

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of )  
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Petitions of the Verizon Telephone )  
Companies for Forbearance Pursuant to ) WC Docket No. 06-172  
47 U.S.C. § 160(c) in the Boston, New York, )  
Philadelphia, Pittsburgh, Providence, and )  
Virginia Beach Metropolitan Statistical )  
Areas )  
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SPRINT NEXTEL CORPORATION'S  
OPPOSITION TO PETITIONS FOR FORBEARANCE

Vonya B. McCann  
John E. Benedict  
Sprint Nextel  
2001 Edmund Halley Drive  
2nd Floor  
Reston, VA 20191  
703-592-5188

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*Computer Inquiry* rules<sup>3</sup> with respect to Verizon's incumbent local exchange carrier ("ILEC") operations for mass market, enterprise, and wholesale services that it dominates in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach MSAs. By the Petitions, Verizon seeks to erode the market-opening requirements applicable to ILECs and the market protections applicable to all common carriers. Assuming the petitions are not simply dismissed in response to the pending motion of ACN Communications, et al.,<sup>4</sup> the petitions should be denied.

First, Verizon has made no showing that could justify forbearance from section 251(c) of the Act.<sup>5</sup> Verizon points to market share gains by mass market *retail* competitors, but the Act also focuses on *wholesale* competition. Verizon fails to show that requesting carriers have any genuine alternatives to its Bell Operating Company's ("BOC") facilities to compete, and Verizon remains unquestionably dominant in each of these MSAs. Unbundled network elements ("UNEs") – particularly loops, subloops, and transport – remain critical to CLEC competitors at the vast majority of wire centers.

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<sup>3</sup> 47 U.S.C. § 251(c); 47 C.F.R. §§ 61.38, 61.41-61.49, 65.1-65.830. See Amendment of Sec. 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), CC Docket No. 85-229, Report and Order, 104 FCC 2d 958 (1986); Application of ONA and Nondiscrimination Safeguards to GTE Corp., CC Docket No. 92-256, Report and Order, 9 FCC Rcd 4922 (1994).

<sup>4</sup> See Public Notice DA 06-2056 (Oct. 18, 2006); Letter from Andrew Lipman, et al. (counsel for ACN Communications, et al.) to Marlene Dortch (FCC), WC Docket No. 06-172 (filed Oct. 16, 2006). Sprint Nextel filed in support of dismissal on October 30, 2006. More recently, the New Hampshire Public Utilities Commission "join[ed] in the competitive carriers' motion to dismiss" the petitions, citing Verizon's violation of law, "misappropriation of proprietary data," and abuse of "its privileged role as E911 database administrator." NHPUC Joinder in Competitive Carriers' Motion to Dismiss at 1, 3, 4 (filed Feb. 1, 2007).

<sup>5</sup> Section 251(c) requires ILECs to grant access to their networks and services, by providing interconnection, unbundled network elements ("UNEs"), resale, and collocation.

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Sprint Nextel's own experience shows that Verizon's market dominance – its control over the local loop and special access, and the lack of alternative suppliers – precludes any finding that enterprise and wholesale markets are competitive.

Second, Verizon provides insufficient justification for its request for exemption from dominant carrier regulation under Title II in the MSAs. It seeks effectively complete ILEC deregulation and elimination of the consumer and market protections that accompany those rules. Again, it bases its request solely on the alleged presence of retail competition, and chiefly mass market competition. Verizon fails its burden of showing that it is no longer dominant in wholesale or enterprise markets. Even if one accepted every one of Verizon's assertions about the presence of mass market retail competition in these MSAs, the Petitions provide no basis for forbearing from its Title II obligations at this time.

Third, the Petitions are grossly overbroad. Verizon has ignored the Commission's recognition that forbearance cannot extend where competition is not established, and it has ignored the Commission's insistence on granularity. Verizon has ignored the significant limits of the *Qwest Omaha Order's* grant of forbearance,<sup>6</sup> and seeks far wider statutory and regulatory exemptions than Qwest sought or ever was allowed. In fact, given the greater market power of Verizon (extending even farther than Qwest's in Omaha), even that forbearance would be unjustified.

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<sup>6</sup> Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha MSA, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415 ("Qwest Omaha Order") at ¶ 69 n.186 ("reject[ing] the idea of measuring facilities-based coverage on an MSA basis," because "[u]sing such a broad geographic region would not allow us to determine precisely where facilities-based competition exists"), appeal pending sub nom. Qwest Corp. v. FCC, No. 05-1450 (D.C. Cir.).

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Fourth, the evidence does not support forbearance. Verizon's evidence is inadequate, misleading, and unreliable. Verizon's claims about mass market competition and non-ILEC fiber are based on sources that cannot be vetted. It may have abused its ILEC position to misappropriate competitors' E911 data and appears to have violated the *Verizon/MCI Protective Order*. It refused to allow other parties fully unredacted access to its submission, in defiance of the Commission's first protective order. Scrutinizing Verizon's claims also reveals that its line losses are largely the result of its customers' adopting DSL, not switching to competitors, and it points to fiber where there really is none available. It ignores Verizon's acquisition of MCI. In truth, these six MSAs are not sufficiently competitive. Although cable telephony providers are making progress in the retail mass market, competitors of all types must rely on Verizon facilities to reach their customers, particularly in the enterprise and wireless markets. Verizon claims there are wholesale alternatives, but Sprint Nextel's own data shows they are very rare. The Commission and the Department of Justice have recognized that the special access market is not competitive, and wholesale alternatives to Verizon are far too limited to check its market power.

Fifth, for all of these reasons, Verizon has failed to meet the stringent standards of section 10.<sup>7</sup> Instead of promoting competition, the Petitions are anticompetitive, harmful to consumers, and contrary to the public interest.

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<sup>7</sup> 47 U.S.C. § 160.

**II. VERIZON'S PETITIONS SHOULD BE DENIED.**

**A. The Petitions should be denied as to Verizon's section 251(c) obligations.**

Verizon has not made a sufficient showing to justify forbearance from enforcing its obligations under section 251(c) of the Act. Verizon points to a growing competitive presence in the retail market. But it relies on alleged retail competition to justify total deregulation in the retail and wholesale markets. In adopting the Telecommunications Act of 1996,<sup>8</sup> Congress understood that fully competitive markets must develop before ILECs can be deregulated. Accordingly, any competitors' gains in the retail market matter little, as long as competitors remain dependent on Verizon for facilities, services, interconnection, and collocation.

Verizon points to retail competition with cable TV systems, "traditional CLECs," VoIP providers, "systems integrators," and wireless carriers.<sup>9</sup> None of this establishes that Verizon is no longer a dominant carrier in the wholesale market in these MSAs. Verizon provides no substantive or credible evidence that overbuilds yet represent a sufficient competitive presence in the wholesale market. Cable TV-based facilities are generally concentrated in residential areas -- often split among multiple, non-contiguous systems -- and provide only minimal wholesale services for transport and no alternatives for loops. Even where competitive fiber facilities have been constructed,<sup>10</sup> only Verizon can offer ubiquitous coverage and complete building access. Wireless carriers and VoIP providers do not offer wholesale alternatives to Verizon facilities for either new entrants

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<sup>8</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>9</sup> Petition at 1-3.

<sup>10</sup> The leading cable operator in Norfolk has expanded its network to try to reach commercial buildings, for example, but even there its reach is limited.

