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SUMMARY

Before the Commission considers granting Verizon any of the relief it has requested in six of the largest markets in Verizon's territory, it must evaluate the consequences of the last decision it made granting a Bell operating company blanket regulatory relief from the unbundling requirements of section 251 of the Telecommunications Act of 1996 (the "Telecom Act"). Integra's experience in the Omaha market before and after the *Omaha Forbearance Order* should provide the Commission with sufficient information to determine the lack of success of its deregulatory policies. McLeodUSA has also represented to the Commission that as a result of the *Omaha Forbearance Order*, it is leaving the Omaha market because the market is no longer economically viable.

The *Omaha Forbearance Order* substantially stopped Integra's plans to enter the Omaha market to compete with Qwest. In the summer of 2005, Integra conducted a thorough market analysis of the Omaha, Nebraska market and decided that conditions were sufficiently favorable for Integra to enter the market and compete with Qwest. The decision to enter the Omaha market was based upon an expectation that Integra would be able to obtain unbundled network element loops and transport from Qwest at TELRIC rates, as permitted by federal law.

The Commission's decision in September 2005 to grant Qwest relief from its obligations under the Telecom Act to provide unbundled network elements to competitors required Integra to reevaluate the feasibility of competitive entry in Omaha. Integra decided that it was not economically feasible to enter the Omaha market without access to UNE loops and transport in the entire market. Integra concluded that it would not enter the Omaha market.

McLeodUSA has also informed the Commission that the *Omaha Forbearance Order* has made the Omaha market so unattractive that, absent relief from the appellate court in

McLeodUSA's appeal of the *Omaha Forbearance Order*, McLeodUSA will stop providing service in Omaha and exit the market. McLeodUSA's experience is an excellent barometer of what the Commission can expect in every one of the Verizon markets subject to the forbearance petitions if those petitions were to be granted.

Requiring a CLEC to obtain loops and transport at special access rates for small and medium-sized business customers makes it extremely difficult to provide service at rates that would be competitive with the ILEC. Integra continues to depend on the incumbent local exchange carrier for these essential facilities at cost-based rates that make it possible for Integra to price its products competitively.

The Verizon Petitions must also be denied because the Commission cannot satisfy the statutory requirement that forbearance must be shown to promote competitive market conditions. The evidence described above demonstrates that the Commission's decision to free Qwest from its statutory obligation to provide UNEs at TELRIC rates in Omaha has eliminated at least two CLECs from the Omaha market, one of which was "the only alternative provider of wholesale local services" to other CLECs in the MSA.

Forbearance from the application of specific sections of the Telecom Act as requested by Verizon in six markets would also fail Section 10(a)(3) of the Telecom Act because forbearance would not be in the public interest. UNE-based competition has benefited consumers through lower prices, increased offerings, and better customer service. Integra has adopted this approach and enjoys the highest customer loyalty and customer satisfaction ratings in the telecommunications industry.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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Verizon Petitions for Forbearance in)	
the Boston, New York, Philadelphia,)	WC Dkt. No. 06-172
Pittsburgh, Providence, and Virginia Beach)	
Metropolitan Statistical Areas)	
)	

COMMENTS OF INTEGRA TELECOM, INC.

Integra Telecom, Inc. (“Integra”), through undersigned counsel, submits these comments in response to the Public Notices dated September 14, 2006, October 18, 2006, and January 26, 2007, seeking comment on the Petitions for Forbearance in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas (“MSAs”) filed by Verizon.¹ In its Petitions, Verizon asks for comparable deregulatory treatment that the Commission granted to Qwest Corporation in connection with its Petition for Forbearance from regulation in the Omaha, Nebraska MSA.² The Verizon Petitions should be denied because the relief requested would substantially impede the development of competition in the MSAs at issue, similar to the manner in which competitive entry in the Omaha market has been effectively eliminated following the release of the *Omaha Forbearance Order*.

