Providence MSA

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

FILED/ACCEPTED
JAN 2 6 2007
Federal Communications Commission
Office of the Secretary

PETITION OF THE VERIZON TELEPHONE COMPANIES
FOR FORBEARANCE

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September 6, 2006

REDACTED – FOR PUBLIC INSPECTION

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I. INTRODUCTION AND SUMMARY

This forbearance petition seeks in the Providence Metropolitan Statistical Area ("MSA")[1] substantially the same regulatory relief the Commission granted in the *Omaha Forbearance Order*.[2] Throughout this MSA, Verizon faces competition from a wide range of technologies and an even broader array of providers. These competitive alternatives are available to mass-market and enterprise customers alike. As demonstrated in this petition and in the attached Declaration of Quintin Lew, Judy Verses, and Patrick Garzillo, this "level of facilities-based competition ensures that market forces will protect the interests of consumers," and that the regulations at issue are no longer necessary. *Omaha Forbearance Order* ¶ 1. In fact, competition in the Providence MSA is more advanced than it was in Omaha.

Mass-market consumers throughout the Providence MSA now have access to a wide range of competitive alternatives for affordable local telephone service. As was the case in Omaha, cable operators in the Providence MSA offer competitive voice services to the vast majority of the homes in the MSA. Both of the major cable operators in the MSA – Cox and Comcast – currently offer voice service in the MSA, both have indicated that they intend to provide such services throughout virtually all of its franchise areas in the near future, and both appear close to achieving that goal in the Providence MSA.

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[1] The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc. References to the Providence MSA mean Verizon's incumbent local service territory in the Providence-New Bedford-Fall River, RI-MA MSA, as defined by the Office of Management and Budget as of December 2005.

[2] *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*").

Other types of mass-market competition are even more advanced in the Providence MSA than they were in Omaha. Each of the nation's major wireless carriers serves the entire Providence MSA (or in some cases almost the entire MSA), each offers service that is competitive with Verizon's wireline service, and large and increasing numbers of consumers in the MSA are using these wireless alternatives in place of their wireline service. Consumers also can obtain telephone service from several dozen "over-the-top" VoIP providers, which can be accessed over competitive cable networks. Verizon also continues to face extensive competition from traditional CLECs, including carriers that obtain wholesale service from Verizon, which the Commission in the *Omaha Forbearance Order* deemed relevant to forbearance inquiries such as this one.

These various competitive alternatives are widely used in the Providence MSA. Between 2000 and 2005, Verizon's retail residential switched access lines in the Providence MSA declined by approximately **[Begin Proprietary]** **[End Proprietary]** percent, even though the number of households in the MSA increased by approximately 2 percent during this time. In this competitive environment, imposing regulation crafted in and for an earlier era is not only unnecessary, it is also counterproductive.

There is likewise intense competition for enterprise services in the Providence MSA. As the Commission has found, cable companies are capable of using their ubiquitous cable networks to serve enterprise customers. As was the case in Omaha, each of the major cable operators in the Providence MSA is actively marketing higher capacity services to enterprise customers, including both smaller businesses and large enterprise customers. Apart from cable, there are even greater competitive alternatives for enterprise customers in the Providence MSA than there were in Omaha. There are

several known competitive fiber providers that operate networks in areas where enterprise customers are concentrated in the Providence MSA, including wire centers that account for approximately **[Begin Proprietary]** **[End Proprietary]** percent of Verizon's retail switched business lines in the MSA.

These competitive alternatives are widely used among enterprise customers in the Providence MSA. In the last five years alone, Verizon's retail switched business lines in the Providence MSA declined by approximately **[Begin Proprietary]** **[End Proprietary]** percent, even though the enterprise segment, like the business segment as a whole, grew overall. Moreover, these declines took place on top of the inroads that competitors made in the two prior decades.

II. THE FIRST TWO PARTS OF THE FORBEARANCE TEST ARE SATISFIED AS A CONSEQUENCE OF THE FACT THAT TELECOMMUNICATIONS COMPETITION IN THE PROVIDENCE MSA IS ROBUST AND RAPIDLY GROWING

Competition in the Providence MSA is more advanced than it was in the Omaha MSA. Cable voice services are just as widely available in the Providence MSA as they were in Omaha MSA, for mass-market and enterprise customers alike. Moreover, for both types of customers, other competitive alternatives are more advanced in the Providence MSA than they were in Omaha. The Commission should accordingly find that the first two prongs of the forbearance test are satisfied and grant Verizon substantially the same relief that it granted in the *Omaha Forbearance Order*.[3]

