

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

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

**OPPOSITION OF CAVALIER TELEPHONE SUBSIDIARIES
TO VERIZON’S PETITIONS FOR FORBEARANCE**

Eight operating subsidiaries of Cavalier Telephone Corporation (“Cavalier”) respectfully submit this opposition to the petitions for forbearance (“the Petitions”) filed by the Verizon Telephone Companies (“Verizon”) in this proceeding. Cavalier opposes the Petitions as set forth in the Opposition to Verizon’s six petitions in this docket submitted on behalf of 22 Opponents by Bingham McCutcheon LLP (“Opponents’ Comments”). Cavalier’s subsidiaries adopt the Opponents’ Comments as if fully set forth herein, but respectfully request that the Federal Communications Commission (“the Commission”) also consider the arguments below with respect to Verizon’s request for forbearance from its § 251(c)(3) loop and transport unbundling obligations.

Forbearance from these requirements would have a severe and negative impact on the following eight Cavalier subsidiaries that operate in one or both of the Virginia Beach and Philadelphia metropolitan statistical areas (“MSAs”):

- Cavalier Telephone, LLC (“Cavtel”), a competitive local exchange carrier (“CLEC”) that provides voice and data services to residential and business customers, and wholesale services to other carriers; and

- Talk America of Virginia, Inc. (“TA-VA”), a CLEC that provides voice and data services to residential and business customers;
- Cavalier Telephone Mid-Atlantic, LLC (“CTMA”), a CLEC that provides voice and data services to residential and business customers;
- Cavalier Networks, LLC (“Cavalier Networks”), a provider of metropolitan fiber;
- Talk America Inc. (“Talk”), a CLEC providing residential and business voice and data services;
- Phonom LLC (“Phonom”), a voice over Internet protocol (“VoIP”) provider;
- Elantic Telecom, Inc. (“Elantic”), a provider of long-haul fiber and lit services; and
- Cavalier IPTV, LLC (“Cavalier IPTV”), an Internet protocol television provider.

The four CLECs named above, together with their affiliates, provide telecommunications services to approximately 444,000 residential customers with 500,000 lines in the mid-Atlantic region and elsewhere, and approximately 125,000 business customers with over 1,000,000 lines. These companies will all likely go out of business if the Commission grants Verizon’s forbearance request.

Together, the Virginia Beach and Philadelphia MSAs represent over half the combined business of Cavtel and CTMA, and nearly half the combined business of Talk and TA-VA. The Virginia Beach MSA includes the following Virginia localities:

- Virginia Beach,
- Norfolk,
- Williamsburg,
- Newport News,
- Portsmouth,
- Chesapeake,
- Hampton,
- Suffolk,
- Poquoson,
- Gloucester County,
- Isle of Wight County,
- James City County,
- Matthews County,
- Surry County, and
- York County.¹

¹ See http://en.wikipedia.org/wiki/Virginia_Beach-Norfolk-Newport_News,_VA-NC_MSA. It also includes Currituck County, North Carolina, an area not served by any Cavalier subsidiary.

The Philadelphia MSA is even larger, stretching across four states and encompassing:

- New Castle County in Delaware;
- Cecil County in Maryland;
- Burlington, Camden, Cumberland, Gloucester, and Salem Counties in New Jersey; and
- Berks, Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania.²

As explained below, the Commission would force the exit of multiple competitors and further roll back competition, if Verizon were relieved of its loop and transport unbundling obligations in these MSAs. Such a result is not warranted by the facts or applicable law, nor by Verizon's tenuous and dubious arguments that rely heavily on unlawfully obtained E911 data.³

1. Title 47 U.S.C. §§ 251(c) and 271 are not fully implemented.

Congress barred forbearance from the enforcement of 47 U.S.C. §§ 251(c) and 271 until the Commission “determines that those requirements have been fully implemented.” 47 U.S.C. § 160(d). The Commission takes a simplistic view that this precondition is met “because the Commission has issued rules implementing section 251(c) and those rules have gone into effect.”⁴ However, Congress used the term “fully implemented” in § 160(d), in contrast to its requirement that the Commission “complete

² See http://en.wikipedia.org/wiki/Delaware_Valley.

³ Verizon's use of E911 data, in violation of its obligations under interconnection agreements with Cavalier and other competitors, and in violation of its obligations under a protective order in the Verizon-MCI merger proceedings at the Commission, was the focus of a motion to dismiss filed by 17 carriers on October 16, 2006. Cavalier's operating subsidiaries will not reiterate the arguments in that motion, but they respectfully urge the Commission to grant the relief requested in that still-pending motion.

⁴ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) *appeal pending*, *Time Warner Telecom, et al. v. FCC*, No. 05-4769 (D.C. Cir.) (“*Omaha Order*”), at ¶ 53.

all actions necessary to establish regulations to implement the requirements” of § 251 within six months after February 8, 1996. See 47 U.S.C. § 251(d)(1).

It is not convincing or even reasonable for the Commission to posit that Congress intended no difference between requirements that the Commission: (a) establish regulations within six months to implement the requirements of § 251 of the Telecommunications Act of 1996, and (b) not forbear from enforcing the requirements of § 251(c) and § 271 until their requirements had been “fully implemented.”

The phrase “establish regulations to implement the requirements” has connotations that are altogether different from the term “fully implemented.” The first phrase indicates what the Commission would like to read into the second phrase—merely establishing regulations. By contrast, “fully implemented” indicates that the goals of two sections have actually been realized. That is not the case with the goals of § 251(c).⁵

Section 251(c)(3) requires incumbent local exchange carriers (“ILECs”) like Verizon to “to provide...nondiscriminatory access to network elements on an unbundled basis...on rates, terms, and conditions that are just, reasonable, and nondiscriminatory....” Verizon has not done that, but instead has sought to thwart the market-opening requirements of § 251(c) at every turn—not just through the litigiousness that seems to have worn down a Commission complaining that its “section 251(c) rules often are subject to court challenges” (*Omaha Order* at ¶ 56), but also through its abuse of a dominant position in the market.

⁵ In its *Omaha Order*, the Commission rejected a “competition-based test to determine when section 251(c) has been fully implemented.” *Omaha Order* at ¶ 55. That rejection seems out of place with respect to a pro-competitive, market-opening provision. It also seems ill-considered, because the competitors who lost that argument have all left or planned to leave the Omaha market—McLeod unless it prevails in appealing the *Omaha Order*, and AT&T and MCI because they were merged into ILECs SBC and Verizon.

For example, it might be reasonable to expect that the Commission's regulations,⁶ coupled with an independent decision by the Virginia State Corporation Commission ("SCC"),⁷ would make unbundled DS1 loops more readily available to competitors like Cavalier. That is not so, for reasons including but not limited to the following:

- (1) Verizon sometimes cancels orders for DS1 loops as unbundled network elements ("UNEs") after Verizon has already provided a firm order confirmation ("FOC") date for the delivery of such UNEs;⁸
- (2) Verizon sometimes cancels orders for UNE DS1 loops after the FOC date for delivery of the loop has passed, and Verizon has already failed to deliver it;⁹
- (3) Verizon cancels these orders for UNE DS1 loops because of "routine network modifications"—a practice barred by orders of this Commission, the SCC, and Verizon's interconnection agreements with Cavalier; and
- (4) Verizon has taken the position that it is not required to make routine network modifications in states other than Virginia unless Cavalier signs an interconnection amendment agreeing to other rates, terms, and conditions imposed by Verizon.