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or existing competitors. Indeed, they are overwhelmingly dependent on Verizon to reach their own customers. Thanks to its legacy monopoly network, Verizon has bottleneck control over its competitors, even intermodal competitors.

Consequently, competitors still necessarily must rely on access to Verizon's ILEC networks to compete. Those "traditional CLECs" obviously depend on access to unbundled network elements under section 251(c) to provide their service. Other wireline carriers also rely on access to network elements to support their ability to compete against Verizon in these markets.<sup>11</sup>

Thus, regardless of Verizon's allegations about any growth of retail competition in its target MSAs and a decline in Verizon's retail market share, its Petitions fail to show that, even if it is facing a modest but growing measure of retail mass market competition, it no longer dominates the enterprise, wholesale, and special access markets,<sup>12</sup> or that competitors have alternatives to unbundled network elements under section 251.<sup>13</sup>

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<sup>11</sup> The lifting of selected unbundling obligations in the *Triennial Review Remand Order* and forbearance grants to BOCs have had negative effects on what Verizon calls "traditional CLECs." Petition at App. A, p. 18. Verizon's Petitions thus tacitly acknowledge that these carriers now pose less of a threat to its market dominance.

<sup>12</sup> Commenting on BellSouth's request for waiver of similar requirements, Qwest opposed waiver for "the megaBOCs," explaining "there is no record support for non-dominant treatment of post-merger SBC or Verizon." In a separate petition for forbearance, Qwest also argued that their market power actually warrants forbearing from enforcing unbundling rules that could otherwise require other ILECs to allow the megaBOCs to convert former AT&T and MCI special access circuits to UNEs. Comments of Qwest Communications Int'l Inc., BellSouth Corporation's Petition for Waiver, WC Docket No. 05-277 (filed Oct. 18, 2005) at 6; Qwest Communications Int'l Petition for Forbearance from Enforcement of the Commission's Circuit Conversion Rules as They Apply to Post-Merger Verizon/MCI and SBC/AT&T, WC Docket No. 05-294 (filed Oct. 4, 2005).

<sup>13</sup> If the Commission issues any order on the merits, it should expressly reiterate that Verizon retains the obligation to provide wholesale access to all section 271 checklist items. 47 U.S.C. § 271. It should also ensure that Verizon meets all voluntary

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**B. The Petitions must be denied as to Verizon's Title II and *Computer Inquiry* obligations.**

Verizon also seeks sweeping exemption from its Title II and *Computer Inquiry* obligations.<sup>14</sup> It seeks exemption from dominant carrier tariffing obligations<sup>15</sup> and price cap rules under Part 61.<sup>16</sup> It seeks exemption from section 214 procedures and Part 63 rules applicable to dominant carriers.<sup>17</sup> It also seeks exemption from all *Computer III* requirements, including comparably efficient interconnection ("CEI") and Open Network Architecture ("ONA") rules designed to prevent network discrimination against facilities-based competitors.

Verizon's sole justification is its claim that it no longer has market power in these MSAs' markets for its ILEC services. Sprint Nextel disputes Verizon's claim that it lacks retail market power, because it plainly remains the dominant retail local exchange carrier in these MSAs, continues to hold the vast majority of lines, and clearly has power over competitors and customers. The fact that cable-TV based competitors are beginning to provide retail competitive pressure does little to remove Verizon's power in the enterprise and wholesale markets. The Petitions certainly fail to prove that it lacks

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commitments that were adopted in the *Verizon/MCI Order*. These include its section 251(c) unbundling commitments (including availability of loops and transport at existing rates, at least through the full 24-month term of the voluntary commitment), and all remaining special access commitments. Verizon Comms., Inc. and MCI, Inc. Applications for Approval of Transfer of Control, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433 at ¶¶ 2, 24, 48, 51 (2005) ("Verizon/MCI Order").

<sup>14</sup> Petition at 3-4 n.3.

<sup>15</sup> 47 C.F.R. §§ 61.32, 61.33, 61.38, 61.58 and 61.59.

<sup>16</sup> 47 C.F.R. §§ 61.41-61.49.

<sup>17</sup> 47 U.S.C. § 214; 47 C.F.R. §§ 63.03, 63.04, 63.60-63.66.

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market power in the enterprise or wholesale markets. The Petitions also ignore that retail competitors -- particularly in the enterprise market -- still rely heavily on Verizon facilities to provide services in each of these MSAs, and Verizon remains unquestionably dominant in the wholesale market because of its power over special access.

Verizon's Petitions would not promote competitive market conditions, and would only undermine competition. Verizon's suggestion that section 201 and 202 would be sufficient to protect against unjust and unreasonable rates and discrimination<sup>18</sup> might hold some truth in certain segments of the retail mass market in some areas. It can provide little comfort, however, to Verizon's enterprise and wholesale competitors. Forbearance would give Verizon undue control over the wholesale market and thus over key costs of retail competitors.

**C. The petitions should be denied as overbroad.**

The Petitions are grossly overbroad. Verizon claims it seeks "substantially the same relief" granted to Qwest.<sup>19</sup> Yet Verizon has ignored the very significant limits of the *Qwest Omaha Order's* grant of forbearance, both in terms of the scope of relief it allowed and the granular level of evidence the Commission required to justify that relief.<sup>20</sup>

In reality, Verizon seeks the dismantling of a much broader array of statutory and regulatory safeguards. Its Petitions cover a wider range of services and markets, and

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<sup>18</sup> Petition at 24 n. 38.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> Verizon also ignores the Commission's clear instruction that the *Qwest Omaha Order* does not "adopt ... rules of general applicability," and that "each case must be judged on its own merits." *Qwest Omaha Order* at ¶ 2.

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affect larger geographic areas, than Qwest sought – and they seek much wider exemptions than Qwest ever received. Verizon ignores the Commission's recognition that forbearance cannot extend where competition is not established. The *Qwest Omaha Order* limited regulatory relief for mass market retail services to areas where a cable telephony provider was currently offering service and had already established a substantial market share. Verizon seeks exemption throughout these MSAs, rather than in wire centers where cable operators are currently providing telephony services. It relies on its *expectation* that cable telephony will be introduced throughout these MSAs. Its prediction of competition is broader than the reality of competition today. Verizon also ignores the many low-density areas within these MSAs.<sup>21</sup> Unlike in Omaha, cable telephony is only now establishing itself, deployment is not wholly completed, and competitive market share is more limited than at the time of Qwest's petition.

Verizon also seeks elimination of unbundling obligations, asking the Commission to assume it will always have incentive to continue providing non-UNE loops. The *Qwest Omaha Order*, however, noted that Qwest is specifically *required* to continue providing unbundled loops -- and at just and reasonable rates.<sup>22</sup> Additionally, the Commission has announced that its recent partial grant of forbearance to ACS of

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<sup>21</sup> VSCC at 2. The MSAs targeted by Verizon are very large, with many rural areas. The Virginia Beach MSA, for example, includes nine cities and seven counties, is served by two Verizon companies (each with three rate zones), and has a total of about 53 wire centers. *Id.* at 2. The MSA covers 2,368 square miles, including an entire county with a population density of just 24.5 people per square mile.

<sup>22</sup> *Qwest Omaha Order* at ¶¶ 79, 80, 96 (reiterating Qwest's obligations to provide unbundled network elements under section 271(c)(2)(B)). The Commission cannot assume such obligations always apply to Verizon. Its legacy GTE properties, including Verizon South in much of the Virginia Beach MSA, are not Bell Operating companies, even though now owned by one.