[3] Specifically, Verizon requests that the Commission forbear from applying loop and transport unbundling regulation pursuant to 47 U.S.C. § 251(c), *see* 47 C.F.R. § 51.319 (a), (b), (e), The Commission has determined that section 251(c) has been "'fully implemented' for all incumbent LECs nationwide." *Omaha Forbearance Order* ¶¶ 51, 52; *see* 47 U.S.C. § 160(d). Verizon also seeks forbearance from the dominant carrier tariffing requirements set forth in Part 61 of the Commission's rules (47 C.F.R. §§ 61.32,

A. Mass-market Competition in the Providence MSA

Mass-market consumers throughout the Providence MSA now have access to a wide range of competitive alternatives for affordable local telephone service. The most prevalent sources of competition are cable and wireless networks, which offer ubiquitous facilities-based alternatives to Verizon's service. In addition, consumers can obtain telephone service from literally dozens of so-called "over-the-top" VoIP providers, which can be accessed over competitive cable networks. Traditional CLECs, including carriers that obtain wholesale service from Verizon provide an additional layer of competition. As demonstrated below, in addition to being widely available, each of these competitive alternatives also is widely used by consumers in the Providence MSA.

1. Cable

The major incumbent cable operators in the Providence MSA – Cox and Comcast – together account for approximately 85 percent of the homes in the Providence MSA. *See* Lew/Verses/Garzillo Decl. ¶ 13.

Each of these cable operators either already offers voice service throughout virtually all of its Providence MSA franchise areas, or has indicated it will be capable of doing so very shortly. *See id.* ¶¶ 15-16, 18. Cox already appears to offer voice services throughout virtually all of its franchise territory in the Providence MSA. *See id.* ¶ 16.

61.33, 61.38, 61.58, and 61.59); from price cap regulation set forth in Part 61 of the Commission's rules (*id.* §§ 61.41-61.49); from the Computer III requirements, including Comparably Efficient Interconnection ("CEI") and Open Network Architecture ("ONA") requirements; and from dominant carrier requirements arising under section 214 of the Act and Part 63 of the Commission's rules concerning the processes for acquiring lines, discontinuing services, assignments or transfers of control, and acquiring affiliations (*id.* §§ 63.03, 63.04, 63.60-63.66).

Comcast currently offers VoIP service in 11 of the 20 towns it serves in Bristol County.[4] Comcast plans to market its voice service to 80 percent of its nationwide footprint by the end of 2006. *See* Lew/Verses/Garzillo Decl. ¶ 18. Exhibit 3 to the Lew/Verses/Garzillo Declaration contains a map showing these cable operators' local franchise areas in the Providence where they are or soon will be providing voice services.

Data on where cable companies in the Providence MSA are already serving customers confirm that they are close to meeting their goal of providing service throughout their franchise territories. When a cable company wins a new residential subscriber, it typically obtains an E911 listing for that subscriber. *See id.* ¶ 17. According to the residential E911 listings cable companies have obtained as of the end of December 2005, cable companies in the Providence MSA collectively provide voice service to residential customers in wire centers that account for approximately **[Begin Highly Confidential]** **[End Highly Confidential]** percent of Verizon's residential access lines in the MSA. *See id.* ¶ 21. Moreover, these data likely understate the extent of competition for mass-market customers as a whole, because they are based only on residential E911 listings and do not include E911 listings for the small business customers that the Commission also has defined as part of the mass market. *See Omaha Forbearance Order* ¶ 28 n.78.[5]

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[4] Comcast New England, *Products and Services*, http://www.comcast-ne.com/start.php. Comcast offers Comcast Digital Voice service in Acushnet, Berkley, Dartmouth, Easton, Fairhaven, Fall River, Freetown, Mansfield, New Bedford, Plainville, and Raynham.

[5] Although the Commission in the *Omaha Forbearance Order* analyzed the extent to which cable companies were able to provide service to a certain percent of end user customers within a wire center, it recognized that only cable companies themselves have access to such data and that there is no way for carriers like Verizon "to discern exactly

There is likewise no question that these cable operators are offering voice service that is comparable to Verizon's. In the *Omaha Forbearance* Order, the Commission held that Cox's voice services "compete as substitutes for Qwest's wireline telecommunications service offerings." *Id.* ¶ 65; *see id.* ¶ 33.[6] The same is true here. As the chart provided as Exhibit 1 to the Lew/Verses/Garzillo Declaration shows, cable operators in the Providence MSA are offering voice services that are competitive with Verizon's own offering and are comparably priced.

Large and increasing numbers of mass-market consumers in the Providence MSA now subscribe to cable voice services. In the *Omaha Forbearance Order*, the Commission relied on E911 listings data as a "directional surrogate" for the number of access lines served by facilities-based competitors such as cable operators. *Omaha Forbearance Order* ¶¶ 29, 58 n.152. The Commission analyzed E911 listings only for residential customers, however, *see id.* ¶ 28, even though this understates facilities-based competition in the mass-market because it excludes the very small business customers that the Commission also has defined within this segment, *see id.* ¶ 28 n.78. According to E911 listings data as of the end of December 2005, Cox and Comcast together serve at least **[Begin Highly Confidential]** **[End Highly Confidential]** residential subscribers in the Providence MSA. *See* Lew/Verses/Garzillo Decl. ¶ 21. These totals are rising rapidly.