These anticompetitive and abusive practices demonstrate Verizon's remarkably strong market power, and they would not be possible if the pro-competitive unbundling requirements of § 251(c)(3) were in fact "fully implemented."

Similarly, ordering a DSL loop from Verizon frequently becomes a confusing adventure caused by Verizon's incorrect databases that only a monopolist could foist on its competitors. Indeed, Verizon's loop qualification database may say one thing about a

⁶ See, e.g., 47 C.F.R. § 51.319(a)(7), requiring routine network modifications.

⁷ See, January 28, 2004 Final Order and March 5, 2004 Order on Reconsideration, in *Cavalier Telephone, LLC v. Verizon Virginia Inc.*, SCC Case No. PUC-2002-00088. Verizon challenged this decision by filing a civil action filed against Cavalier and the SCC in federal district court in April 2004, then moved the court to hold the action in abeyance, and finally voluntarily dismissed the action just a few months ago.

⁸ Two examples are attached to the Declaration of Jim Vermeulen, Exhibit "B" to this Opposition.

⁹ Four examples are attached to the Declaration of Jim Vermeulen, Exhibit "B" to this Opposition.

loop, while its manual loop qualification says something entirely different; loops can be qualified but not ordered; and loops can be ordered but not delivered. A sample of rejected loop qualification requests from Cavtel's Norfolk, Virginia sales office shows numerous DSL loops rejected from September 2006 through February 2007.¹⁰ Some of those qualification requests drew negative responses for ostensibly valid reasons (such as load coils), but the rest require a deciphering of jargon such as "DLC" or "digital loop carrier" or "PARTS." Together, they show the negative impact of restrictions on unbundling for just one product, in one market, over a limited period of time.

Similar problems plague Verizon's provisioning of basic DS0 copper loops. As shown in the attached summary of these loops ordered from Verizon by Cavtel and CTMA from the September 2006 through February 2007, Verizon frequently provides them late or in a defective condition.¹¹

Cavalier has tried to address this situation by tariffing "truck roll" charges that compensate Cavalier for the costly dispatch of its field personnel to address problems caused by Verizon. These charges mirror similar charges that Verizon imposes on Cavalier. However, Verizon has challenged Cavalier's tariffs, which further adds to the litigation burden that Verizon constantly seeks to impose on Cavalier. In Maryland, Cavalier's tariffed charges were upheld,¹² but a Pennsylvania Administrative Law Judge

¹⁰ See third attachment to Declaration of Jim Vermeulen, Exhibit "B" to this Opposition.

¹¹ See second attachment the Declaration of Jim Vermeulen, Exhibit "B" to this Opposition.

¹² See December 12, 2006 Order No. 81153 in Case 9022, *In the Matter of the Complaint of Verizon Maryland Inc. Concerning Customer Winback Charges Imposed by Cavalier Telephone Mid-Atlantic, LLC*.

(“ALJ”) recently rejected the same charges,¹³ based largely on Verizon’s argument that the Performance Assurance Plan (“PAP”) in Pennsylvania already compensates Cavalier. Unfortunately, the types of problems reflected by the DS0 loop provisioning data are several orders of magnitude larger than the scarcely perceptible several thousand dollars a month that Cavtel and CTMA receive in PAP payments from Verizon. In contrast, those two CLECs buy about \$10 million a month in UNEs from Verizon.

Finally, the Commission should not mistakenly think that problems with unbundled facilities are limited to the provisioning realm, for Verizon’s abuse of its dominant position extends into other areas as well. For example, Verizon is disputing over \$25 million in access charges due to Cavtel and CTMA, forcing Cavalier to pursue collections actions¹⁴ even though Verizon previously asserted a similar dispute and then paid the disputed bills in full. Verizon later brought counterclaims for Cavalier’s alleged failure to provide electronic message interchange (“EMI”) records that Verizon did not even ask about between 2002 and 2006.

Similarly, Verizon has recently backbilled Cavtel and CTMA approximately \$1.5 million in charges for their use of operations support systems (“OSS”). At least some of this use is driven by Verizon itself, because Verizon queries orders back to CLECs, cancels orders for no facilities, cancels orders after an FOC date is established through

¹³ See January 22, 2007 Recommended Decision in *Verizon Pennsylvania Inc.’s Formal Complaint Against Cavalier Telephone Mid-Atlantic, LLC’s Switched Access Services Tariff Revisions Seeking to Impose Retail Time & Materials Charges on Verizon*, Case No. R-00050971C0001.

¹⁴ *Cavalier Telephone, LLC v. Verizon Virginia Inc.*, Richmond Circuit Court, Civil Action No. CL 06-1778-4; *Cavalier Telephone Mid-Atlantic, LLC v. Verizon Delaware Inc.*, New Castle County Superior Court, Civil Action No. 06C-03-165 JOH; *Cavalier Telephone Mid-Atlantic, LLC v. Verizon New Jersey Inc.*, Essex County Superior Court, Docket No. L-248-06; *Cavalier Telephone Mid-Atlantic, LLC v. Verizon Pennsylvania Inc.*, Pennsylvania Public Utility Commission, Case No. C-20055343; *Cavalier Telephone Mid-Atlantic, LLC v. Verizon Maryland Inc.*, Maryland Public Service Commission, Case No. 9046.

the OSS, and so forth. Moreover, Verizon's pricing for such use was approved years ago,¹⁵ but Verizon waited to bill Cavtel, CTMA, and other CLECs until after AT&T and MCI—stalwart opponents of such shady tactics—had exited the competitive market. Verizon was apparently hoping to use yet another anticompetitive tactic as impetus for still more competitors to exit the market.

In sum, Verizon has made a hash of providing UNEs to competitors, deliberately engaging in actions designed to frustrate such provisioning and defying the unbundling regulations of this Commission and its state counterparts. In this context, it is unreasonable to assert that § 251(c) or the corresponding checklist items in § 271 are “fully implemented.” Rather, Verizon has fought and defied its unbundling obligations, impeding competition and denying its benefits to consumers.

In this context, §§ 251(c) and 271 are—at best—only “partially implemented,” and for the most part that “partial implementation” simply means that Verizon was long ago permitted the access that it craved to long-distance markets. The pro-competitive environment envisioned by Congress in 1996 was far from “fully implemented” then, and it remains an unfulfilled and distant goal today. This Commission should not permit Verizon to gain the benefit of the regulatory bargain enacted through the Telecommunications Act of 1996, but to cast off the pro-competitive tradeoff under that Act before it is even partially fulfilled.