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Anchorage is conditioned on loops and subloops being available in all affected wire centers. It applied this condition even though ACS is not a BOC and not subject to section 271(c)(2)(B) unbundling requirements.<sup>23</sup>

Verizon points to theoretical competition -- competition that could develop -- when the *Qwest Omaha Order* based its decision principally on facilities-based competition that actually exists today. In determining whether and where any transport or high-cap unbundling could be removed, the *Qwest Omaha Order* both required granular evidence -- "factors unique to" and "evidence particular to the Omaha MSA"<sup>24</sup> -- and limited relief to a small percentage of total wire centers.<sup>25</sup>

Verizon's Petitions do not limit their requests for forbearance just to portions of the MSAs where competition supposedly is securely established. The *Triennial Review Remand Order* provided for relief from unbundling on a building- or route-specific basis, based on evidence of competition in wire centers.<sup>26</sup> The Petitions, however, seek exemption throughout these MSAs with no granularity whatsoever, and fail to "include a

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<sup>23</sup> The Commission also set benchmark rates and a one-year transition period before forbearance takes effect. Petition of ACS of Anchorage, Inc. Pursuant to Sec. 10 of the Communications Act of 1934, as Amended, for Forbearance from Secs. 251(c)(3) and 252(d)(1) in the Anchorage Study Area, WC Docket No. 05-281, Memorandum Opinion and Order, FCC 06-188 at ¶¶ 39, 47 (rel. Jan. 30, 2007) ("ACS Anchorage Order"). Several appeals of the order have been filed.

<sup>24</sup> *Qwest Omaha Order* at ¶¶ 2 n.4; 14 n.46; See also id. at ¶¶ 14, 67 n.177; 69 n.189 (cautioning that the order is limited to a "specific geographic market").

<sup>25</sup> The *ACS Anchorage Order* also limits forbearance. It applies to fewer than half of wire centers in the Anchorage study area.

<sup>26</sup> Unbundled Access to Network Elements, WC Docket No. 04-313, Order on Remand, 20 FCC Rcd 2533 (2005), aff'd, *Covad v. FCC*, 450 F.3d 528 (D.C. Cir. 2006) ("Triennial Review Remand Order").

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wire center by wire center analysis."<sup>27</sup> While enthusiastically pointing to the *Qwest Omaha Order*, Verizon ignores the Commission's insistence on review of competition and facilities by wire center.<sup>28</sup> Just ten years after passage of the 1996 Act, Verizon cannot pretend that facilities-based competition is in place everywhere in these MSAs.<sup>29</sup> In enterprise and wholesale services, in particular, Verizon cannot credibly suggest that competitive facilities are so ubiquitous to justify forbearance throughout these MSAs -- some of the largest in the country, and affecting millions of residences and many hundreds of thousands of commercial buildings.

**III. THE EVIDENCE DOES NOT JUSTIFY FORBEARANCE.**

**A. Verizon's evidence is inadequate and misleading.**

The Virginia State Corporation Commission recognizes that Verizon's evidence is wholly "insufficient."<sup>30</sup> What little evidence Verizon has provided is unreliable and misleading. To start out, Verizon heavily redacted its submissions. For months, it refused to allow parties (including Sprint Nextel) to see the information, even though the

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<sup>27</sup> Comments of the Virginia State Corporation Commission ("VSCC") at 6.

<sup>28</sup> *Id.* at ¶ 69 & n.186.

<sup>29</sup> Verizon claims there is at least one "fiber provider" in [ ]% of wire centers in the Boston MSA that account for 80% of high-capacity special access revenues, for example. Petition at 21. Even assuming competitive fiber were actually available in each of those offices (something disproved by Sprint Nextel's provisioning experience), that does not make a competitive market. Even assuming that fiber were always suitable and available to competitors, Verizon concedes it has an absolute monopoly in at least [ ]% of even those highest-revenue wire centers. It has a monopoly effectively in all offices at lower capacity levels.

<sup>30</sup> VSCC at 8.

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protective order gave Verizon no right to refuse access.<sup>31</sup> If competition is so extensive and so vibrant as to meeting section 10's standards, the evidence should be manifest and public, not divined from confidential data.

Verizon claimed it withheld the information because it is proprietary to its competitors. Ironically, then, Verizon has unilaterally accessed proprietary information held in trust as ILEC, appropriated it for its own purposes, and then created selective compilations ostensibly to justify its regulatory advocacy. This raises legitimate concerns that Verizon may have violated laws and its interconnection agreements and abused its privileged ILEC position as E911 administrator to misappropriate proprietary data of competitors, and then used that data to manufacture evidence for its anticompetitive deregulatory advocacy efforts. Many interested parties -- including both competitors and major customers -- have argued that the Petitions must be dismissed for those reasons alone. It is also further troubling that Verizon apparently violated the protective order governing competitors' data submitted into the Verizon/MCI merger proceeding record.

Even apart from whether Verizon unlawfully has misappropriated confidential data, it is an open question whether the evidence Verizon fashioned from it is reliable. Verizon is the only party that had access to the selected information that it extracted from competitors' data. Because no other party can expect to have access to the underlying data, it is impossible for Verizon's evidentiary claims to be vetted. For that reason alone,

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<sup>31</sup> Verizon's approach prevented scrutiny by the public and handicapped the development of a full record for the Commission. That prompted a group of competitive carriers to file a motion to compel, something that should have been unnecessary. Under the Administrative Procedure Act, the Commission cannot grant any forbearance sought by Verizon where the public has been denied full opportunity to learn of, review, and comment on a petition and all of the evidence. 5 U.S.C. § 553, *et seq.* ("APA").

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the Commission should disregard the data.<sup>32</sup> That is especially true when Verizon may have acted unlawfully in accessing and manipulating its sources in the first place.

The Petitions betray a remarkably cavalier attitude toward evidence in other ways, too. For example, Verizon claims that its retail residential switched access lines in the Boston MSA declined by approximately [ ]% between 2000 and 2005,<sup>33</sup> which it attributes to gains by competitors. But that is misleading, because the great majority of its line loss is from second lines. ARMIS data shows primary lines in Massachusetts were down by only 5% between 2002 (the first year such data are available) and 2005, while secondary lines were down by 42%.<sup>34</sup> Verizon's line loss likely had far less to do with competition than with substitution of DSL service for former second lines. Indeed, company-wide, Verizon's DSL lines rose from fewer than 150,000 to more than 5.1 million between early 2000 and year-end 2005,<sup>35</sup> such that its loss of second line revenues has been eclipsed by higher DSL revenues. And while Verizon speculates that

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<sup>32</sup> Commenting on the GAO Draft Report, the Commission remarked:

Significantly, the FCC was not provided the data used to perform these studies. Without access to the data used to perform these studies, the FCC cannot evaluate the reliability of the GAO studies or assess the validity of the conclusions drawn therefrom.

GAO Report at App. III, Letter from to Mark Goldstein (GAO) from Anthony Dale (FCC), Nov. 13, 2006, at 3. If the Commission cannot rely on the GAO's studies and conclusions, it surely cannot rely on Verizon's Petitions here.

<sup>33</sup> Petition at App. A ¶ 7.

<sup>34</sup> ARMIS 43-08, Table III, row 320, cols. fg & fh. Residential primary lines declined by 98,106, while residential non-primary lines declined by 141,398. In 2002, secondary lines were 14.9% of the total. Today, they represent only 9.7% of the total.