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where its facilities-based competitors are capable of providing service." *Omaha Forbearance Order* ¶ 69 & n.187. Verizon has accordingly used E911 listings data here.

[6] *See also Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433, ¶¶ 87-88 (2005) ("*Verizon/MCI Order*") (holding that "facilities-based VoIP providers" that "own and control the last mile facility clearly fall within the relevant service market for local service." These services "have many similar characteristics to traditional wireline local service" and are viewed by mass-market customers "as sufficiently close substitutes for local service.").

For example, Comcast reports that it is adding an average of more than 17,000 customers each week nationwide.[7] More than half of Cox's customers nationwide bundle two or more services (cable, telephone, and high-speed Internet), and Cox accounts for 97 percent of cable customers in Rhode Island.[8]

In sum, there are "extensive [cable] facilities in the [Providence] MSA capable of delivering . . . mass market . . . services." *Omaha Forbearance Order* ¶ 66; *see id.* ¶¶ 35-36 (finding that such facilities demonstrate that supply elasticities are high). These cable operators have been "successfully providing local exchange and exchange access services . . . without relying on [Verizon's] loops or transport." *Id.* ¶ 64. Thus, as the Commission held in the *Omaha Forbearance Order*, this competition is, standing alone, "sufficient to justify forbearance" from loop and transport unbundling regulations, *id.* ¶ 69, and from dominant carrier regulation of switched access services, *id.* ¶ 36 ("Cox's extensive facilities build-out in the Omaha MSA, and growing success in luring Qwest's mass market customers, indicates that the first factor is easily satisfied for . . . switched access . . . services.").

2. Wireless

Verizon also faces competition in the Providence MSA from multiple wireless providers. Mass-market customers are increasingly using wireless services in place of traditional wireline telephone services. Wireless services are therefore appropriate to include in the forbearance analysis.

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[7] *See* Comcast Press Release, *Comcast Reports Second Quarter 2006 Results* (July 27, 2006); *see also* Lew/Verses/Garzillo Decl. ¶ 18.

[8] *See* Cox News Release, *More Than 50% of Cox Customers Bundle Two or More Video, Internet and Phone Services* (July 27, 2006); *see also* Lew/Verses/Garzillo Decl. ¶¶ 14-15.

In the Commission's most recent analysis of the extent of competition between wireless and wireline services, it recognized that "growing numbers of particular segments of the mass market are choosing mobile wireless service in lieu of wireline local services"; that "approximately 6 percent of households have chosen to rely upon mobile wireless services for all of their communications needs"; that "Verizon considers this growing substitution in developing its marketing, research and development, and corporate strategies for its local service offerings"; that certain wireless carriers such as Sprint Nextel "would likely take actions that would increase intermodal competition between wireline and mobile wireless services"; and that "intermodal competition between mobile wireless and wireline service will likely increase in the near term." *Verizon/MCI Order* ¶ 91. The Commission also recognized that, "[e]ven if most segments of the mass market are unlikely to rely upon mobile wireless services in lieu of wireline local services today," in order for wireless service to constrain prices for wireline service the analysis "only requires that there be evidence of sufficient substitution for significant segments of the mass market." *Id.* The Commission accordingly concluded that "mobile wireless services should be included within the product market for local services to the extent that customers rely on mobile wireless service as a complete substitute for . . . wireline service." *Id.*

Significantly, the Commission's conclusions with respect to wireless were not confined or unique to any particular geographic market but instead applied generally to all relevant geographic markets. The Commission also recognized that it was not necessary to evaluate competition on a granular geographic basis and that a state-level analysis was a "reasonable approach to our analysis, particularly given that Verizon's

pricing . . . is generally advertised on a statewide basis." *Id.* ¶ 100. Although the Commission reached these conclusions in the context of analyzing a merger, the purpose of that analysis – determining the extent of mass-market competition – is identical to the one here, and the Commission's conclusions should therefore hold the same weight here as they did in that context.

Against this backdrop, the evidence shows that, in the Providence MSA, wireless service is another form of facilities-based competition that, both taken alone and particularly in combination with other forms of facilities-based competition, is sufficient to ensure that market forces will protect the interests of consumers.

First, competitive wireless service is available throughout the Providence MSA. As demonstrated in the maps attached as Exhibit 4 to the Lew/Verses/Garzillo Declaration, Cingular, Sprint Nextel, and T-Mobile all offer telephone services in the Providence MSA, and competitive wireless service from at least one of these carriers is available throughout the Providence MSA. *See* Lew/Verses/Garzillo Decl. ¶ 23 & Exhibit 4.