¹⁵ For instance, the Virginia State Corporation Commission approved OSS rates in an April 15, 1999 Final Order in Case No. PUC970005. Verizon has no reasonable explanation for why it waited almost 8 years to start billing under those rates.

2. Unbundling is necessary to ensure that charges and practices are just, reasonable and not unreasonably discriminatory.

Unlike the retail market that the Commission addressed in the *Omaha Order*, it cannot be said that “competition based on UNE loops and transport make up a minor portion of the competition” in the Philadelphia and Virginia Beach MSAs. See Omaha Order at ¶ 68. Nationwide, Cavalier’s CLEC subsidiaries serve about 444,100 residential customers with some 498,670 lines; and about 125,093 business customers over approximately 1,020,681 lines.¹⁶ All of those customers could be at risk if forbearance strikes down a key segment of Cavalier’s business in the mid-Atlantic.

Directly at risk in the Philadelphia MSA are over 75,000 customers of Cavalier’s CLEC subsidiaries, and in the Virginia Beach MSA another 31,500 residential customers.¹⁷ Those customers all depend upon Cavalier for service, and Cavalier in turn depends upon unbundled loops and transport that it can obtain only from Verizon.¹⁸

Cavalier’s business model simply will not survive on a diet of “Wholesale Advantage” or other potential substitutes that Verizon might suggest.¹⁹ If Cavalier’s business model fails, it could also affect the businesses of other carriers—CLECs, wireless carriers, VoIP providers, and others—that obtain underlying facilities from Cavalier’s subsidiaries. Forbearance from unbundled transport and loop requirements could thus create a ripple effect that not addressed anywhere in Verizon’s Petitions.

¹⁶ Declaration of Jim Vermeulen at ¶ 7, Exhibit “B” to this Opposition.

¹⁷ See table attached to Declaration of Justina Sun, Exhibit “A” to this Opposition.

¹⁸ Id. at ¶¶ 2, 5-7, see also Exhibit “A” to this Opposition; Declaration of Jim Vermeulen at ¶¶ 8-13, Exhibit “B” to this Opposition.

¹⁹ Declaration of Jim Vermeulen at ¶¶ 10-12, Exhibit “B” to this Opposition.

Moreover, Verizon has advanced no contentions, no evidence, and not even any vague reassurances about post-forbearance rates, terms, and conditions for any potential substitutes for unbundled loops and transport currently provided under § 251(c). No evidence exists that any such rates, terms, or conditions exist. For example, in response to Cavalier’s September 21, 2006 inquiry about draft commercial agreements in a post-forbearance context, Verizon responded that “[w]e have no draft agreements” and no “additional information.”²⁰

Just as no commercial pricing exists, no § 271 pricing exists for unbundled loops or transport in the Philadelphia or Virginia Beach MSAs. Verizon has opposed all efforts by state commissions to establish such pricing.²¹ Even if a CLEC could pursue such pricing at a state commission, it would face a lengthy battle with Verizon at the state commission level, and a challenge in federal court if the CLEC were to prevail. Under these circumstances, it would be disingenuous for Verizon to argue that such pricing would provide an alternative in the Philadelphia or Virginia Beach MSAs.

Even if Verizon did agree to post-forbearance pricing commitments, CLECs would have no basis to rely upon such commitments. Verizon might simply change its mind and decide to challenge such commitments in federal court, as it did with high-capacity pricing cap imposed by the Virginia State Corporation Commission (“SCC”) as part of its October 6, 2005 approval of the Verizon-MCI merger. Verizon did not appeal the SCC’s October 6, 2005 order approving the merger, but instead filed suit in federal

²⁰ See September 21, 2006 exchange of e-mails, copy attached as Exhibit “C” to this Opposition.

²¹ Verizon’s efforts to oppose § 271 pricing have met with mixed results. Compare Verizon New England, Inc. v. New Hampshire Public Utilities Commission, Case No. 05-cv-94-PB, 2006 U.S. Dist. LEXIS 59339 (D.N.H. Aug. 22, 2006) (invalidating § 271 pricing for UNEs “delisted” in the *Triennial Review Order on Remand*) with Verizon New England, Inc. v. Maine Public Utilities Commission, Civil No. 05-53-B-C, 441 F.Supp.2d 147, (D.Me. 2006) (upholding § 271 pricing grounded in state law).

court to challenge the merger condition,²² after failing in an April 10, 2006 effort to persuade the SCC itself to lift the condition.²³

In sum, only one consequence of forbearance for unbundled loops and transport is certain: that those facilities will be provided under rates, terms, and conditions less favorable than the current rates, terms, and conditions under § 251(c). Cavalier's operating subsidiaries thus face potentially ruinous changes to basic aspects of their business model, while Verizon has advanced absolutely no argument, contention, or evidence to the contrary.

Verizon's Petitions should be denied as insufficient under § 160(a)(1).

3. Continued unbundling is necessary to protect consumers.

Verizon makes no argument that the continued enforcement of its § 251(c) unbundling obligations are not necessary to protect consumers. To the contrary, forbearance from those obligations will adversely impact consumers. Verizon's Petitions thus fail to meet the requirements of § 160(a)(2) and should be rejected.

First, explicit evidence of Verizon's market power exists in the Virginia Beach MSA because Verizon has filed an application with the Virginia State Corporation Commission ("SCC") to have virtually all of its retail services deregulated, promising to limit, but not to forestall, price increases, as a proffered condition for the relief it seeks in

²² *MCIMetro Access Transmission Services of Virginia, Inc. v. State Corporation Commission*, USDC, E.D.Va., Civil Action No. 3:06-CV-740, filed November 8, 2006.

²³ See July 10, 2006 Order Denying Petition, in *Petition of MCIMetro Access Transmission Services of Virginia, Inc. d/b/a Verizon Access Transmission Services of Virginia for Removal of Certain Provisions of the October 6, 2005 Order in Case No. PUC-2005-00051*, Case No. PUC-2006-00057.

that proceeding²⁴ Verizon's ability to raise Virginia retail prices with impunity is thus readily apparent, and points to a lack of demand elasticity of the type presumed to exist by the Commission in the *Omaha Order*. (See *Omaha Order* at ¶ 33.) Verizon has not presented any evidence to show that it lacks such market power in the Philadelphia MSA, either.

Second, forbearance from loop and transport unbundling obligations will leave Cavalier without any viable alternative to the unbundled loops and transport that it currently relies upon to provide service to its customers.²⁵ Cavalier would prefer not to rely upon Verizon for last-mile connectivity to its customers, but it sees no alternative.²⁶ As a result, forbearance from loop and transport unbundling is likely cause Cavalier to exit the markets in the Philadelphia and Virginia Beach MSAs.²⁷

Cavalier's post-forgbearance departure is important because of its potential impact on consumer prices. As a lesser-known competitor, Cavalier must provide services comparable to the services offered by competitors like Verizon, Comcast, and Cox, but at lower prices.²⁸ As a result, Cavalier's price for basic local service (including voice mail), is about \$6-\$9 a month less expensive than Verizon's, and about \$18 a month than Comcast's, in the Philadelphia MSA.²⁹ Similarly, in the Virginia Beach MSA, Cavalier's

²⁴ See January 17, 2007 Application of Verizon Virginia Inc. and Verizon South Inc. for a Determination that Retail Services Are Competitive and Deregulation and Detariffing of Same [*sic*], Case No. PUC-2007-00008, at pp. 20-21.