<sup>35</sup> Verizon 2000 Annual Report at 7; Verizon 2005 Annual Report at 3.

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competitors have gained [ ]% of residential lines in the MSA, it provides no evidence -- and tellingly admits it has only "incomplete data" for the claim.<sup>36</sup>

Likewise, the Petitions' fiber mileage comparisons are incomplete and misleading. Verizon's fiber maps are practically useless. The maps show some "on-fiber buildings" where there appear to be no buildings. They show fiber where fiber does not and cannot serve buildings, and where it is too far from the building to be of practical use. They show long haul fiber facilities as though they are local. Verizon tallies competitive mileage without explaining how it is calculated, and without regard to where it is or whether it is even available to competitors. Verizon's network is ubiquitous, but what little competitive fiber exists is concentrated in central business districts, with competing fibers commonly running side by side.

At the same time, Verizon does not disclose the scale of its own vast network facilities, whether copper or fiber. Doing so would show how paltry competitive facilities are in comparison. Verizon's ILEC fiber, moreover, unlike other carrier's facilities, is almost wholly intraLATA, and largely urban. After all, Verizon was not allowed into the interstate long distance market until recently, and thus had long focused its investment on local facilities. Verizon does not disclose legacy MCI fiber, which is remarkable given that MCI affiliates included many of the largest competitive service providers in these markets until Verizon acquired MCI. Today, Verizon and MCI no longer compete against each other. That means that there is far less competitive fiber than before the merger, and that Verizon's market power has only increased. Indeed, Verizon's data is outdated across the board, because it all predates the MCI acquisition

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<sup>36</sup> Petition at App. A ¶ 7.

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and thus ignores the elimination of that major competitor as well as the added concentration of its own market power.

**B. Verizon retains market power in these MSAs.**

**(1) Mass market competition is not yet fully established throughout these MSAs.**

Verizon has exaggerated the gains of competitors. Cable telephony is certainly growing as a competitor in the residential mass market, but it is far from a full competitive check. With limited exceptions, cable telephony providers generally do not offer wholesale services, and their networks are concentrated in residential areas. And even cable-based competitors usually must rely, directly or indirectly, on Verizon facilities to link portions of their network and to provide service to their own customers, because they do not have territories as large, contiguous, and genuinely ubiquitous as Verizon's. Even where there may be a measure of competition for local end user customers, once a local exchange carrier ("LEC") has a customer, any competitor hoping to serve that customer using switched access must go through that LEC. The Commission has recognized this gives the LEC monopoly power over access charges.<sup>37</sup>

Verizon points to wireless and VoIP service providers as competitors to its ILEC wireline services. The Commission has found that VoIP is not yet a substitute for

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<sup>37</sup> For this reason, the Commission required CLEC switched access charges to be no more than the regulated ILEC's rates. Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers, 16 FCC Rcd 9923 at ¶ 33 (2001). In the *Qwest Omaha Order* (at ¶ 41), the Commission similarly required Qwest to freeze its switched access rates at the regulated ILEC rates it was charging before any forbearance. If the Commission were to grant any forbearance here, it must apply the same condition to Verizon.

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wireline service, either for mass market or enterprise.<sup>38</sup> In the *Verizon MCI Order*, the Commission concluded that, despite vast investment by wireless carriers, only “approximately 6 percent of households have chosen to rely upon mobile wireless services for all of their communications needs,” and found that “the record does not present credible evidence that mobile wireless services have a price constraining effect on all consumers’ demand for primary line wireline services.”<sup>39</sup> In the *AT&T/Cingular Order*, the Commission noted that, unlike AT&T Wireless, Cingular was not pursuing a wireline replacement strategy,<sup>40</sup> and it is unreasonable to expect any ILEC-affiliated carrier would ever do so. Furthermore, because wireless services are more expensive than wireline services (partly attributable to inflated ILEC special access and intercarrier compensation charges), wireless competition can have little price-restraining influence on Verizon's ILEC services. Wireless services, moreover, are not yet a substitute in the enterprise market. They can scarcely hope to compete effectively in that market, so long as ILECs like Verizon continue to charge special access rates far above the costs of service.

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<sup>38</sup> Triennial Review Remand Order at ¶ 38 n.114 (“Although we recognize that limited intermodal competition exists due to VoIP offerings, we do not believe that it makes sense at this time to view VoIP as a substitute for wireline telephony.”).

<sup>39</sup> Verizon Comms., Inc. and MCI, Inc. Applications for Approval of Transfer of Control, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433 at ¶ 91 & n.276 (2005) (“Verizon/MCI Order”).

<sup>40</sup> Applications of AT&T Wireless Servs., Inc. and Cingular Wireless Corp. for Consent to Transfer of Control of Licenses and Authorizations, WT Docket No. 04-70, Memorandum Opinion and Order, 19 FCC Rcd 21522 at ¶ 246 (2004) (subsequent history omitted) (“AT&T/Cingular Order”).

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**(2) Competitors must rely on Verizon facilities to serve enterprise customers.**

Verizon says the retail enterprise market is "highly competitive."<sup>41</sup> That does not mean, however, that regulatory safeguards can or should be removed from Verizon -- much less throughout the entirety of these MSAs. The market is competitive only because such safeguards remain in place. Any retail competition from cable telephony, wireless, or VoIP providers is irrelevant when a competitor seeks to serve business customers.<sup>42</sup> Competitors must rely heavily on Verizon (wholesale) special access to serve (retail) enterprise customers.

Verizon claims that there are many competitive fiber providers in the MSAs. In Boston, for example, it says "at least 12 known competitive fiber providers ... operate networks in the areas where enterprise customers are concentrated."<sup>43</sup> Verizon also claims, "the major cable operator in the Boston MSA is actively marketing higher capacity services to enterprise customers." *Id.* at 2. Sprint Nextel is likely the largest non-BOC-affiliated enterprise services provider and purchaser of such services in each of

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<sup>41</sup> Petition at 16.

<sup>42</sup> See, e.g., Review of Sec. 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 at ¶ 129 (2003) (acknowledging that enterprise customers require "extensive, sophisticated packages of services," connections to "multiple locations," special provisioning and billing capabilities, and the utmost in reliability); *id.* at ¶ 52 (noting that "cable companies have remained focused on the mass market, largely residential service"), Errata, 18 FCC Rcd 19020, rev'd in part on other grds., USTA v. FCC, 359 F.3d 554 (D.C. Cir. 2004), cert. denied sub. nom., NARUC v. USTA, 543 U.S. 925 ("Triennial Review Order").

<sup>43</sup> Petition at 2-3.

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these markets. Sprint Nextel's experience shows that, to serve enterprise customers, viable wholesale alternatives to Verizon facilities are rare.<sup>44</sup>

Alternative suppliers cannot reach the vast majority of customer locations. Boston is representative of Verizon's six target MSAs. Sprint Nextel has over [ ] wireline customer locations in the MSA. Yet [ ]% of them are at buildings having no potential AAV.<sup>45</sup> Fewer than [ ]% have more than one potential AAV. Moreover, despite having invested in a metropolitan fiber ring in Boston,<sup>46</sup> expressly to reduce reliance on ILEC facilities, fully [ ]% of Sprint Nextel's special access spending is with Verizon's ILEC. [ ]% of Sprint Nextel's DS1 connections are with Verizon, as are virtually all DS0 connections. Even at the OCn level, Sprint Nextel has no choice but to rely on Verizon for the large majority of facilities to reach customer locations.

