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Ex Parte Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

*Re: Section 272(f)(1) Sunset of the BOC Separate Affiliate and
Related Requirements, WC Docket No. 02-112*

Dear Ms. Dortch:

I am writing to update the factual record in the above-captioned proceeding.

In the more than three years since the Commission initiated this proceeding, there have been significant developments in the communications industry. As we have previously explained here and elsewhere, changes in technology and consumer demand have restructured the industry around new technologies, new services, and new providers. As a result of these changes, historical market divisions based on technology or geography no longer apply.

As this Commission and state regulators across the country have recognized, the proper analysis of competition in the marketplace should be forward-looking and must take into account the numerous sources of competition that are already present or now emerging. In a dynamic industry such as this one, historic measures of static market share are not especially meaningful in the competitive analysis.

Developments over the past three years underscore the importance of using a forward-looking analysis. Throughout the country, as well as in Verizon's local telephone service areas in particular, a wide variety of providers and technologies are competing with traditional voice telephone services, including the long-distance services at issue in this proceeding. These alternative providers include cable, wireless, over-the-top VoIP, and traditional wireline companies, as well as other alternatives such as e-mail, instant messaging, WiFi, WiMAX, and

Broadband over Powerline (“BPL”). Competition for voice services will only continue to grow going forward with the increasing deployment of advanced broadband networks. Moreover, these new broadband networks, and the advanced VoIP services provided over them, are inherently agnostic with regard to geography and do not lend themselves to the regulatory balkanization used to define geographically distinct voice markets in the past.

For purposes of this proceeding, these developments have several key implications. *First*, any competitive analysis must take into account all types of competing voice providers, as well as reasonable substitutes for voices services, regardless of technology. *Second*, there is no longer a separate long-distance market, but a market for communications services regardless of distance that does not conform to artificial LATA or other geographic boundaries, and that includes distance-insensitive services or packages as well as any stand-alone local or long-distance offerings. *Third*, under current market conditions, there is no plausible argument that traditional wireline carriers could use their local networks to dominate the long-distance component of voice services at issue here. The Commission accordingly should not re-regulate Verizon or other carriers as dominant when they provide in-region, interstate and international interexchange services outside a separate section 272 affiliate now that these separation requirements have sunset as Congress contemplated they would. *Fourth*, the failure to recognize this fact and eliminate dominant carrier regulation of long-distance services for all providers will only harm consumers. Among other things, it will reduce efficiency and increase costs to consumers generally, and would hinder the deployment of advanced broadband networks and services in particular.

I. THERE IS EXTENSIVE COMPETITION FOR VOICE SERVICES

A. Mass-Market

Mass-market consumers now have access to a wide range of communications alternatives for voice services.

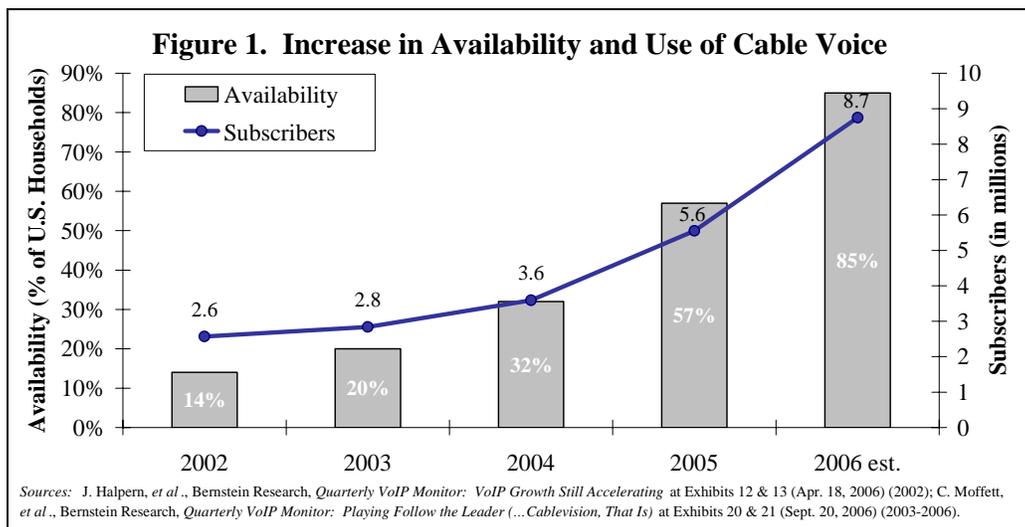
1. Cable

The Commission has repeatedly found that cable voice services “compete as substitutes” for wireline telecommunications service offerings.¹ Forward-looking state regulators around the country have reached the same conclusion.² These determinations are obviously correct.

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, ¶ 65 (2005) (“*Omaha Forbearance Order*”); *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.”).

² *See, e.g., Proceeding on Motion of the Commission To Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services*, Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings at 33-34, Case 05-C-0616 (N.Y.P.S.C. Apr. 11, 2006) (“*New York Pricing Flexibility Order*”) (finding that “facilities-based digital phone service (i.e., cable phone)” is “widely available in New York and that from the perspective of customer demand they

As shown in Figure 1, both the availability and use of cable telephony have grown significantly since the Commission initiated this proceeding. The vast majority of mass-market consumers – both nationally and in Verizon’s local telephone service areas – are now able to purchase voice services from an incumbent cable operator. Cable telephone service is already available to nearly three-quarters of the nation’s households,³ and by the end of next year is expected to be available to approximately 94 percent of homes.⁴ Cable operators are offering distance-insensitive voice services, *see* Exhibits 1 (examples of cable voice offerings) & 3 (cable websites advertising voice offerings), and have had great success selling these services. There are currently 8.5 million cable telephony subscribers, with that total increasing by an average of approximately 1.2 million subscribers each quarter.⁵ JPMorgan estimates that, by the end of 2010, cable will capture 23 percent of primary lines.⁶ Other analysts predict that cable will achieve even higher percentages.⁷



are sufficiently close substitutes for traditional wireline local service. . . . In our judgment, consumers view these offerings as close substitutes to wireline local service.”); *Order Instituting Rulemaking on the Commission’s Own Motion to Assess and Revise the Regulation of Telecommunications Utilities*, Opinion, Rulemaking 05-04-005, Decision 06-08-030, at 119-120 (Cal. P.U.C. Aug. 24, 2006) (“*California Regulatory Reform Order*”) (finding that VoIP services, including those provided by cable operators, “are competitors to wireline telecommunications services” and are a “close substitute for wireline services”).

³ See Comments of the National Cable & Telecommunications Association at 45, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189 (FCC filed Nov. 29, 2006) (“*NCTA Comments*”) (“Cable telephone service is now available to more than 73% of the nation’s households, and it is already being purchased by 8.5 million customers.”).

⁴ See C. Moffett, et al., Bernstein Research, *Quarterly VoIP Monitor: Playing Follow the Leader (... Cablevision, That Is)* at Exhibit 20 (Sept. 20, 2006) (“*Bernstein Research Sept. 2006 Quarterly VoIP Monitor*”) (estimating cable telephony availability of 94 percent of homes passed by year-end 2008).

⁵ *NCTA Comments* at 45; *Bernstein Research Sept. 2006 Quarterly VoIP Monitor* at Exhibit 21.

⁶ J. Chaplin, et al., JPMorgan, *Telecom Services/Wireline: State of the Industry: Consumer* at Table 21 (Jan. 13, 2006) (estimating that cable will have a 23 percent share of wireline primary lines by the end of 2010).

⁷ See, e.g., F. Louthan, et al., Raymond James Equity Research, *Reassessment of Access Lines and Wireline Carriers* at 3 (July 5, 2006) (citing IDC estimates that cable will enjoy a share of more than 30 percent of all primary lines by the end of 2010).

Each of the four major incumbent cable operators – Cablevision, Time Warner, Comcast, and Cox – offers competitive voice services in their service territories. Based on the number of homes these companies claim to pass with their networks, these four companies’ networks pass more than 75 percent of the homes in the country.⁸ Analysts also estimate that these cable operators cover approximately 72 percent of homes in Verizon’s local telephone service areas.⁹ As of year-end 2006, these cable companies had already won approximately 7.6 million voice subscribers (not counting the subscribers that Cablevision added in 4Q06, as it has not yet reported those totals).¹⁰ According to these same sources, just three of these four companies were collectively adding more than 55,000 new subscribers each week (the fourth, Cox, does not report these data).

Comcast is the largest provider of cable television service in the U.S. Its network passes more than 47 million homes nationwide.¹¹ According to analysts, approximately one-third of those homes – roughly 16 million – are in Verizon’s local telephone service areas.¹² Comcast recently stated that it was offering voice service to 32 million homes (nearly 70 percent of its footprint) as of year-end 2006, and that it would reach approximately 40 million homes (85 percent of its footprint) by year-end 2007.¹³ In February 2007, Comcast reported that it was providing voice service to more than 2.5 million customers nationwide as of year-end 2006, and that it was adding an average of more than 32,000 customers per week.¹⁴ Comcast states that it is now “significantly ahead of our plan to reach 20% penetration [of Comcast Digital Voice phone service] by the end of 2009.”¹⁵

⁸ Comcast Press Release, *Comcast Reports 2006 Results and Outlook for 2007* (Feb. 1, 2007); Time Warner Inc. Press Release, *Time Warner Inc. Reports Results for 2006 Full Year and Fourth Quarter* (Jan. 31, 2007); Cablevision News Release, *Cablevision Systems Corporation Reports Third Quarter 2006 Results* (Nov. 8, 2006); Cox News Release, *Cox Communications Announces Updated Customer Statistics Following System Sales & Acquisitions* (June 14, 2006).

⁹ J. Halpern, *et al.*, Bernstein Research, *US Telecom: Full Valuations and High Expectations Drive Less Bullish Outlook for 2007 Than 2006* at Exhibit 8 (Nov. 13, 2006).

¹⁰ See Comcast Press Release, *Comcast Reports 2006 Results and Outlook for 2007* (Feb. 1, 2007) (YE06 data); Time Warner Inc. Press Release, *Time Warner Inc. Reports Results for 2006 Full Year and Fourth Quarter* (Jan. 31, 2007) (YE06 data); Time Warner Inc. Press Release, *Time Warner Inc. Reports Third Quarter 2006 Results* (Nov. 1, 2006); Cablevision News Release, *Cablevision Systems Corporation Reports Third Quarter 2006 Results* (Nov. 8, 2006) (3Q06 data); Cox News Release, *A Decade of Bundling Delivers Cox Communications Considerable Competitive Advantages* (Jan. 30, 2007) (YE06 data).

¹¹ Comcast Press Release, *Comcast Reports 2006 Results and Outlook for 2007* at Table 6 (Feb. 1, 2007).

¹² See J. Halpern, *et al.*, Bernstein Research, *US Telecom: Full Valuations and High Expectations Drive Less Bullish Outlook for 2007 Than 2006* at Exhibit 9 (Nov. 13, 2006); Comcast Press Release, *Comcast Reports 2006 Results and Outlook for 2007* at Table 6 (Feb. 1, 2007).

¹³ Comcast Presentation, Citigroup Entertainment, Media & Telecommunications Conference, at 11 (Jan. 9, 2007) (stating that Comcast Digital Voice was available to “32MM+ Marketable Homes” as of YE06 and would be available to “~40MM Marketable Homes” by YE06, as compared to 47 million homes that Comcast passes).

¹⁴ See Comcast Press Release, *Comcast Reports 2006 Results and Outlook for 2007* (Feb. 1, 2007).

¹⁵ Thomson StreetEvents, *CMCSA – Q4 2006 Comcast Corporation Earnings Conference Call*, Conference Call Transcript at 8 (Feb. 1, 2007) (statement of Comcast Corp. COO and President, Comcast Cable Communications, Steve Burke).

Time Warner Cable, the nation's second largest cable operator, passes approximately 26 million homes nationwide.¹⁶ According to analysts, approximately one-quarter of those homes – roughly 6.5 million – are in Verizon's local telephone service areas.¹⁷ Time Warner Cable offers voice service in every market it served prior to its recent transactions with Adelphia and Comcast (markets in which Time Warner passed more than 16 million U.S. homes),¹⁸ and following those transactions provides voice service to approximately 65 percent of its 26 million homes passed.¹⁹ In February 2007, Time Warner reported that it had more than 1.9 million voice subscribers nationwide as of year-end 2006, and that it was adding an average of 15,000 customers each week.²⁰

Cablevision's network passes approximately 4.5 million homes nationwide.²¹ According to analysts, nearly 80 percent, or 3.6 million homes, are in Verizon's local telephone service areas.²² In 2003, Cablevision became the first cable operator in the U.S. to deploy IP-based telephone service *throughout* its cable service territory.²³ As of the end of the third quarter of 2006, Cablevision reported that it already served more than 1.1 million voice subscribers,²⁴ and was adding an average of nearly 9,000 voice subscribers each week.²⁵ Cablevision also reported that it was then the voice provider for more than 24 percent of the homes it passed, and analysts expect this to increase to approximately 33 percent by the end of 2007.²⁶

¹⁶ Time Warner Inc. Press Release, *Time Warner Inc. Reports Results for 2006 Full Year and Fourth Quarter* (Jan. 31, 2007).