²⁵ See Declaration of Justina Sun at ¶¶ 5-6, Exhibit "A" to this Opposition; Declaration of Jim Vermeulen at ¶¶ 8-12, Exhibit "B" to this Opposition.

²⁶ Declaration of Jim Vermeulen at ¶¶ 2, 11-13, Exhibit "B" to this Opposition.

²⁷ See Declaration of Justina Sun at ¶¶ 6-7, Exhibit "A" to this Opposition.

²⁸ *Id.* at ¶ 3.

²⁹ *Id.* at ¶ 4 and attached table.

price is about \$9 a month cheaper than Verizon, and about \$18 a month cheaper than Cox. (Id.)

Perhaps not all providers would necessarily exit the market, as Cavalier expects it would be forced to do. However, remaining carriers would face higher pricing, because nothing except unknown “commercial pricing” exists. Verizon has adamantly opposed all efforts to develop pricing for unbundled network elements provided pursuant to § 271. The last time the Commission saw such a situation was with the demise of UNE-P and the advent of “commercial pricing” from Verizon and other ILECs. If post-forbearance pricing does present an even worse situation, then consumers would likely see price increases of about \$8 to \$12 a month from competitors.³⁰

Few consumers would wish to pay such rates to competitors, and Cavalier and other carriers would thus exit the market. Without Cavalier and other carriers providing competitive pricing, a Verizon-cable duopoly could then increase the already higher prices that they charge for local service with voice mail. In fact, the duopoly would likely be more intent on selling bundled services and broadband, consistent with Verizon’s stated intentions.³¹ Such a duopolistic, broadband-focused environment would have dire consequences for consumers:

- plain old telephone service (“POTS”) would occupy a desultory and degraded position, if it even remained available on a free-standing basis;
- low-cost VoIP providers would disappear or raise price to reflect increased costs foisted upon them by the duopoly of underlying carriers, and

³⁰ See Declaration of Justina Sun at ¶ 6, Exhibit “A” to this Opposition.

³¹ See <http://biz.yahoo.com/prnews/070129/nym026.html?v=80> (Verizon Q4 2006 press release).

- credit-challenged and lower-income customers would effectively be redlined out of access to higher-cost broadband-based services like FiOS.

In its Petitions, Verizon has presented no argument that would point to an outcome different from that outlined above. The Commission might expect that resellers could still provide POTS at competitive pricing, even in the type of post-forgbearance environment described above. However, even if that were the case, forbearance would have spelled the end of facilities-based competition.

Congress did not intend such a result to arise under the Telecommunications Act of 1996. Verizon's failure to argue otherwise thus underscores Verizon's failure to meet its burden under § 160(a)(2).

4. Forbearance is not consistent with the public interest.

Verizon has not advanced a single argument that the forbearance it seeks will promote competitive market conditions or enhance competition amongst telecommunications providers. These flaws are fatal to Verizon's Petitions under the public interest requirement of § 160(a)(3). Moreover, the secrecy surrounding the data in Verizon's Petitions creates a needless impediment to open debate and sound public policy, as well as an irony in light of the fact that Verizon obtained its E911 data in violation of its obligations under interconnection agreements with competitors. For these reasons, Verizon's Petitions should be rejected as contrary to the public interest.

a. Forbearance will not promote competitive market conditions.

Verizon's Petitions urge the Commission to focus on customer growth for cable voice providers and a decline in Verizon's wireline customer base. Verizon also urges the Commission to recognize competition from CLECs, VoIP providers, and wireless carriers. However, this myopic, zero-sum focus only tells a small part of the story.

First, big competitors have left the market. As noted above, AT&T has been merged into SBC, which took its name. Residential customers outside of AT&T's ILEC territory can no longer call AT&T to sign up for service. Likewise, MCI has been merged into Verizon, and become part of "Verizon Business." Verizon now presides over "expected declines in former MCI operations serving mass market (residential and small business) customers."³² At least some of Verizon's "losses" are thus planned and deliberate, not the result of vigorous competition.

Second, Verizon claims that it is losing out to cable providers, VoIP, broadband, and wireless. However, Verizon still dwarfs even its biggest competitors, with 45.1 million total domestic wireline access lines.³³ In contrast, Comcast, a competitor in the Philadelphia MSA, claims 2.4 million voice customers,³⁴ while Cox, its competitor in the Virginia Beach MSA, claims "over 2 million" residential customers³⁵ and "over 100,000" business customers.³⁶

Third, Verizon offsets any wireline losses with gains elsewhere. If Verizon lost any wireline customers in the fourth quarter of 2006, then those losses should have been more than offset by the 2.3 million new customers added by Verizon Wireless, which gave that business a total of 59.1 million customers.³⁷ Verizon also added 1.8 million new broadband connections (FiOS and DSL) in 2006. (Id.) Even with the planned

³² See <http://biz.yahoo.com/prnews/070129/nym026.html?v=80> (Verizon Q4 2006 press release).

³³ Id.

³⁴ See <http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-homeprofile>.

³⁵ See <http://www.cox.com/telephone/default.asp>.

³⁶ See <http://www.coxbusiness.com/aboutus/index.html>.

³⁷ See <http://biz.yahoo.com/prnews/070129/nym026.html?v=80> (Verizon Q4 2006 press release).

decline in the former MCI's mass market operations, Verizon's wireline revenues in the fourth quarter of 2006 reportedly increased by 36.1% compared to the fourth quarter of 2005, apparently driven in large part by a 92.8% increase in data revenues. (Id.)

Cavtel, Talk, and their CLEC affiliates possess roughly 444,000 residential customers and roughly 125,000 business customers. Against Verizon's massive customer base and formidable market power, Cavtel and Talk—and even competitors like XO, Level 3, and Paetec/US LEC—pale in comparison. Even the vaunted cable companies, with their rapid growth in voice services, are an order of magnitude smaller.

Nonetheless, Cavtel, Talk, and their affiliates have built or acquired a fiber network that represents over \$1 billion invested over the course of the last eight years or so.³⁸ Like virtually every other competitor that started doing business after passage of the Telecommunications Act of 1996, Cavtel, Talk, and their affiliates are not able to economically construct ubiquitous, last-mile facilities. That investment will be stranded if the Commission grants forbearance that cuts off unbundled transport needed to link existing networks to each other, and unbundled loops needed to connect that network with individual customers. Cavalier's subsidiaries are well aware that the Commission discounted the “stranded network” argument in ¶ 79 of the *Omaha Order*. However, even if the arguments at the outset of this Opposition fail to convince the Commission that §§ 251(c) and 271 are not “fully implemented,” then the sampling of Verizon's antics with last-mile facilities should at least inform the Commission that Verizon will further curtail access to last-mile facilities if the Commission grants Verizon's Petitions.

