Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Verizon's Petitions for Forbearance	)	WC Docket No. 06-172
In the Boston, New York, Philadelphia,		)
Pittsburgh, Providence, and Virginia Beach		) DA 06-1869
Metropolitan Statistical Areas	)	
	)	DA 07-277
	)	

THE COMMENT OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Pennsylvania Public Utility Commission (PaPUC) files this Comment in response to the Federal Communication Commission's (FCC) Public Notice at DA 06-1869 issued September 14, 2006 (the "Verizon forbearance petitions") and DA 07-277 issued on January 26, 2007 (the Forbearance Comment extension).

The FCC solicits comment on six petitions filed by Verizon pursuant to Section 10 (160(a)) of the Telecommunications Act of 1996 (TA-96) seeking forbearance from Section 251(c) and Section 271 obligations imposed on Verizon under TA-96.

The PaPUC Comment

Preliminary Observations. The PaPUC appreciates the opportunity to respond to the Verizon forbearance petitions. The FCC's extensions provided the PaPUC with time to prepare a more detailed and Pennsylvania-specific Comment. The observations set out are relevant to

northern regions of the State of Delaware as well as the State of New Jersey because they are located in the Philadelphia MSA.

The PaPUC Comment should not be construed as binding on the PaPUC or any other state commission in any proceeding nor do they constitute the views of any Commissioner or group of Commissioners. The Comment could change in response to subsequent events including review of filed Comments or developments under state and federal law.

Summary of the Comment. The PaPUC urges the FCC to reject the Verizon forbearance petitions on several grounds.

First, the PaPUC previously issued an order approving the merger (Merger Order) of Verizon Communications, Inc. (Verizon) and MCI, Inc. (MCI). The PaPUC's Merger Order made findings and imposed conditions on Verizon under 66 Pa.C.S. §1102 and 1103 of the Pennsylvania Public Utility Code. Those provisions give the PaPUC the authority to issue certificates approving a merger. The PaPUC's conditions mirror conditions already imposed by the FCC and the Department of Justice when those agencies approved Verizon's merger with MCI.

Those conditions comply with the Commission's legal obligation, set forth in the *City of York v. the Pennsylvania Public Utility Commission*, 449 Pa. 136, 295 A.2d 825 (1972) decision, to issue a certificate of convenience approving a merger only after the Commission is able to find that public benefit will result from the merger. The PaPUC imposed state-specific conditions to underscore the affirmative public benefit of the merger in

Pennsylvania. A grant of federal forbearance should not be granted if it obviates state-specific conditions or undermines the ability of intermodal or intramodal competitors to deliver telecommunications in the Philadelphia MSA or other MSAs.

The PaPUC is gravely concerned that a grant of forbearance will effectively overturn the PaPUC's state-specific merger findings and conditions. The PaPUC imposed conditions under Pennsylvania law and is defending that decision in our state courts. The PaPUC opposes any forbearance which puts that decision at risk.

The PaPUC approved the Verizon-MCI merger premised on continuation of those conditions given the record evidence in our proceeding. Verizon provides no Pennsylvania-specific evidence in this proceeding which warrants any other result. The PaPUC imposed our conditions to comply with the public benefit requirement of Pennsylvania law. The FCC's forbearance cannot overturn those conditions when doing so unnecessarily places the PaPUC's merger order at risk or undermines our findings on intramodal and intermodal competition.

Second, the Verizon forbearance petitions make three requests that reflect a basic misstatement on the FCC's holding in the *Omaha Forbearance Order,* WC Docket No. 04-223 (December 2, 2005) (*Omaha Order).* The PaPUC suggests that a closer reading of the *Omaha Order* makes that decision inapplicable to these petitions.

The FCC notes that the *Omaha Order* was based on the unique evidentiary considerations being provided in the Omaha MSA. That included the delivery of wireline voice service over a cable network and evidence other than proprietary E-911 data in wire centers. The FCC explicitly noted that the *Omaha Order* does not constitute a general ruling or a declaratory order.[1] The Verizon forbearance petitions contradict that holding by presenting the *Omaha Order* as a general rule of future applicability.

