments, at 6-35.

customers are part of the "mass market" for purposes of the unbundling rules, so those investing in the facilities necessary to provide next-generation broadband services have a clear understanding of which facilities will be subject to unbundling. Second, this means moving forward to establish a national deregulatory policy for the broadband *services* that will be offered over these broadband facilities.

In addition, the Commission should reform its regulation of *narrowband* services to take into account the competitive realities in today's marketplace. Verizon has produced voluminous evidence regarding the already widespread and steadily growing intermodal competition that characterizes the market today. That competition eliminates any potential justification for continuing the TELRIC regime, which merely served to subsidize other carriers' use of a single network. Given the competition for retail services, it is time for the Commission to seriously reexamine all its economic regulation of telecommunications providers. *See* Section II, below.

Finally, the Commission should reject certain commenters' attempts to use the biennial review proceeding to establish *new* regulatory requirements, or to keep rules that are no longer necessary to achieve a federal purpose. *See* Section III, below.

Argument

I. Competition Is Flourishing in the Broadband Market, and the Commission Should Continue Its Deregulatory Approach to Broadband Services

The Commission unequivocally found, based on the existence of robust intermodal competition in the broadband market, that ILECs "do not have to offer unbundled access" to broadband facilities.[2] Competitive developments since the *Triennial Review Order* confirm the

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[2] *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶¶ 7, 23 (2003) (*"Triennial Review Order" or "TRO"*).

wisdom of that decision, and emphasize the need for the Commission to act quickly to create a national, deregulatory environment for broadband facilities and services, to ensure that other unnecessary regulatory constraints do not slow the deployment of next generation broadband services.

As Verizon demonstrated in initial comments, the market for broadband services is vibrantly competitive. *See* Verizon Comments, at 6-10. Verizon has announced plans to spend more than $1 billion during 2004, to deploy fiber-to-the-premises ("FTTP") facilities in selected states.[3] Verizon now is completing work on the deployment of FTTP networks in select markets in Texas, California, and Florida. It also has recently announced the rollout of Verizon Fios, a suite of high-speed Internet services provided over those networks.[4] These new services will facilitate a wide array of voice, data, and video applications, including video chat and conferencing, digital movie downloads, voice over Internet protocol ("VOIP") services, and the quick uploading of multi-megabit emails with photo attachments. They will first be made available in Keller, Texas later this summer, with additional deployment sites in southern California and in the Tampa area of Florida, where Fios will be available to consumers later this year. More generally, Verizon remains on track to pass one million homes and businesses with fiber loops in parts of nine states by the end of the year.

These new deployments in Texas, California, and Florida are proof that market forces, if unhindered by regulatory burdens, will foster innovative technology and services at competitive rates. Indeed, Verizon Fios far exceeds both the upstream and downstream data speeds currently

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[3] *See* Declaration of Jerry Holland, CC Docket No. 01-338, ¶ 11 (filed Mar. 29, 2004) (attached as Exhibit E to Verizon Comments, WC Docket No. 04-179 (filed July 12, 2004)) ("Holland Decl.").

[4] *See* Letter from Edward Shakin, Verizon, to Marlene H. Dortch, FCC, CC Docket Nos. 01-337, 01-338, 02-33, 02-52, and 04-242, at 1 & attachment thereto (filed July 29, 2004) (attached as Exhibit A hereto).

available from cable broadband service providers, and it is available at comparable or lower prices. Current residential broadband speeds offered by cable modem providers range from 2 Mbps/256 kbps to 3.5 Mbps/1Mbps.[5] Comcast and Time Warner Cable recently announced plans to offer customers higher speed tiers of cable modem service in addition to their current offerings. Comcast's higher download speed of 4 Mbps will be available for $52.95 per month later this year, and Time Warner Cable's higher speeds of up to 6 Mbps/512 kbps will be available for between $64.95 and $84.95 starting in August 2004. Brigitte Greenberg, *Cable Revving Up Engines On Internet Service*, Communications Daily, July 28, 2004, at 2. The decision of these companies to offer additional higher speed options further emphasizes the intensely competitive nature of the evolving broadband market.

In order to facilitate the rapid deployment of broadband networks, the Commission should clarify that broadband facilities that are not subject to unbundling under Section 251 also are not subject to unbundling under Section 271. *See* Verizon Comments, at 10-15; Verizon Comments, WC Docket No. 04-245 (filed July 30, 2004). As the Commission has already found, there is no basis in competitive reality for imposing unbundling obligations on broadband facilities. *See* Verizon Comments, at 10-15. The threat of potential unbundling obligations under Section 271 would have the same negative effects on broadband investment and deployment that the Commission correctly concluded would result from the enforcement of similar unbundling obligations under Section 251. The Commission should remove this investment-chilling uncertainty by forbearing from any stand-alone obligations to unbundle broadband elements under Section 271, and preempting any state attempts to unbundle these