³⁸ Declaration of Justina Sun at ¶ 2, Exhibit “A” to this Opposition.

In addition to the direct impact of stranded network, forbearance from loop and transport unbundling would set off a chain reaction among competitors, because Cavalier's subsidiaries have provided facilities to, or acquired facilities from, all of the competitors named above, as well as several others named in Verizon's Petitions. Similarly, Cavalier's subsidiaries have provided facilities to wireless carriers, VoIP carriers (including but not limited to Cavtel's own VoIP affiliate, Phonom), and Internet service providers (without gaming reciprocal compensation).

All of these companies—and the different forms of competition that they represent—are thus interconnected in ways that extend beyond the mere exchange of traffic. All of them thus depend, in some degree, upon the availability of metro and long-haul fiber from companies that in turn rely upon unbundled transport and loops. Verizon has not even begun to address the anticompetitive consequences that would follow hard upon forbearance, unraveling that whole chain of relationships.

Verizon has thus failed to identify any way in which forbearance would promote competition, has not addressed the inevitable anticompetitive consequences of forbearance, and has not supported its own static, self-centered arguments about the unspecified cost of “excessive unbundling” or the extant state of competition. Verizon's Petitions should thus be denied.

b. Forbearance will not enhance competition among telecommunications providers

As indicated above, Verizon identifies no way in which forbearance will promote competition or avoid significant damage to the extant state of competition in the Philadelphia or Virginia Beach MSAs. Verizon also has not demonstrated that forbearance will create the potential for any future competition.

In the *Omaha Order*, the Commission relied in part on “potential competition from established competitors which can rely on the wholesale access rights and other rights they have under sections 251(c) and section 271 from which we do not forbear.” *Omaha Order* at ¶ 71. That assessment now seems overly optimistic. As pointed out above, AT&T and MCI have now been merged into ILECs SBC and Verizon, and will no longer compete out of region. McLeod, the other major CLEC that drew frequent mention in the *Omaha Order*, has announced that it intends to cease operations in the Omaha, Nebraska market unless it prevails in its appeal of the *Omaha Order*.³⁹

Verizon has not even addressed potential competition, or the “enhance competition” prong of § 160(a)(3)’s public interest requirement. Verizon’s omission likely stems from the fact that no viable argument exists to that potential competition can be encouraged through the removal of unbundled access to last-mile facilities like local transport and loops. Such ubiquitous, last-mile facilities are “bottleneck facilities” or “essential facilities” that cannot be duplicated on an economically justifiable basis. Monopoly telephone providers built them during the late nineteenth century and in the twentieth century; monopoly cable television providers built them beginning in the 1940s and 1950s. Expecting small competitors to build them in the eleven years since passage of the Telecommunications Act of 1996 simply is not reasonable.

As with the impact of forbearance actual competition, Verizon has failed to address the impact of forbearance on potential competition. As such, Verizon has failed to meet the “public interest” requirement of 47 U.S.C. § 160(a)(3), and its Petitions should thus be rejected.

³⁹ See December 15, 2006 letter from McLeodUSA to the Commission, copy attached as Exhibit “D” to this Opposition.

c. Secrecy makes for bad public policy.

Secrecy is the single attribute that unifies the Commission's *Omaha Order* and *ACS Order*,⁴⁰ and Verizon's Petitions in this docket; however, it makes for bad public policy. As Justice Brandeis noted, "Publicity is justly commended as a remedy for social and industrial diseases. *Sunlight is said to be the best of disinfectants*; electric light the most efficient policeman." L. Brandeis, *OTHER PEOPLE'S MONEY* 62 (National Home Library Foundation Ed. 1933) (emphasis supplied), quoted in *Buckley v. Valeo*, 424 U.S. 1, 67 (1976). The *Omaha Order* and the *ACS Order* shun the sunlight and seek the shadow, by looking almost solely at the retail market share of cable providers, and then only by reference to the bracketed terms "REDACTED" or "confidential."

Verizon's Petitions echo this secrecy and lack of transparency, repeatedly basing their argument on data that are completely replaced by indecipherable asterisks. Yet Verizon's secrecy is prompted by unclean hands, for the only real data presented by Verizon was obtained through Verizon's violation of its interconnection agreements with CLECs like Cavtel and CTMA, or its violation of the protective order in the Commission's proceedings on the Verizon-MCI merger.

Verizon seeks to avoid scrutiny of these ill-gotten gains by presenting no public data except on a national scale, such as the expected levels of access to voice services from cable companies,⁴¹ or perplexing contradictions like an assertion that the Virginia Beach MSA has approximately 623,000 households, while Cox's network passes

⁴⁰ *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).

⁴¹ See, e.g., Lew/Verses/Garzillo Virginia Beach Declaration, at ¶ 14, p. 7.

approximately 645,000 homes in that MSA.⁴² With data that vague, irrelevant, and self-contradictory, perhaps it is no small wonder that Verizon sought to hide most of it.

Even without this concealment, which in itself disserves the public interest, Verizon's Petitions fail to satisfy 47 U.S.C. § 160(a)(3), which requires that forbearance be "consistent with the public interest." Verizon's Petitions contain no argument directed to the public interest. Instead, Verizon argues its own interest by claiming that it should not be the subject of "excessive unbundling"⁴³ and reiterates its claim that competition already exists.⁴⁴

Verizon advances these claims in virtually identical terms for very different areas, and they are based on specious generalizations like the assertion that "large fractions of long-distance calls and minutes have already migrated to wireless." (Virginia Beach Petition at p. 26.) The support for this claim reportedly lies in estimates by Merrill Lynch and the Yankee Group (Lew/Verses/Garzillo Virginia Beach Declaration. at ¶¶ 24-25, pp. 12-14) and a year-end survey by a wireless trade association (*id.* at ¶ 25, p. 13). As pointed out above, such nationwide surveys are contradicted by simple facts showing that Verizon's Petitions are insufficient under 47 U.S.C. § 160(a)(3).

Conclusion

For the reasons stated above, the eight operating subsidiaries of Cavalier Telephone Corporation respectfully request that the Commission deny Verizon's request

⁴² *Id.* at ¶¶ 6-7, p. 3.

⁴³ Philadelphia Petition at pp. 26-28; Virginia Beach Petition at pp. 24-25.

⁴⁴ Philadelphia Petition at pp. 28-29; Virginia Beach Petition at pp. 25-27.

for forbearance from its obligation to provide § 251(c)(3) unbundled loop and transport facilities in the Philadelphia and Virginia Beach metropolitan statistical areas.

Dated: March 5, 2007.