In the event the FCC grants forbearance, the forbearance should be no broader than the *Omaha Order* and the forbearance must recognize Pennsylvania-specific conditions. In order to obtain that limited relief, Verizon must be required to provide the kind of evidence provided in the *Omaha Order* and on a ubiquitous basis because otherwise forbearance could undermine the findings and conditions in our merger order.

The Verizon forbearance petitions do not contain extensive evidence establishing that competitive alternatives are available on a ubiquitous basis throughout every MSA that is the subject of a forbearance petition. Moreover, the Verizon forbearance petitions present no Pennsylvania-specific evidence countering the reliance that other competitors put on access to loop and transport service to provide competitive service in the Philadelphia MSA or other MSAs.

Consequently, the FCC should not grant forbearance. If, however, the FCC grants forbearance, the forbearance grant must continue the status quo

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[1] *Omaha Forbearance Order*, paragraph 14, particularly footnotes 46 and 47.

for the mass market (residential) local exchange access and broadband internet access obligations notwithstanding the *Omaha Order*[2] and then only if Verizon provides far more evidence than is currently the case. Verizon should not be allowed to obtain limited relief, let alone the far broader relief requested in the forbearance petitions, by reference to a far narrower decision that partially relied on proprietary E-911 information.

Any forbearance must expressly provide that the limited relief does not overturn state merger conditions imposed on Verizon. Any forbearance must expressly provide that independent state regulatory determinations coming within the state commission's authority continue in force and authority. Finally, any forbearance must expressly provide that the current practice used by alternative service providers in the Philadelphia MSA, and other Pennsylvania MSAs, will continue in force and effect. These provisions are required because alternative service providers, like Cavalier, rely heavily on UNE-L to provide mass residential market services in Philadelphia and, possibly, other MSAs as well. Forbearance must not undermine access to UNE-L because that action will deny residential customers access to competitive services at reasonable prices and undermine the PaPUC's conclusion in its merger order that intermodal and intramodal competition constrain any alleged market power.

Extended Discussion

[2] *Omaha Forbearance Order*, paragraphs 14, 15, 39, 50, and 66-67.

Verizon filed the Verizon forbearance petitions on September 6, 2006. The Verizon forbearance petitions seek forbearance from unbundling and tariff obligations applicable to the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach MSAs.

Summary of the Verizon forbearance petitions. The PaPUC notes that Verizon seeks forbearance in three major areas. First, Verizon asks the FCC to forbear from applying loop and transport unbundling obligations pursuant to 47 U.S.C. §251(c) given the FCC's conclusion in the *Omaha Order* that Section 251(c) has been fully implemented. Second, Verizon also asks the FCC to forbear from dominant carrier tariffing requirements and requirements for acquiring lines, discontinuing service, assignments or transfers of control, and acquiring affiliations under Section 214 of TA-96 and Part 63 of the FCC's rules. Finally, Verizon asks the FCC to forbear from price cap regulation of services within the FCC's jurisdiction and the Computer III requirements, including Comparably Efficient Interconnection ("CEI")[3] and Open Network Architecture ("ONA")[4].

The Verizon forbearance petitions rely on the prevalence of intermodal competition and the availability of facilities-based competitive alternatives

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[3] CEI is a term of art referring to the FCC's requirement that ILECs providing "information services" with an interface should make the specifications and prices for that interface available to others to facilitate interoperability and interconnection on different networks. Forbearance would end that commitment for Verizon.

[4] ONA is a term of art referring to the FCC's efforts to allow phone companies to provide "value added" services, like three-way calling and Caller ID, so long as those same services are also made available for delivery by competitors. Like CEI, forbearance could end this policy for Verizon.

for serving mass market and enterprise customers. Verizon cites the availability of cable-based voice service, the prevalence of wireless service, and a decline in access lines as grounds for granting forbearance under the three-prong test of Section 160(a) of TA-96.[5] Verizon cites the *Omaha Order* as precedent for the requested relief.