For many years, Sprint Nextel has maintained a proprietary database of building addresses potentially served by alternative access vendors ("AAVs"). Sprint Nextel uses the database for its own provisioning, and updates it continually. The database shows just [ ] building addresses in the Boston MSA that might possibly be reached by

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<sup>44</sup> Not only are alternative providers rare, but the cost of construction (averaging \$[ ] per foot for new fiber), the substantial time required to gain regulatory approvals, and the time needed to build, continue to make self-provisioning economically unviable.

<sup>45</sup> In Appendix A, Sprint Nextel has attached this data for each of the six MSAs. It is inappropriate to treat legacy MCI facilities as AAVs within these Verizon territories. But even if MCI facilities were included, the percentage of sites without any potential AAVs declines only by 1 or 2%.

<sup>46</sup> Sprint Nextel has leased dark or lit metropolitan fiber rings that reach selected Verizon end offices in portions of the [ ]. Sprint Nextel has no such network facilities in the [ ]. Ironically, Verizon has won ownership and control over much of the fiber in these rings, thanks to its 2006 acquisition of MCI and its affiliates.

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any AAV facilities.<sup>47</sup> Only a tiny fraction of those, perhaps [ ], have more than one potential AAV. In contrast, GeoResults suggests there are approximately [ ] commercial buildings in the Boston MSA. Again, Verizon's acquisition of MCI only further concentrated its market power in Boston and each of these MSAs. There are fewer AAV-served buildings today than just a few years ago.

If anything, the AAV database overstates the level of competitive access. It includes legacy MCI facilities, which are now controlled by Verizon. Some other entries doubtless are Verizon or legacy MCI facilities leased by an AAV or purchased as UNEs. AAVs eager to promote their services may overstate the reach of their networks. Commonly, AAV facilities reach only a portion of the building, and extending them is often difficult or impossible. The AAV facility may lack the needed capacity, or the facility may be too large to be economically provisioned. The AAV may be technically or financially unviable as a supplier. Moreover, some double-counting of addresses and facilities is inevitable, because some buildings have more than one address and because two AAVs may point to the same facility.

Of the [ ] locations where Sprint Nextel has circuits serving enterprise customers in the Boston MSA, only [ ] buildings have any AAV facility reaching even part of the building. For the reasons described above, however, Sprint Nextel is able to rely solely on the AAV at only [ ] of those sites.<sup>48</sup> At another [ ] buildings, Sprint Nextel purchases services from both Verizon and the AAV. These low

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<sup>47</sup> The AAV database includes all types of buildings, including commercial, government, hospital, educational, and other institutional sites.

<sup>48</sup> These figures count AT&T as an AAV in these six MSAs. Legacy AT&T is by far the largest AAV listed, though it is no longer an ILEC competitor in AT&T's vast local territories.

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numbers are despite Sprint Nextel's long-standing policy of utilizing AAV facilities wherever feasible. This experience is typical of these six MSAs.

Verizon's tariff and contract policies also serve to frustrate the development of competitive alternatives. Like many ILECs, Verizon makes it difficult and expensive to switch from the incumbent. It imposes stiff fees, which are not cost justified, for circuit transfers. The fees are set so high that another supplier must offer significantly lower rates to justify the change. Verizon insists on very high traffic or spending percentage commitments to qualify for the best rates, which has the effect of starving competitors for business and discouraging AAV investment. Its performance in making circuit changes has too often risked introducing service issues -- problems that can easily prompt a customer to leave the competitor for the ILEC.<sup>49</sup> The *GAO Report* noted that such conditions and terms "may inhibit choosing competitive alternatives," even for a "portion of their demand," and "even if the competitor is less expensive."<sup>50</sup> Even a large competitor like Sprint Nextel lacks leverage when dealing with an entrenched ILEC like Verizon.

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<sup>49</sup> Each of the BOCs has a poor record of UNE and special access provisioning performance. Verizon alone paid millions in penalties to the U.S. Treasury for failing to meet performance commitments. Meanwhile, the Commission's rulemakings on UNE and special access performance standards remain pending. Performance Measurements and Standards for Unbundled Network Elements and Interconnection, CC Docket Nos. 01-318, et al., Notice of Proposed Rulemaking, 16 FCC Rcd 20641 (2001); Performance Measurements and Standards for Interstate Special Access, Notice of Proposed Rulemaking, CC Docket Nos. 01-321, et al., 16 FCC Rcd 20896 (2001).

<sup>50</sup> U.S. General Accountability Office, Report to the Chairman, Committee on Government Reform, House of Representatives: FCC Needs to Improve its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services, GAO 07-80 (Nov. 2006) ("GAO Report") at 30.

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**(3) There are insufficient wholesale alternatives to check Verizon's market power.**

Verizon claims there are other wholesale service providers in these six MSAs. The Virginia State Corporation Commission ("VSCC") examined that claim when Verizon sought permission to acquire MCI. In that proceeding, Verizon presented the same GeoTel data. Yet, "[a]t that time, with all the available evidence in the Verizon/MCI proceeding, including GeoTel data, we concluded that eliminating MCI as an independent wholesale provider could have an adverse effect on the wholesale special access market...."<sup>51</sup> In comments filed in this docket, the VSCC opposes "additional regulatory relief to Verizon in the wholesale special access market until Verizon proves that market to be sufficiently competitive."<sup>52</sup>

As one of the nation's largest purchasers of wholesale services, Sprint Nextel knows that competitive alternatives to Verizon facilities are rare in these MSAs. For example, Sprint Nextel has [ ] mobile switching centers and nearly [ ] cell sites in the Boston MSA.<sup>53</sup> It has more than [ ] connections for this wireless network traffic alone. Self provisioning on such a scale is clearly impossible for non-ILECs. Yet Sprint Nextel has virtually no wholesale alternatives to Verizon. In the Boston MSA, fully [ ]% of Sprint Nextel's special access purchases for its wireless network are from Verizon. Again, that level is despite Sprint Nextel's long-standing

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<sup>51</sup> Comments of the Virginia State Corporation Commission (filed Dec. 15, 2006) at 5. The VSCC's comments are addressed to the Virginia Beach MSA, but apply to all six petitions.

<sup>52</sup> Id. at 9. The VSCC also concludes the Commission should deny any forbearance "until after all the Verizon/MCI merger conditions and requirements imposed by the FCC, DOJ, and VSCC have been fully implemented and their applicable time lines satisfied." Id.

<sup>53</sup> Data for each of the six MSAs is outlined in Appendix B.

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policy of utilizing non-BOC facilities where feasible, as it is in Sprint Nextel's interest to promote alternative suppliers. In addition, with [ ]% of Sprint Nextel's cell sites in the MSA outside the Boston urban core, there can be little expectation that anyone but the incumbent will be in a position to build suitable facilities.

Indeed, the great majority of Verizon central offices in these six MSAs still do not have any viable alternative for high-capacity loop or transport. And of course no AAV or combination of vendors yet provides coverage that can approach the ubiquity of Verizon's loop or interoffice networks.

**(4) The Commission and the Department of Justice have recognized that the special access market is not competitive.**

Forbearance cannot properly be granted – either broadly or narrowly – while Verizon retains its dominance of the special access market. Verizon effectively controls pricing for special access in these MSAs, and it sets charges far above costs.