Respectfully submitted,



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Cavalier Telephone Mid-Atlantic, LLC;
Talk America Inc.;
Cavalier Networks, LLC;
Cavalier IPTV, LLC;
Elantic Telecom, Inc.; and
Phonom LLC*

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

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

**OPPOSITION OF CAVALIER TELEPHONE SUBSIDIARIES
TO VERIZON'S PETITIONS FOR FORBEARANCE**

Exhibit "A"

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

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

DECLARATION OF JUSTINA SUN

1. My name is Justina Sun. I am Executive Vice President for Consumer Marketing of Cavalier Telephone Corporation (“Cavalier”). My business address is 2134 W. Laburnum Ave., Richmond, VA 23227. I just recently joined Cavalier, and am responsible for the sales, marketing and product development for all residential services at Cavalier, including circuit-switched voice, voice over Internet protocol, DSL and other data services, and Internet protocol television (“IPTV”) services. I have more than 20 years of experience in marketing strategy and messaging, product positioning and campaign execution, including experience providing marketing consulting to telecommunications, technology and media based companies. I have factual knowledge relating to the information described in this Declaration.

2. Cavalier's business model is based on access to DS0 loops and—where necessary—local transport, both as unbundled network elements (“UNEs”) provided by Verizon. This model has been a successful basis for providing innovative and valuable services to consumers, as shown by Cavalier's recent roll-out of video programming services in Richmond and other markets. Cavalier has built or acquired network facilities in the mid-Atlantic and elsewhere that represent almost \$1 billion in investment over the past seven years. Because of Verizon’s pending forbearance petitions, I have had to examine whether Cavalier could continue

to operate under this business model if forbearance were granted in Philadelphia and Virginia Beach.

3. Unlike many other competitive telecommunications carriers, Cavalier has focused primarily on the mass-market (residential and small business) segment of the telecommunications and information services markets. This type of customer is extremely price-sensitive. In order for a new, lesser-known competitor like Cavalier to make inroads in this segment of the market, we must offer products that are comparable in features and quality to those offered by the incumbent provider, Verizon, at a significantly lower price.

4. The table attached to my Declaration compares the price for basic residential telephone service packages currently being charged by Verizon, Comcast, Cox, and Cavalier in the Philadelphia and Virginia Beach metropolitan statistical areas (“MSAs”). As this table shows, Cavalier’s current prices are significantly lower than comparable offerings from Verizon, Comcast, and Cox.

5. Cavalier has carefully evaluated strategic alternatives if the Commission were to grant the forbearance requested by Verizon in WC Docket No. 06-172. As stated in the Declaration of Jim Vermeulen, Cavalier has found that there are not likely to be any wholesale DS0 loop alternatives other than Verizon, and Verizon does not offer, and has no intention to offer, commercially reasonable wholesale DS0 loop access. That is not surprising, given that Cavalier is able to provide consumers with innovative voice, Internet, and video programming services over copper loops, at lower prices than Verizon.

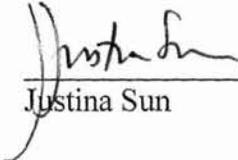
6. Even if Cavalier is able to obtain continued access to Verizon loops after forbearance, it would likely incur significantly increased cost for those loops, which it would have to pass through to our customers in the form of higher prices. Although Verizon has not

provided any information in their petitions which would indicate future prices under a commercial agreement, based upon information submitted by Verizon to Cavalier under its "Wholesale Advantage Program", unbundled loop prices could rise up to \$8.75 per month. As indicated in the attached table, even a modest increase in costs would dramatically impact, and perhaps eliminate, our pricing advantage vis-à-vis Verizon and Comcast. In my opinion, our customers would not tolerate a large price increase and we would lose so many customers to our competitors that it would put the viability of our business plan in these markets into serious question.

7. Cavalier has concluded that if the Commission grants the requested forbearance relief, it will likely sell its assets, or otherwise cease or limit its operations, in Philadelphia, Virginia Beach, and the surrounding markets in the two MSAs.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed March 5, 2007.



Justina Sun

Product Type	Cavalier Price (voicemail included)	Verizon Price (with voicemail)	Comcast or Cox Price (voicemail included)	Actual Affected Cavalier Customers	Price Increase to Customers if Forbearance Granted
Delaware Residential (in Philadelphia MSA)	\$24.95 with 12 calling features, including voicemail (25 minutes)	\$30.95 with 10 calling features, \$8 for voice mail (30 minutes), for total \$38.95	\$42.95 , additional \$15 if without basic cable , for total \$57.95	14,595	\$7.95 or more (projected)
Philadelphia Residential	\$24.95 with 12 calling features including voicemail (25 minutes)	\$33.95 with 10 calling features, \$8 for voice mail (30 minutes), for total \$41.95	\$42.95, additional \$15 if without basic cable, for total \$57.95	61,478	
Virginia Beach Residential	\$24.95 with 12 calling features including voicemail (25 minutes)	\$33.95 with 10 calling features, \$8.15 for voice mail (30 minutes), for total \$42.10	\$42.95, additional \$15 if without basic cable, for total \$57.95	31,500	

**Before the
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Washington, D.C. 20554**

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

**OPPOSITION OF CAVALIER TELEPHONE SUBSIDIARIES
TO VERIZON'S PETITIONS FOR FORBEARANCE**

Exhibit "B"

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

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

DECLARATION OF JIM VERMEULEN

1. My name is Jim Vermeulen. I am Vice President of Engineering for the operating subsidiaries of Cavalier Telephone Corporation (“Cavalier”). My business address is 2134 West Laburnum Avenue, Richmond, Virginia 23227. I have worked for Cavalier for over five years. As Vice President of Engineering, I am responsible for overseeing the design and implementation of Cavalier’s networks, and the engineering personnel who establish and maintain those networks. Before joining Cavalier, I worked for approximately four years as director of operations and engineering for Conectiv Communications Inc., which offered voice and data services in Delaware, Maryland, and New Jersey; and, before that, spent five years as a project manager for U.S. West Communications, Federal Services in Richland, Washington and Denver, Colorado. I have factual knowledge relating to the information described in this Declaration.

2. Cavalier currently obtains unbundled network elements (“UNEs”) from Verizon, including unbundled transport and unbundled loops, that we use in conjunction with our own facilities and equipment to deliver circuit-switched voice services, voice over Internet protocol (“VoIP”), digital subscriber line (“DSL”) and other data services, and Internet protocol television

(“IPTV”) service. If there were any other alternatives to Verizon, we would vigorously pursue such an option, because Verizon makes every aspect of ordering, provisioning, billing, and payment of UNEs so extraordinarily difficult and cumbersome, apparently by design.

Unfortunately, Verizon UNEs are the only way we have to reach customers.

3. Cavalier provides all of these services, except IPTV, throughout much of the Philadelphia MSA and the Virginia Beach MSA. We currently provide IPTV service in Richmond, Virginia and surrounding areas, and in Williamsburg, Virginia in the Virginia Beach MSA. We plan to roll out IPTV in the rest of the Virginia Beach MSA within the next 30-60 days, and we ultimately intend to deploy it throughout Cavalier’s footprint in the mid-Atlantic region, Michigan, Ohio, and Georgia.

4. We deliver all of our voice and data services, and our IPTV service, over unbundled copper loops obtained from Verizon. Sometimes we experience significant issues obtaining these loops from Verizon, as shown in the attachments to my declaration. Those attachments summarize issues with Verizon’s cancellation of Cavalier’s orders for unbundled DS1 loops, issues with Verizon’s provision of unbundled DS0 loops, and issues with Verizon’s DSL loop qualification system.