Second, each of these carriers offers packages of services that are competitive with Verizon's wireline service for comparable offerings. *See id.* ¶ 24 & Exhibit 1. Exhibit 1 to the Lew/Verses/Garzillo Declaration contains a chart comparing the most prominently advertised plans of the major wireless carriers in the Providence MSA with Verizon's comparable wireline offerings in the MSA. The chart demonstrates that the features and prices of these plans are comparable, even without considering the added value that consumers receive from mobility. Although these plans will not necessarily appeal to all consumers in the MSA, they obviously appeal to the vast majority (given

that they are the most heavily marketed), and are therefore able to impose competitive discipline on wireline services. *See Verizon/MCI Order* ¶ 91.

Third, the use of wireless in the Providence MSA is extensive. According to the FCC's most recent data, there were nearly 710,000 wireless subscribers in Rhode Island as of the end of December 2005.[9] By comparison, as of that same date, ILECs and CLECs reported serving 369,000 and 265,000 wireline access lines, respectively.[10] The portion of the Providence MSA within the state of Rhode Island represents all of the state's population,[11] and there is no basis to suppose that wireless use is any less prevalent in the Providence MSA than in the state as a whole (indeed, if anything, the converse is likely to be true, given the favorable demographics of the Providence MSA).[12] Moreover, in the past year, the number of national wireless subscribers has continued to grow rapidly (by approximately 12 percent), while the number of wireline access lines has declined. *See* Lew/Verses/Garzillo Decl. ¶ 25. This trend is likely to be even more pronounced in the Providence MSA than in the nation as a whole.

Finally, the evidence demonstrates that large and growing numbers of customers are using wireless service in place of traditional wireline service. Unfortunately, there are no sources of which Verizon is aware that compile data on the extent to which this is

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[9] Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Local Telephone Competition: Status as of December 31, 2005* at Table 14 (July 2006).

[10] *See id.* at Tables 9 & 10.

[11] U.S. Census Bureau, *County Population Dataset*, http://www.census.gov/popest/counties/files/CO-EST2005-ALLDATA.csv (2005 estimates).

[12] For example, according to the U.S. Bureau of Economic Analysis, the Providence MSA has the seventieth highest per capita personal income of any MSA, nearly three percent higher than the U.S. as a whole. *See* BEA News Release, *Local Area Personal Income, 2004* (Apr. 25, 2006).

occurring on an MSA (or even state-wide) basis. Nonetheless, as discussed in Section II.A.5 below, it is clear from what has happened to Verizon's embedded base of wireline access lines in the Providence MSA that a significant number of customers are giving up their wireline service in favor of wireless alternatives.

National trends provide confirmation of this fact. *See id.* ¶ 26. According to Deutsche Bank, "wireless cannibalization" now accounts for "more than 1m lines lost per quarter."[13] Lehman Brothers estimates that 20 million wireline access lines have been lost to wireless providers since 1999, and that going forward 6 million additional wireline access lines will be lost to wireless each year.[14] Analysts predict that the number of wireless-only users will grow to 20-25 percent of the market by 2010.[15]

Even greater displacement has occurred in terms of the number of customers using their wireless service as their primary phone, and, as a result, in the amount of traffic migrating from wireline to wireless networks. *See* Lew/Verses/Garzillo Decl. ¶¶ 26-28. The Yankee Group estimates that wireless subscribers make 64 percent of their long-distance calls and 42 percent of their local calls on their wireless phones.[16] *See* Lew/Verses/Garzillo Decl. ¶ 27. These very high usage levels demonstrate consumers' willingness to use wireless in place of wireline and indicate that customers would have a

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[13] V. Shvets, *et al.*, Deutsche Bank, *4Q04 Review: Wireless OK . . . RBOCs Fare Poorly* at 6 (Feb. 28, 2005).

[14] *See* B. Bath, Lehman Brothers, *Telecom Services – Wireline* at Figure 11 (July 7, 2005).

[15] *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).

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

viable alternative should Verizon attempt to raise its wireline prices. This competition accordingly protects against such price increases in the first instance.

3. Over-the-Top VoIP Providers

There are more than 25 "over-the-top" VoIP providers that currently offer service in the Providence MSA. *See* Lew/Verses/Garzillo Decl. ¶ 32 & Exhibit 2. As demonstrated in the charts attached as Exhibits 1 and 2 to the Lew/Verses/Garzillo Declaration, these providers offer services with features comparable to Verizon's wireline telephone service, at prices that typically are lower than Verizon's prices, even when the price of the underlying broadband connection needed for VoIP service is taken into account. *See id.* ¶¶ 32-33 & Exhibits 1-2. Although these providers do not operate their own loop and transport networks, they can be provided over competitive networks that do (such as cable networks), and therefore are an added source of competitive discipline on Verizon.