Comparison of the Verizon forbearance petitions and the Omaha Order. A close examination of the Verizon forbearance petitions shows that Verizon seeks forbearance far broader than that obtained in the *Omaha Order.* The PaPUC urges the FCC to limit consideration of any forbearance to the forbearance at issue in the *Omaha Order.* The PaPUC also urges the FCC to make a determination on that limited forbearance in Verizon's MSAs only if Verizon provides the kind of evidence that was provided in the *Omaha Order* and on a ubiquitous basis throughout the MSA. The FCC's grant of forbearance should not undermine the competitors' ability to deliver alternative intermodal or intramodal services at reasonable prices. Verizon must not prevail by relying on the narrow and limited *Omaha Order* to obtain far greater relief.

The PaPUC notes that Verizon seeks forbearance from 47 C.F.R. § 51.319(a), (b), and (e) loop and transport obligations for the entire Philadelphia and Pittsburgh MSAs. Verizon also seeks forbearance from the FCC's Part 61 dominant carrier tariffing requirements under §§ 61.32, 61.33,

[5] Section 160(a) allows the Commission to forbear from applying any regulation or provision of TA-96 to a telecommunications carrier or service, or class of carriers or services, if (1) the requirement is not necessary to ensuring that services are just and reasonable and not unjust or unreasonably discriminatory; (2) is not necessary for the protection of consumers; and (3) is consistent with the public interest.

61.58 and 61.59. Verizon also wants forbearance from the FCC's Part 61 price cap regulations at §§ 61.41-61.49 as well as the Computer III requirements on CEI and ONA. Finally, Verizon seeks forbearance from the dominant carrier requirements arising under Section 214 of TA-96 and Part 63 of the FCC's rules concerning the processes for acquiring lines, discontinuing services, assignment or transfers of control, and acquiring affiliations under §§ 63.03, 63.04, and 63.60-63.66.

These components are considerably greater than those decided in the *Omaha Order.* Moreover, the impact in Pennsylvania is far greater than the impact in other states for the reasons set out below.

The Forbearance Petitions' Impact in Pennsylvania. The PaPUC opposes the forbearance petitions because they could substantially undermine, if not eliminate, the current ability of other competitive providers to deliver services at reasonable rates in the Philadelphia MSA and other MSAs. The proposed forbearance petitions could undermine the service providers' market-driven goal of delivering competitive services.

Forbearance could do just that because it would impose more costly obligations on intramodal competitors just because they are unable to vertically integrate their cable or telephone facilities with their services. Vertical integration could result from a forbearance that replaces competitors' access to services at tariffed or interconnection rates with private contracts not otherwise subject to review and transparency.

The PaPUC cites Cavalier Communications, Inc., a service provider located in Delaware, Pennsylvania, and Virginia, as an example. Cavalier is a major provider in the Philadelphia MSA. Although Cavalier has some facilities, Cavalier does not have its own ubiquitous network capable of serving the entire Philadelphia MSA. Although that may happen some time in the future, Cavalier currently relies heavily on access to Verizon's ubiquitous loop and transport facilities to service approximately 61,000 customers in the Philadelphia MSA. Those customers are primarily residential customers. Those customers may lose service if forbearance replaces Cavalier's access to loop and transport at tariffed rates with private contracts subject to no review or transparency.

In the current environment, Cavalier's ability to purchase loop and transport (UNE-L) at tariffed rates permits Cavalier to charge its customers prices in the $24.95 range (and this price includes features such as voicemail) or $34.95 (which includes features including voicemail AND nationwide calling). Verizon's also relies on the same loop and transport facilities to provide a voicemail package currently priced in the $32 range and a nationwide calling package priced in the $40 range. Comcast's lowest alternative offering for similar service is priced in the $42 range.[6]

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[6] In addition to the haunting specter of duopoly, the PaPUC recognizes that Comcast does currently offer a "limited term" service priced at $100 per month for a Triple Play consisting of voice, internet-access, and cable service. A temporary offering, however, is not the same thing as an ability to provide narrow voice-grade service on an ongoing basis in an MSA. Moreover, Comcast relies on facilities that are essentially telecommunications facilities but lack the tariff or unbundling obligations imposed on Verizon's facilities. This combination of temporary offerings and unequal legal obligations demonstrates the problems created by policies that focus almost exclusively on am intermodal competition future, devoid of tariffs or unbundling, without considering the intramodal competition present and its reliance on tariffs and unbundling. These petitions vividly demonstrate the results of a regulatory proposition which limits competitor access to essential facilities, if at

