III. THE FINAL PART OF THE FORBEARANCE TEST IS SATISFIED BECAUSE THE REQUESTED RELIEF IS IN THE PUBLIC INTEREST

As the Commission found in the *Omaha Forbearance Order*, evidence of competition satisfies not only the first two prongs of the forbearance test, but also supports a finding that the third prong of the forbearance test (47 U.S.C. § 160(a)(3)) is met – that eliminating the regulations in question is in the public interest. *See Omaha Forbearance Order* ¶¶ 47, 75. As demonstrated above, competition in the Virginia Beach MSA is even more advanced than in Omaha. Cable voice services in the Virginia Beach are just as widely available as they were in Omaha, and other types of competition are even more widespread. In the *Omaha Forbearance Order* the Commission also identified two additional reasons why forbearance of the regulations at issue was in the public interest, both of which apply with equal force here.

First, as the Commission found in Omaha, the costs of the unbundling obligations that Verizon faces in the Virginia Beach MSA outweigh the benefits. *See id.* ¶ 76. Both the Commission and the D.C. Circuit have recognized the harm to the public interest and to competition from excessive unbundling. As the Commission has explained, "excessive network unbundling requirements tend to undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology."[31] Similarly, the D.C. Circuit has recognized that mandated unbundling "imposes costs of its own, spreading the disincentive to invest in innovation and creating

[31] *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, ¶ 3 (2003) (subsequent history omitted).

complex issues of managing shared facilities."[32] Given the extensive facilities-based competition that already exists in the Virginia Beach MSA, and the potential for even greater facilities-based competition to emerge, any potential benefits from unbundling regulation are slim, while the costs of such regulatory intervention are significant. *See Omaha Forbearance Order* ¶ 77. Forbearance will give both Verizon and other facilities-based competitors greater incentives to continue to invest in facilities, which will ensure the continued growth of long-lasting facilities-based competition.

Eliminating unbundling regulation also will "further the public interest by increasing regulatory parity" between telecommunications providers in the Virginia Beach MSA. *Id.* ¶ 78; *see id.* ¶ 49. As explained above, these regulations were imposed at a time when Verizon's narrowband circuit-switched network was a dominant technology, but this is far from the case today. Verizon is now losing mass-market and enterprise lines and customers to wireless and broadband wireline competitors. As the Commission noted, it is "in the public interest to place intermodal competitors on an equal regulatory footing by ending unequal regulation of services provided over different technological platforms." *Id.* ¶ 78. In the face of such competition, asymmetrical regulation imposes artificial price constraints that delay and impede full fair competition among providers and harms consumers.[33]

Second, as the Commission also found in Omaha, eliminating dominant carrier regulations that apply to interstate switched access services is consistent with the public

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[32] *United States Telecom Ass'n v. FCC*, 290 F.3d 415, 427 (D.C. Cir. 2002).

[33] *See, e.g., Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶¶ 45, 71, 79 & n.241 (2005).

interest where vigorous local competition has emerged. *See Omaha Forbearance Order* ¶ 47. As demonstrated above, competition is more advanced in the Virginia Beach MSA as it was in Omaha. Cable voice services in the Virginia Beach MSA are just as widely available as they were in Omaha, and other types of competition are even more widespread. Moreover, with respect to interstate switched access services, competitive wireless services – which are ubiquitous throughout the Virginia Beach MSA – are particularly significant because customers can use their wireless phones for long-distance calls even where they do not abandon their wireline phone entirely. In fact, large fractions of long-distance calls and minutes have already migrated to wireless. *See* Lew/Verses/Garzillo Decl. ¶¶ 24, 25.

As the Commission found in Omaha, eliminating dominant carrier regulation for interstate switched access services also will promote the public interest by eliminating the unnecessary costs such regulations impose. In particular, "[i]n these environments that are competitive for end users, applying these dominant carrier regulations to [Verizon] limits its ability to respond to competitive forces and, therefore, its ability quickly to offer consumers new pricing plans or service packages." *Omaha Forbearance Order* ¶ 47.

The Commission has similarly recognized in other contexts that certain "regulations associated with dominant carrier classification can also have undesirable effects on competition."[34] For example, the Commission has recognized that tariffing requirements "impose significant administrative burdens on the Commission and the

[34] *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, ¶ 90 (1997) ("*LEC Classification Order*").

[BOCs]," and "adversely affect competition." *LEC Classification Order* ¶ 89. Such regulations reduce the incentive and ability to discount prices in response to competition and to make efficient price changes in response to changes in demand and cost. Similarly, the Commission's price cap regulations limit Verizon's ability to respond to market conditions and competition. Unlike other providers in the Virginia Beach MSA, to whom price cap regulation does not apply, Verizon is restricted from responding to competition with deaveraged rates and cannot respond to competitors' bundled service offerings. Competitors also can use these regulations to their advantage, both to undercut each others' pricing or to maintain artificially high prices.

For these reasons, dominant carrier regulation of the switched-access market is not only unnecessary to ensure just, reasonable, and nondiscriminatory rates and to protect consumers, but it would be affirmatively detrimental to competition and harmful to the public interest.