Both the Commission and the Department of Justice (“DOJ”) have recognized that the special access market is not competitive, and that safeguards remain necessary. In the *Wireline Broadband Order*, the Commission expressly declined to remove Title II regulation of stand-alone ATM service, frame relay, gigabit Ethernet service, and other high-capacity special access services, because these “basic transmission” services are “telecommunications services under the statutory definition,”<sup>54</sup> warranting continued oversight.

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<sup>54</sup> Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 at ¶ 9 (2005) (“Wireline Broadband Order”).

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That finding was consistent with other recent Commission rulings. In the *SBC/AT&T* and *Verizon/MCI Orders*, echoing the DOJ's conclusions, the Commission found that, "absent appropriate remedies," the mergers were "likely to result in anticompetitive effects for wholesale special access services."<sup>55</sup> In the *Qwest Omaha Order*, the Commission found Qwest remained dominant in enterprise services, such as special access high capacity loops, despite intermodal competition in some other service markets.<sup>56</sup> In the *Triennial Review Order*, the Commission found that "no third parties are effectively offering, on a wholesale basis, alternative local loops capable of providing narrowband or broadband transmission capabilities to the mass market."<sup>57</sup> In the *Triennial Review Remand Order*, the Commission acknowledged that special access rates can be "supra-competitive," and would increase, without the "constraining effect" of section 251 unbundling.<sup>58</sup> It also found competitors "impaired" for high-capacity loops and transport in the vast majority of locations nationwide.<sup>59</sup> Nothing in the Petitions rebuts these findings. On the contrary, the *GAO Report* concluded that facilities-based competition is not extensive in any of the sixteen MSAs it reviewed, including three of those targeted by the Petitions.<sup>60</sup>

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<sup>55</sup> SBC Communications Inc. and AT&T Corp. Applications for Transfer of Control, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290 at ¶ 24 (2005) ("SBC/AT&T Order"); Verizon Communications, Inc. and MCI, Inc. Applications for Transfer of Control, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433 at ¶ 24 (2005) ("Verizon/MCI Order").

<sup>56</sup> *Qwest Omaha Order* at ¶ 50.

<sup>57</sup> *Triennial Review Order* at ¶ 233.

<sup>58</sup> *Triennial Review Remand Order* at ¶¶ 64, 65.

<sup>59</sup> *Id.* at ¶¶ 66, 146.

<sup>60</sup> *GAO Report* at 19.

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With the *Special Access Rulemaking* and *Special Access Performance Measures Rulemaking*<sup>61</sup> still pending, Verizon continues effectively to control pricing for special access in these MSAs, and without effective performance guarantees. Already, Verizon has the incentive and the ability to abuse its dominance of the access market. Without access reform, where another rulemaking remains pending,<sup>62</sup> Verizon's affiliates -- including its wireless, long distance, enterprise, and broadband affiliates -- enjoy unfair and artificial structural cost advantages over any competitor.<sup>63</sup> Accordingly, Verizon cannot justify ending dominant carrier tariffing requirements and price cap regulation under Part 61; *Computer Inquiry* requirements, including CEI and ONA rules; and dominant carrier requirements under section 214 and Part 63 of the Commission rules governing acquisition of lines, discontinuance of service, assignments or transfers, and

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<sup>61</sup> Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No 05-25, RM 10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) ("Special Access Rulemaking"); Performance Measurements and Standards for Interstate Special Access Services, CC Docket Nos. 01-321, et al., Notice of Proposed Rulemaking, 16 FCC Rcd 20896 (2001) ("Special Access Performance Measures Rulemaking").

<sup>62</sup> The Commission's rulemaking on access reform also remains pending. Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC 4685 (2005).

<sup>63</sup> Within these MSAs, Verizon has the majority of all telecommunications subscribers of all types. Its ILECs retain the vast majority of local wireline subscribers. Its long distance affiliate is the largest interexchange carrier. Its wireless affiliate is the largest wireless provider in these MSAs. Thanks to its acquisition of MCI, its enterprise affiliate is the second largest provider of such services. This market dominance by Verizon affiliates means a disproportionate share of traffic on Verizon's network is its own, to bill and keep. Because Verizon does not have to pay an outside provider for high-priced wholesale intercarrier compensation services, it has both a huge structural cost advantage and countless opportunities to discriminate and manipulate costs. The market abuse would be made even worse by Verizon's separate, pending request for waiver and forbearance of dominant carrier regulations applicable to in-region, interexchange services throughout all of its markets. See Sprint Nextel Corp.'s Opposition, Petition of Verizon Local and Long Distance Tel. Cos. for Interim Waiver of and Forbearance from Certain Dominant Carrier Regulations for In-Region, Interexchange Services, WC Docket No. 06-56 (filed Apr. 21, 2006).

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acquiring affiliations. Given Verizon's continued power in the special access market, each of these long-standing rules should remain in place at least until the Commission completes the rulemaking.

**IV. THE PETITIONS FAIL TO MEET SECTION 10'S REQUIREMENTS FOR FORBEARANCE**

**A. Verizon has not shown that compliance with section 251, Title II, and *Computer Inquiry* rules is not necessary to ensure just and reasonable charges and practices and to guard against discrimination.**

By any measure, Verizon remains overwhelmingly dominant in these MSAs.

Competitors must rely on Verizon facilities to serve their customers. UNE-L competitors plainly rely on access to network elements. Competitive IXCs and enterprise competitors must rely on Verizon for the vast majority of their exchange access.<sup>64</sup> Wireless carriers must rely overwhelmingly on Verizon for backhaul facilities.

The Commission cannot simply accept on faith Verizon's casual assertion that it will provide such access at just and reasonable rates and terms, or that the retail competition that Verizon now faces would check its exercise of power in the wholesale market. Not long ago, Verizon received wholesale price flexibility in these markets – ostensibly to enable it to lower rates to meet competition. But instead of dropping as they would in a competitive market, Verizon's rates of return have risen sharply, from 15.26% in 2000 to 41.97% in 2005, based on ARMIS data. This trend, and these rates, show that

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<sup>64</sup> See Comments of Sprint Corp., Performance Measurements and Standards for Interstate Special Access Services, CC Docket No. 01-321 at 4 (filed Jan. 22, 2002); Comments of AT&T Corp., Review of the Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, CC Docket No. 01-337 at 28 (filed Mar. 1, 2002).

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Verizon does not face any effective competition in the special access market.<sup>65</sup> In fact, the GAO Report found dedicated access list prices in Phase II markets (which include Pittsburgh and Norfolk, and theoretically should be the most competitive markets) have risen, on average, while price cap rates have fallen.<sup>66</sup> Prices for channel terminations and dedicated transport also are higher in Phase II areas than in Phase I areas.

Given its market dominance and its history, Verizon's good conduct cannot be presumed. Like other BOCs, it has shown a pattern of resisting competition in violation of the Act's requirements. Together, the BOCs have been assessed fines, penalties, and compelled refunds of over \$1 billion for market misconduct and violations of statutory obligations, merger conditions, and conditions of section 271 approvals. Verizon, in particular, has incurred tens of millions in penalties for failing to meet performance standards -- standards especially critical to competitors' ability to win and hold customers from an entrenched incumbent.