The ability to reach customers should not be undermined by grants of forbearance that replace tariffs or unbundled elements with private contracts not subject to review or transparency. Intramodal competitors need access to loop and transport services as much as intermodal competitors need connection to the PSTN. The FCC should refrain from forbearance if it replaces intramodal competition with an intermodal competition model that effectively limits customer choice only to those cable or telephone providers capable of vertically integrating their services with their facilities.

The FCC should consider very carefully the long-term impact of any forbearance grant which limits customers in an MSA to vertically-integrated service providers. The FCC should not issue forbearance decisions that prevent competitive services providers, like Cavalier, from resorting to intramodal structures like UNE-L in order to deliver services to customers at alternative price points similar to those discussed above.

Forbearance should not undermine this status quo particularly if, as here, forbearance raises the legal issue about the FCC's authority to use its forbearance power to overturn the intramodal mandates set out in other provisions like Sections 251(a) through (c) of TA-96. Congress may not have given the FCC the authority to use forbearance as a vehicle to rewrite other provisions of federal law, such as Section 251, just because some incumbent providers consider those provisions an obstacle to their business plan for the deployment of advanced services.

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all, through private discretionary contracts (the Comcast model) compared to tariff or unbundled elements (the Verizon model) even though they are performing the same function: facilitating communication.

In that vein, the PaPUC notes a very recent federal court decision affirming the states' collective authority over intrastate rate communications under the Telecommunications Act of 1996. *Comcast IP Phone v. Missouri Public Service Commission, Case No. 06-4233-CV-C-NKL (W.D. MO January 28, 2007) (Comcast IP Phone).* In *Comcast IP Phone,* the court recognized a lack of certainty about comprehensive rules on Internet Protocol (IP) telephony. However, the *Comcast IP Phone* decision ruled that there was a clear Congressional intent to allow states to regulate intrastate telecommunications. *Comcast IP Phone,* p. 5.

The *Comcast IP Phone* court concluded that Congress never intended federal law to preempt state regulation of intrastate communications services. *Comcast IP Phone,* pp. 5-6. Consequently, the FCC's authority over intrastate communications services is very limited because the federal law retains state authority over intrastate compensation rates for intrastate communications services.

The PaPUC respectfully suggests that a grant of forbearance which abandons the intramodal competition provided by loop and transport access under one section of federal law may be equally vulnerable to the logic rejected by the federal court in the *Comcast IP Phone* decision. With forbearance, as with preemption, the FCC may not have the authority to ignore one provision of federal law in favor of another. That reasoning may be particularly applicable here if a service provider relies on those provisions to deliver intrastate telecommunications to end-user customers.

Cavalier is a major intramodal competitor that can, and does, service residential markets in Pennsylvania and other states. Cavalier, in marked contrast to the vertically-integrated Triple Play or Bundled Service packages offered by cable and telephone companies, does not require a tie-in to the purchase of services like broadband.

Forbearance will likely require Cavalier to withdraw from these service markets. That withdrawal would leave traditional Plain Ordinary Telephone Service (POTS) customers with Verizon or Comcast as their dominant choices – and then only if Comcast's equivalent of POTS service over their cable facilities continues to be viewed as basic telecommunications service.

These forbearance petitions provide the FCC with an opportunity to examine the wisdom of treating facilities differently even though they are providing the same essential function: facilitating communications. On the one hand, the FCC could grant forbearance in Pennsylvania and replace access to facilities through unbundling or with tariffs only by ignoring the fact that intramodal competition effectively constrains the exercise of any alleged market power. On the other hand, the FCC could deny forbearance in Pennsylvania and affirm the role that access to facilities through unbundling or tariffs plays in developing a competitive market.