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[5] *See* Competition in the Provision of Voice Over IP and Other IP-Enabled Services, IP-Enabled Services, WC Docket No. 04-36, Appendix A, A-5, Table 2 (filed May 28, 2004) (attached as Exhibit D to Verizon Comments). In Keller, Texas, high speed Internet service is currently offered at maximum download speeds of between 384 Kbps and 3 Mbps. *See* Charter Communications, *Get It Now*, at http://www.charter.com/products/highspeed/highspeed.aspx.

services. The Commission also should create a clear definition of "mass market" customers, so that FTTP deployment can occur with clear knowledge as to which facilities must be unbundled.[6]

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*.[7] 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.[8]

II. The Current State of Competition Demonstrates that the Commission Should Eliminate the TELRIC Pricing Regime, and Work to Eliminate All Economic Rate Regulation

In addition, the Commission should reform its rules governing narrowband facilities and services to take into account the competitive realities of today's marketplace. In particular, it should reform the TELRIC regime, which does not compensate ILECs for their costs, and which creates disincentives to facilities-based investment by both incumbents and competitors. Given

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[6] *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).

[7] *See* Verizon 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).

[8] *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-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").

the competition for end-user telecommunications services, it also should seriously reexamine all of its economic regulation of these services.

In recent weeks, Verizon has submitted extensive evidence describing the state of competition for high-capacity services in the largest MSAs where Verizon provides service as the incumbent local exchange carrier, and the widespread deployment of competing voice telephone services by cable companies and VOIP providers, as well as increasing competition from wireless and other intermodal providers and competitors that have deployed their own circuit switches.[9] These developments conclusively show that the unbundling standards in the Act are not satisfied with respect to high capacity facilities or switching. In addition, they also reinforce the fact that competition is rapidly increasing throughout the telecommunications marketplace and that, for any elements that are subject to an unbundling requirement going forward, TELRIC reform is long overdue in order to ensure that UNE rates provide correct economic signals to the market, restore efficient investment incentives, and fairly compensate the incumbents.

Among other things, Verizon has demonstrated that:

- By 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 plan to offer it to at least 20 million more the following year.
- Regardless of whether cable companies themselves offer VOIP, the 85-90 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.

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[9] *See* Verizon Comments, at Exhibit C thereto; *see also*, Letters from Donna Epps, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 03-173, at 1-3 (filed Aug. 9, 2004) ("Verizon August 9 Switching Ex Parte" "Verizon August 9 High-Capacity Ex Parte"); Letter from Dee May, Verizon, to Marlene H. Dortch, FCC, CC Docket Nos. 01-338, 98-147 and 96-98, at 10, 15 (filed June 24, 2004); Letter from Michael E. Glover, Verizon, to Marlene H. Dortch, FCC, CC Docket Nos. 01-338, 98-147 and 96-98, at 19, 29 (filed July 2, 2004).

- Wireless carriers are aggressively competing both for lines and for traffic: during the last two years, the number of wireless lines has grown from 137 million to 155 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 43 percent of long distance traffic.
- Competing carriers now have some 10,000 circuit switches and packet switches nationwide, and have used their switches to provide voice telephone service in wire centers that contain 86 percent of Bell company access lines nationwide.

See Verizon August 9 Switching Ex Parte, at 1-3; *see also* Verizon Comments, Exhibit B at 9-16.

In addition, Verizon has shown that

- 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;
- Competing providers have targeted deployment of their facilities to serve that demand, with an average of 20 competitor networks in the top 50 MSAs in the country;
- At least one competing provider has conceded that it earns the "majority of [its] revenue .. .exclusively through [its] own network facilities ..." and boasts that "[w]hile [RBOCs] have lots of fiber deployed, I don't know that they have more buildings connected than we do in all cases;"
- Competing providers are using fixed wireless and cable to reach customers, with 40 percent of large businesses, 29 percent of mid-sized businesses, and 23 percent of small businesses using fixed wireless for at least some high-capacity services and 41 percent of large businesses, 32 percent of mid-sized businesses, and 44 percent of small business using cable modem service for some high-capacity services.

See Verizon August 9 High-Capacity Ex Parte at 2.

The high capacity evidence shows that competing providers have deployed their own facilities wherever significant demand for high capacity services exists. In addition, other carriers are making extensive use of Verizon's special access, which they purchase at significant volume and term discounts of 35 to 40 percent, to provide their own high capacity services to business customers of all shapes and sizes.[10]

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[10] Letter from Michael E. Glover, Verizon, to the Honorable Michael K. Powell, Chairman, FCC, CC Docket Nos. 01-338, 98-147 and 96-98, at 2 (filed July 19, 2004); Verizon August 9 Switching Ex Parte, Attachment at 10 and tab 4.

Other providers not only are able to compete successfully, but actually dominate key market segments. Competing providers such as AT&T dominate the large enterprise segment of the market, the most valuable segment of the telecom industry and a market that accounts for the vast majority of high-capacity demand. AT&T, MCI, and Sprint account for nearly half of all revenues from larger enterprise customers and are the primary service provider for nearly three-quarters of larger corporate accounts. In contrast, within its region, Verizon accounts for only 9 percent of the $28 billion spent on network-related service by the 400 companies with the highest annual telecommunications expenditures. Accordingly, Royce Holland explains that "[t]he large corporate enterprise market … is all but irrelevant to the debate over competition policy because there are no bottleneck facilities."

