COMPTEL

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January 24, 2007

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554

Re: *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. §160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172

Dear Ms. Dortch:

On October 6, 2006, the Verizon Telephone Companies ("Verizon") filed amendments to its Tariff F.C.C. Nos. 1 and 11, Access Services, to introduce a new Contract Tariff Option ("New Option"). The New Option is an offering exclusively for customers who commit to convert their 1.544 Mbps (DS1) and 44.736 Mbps (DS3) Unbundled Network Elements ("UNEs") to DS1 and DS3 Special Access Services purchased under Tariff F.C.C. Nos. 1 and 11. A review of the rates and terms contained in the New Option and their potential impact on carrier customers starkly illustrates Verizon's continuing market power and underscores the need to deny Verizon's pending regulatory forbearance petitions[1] and to maintain current

[1] *See* Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the New York Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Philadelphia Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Pittsburgh Metropolitan Statistical Area; Petition of the Verizon Telephone Companies

federal rules that ensure competitors' access to unbundled DS1 and DS3 loops and dedicated transport pursuant to Section 251(c)(3) of the Communications Act of 1934, as amended ("Act").

As described by Verizon, when certain requirements are met, customers subscribing to the New Option will receive discounted monthly recurring rates for their DS1 and DS3 Special Access Services. To be eligible to subscribe to the New Option, however, a customer must purchase UNEs in at least three Qualified Metropolitan Statistical Areas ("MSAs")[2] and must elect to include 100% of its UNEs in either 100% of its Qualified MSAs or 80% of its Qualified MSAs. Customers are not permitted to disconnect, move, or rearrange eligible Special Access Service circuits,[3] and any circuits converted back to UNEs would incur termination penalties.[4] Further, New Option customers are prohibited from subscribing to any additional contract tariff option or specialized service arrangement unless explicitly permitted to do so.[5] The New Option was offered for a limited time; the subscription period ended on January 20, 2007.[6]

In presentations to its carrier customers, Verizon touts the elimination of the uncertainty of operating in the current UNE environment as a particular benefit of the New Option. The uncertainty cited by Verizon no doubt is attributable in large part to its pending regulatory forbearance petitions in which Verizon seeks relief from Section 251(c)(3) unbundling requirements for DS1 and DS3 loops and dedicated transport throughout six (6) major MSAs. If Verizon's petitions are granted, DS1 and DS3 loop and transport UNEs will disappear entirely in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach MSAs. Verizon suggests that carrier customers should embrace its New Option now as 'insurance' against such a result, since the Special Access rates offered under the

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for Forbearance Pursuant to 47 U.S.C. § 160 in the Providence Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Virginia Beach Metropolitan Statistical Area (filed Sept. 6, 2006) (together, the "Verizon Petitions").

2 A Qualified MSA is an MSA "where the customer purchases one (1) or more of the Eligible UNEs . . . from the Telephone Company." Tariff F.C.C. No. 1, Section 21.45(B)(2), Verizon Telephone Companies, Transmittal No. 746 (Oct. 6, 2006).

3 Grooming for the purpose of changing the amount of applicable channel mileage is permitted. *See* Tariff F.C.C. No. 1, Section 21.45(F)(4)(c).

4 *See* Tariff F.C.C. No. 1, Section 21.45(F)(4)(d).

5 *See* Tariff F.C.C. No. 1, Section 21.45(H)(1)(a).

6 *See* Tariff F.C.C. No. 1, Section 21.45(B)(1).

New Option are less than the Special Access rates that would be available to carriers once forbearance relief is granted.[7]

Verizon's 'insurance' comes at a heavy price. Verizon has provided one COMPTEL member an analysis of the financial impact of the New Option. Verizon estimates that this carrier would experience a cost increase of approximately $250,000 per month, or $3 million annually, as a result of converting its DS1 and DS3 UNEs to Special Access Service under the New Option. The carrier's 'choice' is to immediately begin incurring $250,000 per month in increased costs or to risk potentially greater monthly increases if Verizon is successful in obtaining forbearance from Section 251(c)(3) unbundling requirements later this year.[8]

The stark nature of the options Verizon has presented to carrier customers shows the strength of Verizon's market power in the DS1 and DS3 transmission markets. If carrier customers enjoyed any real alternatives to Verizon's DS1 and DS3 offerings – either through self-supply or alternative wholesale service arrangements – Verizon could not offer a Special Access product guaranteed to substantially increase carriers' costs and expect to be taken seriously. In a competitive market, a service provider must offer its products at price levels that attract customers. An offering like Verizon's New Option, which would necessarily increase a potential customer's costs significantly – and lock the customer in to higher rates for the entire multi-year term of the service arrangement – would never make it to market. Likewise, no carrier with practical alternatives would spend more than a moment considering Verizon's New Option before rejecting it. Verizon's New Option only exists because of current deficits in the competitive environment, an environment where carriers are compelled to rely on Verizon's facilities and services to reach their customers.

The price increases contained in the New Option prove the lack of competition in the DS1 and DS3 loop and transport markets. As COMPTEL has previously shown, in such an environment, one can expect that retail rates for services dependent on Verizon's DS1 and DS3 transmission facilities would be even higher in the absence of regulatory compulsion to offer Ds1 and DS3 loops and transport at cost based (*i.e.* TELRIC) rates. [9] The lack of competitive constraints on

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7 As indicated above, the New Option subscription period will expire on January 20, 2007.

8 The 15-month statutory deadline for disposition of Verizon's forbearance petitions is early December 2007.

9 See, *e.g.*, White Paper, "Eliminating Access to High Capacity UNE Loops and Transport Will Cost U.S. Businesses $130 Billion," William Lehr and Mark Bryant, submitted as an attachment to Letter from Jonathan Lee,

Verizon's rates evidenced by the New Option and the scare tactics employed by Verizon to motivate customers to subscribe to the New Option in an effort to skew the record in the instant docket in its favor should elicit serious concern from the Commission. It is clear that Verizon's market power cannot be constrained by anything but the regulatory will of the FCC and the state commissions to implement and enforce Section 251(c)(3) of the Act. Verizon's offer should be seen for what it is: an attempt to bully competitors and create a misleading record for the Commission. Verizon's latest tactic provides further evidence—not that any is needed—for the Commission to promptly dismiss Verizon's petitions.

Sincerely,

Jonathan D. Lee

Jonathan Lee
General Counsel

CompTel/ASCENT to Marlene H. Dortch, FCC, WC Docket No. 04-440, filed November 23, 2004.