In addition, if Comcast's services are classified as information services under the intermodal competition approach, there will continue to be no tariff or unbundling obligation imposed on Comcast. If Verizon's facilities are subject to this forbearance, competitors like Cavalier will gain access to facilities only by private contract not subject to transparency or oversight.

The PaPUC respectfully suggests that these results could encourage incumbent companies to successfully argue that neither Comcast nor Cavalier have independent Section 251(a) interconnection rights to the PSTN. Such a result would require intramodal and intermodal competitors to get access to an incumbent telephone company's network and end-user customers, if at all, by private contracts that are neither transparent nor subject to oversight.

The PaPUC is concerned about this approach because it could harm Pennsylvania's market. In the current environment, Cavalier is an intramodal competitor which owns a subsidiary located in Pennsylvania (Talk America) with approximately 200 employees in Pennsylvania. Cavalier has some facilities, trucks, and maintenance services that collectively employ Pennsylvanians. Cavalier's presence contributes to Pennsylvania's economic well-being.

Cavalier is not dependent on the delivery of services using the now-abandoned UNE-P model. Cavalier provides alternative service, and employment to Pennsylvanians, through loop and transport services without resort to Verizon's other services (the older UNE-P). Forbearance could undermine this environment.

Given this probability, the PaPUC suggests that Verizon be required to provide far more detailed information on what alternative loop and transport services are ubiquitously deployed throughout the entire Philadelphia MSA, or any other MSA for that matter, before the FCC grants forbearance. In conducting that analysis, the PaPUC urges the FCC to proceed very cautiously before concluding that confidential 911 information, sometimes

treated as proprietary and not subject to disclosure in some states, is relied on to conclude that loops and transport are no longer required by Section 251 of TA-96.

The PaPUC makes these observations because loop and transport access are essential facilities that carriers like Cavalier need to reach customers in the Philadelphia MSA, and North Philadelphia in particular, if those customers want to buy Cavalier's services. Cavalier offers service in some sections of the Philadelphia MSA where credit scores or zip code discourage other service providers. Cavalier's business plan is apparently more inclined to deliver that service and, for that reason, is a large presence in sections of the Philadelphia MSA such as North Philadelphia. This is based, in part, on the fact that Cavalier uses a combination of low credit scores and an active deposit system for people who might not otherwise be encouraged to purchase Triple Plays or Bundles.

Forbearance could undermine that current Pennsylvania market. Pennsylvania could lose a viable intramodal competitor and tax-generating employer. Philadelphia MSA customers could lose an alternative service provider. A bankrupt or disappearing intramodal competitor may never be able to extend service to other MSAs like Pittsburgh, Erie, or Harrisburg-York-Lebanon. Forbearance should not undermine the current competitive status quo in a rushed decision that relies largely on confidential and proprietary 911 data.

Moreover, the Verizon forbearance petitions are far more extensive than the petition presented in the *Omaha Order* or the Qwest forbearance

petition. The Qwest forbearance petition contained a much shorter list of federal regulations subject to forbearance compared to those set out in Verizon's forbearance petitions. The Quest forbearance petition was limited to (1) requirements under Section 214 of TA-96 applicable to dominant carriers; (2) Sections 61.38 and 61.41-49 of the FCC's rules which require dominant carriers to file tariffs on 15-days notice with cost support; and Sections 61.41-61.49 and 63 which impose price cap and rate of return regulation on dominant carriers.[7] All other requests were denied for failure to specify the regulation or provide the evidence demonstrating how they met the Section 10 (Section 160(a)) forbearance requirements.[8]

The Verizon forbearance petitions add dominant carrier tariffing requirements under 47 C.F.R. §§ 61.32, 61.33, 61.58, and 61.59. Verizon also includes Computer III's CEI and ONA requirements as well as the FCC's Part 63 requirements governing processes for acquiring lines, discontinuing services, assignment or transfers of control, and acquiring affiliations under §§ 63.03, 63.04, and 63.60-63.66.