5. Cavalier has tried to combat some of these issues, such as defective loops, by charging for costly technician dispatches to remedy problems caused by Verizon. However, Verizon fights these efforts, claiming that the Performance Assurance Plan (“PAP”) already compensates Cavalier. In my view, the PAP does not come close to compensating Cavalier, because Cavalier typically receives only several thousand dollars in PAP payments a month, despite spending about \$10 million a month on Verizon UNEs.

6. In addition, Cavalier has encountered a host of other interconnection issues with Verizon, including Verizon's dispute of over \$25 million in access charges billed by Cavalier, and Verizon's recent backbilling of Cavalier for about \$1.5 million in charges for use of its operation support systems ("OSS").

7. After its recent merger with Talk America Inc., Cavalier serves approximately 444,100 residential customers with about 498,670 lines; and about 125,093 business customers over approximately 1,020,681 lines.

8. As I indicated above, we serve those customers over unbundled loops and transport. If Verizon succeeds in withdrawing unbundled loops and transport, then Cavalier will have no substitute. To my knowledge, Verizon does not have a special access wholesale offering that could reasonably substitute for unbundled copper loops. Although Verizon offers voice-grade loops as a special access service, it is at a much higher price than unbundled copper loops, and it is voice-grade only, meaning that Cavalier could not provide DSL, VoIP, or IPTV services the same way that it does with UNE loops.

9. For higher-capacity services, Verizon does offer other special access services, including DS1 and DS3 loops, that could technically support provision by Cavalier of its package of voice, Internet, and IPTV services. However, providing those services over special access facilities is not economically viable, because Verizon's pricing of these special access services would require Cavalier to charge much higher consumers prices, which would destroy Cavalier's ability to compete in the retail marketplace.

10. I am also aware of Verizon's "Wholesale Advantage" offerings, which are the "substitute" services that Verizon has offered to its competitors in place of unbundled network elements that have been made unavailable by recent FCC decisions. To the best of my

knowledge, Verizon currently offers unbundled loops under Wholesale Advantage contracts only as a component of a bundled, resale-like local exchange service. Based on what I know, even if Verizon made unbundled copper loop facilities available under “commercial” terms similar to these offerings, it is my understanding that Verizon would impose a surcharge that would price such loops substantially above the current UNE prices. Again, passing such increased costs along to consumers simply would not work.

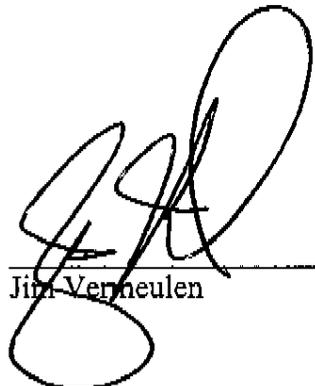
11. As a result, to the best of my knowledge, there is no commercially available wholesale alternative to Verizon’s loop facilities in the Philadelphia and Virginia Beach MSAs for the type of mass-market customer that Cavalier serves. The only entity other than Verizon that even has facilities in existence that might conceivably provide access to mass-market subscribers in any significant portion of these MSAs is the franchised cable television operator, and these operators have never offered competitors wholesale access to mass-market, last-mile facilities in the Philadelphia or Virginia Beach MSAs.

12. I conclude that there is not currently any commercially reasonable offering of wholesale loop facilities, either from Verizon or any other provider, that could serve as a workable substitute for unbundled copper loops.

13. Having gone through the exercise of finding replacements for Verizon dark fiber that became unavailable after the FCC issued its Triennial Review Order on Remand, I can also conclude that there is no commercially reasonable offering of wholesale local transport that can replace the dark fiber and other local transport that Cavalier currently relies upon to link together portions of its network.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed March 5, 2007.



Jim Verneulen

**Before the
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Virginia Beach Metropolitan Statistical)	
Areas		

DECLARATION OF JIM VERMEULEN

**ATTACHMENT 1 OF 3
UNE DS1 CANCELLATION ISSUES**

Orders Cancelled Before FOC

Cavalier PON	Date sent to Verizon	Date Cancelled	Reason for Cancellation
NW-2552828UNEL	11/14/2006	11/15/2006	A NO FACILITY CONDITION EXISTS NO APPARATUS/DOUBLER CASE/PLACE CARD A SUPP 1 IS REQUIRED TO CANCEL THIS ASR
NW-2542655UNEL	11/10/006	11/15/2006 0:00	A NO FACILITY CONDITION EXISTS NO APPARATUS/DOUBLER CASE/PLACE CARDA SUPP 1 IS REQUIRED TO CANCEL THIS ASR

Orders Cancelled After FOC

Cavalier PON	Requested DD	CNR Sent	Reason for Cancellation
NW-2536791UNEL	11/14/2006	11/17/2006	CANCEL PLEASE CANCEL THIS ASR. THERE ARE NO FACILITIES AVAILABLE. NO SPARE PAIRS AND NEEDS A DOUBLER.
NW-2531276UNEL	11/17/2006 0:00	11/17/2006	PLEASE SEND A SUP TO CANCEL THERE ARE NO AVAILABLE FACILITIES PAIRS DEFECTIVE NO SPARES
NW-2530837UNEL	11/14/2006	11/15/2006	PER ENGINEER NO FACILITIES - CANCEL AND RE-ISSUE AS SPECIAL ACCESS.
WR-2537079UNEL	11/15/2006	11/15/2006	CANCEL PLEASE CANCEL THIS ASR. THERE ARE NO FACILITIES AVAILABLE. NO GOOD SPARE PAIRS.

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DECLARATION OF JIM VERMEULEN

**ATTACHMENT 2 OF 3
UNE DS0 PROVISIONING ISSUES**

Cavalier Telephone – Philadelphia & Delaware MSA / VA Beach MSA
 DSO Residential Loop Installation Summary
 September 2006 – February 2007

Philadelphia Market – 345

New Loops -

Ordered	On – Time	Late
Sept 06 - 2,375	686	1,689
Ordered	On – Time	Late
Oct 06 - 2702	2114	588
Ordered	On – Time	Late
Nov 06 - 2060	1553	507
Ordered	On – Time	Late
Dec 06 - 1629	1272	357
Ordered	On – Time	Late
Jan 07 – 2364	1899	465
Ordered	On – Time	Late
Feb 07 – 1838	1230	608

Hot Cuts -

Ordered	On – Time	Late
Sept 06 - 1,496	1,190	306
Ordered	On – Time	Late
Oct 06 - 1359	1285	74
Ordered	On – Time	Late
Nov 06 - 1070	825	245
Ordered	On – Time	Late
Dec 06 - 1027	871	156
Ordered	On – Time	Late
Jan 07 - 1652	1556	96
Ordered	On – Time	Late
Feb 07 - 1081	1002	79

Note: EDI reporting

Defective
Sept 06 - 1,118
Oct 06 – 1,539
Nov 06 – 1,125
Dec 06 – 875
Jan 07 – 930
Feb 07 - 839