In the *Verizon/MCI Order*, the Commission recognized that "some proportion of mass market customers may view certain over-the-top VoIP services as substitutes for wireline local service." *Verizon/MCI Order* ¶ 89. This turns on whether consumers have existing broadband connections and on their particular local service requirements. *See id.* At the time, the Commission held that the evidence regarding the extent to which these conditions are satisfied was "inconclusive." *Id.*

Since the record compiled in the Verizon/MCI proceeding, however, the competitive significance of over-the-top VOIP services has continued to grow. For example, while Vonage, the largest over-the-top VOIP provider, served 600,000

customers at the time of that earlier proceeding,[17] that figure has now grown to more than two million, and Vonage reports that it is adding more than 22,000 subscribers each week nationwide.[18] Analysts estimate that over-the-top VoIP providers will displace 5 percent of local telephone access lines by the end of 2010.[19]

The percentage of consumers subscribing to broadband services also continues to grow and is expected to increase even further in the future, which means that an even greater proportion of customers will find VoIP services an attractive alternative. *See Verizon/MCI Order* ¶ 89. In the Providence MSA, approximately 50 percent of households subscribed to broadband service as of June 2006.[20]

4. Wholesale Alternatives

In the *Omaha Forbearance Order*, the Commission also relied in part on competitors' ability to use the ILEC's wholesale offerings pursuant to "provisions of the Act designed to develop and preserve competitive local markets." *Omaha Forbearance Order* ¶ 64; *see id.* ¶ 37. The Commission recognized that where there are "very high levels of retail competition that do not rely on the [ILEC's] facilities – and for which [the ILEC] receives little to no revenue" the ILEC has "the incentive to make attractive

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[17] *See* Joint Opposition of Verizon Communications Inc. and MCI, Inc. to Petitions to Deny and Reply to Comments, at 56, *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75 (FCC filed May 24, 2005).

[18] *See* Vonage Press Release, *Vonage Crosses 2 Million Line Mark* (Sept. 5, 2006); Vonage, Form 10-Q at 14 (SEC filed Aug. 4, 2006); *see also* Lew/Verses/Garzillo Decl. ¶ 31.

[19] *See* J. Chaplin, *et al.*, JPMorgan, *Telecom Services/Wireline: State of the Industry: Consumer* at 12 (Jan. 13, 2006); *see also* Lew/Verses/Garzillo Decl. ¶ 34.

[20] Centris Plus, *Market Report – Area* (2Q 2006).

wholesale offerings available so that it will derive more revenue indirectly from retail customers who choose a retail provider other than [the ILEC]." *Id.* ¶ 67.

As demonstrated above, there is extensive facilities-based retail competition in the Providence MSA and Verizon has in fact made attractive wholesale offerings available even when it has no obligation to do so. Following the Commission's decision to eliminate the UNE platform, Verizon began offering its Wholesale Advantage service, which provides the same features and functionality of the UNE platform but at negotiated market rates. As of the end of December 2005, competitors in the Providence MSA were serving approximately **[Begin Proprietary]** **[End Proprietary]** voice-grade equivalent residential lines using this wholesale product. *See* Lew/Verses/Garzillo Decl. ¶ 30. As of that same date, competitors were reselling approximately **[Begin Proprietary]** **[End Proprietary]** voice-grade equivalent residential lines in the Providence MSA pursuant to the resale provisions of Section 251(c)(4). *See id.*

5. Decline in Verizon's Retail Lines

In the *Omaha Forbearance Order,* the Commission held that the proper focus should be on the availability of competitive alternatives, rather than on the number of customers who have already chosen to switch to such alternatives. The Commission will look at both "actual and potential competition" that "either is present, or readily could be present." *Omaha Forbearance Order* ¶ 62. This focus on the availability of actual and potential competitive alternatives rather than static market share is consistent with the approach the Commission has taken in other contexts. The Commission has long held that "an analysis of the level of competition for LEC services based solely on a LEC's

market share at a given point in time would be too static and one-dimensional."[21] "[T]he presence and capacity of other firms matter more for future competitive conditions than do current subscriber-based market shares."[22]

As demonstrated above, there are multiple competitive alternatives that are widely available in the Providence MSA and that also are being used by mass-market consumers throughout the MSA. This fact is further confirmed by the declines that Verizon has experienced in its base of switched access lines. Between 2000 and 2005, Verizon's retail residential switched access lines declined by approximately **[Begin Proprietary]** **[End Proprietary]** percent, even though the number of households in the MSA increased by approximately 2 percent during this time. *See* Lew/Verses/Garzillo Decl. ¶ 7.[23] Analysts expect these declines to continue in the future.[24]

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[21] *Price Cap Performance Review for Local Exchange Carriers*, Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1, Further Notice of Proposed Rulemaking in CC Docket No. 93-124, and Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197, 11 FCC Rcd 858, ¶ 143 (1995).