¹⁷ See J. Halpern, *et al.*, Bernstein Research, *US Telecom: Full Valuations and High Expectations Drive Less Bullish Outlook for 2007 Than 2006* at Exhibit 9 (Nov. 13, 2006); Time Warner Inc. Press Release, *Time Warner Inc. Reports Results for 2006 Full Year and Fourth Quarter* (Jan. 31, 2007).

¹⁸ Thomson StreetEvents, *TWX – Q4 2004 Time Warner Inc. Earnings Conference Call*, Conference Call Transcript (Feb. 4, 2005) (statement of Time Warner Inc. CFO Wayne Pace).

¹⁹ Time Warner Inc. Press Release, *Time Warner Inc. Reports Results for 2006 Full Year and Fourth Quarter* (Jan. 31, 2007); Time Warner Inc., *2006 Trending Schedules* at Schedule 6, <http://ir.timewarner.com/downloads/4Q06Trending.pdf>.

²⁰ See Time Warner Inc. Press Release, *Time Warner Inc. Reports Results for 2006 Full Year and Fourth Quarter* (Jan. 31, 2007); Time Warner Inc. Press Release, *Time Warner Inc. Reports Third Quarter 2006 Results* (Nov. 1, 2006).

²¹ See Cablevision News Release, *Cablevision Systems Corporation Reports Third Quarter 2006 Results* (Nov. 8, 2006).

²² See J. Halpern, *et al.*, Bernstein Research, *US Telecom: Full Valuations and High Expectations Drive Less Bullish Outlook for 2007 Than 2006* at Exhibit 9 (Nov. 13, 2006); see also *id.* at 7-8 (“Cablevision . . . is almost entirely in Verizon's footprint.”).

²³ Cablevision News Release, *Cablevision Completes Network Rebuild* (Dec. 3, 2003).

²⁴ Cablevision News Release, *Cablevision Systems Corporation Reports Third Quarter 2006 Results* (Nov. 8, 2006).

²⁵ See *id.*

²⁶ *Id.*; R. Bilotti, *et al.*, Morgan Stanley, *Cablevision Systems: Analysis of 3Q06 Results and Revised Model* at Exhibit 18 (Nov. 9, 2006). See also C. Moffett, *et al.*, Bernstein Research, *Cable 3Q Preview: Raising Target Prices for Comcast and Cablevision; Risk/Reward Still Positive* at 15 & Exhibit 23 (Oct. 19, 2006); Cablevision News Release, *Cablevision's Optimum Voice Surpasses One Million Customers* (July 18, 2006) (Tom Rutledge, Cablevision chief operating officer: Optimum Voice “has already been embraced by one-third of [Cablevision's] cable television customers and more than half of [the company's] high-speed Internet customers.”).

Cox Communications' network passes more than 9 million homes nationwide.²⁷ According to analysts, approximately 16 percent, or 1.5 million homes, are in Verizon's local telephone service areas.²⁸ In October 2006, Cox announced that its Digital Telephone service was available in all Cox markets.²⁹ In January 2007, Cox reported that it was providing voice service to more than 2 million homes as of year-end 2006.³⁰ Cox also reported in July 2006 that it already provides voice services to "33 percent of total cable customers and 24 percent of all homes passed by Cox's network."³¹

Bright House Networks is the nation's sixth largest cable operator, with over 2.2 million customers in several large markets, including Tampa, which is one of the country's largest cable clusters.³² The company launched phone service in Verizon's local telephone service areas in Florida in 2004, and as of May 2006 reported that it had already gained more than 225,000 customers.³³ Press reports put that total at more than 300,000 as of December 2006.³⁴ This is consistent with the company's claim that it "is signing up 8,000 to 10,000 new customers for its voice product every month."³⁵

Charter Communications passes approximately 11.8 million homes and has reported that it has nearly 5.5 million cable subscribers.³⁶ According to Charter, approximately 20 percent, or 2.4 million of these homes passed, are in Verizon's local telephone service areas.³⁷ The company has reported that it had deployed telephony services to 6.8 million homes as of year-end 2006.³⁸ In February 2007, the company announced that it now serves more than 500,000 voice customers, and that the company "has more than quadrupled its number of customers since

²⁷ Cox News Release, *Cox Communications Announces Updated Customer Statistics Following System Sales & Acquisitions* (June 14, 2006).

²⁸ See J. Halpern, et al., Bernstein Research, *US Telecom: Full Valuations and High Expectations Drive Less Bullish Outlook for 2007 Than 2006* at Exhibit 9 (Nov. 13, 2006); Cox News Release, *Cox Communications Announces Updated Customer Statistics Following System Sales & Acquisitions* (June 14, 2006).

²⁹ See Cox News Release, *Cox Digital Telephone Now Offered in All Cox Markets* (Oct. 30, 2006).

³⁰ Cox News Release, *A Decade of Bundling Delivers Cox Communications Considerable Competitive Advantages* (Jan. 30, 2007).

³¹ Cox News Release, *Cox Digital Telephone To Be Available in All Cox Markets by End of Year* (July 13, 2006).

³² Bright House Networks Press Release, *Bright House Networks Adds Digital Phone Features* (Nov. 27, 2006); Bright House Networks, *Company Overview*, http://www.mybriighthouse.com/about_us/company_overview.aspx.

³³ Bright House Networks Press Release, *More Than 225,000 Florida Families Switch to Bright House Networks Digital Phone* (May 2, 2006).

³⁴ R. Roger, *Cable Operators Seek Competitive Edge*, Bradenton Herald at 1 (Dec. 17, 2006).

³⁵ L. Mayk, *Battle for Your Bills Heats Up*, Sarasota Herald-Tribune at 16 (Oct. 30, 2006) (quoting company spokesman Joe Durkin).

³⁶ Charter Communications Press Release, *Charter Reports Third-Quarter 2006 Financial and Operating Results* (Oct. 31, 2006).

³⁷ *Charter at Citigroup 17th Annual Entertainment, Media and Telecommunications Conference – Final*, FD (Fair Disclosure) Wire, Transcript 011007au.742 (Jan. 10, 2007) (statement by Charter president and CEO Neil Smit).

³⁸ Charter Communications Press Release, *Charter Reports Preliminary Financial and Operating Results for Fourth-Quarter 2006* (Feb. 9, 2007).

the beginning of 2006.”³⁹ Charter has stated that it plans to continue expanding the availability of its service.⁴⁰

In addition to the larger cable operators discussed above, many of the smaller cable operators in Verizon’s local telephone service areas also are capable of and are providing voice services in their service territories. For example, as shown in Exhibit 2, cable operators such as RCN, Atlantic Broadband, Knology, Mediacom, and others all offer voice services in Verizon’s local telephone service areas.

2. Wireless

The Commission has recognized that “growing numbers of particular segments of the mass market are choosing mobile wireless service in lieu of wireline local services,” and that wireless is competing with wireline both for minutes of use and, in many cases, for subscriber lines.⁴¹ The Commission has further noted that it is not necessary that all segments of the mass market be likely to rely upon mobile wireless services in lieu of wireline local services in order for wireless service to constrain prices for wireline service, but rather the analysis “only requires that there be evidence of sufficient substitution for significant segments of the mass market.”⁴² The Commission also found that the evidence shows that “intermodal competition between mobile wireless and wireline service will likely increase in the near term.”⁴³ That conclusion is borne out by ongoing developments, both generally and with respect to the long-distance component of voice services in particular.

As an initial matter, wireless carriers were the pioneers in offering distance-insensitive voice services.⁴⁴ These new offerings caused many customers to use wireless services for their long-distance calling, and later led to increasing displacement of wireline lines. Today, all major wireless providers offer plans with distance-insensitive buckets of minutes. *See* Exhibits 4 (describing wireless offerings) & 5 (maps of major wireless providers in Verizon’s local telephone service areas). Verizon and other wireline companies have responded to these plans with their own comparable offerings. *See* Exhibits 6 & 7 (describing wireline offerings carriers in Verizon’s local telephone service areas).

Mass-market customers are increasingly using wireless services in place of traditional wireline telephone services. As of June 2006, there already were substantially more wireless

³⁹ Charter Communications Press Release, *Charter Telephone Reaches Half-Million Customer Mark* (Feb. 15, 2007).

⁴⁰ *Id.* (In the past year, “Charter undertook an aggressive rollout of telephone,” and “Charter plans to launch phone service in more markets this year.”).

⁴¹ *Verizon/MCI Order* ¶ 91.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Ninth Report, 19 FCC Rcd 20597, ¶ 113 (2004).

subscribers (217 million) than wireline access lines (172 million).⁴⁵ As shown in Figure 2, this represents a significant increase since the Commission initiated this proceeding. As of the middle of 2006, approximately 72 percent of U.S. households had at least one wireless phone.⁴⁶ Analysts have estimated that wireless subscribers make 64 percent of their long-distance calls and 42 percent of their local calls on their wireless phones.⁴⁷ A large and increasing number of customers are giving up their wirelines entirely in favor of wireless. CIBC estimates that 12.8 percent of wireline access lines have been lost to wireless, and that the total will rise to 16.7 percent within two years.⁴⁸ Analysts predict that the number of wireless-only users will grow to 18-25 percent of the market by 2010.⁴⁹

Wireless prices have continued to decline, and have been a significant factor in constraining wireline prices. All major wireless carriers offer voice services that are competitive with comparable wireline offerings with respect to price, *see* Exhibit 4 (describing wireless offerings), despite the fact that regulatory actions have kept wireline prices artificially low in many instances.⁵⁰ The coverage and reliability of wireless networks has continued to improve

⁴⁵ See Ind. Anal. & Tech. Div., WCB, FCC, *Local Telephone Competition: Status as of June 30, 2006* at Tables 1 & 14 (Jan. 2007) (“*FCC July 2006 Local Competition Report*”).

⁴⁶ CTIA, *Wireless Quick Facts: September 2006*, http://www.ctia.org/research_statistics/statistics/index.cfm/AID/10202.

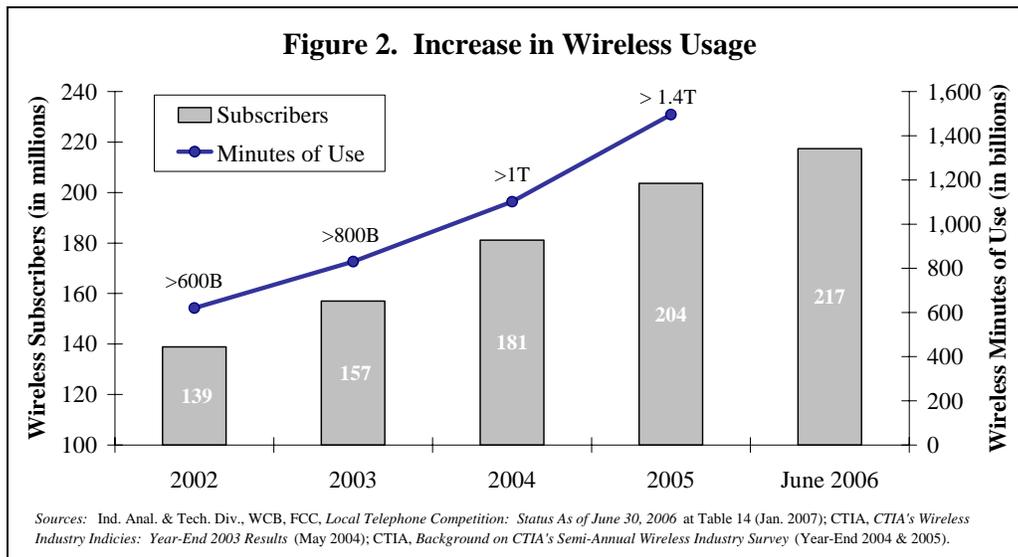
⁴⁷ K. Griffin, Yankee Group, *Pervasive Substitution Precedes Displacement and Fixed-Mobile Convergence in Latest Wireless Trends* at 5 and Exhibit 3 (Dec. 2005); *see also* D. Chamberlain, *et al.*, In-Stat, *Wireless in the Consumer Telecom Bundle: Discounts without Convergence* at 15 (Oct. 2005) (19 percent of survey respondents transferred all long-distance calling to wireless); Pew Internet & American Life Project, *Pew Internet Project Data Memo: Cell Phone Use* at 4 (Apr. 2006) (26 percent of Americans surveyed said they couldn’t live without a wireless phone).