The *Omaha Order* granted Qwest a very limited forbearance from Section 251(c)(2) and Section 271 obligations, including loop and switch transport, for mass market local exchange access and mass market broadband internet serving residential customers in 9 of Qwest's 24 wire centers in the Omaha MSA.[9] The *Omaha Order* otherwise denied

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[7] *Omaha Order,* paragraph 14.

[8] *Omaha Order,* paragraph 14.

[9] *Omaha Order,* paragraph 15.

forbearance from any other requirements. This included wholesale access as well as enterprise customer.[10]

The PaPUC notes that the FCC's *Omaha Order* did not rely exclusively on E-911 wire center data in making that determination. The *Omaha Order* notes that E-911 wire center is necessary and approximate, though not stand-alone, evidence when making a forbearance determination.[11] Verizon should not be permitted to rely on proprietary E-911 data, without additional documentation, in support of forbearance relief in any MSA let alone a forbearance that is broader than the *Omaha Order.*

Moreover, the *Omaha Order* specifically refused to forbear from any of the wholesale access obligations, including special access, imposed on Qwest.[12] Providers like Cavalier rely on access to wholesale elements like loop and transport or tariffs to provide competitive alternatives. The Verizon forbearance petitions, by contrast, include wholesale and special access notwithstanding the FCC's recent merger conditions and, possibly, the PaPUC's Pennsylvania-specific merger conditions.

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[10] *Omaha Order,* paragraphs 57, 60-61, and 67.

[11] *Omaha Order,* paragraph 28 and 29. The FCC relied on petitioner data on number of residential customers served, E-911 information from April 2004, and competitive LEC resale and UNE-P data as of April 2004. This is more extensive compared to Verizon's evidence on limited E-911 wire center data and general allegations about competition.

[12] *Omaha Order,* paragraphs 22 n. 66, 37, 39, 43, 50, 60-61, and 67.

The PaPUC urges the FCC to require the same evidentiary requirements when deciding whether to grant the same limited forbearance relief consistent with the *Omaha Order.* Verizon should be required to submit evidence establishing ubiquitous availability throughout an entire MSA. Finally, any forbearance must not undermine Pennsylvania-specific merger conditions.

In the *Omaha Order*, the FCC denied a narrow forbearance for wholesale access and enterprise customer services based on anticompetitive impact and Qwest's failure to provide detailed record evidence on market share, geographic location, and elasticity of demand and supply.[13] That evidence and those considerations are even more relevant in the Pennsylvania MSAs given the PaPUC's merger order findings and conditions. That includes the impact to intramodal service providers like Cavalier.

The PaPUC makes these observations for one primary reason: the PaPUC's earlier order approving Verizon's merger with MCI contained important and substantial conditions identical to those the FCC imposed on Verizon. The PaPUC opposes any forbearance that does not establish the ubiquitous availability of services when a forbearance decision could undermine the PaPUC's merger findings and conditions.

The PaPUC does not support any forbearance that reverses or undermines the findings and conditions set out in the PaPUC's merger order. The PaPUC cannot endorse a decision that places those findings and

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[13] *Omaha Order,* paragraphs 14, 15, 39, 50, 61, and 71-72.

conditions at risk. The PaPUC asks the FCC from considering a forbearance decision that undermines the PaPUC's ongoing defense of those findings and conditions in state appellate court proceedings.

The PaPUC urges the FCC to deny forbearance. If the FCC does otherwise, the PaPUC alternatively urges the FCC to expressly hold that forbearance does not, and should not be read to, overturn the findings and conditions set out in the FCC's merger order as well as any state commission order. The FCC should also preserve the current status quo structures that promote intramodal and intermodal competition as well.