[22] *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent To Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, ¶ 148 (2004); *see also Verizon/MCI Order* ¶ 74 (holding that market share data is entitled to little weight because it "does not reflect the rise in data services, cable and VoIP competition, and the dramatic increase in wireless," nor the fact that "myriad providers are prepared to make competitive offers." As a result, "market shares may misstate the competitive significance of existing firms and new entrants.").

[23] Including data for the former MCI, Verizon served approximately **[Begin Proprietary]** **[End Proprietary]** voice-grade equivalent residential access lines in the Providence MSA as of December 2005. *See* Lew/Verses/Garzillo Decl. ¶ 6.

[24] *See, e.g.*, J. Hodulik, *et al.*, UBS, *Wireline Postgame Analysis 13.0: Recap of Fourth Quarter 2005 Results* at 6 (Mar. 14, 2006) (In the fourth quarter of 2005, "[t]otal access line losses for the wireline carriers continued to accelerate, declining 5.8% compared with a 5.3% decline in the prior quarter and 4.2% decline a year ago. All the carriers showed worsening trends with Verizon leading the pack."); *id.* at Table 25 (estimating that Verizon served 79 percent of households passed in its region at end of 2005, and that Verizon will serve only 70 percent of households within its region at the end of 2006.); J.

B. Competition for Enterprise Customers in the Providence MSA

Just as the provision of services to mass-market customers in the Providence MSA is highly competitive, so is the provision of services to enterprise customers.

In the *Omaha Forbearance Order*, the Commission decided to forbear from loop and transport unbundling with respect to enterprise customers based on competition from Cox, the incumbent cable operator, together with "maps and other evidence" that other competitors have deployed their own transport facilities, and additional evidence that competing carriers were using wholesale alternatives to compete successfully. *Omaha Forbearance Order* ¶ 66; *see id.* ¶ 67. As demonstrated below and in the attached Lew/Verses/Garzillo Declaration, Verizon is providing here the same types of information on which the Commission relied to forbear from loop and transport unbundling and from dominant-carrier regulation of switched access services in Omaha. As in the mass-market, evidence demonstrates that "the level of facilities-based competition [in the Providence MSA] ensures that market forces will protect the interests of consumers." *Id.* ¶ 1.

In its most recent analysis of enterprise competition in Verizon's region, the Commission acknowledged that there is a wide range of competitors that have deployed "extensive local fiber networks" in Verizon's region, including in the Providence MSA. *Verizon/MCI Order* ¶ 44; *see id.* ¶¶ 30, 45. The Commission also found that retail

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Chaplin, *et al.*, JPMorgan, *Telecom Services/Wireline: Fourth-Quarter 2005 Wrap* at 5 (Mar. 23, 2006) ("Industry access lines declined 4.4% y/y, marking the sixth consecutive quarter that the rate of line loss has accelerated sequentially. We attribute the acceleration in line loss to an increase in wireless and broadband substitution. In addition, since households grow at approximately 1.2% per year. . . the 1.7 million lines lost in the [fourth quarter of 2005] probably understates the real impact of substitution.").

competition for enterprise customers is "strong" and will remain so "because medium and large enterprise 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." *Id.* ¶ 56. The Commission noted that Verizon competes with a long list of competitors, "includ[ing] interexchange carriers, competitive LECs, cable companies, other incumbent LECs, systems integrators, and equipment vendors." *Id.* ¶ 64. The Commission concluded that these "myriad providers are prepared to make competitive offers," and that they therefore "ensure that there is sufficient competition." *Id.* ¶ 74. These facts all remain true today, both as a general matter, and in particular with respect to the Providence MSA.

First, cable companies have ubiquitous cable networks in the Providence MSA, and these networks are capable of – and are – being used to serve enterprise customers. In the *Omaha Forbearance Order*, the Commission found that Cox's cable facilities were "capable of delivering both mass market and enterprise telecommunications services." *Omaha Forbearance Order* ¶ 66. The Commission relied on the fact that Cox had "strong success in the mass market, its possession of the necessary facilities to provide enterprise services, its technical expertise, its economies of scale and scope, its sunk investments in network infrastructure, its established presence and brand in the Omaha MSA, and its current marketing efforts and emerging success in the enterprise market." *Id.* The Commission also noted that Cox had particularly strong incentives to compete for enterprise customers as compared to the mass-market, because the "revenue potential" is greater. *Id.* The Commission concluded that, in light of these facts, "Cox poses a substantial competitive threat . . . for higher revenue enterprise services." *Id.* In reaching

this conclusion, the Commission found the fact that Cox's existing network did not necessarily reach every individual business location as "not . . . dispositive" in light of the other evidence demonstrating Cox's incentives and ability to serve these customers. *Id.* ¶ 66 n.174.