Similarly, the switching evidence demonstrates that competing providers are offering voice telephone services to mass market customers at rates that compete directly with traditional telephone service. For each of Verizon's 25 top MSAs (based on number of access lines), Verizon has shown that competitors' voice telephone offerings are very competitive in terms of the services and features included. For example, AT&T offers VOIP service in 100 major metropolitan markets for $34.99 per month. Time Warner offers a bundled package of local and long distance service for $39.95. Cablevision offers a similar package for $34.95. Cablevision also recently introduced a bundled package of local and long distance, high speed Internet access, and digital cable for $89.85 – about the same price it previously charged for high speed Internet access and digital cable alone. The result, according to Cablevision, is that customers "are essentially receiving their voice service for free." Vonage offers an unlimited local and

long distance package for only $29.99. And BroadVoice and Packet8 offer similar packages for $19.95.[11]

In short, there is extensive competition to provide high capacity services to business customers of all shapes and sizes. Similarly, there is extensive competition to provide voice telephone service to mass market customers. Under these circumstances, there simply is no justification for finding that competition is impaired without access to high capacity facilities or UNE switching. Accordingly, the provision of unbundled high capacity loops and transport and of unbundled switching or UNE-P cannot be "required" under section 251(c). Moreover, 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 Comments, at 36-37.

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[11] *See* Verizon Comments, Exhibit B, at 6, 10; *see also* Verizon August 9 Switching Ex Parte, at 2-3, and tabs A-D thereto.

III. The Commission Should Not Adopt New Regulations, Or Maintain Regulations that Are No Longer Necessary, As Proposed by Some Commenters

A. The Commission Should Reject the Proposal to Adopt Additional Requirements Before Retiring Copper Loops

In the 2002 Biennial Review Notice of Proposed Rulemaking, the Commission asked for comment on the very limited issue of whether current Rule 51.329(c), "which enumerates the specific titles that incumbent LECs must use when providing public notice, or certification of public notice, of network changes," should be modified to "add[] specific titles to identify notices of replacement of copper loops or copper subloops" with FTTP loops.[12] AT&T attempts to convert this limited request for comment into a wholesale revisiting of the notice requirements for retirement of copper loops. In particular, AT&T argues that the Commission should "require that ILEC notices of all copper loop retirements be provided directly to potentially affected CLECs," "provide circuit-specific identification to the individual CLECs potentially affected," and "revise" – *i.e.*, significantly lengthen – "the current notice periods." AT&T Comments, at 2-3 & n.3. The Commission should reject these proposals, which not only go beyond the scope of the biennial review process, but also are completely contrary to the notice requirements recently set forth in the *Triennial Review Order*.[13]

As an initial matter, arguments that the Commission should use the biennial review proceeding to dramatically *increase* the regulatory requirements for retiring copper loops are flatly inconsistent with the Act, and must be rejected on that threshold ground alone. The Commission cannot use the biennial review proceeding to add to existing regulations, as it would be contrary to the purposes of Section 11, which directs the Commission to "repeal or modify"

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12 *See Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, Notice of Proposed Rulemaking, 19 FCC Rcd 764, ¶ 20 (2004) ("2002 Biennial Review NPRM").

13 *TRO*, ¶ 281.

regulations that are no longer necessary. 47 U.S.C. § 161; *see also 2002 Biennial Regulatory Review*, 18 FCC Rcd 4726, ¶ 11 (2003) ("add[ing] or expand[ing]" regulations, "as opposed to modifying or eliminating existing rules," is "beyond the scope" of the biennial review.); *2000 Biennial Regulatory Review,* 16 FCC Rcd 1207, ¶ 19 (2001) ("[A]s a part of the biennial review process, we do not intend to impose new obligations on parties in lieu of current ones, unless we are persuaded that the former are *less burdensome* than the latter and are necessary to protect the public interest") (emphasis added). [14]

Moreover, the Commission correctly rejected the same types of arguments AT&T raises here. Relying on a broad record, in the *Triennial Review Order* the Commission specifically rejected proposals to impose "extensive rules that would require affirmative regulatory approval prior to the retirement of any copper loop facilities." Rather, it determined that making minor modifications to the existing rules regarding notices of network change would "serve as adequate safeguards" against the concerns raised by CLECs. *Id.* In so doing, this portion of the *TRO* comported with the Commission's decision to remove regulatory burdens that would only inhibit incentives by ILECs and CLECs alike to invest in new fiber to the premises deployment. *See TRO*, ¶¶ 273-284, 288-290.