¹ Wireline Competition Bureau Grants Extension of Time to File Comments on Verizon’s Petitions for Forbearance in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas, WC Docket6 No. 16-172, Public Notice, DA 07-277 (WCB rel. Jan. 26, 2007); Wireline Competition Bureau Grants Extension of Time to File Comments on Verizon’s Petitions for Forbearance in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas, WC Docket6 No. 16-172, Public Notice, DA 06-2057 (WCB rel. Oct. 18, 2006); Pleading Cycle Established for Comments on Verizon’s Petitions for Forbearance in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas, WC Docket No. 06-172m Public Notice, DA 06-1869 (WCB rel. Sep. 14, 2006).

² *Petition of Qwest Corporation for Forbearance Pursuant to 47 USC §160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 04-223, 20 FCC Rcd 19415 (2005) (“*Omaha Forbearance Order*”), *appeal pending*, *Qwest Corp. v. FCC*, No. 04-1450 (DC Cir filed Dec. 12, 2005).

Integra is a facilities-based competitive local exchange carrier (“CLEC”) headquartered in Portland, Oregon and providing local exchange service in eight states: Arizona, California, Idaho, Minnesota, North Dakota, Oregon, Utah, and Washington. Integra’s primary market is small and medium-sized businesses. Integra provides, among other things, local, long distance, high-speed Internet and data services. Integra has more than 1,000 employees and serves over 60,000 customers across its eight-state footprint. Integra owns and operates a best-in-class carrier network that differentiates itself by staffing locally based customer care, technical, and account management professionals whose goal is to provide high-level, personalized client service and satisfaction. The company enjoys the highest customer loyalty and customer satisfaction ratings in the telecommunications industry.

I. THE COMMISSION SHOULD DENY THE VERIZON FORBEARANCE PETITIONS BECAUSE THE EVIDENCE SHOWS THAT FORBEARANCE EFFECTIVELY ELIMINATED COMPETITION IN OMAHA

Before the Commission considers granting Verizon any of the relief it has requested in six of the largest markets in Verizon’s territory, it must evaluate the consequences of the last decision it made granting a Bell operating company blanket regulatory relief from the unbundling requirements of section 251 of the Telecommunications Act of 1996 (the “Telecom Act”).³ Integra’s experience in the Omaha market before and after the *Omaha Forbearance Order* should provide the Commission with sufficient information to determine the lack of

³ 47 U.S.C. § 251. The Commission should also consider the consequences of its decision freeing ACS from its unbundling obligations under section 251 of the Act in Anchorage, Alaska, although the consequences of that decision may not yet have materialized. *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, WC Docket No. 05-281, Memorandum Opinion and Order, FCC 06-188 (rel. Jan. 30, 2007) (“*Anchorage Forbearance Order*”).

success of its deregulatory policies.⁴ If that were not enough to make clear that forbearance from unbundling obligations effectively kills competition, in addition to Integra, McLeodUSA has represented to the Commission that as a result of the *Omaha Forbearance Order*, it is leaving the Omaha market because the market is no longer economically viable.⁵

As the attached Declaration of Dudley Slater, Chief Executive Officer and co-founder of Integra Telecom, Inc., demonstrates, the *Omaha Forbearance Order* substantially stopped Integra's plans to enter the Omaha market to compete with Qwest. Integra purchases DS0 and DS1 loops as unbundled network elements ("UNEs") from the incumbent local exchange carrier to provide service to Integra's customers. Integra also purchases DS1 and DS3 interoffice transport facilities, as well as dark fiber, as UNEs from the incumbent local exchange carrier, where the ILEC is required to provide them. Integra uses its own switching facilities and does not use the unbundled network element-platform ("UNE-P") or, in any significant way, the "commercial agreement" substitute for UNE-P.⁶

In the summer of 2005, Integra conducted a thorough market analysis of the Omaha, Nebraska market and decided that conditions were sufficiently favorable for Integra to enter the market and compete with Qwest.⁷ In addition to the initial investment and start-up costs to enter

⁴ The Commission has been admonished by another federal agency that it lacks credible data to determine the effectiveness of its deregulatory regimes. *FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, Report to the Chairman, Committee on Government Reform, House of Representatives, United States General Accountability Office, GAO-07-80 (Nov. 2006) at 36-37 ("GAO Report"). The attached Declaration of Dudley Slater addresses that shortcoming because it provides the Commission with sufficient information to determine that granting forbearance from enforcement of section 251(c)(3) not only impedes competition, but eliminates it by discouraging competitive service providers from entering markets where relief from section 251(c)(3) requirements has been granted.