CONCLUSION

For the foregoing reasons, Verizon requests that the Commission grant relief that is parallel to the relief granted in the *Omaha Forbearance Order* and forbear from loop and transport unbundling regulation pursuant to 47 U.S.C. § 251(c) and dominant carrier regulations for switched access services in the Virginia Beach MSA.

Respectfully submitted,

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September 6, 2006

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

In the Matter of	)	
	)	
Petition of the Verizon Telephone	)	WC Docket No. _____
Companies for Forbearance Pursuant to	)	
47 U.S.C. § 160(c) in the	)	
Virginia Beach Metropolitan Statistical Area	)	

DECLARATION OF QUINTIN LEW, JUDY VERSES, AND PATRICK GARZILLO REGARDING COMPETITION IN THE VIRGINIA BEACH METROPOLITAN STATISTICAL AREA

I. INTRODUCTION AND SUMMARY

1. My name is Quintin Lew. My business address is One Verizon Way, Basking Ridge, NJ 07920. I am Vice President – Marketing and Sales in the Verizon Partner Solutions Group (formerly known as Wholesale Markets) and have worked in this organization for 3 years. In this capacity, I am responsible for competitive and market analysis as well as the product management and marketing of our Special Access Products. I have over 20 years with Verizon or its predecessors in most areas of marketing, strategic planning, and business development. In this capacity, I have information and knowledge relating to the sources of data described specifically in paragraphs 4-5, 10-11, 20-29, and 34-51 of this Declaration.

2. My name is Judy Verses. My business address is One Verizon Center, MC: VC11W403, Basking Ridge, NJ 07920. I am Sr. Vice President – Marketing Operations and have worked for Verizon for twenty-three years, including positions in Sales and Product Line Management. For the past 4 years I have had marketing responsibility for Consumer and Small Business Customers. My current responsibilities include alternate channel development, multi-cultural sales and marketing, market research and marketing analytics, as well as competitive intelligence. In this capacity, I have information and knowledge relating to the third party

sources of data Verizon has used to identify competitive local exchange carrier ("CLEC") fiber transport and loop facilities and to determine the correlation between customer telecommunication spending and CLEC deployment of fiber facilities as described specifically in paragraphs 4-7, 9, 14-26, and 30-33 of this declaration.

3. My name is Patrick Garzillo. My business address is One Verizon Way, Basking Ridge, New Jersey 07920-1097. I am Vice President – Finance, Service Costs and Analysis for Verizon, and I have more than 35 years of experience with Verizon and its predecessor companies. My current responsibilities include managing and supervising the development, preparation and analysis of economic cost information, embedded costs of regulated and non-regulated services, separated costs, supporting data, cost analysis, and Universal Service Fund related issues. I also support the development of key marketing strategies, regulatory policies, and legislative positions for Verizon through financial analysis associated with a broad array of state and federal regulatory issues. In this capacity, I have information and knowledge relating to the sources of data described specifically in paragraphs 4-9, 11-13, 18, 28-29, 37-40, and 43-48 of this declaration.

4. The purpose of this declaration is to demonstrate that there is extensive facilities-based competition for certain geographic and product market combinations in Verizon's region, based on the framework the Commission applied in the *Omaha Forbearance Order*.[1] We focus on the Virginia Beach-Norfolk-Newport News, VA-NC metropolitan statistical area ("Virginia Beach MSA"), and provide a competitive showing for mass-market switched access and enterprise services.

[1] *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) ("*Omaha Forbearance Order*").

5. Our declaration and accompanying exhibits contain information collected from publicly available sources and internal Verizon databases. We have identified the sources of all publicly available information on which we rely. We also supervised the collection of data from Verizon's internal databases. Our declaration and exhibits accurately reflect the data contained in those databases. For purposes of this declaration, all competitive data that were previously attributed to MCI (such as line counts) have been attributed to Verizon.[2] A summary of the data is set forth below.

6. There are approximately 623,000 households and 1.6 million people in the Virginia Beach MSA.[3] Approximately 99 percent of the population lives in the 15 incorporated cities and counties in Virginia; the remaining one percent lives in Currituck County, N.C.[4] As of the end of December 2005, Verizon provides service to approximately **** **** access lines in the Virginia Beach MSA – approximately **** **** residential lines and approximately **** **** business lines.[5]

7. Cox's network passes approximately 645,000 homes in the Virginia Beach MSA, and the company offers mass-market voice and broadband services to the vast majority of the homes served by its network. According to Verizon's residential E911 listing data – which are

[2] Calculations of the decline in access lines and the percentage of Verizon lines in wire centers served by competitors do not attribute MCI data to Verizon.

[3] U.S. Census Bureau, *County-Level Housing Unit Dataset*, http://www.census.gov/popest/housing/files/HU-EST2005_US.CSV (2005 estimates); U.S. Census Bureau, *Annual Estimates of the Population of Metropolitan and Micropolitan Statistical Areas*, http://www.census.gov/population/www/estimates/metropop/2005/cbsa-01-fmt.xls (2005 estimates).

[4] U.S. Census Bureau, *County Population Dataset*, http://www.census.gov/popest/counties/files/CO-EST2005-ALLDATA.csv (2005 estimates). Verizon is not the only incumbent LEC in the Virginia Beach MSA: a portion of Currituck County, N.C. is served by Sprint.