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[14] Moreover, if AT&T disagreed with the policy decisions set forth in the Triennial Review Order, it should have raised its objections in a petition for reconsideration of *that* order. Of course, AT&T could not have filed a petition for reconsideration, as it chose to instead appeal the Triennial Review Order. However, it cannot be allowed to circumvent that limitation on petitions for reconsideration, or escape the time period for filing such petitions (which has long passed), by attempting to revive its arguments in this docket. *See* 47 C.F.R. § 1.429 (petitions for reconsideration must be filed within 30 days); *see also Natural Resources Defense Council v. Nuclear Regulatory Commission*, 666 F.2d 595, 601-602 (D.C. Cir. 1981) ("The issue we face, therefore, is whether NRDC may now do indirectly what it is forbidden by statute from doing directly – that is, whether NRDC may now seek review of the procedure by which the amendments were promulgated, even though it could have but did not seek direct review thereof, by simply raising its objections in a petition for rulemaking and seeking direct review of the order denying the petition. We answer that question in the negative").

The Commission found that CLECs' concerns about retirement of copper loops would be adequately addressed by amending the network disclosure rules to ensure that carriers are provided adequate notice of any network change that would affect CLECs' ability to provide service. *See TRO*, ¶¶ 281-284. As the Commission recognized elsewhere in the *Triennial Review Order*, FTTP deployment "is still in its infancy" and faces "several economic and operational entry barriers." *Id.*, ¶ 274. In accordance with Section 706(a)'s directive to "remove barriers to infrastructure investment," the Commission eliminated requirements (such as unbundling) that would stifle FTTP or other advanced infrastructure investment by both ILECs and CLECs. *Id.*, ¶¶ 286, 288, 290; *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 579 (D.C. Cir. 2004). Nothing has changed that would warrant revisiting that aspect of the *Triennial Review Order*. Indeed, it would be arbitrary and capricious for the Commission to revisit and reverse its position on the proper scope of these requirements in this Biennial Review proceeding, when the Commission made clear its intent to resolve UNE issues in the context of the *Triennial Review Order*.[15] In reliance on the *TRO*'s deregulatory approach to FTTP, Verizon plans to spend $1 billion to pass more than one million homes in 2004, and billions more in future years to further expand its fiber deployment.[16]

Yet the rule changes proposed by AT&T would *add* to the burdens and costs of replacing copper with fiber, thus creating disincentives to both CLECs and ILECs to spend the billions of dollars in necessary broadband infrastructure investment and ultimately hampering FTTP deployment. The Commission should reject proposals that would create unnecessary hurdles to

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[15] *See TRO*, ¶ 6 ("The path to the rules and policies we set forth in this Order has been neither straight nor easy . . . [but] we believe that the certainty that we bring today will help stabilize the telecommunications industry, yield renewed investment in telecommunications networks, and increase sustainable competition in all telecommunications markets for the benefit of American consumers").

[16] Holland Decl. ¶ 6.

the replacement of copper with fiber, such as burdensome notification processes or longer periods for CLEC notification/opposition. The Commission's current rules give CLECs an opportunity to comment on any planned retirement, and it can take up to 90 days after the public notice before such objections are deemed denied. *TRO*, ¶¶ 282-83. As others have pointed out, if anything, the delays resulting the public notice requirement already are too long. *See* BellSouth Reply Comments, WC Docket No. 02-313, at 2-6 (filed Nov. 4, 2002).

B. Hypothetical Concerns About State Uses for Uniform Accounts Are Not An Appropriate Basis for Maintaining Accounts that are Not Necessary for a Federal Purpose

The Commission also should reject Kansas Corporation Commission's arguments that all accounting and reporting regulations be maintained, because some of them *might* be useful for state needs. *See* Kansas Corporation Commission Comments, WC Docket 04-179, at 2-4 (filed July 12, 2004). The articulation of hypothetical state uses should not stand in the way of the Commission's statutory obligation to eliminate unnecessary federal regulation.

Moreover, Kansas' comments appear to misunderstand the nature of the Uniform System of Accounts. The accounting rules at issue are targeted to meet regulatory purposes, and are separate from the financial accounting rules at issue in the "accounting scandals" to which Kansas alludes. *See* Kansas Comments, at 3.[17]

Likewise, Kansas's arguments about the usefulness of these accounts in assisting state regulators to "monitor the state of competition" for purposes of determining whether to designate additional eligible telecommunications carriers ("ETCs") for universal service support, also miss the mark. Kansas Comments, at 3. As an initial matter, the Commission is undertaking a proceeding to determine whether to reform the ETC process, and Verizon and other commenters

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[17] *See also* Verizon Reply Comments, CC Docket No. 00-199, at 6-7 (filed May 7, 2002).

have noted that the purported benefits to "competition" should not be a basis for granting ETC status in high cost areas. *See* Verizon Comments, CC Docket No. 96-45, at 9-14 (filed Aug. 6, 2004). Even if the state of competition were relevant to granting ETC status, that evidence exists in the marketplace, not in the regulatory accounts of certain ILECs.[18]