⁵ Ex Parte Letter from Chris MacFarland, Group Vice President-Chief Technology Officer, McLeodUSA Telecommunications Services, Inc., to Marlene H. Dortch, Secretary, FCC, *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281 (Dec. 15, 2006) at 1, 2.

⁶ Slater Decl. at para. 4.

⁷ Slater Decl. at para. 5.

the Omaha market, Integra was prepared to commit more than \$6.5 million a year in capital expenditures, sales and general administrative expenses, and the purchase of wholesale telecom services to provide services to small and medium businesses in Omaha.⁸ The decision to enter the Omaha market was based upon an expectation that Integra would be able to obtain unbundled network element loops and transport from Qwest at TELRIC rates, as permitted by federal law.⁹

The Commission's decision in September 2005 to grant Qwest relief from its obligations under the Telecom Act to provide unbundled network elements to competitors required Integra to reevaluate the feasibility of competitive entry in Omaha. Integra decided that it was not economically feasible to enter the Omaha market without access to UNE loops and transport in the entire market. Integra concluded that it would not enter the Omaha market. Integra decided that the investments it was prepared to make to provide service in the Omaha market would be better for the company if they were made in other markets.¹⁰

For these reasons, Integra was not surprised when McLeodUSA informed the Commission that the *Omaha Forbearance Order* has made the Omaha market so unattractive that, absent relief from the appellate court in McLeodUSA's appeal of the *Omaha Forbearance Order*,¹¹ McLeodUSA will stop providing service in Omaha and exit the market.¹² McLeodUSA has stated that it will either sell its Omaha assets or just cease its operations there if a buyer cannot be found, which currently appears to be the case. McLeodUSA has said that it has invested "tens of millions of its own capital" in its Omaha local network infrastructure, which

⁸ Slater Decl. at para. 7.

⁹ Slater Decl. at para. 7.

¹⁰ Slater Decl. at para. 9.

¹¹ *McLeodUSA Telecom v. FCC*, D.C. Cir. Dkt. No. 05-1469.

¹² McLeodUSA Ex Parte at 1.

appears may be sacrificed as a result of the Commission's attempt to deregulate the monopoly service provider in Omaha.

McLeodUSA's experience is an excellent barometer of what the Commission can expect in every one of the Verizon markets subject to the forbearance petitions if those petitions were to be granted. The Commission should expect to see exorbitant increases in recurring and non-recurring charges for high-capacity circuits as the BOC immediately imposes special-access rates, and completely one-sided "negotiations" for the prices of these circuits as the BOC denies any obligation to provide them under any terms other than as special access.¹³ The Commission's "predictive judgment" that the ILEC will have an incentive to offer wholesale facilities at reasonable rates to its competitors has proven to be flawed in Omaha.¹⁴ The prediction "that Qwest will not react to our decision here by curtailing wholesale access to its analog, DS0-, DS1-, or DS3-capacity facilities" turned out to be wrong.¹⁵

Requiring a CLEC to obtain loops and transport at special access rates for small and medium business customers makes it extremely difficult to provide service at rates that would be competitive with the ILEC. Access to UNE loops at the DS0 and DS1 levels at TELRIC rates, and access to UNE interoffice transport at the DS1 and DS3 levels also at TELRIC rates, are important components of the Integra business model of serving small and medium-sized businesses.¹⁶ These facilities support volumes of traffic that, in most cases, are too small to

¹³ McLeodUSA Ex Parte at 2. In fact, Integra is unaware of any special access product that consists of a two-wire copper loop that would permit deployment of plain old telephone service ("POTS") or DSL. Thus, absent the availability of such loops as UNEs, a competitor's options would be limited to high capacity special access circuits to the detriment of small customers whose needs do not justify a high capacity circuit.

¹⁴ *Omaha Forbearance Order* at para. 79.

¹⁵ *Id.*

¹⁶ Slater Decl. at para. 10.

justify the deployment of Integra’s own loop facilities.¹⁷ Integra continues to depend on the incumbent local exchange carrier for these essential facilities at cost-based rates that make it possible for Integra to price its products competitively.