⁴⁸ T. Horan, *et al.*, CIBC World Markets, *4Q06 Communications and Cable Services Preview*, at 16, Exhibit 8 (Jan. 18, 2007); *see also* B. Bath, Lehman Brothers, *Telecom Services – Wireline* at Figure 11 (July 7, 2005) (estimating 24 million wireline access lines have been lost to wireless providers since 1999).

⁴⁹ See 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); R. Bilotti, *et al.*, Morgan Stanley, *Cable/Satellite: Looking into 3Q06 and 2007: Cautious on Top Line, Capital Expenditures, and Lofty Valuations* at Exhibit 53 (Oct. 25, 2006) (predicting 20 percent wireless substitution by the end of 2009); V. Shvets, *et al.*, Deutsche Bank, *4Q04 Review: Wireless OK . . . RBOCs Fare Poorly* at 6 (Feb. 28, 2005) (“wireless cannibalization” now accounts for “more than 1m lines lost per quarter.”); J. Chaplin, *et al.*, JP Morgan, *State of the Industry: Consumer* at Table 57 (Jan. 13, 2006) (estimating that, by the end of 2010, wireless will capture 18 percent of primary lines).

⁵⁰ See, e.g., *Application by Verizon New England Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Vermont*, Memorandum Opinion and Order, 17 FCC Rcd 7625, ¶ 68 (2002) (“In many states . . . higher business rates subsidize some residential rates, and, consequently, certain residential services are priced below cost.”); *Sprint v. FCC*, 274 F.3d 549, 555 (D.C. Cir. 2001) (noting that the FCC’s counsel explained that “state commissions have historically set relatively low residential rates, especially rural ones, allowing the incumbent monopoly to make it up in other aspects of their business.”).

due to investments by wireless providers,⁵¹ and the overwhelming majority of consumers are satisfied with the quality of their wireless service.⁵²



3. Over-the-Top VoIP

The Commission has found that “some proportion of mass market customers may view certain over-the-top VoIP services as substitutes for wireline local service.”⁵³ This turns on whether consumers purchase broadband connections, or have them available to purchase, and on their particular local service requirements.⁵⁴ A number of state regulators have recognized that these conditions are now met and that over-the-top VoIP services are a substitute for traditional wireline services.⁵⁵

⁵¹ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Eleventh Report, 21 FCC Rcd 10947, ¶¶ 132-134 (2006).

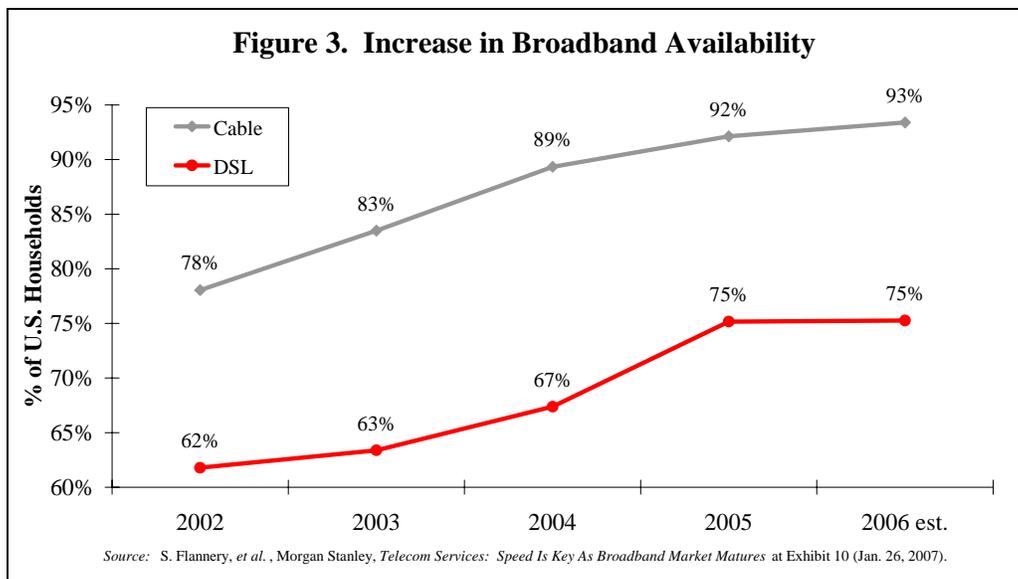
⁵² CTIA Press Release, *Consumers Remain Overwhelmingly Satisfied with their Wireless Service, New Poll Finds* (Sept. 13, 2006) (An August 2006 survey by McLaughlin & Associates found that 86 percent were satisfied with their wireless phone service).

⁵³ *Verizon/MCI Order* ¶ 89.

⁵⁴ See *id.*

⁵⁵ See, e.g., *New York Pricing Flexibility Order* at 33-34 (Concluding that “application based phone service (e.g., Vonage)” is “widely available in New York and that from the perspective of customer demand they are sufficiently close substitutes for traditional wireline local service. . . . In our judgment, consumers view these offerings as close substitutes to wireline local service.”); *California Regulatory Reform Order* at 119-120 (“VoIP communications are competitors to wireline telecommunications services”; “VoIP is a close substitute for wireline service.”); *Joint Application of Verizon Communications, Inc. and MCI, Inc. for Approval of Agreement and Plan of Merger*, Opinion and Order, Docket Nos. A-310580F0009, *et al.*, 2006 Pa. PUC LEXIS 22, at *132 (Pa. P.U.C. Jan. 11, 2006) (“The presence of substitutes or alternatives such as cable telephony, and VoIP, for the mass market customer class, particularly for the provision of local service, are a sufficient constraint on the exercise of market power and potentially anti-competitive behavior.”); Div. of Competitive Markets and Enforcement, Florida PSC, *Report on the Status of Competition in the Telecommunications Industry: As of May 31, 2006* at 66, 2 (Dec. 2006) (VoIP services “are successfully providing competitive alternatives to both residential and business subscribers.” The PSC noted

As an initial matter, any customer with a broadband connection can obtain voice service from one of these VoIP providers. This is particularly significant because broadband is now available to more than 90 percent of U.S. households from a provider other than the incumbent LEC.⁵⁶ See Figure 3.

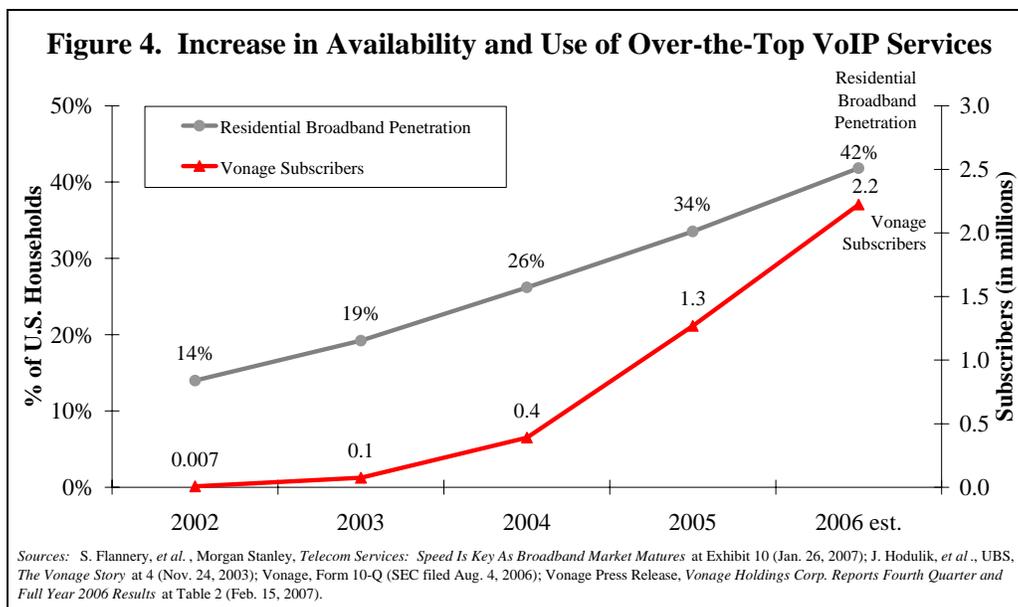


Moreover, a significant and rapidly growing portion of mass-market customers subscribes to broadband service, approximately 42 percent as of year-end 2006,⁵⁷ while many more customers have broadband available to them. As shown in Figures 3 & 4, the availability and use of broadband have grown significantly since the Commission initiated this proceeding, as has the use of broadband to obtain over-the-top VoIP services.

“the increasing acceptance of intermodal competitors, especially wireless and Voice over Internet Protocol (VoIP) service providers, as adequate substitutes for wireline telecommunications service by the consuming public.”)

⁵⁶ See, e.g., NCTA, *Industry Overview: Statistics & Resources*, <http://www.ncta.com/Docs/PageContent.cfm?pageID=86> (estimating 107.8 million homes passed by cable modem service in 2006); Leichtman Research Group, Inc., Research Notes 1Q06 at 7 (Mar. 15, 2006) (estimating 107.5 million homes passed by cable modem service provided by the top 10 MSOs).

⁵⁷ S. Flannery, et al., Morgan Stanley, *Telecom Services: Speed Is Key As Broadband Market Matures*, at Exhibit 10 (Jan. 26, 2007).



Over-the-top VoIP services were first embraced principally by consumers who make large volumes of international and long-distance calls, and now appeal to consumers generally and compete directly with traditional wireline service offerings. Indeed, as shown in Exhibit 8, there are dozens of over-the-top VoIP providers in Verizon’s local telephone service areas that offer voice services at prices that are comparable to or lower than Verizon’s prices.

The fact that over-the-top VoIP services are viewed as an alternative to traditional voice service is evidenced by the numbers of customers switching to these services. As of September 2006, analysts reported that over-the-top VoIP providers served at least 2.3 million subscribers.⁵⁸ Vonage, the largest over-the-top VoIP provider, is adding approximately 13,000 subscribers each week, and served more than 2.2 million subscribers as of the end of 2006, a 75 percent increase over the previous year.⁵⁹ Analysts estimate that over-the-top VoIP providers will displace 5 percent of primary telephone access lines by the end of 2010.⁶⁰

For customers who have not yet subscribed to broadband service, analysts have determined that 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.⁶¹ The quality of over-the-top VoIP services also is sufficient for most users. In fact,

⁵⁸ See Bernstein Research Sept. 2006 *Quarterly VoIP Monitor* at Exhibit 17.

⁵⁹ Vonage Press Release, *Vonage Holdings Corp. Reports Fourth Quarter and Full Year 2006 Results* at Table 2 (Feb. 15, 2007).

⁶⁰ See J. Chaplin, et al., JPMorgan, *Telecom Services/Wireline: State of the Industry: Consumer* at Table 21 (Jan. 13, 2006).

⁶¹ See M. Rollins, et al., Citigroup, *Share Wars – Telco vs. Cable* at 7 (Oct. 5, 2005) (The average narrowband household could capture a net savings of \$6 per month by subscribing to broadband and migrating to VoIP service. Assumes \$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); 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

most customers who subscribe to VoIP view it as a replacement for their primary telephone line. For example, analysts have reported that approximately 60-70 percent of Vonage's subscribers port their telephone numbers.⁶²

4. Traditional CLECs

Although declining in importance relative to intermodal competitors, there are still a number of traditional CLECs that provide distance-insensitive voice services to mass-market customers. See Exhibit 7 (describing offerings of traditional CLECs). According to the Commission's most recent Local Competition Report, CLECs reported serving more than 6 million mass-market lines as of June 2006, not including lines served by cable companies.⁶³

Following the Commission's finding of no impairment for switching, Verizon began offering its Wholesale Advantage service, which provides the same features and functionality of the UNE platform but at negotiated market rates.⁶⁴ As of December 2006, more than 100 competitors were serving approximately 1.5 million residential lines using Wholesale Advantage, and more than 150 competitors were serving more than 150,000 residential lines using Verizon's resale offerings. Still other competitors are offering voice services to mass-market customers by combining their own facilities with wholesale service purchased from Verizon.

5. Additional Competitive Alternatives

Changes in technology have opened the door for a variety of other types of services to compete with traditional wireline voice service.

First, e-mail and instant messaging ("IM") substitute for a large fraction of voice traffic on wireline networks.⁶⁵ A large and growing fraction of this traffic originates and/or terminates on competitive networks, but even when carried over the incumbents' network, such traffic often substitutes for local or long-distance telephone calls and displaces significant usage-sensitive (e.g., per-minute or per-call) revenues that incumbents otherwise would receive. A 2006 Yankee

broadband is compelling to dial-up subscribers, for whom the cost of upgrading to broadband is more than offset by the savings on telephony.").