In the Commission's 2000 biennial review of accounting issues, the Commission ordered or proposed several measures designed to streamline the accounting rules, and properly noted that, "if we cannot identify a federal need for a regulation, we are not justified in maintaining [it]."[19] However, it later convened a Federal-State Joint Conference, and suspended implementation of several previously adopted changes while the Joint Conference considered "initiatives that will improve the collection of adequate, truthful, and thorough accounting data for regulatory purposes."[20] Unfortunately, what the Joint Conference suggested was that the Commission largely *undo* much of the regulatory reform it adopted or proposed in the 2000 biennial review. The Commission wisely rejected many of these proposals.[21]

The Commission should once again turn to examining ways to repeal or modify many of the accounting and ARMIS reporting requirements that are "no longer necessary in the public interest as a result of meaningful economic competition." 47 U.S.C. § 161. The existing accounting and ARMIS reporting requirements are a relic of rate of return regulation, imposed on the local exchange carriers in an era prior to significant local entry, before their rates were

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[18] Similarly, states can monitor the "receipt and use of [universal service] funds," Kansas Corporation Commission Comments, at 3, through data requests to the carriers receiving such funds. That limited need for data certainly does not justify Kansas' assertion that the Commission should maintain *all* current accounting rules and regulations.

[19] *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2*, 16 FCC Rcd 19911, ¶ 207 (2001) ("*Phase 2 Accounting Order*").

[20] *Federal-State Joint Conference on Accounting Issues*, 17 FCC Rcd 17025, ¶ 4 (2002).

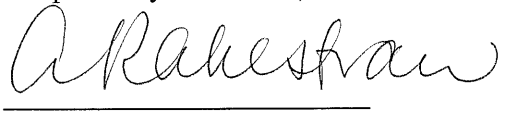
[21] *See Federal-State Joint Conference on Accounting Issues*, Report and Order, WC Docket No. 02-269, FCC 04-149 (rel. June 24, 2004).

under price caps, and before the Commission provided for pricing flexibility. In the Phase II and Phase III proceedings, commenters pointed out a number of rules that could be eliminated or streamlined, and the Commission should look to the comments in those proceedings to identify regulations that are no longer necessary. *See* Verizon Comments, Exhibit B at 2-6.

CONCLUSION

The Commission should eliminate the regulatory burdens on wireline broadband facilities and services, and reform its TELRIC pricing regime and economic regulation of retail services. It should not expand the requirements for network notification of retirement of copper loops. It also should reject suggestions to retain regulations that are no longer necessary to support federal needs.

Respectfully submitted,



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August 11, 2004

EXHIBIT A

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July 29, 2004

Ex Parte

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

Re: Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services CC Docket No. 01-337; Review of the Section 251 Unbundling Obligations of Incumbent LECs CC Docket No. 01-338; Appropriate Framework for Broadband Access to the Internet over Wireline Facilities CC Docket No. 02-33; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities CC Docket No. 02-52 and Verizon's Petition for a Declaratory Ruling or, Alternatively, Interim Waiver and Verizon's Conditional Petition for Forbearance under 47 U.S.C. Section 160(e) with Regard to Broadband Services Provided via Fiber to the Premises WC Docket No. 04-242

Dear Ms. Dortch:

I am writing to update the Commission on recent developments concerning Verizon's deployment of fiber-to-the-premises ("FTTP") facilities in selected states, and to provide additional authority in support of Verizon's petition for forbearance from the application to such facilities of any stand-alone section 271 unbundling obligations.

1. Verizon is completing work on the deployment of FTTP networks in select markets in Texas, California, and Florida. It has recently announced the rollout of Verizon Fios, a suite of high-speed Internet services provided over those networks. *See* Verizon News Release (July 19, 2004) (attached). These new services will facilitate a wide array of voice, data, and video applications, including video chat and conferencing, digital movie downloads, voice-over-IP services, and the quick uploading of multi-megabit emails with photo attachments. They will be available first in Keller, Texas later this summer, with additional deployment sites in southern California and in the Tampa area of Florida, where Fios will be available to consumers later this

year. More generally, Verizon remains on track to pass one million homes and businesses with fiber loops in parts of nine states by the end of the year.

2. These new deployments in Texas, California, and Florida underscore the tendency of market forces, if unhindered by regulatory burdens, to foster innovative technology and services at competitive rates. Indeed, Verizon Fios far exceeds both the upstream and downstream data speeds currently available from cable broadband service providers, and it is available at comparable or lower prices. Current residential broadband speeds offered by cable modem providers range from 2 Mbps/256 kbps to 3.5 Mbps/1 Mbps.[1] By contrast, Verizon Fios will offer residential broadband speeds ranging from 5 Mbps/2Mbps to 30 Mbps/5Mbps. Moreover, Verizon's service will be offered at a starting price of $34.95, substantially lower than the $39.95 to $44.95 price range for the slower broadband services offered by cable modem providers in many areas.[2]

3. Verizon's deployment of these faster and cheaper broadband services confirms that, as Verizon has explained in detail in prior submissions, the Commission is fully justified in relying on market forces to yield "just and reasonable" rates and terms in the competitive market for broadband services. *See* 47 U.S.C. § 160(a)(1).[3] Courts and agencies have long recognized the