[5] Data include lines served by MCI. The estimate for facilities-based lines served by MCI are as of March 2005 for the City of Virginia Beach and as of December 2005 for other parts of the MSA, as explained in paragraph 8, *infra.* Verizon access line data cited throughout this declaration are based on voice-grade equivalent lines.

significantly understated because they do not include current listings for all areas within the Virginia Beach MSA – Cox is providing mass-market voice service to customers in wire centers that account for **** **** percent of Verizon's residential access lines in the MSA.

8. Because Verizon is no longer the E911 provider for the City of Virginia Beach, the E911 listings data for the Virginia Beach Public Safety Answering Point (PSAP) are available to Verizon only up to March 2005. Verizon is still the E911 provider in other parts of the MSA, so Verizon has E911 listings data for these other parts of the MSA as of December 2005. Between March and December 2005, Verizon has seen steady growth in competitive E911 listings in the parts of the MSA where Verizon is still the E911 provider, and there is every reason to believe that the same is true of those areas where Verizon is not the E911 provider. Thus, the E911 listings data used here undoubtedly understate the extent of competition in Virginia Beach today.

9. Competitive wireless services and over-the-top voice services also are available throughout the MSA, and there are also traditional CLECs that serve mass-market customers. As a result of this competition, Verizon's retail residential switched access lines have declined in the Virginia Beach MSA – by approximately **** **** percent from 2000 to 2005 – even though the number of households in the MSA increased by approximately 7 percent during this time.[6] Based on the necessarily incomplete data available to Verizon that do not include various forms of intermodal competition (and that also are out of date for certain portions of the MSA), competitors currently provide service to approximately **** **** percent of residential lines in Verizon's service area in the Virginia Beach MSA.

[6] U.S. Census Bureau, *County-Level Housing Unit Dataset*, http://www.census.gov/popest/housing/files/HU-EST2005_US.CSV.

10. There also is robust competition for enterprise customers in the Virginia Beach MSA. There is a wide variety of competing providers serving these customers, including the cable company, interexchange carriers, competitive LECs, other incumbent LECs, systems integrators, and equipment vendors. Cox, the major cable operator in the Virginia Beach MSA, offers service to business customers, using both its cable networks and fiber networks that it has deployed specifically to serve business customers. Other competitors are using a combination of their own facilities, facilities obtained from third-party providers, and special access obtained from Verizon.

11. According to data from GeoTel, there are at least two known competing carriers that operate fiber networks within the Virginia Beach MSA and these networks span at least **** **** route miles. As GeoTel itself recognizes, its information regarding CLEC fiber routes, while extensive, is not comprehensive. GeoTel continually works to update its databases, and it provides Verizon with updates approximately every six months. Each of these updates contains new information. Moreover, GeoTel does not have complete data for every CLEC. During the course of the Verizon/MCI merger, for example, Verizon received other confidential sources of data that showed additional CLEC fiber beyond what is contained in the GeoTel data. Thus, there is reason to believe that the GeoTel information understates, perhaps significantly, the extent to which CLECs have self-provisioned fiber facilities. There are at least one or more known competing fiber providers in **** **** percent of wire centers in the Virginia Beach MSA, and these wire centers represent approximately **** **** percent of Verizon's retail switched business lines in the MSA.

12. Based on the most recent business E911 listings data available for the City of Virginia Beach and as of December 2005 for other parts of the MSA, competing carriers are

serving business customers in **** **** percent of the wire centers in the Virginia Beach MSA, and these wire centers account for **** **** percent of Verizon's retail switched business lines in the MSA.[7] As of December 2005, competitor are using special access to serve business customers in **** **** percent of wire centers in the Virginia Beach MSA. These wire centers serve **** **** percent of Verizon's retail switched business lines in the MSA.

13. As a result of this competition, Verizon's retail business switched access lines have declined in the Virginia Beach MSA – by approximately **** **** percent from 2000 to 2005 – even though the population in the MSA increased by approximately 4 percent during this time.[8] Competitors in the Virginia Beach MSA have obtained approximately **** **** business E911 listings,[9] and serve approximately **** **** voice-grade equivalent lines using special access and private lines obtained from Verizon.

[7] This figure is presented as a range because Verizon's data do not in all cases allow an E911 listing to be associated with a specific wire center. The low end of the range is based on the E911 listings that can be directly attributed to a specific wire center (because there is only one wire center associated with the NPA-NXX code for the E911 listing), and therefore represents the minimum number of wire centers (and associated access lines) in which competing carriers are providing service. The high end of the range is derived by applying an allocation methodology to those E911 listings that cannot be directly attributed to a specific wire center (because there is more than one possible wire center associated with the NPA-NXX code for the E911 listing). This methodology proportionally assigns E911 listings to each of the possible wire centers with which the E911 listing can be associated.

[8] U.S. Census Bureau, *Annual Estimates of the Population of Metropolitan and Micropolitan Statistical Areas*, http://www.census.gov/population/www/estimates/metropop/2005/cbsa-01-fmt.xls.

[9] Based on the most recent data available for the City of Virginia Beach and as of December 2005 for other parts of the MSA.