⁶² See D. Shapiro, *et al.*, Banc of America Securities, *Battle for the Bundle* at 30 (June 14, 2005).

⁶³ *FCC June 2006 Local Competition Report* at Tables 2 & 5. The Commission's data do not provide a breakdown of the technology used to serve these mass-market lines, but for CLEC mass-market and enterprise lines combined, approximately 36 percent are provided via CLECs' own loops, 42 percent are provided via UNEs, and 22 percent are provided via resale. *Id.* at Table 3.

⁶⁴ *Omaha Forbearance Order* ¶ 67 (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 wholesale offerings available so that it will derive more revenue indirectly from retail customers who choose a retail provider other than [the ILEC]."); *id.* ¶ 71 (retail competition "minimizes the risk of . . . anticompetitive conduct").

⁶⁵ See D. Schoolar, In-Stat/MDR, *State of the US Carrier Market* at 6 (Oct. 2003) ("Consumers are using e-mail and instant messaging in place of a phone call."); C. Golvin, *et al.*, Forrester, *Sizing U.S. Consumer Telecom*, at 19 n.5 (Jan. 2002) ("[a]lternate forms of communications, such as email and instant messaging, [] reduce long-distance minutes of use.").

Group survey found that “a significant portion of Yahoo! IM users stated that IM usage has replaced at least 10% of their telephony calling.”⁶⁶ The three largest instant messaging providers – AOL, MSN, and Yahoo! – serve 46.4 million, 27.6 million, and 24 million active users, respectively.⁶⁷ According to the most recent J.D. Power and Associates survey of online use, approximately 36 percent of U.S. Internet users now use instant messaging on a daily basis.⁶⁸

The use of e-mail and IM in place of telephone calls also is occurring on wireless networks, where it displaces not only wireless but also wireline calls. In the case of Verizon Wireless, for example, customers sent and received 5 billion text messages on their mobile phones in September 2006 alone – up from 2 billion in September 2005.⁶⁹ Among all major wireless carriers, data services are growing rapidly and now account for between 11-14 percent of total voice revenues, up by an average of 50 percent from the previous year.⁷⁰

Second, as the Commission has recognized, there are a number of emerging broadband technologies, such as WiMAX, WiFi, and Broadband over Powerline, that will offer an alternative means through which mass-market customers can obtain VoIP service.⁷¹ Because many of these alternatives are less expensive to deploy than traditional alternatives, they are being deployed in rural and other high-cost areas.⁷²

Fixed Wireless/WiMAX. Fixed wireless service is a broadband alternative for many customers today and is likely to reach many more customers over the next few years. Currently, there are thousands of wireless Internet service providers (“WISPs”) that use fixed wireless technology, often to serve rural areas that cable and DSL do not reach.⁷³ In Virginia, for

⁶⁶ J. Simpson, Yankee Group, *Web Voice Services Challenge the Incumbents in Telecommunications* at 9 (Aug. 2006).

⁶⁷ See B. Nielsen, *AOL Upgrades Instant Messenger with Video*, Chicago Sun-Times (Nov. 16, 2006) (citing October 2006 data provided by Leilani Han of Nielsen/NetRatings).

⁶⁸ J.D. Power and Associates Press Release, *J.D. Power and Associates Reports: Yahoo! Messenger Ranks Highest in Customer Satisfaction among Instant Messaging Services* (Oct. 11, 2006). J.D. Power and Associates estimates that 78 percent of U.S. households subscribe to an ISP. J.D. Power and Associates Press Release, *J.D. Power and Associates Reports: High-Speed Internet Overtakes Dial-Up in Market Share as Bundling Makes Services More Affordable* (Sept. 20, 2006) (citing the J.D. Power and Associates 2006 Internet Service Provider (ISP) Residential Customer Satisfaction Survey).

⁶⁹ VZ – Verizon at UBS 34th Annual Global Media Conference, Thomson StreetEvents, Conference Call Transcript (Dec. 6, 2006) (statement by Verizon Chief Financial Officer Doreen Toben).

⁷⁰ S. Flannery, et al., Morgan Stanley, *Telecom Services: 3Q06 Trend Tracker: Cost Savings Critical as Wireless & Broadband Growth Slows* at Exhibit 56 (Dec. 4, 2006); S. Flannery, et al., Morgan Stanley, *Telecom Services: 3Q05 Trend Tracker: Wireless Winners and Losers Diverge* at Exhibit 61 (Dec. 1, 2005).

⁷¹ 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) (“*Wireline Broadband Order*”).

⁷² For example, Virginia Broadband provides fixed wireless services in three rural service territories and is expanding its service territory to 16 counties through a partnership with the Rappahannock Electric Cooperative. See Virginia Broadband, LLC, *What Is Our Coverage Area*, <http://www.vabb.com/coverage.htm> (as of 2005); M. Cotter, *REC Plans To Roll Out Broadband Service*, Fredericksburg.com (May 20, 2006), http://fredericksburg.com/News/FLS/2006/052006/05202006/192464/printer_friendly.

⁷³ See Wireless Broadband Access Task Force, FCC, *Connected & On the Go: Broadband Goes Wireless*, GN Docket No. 04-163, at 32 (Feb. 2005) (reporting estimates that there are between 4,000 and 8,000 WISPs). There is

example, a Verizon survey revealed that fixed wireless services were available to 71 percent of households in Verizon's local telephone service area in the state. See Exhibit 9. WISP services also are being deployed in major metropolitan areas by companies such as TowerStream and Clearwire.⁷⁴ Sprint has announced that by 2008 it will have constructed a nationwide WiMAX network to provide 2-4 Mbps service to an estimated 100 million customers, with an investment of \$3 billion.⁷⁵ WiMAX services are capable of and are being used to provide voice services that compete with distance-insensitive wireline offerings.⁷⁶ In-Stat estimates that, by 2009, 8.5 million users will get their broadband services via WiMAX, with more than half of those customers receiving voice service via their WiMAX connection.⁷⁷

WiFi. Initial deployment of commercial WiFi service in the U.S. involved the placement of hotspots in public gathering points such as airports, coffee shops, and parks.⁷⁸ Recently, dozens of cities have begun deploying WiFi networks to provide high-speed Internet access (typically up to 1 Mbps) and other services to businesses and residents.⁷⁹ These WiFi networks are capable of being used to access a wide range of VoIP services. Vonage recently announced

at least one fixed wireless broadband provider in all but three states (Connecticut, Delaware, and Rhode Island) and an average of more than 8 providers in the remaining 47 states. Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *High-Speed Services for Internet Access: Status as of June 30, 2006* at Table 8 (Jan. 2007) ("FCC June 2006 High-Speed Internet Access Report"). WiMAX is being rapidly deployed, and more than 150 deployments were in use as of May 2006. See U.S. Gov't Accountability Office, *Broadband Deployment Is Extensive Throughout the United States, But It Is Difficult To Assess the Extent of Deployment Gaps in Rural Areas*, GAO-06-426 at 60 (May 2006) ("May 2006 GAO Report").

⁷⁴ TowerStream, *Service Areas*, <http://www.towerstream.com/content.asp?serviceareas> (TowerStream offers high-speed Internet access in Boston, New York City, San Francisco, Los Angeles, Chicago, and Providence/Newport/Westerly, Rhode Island); Clearwire, *Interactive Coverage Map*, http://www.clearwire.com/store/service_areas.php; Clearwire, *Clearwire Facts*, <http://www.clearwire.com/company/facts.php> (Clearwire serves 162,000 subscribers in 31 U.S. markets in Alaska, California, Florida, Hawaii, Idaho, Minnesota, Nevada, North Carolina, Oregon, Texas, Washington State, and Wisconsin).

⁷⁵ A. Sharma, *et al.*, *Sprint To Spend Up to \$3 Billion To Build Network Using Wimax – New Wireless-System Plan Shows Belief in Demand for Mobile Internet Services*, Wall St. J. at B2 (Aug. 9, 2006); A. Mohammed, *Sprint Nextel To Build \$2.5 Billion Wireless Network*, Wash. Post at D04 (Aug. 9, 2006); J. Markoff, *et al.*, *Sprint Will Build an Intel-Backed Network*, N.Y. Times at 7 (Aug. 9, 2006).

⁷⁶ See, e.g., Clearwire, *Clearwire Internet Phone Service: Features*, <http://www.clearwire.com/internet-phone-service/features.php>; Clearwire, *Products: Internet Phone Service*, <http://www.clearwire.com/internet-phone-service/compare.php> (Clearwire offers unlimited local and long-distance calling, along with many basic features (including voice mail, caller ID, call forwarding, 3-way calling, call blocking, etc.), for \$29.99); Virginia Broadband, *What is VoIP*, <http://www.vabb.com/voip.htm> (Virginia Broadband advertises "Local and National telephone service for one flat rate. With your high-speed Internet connection you can get phone service, and not have to deal with any large, cumbersome phone company.").

⁷⁷ J. Hu, *Study: Net Phones Key to WiMax Success*, CNet News.com (Feb. 16, 2005), http://news.com.com/Study+Net+phones+key+to+WiMax+success/2100-1039_3-5579377.html.

⁷⁸ See JiWire, *Wi-Fi Hotspot Directory*, <http://www.jiwire.com/search-hotspot-locations.htm> (49,892 hotspots in the U.S. as of February 12, 2007); see also T-Mobile, *T-Mobile HotSpot: US Locations*, <https://selfcare.hotspot.t-mobile.com/locations/viewLocationMap.do> (T-Mobile offers more than 8,000 WiFi hotspots spanning all 50 states).

⁷⁹ According to one industry source, as of the end of 2006 there were approximately 79 municipal WiFi networks in the U.S. that were providing public access, plus 36 additional networks that were being used solely for municipal purposes such as public safety. See MuniWireless.com, *List of US Cities and Regions* at 1, 3 (Dec. 29, 2006), <http://munewireless.com/reports/docs/Dec-29-2006summary.pdf>.

plans to launch VoIP on the municipal WiFi networks that EarthLink is deploying.⁸⁰ A variety of equipment manufacturers (including LinkSys and NetGear) have begun producing handsets to be used on WiFi networks using Skype's VoIP service.⁸¹

Broadband over Powerline. Chairman Martin has stated that BPL services “hold great promise for consumers.”⁸² BPL uses the electric distribution network as a third broadband pipe to the home. Because the wires needed for BPL are largely in place, BPL can be deployed rapidly and at relatively low cost in virtually any market.⁸³ BPL technology is being deployed commercially by Current Communications (a company backed by Google and other investors) in Ohio and Texas,⁸⁴ and by other providers in smaller deployments throughout the U.S.⁸⁵ Where BPL is available, it is capable of and is being used to access VoIP services. For example, Current Communications offers “local telephone service combined with unlimited long distance and your favorite calling features – all for one low monthly price.”⁸⁶ Current voice service “is available without a subscription to broadband Internet service.”⁸⁷

6. Wireline Minutes and Lines Have Declined

While competition from the various alternatives described above has been steadily increasing, the traditional wireline business has declined. Both access lines and access minutes are steadily decreasing. The migration of traffic is particularly significant for purposes of this proceeding because lost long-distance traffic historically would have traversed the local network. Today, increasing amounts of long-distance traffic originate, terminate, or both on alternative networks – such as wireless-to-wireless calls, and calls that originate on cable networks or other

⁸⁰ Vonage Press Release, *Beyond Broadband Voice: Vonage and EarthLink Team To Offer Wi-Fi Access* (Jan. 8, 2007).

⁸¹ *Google and Skype Fund FON as Cisco Joins*, Computer Business Review Online (Feb. 7, 2006), http://www.cbrownline.com/article_feature.asp?guid=2A93B2D6-BE8B-4EB8-99CD-EDF7DFB80C65 (“Skype has partnerships in place with hotspot aggregators such as Boingo and The Cloud, and already offers WiFi-enabled Skype handsets made by, among others, Linksys. A visit to any internet cafe in a big city will reveal countless individuals calling home over the P2P VoIP service, so if those connections can be wireless-enabled, it should only stand to gain more users.”).

⁸² Statement of Chairman Kevin J. Martin in WC Docket No. 06-10 (rel. Nov. 7, 2006).

⁸³ See S. Cleland, NetCompetition.org, *Why Competition Obviates Net Neutrality*, presentation for the FTC Internet Access Task Force at 6 (Sept. 26, 2006) (“99% of the cost to provide BPL is already paid for to supply electricity.”).

⁸⁴ See Current Communications, *Overview*, <http://www.currentgroup.com/about/index.html>; Current Communications Press Release, *Current Communications Group Announces Strategic Investments To Catalyze Broadband over Power Line Deployments* (July 7, 2005); Current Communications Press Release, *Current Communications Announces \$130 Million in Investments in Broadband over Power Line Networks* (May 4, 2006).