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1 *See* Competition in the Provision of Voice Over IP and Other IP-Enabled Services, *IP-Enabled Services*, WC Docket No. 04-36, Appendix A, A-5, Table 2 (filed May 28, 2004) ("Broadband Competition: May 2004"). In Keller, Texas, high speed Internet service is currently offered at maximum download speeds of between 384 Kbps and 3Mbps. *See* Charter Communications, *Get It Now*, at http://www.charter.com/products/highspeed/highspeed.aspx. Comcast and Time Warner Cable recently announced plans to offer customers higher speed tiers of cable modem service in addition to their current offerings. Comcast's higher download speed of 4 Mbps will be available for $52.95 per month later this year, and Time Warner Cable's higher speeds of up to 6 Mbps/512 kbps will be available for between $64.95 and $84.95 starting in August 2004. Brigitte Greenberg, *Cable Revving Up Engines On Internet Service*, Communications Daily, July 28, 2004, at 2. The decision of these companies to offer additional higher speed options further emphasizes the intensely competitive nature of the evolving broadband market.

2 *See* Broadband Competition: May 2004, A-5, Table 2. In Keller, Texas, providers currently offer high speed Internet service at prices of $29.99 and $39.99 for maximum download speeds of 384 Kbps and 3Mbps, respectively. *See* Charter Communications, *Get It Now*, at http://www.charter.com/products/highspeed/highspeed.aspx.

3 The "just and reasonable" standard originates from the Interstate Commerce Act, *see, e.g.*, Interim Decision and Order, *AT&T and the Associated Bell System Companies Charges for Interstate and Foreign Communication Service*, 9 F.C.C. 2d 30, ¶ 67 (1967), and appears in numerous state and federal statutes, including sections 10(a)(1) and 201(b) of the Communications Act. *See* 47 U.S.C. § 160(a) (requiring the Commission to "forbear from applying any regulation or any provision of this chapter . . . if the Commission determines

"wide discretion" that the "just and reasonable" standard confers upon agencies. *See, e.g., Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 721 (D.C. Cir. 2000) (observing that Federal Power Act confers "wide discretion" on FERC to determine whether rates are "just and reasonable" or "undu[ly] discriminat[ory]"). The phrase "just and reasonable rates" has "no intrinsic meaning applicable alike to all situations[.]" *Chicago v. FPC*, 458 F.2d 731, 750 (D.C. Cir. 1971).

In particular, the Supreme Court has "consistently rejected any thought that costs should be the controlling factor in rate making."[4] Instead, the "just and reasonable" standard "accommodate[s] rates designed . . . to reflect the value of a service rather than its cost . . . [and] to reflect competitive market factors[.]"[5] Courts have accordingly determined that agencies "may rely upon market-based prices in lieu of cost-of-service regulation to assure a 'just and reasonable' result." *Consumers Energy Co. v. FERC,* 367 F.3d 915, 922-23 (D.C. Cir. 2004) (citation omitted).[6] Likewise, the Commission has found that "market forces will generally ensure that the rates, practices, and classifications . . . are just and reasonable and not unjustly or

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that," inter alia, "enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are *just and reasonable* and are not unjustly or unreasonably discriminatory") (emphasis added); 47 U.S.C. § 201(b) ("All charges, practices, classifications, and regulations for and in connection with such communication service, shall be *just and reasonable*, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful.") (emphasis added).

4 *Alabama Great S. R.R. v. United States*, 340 U.S. 216, 223 n.4 (1951) (holding that Interstate Commerce Commission was entitled to consider relevant factors other than cost when setting differential between all-rail rate and joint rail-barge rate, including necessity for maintaining competition).

5 Win Whittaker, *A Price-Level (Incentive) Regulation Proposal for Oil Pipelines,* 46 Okla. L. Rev. 415, 429-30 (1993) (citing *Assoc. Gas Distrib. v. FERC,* 824 F.2d 981, 1010-11 (D.C. Cir. 1987) (recognizing that "value of service ratemaking . . . has an established place" in rate regulation); *Consol. Rail Corp. v. United States*, 812 F.2d 1444, 1454 (3d Cir. 1987) (affirming ICC pricing plan "rely[ing] primarily on market forces"); *Houston Lighting & Power Co. v. United States*, 606 F.2d 1131, 1148 (D.C. Cir. 1979) (holding that rates which exceed fully distributed costs are "neither arbitrary nor forbidden by the Act")).

6 *See also Ting v. AT&T,* 319 F.3d 1126, 1145 (9th Cir. 2003), ("in contrast to 1934, when Congress enacted §§ 201(b) and 202(a) to protect customers for whom AT&T was the only option, the FCC now defers to the market unless the market is seriously flawed or not competitive"), *cert. denied*, 124 S. Ct. 53 (2003); *see also Elizabethtown Gas Co. v. FERC*, 10 F.3d 866, 870 (D.C. Cir. 1993) ("it is rational to assume that the terms of their voluntary exchange are reasonable") (citation omitted).

unreasonably discriminatory."[7] And the D.C. Circuit has held that the "generality of these terms" permits the Commission "to value the free market, the benefits of which are well-established," and entitles the Commission to reject any stricter reading of these terms that "would harm consumers and would be contrary to Congress' clearly articulated policy in favor of competition in telecommunications services." *Orloff v. FCC*, 352 F.3d 415, 420-21 (D.C. Cir. 2003) (internal quotations omitted), *cert. denied*, 124 S. Ct. 2907 (2004).