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II. COMPETITION FOR MASS-MARKET SWITCHED ACCESS SERVICES

14. The wireline telephone business has undergone and is continuing to undergo fundamental change. Cable, wireless, Voice over Internet Protocol ("VoIP"), e-mail, and instant messaging are all being used as replacements for traditional wireline services. At the end of 2005, cable companies already offered voice telephone service to approximately 57 percent of homes nationwide, and by the end of 2008, 94 percent of homes will have access to voice telephone service from a cable company.[10] There are also multiple over-the-top VoIP providers such as Vonage, Packet8, VoicePulse, Skype, and Lingo that offer service nationwide to anyone with a cable modem or other type of broadband connection. Wireless carriers are aggressively competing both for lines and for traffic. At least 69 percent of the U.S. population now has a wireless phone,[11] and at least 10 percent of wireless subscribers have given up their wireline

[10] *See* C. Moffett, *et al.*, Bernstein Research, *Quarterly VoIP Monitor: Six Million and Counting* at Exhibit 17 (June 12, 2006).

[11] CTIA, *Wireless Quick Facts*, http://files.ctia.org/pdf/Wireless_Quick_Facts_April_06.pdf. The Yankee Group estimates that more than 70 percent of U.S. households have a wireless

phone while at least 14 percent use their wireless phone as their primary phone.[12] According to an analysis by JP Morgan, ILECs nationwide have lost approximately 9 percent of their primary access lines to wireless.[13] They have lost an additional 7 percent of their primary lines to cable and other VoIP providers.[14] And they have lost 6 percent of their lines to CLECs.[15] JP Morgan estimates that, by 2010, wireless will capture 18 percent of primary lines while cable and other VoIP providers will capture 28 percent.[16]

A. Cable

15. Cox is the largest cable operator in the Virginia Beach MSA, with approximately 645,000 homes passed, or approximately 98 percent of homes in the MSA.[17] *See* Exhibit 3. Cox spent $500 million to $600 million on system upgrades in Hampton Roads, and the company began offering circuit-switched phone service to Hampton Roads residents in 1998.[18] Cox

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phone. K. Griffin, Yankee Group, *Pervasive Substitution Precedes Displacement and Fixed-Mobile Convergence in Latest Wireless Trends* at 4 (Dec. 2005).

[12] K. Mallinson, Yankee Group, *Wireless Substitution of Wireline Increases Choice and Competition in Voice Services* at 5 (July 27, 2005); C. Wheelock, In-Stat/MDR, *Cutting the Cord: Consumer Profiles and Carrier Strategies for Wireless Substitution* at 1 (Feb. 2004). *See also* J. Armstrong, *et al.*, Goldman Sachs, *2006 Outlook – Stuck in Neutral* at 31 (Jan. 13, 2006) (wireless-only customers represent a 12.5 percent share of the residential market).

[13] J. Chaplin, *et al.*, JP Morgan, *State of the Industry: Consumer* at Tables 57 & 72 (Jan. 17, 2006).

[14] *See id.* at Tables 57 & 72 (lines served by cable and other VoIP providers as a percentage of total telephony households).

[15] *See id.* & Table 21 (excluding lines lost to MCI).

[16] *See id.* at 10-12. Some analysts expect cable telephony to enjoy a share of more than 30 percent of all U.S. households by the end of 2010. *See* F. Louthan, *et al.*, Raymond James Equity Research, *Reassessment of Access Lines and Wireline Carriers* at 3 (July 5, 2006) (citing IDC estimates).

[17] Media Business Corp., *Top 10 MSOs by County* (Mar. 2004); U.S. Census Bureau, *County-Level Housing Unit Estimates*, http://www.census.gov/popest/housing/files/HU-EST2004-CO.csv (2004 estimates). This includes homes passed in areas not served by Verizon.

[18] C. Shapiro, *Can You See Me Now? Good.*, Virginian-Pilot at D1 (Mar. 7, 2005) (citing Cox spokesman Thom Prevette).

currently provides mass-market voice service over its cable network in Hampton Roads and parts of Newport News, Williamsburg, and Virginia Beach.[19]

16. Cox serves at least 1.8 million telephone customers nationwide.[20] In July 2006, Cox announced that its Digital Telephone service "will be available in all Cox markets by the end of the year," and that Cox "will continue to add telephone service in the communities it serves in early 2007."[21] Cox's telephone penetration is "33 percent of total cable customers and 24 percent of all homes passed by Cox's network," which Cox claims is "the highest among all cable operators."[22] More than half of Cox's customers bundle two or more video, Internet, and phone services.[23]

17. In the Virginia Beach MSA, Cox offers unlimited local calling for $14.00 per month for customers with other Cox services, or $15.39 as a standalone service. Calling packages with unlimited local and long-distance calling are available for $29.95 without calling features, or $39.95 with calling features.[24]

18. When a cable company wins a new residential subscriber, it typically obtains an E911 listing for that subscriber. Based on the most recent residential E911 listings data available for the City of Virginia Beach and as of December 2005 for other parts of the MSA, Cox is providing mass-market voice service to customers in wire centers in the Virginia Beach MSA

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[19] Cox Hampton Roads, *Cox Digital Telephone FAQ's*, http://www.cox.com/hr/help/telephone/faq-phone.asp.

[20] Cox News Release, *Cox Digital Telephone To Be Available in All Cox Markets by End of Year* (July 13, 2006).