The Commission and many state commissions have found these recurrent enforcement measures necessary to protect the competitive marketplace, to protect consumers, and to protect the public interest. They establish that Verizon has imposed and continues to impose "charges, practices, classifications, or regulations" that are unjustly and unreasonably discriminatory and that section 251, Title II, and *Computer*

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<sup>65</sup> Appendix C sets out Verizon's rising special access rates of return from 2000 to 2005.

<sup>66</sup> GAO Report at 13-14. The Report also found that average ILEC revenue was higher in Phase II than Phase I areas, and not statistically different than average revenue in areas still under price caps. *Id.* at 14.

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*Inquiry* obligations remain necessary for "the protection of consumers" and to promote "the public interest."<sup>67</sup>

Moreover the Commission has already reclassified retail broadband Internet access services as information services outside the reach of Title II and *Computer Inquiry* precedent. Consequently, granting Verizon's request here would mean that it is essentially exempt from all regulation and market safeguards associated with retail and wholesale services in six markets that it still dominates. Verizon suggests that sections 201 and 202 are sufficient.<sup>68</sup> The Commission has previously recognized that market safeguards are necessary because BOCs can engage in many "subtle" forms of discrimination, and "it is impossible for the Commission to foresee every possible type of discrimination, especially with evolving technologies" -- much less to detect or remedy it.<sup>69</sup>

As a practical matter, granting the Petitions would effectively negate sections 201 and 202. It would give Verizon the power to unreasonably discriminate against competitors and in favor of their affiliates -- affiliates that include these MSAs' largest wireless carrier, largest long distance carrier, largest broadband services provider, and second largest enterprise services provider. It would give Verizon the power to exploit its dominance of the special access market to constrain or frustrate competition. It would

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<sup>67</sup> 47 U.S.C § 160(a).

<sup>68</sup> Petition at 24 n.38.

<sup>69</sup> Applications of Ameritech Corp., Transferor, and SBC Comms. Inc., Transferee, For Consent to Transfer Control of Corps. Holding Commission Licenses and Lines Pursuant to Secs. 214 and 310(d) of the Comms. Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712 at ¶ 206 (1999) (subsequent history omitted) (noting further that it is particularly difficult "with evolving technologies"). See also id. at ¶¶ 171, 209, 223, 241 (highlighting examples of "subtle" and "less detectible" discrimination risks).

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be in a position to exploit its duopoly status in portions of these MSA – and its monopoly status in others – to establish rates and practices that are neither regulatory control nor the full competitive check that the Act clearly envisions.

**B. Verizon has not shown that compliance with section 251, Title II, and *Computer Inquiry* rules is not necessary to protect consumers.**

Verizon claims that market-opening requirements of section 251 and market safeguards of Title II and the Commission's *Computer Inquiry* rules are no longer necessary to protect consumers.<sup>70</sup> Even if one accepted Verizon's factual assertions, it does not follow that compliance with section 251(c) and Title II is unnecessary to protect consumers in these MSAs. What Verizon seeks is protection from competition: the ability to discriminate against competitors to maintain its market power. For the retail mass market, Verizon's Petitions would limit these six MSAs to, at best, a duopoly where cable systems happen to provide telephony services, and a Verizon monopoly everywhere else in the MSA. Enterprise competition would be limited to a relative handful of buildings with alternate access, and wholesale competition would be more limited still. And although Verizon claims that it would have incentive to allow competitors access to its network at commercial rates,<sup>71</sup> the Commission can have no assurance that any competitor will have any cost-effective access to Verizon facilities or services. Ending ONA and CEI rules, for example, would allow Verizon to "design out" competitors from its network. Verizon would be sure to find ways to discriminate against competitors and in favor of its affiliates in the enterprise, long distance, and wireless service markets.

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<sup>70</sup> Petition at 1, 3 n.3.

<sup>71</sup> *Id.* at 27.

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Verizon implies that competition with cable and wireless competitors alone may be sufficient to ensure that rates and practices are just and reasonable. Yet cable telephony, despite very recent growth, remains at a relatively early stage of market development. Cable telephony revenues, while growing, are relatively small,<sup>72</sup> and cable telephony faces widespread practical and regulatory barriers to entry.<sup>73</sup> It matters less how many homes are passed than how many customers have actually been captured from the incumbent. Cable telephony, moreover, has limited impact on DS3 and higher capacities that are critical in the business market, and it can offer no substitute for Verizon's special access services that remain critical to enterprise, wireless, and even cable competitors. With the competitive pressures of unbundling removed, Verizon would have less pressure on its wholesale special access price and services.

Contrary to Verizon's predictions, wireless carriers can provide little competitive check on a BOC, chiefly because wireless carriers must rely on ILEC facilities to provide their service. Yes, there now are more wireless phone numbers in service than wireline

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<sup>72</sup> For example, Comcast -- one of the largest cable telephony providers -- had \$6.6 billion in revenue in the third quarter of 2006. Only \$250 million (less than 4%) was from voice services. Press Release: Cablevision Systems Corp. Reports Third Quarter 2006 Results (Nov. 8, 2006) at 3.

<sup>73</sup> Just some of those barriers were described in petitions filed by Time Warner Cable. See Petition of Time Warner Cable for Preemption Pursuant to Sec. 253 of the Comms. Act, as Amended, WC Docket No. 06-54 (filed Mar. 1, 2006); Petition of Time Warner Cable for Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnection Under Sec. 251 of the Comms. Act of 1934, as Amended, to Provide Wholesale Telecoms. Services to VoIP Providers, WC Docket No. 06-55 (filed Mar. 1, 2006). The Commission has addressed some of those barriers by granting Time Warner's petition for declaratory ruling. Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecoms. Services to VoIP Providers, WC Docket No. 06-55, DA 07-709 (rel. Mar. 1, 2007).

ones. However, ILECs enjoy a major cost advantage, and considerable rate headroom.<sup>74</sup> Contrary to Verizon's implication, much of wireless calling does not displace wireline calling. Rather, because of convenience and mobility, wireless services have increased total calling of all types. In any event, whether or not consumers are increasing the wireless share of their calling, the fact is few consumers have yet to discontinue wireline service. Most wireless carriers -- including Verizon -- have not seriously sought to market themselves as substitutes for wireline service. Wireless services can provide no competitive check in the enterprise market, because there has been virtually no wireless substitution there.

Forbearance therefore could only harm consumers. It would block new entrants and discourage competition by requiring CLECs to build their own facilities, something the Supreme Court found Congress did not intend,<sup>75</sup> and by increasing Verizon's market power in the enterprise and wholesale markets. It would limit consumer choices and increase costs for consumers. It would grant Verizon a measure of market power that the Act was clearly intended to keep in check.

**C. Forbearance would be contrary to the public interest and would harm competition.**

Because Verizon dominates the special access market, even its facilities-based competitors -- including those "intermodal competitors" it mentions -- must rely on Verizon's network to serve their customers. UNE-L competitors obviously rely on

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<sup>74</sup> ILECs' artificial cost advantage is attributable to ownership of a network paid for by decades of state-sanctioned, and often state-subsidized, monopoly, outdated intercarrier compensation rules, and the lack of long-overdue special access reform.

<sup>75</sup> See Verizon Comms. v. FCC, 535 U.S. 467, 491-92, 494 (2002) (noting that the Act does not envision or require any threshold investment in facilities by requesting carriers).