⁸⁵ See, e.g., United Power Line Council, *BPL Deployment Map*, http://uplc.utc.org/file_depot/0-10000000/0-10000/7966/conman/BPL+Deployment+Map+2007.pdf; BPL Co-op, *Broadband over Powerline*, <http://www.forcvec.com/bplcoop/index.html> (In southwestern Virginia, a joint venture of the Central Virginia Electric Co-operative and International Broadband Electric Communications is deploying BPL service to rural customers.).

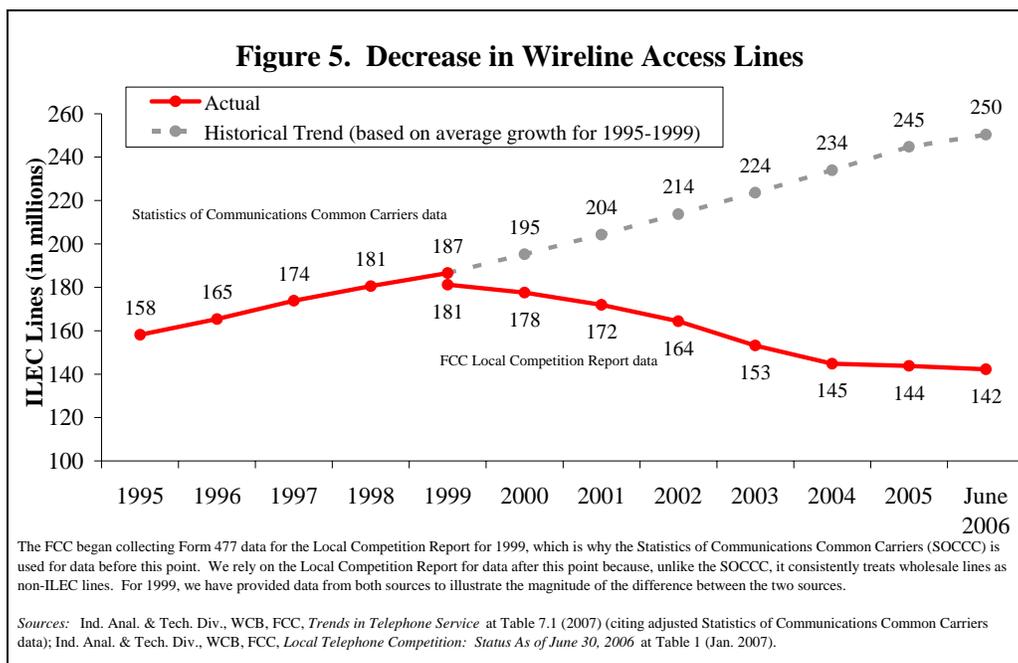
⁸⁶ Current Communications, *Residential Voice*, <http://www.current.net/ServiceAndPricing/Residential/Voice/>.

⁸⁷ Current Communications, *Residential Voice FAQ*, <http://www.current.net/ServiceAndPricing/Residential/Voice/Faq/>.

competitive last-mile facilities. Thus, while these alternatives also compete for voice services generally, it is beyond serious dispute that they can be and are used as alternatives for the long-distance component of voice telephone service.

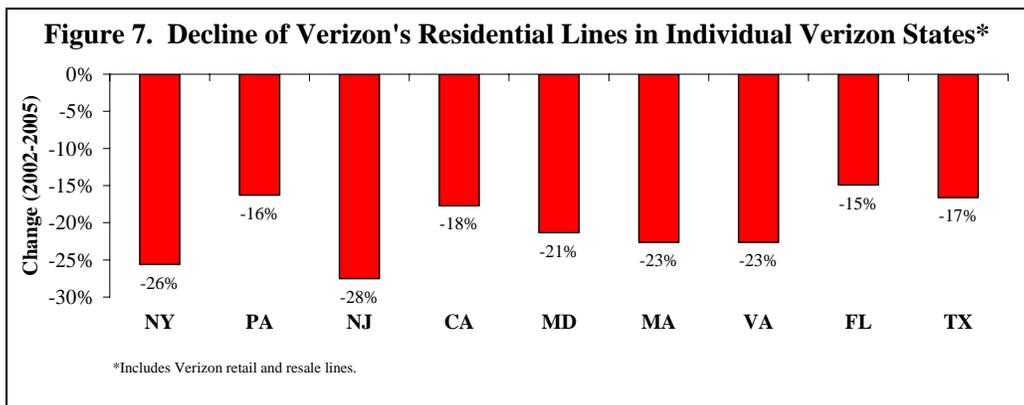
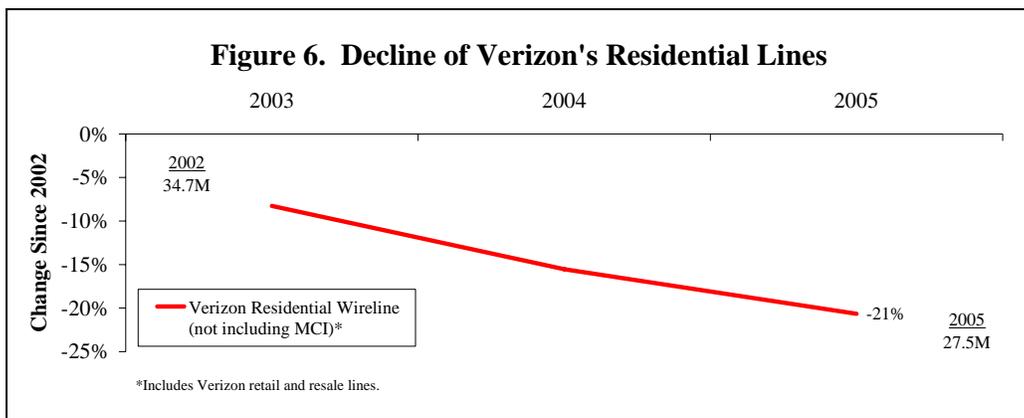
As an initial matter, any analysis of the decline in access lines and minutes must take into account not only the trend in the absolute number of lines and minutes, but also a comparison to historical growth rates. Historically, both the number of access lines and the number of minutes traversing local networks grew at a relatively stable rate, driven in large measure by growth in the population and the overall economy. But while these overall trends have continued, the numbers of local wireline lines and minutes not only are no longer growing but have actually declined in absolute terms as intermodal competition and technology substitution have increased.

With respect to lines, Figure 5 shows the number of nationwide ILEC access lines over the past decade. It also compares the decline in access lines that has occurred over the past six years to the historical trend of year-over-year growth in access lines, driven by the general growth in population and the economy. Given that these larger economic trends have continued, it is apparent that the actual loss of access lines to other alternatives is even greater than what the absolute loss in ILEC lines shows, as ILECs are not capturing all of the new demand. Moreover, these trends show that ILECs are losing lines not just to cable and other wireline competitors, but also to wireless, as the difference between the historical trend and the current number of lines exceeds the number of competitive lines that cable companies and CLECs report serving.⁸⁸



⁸⁸ The loss of second lines to DSL or other competitive alternatives accounts for no more than a small percentage of the total decrease in ILEC lines. According to the Commission's most recent data, there were 26.2 million non-primary residential lines in 2000 compared to 12.1 million in 2005, representing a net loss of 14.1 million lines. See Ind. Anal. & Tech. Div., WCB, FCC, *Trends in Telephone Service* at Table 7.4 (2007). By comparison, Figure 5 shows a difference of 54 million lines from 2000 to 2003, and a difference of 37 million additional lines between 2003 and June 2006.

Data from Verizon provide further evidence of these trends. From 2002 through 2005, Verizon's switched access lines provided to residential customers declined by approximately 21 percent in absolute terms (from 34.7 million to 27.5 million), in contrast to the historical trend of year-over-year growth. See Figure 6.⁸⁹ This decline occurred both region-wide and in individual states. See Figure 7. And the trend has continued since the elimination of the UNE platform ("UNE-P"). Verizon had, as of December 2004, lost approximately 4.4 million residential lines to UNE-P, and since the abolition of the UNE-P Verizon's access lines have continued to decline in both absolute and relative terms. As one analyst has explained, "the telcos failed to win back a substantial portion of wholesale line cancellations, which customers likely took one of three paths: (1) they shifted to wireless only, (2) they defected to standalone, price-competitive VoIP providers, or (3) they opted into cable triple-play bundles. The probable answer is a little of all three occurred, with the emphasis on the latter two and increasingly #3."⁹⁰

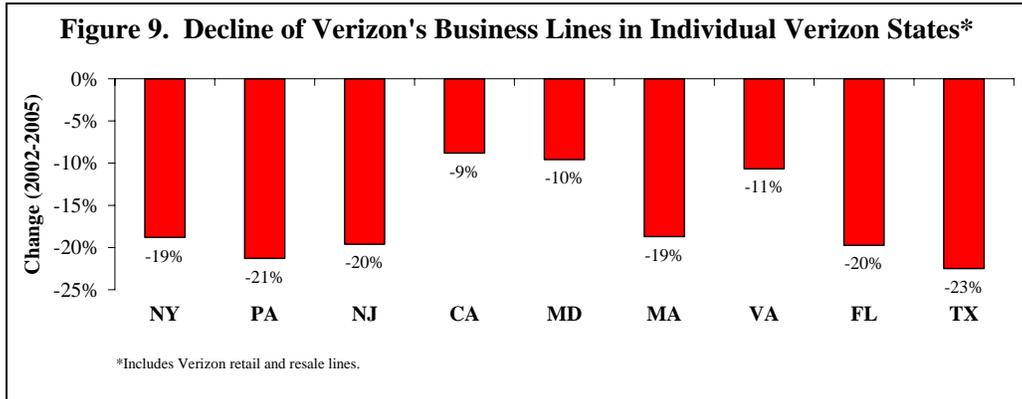
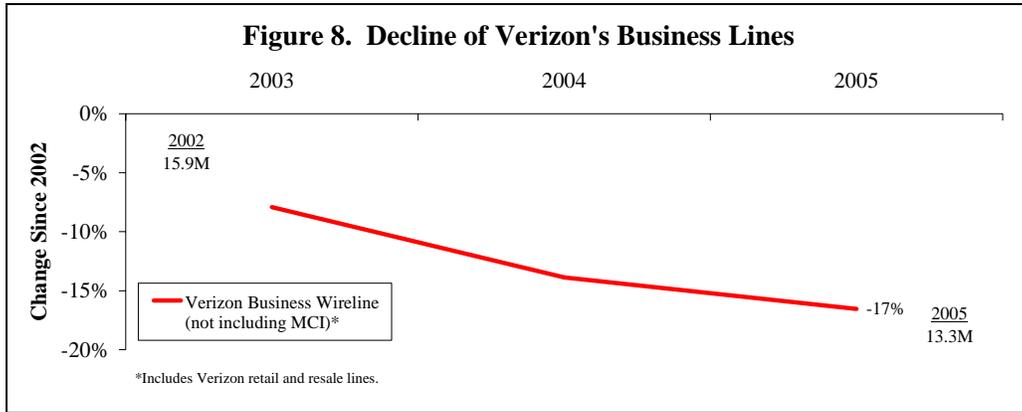


Verizon's data also show a decline in switched access lines provided to business customers, which includes very small businesses that the Commission considers part of the mass-market, as well as medium and large enterprise customers. From 2002 through 2005, Verizon's

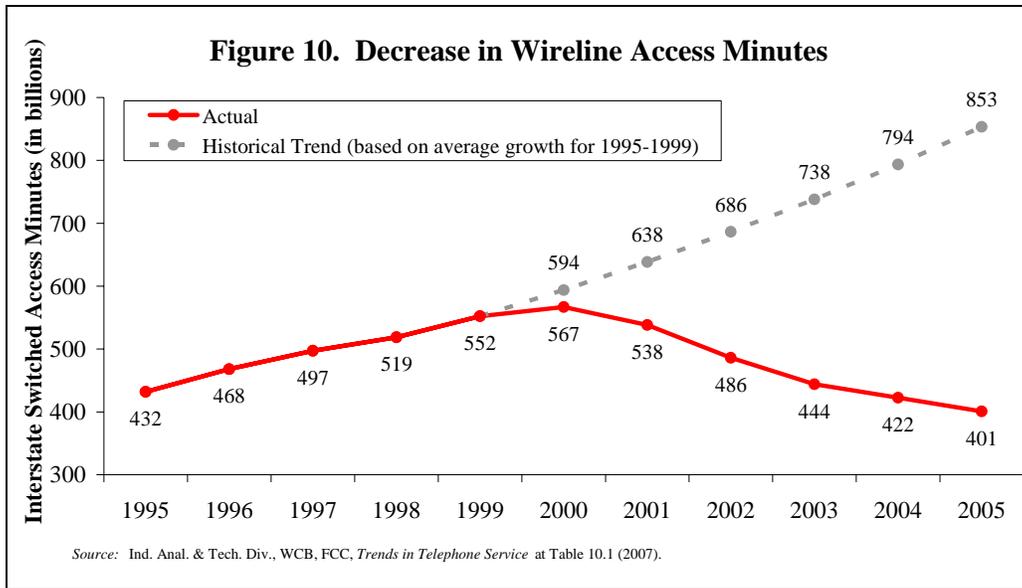
⁸⁹ During this same period (2002-2005), the number of second lines that Verizon provided declined from 5.3 million to 3.1 million, a decrease of 2.2 million. Thus, the loss of second lines to DSL or other competitive alternatives accounts for no more than a small percentage of the decrease in the Verizon's total access lines.