[21] *Id.*

[22] *Id.*

[23] Cox News Release, *More Than 50% of Cox Customers Bundle Two or More Video, Internet and Phone Services* (July 27, 2006).

[24] Cox Hampton Roads, *Digital Phone Features and Pricing*, http://www.cox.com/hr/telephone/pricing-telephone.asp.

that account for approximately **** **** percent of Verizon's residential access lines in the MSA. Based on these same data, Cox provides service to approximately **** **** residential lines in the Virginia Beach MSA.

19. Mass-market voice services offered by cable companies are typically priced at or below comparable offerings from Verizon. Exhibit 1 is a chart that compares the price and features of Cox's voice telephone service offering with those of Verizon and several leading competitors. *See* Exhibit 1. This chart shows that the cable offering is very competitive.

B. Wireless

20. There are multiple competitive wireless providers serving the Virginia Beach MSA. As the maps in Exhibit 4 illustrate, Cingular, Sprint Nextel, T-Mobile, ALLTEL, and NTELOS all provide service in the MSA,[25] and competitive wireless service from at least one of these carriers is available throughout the MSA.

21. These wireless carriers all provide service that is competitive with wireline service for comparable offerings. Exhibit 1 is a chart that compares the voice telephone service offerings of several leading wireless competitors in the Virginia Beach MSA with Verizon's wireline service offering. *See* Exhibit 1. The service packages listed on the chart are those most prominently featured in advertising materials and are most comparable between service providers. The chart demonstrates that wireless providers in the Virginia Beach MSA offer buckets of minutes and other features at prices that are competitive with comparable packages offered by Verizon and other wireline providers.

22. Wireless carriers are now competing with wireline carriers both for local access lines and, even more extensively, for long-distance calls, as well as local calls. For a growing

[25] Verizon Wireless also provides service throughout the Virginia Beach MSA.

number of customers, wireless service is displacing landline telephone service. During the last few years, the number of wireless subscribers has grown from 140 million to more than 207 million, growing at more than 20 million new wireless subscribers each year.[26] By contrast, there are approximately 175 million wireline access lines, and that number is declining each year.[27] According to the FCC's recent *Local Competition Report*, the number of national wireless subscribers has continued to grow rapidly (by approximately 12 percent) in the last year, while the number of wireline access lines has declined.[28]

23. Lehman Brothers estimates that 20 million wireline access lines have been lost to wireless since 1999, and that wireless will continue to win more than 6 million new subscribers from wireline each year.[29] Deutsche Bank states that "wireless cannibalization" amounts to "more than 1m lines lost per quarter."[30] Analysts predict that the number of wireless-only users will grow to 20-25 percent of the market by 2010.[31] A Harris Interactive survey found that 39 percent of current landline customers are interested in going wireless altogether in the next two

[26] CTIA, *CTIA's Semi-Annual Wireless Industry Survey Results*, http://files.ctia.org/pdf/CTIAEndYear2005Survey.pdf.

[27] *See, e.g.*, Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Local Telephone Competition: Status as of December 31, 2005* at Table 1 (July 2006) (End-user switched access lines have declined steadily since their peak in December 2000).

[28] *See id.* at Tables 1 & 14.

[29] *See* B. Bath, Lehman Brothers, *Telecom Services - Wireline* at Figure 11 (July 7, 2005). *See also* T. Horan, *et al.*, CIBC World Markets, *3Q05 Communications and Cable Services Review* at Exhibit 12 (Nov. 23, 2005) (estimating wireless substitution at 20 million lines as of year-end 2005, increasing by 5-6 million lines each year through 2007).

[30] V. Shvets, *et al.*, Deutsche Bank, *4Q04 Review: Wireless OK . . . RBOCs Fare Poorly* at 6 (Feb. 28, 2005). *See also* F. Louthan, *et al.*, Raymond James, *VZ, SBC, BLS, Q: Cable Threat Comparison for RBOCs* at 2 (July 11, 2005) ("look for wireless substitution to be the largest displacer of access lines over the next five years").

[31] *See* D. Barden, *et al.*, Banc of America Securities, *Setting the Bar: Establishing a Baseline for Bell Consumer Market Share* at 4 (June 14, 2005); F. Louthan, *et al.* Raymond James Equity Research, *Reassessment of Access Lines and Wireline Carriers* at 2 (July 5, 2006) (predicting 25 percent wireless substitution by 2010).

years.[32] Even if they are not replacing their landline phone altogether, at least 14 percent of U.S. consumers now use their wireless phone as their primary phone.[33] And even larger percentages of young consumers – which will make up the next generation of homeowners – are disconnecting their wireline service, which make it likely that the rate at which customers use wireless in place of wireline will increase even further in the future.[34]

24. In addition, wireless carriers are competing even more extensively to displace telephone calls and minutes that previously were made on wireline networks. Merrill Lynch estimated that "approximately 23% of voice minutes in 2003 were wireless," and that in 2004 "wireless could make up approximately 29% of voice minutes in the US."[35] The Yankee Group estimates that wireless subscribers make 64 percent of their long-distance calls and 42 percent of

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[32] *See* National Consumers League Press Release, *National Consumers League Releases Comprehensive Survey about Consumers and Communications Services* (July 21, 2005).