The Commission no doubt expected there to be some upward price movement for UNE facilities following the *Omaha Forbearance Order*. At the same time, the Commission recognized in the *Omaha Forbearance Order* and the *Anchorage Forbearance Order* that there were not “any significant alternative sources of wholesale inputs for carriers in this geographic market.”¹⁸ Somehow the Commission believed that the single source for a CLEC’s essential facilities would act reasonably and negotiate a fair price for loops and transport at a rate higher than the TELRIC rate. That clearly did not happen in Omaha, as McLeod explained. Qwest behaved exactly as one would expect a monopolist to behave. It priced the essential facilities at a level that would make it impossible for McLeodUSA to compete, driving McLeodUSA out of the market and leaving the market to Qwest. And Cox Communications, the ostensible competitor to Qwest, whose presence in the market was the reason for granting the forbearance petition, declined to make any offer to provide competitive high-capacity circuits to McLeod.¹⁹ The irony of the situation in Omaha is that McLeodUSA was also “the only alternative provider of wholesale local services to other competitive local exchange carriers in the Omaha MSA market.”²⁰ Thus, if McLeodUSA exits the Omaha market as is expected, the Commission can

¹⁷ The GAO Report confirms that, even without UNEs, low demand may make it uneconomical for competitors to extend their own networks to end users. GAO Report at 13.

¹⁸ *Omaha Forbearance Order* at para. 67; *Anchorage Forbearance Order* at para. 30.

¹⁹ McLeodUSA Ex Parte at 2.

²⁰ *Omaha Forbearance Order* at n.176, quoting Letter from William A. Haas, Associate General Counsel, McLeodUSA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-223 at 2.

expect a cascading effect leaving a trail of impaired CLECs that had relied on McLeodUSA for wholesale local services.

As a result of the *Omaha Forbearance Order*, at least two CLECs—Integra Telecom and McLeodUSA—have determined that competition in the Omaha market is no longer viable and have decided either to direct resources to markets other than Omaha, or to discontinue operations at the risk of losing millions of dollars of sunk investment. The Commission could hardly have intended for this result to happen, but it was clearly foreseeable. In fact, the Nebraska Public Service Commission anticipated the negative consequences of granting Qwest relief from its statutory obligations within Nebraska and strongly urged the Commission not to grant the relief requested.²¹ It is also foreseeable that, if the Verizon Forbearance Petitions are granted, numerous CLECs either will not enter the Verizon markets or will be compelled to abandon sunk investments in facilities to serve those markets. The Commission should avoid both results and deny the Verizon Forbearance Petitions.²²

II. FORBEARANCE WILL NOT PROMOTE COMPETITIVE MARKET CONDITIONS

The Verizon Petitions must also be denied because the Commission cannot satisfy the statutory requirement that forbearance must be shown to promote competitive market conditions. Section 10(b) of the Telecom Act²³ requires the Commission to consider “whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including

²¹ Reply Comments of Nebraska Public Service Commission, *Qwest Petition for Forbearance in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223 (filed Sep. 9, 2004).

²² Any analysis of the state of competition in each of the Verizon markets for the purposes of forbearance from providing UNEs must also exclude consideration of CLECs using UNEs. *Omaha Forbearance Order* n.185 (“Granting Qwest forbearance from the application of section 251(c)(3) on the basis of competition that exists only due to section 251(c)(3) would undercut the very competition being used to justify forbearance.”)

²³ 47 U.S.C. § 160(b).

the extent to which such forbearance will enhance competition among providers of telecommunications services.” The evidence described above demonstrates that the Commission’s decision to free Qwest from its statutory obligation to provide UNEs at TELRIC rates in Omaha has eliminated at least two CLECs from the Omaha market, one of which was “the only alternative provider of wholesale local services” to other CLECs in the MSA. There is no reason for the Commission to believe that circumstances will be different in any of the six MSAs for which Verizon seeks comparable deregulatory largesse. Therefore, forbearance from enforcement of section 251(c)(3) and its pricing standard under 252(d)(2) while CLECs rely on UNEs at TELRIC rates to provide services in competition with the ILEC, and for which there is no reasonable wholesale alternative that would permit them to continue to compete effectively, cannot satisfy the standard under section 10(b) that forbearance must promote competitive market conditions. Accordingly, the Verizon petitions must be denied.