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Verizon facilities. Cable telephony competitors rely on Verizon special access to link their enhanced cable networks together and to provide their own services. Wireless carriers and competitive IXCs must rely heavily on its special access. While Verizon points to the prospect of market gains by "over-the-top" VoIP providers,<sup>76</sup> if and when such service providers earn a significant place in the market they too will likely rely on Verizon facilities, either directly or indirectly, to provide their service. There simply are not yet sufficient wholesale alternatives to Verizon.

Verizon repeatedly points to the *Qwest Omaha Order*, and hopes the Commission will grant even wider deregulation in these six MSAs. In that proceeding, however, the Commission acted only after undertaking a specific market analysis, and after finding competition had ended Qwest's traditional ILEC market power for some services in some portions of the Omaha MSA. The Commission limited the scope of forbearance solely to specific services in specific centers where it determined Qwest lacked market power. It explicitly declined to include special access services.

The Commission explained in that order, "as we evaluate the regulations at issue pursuant to the Section 10 standard ... our inquiry is informed by the Commission's traditional market power analysis."<sup>77</sup> Verizon's market power over the special access market precludes finding that its Petitions meet section 10 requirements. Granting the Petitions would allow Verizon to limit, or eliminate, competition from other carriers and service providers, by giving Verizon the power to impose discriminatory rates and terms for loop and transport services or perhaps even refuse to provide service altogether.

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<sup>76</sup> Petition at 12.

<sup>77</sup> Qwest Omaha Order at ¶ 17.

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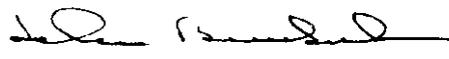
Forbearance would seriously undermine enterprise and wholesale competition, in particular. Verizon claims that the Commission has concluded that the mere prospect of losing retail revenue will ensure that it provides wholesale services to competitors at reasonable rates.<sup>78</sup> Yet Sprint Nextel's experience -- and doubtless that of other major purchasers of special access services -- shows that assumption is wholly mistaken. Forbearance could serve only to reduce competition and increase prices for consumers.

**V. CONCLUSION**

The Commission should deny the Petitions. Competition simply is not yet sufficiently established in these MSAs to justify eliminating these regulatory safeguards. Verizon's request for exemption from its statutory and regulatory obligations is contrary to the Act, contrary to Congressional goals, and contrary to the stringent standards of section 10.

Respectfully submitted,

SPRINT CORPORATION

By 

Vonya B. McCann  
John E. Benedict  
2001 Edmund Halley Drive  
VARESP0201-A268  
Reston, VA 20191-3436  
703-592-5188

March 5, 2007

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<sup>78</sup> Petition at 14, citing Qwest Omaha Order at ¶ 67.

APPENDIX A

SPRINT NEXTEL WIRELINE SITES  
By Number of Alternative Access Vendors Available  
By MSA

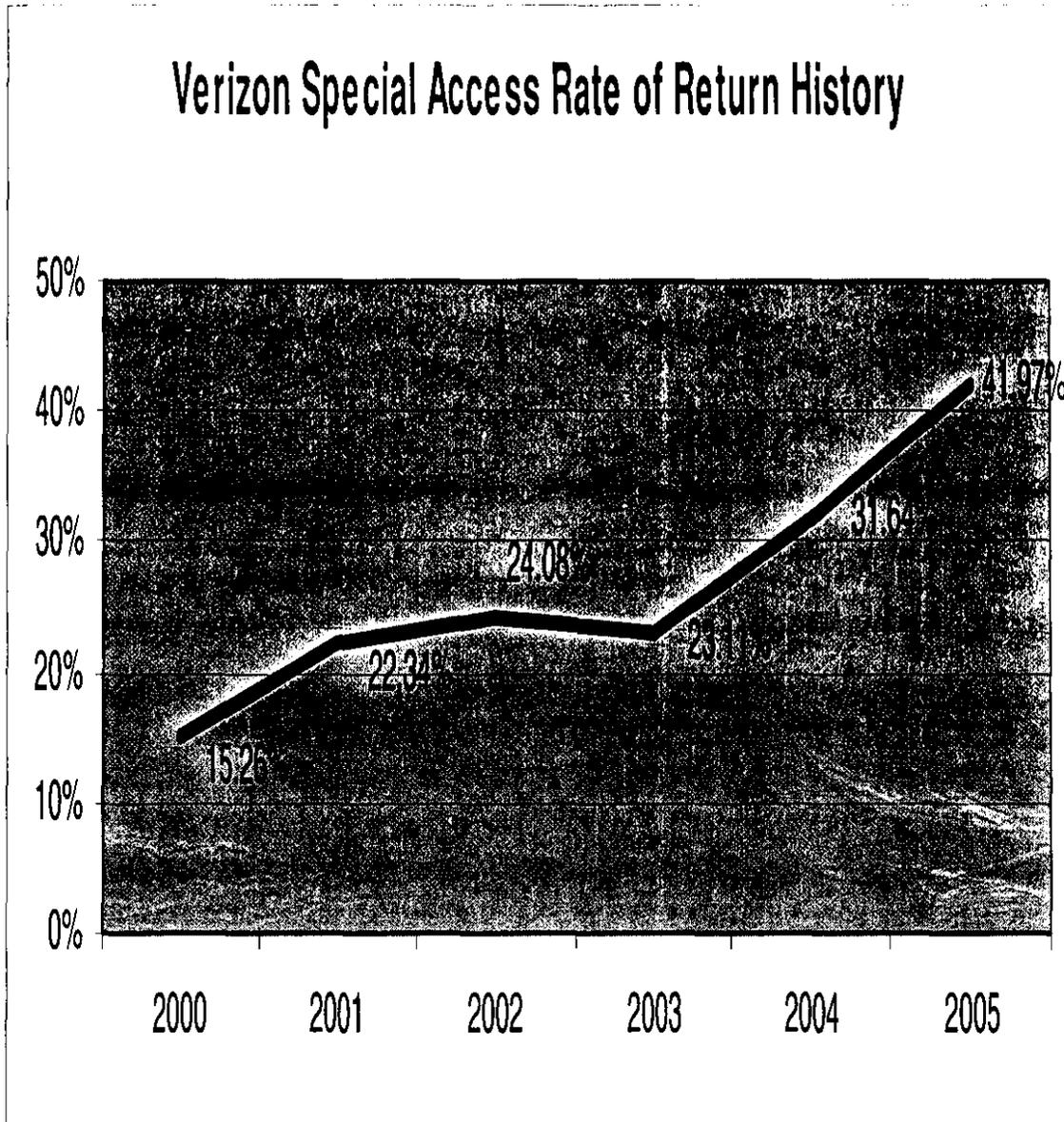
No. of AAVs Per Address	Boston	NY City	Philadelphia	Pittsburgh	Providence	VA Beach
0	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
1	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
2	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
3	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
4	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
5+	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
<b>Total</b>	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
<b>% Without Any AAVs</b>	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%

## APPENDIX B

### SPRINT NEXTEL WIRELESS NETWORK FACILITIES By Number with Alternative Access Vendors By MSA

	<u>Boston</u>	<u>NY City</u>	<u>Philadelphia</u>	<u>Pittsburgh</u>	<u>Providence</u>	<u>VA Beach</u>
No. of Cell Sites in MSA	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
No. of Mobile Switching Centers in MSA	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
No. of Cell Sites with AAVs	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

## APPENDIX C



Source: FCC Report 43-01, Table I Cost and Revenue, Column (s) Special Access, Row 1915 Net Return divided by Row 1910 Average Net Investment.