[33] C. Wheelock, In-Stat/MDR, *Cutting the Cord: Consumer Profiles and Carrier Strategies for Wireless Substitution* at 1 (Feb. 2004) ("14.4% of US consumers currently use a wireless phone as their primary phone"). *See also* J. Armstrong, *et al.*, Goldman Sachs, *2006 Outlook – Stuck in Neutral* at 31 (Jan. 13, 2006) (wireless-only customers represent a 12.5 percent share of the residential market).

[34] *See* Clyde Tucker, Brian Meekins, J. Michael Brick, & David Morganstein, Household Telephone Service and Usage Patterns in the United States in 2004, presented at the 2004 Annual Meeting of the American Association for Public Opinion Research (A Census Bureau study found that in households headed by someone under 24 years of age, 18.0 percent had a cellular telephone only; and 9.6 percent of households headed by someone between 25 and 34 years of age had cellular telephones only). *See also* A. Quinton, *et al.*, Merrill Lynch, *Telecom Services: Unraveling Revenues* at 5 (Nov. 20, 2003) ("[W]e believe that demographic trends favor wireless. . . . So, as the US population ages, more young people are likely to become wireless subscribers – and either displace the purchase of a wireline service with wireless or cut the cord on an existing line."); S. Ellison, IDC, *U.S. Wireline Displacement of Wireline Access Lines Forecast and Analysis, 2003-2007* at 7 (Aug. 2003) ("The first communications services purchased by youth and young adults are now often wireless services. Adoption of wireless by teenagers is increasingly being translated into forgoing traditional primary access lines when such wireless users go to college or otherwise establish their own households.").

[35] D. Janazzo, *et al.*, Merrill Lynch, *The Next Generation VIII: The Final Frontier?* at 5 (Mar. 15, 2004); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Eighth Report, 18 FCC Rcd 14783, ¶ 102 (2003) ("One analyst estimates that wireless has now displaced about 30 percent of total wireline minutes.").

their local calls on their wireless phones.[36] The FCC's own data show that wireline toll minutes have declined rapidly for the industry as a whole. Average residential toll minutes per line reached a peak of 149 minutes per month in 1997, and declined to only 71 minutes per month in 2003.[37] In total, consumers have reduced the number of long-distance minutes of use on landline phones by 52 percent during that period.[38] Moreover, approximately 32.9 percent of wireless subscribers use their landline only for local calls.[39] These findings "suggest[] that wireless is eroding the usage of wireline long distance and local toll services twice as much as the rate of complete wireless substitution."[40]

25. The absolute increase in wireless minutes has been explosive. By 2005, wireless minutes of use had risen to 1.4 trillion, an increase of 35.8 percent from 2004 and more than 400 percent since 2000.[41] This increased usage has been accompanied by a rapid erosion in traditional distinctions between the locations from which subscribers use fixed and mobile service, as subscribers increasingly use their mobile devices at stationary locations from which wireline alternatives would readily be used. For example, a Yankee Group survey found that the percentage of wireless usage in the home by mobile phone users doubled as a percentage of total

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[36] K. Griffin, Yankee Group, *Pervasive Substitution Precedes Displacement and Fixed-Mobile Convergence in Latest Wireless Trends* at 5 & Exhibit 3 (Dec. 2005).

[37] Ind. Anal. & Tech. Div., Wireline Competition Bureau, *Trends in Telephone Service* at Table 14.2 (June 2005) ("*Trends in Telephone Service*") (includes: IntraLATA-Intrastate, InterLATA-Intrastate, IntraLATA-Interstate, InterLATA-Interstate, International, and Others (toll-free minutes billed to residential customers, 900 minutes, and minutes for calls that could not be classified)).

[38] *Trends in Telephone Service* at Table 14.2.

[39] D. Chamberlain, In-Stat/MDR, *Cutting the Cord: Consumer Profiles and Carrier Strategies for Wireless Substitution* at 1 (Oct. 2005).

[40] *Id.* at 6.

[41] *See* CTIA, *CTIA's Semi-Annual Wireless Industry Survey Results* at 7, http://files.ctia.org/pdf/CTIAEndYear2005Survey.pdf.

usage between 2001 and 2005.[42] By 2005, wireless subscribers reported that 24 percent of their wireless calling took place inside the home, and 10 percent of their wireless calling took place at work.[43]

26. There is statistical evidence that wireless puts competitive pressure on wireline pricing. An econometric analysis by the Competitive Enterprise Institute found that "a one percent increase in wireline prices would result in nearly a 2 percent increase in wireless demand. In other words, if wireline carriers were to increase their prices, wireless service providers would gain a substantial number of subscribers. This finding, coupled with the fact that wireless prices continue to decrease, suggests that wireline providers may soon be under pressure to decrease prices in order to stem market share losses."[44]

C. Traditional CLECs

27. Although declining in importance relative to intermodal competitors, there are still a number of traditional CLECs that serve mass-market customers.

28. Cavalier Telephone provides mass-market local voice services in the Virginia Beach MSA using its own switch together with unbundled loops. Cavalier operates networks in Hampton Roads and Norfolk using its switch in Norfolk.[45] Cavalier offers unlimited local calling with calling features for $24.95 per month; unlimited long-distance service is available

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[42] *See* K. Mallinson, Yankee Group, *Wireless Substitution of Wireline Increases Choice and Competition in Voice Services* at Exhibit 3 (July 27, 2005).