Verizon's request to forbear from line acquisition, service quality, and transfers of control also raises important questions about the Commission's legal authority under the Pennsylvania Public Utility Code. The PaPUC has continuing obligations to ensure safe, reasonable, and adequate service as well as continuing authority to issue a certificate of convenience approving any merger. The PaPUC is concerned that forbearance under federal law may give rise to similar requests to forbear from provisions of the Public Utility Code, particularly Chapters 5 and 11, that address similar concerns about service and merger approvals in the Philadelphia and Pittsburgh MSAs. In the event the FCC grants forbearance, the PaPUC asks the FCC to expressly note that forbearance does not, and should not be read to, obviate any independent state authority to address matters within a state commission's jurisdiction. This is consistent with recent federal decisions as well. *See Comcast IP Phone v. Missouri Public Service Commission, Case No. 06-4233-CV-C-NKL (W.D. MO January 28, 2007.*

The PaPUC is concerned that these Verizon forbearance petitions are limited to Pennsylvania's major urban markets. Those markets are larger and different from the Omaha MSA market addressed in the *Omaha Order.* The FCC recognized as much when it noted that the evidentiary and market considerations at issue in the Omaha MSA are not easily duplicated elsewhere.[14]

That is particularly true for in the Philadelphia and Pittsburgh MSAs. The Philadelphia MSA Forbearance Petition encompasses a three-state region. The Philadelphia MSA includes the State of Delaware north of the Canal as well as portions of the State of New Jersey. The Pittsburgh MSA is a large MSA encompassing Pennsylvania's second largest urban area.

These multi-state and heavily urbanized MSAs are different from the Omaha MSA. The PaPUC does not believe that forbearance greater than that provided in the *Omaha Order* with far less evidence than that the FCC relied on in the *Omaha Order.* The PaPUC does not think this is appropriate for Pennsylvania's larger MSAs.

Moreover, the Verizon forbearance petitions do not address what, if any, negative impact relief in the Philadelphia and Pittsburgh MSAs may have on Verizon's current intrastate rate structures. Verizon's current intrastate telecommunications services and products are provided using a four-density cell approach. The Philadelphia and Pittsburgh MSAs contain

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[14] *Omaha Forbearance Order,* paragraph 12, particularly nn. 46 and 47.

density cells with the largest percentage of Density Cell 1 and Density Cell 2 wire centers compared to other Pennsylvania MSAs.

Pennsylvania's density cells facilitate different, though just and reasonable, rate structures in multiple MSAs. The PaPUC is concerned that Verizon's forbearance petitions fail to address the impact they have on this density cell structure. At a minimum, the FCC should require Verizon to address this concern with the kind of data submitted in the *Omaha Order.* The FCC should also require Verizon to detail the anticipated impact to Pennsylvania's mass market (residential) customers throughout Pennsylvania as well as specific MSAs.

The PaPUC makes these requests given that Verizon's misplaced reliance on the *Omaha Order* as precedent for a general rule of application. The FCC's decision limited the *Omaha Order* to the evidentiary considerations in the Omaha MSA. The FCC notes that the *Omaha Order* is not to be viewed as a broad new ruling or declaratory order.[15]

Verizon further claims that mass-market and enterprise competition in the Philadelphia and Pittsburg markets support forbearance. However, a close reading of the *Omaha Order* shows that the FCC specifically denied forbearance for enterprise customers and wholesale services. The *Omaha Order* limited forbearance to mass market (residential) local exchange access

[15] *Omaha Order,* paragraph 12, particularly nn. 46 and 47.

and broadband internet access and then only so long as Qwest complied with the regulatory requirements already imposed on CLECs.[16]

The Verizon forbearance petitions' reliance on intermodal competition in support of forbearance is equally misplaced. The "intermodal competition" theory advanced in the Verizon forbearance petitions was rejected in the *Omaha Order*.[17] The Verizon forbearance petitions provide no hard evidentiary data on ubiquitous availability to support a general observation that cable operators, alternative voice-grade providers, and internet-protocol providers of services provide limited narrow voice-grade service in every wire center in the MSA.

The PaPUC is concerned that forbearance could change current arrangements, including wholesale special access and enterprise market competition, if forbearance is interpreted to overturn Verizon's current obligation to provide wholesale and special access services as tariffed common-carrier services. The FCC should replace tariffed or UNE-rated services only upon a showing of wire center competition identical to that set out for the nine wire centers and then if those services are ubiquitously available throughout an entire MSA. Otherwise, the FCC may undermine the PaPUC's conclusion in its recent merger order that intermodal and intramodal competition can effectively act to constrain any alleged market power.