This same analysis applies with equal force here. As demonstrated above, the major incumbent cable companies in the Providence MSA – Cox and Comcast – have had "strong success in the mass market." Moreover, they operate ubiquitous cable networks and, therefore, possess "the necessary facilities to provide enterprise services." Indeed, these companies already market services to business customers over their cable networks, including Internet access service, voice service, or both. The statements of the cable operators themselves – which are collected in Exhibit 7 of the Lew/Verses/Garzillo Declaration and highlighted below – confirm this fact:

- "Cox Business Services is the business-to-business division of Cox Communications," and "a facilities-based provider of advanced voice, data and video products and services to more than 100,000 business customers in industries ranging from healthcare and hospitality to government and education. The backbone of our capability as a communications provider is our self-owned and self-maintained nationwide IP network."[25] Cox Business Services "serves businesses of every size in many locations throughout the Rhode Island area."[26]

- Comcast offers business customers service through its subsidiary, Comcast Commercial.[27] Comcast offers a variety of data services to business customers in the Providence MSA, including dedicated Internet

[25] Cox, *About Us*, http://www.coxbusiness.com/aboutus/.

[26] *See* Cox Business Services, *Rhode Island*, http://www.coxbusiness.com/systems/ri_rhodeisland/.

[27] *See* Comcast Commercial, http://www.comcastcommercial.com/index.php?option=com_frontpage&Itemid=1.

> access, Ethernet, and metropolitan area network services.[28] Comcast also offers cable modem services for use by smaller businesses.[29] In addition, Comcast offers data services to other telecommunications carriers, leveraging "the massive network of our parent company."[30] For carriers, Comcast offers "[c]ost-effective transport that can reach into new markets and scale at a moments notice."[31]

In addition to using their cable networks to serve business customers, the major cable companies in the Providence MSA have separate subsidiaries or affiliates that are dedicated to serving business customers using fiber networks. As noted above, Cox Business Services claims that it "serves businesses of every size in many locations throughout the Rhode Island area." *See* Lew/Verses/Garzillo Decl. ¶ 44. Comcast Commercial asserts that it "delivers a full suite of Internet and network services that can meet the needs [and] demands of any size business and any business application."[32] *See* Lew/Verses/Garzillo Decl. ¶ 45.

As this evidence makes clear, cable operators in Providence have the requisite facilities and infrastructure, "technical expertise," "economies of scale and scope," and "established presence and brand" to serve business customers. These companies are

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[28] *See* Comcast Commercial, *Services*, http://www.comcastcommercial.com/index.php?option=content&task=view&id=6&Itemid=27; Comcast Commercial, *Enterprise Network Service*, http://www.comcastcommercial.com/index.php?option=content&task=view&id=8&Itemid=37.

[29] *See* Comcast, *Comcast Workplace*, http://www.comcast.com/business/Availability.ashx (using zip code 02745).

[30] Comcast Commercial, *Telecommunications: Increasing Margins with Lower Transport Costs*, http://www.comcastcommercial.com/index.php?option=content&task=view&id=33&Itemid=71.

[31] *Id.*

[32] Comcast Commercial, *Our Company*, http://www.comcastcommercial.com/index.php?option=content&task=view&id=3&Itemid=33.

large and well established both in general and in the Providence MSA. *See id.* ¶¶ 14, 18. They have already been successful in serving business customers in the MSA. *See id.* ¶¶ 43-45.

Second, there are extensive competitive fiber networks in the Providence MSA. According to GeoTel, a leading provider of telecommunications facilities information, there are at least three known competing providers that operate fiber networks within the Providence MSA, and those networks span at least **[Begin Proprietary]** **[End Proprietary]** route miles. *See id.* ¶ 38 & Exhibit 5.[33] GeoTel's data for the Providence MSA do not include the major cable companies (Cox and Comcast) or their affiliated CLEC units, or some other traditional telecom carriers (such as AT&T). *See id.* ¶¶ 42-54 & Exhibit 5.

The maps attached as Exhibits 5 and 6 to the Lew/Verses/Garzillo Declaration show these fiber routes. *See Omaha Forbearance Order* ¶ 66 (relying on similar maps); *Verizon/MCI Order* ¶ 45 (same). As the maps demonstrate, these competitive fiber routes reach virtually all areas in the Providence MSA where enterprise customers are concentrated. For example, there are one or more known competing fiber providers in at

[33] 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 high-capacity transport facilities. In fact, the total reported here does not include the vast majority of fiber that AT&T operates, even though AT&T operates one of the largest fiber networks in the Providence MSA. GeoTel does not have data for AT&T in the Providence MSA. *See* Lew/Verses/Garzillo Decl. ¶ 9.

least **[Begin Proprietary]** **[End Proprietary]** percent of the **[Begin Proprietary]** **[End Proprietary]** wire centers in the Providence MSA that account for 80 percent of Verizon's high-capacity special access revenues. *See* Lew/Verses/Garzillo Decl. ¶ 38 & Exhibit 5. Similarly, there are at least one or more known competing fiber providers in wire centers that account for approximately **[Begin Proprietary]** **[End Proprietary]** percent of Verizon's retail switched business lines in the MSA. *See id.* ¶ 38.