[43] K. Griffin, Yankee Group, *Pervasive Substitution Precedes Displacement and Fixed-Mobile Convergence in Latest Wireless Trends* at 5 (Dec. 2005).

[44] Stephen B. Pociask, Competitive Enterprise Institute, *Wireless Substitution and Competition: Different Technology but Similar Service – Redefining the Role of Telecommunications Regulation* at 15 (Dec. 15, 2004) (endnote omitted).

[45] New Paradigm Resources Group, Inc., *Competitive Carrier Report 2006*, Ch. 6 – Cavalier Telephone Corp. at 5 (20th ed. 2006) ("*Competitive Carrier Report 2006*").

for an additional $10 per month.[46] According to Cavalier, "almost 200,000 people made the switch to Cavalier for their phone and high speed DSL services" throughout the mid-Atlantic, and "Cavalier customers get the best in voice and data services with savings up to 30%."[47] In May 2005, Cavalier estimated that it has approximately 25,000 residential customers and about 3,500 business customers from Williamsburg to Virginia Beach, "amounting to a market share of about 8 percent in its current Hampton Roads territory."[48] Based on the most recent E911 listings data available for the City of Virginia Beach and as of December 2005 for other parts of the MSA, Cavalier is providing mass-market voice service using its own switches to customers in wire centers in the Virginia Beach MSA that account for **** **** percent of Verizon's residential access lines in the MSA. Based on these same data, Cavalier provides service to approximately **** **** residential lines in the Virginia Beach MSA, in whole or in part using its own facilities, including in all cases its own switch.

29. A number of CLECs are serving mass-market customers using Verizon's Wholesale Advantage product – which is the market-based successor to the regulated UNE platform service that Verizon was at one time required to provide. Some CLECs also resell Verizon's retail residential service. As of the end of December 2005, competitors are serving approximately **** **** voice-grade equivalent residential lines in the Virginia Beach MSA using Wholesale Advantage and **** **** voice-grade equivalent residential lines on a resale basis.

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[46] Cavalier Telephone, *Overview of the Cavalier Telephone Residential Calling Plans*, http://www.cavtel.com/homeservice/plans.shtml.

[47] Cavalier Telephone, *Switching to Cavalier Telephone & Save on Residential Telephone & High Speed DSL Services*, http://www.cavaliertelephone.com/residential/index.shtml.

[48] C. Shapiro, *Cavalier Telephone To Dial into Portsmouth, Chesapeake*, Virginian-Pilot at D1 (May 25, 2005) (citing Cavalier vice president of product management and marketing Andy Lobred).

D. Over-the-Top VoIP

30. Consumers who today are unable to receive telephone services directly from their cable company can usually obtain them from multiple independent over-the-top VoIP providers. Any customer who has access to cable modem or other broadband services – which more than 90 percent of U.S. households now do[49] – can obtain voice services from one of these providers. VoIP vastly expands the number of competitors that can offer mass-market voice telephone service because they can offer VoIP over any type of broadband facility provided by any other company. Broadband access through satellite, BPL, Wi-Fi, and WiMax is emerging, and these technologies will offer an alternative means through which mass-market customers can access VoIP service.[50] Vonage, the largest of the new over-the-top providers, currently offers local numbers in 44 states and the District of Columbia.[51] Vonage already is approaching two million VoIP subscribers, and reports that it is adding an average of more than 22,000 subscribers each week.[52]

31. As shown in Exhibit 2, mass-market customers in the Virginia Beach MSA can choose from more than 20 VoIP providers who offer local phone numbers. These VoIP providers are offering service at prices that are competitive to Verizon's service, with plans that start at $5.95 for metered service (ZingoTel's 100-minute Basic plan) and $14.95 for unlimited

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[49] *See* NCTA, *Broadband Availability*, http://www.ncta.com/ContentView.aspx?contentId=60 (116.1 million homes passed by cable modem service as of 2005); *see also* NCTA, *2006 Industry Overview* at 11 & Chart 6 (cable modem service is available to approximately 93 percent of homes passed by cable as of year-end 2005) (citing Morgan Stanley).

[50] *See, e.g., Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶ 33 (2005).

[51] Vonage, *Available Area Codes*, http://www.vonage.com/avail.php?lid=nav_avail.

[52] *See* Vonage, Form 10-Q at 14 (SEC filed Aug. 4, 2006). More than 95 percent of Vonage subscribers are in the U.S. *See* Vonage, Form S-1A at 1 (SEC filed May 23, 2006).

service (ZingoTel's Residential Unlimited plan). Verizon has prepared a chart that compares the prices and features of voice telephone service offerings of several leading competitors. *See* Exhibits 1 & 2. For example, Vonage and AT&T both offer unlimited local and long-distance packages for $24.99 per month.[53] Vonage also offers a VoIP package for $14.99 per month that includes 500 minutes with additional minutes at 3.9 cents.[54] Packet8, Lingo, and BroadVoice offer similar packages for $19.99 or less, not including promotional discounts such as the first month free.[55] *See* Exhibit 2. Some providers offer pay-as-you-go plans, often with a small number of minutes, for $5.95 to $9.99, to attract low-volume users. *See* Exhibit 2.