III. FORBEARANCE WOULD HARM CONSUMERS

Under Section 10(a)(3) of the Telecom Act,²⁴ the Commission must consider whether forbearance is “consistent with the public interest.” Forbearance from the application of specific sections of the Telecom Act as requested by Verizon in six markets would be inconsistent with the public interest because it is the Telecom Act in general, and the specific sections in question in particular, that has helped create local service competition in the first place. Such competition has benefited consumers through lower prices, increased offerings, and better customer service.²⁵

²⁴ 47 U.S.C. § 160(a)(3).

²⁵ For example, Integra was the first in Oregon to offer retail DSL service to significant portions of its customer base. Slater Decl. at para. 12.

As a result of access to UNE facilities at TELRIC rates, Integra is able to provide its customers with a unique and highly responsive service model that is built on the foundation of staffing customer care and technical employees locally so they can provide customer service that is tailored to the needs of the local customer base. Primarily as a result of this approach, Integra enjoys the highest customer loyalty and customer satisfaction ratings in the telecommunications industry. Exhibit A to the Slater Declaration attached to these Comments is a summary of a 2006 Customer Survey conducted by Riley Research Associates. The survey demonstrated that in Integra's five largest markets—Portland/Vancouver, Seattle, Minneapolis/St. Paul, Salt Lake City, and Tacoma—Integra ranks first among *all* providers, including ILECs and CLECs, in numerous customer satisfaction categories such as reliability of service, resolving service calls in a timely manner, and price. The survey also demonstrates that there is considerable market demand for service from providers like Integra.²⁶

The Commission's policies should be aimed at encouraging innovation and performance like this because it benefits consumers. The Commission should recognize that there are numerous ways for new market entrants to compete with the incumbents, and that UNE-based services are a key complement to other forms of facilities-based competition. The fact that an ILEC may face a significant competitive threat from a cable television provider offering telecommunications as a part of a bundle of services—as was the primary case in the Omaha and Anchorage markets that led to *Omaha Forbearance Order* and the *Anchorage Forbearance Order*—should not excuse that ILEC from adhering to its statutory obligations to make elements of its network available to other carriers on an unbundled basis at cost-based rates. There is no rational reason to ruin the success stories of UNE-based CLECs—and thereby to deprive

²⁶ Slater Decl. at para. 11.

consumers of a competitive alternative that offers better service—simply because a cable television company has taken market share from an incumbent LEC. Further, if TELRIC-based rates are creating an insurmountable regulatory burden for ILECs to bear that cable television providers do not share, then the solution is not elimination of TELRIC-based rates for UNEs, it is modification of TELRIC to the extent necessary, if at all, to be consistent with the cost-based pricing standard.

In short, the Telecom Act is working well to create success stories like Integra's. The availability of UNEs under the Telecom Act benefits the public interest because competitors like Integra emphasize customer satisfaction, offer lower prices for existing services, and have taken a leading role in introducing new products and services. In the markets subject to the Verizon Forbearance Petitions, loops and transport circuits must remain available as UNEs subject to TELRIC pricing for consumers there to continue to enjoy the advantages provided by CLECs. One clearly foreseeable consequence of the Telecom Act was precisely what is occurring – loss of ILEC market share to companies like Integra and McLeodUSA and others that rely upon UNEs as provided in the statute. The Commission should avoid deregulatory solutions that write sections out of the Telecom Act in order to return market share to ILECs by eliminating competitors. The Commission should deny Verizon's Petitions in their entirety.

IV. CONCLUSION

For the foregoing reasons, the Commission should deny the Verizon Petitions for Forbearance from enforcement of the network element unbundling requirements. The Commission's previous decision to deregulate the ILEC in Omaha resulted in at least two CLECs deciding not to provide services in that market. The Commission should promote competitive market conditions in the Verizon markets rather than impede them as a result of forbearing from enforcement of Verizon's UNE provisioning requirements.

Respectfully submitted,

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