⁹⁰ C. Moffett, et al., Bernstein Research, *Quarterly VoIP Monitor: Six Million and Counting* at 10 (June 12, 2006).

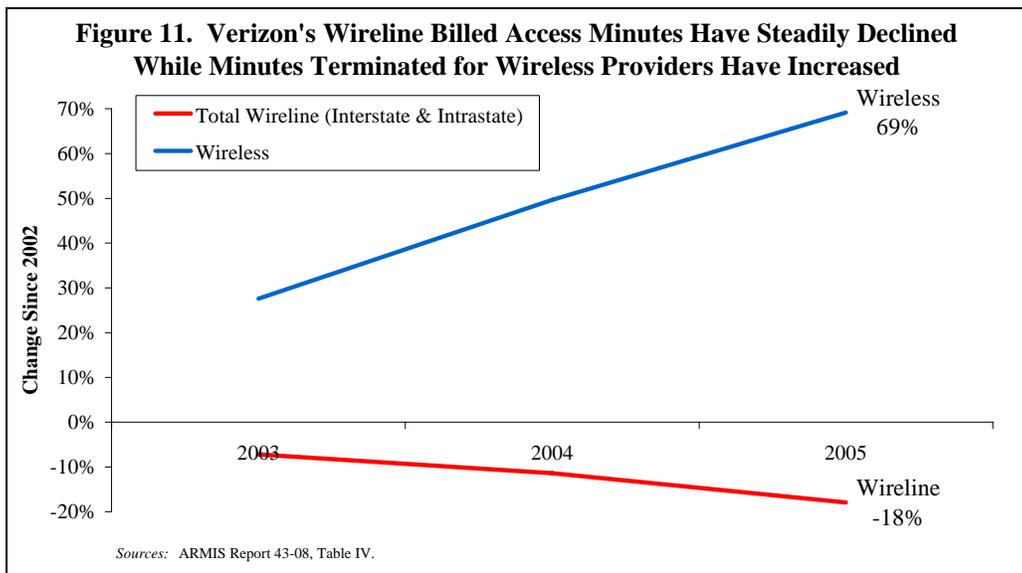
switched access lines provided to business customers have declined by approximately 16 percent (from 16.8 million to 14.1 million). See Figure 8. This decline occurred both region-wide and in individual states. See Figure 9.

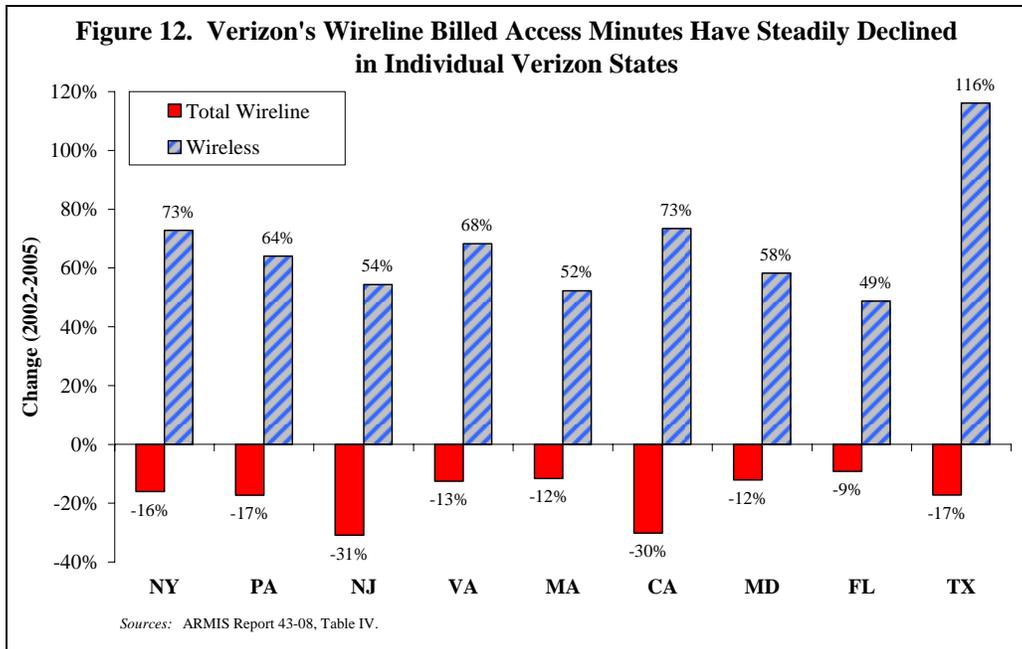


With respect to minutes, Figure 10 shows the number of interstate switched access minutes from 1995 to 2005 (the most recent year the Commission reports). It also compares the decline in minutes that has occurred over the past five years to the historical trend of year-over-year growth in interstate switched access minutes access lines, driven by the general growth in population and the economy. As noted above, given that these larger economic trends have continued, it is apparent that the actual loss of minutes to other alternatives is even greater than what the absolute loss in interstate switched access minutes shows, as ILECs are not capturing all of the new demand.



Here, too, Verizon’s data provide further evidence of these trends. Between 2002 and 2005, the number of billed access minutes originating or terminating on Verizon’s wireline network billed to interexchange carriers decreased by 18 percent. *See* Figure 11. By contrast, minutes that Verizon terminated for wireless carriers during this period increased by 69 percent. *See id.* Actual use of wireless is, of course, much greater as this does not include the significant amount of wireless-to-wireless traffic that takes place, or the calls between wireless and other competitive wireline or cable networks. Figure 12 shows that, just as these trends are taking place across Verizon’s local telephone service areas, they also are occurring within individual states.

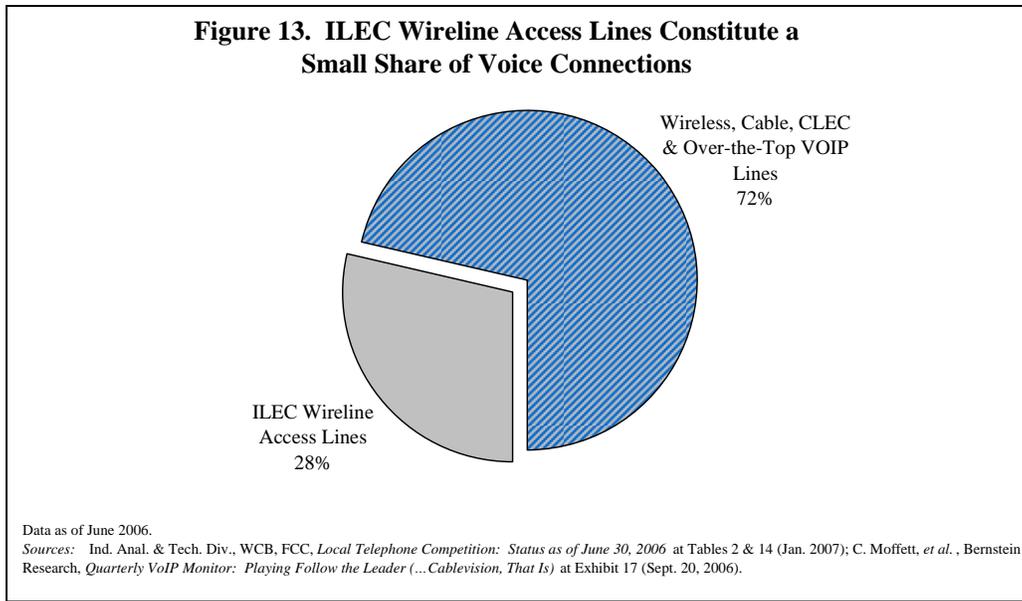




Finally, while static market shares are not meaningful given the rapid emergence of new competitors and the trajectory of competition, an analysis that includes even just the principal alternative providers of voice service makes clear that Verizon and other carriers do not have anything approaching a dominant position, and certainly do not have a position that would allow them to dominate in the long-distance component of voice services. As of June 2006, ILEC wireline access lines accounted for only approximately 28 percent of all voice connections provided to mass-market consumers, with cable, wireless, over-the-top VoIP, and other CLECs accounting for the rest.⁹¹ See Figure 13. As explained above, including all of these alternatives is particularly appropriate in this proceeding, because consumers are extensively using all of these competitive options to make long-distance calls. As also noted above, this figure is conservative, because in the second half of 2006 the use of these various alternatives continued to grow, while ILEC lines continued to decline.

⁹¹ This estimate was calculated as follows. The denominator is the sum of (1) ILEC and CLEC residential wireline access lines, (2) the number of wireless subscribers, and (3) the number of over-the-top VoIP subscribers. The number of ILEC and CLEC lines, and the number of wireless subscribers are based on the FCC's *June 2006 Local Competition Report* (Tables 2 and 14, respectively). Estimates of over-the-top VoIP subscribers are based on the 2Q06 estimate by Bernstein Research. *Bernstein Research Sept. 2006 Quarterly VoIP Monitor* at Exhibit 17. As this analysis compares ILEC wireline access lines to competitive alternatives, it does not attribute the wireless subscribers of any ILEC wireless affiliate to the ILEC. This approach also is appropriate given that wireless is robustly competitive with ILEC wireless affiliates competing against unaffiliated wireless providers nationwide. In order to remain competitive for wireless services, ILEC wireless affiliates must provide service offerings comparable to those of their rivals, even where such offerings compete against the affiliated ILEC's wireline service.

Figure 13. ILEC Wireline Access Lines Constitute a Small Share of Voice Connections



B. Enterprise

The Commission has found that retail 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.”⁹² The Commission recognized that “interexchange carriers, competitive LECs, cable companies, other incumbent LECs, systems integrators, and equipment vendors” all “are prepared to make competitive offers” to enterprise customers and that they therefore “ensure that there is sufficient competition.”⁹³ A number of states have reached similar conclusions.⁹⁴ These findings apply

⁹² *Verizon/MCI Order* ¶ 56.

⁹³ *Id.* ¶ 74.

⁹⁴ *Joint Petition of Verizon Communications Inc. and MCI, Inc. for a Declaratory Ruling Disclaiming Jurisdiction Over or in the Alternative for Approval of Agreement and Plan of Merger*, Order Asserting Jurisdiction and Approving Merger Subject to Conditions, Case 05-C-0237 at 33-34 (N.Y.P.S.C. Nov. 22, 2005) (“We agree with Staff that a direct, retail-based remedy is not required for the Enterprise market. As a group, Enterprise customers are sophisticated purchasers of telecommunication services. These large customers can obtain services from alternative providers or negotiate a competitive price for service if they are not satisfied with either price or service from their current provider.”); Draft Report on the Status of Competition in the Telecommunications Industry, Division of Competitive Markets and Enforcement at 4 (*72) (Fla. P.S.C. May 31, 2006) (“[E]vidence suggests that these intermodal competitors are successfully providing competitive alternatives to both residential and business subscribers. . . . [T]he Commission concludes that competitors are providing functionally equivalent service to both residential and business customers.”); *California Regulatory Reform Order* at 3-4, 75, and 164 (“In conclusion, there is no evidence concerning the basic business segment of the voice communications market that causes us to reassess the conclusions reached in our general market analysis. Indeed, the evidence that we have supports our two major conclusions – that there is a single market for voice communications and this market is subject to significant competition by different technologies. Consequently, we find that it is reasonable to eliminate all price regulations of basic business service effective immediately.”); *id.* (“wireless competition plays a particularly important role in the basic business segment of the voice communications marketplace” and provides evidence of “significant cross-platform competition among providers of basic business service.”).

with equal force in this proceeding, where the ultimate question likewise concerns competition at the retail level.⁹⁵

As the Commission has recognized, enterprise customers tend to purchase packages of service that include not just distance-insensitive voice services, but also myriad data services as well as network integration and management capabilities and wireless services.⁹⁶ Indeed, large enterprise and other commercial and institutional customers now spend more on data and wireless than they spend on wireline voice, and data and wireless spending is growing considerably, while wireline voice spending is declining.⁹⁷ Any reasonable competitive analysis should therefore analyze the full array of services that large enterprise customers and medium businesses purchase as a whole, rather than partition those packages into artificial categories that are no longer relevant in the marketplace.