4. Of particular relevance to Verizon's broadband forbearance petition, the flexibility inherent in the "just and reasonable" standard accommodates rates designed to provide *non-cost incentives* to carriers. In *Permian Basin*, for example, the Supreme Court held that a regulatory agency's "responsibilities [in applying the 'just and reasonable' standard] include the protection of *future*, as well as present, consumer interests." *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 798 (1968) (emphasis added). And the Court further held that, in applying this standard, the agency may discharge its responsibilities to future consumer welfare by "provid[ing] a *useful incentive*" for risky research and development projects that will bear fruit only in the longer term. *Id.* (emphasis added). The D.C. Circuit has similarly concluded "that in setting rates within a just and reasonable range," a regulatory agency "may consider what future activities it wishes to encourage." *Natural Gas Pipeline Co. of Am. v. FERC*, 765 F.2d 1155, 1168 (D.C. Cir. 1985).[8]

Here, too, in considering whether Verizon's forbearance petition meets the standards of section 10(a)(1), the Commission should place significant weight on the longer term consumer benefits of creating investment incentives for the deployment of innovative new technologies.

5. Finally, the discretionary nature of the services at issue is yet another factor that supports the Commission's reliance on market forces to ensure "just and reasonable" rates. Broadband Internet access is a new service option that consumers are free to purchase or not, depending on whether the service and its price suit them. The introduction of such new services is thus fundamentally a competitive phenomenon, as Verizon has explained in detail in its prior submissions.[9] As a result, the justness and reasonableness of rates is properly "established by

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[7] Second Report and Order, *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 11 FCC Rcd 20730, ¶ 21 (1996) (finding tariffs unnecessary to ensure just and reasonable rates); *see also* Memorandum Opinion and Order, *Orloff v. Vodafone Airtouch Licenses*, 17 FCC Rcd 8987 (2002) (finding that "haggling" practices did not violate section 201(b)'s "just and reasonable" requirement given market's competitive nature), *aff'd, Orloff v. FCC, supra*.

[8] *See also American Pub. Gas Ass'n v. FPC*, 567 F.2d 1016, 1056 (D.C. Cir. 1977) (holding that an agency must consider incentives in establishing just and reasonable rates).

[9] *See, e.g.*, Declaration of Alfred E. Kahn and Timothy J. Tardiff at ¶ 13 (Dec. 18, 2001), filed as Exh. B to the Comments of Verizon Communications, *Request for Comments on Deployment of Broadband Networks and Advanced Telecommunications*, Docket No. 011109273-1273-01 (Nat'l Telecomm. & Info. Admin. Dec. 19, 2001).

what customers are willing to pay for such non-essential services."[10] In sum, given the discretionary nature of broadband services, the competitive market for those services, and the public benefit of encouraging innovative new technology like FTTP and Fios, the Commission is more than justified in relying on market forces to yield "just and reasonable" rates and terms.

Sincerely,

Edward Shakin

Attachment

cc: Christopher Libertelli
Matthew Brill
Scott Bergmann
Jessica Rosenworcel
Daniel Gonzalez
John Rogovin
John Stanley
Michelle Carey
Thomas Navin
Jeffrey Carlisle
William Maher

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10 Order, *Investigation into Regulatory Alternatives for NYNEX,* 1995 Me. PUC Lexis 19, at *131 (1995); *see* Notice of Proposed Rulemaking, *Revisions to the Price Cap Rules for AT&T,* 8 FCC Rcd 5205, ¶¶ 3-4 (1993) (concluding there was "substantial reason to consider moving [optional calling plans] from [price caps] to streamlined regulation," as had "already [been] done for [other] services subject to effective competition," and noting that "[b]ecause the current rates for their optional plans already appear to be determined by market forces, not the price cap limits, customers are unlikely to be harmed by streamlined regulation"); Order, *Appropriate Regulatory Plan to Succeed Price Cap Regulation for Verizon Massachusetts' Intrastate Retail Telecom. Svcs.*, 2003 Mass. PUC Lexis 17 (2003) (maintaining pricing flexibility for "discretionary," or "non-basic," residential services, such as Directory Listing Service, Busy Line Verification and Busy Line Interrupt, Ringmate Ring ID Service, and Integrated Services Digital Network ("ISDN"), because market forces had yielded "just and reasonable rates for these services").