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[16] *Omaha Order*, paragraph 15.

[17] *Omaha Order*, paragraph 72.

These forbearance petitions lack the kind of evidence presented in the *Omaha Order.* These petitions do not address Pennsylvania-specific concerns including, but not limited to, the PaPUC's prior findings and conditions in its order approving the Verizon merger.

Consequently, the FCC should deny forbearance. Forbearance also should be denied because it replaces the current regulatory structure for wholesale or special access services with private contracts without significant evidence. The PaPUC does not believe that cursory references to proprietary E-911 data in a very limited number of wire centers supports relief. That belief is particularly relevant when the relief is much broader than the relief provided in the *Omaha Order* even if that decision is not precedent.

Furthermore, the request to forbear from Computer III's CEI and ONA obligations impacts interoperability and interconnection, particularly using special access. Since the FCC's decision in the *Omaha Order* was narrowly confined to mass market (residential) local exchange access and broadband internet access, Verizon's forbearance petitions go well beyond Qwest's Petition and the FCC's decision in the *Omaha Order.*

If, however, the FCC grants forbearance, the FCC should make such a grant consistent with the *Omaha Order.* But before that decision is made, Verizon must provide more evidentiary considerations than the general statements and proprietary E-911 wire center data contained in the current petitions. Moreover, the scope of forbearance must be limited to mass market (residential) local exchange access and broadband internet access issues in a

way that does not undermine the ability of carriers, like Cavalier, to provide alternative services in a Pennsylvania MSA.

Also, the PaPUC urges the FCC to avoid relying solely on confidential or proprietary E-911 data. Proprietary data should not become a standard surrogate for a thorough analysis of the extent of facility and service provider alternatives in every central office or wire centers in the Philadelphia or Pittsburgh MSAs. At a minimum, the FCC should require a petitioner to rely on publicly available information on every central office or wire center within an MSA that is the subject of a forbearance petition.

In support of this suggestion, the PaPUC notes Cavalier's importance in the Philadelphia MSA and the recent General Accounting Office (GAO) report. Those considerations undermine Verizon's allegation that the prevalence of alternative facilities-based providers of service are so prevalent and ubiquitously deployed throughout an MSA that forbearance is appropriate. If anything, Cavalier's reliance on loop and transport and the GAO Report suggest that alternative-facilities are not that ubiquitously deployed. Moreover, special access prices are generally higher in areas where the FCC granted price flexibility based on a conclusion that alternative facilities would operate to check pricing arrangements.[18]

Summary

For these reasons, the PaPUC urges the FCC to reject the Verizon forbearance petitions. Forbearance could overturn prior state merger orders

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[18] General Accounting Office, *Telecommunications: The FCC Needs to Improve its Ability to Monitor and Determine the Extend of Competition in Dedicated Access Markets* (November 2006).

imposing FCC merger conditions as state-specific conditions. Forbearance should not undermine the availability of intermodal and intramodal service providers whose ability to provide service acts as a constraint on any alleged market power .

The FCC should reject the evidentiary standard proposed in the Verizon forbearance petitions. Verizon fails to provide the evidence required by the *Omaha Order*. Rejection is appropriate because Verizon's uses more limited evidence to request forbearance greater than that decided in the *Omaha Order.* Moreover, the Philadelphia MSA is multi-state. Pennsylvania's MSAs are different from the Omaha MSA. This is evident in the ongoing role that intermodal and intramodal competitors, like Cavalier and Comcast, play in providing cost-effective service in the Philadelphia MSA.

In the alternative, the FCC should limit forbearance to that granted in the *Omaha Order* but only if it does not disrupt the competitive status quo in the Pennsylvania MSAs. Intramodal carriers, like Cavalier, must be allowed to utilize current services to continue to serve the Philadelphia MSA and other MSAs. Forbearance must expressly preserve state merger conditions imposed on Verizon and it should promote competition with intermodal competitors on an equal obligation basis. Finally, forbearance must expressly reject any interpretation that the decision somehow overturns or preempts independent state regulatory power.

Respectfully submitted,
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