Verizon's share of retail business services revenues as a whole is relatively small. In an October 2006 report, Lehman Brothers estimated Verizon's 2006 business services revenues at \$19.7 billion, compared to \$103.7 billion for the market as a whole, representing a share of approximately 19 percent.⁹⁸ These totals appear to include all business customers, and may include some customers that the Commission has traditionally counted as part of the mass market. Lehman Brothers' most recent report does not provide a revenue breakdown for different classes of business customers.

Verizon's share of retail data services revenues provided to business customers also is small. Lehman Brothers estimated Verizon's share of such revenues at 14.5 percent in 2006, and expected it to decline to 13.9 percent in 2007.⁹⁹ This is significant for several reasons. *First*, the retail data services analyzed in the Lehman report are the types most often purchased by medium and larger businesses,¹⁰⁰ which confirms that Verizon faces intense competition for these customers in general. *Second*, enterprise customers are increasingly using data services to carry their voice traffic. As a result, the intense competition that Verizon faces in the provision of retail data services also disciplines the retail voice services that are at issue here.

Verizon faces competition from traditional telecom carriers such as AT&T, Level 3, Sprint, Global Crossing, Broadwing, XO, 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. Exhibit 10 summarizes the voice services that traditional competitors are offering in Verizon's local

⁹⁵ See Section 272(f)(1) *Sunset of the BOC Separate Affiliate and Related Requirements*, Further Notice of Proposed Rulemaking, 18 FCC Rcd 10914, ¶ 22 (2003) (noting that Commission's focus is ability of carrier "to unilaterally raise and sustain" retail prices in the relevant markets).

⁹⁶ *Verizon/MCI Order* ¶ 57.

⁹⁷ See T. Seitz, Lehman Brothers, *Telecom Services – Wireline*, at 4, Figure 5 (Oct. 18, 2006).

⁹⁸ *Id.* at 14, Figure 19.

⁹⁹ *Id.* at 11, Figure 15.

¹⁰⁰ Lehman includes the following services: "Unmanaged Business Data Transport, Legacy Packet, IP (Direct Internet Access), Fiber/Ethernet, Other High Speed, Managed Data Networks, Data Centers/Hosting/Content Delivery). See *id.*

telephone service areas; Exhibit 12 provides further descriptions of these offerings from the competitive providers' own websites. Moreover, to the extent medium or large business customers use basic switched business lines, they have all the same alternatives as mass-market customers, and, as shown above (*see* Figures 8 & 9, *supra*), are using these alternatives given the declines in retail business lines.

Cable operators are also moving aggressively into the enterprise market, and are competing for medium-sized businesses as well as smaller businesses that the Commission has defined as part of the mass market. Each of the major cable companies in Verizon's local telephone service areas – Time Warner, Cablevision, Cox, and Comcast – has been offering data services to enterprise customers for many years, and most are now expanding to provide voice services. *See* Exhibit 11 (describing cable voice offerings). One analyst estimates that the cable industry will “grow its commercial revenue base from \$1.3B this year to \$2.0B in '07 and \$3.2B by '08.”¹⁰¹ Buckingham estimates that cable operators have already won approximately 4 percent of revenues for small and medium enterprise customers, and that cable companies can use their existing plant to target more than 85 percent of commercial revenues.¹⁰²

By way of examples, Cablevision offers “Optimum Voice for Business,” which provides “local, regional and long distance calling . . . for one low, fixed per-line monthly rate: a rate that could save you as much as 60 percent per month, or more.”¹⁰³ Cablevision has said it could cut prices for small- and medium-sized businesses by as much as half compared with bills from Verizon and AT&T, and that it could get a 25 percent share of the business market in its area in two years.¹⁰⁴ Cox Business Services offers a variety of voice services to enterprise customers, including digital telephone, Centrex, digital trunks, and dedicated long distance.¹⁰⁵ According to Cox, with Cox Business Services, “your business can enjoy the savings and convenience of getting your local and long distance service from one company, with one bill and one point of contact.”¹⁰⁶ Comcast's CEO has recently stated that commercial services represent the “next great business opportunity” for Comcast, and that it will do the “same thing” in the enterprise market as it has done in the mass market.¹⁰⁷ Comcast recently told investors that it would be making a “\$250 million investment in commercial services in 2007.”¹⁰⁸ Time Warner Cable has

¹⁰¹ Q. Hasan, *et al.*, Buckingham Research Group, *Cable Goes Commercial: Examining Cable's Next Growth Phase* at 18 (Jan. 11, 2007).

¹⁰² *Id.* at Exhibit 14.

¹⁰³ Cablevision, *Optimum Voice for Business, Advantages*, <http://www.optimum.com/business/ov/advantages.jsp>.

¹⁰⁴ *See* Comcast, *Cablevision Target Businesses for Growth*, Reuters (Sept. 20, 2006); M. Farrell, *Cablevision Revs Up for Business Blitz*, Multichannel News (Sept. 25, 2006).

¹⁰⁵ Cox Business Services, *Cox Digital Telephone and Voice Mail*, <http://www.coxbusiness.com/products/voice/digitaltelephone.html>.

¹⁰⁶ *Id.*

¹⁰⁷ *See* Comcast Corporation at Citigroup 17th Annual Entertainment, Media and Telecommunications Conference – Final, FD (Fair Disclosure) Wire, Transcript 010907aw.757 (Jan. 9, 2007) (statement by Comcast chairman and CEO Brian Roberts).

¹⁰⁸ Thomson StreetEvents, *CMCSA – Q4 2006 Comcast Corporation Earnings Conference Call*, Conference Call Transcript at 6 (Feb. 1, 2007) (statement of Comcast Corp. EVP, Co-CFO and Treasurer, John Alchin).

announced that, “[i]n 2007, we will launch Time Warner Cable’s Business Class Phone, an offering directed towards small to medium sized businesses.”¹⁰⁹

Many enterprise customers also are using VoIP technology in place of traditional switched services. Enterprise customers were the first to adopt this new technology. They have migrated their traditional voice services to IP Virtual Private Network (“VPN”) and other converged services that are provided over Multi-Protocol Label Switching (“MPLS”) networks.¹¹⁰ These converged services are being used in place of all local, interexchange, and international voice and data services. A study by In-Stat predicts that business IP phone shipments will increase approximately 450 percent between 2006 and 2010 (from 10 million to more than 45 million).¹¹¹ Another heralded development in the enterprise market is the addition of VoIP capabilities to the new Microsoft Vista Office suite. Microsoft’s Chairman, Steve Ballmer, has stated that “[w]e are going to enter the voice over IP market the beginning of [2007].”¹¹² Analysts have called the new service “a push into the enterprise voice market, bringing the software powerhouse right to the Bells’ back door.”¹¹³

Enterprise customers also are using wireless extensively. According to the Yankee Group, U.S. businesses now spend a quarter of their telecommunications budgets on wireless offerings – about \$33 billion a year.¹¹⁴ For the average company with more than 500 employees, Yankee Group estimates that “a full 40% of them are mobile.”¹¹⁵ Business customers also use

¹⁰⁹ Thomson StreetEvents, *TWX – Q4 2006 Time Warner Inc. Earnings Conference Call*, Conference Call Transcript at 4 (Jan. 31, 2007) (statement of Time Warner Inc. Chairman & CEO, Dick Parsons).

¹¹⁰ See M. McCormack, et al., Bear Stearns, *U.S. Wireline Services: The Catalyst for Consolidation* at 53 (June 2005) (“We expect significant interest in VoIP as businesses pursue the convergence of their voice and data networks onto a single platform in order to improve efficiency, reduce costs, and develop new revenue-generating value-added services. We note that several large companies have made VoIP deployment announcements, including Ford (50K IP phones with SBC), Bank of America (180K IP phones with Cisco and EDS), and Boeing (150K IP phones with Cisco).”).

¹¹¹ P. Tufegdzcic, et al., In-Stat, *IP Phones Invade the Home and Office* at Figure 1 (Nov. 6, 2006).

¹¹² D. Gardner, *Microsoft to Launch Major VoIP Move Early Next Year*, InformationWeek (Nov. 7, 2006), <http://www.informationweek.com/hardware/showArticle.jhtml?articleID=193600273>; C. Mellor, *Microsoft Informer: Microsoft Vista to Get VoIP*, CIO.com (Nov. 8, 2006), http://www.cio.com/blog_view.html?CID=26481 (Microsoft’s new software “will group VoIP, e-mail, video-conferencing and instant messaging into a single communications facility that will be incorporated into desktop and server applications as well as the Vista OS.”).

¹¹³ J. Halpern, Bernstein, *U.S. Telecom: Internal Transformation Holds the Key to Unlocking Long-Term TelCo Values* at 2 (July 14, 2006); see also S. Cleland, et al., Precursor Group, “*Telecom Tunnel Vision*” of SBC-T and VZ-MCIP at 1 (Mar. 10, 2005) (“MSFT’s just-announced Live Communications Server (LCS) offering is a potentially game-changing edge application that threatens to dis-intermediate SBC-T and VZ-MCIP’s coveted enterprise customers. MSFT’s inexpensive LCS application essentially subordinates voice as sub-application of Office. Ultimately, we see MSFT and other tech companies eroding much of T’s and MCIP’s higher-value-added revenue. Over time, what enterprises equipped with MSFT LCS mostly will need from SBC-T and VZ-MCIP is just a fat dumb pipe.”) (emphasis omitted); M. McCormack, et al., Bear Stearns, *Key Takeaways from VON Conference* at 2 (Mar. 20, 2006) (Microsoft’s new service “may be gaining critical mass among customers and represents a strong selling point to deploy VoIP in the enterprise.”).

¹¹⁴ J. Henry, *Analyzing Wireless Use Pays Off*, Arkansas Business (Apr. 24, 2006).

¹¹⁵ *Yankee Group Issues Results of 2005 Wireless User Surveys; Analysis Reveals Burgeoning Trends and Provides Actionable Recommendations*, Business Wire (June 21, 2005).

wireless e-mail extensively, and much of this messaging substitutes for voice calls. As of year-end 2005, there were an estimated 6.0 million data device subscribers (Blackberries, laptop cards, and so forth), which is expected to grow to 16.4 million by the end of 2008.¹¹⁶

II. RE-REGULATING VERIZON AND OTHER CARRIERS AS DOMINANT IN THE PROVISION OF LONG-DISTANCE SERVICE IS UNNECESSARY AND COUNTERPRODUCTIVE

As detailed above, the developments in the marketplace in the time since this proceeding was initiated further confirm that there are multiple providers of communications services that are competing without regard to technology, and that this competition will only continue and grow more intense going forward. These developments have a number of key implications for this proceeding.

First, any competitive analysis must be appropriately forward-looking, and must take into account all types of competing voice providers, as well as reasonable substitutes for voice services, that are already present or are now emerging regardless of technology. The Commission previously has held that, where, as here, new technologies and new providers are emerging, competition “is more appropriately analyzed in view of larger trends in the marketplace, rather than exclusively through the snapshot data that may quickly and predictably be rendered obsolete as th[e] market continues to evolve.”¹¹⁷ The Commission accordingly will “consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.”¹¹⁸ The Commission will examine both “actual and potential competition” that “either is present, or readily could be present.”¹¹⁹ And the Commission has repeatedly recognized that the proper analysis should not be limited to “strict measurement of market share,”¹²⁰ and that any 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.”¹²¹ In particular, market share analysis “may misstate the competitive significance of existing firms and new entrants.”¹²² The Commission has recognized that “the presence and capacity of other firms matter more for future competitive conditions than do current subscriber-based market shares.”¹²³

¹¹⁶ J. Armstrong, *et al.*, Goldman Sachs, *2006 Outlook – Stuck In Neutral* at 27 (Jan. 13, 2006).

¹¹⁷ *Wireline Broadband Order* ¶ 50.

¹¹⁸ *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, ¶ 41 (2004) (“*AT&T Wireless/Cingular Order*”).

¹¹⁹ *Omaha Forbearance Order* ¶ 62.

¹²⁰ *Id.* ¶ 31.

¹²¹ *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).

¹²² *Verizon/MCI Order* ¶ 74.

¹²³ *AT&T Wireless/Cingular Order* ¶ 148.