NEWS RELEASE

FOR IMMEDIATE RELEASE
July 19, 2004

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Verizon Poised to Deliver First Set of Services to Customers Over Its Fiber-to-the-Premises Network

'Verizon Fios' Initially Will Offer Three High-Speed Data Options Including Speeds 10 Times Faster Than Current Consumer Broadband Services and Prices as Low as $34.95

Additional Fiber Deployments Under Way in California and Florida

NEW YORK – Verizon customers in Keller, Texas, soon will be the first to receive groundbreaking high-speed Internet services over Verizon's fiber-to-the-premises (FTTP) network. The company is raising the bar on consumer broadband today by introducing data speeds of up to 30 megabits-per-second (Mbps) in Keller later this summer and in other markets later this year. Prices start at $34.95 per month.

The company also announced additional fiber deployments that are under way in California and Florida.

The new suite of fiber-optic services will be called Verizon Fios[sm] (FYE-ose). FTTP technology utilizes fiber-optic connections – instead of copper wire – directly into homes and businesses to enable a broad array of voice, data and video applications.

Fios consists of three consumer Internet access services. At 30 Mbps, the fastest data service is ten times faster than consumer broadband speeds typically available today. Entry and mid-level services at speeds of 5 Mbps and 15 Mbps also beat the speeds and prices of today's consumer broadband.

"Fios will set the new standard for consumer broadband services in America," said Bob Ingalls, president of Verizon's Retail Markets group. "Our customers will be amazed at the online world that Fios opens to them, as it can make applications like video chat and conferencing, digital movie downloads, and interactive multi-player games a part of their daily lives."

Ingalls added that Verizon is using the most advanced technology to deliver downstream and upstream speeds that will give customers truly interactive, two-way broadband capabilities.

"The Internet is an increasingly interactive place where quickly sending information is just as important as quickly receiving it," he said. "From uploading multi-megabit e-mails with photo attachments, to using voice-over-IP services or interacting with the office from home, Fios will give customers unprecedented speed, efficiency and productivity at very competitive prices."

Each Fios service is available either as part of a bundle of local and long-distance calling services from Verizon or as a stand-alone Internet access service. The company plans a Fios video offering to give consumers an alternative to cable TV in 2005.

Maximum connection speeds and pricing for Fios consumer services are:

- 5 Mbps/2 Mbps for $34.95 a month as part of a calling package, or $39.95 a month stand-alone
- 15 Mbps/2 Mbps for $44.95 a month as part of a calling package, or $49.95 a month stand-alone
- 30 Mbps/5 Mbps at pricing to be announced later

"In addition to an outstanding array of high-speed access options, we will provide our customers with a first-class installation experience, where a Verizon technician visits the home, sets up the connection and configures the service for you," said Ingalls.

Each consumer data offer includes the suite of services currently available to Verizon Online DSL customers at no additional charge, including: MSN Premium content; Verizon's new Broadband Beat entertainment portal optimized for high-speed access featuring news games, streaming video and more; up to nine e-mail accounts with 30 megabytes (MB) of storage for the primary account and an additional 10 MB for each sub-account; address book and calendar; 10 MB personal Web space and a Web site building tool; and access to newsgroups.

Verizon Expands FTTP Deployment in California and Florida

Verizon also has begun building its FTTP network in parts of California, Florida and Texas:

- In California, Verizon plans to pass about 100,000 homes and businesses with FTTP technology in the Huntington Beach area and in other parts of Southern California.
- In Florida, Verizon plans to pass about 100,000 homes and businesses with FTTP technology in the Tampa area and other parts of Hillsborough County.
- In Texas, Verizon plans to pass 100,000 homes in part of the Dallas-Fort Worth metroplex, including Keller, which was announced by the company in May.

Verizon intends to pass 1 million homes and businesses in parts of nine states with fiber by the end of the year.

"Thousands of people can now see for themselves that fiber from Verizon is coming down their streets and heading straight for their doors, and the excitement in these communities is building," said Paul Lacouture, president of Verizon's Network Services group.

"Our approach to FTTP recognizes that broadband is a truly interactive technology, with upstream capabilities playing just as key a role in consumers' online activities as downstream speeds," Lacouture added. "This is in contrast to other providers' plans that focus primarily on one-way entertainment applications that meet more limited, short-term customer needs. Our FTTP deployment will help ensure that our network meets customers' needs today and supports any imaginable requirement that could evolve tomorrow. It will transform the way customers think about and use communications, information and entertainment services."

A Dow 30 company, Verizon Communications (NYSE:VZ) is one of the world's leading providers of communications services, with approximately $68 billion in annual revenues. Verizon companies are the largest providers of wireline and wireless communications in the United States. Verizon is also the largest directory publisher in the world, as measured by directory titles and circulation. Verizon's international presence includes wireline and wireless communications operations and investments, primarily in the Americas and Europe. For more information, visit *www.verizon.com.*

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VERIZON'S ONLINE NEWS CENTER: Verizon news releases, executive speeches and biographies, media contacts and other information are available at Verizon's News Center on the World Wide Web at *www.verizon.com/news*. To receive news releases by e-mail, visit the News Center and register for customized automatic delivery of Verizon news releases.

CERTIFICATE OF SERVICE

I, Eve Klindera Reed, hereby certify that on February 5, 2005, I caused a copy of the foregoing **Application for Review** to be mailed via first-class postage prepaid mail to the following:

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