Third, in addition to the cable companies, a large number of other competitors provide extensive retail competition in the Providence MSA. Such competitors include traditional telecom carriers such as AT&T, Sprint, PAETEC, and One Communications; managed service providers and systems integrators such as IBM, Electronic Data Systems Corp., Accenture, Northrop Grumman, and Lockheed Martin; and equipment vendors such as Lucent and Nortel. *See id.* ¶ 42.

These carriers are using these facilities to serve customers throughout the Providence MSA. In the *Omaha Forbearance Order*, the Commission relied on E911 data to evaluate the extent of competition in an MSA but acknowledged that these data, which are divided between residential and business customers, do not correspond to the distinctions between the mass-market and the enterprise market that the Commission has recognized. *See Omaha Forbearance Order* ¶¶ 28-29 & n.78. In particular, some business E911 listings are for very small businesses that the Commission has defined as part of the mass-market rather than as part of the enterprise market. *See id.* The Commission also has recognized, however, that competition for enterprise customers is generally even more extensive than for small business customers that are part of the mass

market.[34] It follows, therefore, that even though data on business E911 listings may include small businesses, it is a reliable indicator of competition for enterprise customers as well.

According to E911 listings data as of the end of December 2005, competing carriers were using their own switches to serve business lines in **[Begin Proprietary]** **[End Proprietary]** percent of the wire centers in the Providence MSA, and these wire centers represent **[Begin Proprietary]** **[End Proprietary]** percent of Verizon's retail switched business lines in the MSA. *See* Lew/Verses/Garzillo Decl. ¶ 39. Based on these same data, competing carriers have obtained at least **[Begin Proprietary]** **[End Proprietary]** business E911 listings in the Providence MSA, which represents approximately **[Begin Proprietary]** **[End Proprietary]** percent of switched business lines in the MSA. *See id.*[35] In the last five years alone, Verizon's retail business switched access lines have declined by approximately **[Begin Proprietary]** **[End Proprietary]** percent, even though the population in the MSA increased by approximately 2 percent during that same time. *See id.* ¶ 11.

In the *Omaha Forbearance Order*, the Commission also considered "evidence that a number of carriers . . . had success competing for enterprise services using DS1 and

[34] *See, e.g.*, *Verizon/MCI Order* ¶ 56 (finding that "competition for medium and large enterprise customers . . . [is] strong . . . because medium and large enterprise 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.").

[35] These data provide an estimate of the number of business lines competitors are serving. Each E911 residential subscriber listing necessarily represents one customer access line, but in the case of business customers, a listing does not necessarily correlate one-to-one based on the manner in which the service is provided. Importantly, competitors typically do not obtain E911 listings for lines that are used to provide data services. *See* Lew/Verses/Garzillo Decl. ¶ 39.

DS3 special access channel terminations obtained from Qwest" as relevant in its analysis of enterprise competition. *Omaha Forbearance Order* ¶ 68. The Commission held that "this competition that relies on Qwest's wholesale inputs – which must be priced at just, reasonable and nondiscriminatory rates . . . supports our conclusion that section 251(c)(3) unbundling obligations are no longer necessary to ensure that the prices and terms of Qwest's telecommunications offerings are just and reasonable and nondiscriminatory under section 10(a)(1)." *Id.*[36] As in Omaha, competitors in the Providence MSA are competing extensively using special access obtained from Verizon. Based on Verizon's wholesale billing records from December 2005, competitors are using Verizon's special access services to serve business customers in **[Begin Proprietary]** **[End Proprietary]** in the Providence MSA in which Verizon serves switched business lines. *See* Lew/Verses/Garzillo Decl. ¶ 40. As of the end of December 2005, competitors were serving approximately **[Begin Proprietary]** **[End Proprietary]** voice-grade equivalent lines using DS3s and approximately **[Begin Proprietary]** **[End Proprietary]** voice-grade equivalent lines using DS1s, with special access service obtained from Verizon. *See id.*

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

[36] The forbearance that Verizon seeks here will not eliminate Verizon's obligations under sections 201 and 202 to provide traditional TDM technology on just, reasonable, and nondiscriminatory terms. In addition, the *Verizon/MCI Order* prohibits Verizon from raising its DS1 and DS3 special access rates for 30 months following the merger closing date. *Verizon/MCI Order*, Appendix G.