Applying this framework, the forward-looking competitive analysis must take into account the full range of technologies and services that provide voice services, including cable, wireless, over-the-top VoIP, and traditional wireline competitors, as well as other alternatives to traditional voice service such as e-mail, instant messaging, WiFi, WiMAX, and BPL. As the Commission has found with respect to both mass-market and enterprise customers, “intermodal competition from cable telephony, mobile wireless service providers, and providers of certain VoIP services will likely continue to provide these customers with viable alternatives.”¹²⁴ The Commission has also recognized that consumers are increasingly using their broadband connections to obtain competitive voice services, and that broadband competition is robust and growing. The Commission has acknowledged that “[c]hanges in technology are spurring innovation in the use of networks” and that there are a “wide variety of competitive and potentially competitive [broadband] providers and offerings . . . emerging in this marketplace,” such as “satellite and wireless, and even broadband over powerline in certain locations.”¹²⁵

Second, for purposes of this proceeding, the Commission should recognize there is no longer a separate market for stand alone long-distance services, but a single “any distance” market for communications services regardless of geography that includes both distance-insensitive services as well as any stand alone offerings. The fact that these services all compete with one another in the same market is best evidenced by the degree to which distance-insensitive services have supplanted previous stand-alone offerings, both as a general matter and for long distance in particular.

In the time since this proceeding was initiated, consumers have increasingly demanded distance-insensitive communications services, and service providers have responded accordingly. Today, service providers of every variety – wireline, cable, wireless, and VoIP alike – all routinely offer distance-insensitive calling plans. *See* Exhibits 1-8. These distance-insensitive service plans are increasingly displacing stand-alone offerings, including stand-alone long-distance services. According to J.D. Power and Associates, “[s]eventy-five percent of U.S. households now receive their local and long distance telephone service from one provider.”¹²⁶ The number of customers purchasing distance-insensitive services has been steadily increasing each year, a trend that analysts expect will continue.¹²⁷ As shown above, moreover, wireless distance-insensitive plans also substitute in particular for what previously would have been wireline voice long-distance calls.

¹²⁴ *Verizon/MCI Order* ¶ 77 (referring to enterprise customers); *see id.* ¶ 102 (concluding that for mass-market customers, “competition from intermodal competitors is growing quickly, and we expect it to become increasingly significant in the years to come.”); *id.* ¶ 105 (“[W]e find that intermodal competitors, including facilities-based VoIP and mobile wireless providers, are likely to capture an increasing share of mass market local and long distance services.”).

¹²⁵ *Wireline Broadband Order* ¶ 50.

¹²⁶ J.D. Power & Associates Press Release, *J.D. Power & Associates Reports: Three-Quarters of Households Now Bundle Local and Long-Distance Telephone Service with One Provider* (July 13, 2005).

¹²⁷ *See, e.g.,* D. Lemelin, In-Stat, *Wireline Remains in Decline: US Wireline Service 2005* at 19 (Mar. 2006) (noting “[c]ontinued consumer migration to alternative ‘any distance’ voice technology, including VoIP telephony and wireless services that often bundle minutes of use, or provide unlimited minutes of local and domestic long distance.”).

Although various providers still offer stand-alone long-distance services, this does not suggest there is a separate market for these services. As an initial matter, these stand-alone offerings are due in part to regulatory requirements, not market forces. State regulations often require local telephone companies to offer stand-alone local services, and equal access rules require local telephone companies to enable customers to select a separate long-distance carrier. In the absence of such regulation, it is not clear there would be market-driven supply or demand for stand-alone services. As the Commission has found, regulations requiring certain offerings tend to “skew” offerings in the marketplace.¹²⁸

Regardless, it is clear that any stand-alone services are disciplined by distance-insensitive services and bundles that consumers are increasingly purchasing. Different services are considered to be part of the same product market so long as they are considered reasonably interchangeable by “marginal” customers – that is, the subset of customers who will switch between the services in the putative market in response to small changes in relative prices. The Commission has recognized that in order for two competing technologies to constrain each other’s prices, it “only requires that there be evidence of sufficient substitution for significant segments of the mass market,” not that every customer views the two services as substitutes.¹²⁹ And, as noted above, the facts show that large numbers already have switched to distance-insensitive plans and are continuing to do so.

In any event, while the facts show there no longer is a separate long-distance market, it is all the more apparent that there is no separate *wireline* long-distance market. As demonstrated above, consumers use cable, wireless, and VoIP services extensively in place of wireline long-distance services, and these services must therefore be included in any analysis of whether any provider or group of providers could dominate the long-distance component of voice telephone services.

Third, under current market conditions, there is no plausible argument that traditional wireline carriers could use their local networks to dominate the provision of voice long-distance service. Accordingly, there is no reason to re-regulate long-distance services offered by a subset of providers just because the section 272 separation requirements have sunset on the schedule established by Congress. As demonstrated above, there are now many competitive alternatives available, and consumers are using these alternatives to a large and increasing extent, both as a general matter and for their voice long-distance calls in particular.

In light of these circumstances, it is implausible that any single provider could use its local market presence to dominate the provision of long-distance services. Indeed, the Commission has repeatedly recognized that the long-distance market is competitive,¹³⁰ that

¹²⁸ *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, ¶ 261 (2003) (“[R]ules requiring line sharing may skew competitive LECs’ incentives toward providing a broadband-only service to mass market consumers, rather than a voice-only service or, perhaps more importantly, a bundled voice and xDSL service offering.”).

¹²⁹ *Verizon/MCI Order* ¶ 91.

¹³⁰ See, e.g., *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area*, 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, ¶ 86 (1997) (“*LEC Classification Order*”) (“Because we previously have found that

barriers to entry are low,¹³¹ and that demand for long-distance services is very elastic, both in the mass market and especially in the enterprise market.¹³² And those conclusions apply with even greater force today, with the wide proliferation of intermodal alternatives. For example, in 2006, cable, wireless, VoIP, and wireline providers added a *net* total of approximately 21 million subscribers, which indicates that a large fraction of mass-market customers are switching between these various alternatives, or switching between various providers, at any given point in time.¹³³ Moreover, this is a conservative total because *gross* adds, which providers generally do not report, are undoubtedly higher due to customer churn.

Although it is impossible to develop precise market shares that take into account all of the voice and non-voice alternatives available to consumers for long distance, even examining a subset of those alternatives shows that any individual provider serves only a small portion of consumer demand. As demonstrated above, ILEC wireline access lines represent less than 30 percent of total voice connections. *See* Figure 13, *supra*. This is well below the levels at which the Commission previously made findings of non-dominance with respect to long-distance services, even before the advent of intermodal competition.¹³⁴

Moreover, just as it is true that no carrier is dominant in the provision of traditional circuit-switched long-distance voice services, it is if anything even more true with respect to advanced VoIP services. Both the broadband services over which they are provided and the VoIP services themselves are inherently agnostic with respect to geographic boundaries and are being offered by a wide range of providers across the country. These services can be offered over any broadband connection, which are now available to 90 percent or more of the population. Thus, there is no plausible argument that any single provider is or could become

markets for long distance services are substantially competitive in most areas, marketplace forces should effectively deter carriers that face competition from engaging in the practices that Congress sought to address through the section 214 requirements.”); *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, ¶ 36 n.107 (2005) (collecting orders in which the FCC found the long-distance market to be competitive).

¹³¹ *Verizon/MCI Order* ¶ 81 (noting the “presence of extensive competitive national wholesale interexchange networks with excess capacity”).

¹³² *See Motion of AT&T Corp. To Be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271, ¶ 63 (1995) (“*AT&T Reclassification Order*”) (“[R]esidential customers are highly demand-elastic and will switch to or from AT&T in order to obtain price reductions and desired features.”); *Verizon/MCI Order* ¶ 56 (“medium and large enterprise customers are sophisticated, high-volume purchasers of communications services that demand high-capacity communications services, and because there will remain a significant number of carriers competing in the market.”).

¹³³ J. Chaplin, *et al.*, JPMorgan, *Telecom Services/Wireline: State of the Industry: Consumer* at Table 21 (Jan. 13, 2006) (net adds for VoIP lines); J. Chaplin, *et al.*, JPMorgan, *Telecom Services/Wireline: Fourth Quarter 2006 Preview* at Tables 12 & 23 (Jan. 23, 2007) (net adds for cable, ILEC, and wireless lines).

¹³⁴ When the Commission declared AT&T to be non-dominant in the provision of domestic interstate interexchange services, AT&T’s market share of such services was estimated to be less than 60 percent. *AT&T Reclassification Order* ¶ 67. Likewise, AT&T’s share of the international message telephone service market was estimated to be sixty percent when AT&T was declared non-dominant in the provision of those services, and AT&T’s average market share in 76 select countries was 74 percent, and AT&T faced no competition at all in four countries. *Motion of AT&T Corp. To Be Declared Non-Dominant for International Service*, Order, 11 FCC Rcd 17963, ¶ 40 (1996).

dominant in the provision of VoIP services. The Commission must accordingly find that, at a minimum, all providers are non-dominant in the provision of VoIP services.¹³⁵

Fourth, and finally, re-regulating long-distance services provided by a subset of providers would only harm consumers by needlessly reducing efficiency, increasing cost and hindering deployment of advanced broadband networks and services.

As the Commission has found, “regulations associated with dominant carrier classification can . . . have undesirable effects on competition.”¹³⁶ For example, “[i]n these environments that are competitive for end users, applying these dominant carrier regulations to [a carrier] limits its ability to respond to competitive forces and, therefore, its ability quickly to offer consumers new pricing plans or service packages.”¹³⁷ The Commission has also recognized that requiring carriers to file tariffs for long-distance service “may harm consumers by impeding the development of vigorous competition, which could lead to higher rates.”¹³⁸ In particular, such requirements “(1) remov[e] incentives for competitive price discounting; (2) reduce[e] or tak[e] away carriers’ ability to make rapid, efficient responses to changes in demand and cost; (3) impos[e] costs on carriers that attempt to make new offerings; and (4) prevent[] consumers from seeking out or obtaining service arrangements specifically tailored to their needs.”¹³⁹ The Supreme Court has likewise acknowledged its “considerable sympathy” with the view that tariff “filing costs raise artificial barriers to entry and that the publication of rates facilitates parallel pricing and stifles price competition.”¹⁴⁰

Re-regulating Verizon and other carriers as dominant also would violate well-settled policies favoring a level regulatory playing field for new investment. As the Commission has held, “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.”¹⁴¹ The Commission will “neither unfairly favor nor disfavor one technology over another.”¹⁴² Given the extensive competition that now exists for voice services, asymmetrical regulation imposes artificial price constraints that impede full competition among providers and harms consumers.¹⁴³

¹³⁵ The Commission also should confirm in its ongoing IP-Enabled Services proceeding that VoIP services are preemptively interstate in nature and deregulated, regardless of provider. *See IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

¹³⁶ *LEC Classification Order* ¶ 90.

¹³⁷ *Omaha Forbearance Order* ¶ 47.

¹³⁸ *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, As Amended*, Second Report and Order, 11 FCC Rcd 20730, ¶ 37 (1996).

¹³⁹ *Id.* ¶ 53.

¹⁴⁰ *MCI Telecommunications Corp. v. AT&T*, 512 U.S. 218, 233 (1994).

¹⁴¹ *Omaha Forbearance Order* ¶ 78.

¹⁴² *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 47 (1997).

¹⁴³ *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).

The harms of re-imposing dominant carrier regulation would be even greater in the case of advanced broadband networks and services that Verizon and other carriers are deploying, and in the case of advanced VoIP services. These new networks and services do not conform to any geographic boundaries, much less the artificial boundaries traditionally used to define and regulate separate local and long-distance services and markets. These advanced networks are instead designed to provide multiple services – voice, data, and in some cases, video – using packet switches, computer servers, and other types of equipment that may be located more efficiently at some distance from the end user. As the Commission has noted, “[f]ully evolved digital broadband will virtually eliminate geographic distance as an obstacle to acquiring information, and dramatically reduce the time it takes to access information.”¹⁴⁴ Imposing regulation on these networks and services based on the artificial service and geographic categories of the past would impede the ability of providers to deploy these networks and services based on the most efficient engineering and business considerations, and require instead that they conform to outdated regulatory requirements. By reducing the efficiency of these new networks, such regulation would delay or deter their deployment, contrary to Congress’s and the Commission’s stated goals of promoting broadband deployment.¹⁴⁵

In sum, dominant carrier regulation of Verizon’s and other carriers’ long-distance services 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.

Very truly yours,

A handwritten signature in black ink that reads "Dee May". The signature is written in a cursive, flowing style.

Attachments

¹⁴⁴ *Service Rules and Procedures to Govern the Use of Aeronautical Mobile Satellite Service Earth Stations in Frequency Bands Allocated to the Fixed Satellite Service*, Notice of Proposed Rulemaking, 20 FCC Rcd 2906, ¶ 2 (2005).

¹⁴⁵ *See, e.g., Wireline Broadband Order* ¶ 77; 47 U.S.C. § 157 nt. (Section 706 of the Act).