32. 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 combination of local, long-distance and dial-up Internet access. One study concluded that the average narrowband household could capture a net savings of $6 per month by subscribing to broadband and migrating to VoIP service.[56] In fact, many subscribers appear to be making the switch from narrowband to broadband principally in order to obtain VoIP phone service. According to a recent study by Bernstein Research, at least 40 percent of all VoIP subscribers are new subscribers to broadband services that are attracted to the voice-data-video bundle that cable

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[53] Vonage, *Premium Unlimited Plan*, http://www.vonage.com/services_premium.php; AT&T, *Plans & Pricing*, http://www.usa.att.com/callvantage/plans/index.jsp.

[54] Vonage, *Basic 500 Plan*, http://www.vonage.com/products_basic.php.

[55] Packet8, *Residential Plans*, http://www.packet8.net/about/residential.asp; Lingo, *Home Plans*, http://www.lingo.com/voip/residential/home_plans.jsp; BroadVoice, *Rate Plans, Compare Plans*, http://www.broadvoice.com/rates_compare.html.

[56] *See* M. Rollins, *et al.*, Citigroup, *Share Wars – Telco vs. Cable* at 7 (Oct. 5, 2005) (assuming $50 a month landline service & $21 a month dial-up, replaced by $40 a month cable modem service and an independent VoIP provider at $25 a month); *see also* C. Moffett, *et al.*, Bernstein, *Quarterly VoIP Monitor: The "Halo Effect" of VoIP is Driving Faster Subscriber Growth* at 4 (Sept. 2, 2005) ("[T]he bundled price of VoIP and broadband is compelling to dial-up subscribers, for whom the cost of upgrading to broadband is more than offset by the savings on telephony.").

operators offer.[57] As Bernstein explains, cable "[v]oice bundles induce not only existing HSD [high-speed data] customers to add voice to existing bundles, they also add incremental growth to HSD through three separate mechanisms. First, they induce new customers either to *convert* from dial-up to HSD in order to get the bundled phone price; second, they induce DSL customers to switch to cable HSD in order to get the bundled phone price; and/or third, they induce HSD customers to retain their HSD service, thereby reducing churn."[58]

33. Many customers view VoIP service as a replacement for their primary telephone line. For example, approximately 60-70 percent of Vonage's subscribers are porting their telephone numbers.[59] Analysts estimate that over-the-top VoIP providers will displace five percent of local telephone access lines by the end of 2010.[60]

III. COMPETITION FOR ENTERPRISE SERVICES

34. Just as there is intense competition for mass-market customers in the Virginia Beach MSA, the same is true for enterprise customers. Indeed, this is widely considered the most competitive segment of the telecommunications industry.[61] The Commission has

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[57] *See* C. Moffett, *et al.*, Bernstein Research, *Cable and Satellite: ~40% of Cable VoIP Customers "New" to Broadband* (July 6, 2006).

[58] *Id.* at 3.

[59] *See* D. Shapiro, *et al.*, Banc of America Securities, *Battle for the Bundle* at 30 (June 14, 2005).

[60] *See* J. Chaplin, *et al.*, JPMorgan, *Telecom Services/Wireline: State of the Industry: Consumer* at 12 (Jan. 13, 2006).

[61] *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, ¶ 73 n.223 (2005) ("competition in the enterprise market is robust"); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations, et al.*, Memorandum Opinion and Order, 19 FCC Rcd 21522, ¶ 248 n.590 (2004) ("[W]e note that [] competition is greater for enterprise services than for mass market services."); *Federal Communications Commission 2004 Biennial Regulatory Review; Consumer & Governmental Affairs Bureau*, Staff Report, 20 FCC Rcd 88, Appendix, ¶ 44 (2005) ("Competition for business customers in metropolitan areas, in general, continues to develop more rapidly than competition for residential customers or customers in rural areas.").

recognized that competition for medium and large enterprise customers is "strong" and is poised to remain so because these customers "are sophisticated, high-volume purchasers of communications services that demand high-capacity communications services" and because there are a "significant number of carriers competing in the market."[62] These competitors "include interexchange carriers, competitive LECs, cable companies, other incumbent LECs, systems integrators, and equipment vendors."[63]

35. Although not all of the carriers that serve enterprise customers own and operate their own facilities, there is an extensive wholesale market for these facilities. In fact, no telecommunications carrier in the United States, including Verizon, has ubiquitous high-capacity telecommunications facilities that are capable of serving all the needs of commercial and institutional customers. As a result, all retail service providers must depend, to a greater or lesser degree, on multiple facilities-based carriers to create a network that can serve all of the needs of commercial and institutional customers. Furthermore, provision of underlying facilities is only one component of offering service, because commercial and institutional customers demand integrated communications solutions that are likewise compatible with their overall information technology infrastructure.

36. While Verizon is one of the largest wholesale suppliers to other competing carriers in the enterprise market, it provides the vast majority of wholesale inputs to these carriers as special access, not as unbundled network elements. In the *Omaha Forbearance Order*, the Commission acknowledged that this form of wholesale competition was relevant in

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[62] *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433, ¶ 56 (2005) ("*Verizon/MCI Order*").

[63] *Id.* ¶ 64.