Note: The number of defective is an estimate and does not differentiate between new loops, hot cuts / cut through, dispatchable

No Facilities Order Cancelled
Sept - 12

Delaware Market – 455

New Loops -

Ordered	On – Time	Late
Sept 06 - 564	393	171
Ordered	On – Time	Late
Oct 06 - 621	543	78
Ordered	On – Time	Late
Nov 06 - 509	391	118
Ordered	On – Time	Late
Dec 06 – 397	354	43
Ordered	On – Time	Late
Jan 07 – 552	473	79
Ordered	On – Time	Late
Feb 07 – 427	345	82

Hot Cuts -

Ordered	On – Time	Late
Sept - 228	201	27
Oct - 231	227	4
Nov - 174	107	67
Dec – 146	133	13
Jan – 215	209	6
Feb – 185	179	6

Note: EDI reporting

Defective
Sept 06 - 183
Oct 06 – 258
Nov 06 – 243
Dec 06 – 158
Jan 07 – 185
Feb 07 -192

Note: The number of defective is an estimate and does not differentiate between new loops, hot cuts / cut through, dispatchable

No Facilities Order Cancelled
Sept - 2

Tidewater Market – 115

New Loops -

Ordered	On – Time	Late
Sept 06 - 1,681 orders	1384	297
Ordered	On – Time	Late
Oct 06- 1462orders	1369	93
Ordered	On – Time	Late
Nov 06 - 1455	1056	399
Ordered	On – Time	Late
Dec 06 - 1185	816	369
Ordered	On – Time	Late
Jan 07 - 1403	1333	70
Ordered	On – Time	Late
Feb 07 – 1342	1207	135

Hot Cuts -

Ordered	On – Time	Late
Sept 06 - 402	363	39
Ordered	On – Time	Late
Oct 06 - 297	287	10
Ordered	On – Time	Late
Nov 06 - 311	219	92
Ordered	On – Time	Late
Dec 06 - 258	224	34
Ordered	On – Time	Late
Jan 07 - 308	282	26
Ordered	On – Time	Late
Feb 07 - 264	243	21

Note: EDI reporting

Defective
Sept 06 – 638
Oct 06 – 510
Nov 06 – 431
Dec 06 – 379
Jan 07- 389
Feb 07- 325

Note: The number of defective is an estimate and does not differentiate between new loops, hot cuts / cut through, dispatchable

No Facilities Order Cancelled
Sept - 75

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DECLARATION OF JIM VERMEULEN

**ATTACHMENT 3 OF 3
DSL LOOP QUALIFICATION ISSUES (“NO FACILITIES”)**

DSL Loop Qualification Issues (Norfolk Sales Office)

City	State	Zip	Loop Product Available	Wire Center Name	Date Returned	Transaction Number
Hampton	VA	23663	Parts	Queen St.	8/9/06	LSWB340809200612310806275
Norfolk	VA	23504	Parts	Bute St.	9/5/06	LSWF350905200616565001712
Norfolk	VA	23509	Load Coils	Bute St.	9/5/06	LSWF350905200616562001708
Norfolk	VA	23509	DLC - LST Dependent	Bute St.	9/5/06	LSWF350905200613065701070
Newport News	VA	23601	Parts	Harpersville	9/5/06	LSWF350905200616595401733
Norfolk	VA	23518	Load Coils	Granby St.	9/11/06	LSWB340911200614462909280
Virginia Beach	VA	23452	Loop Length Exceeds Svc. Requested	Plaza Trail	9/12/06	LSWB340905200616053511852
Portsmouth	VA	23707	DLC - No Copper	High Street	9/14/06	LSWF340914200609155100309
Newport News	VA	23601	Digital Loop Carrier	Harpersville	9/15/06	LSWB350915200613270207077
Portsmouth	VA	23702	Loop Length Exceeds Svc. Requested	High Street	9/15/06	LSWB410915200611285505017
Norfolk	VA	23517	Parts	Bute St.	9/18/06	LSWB350918200609171401869
Virginia Beach	VA	23454	Parts	Plaza Trail	9/19/06	LSWB350919200613240406935
Williamsburg	VA	23185	Load Coils	Williamsburg	9/20/06	LSWB420920200608595702604
Norfolk	VA	23508	Parts	West Little Ck.	9/21/06	LSWF420921200609140500404
Hampton	VA	23661	Digital Loop Carrier	Aberdeen Rd.	9/22/06	LSWF410922200611531800913
Hampton	VA	23666	Parts	Drummonds Corner	9/22/06	LSWF410922200613174701208
Newport News	VA	23602	Parts	Jefferson	9/22/06	LSWF410922200613350101273
Newport News	VA	23608	Parts	Jefferson	9/22/06	LSWF410922200613220501227
Virginia Beach	VA	23454	DLC - No Copper	Plaza Trail	9/22/06	LSWF420921200616034901714
Virginia Beach	VA	23454	DLC - No Copper	Va. Bch. 32nd St.	9/22/06	LSWF410922200613252801233
Newport News	VA	23606	DLC - No Copper	Harpersville	9/27/06	LSWB420927200615033909718
Williamsburg	VA	23188	Parts	Williamsburg	9/27/06	LSWB41092720061626431999
Virginia Beach	VA	23454	DLC - No Copper	Great Neck Rd.	9/29/06	LSWB350929200608510201484
Hampton	VA	23669	DLC - No Copper	Queen St.	9/29/06	LSWB420929200615315210050
Norfolk	VA	23505	DLC - No Copper	West Little Ck.	9/29/06	LSWB420929200611153104848
Williamsburg	VA	23185	Parts	Williamsburg	9/29/06	LSWB350929200610211003585
Norfolk	VA	23502	DLC - No Copper	Brickell Rd.	10/4/06	LSWB341004200609355202222
Portsmouth	VA	23707	DLC - LST Dependent	High Street	10/4/06	LSWB341004200610020702770
Williamsburg	VA	23188	Parts	Toano	10/4/06	LSWF411004200616274002490
Williamsburg	VA	23185	DLC - LST Dependent	Williamsburg	10/5/06	LSWB411005200612570707103
Newport News	VA	23606	Parts	Harpersville	10/6/06	LSWF411006200609500400463
Norfolk	VA	23510	DLC - No Copper	Bute St.	10/9/06	LSWF421009200609345500462
Virginia Beach	VA	23452	Digital Loop Carrier	Chinese Corner	10/9/06	LSWF421009200609190800393
Virginia Beach	VA	23462	DLC - LST Dependent	Chinese Corner	10/9/06	LSWF411009200609381700544
Virginia Beach	VA	23452	Loop Length Exceeds Svc. Requested	Plaza Trail	10/9/06	LSWF411009200612483001390
Virginia Beach	VA	23454	DLC - No Copper	Plaza Trail	10/10/06	LSWF421009200613315301386
Williamsburg	VA	23185	Loop Length Exceeds Svc. Requested	Williamsburg	10/10/06	LSWF421009200613573101454
Newport News	VA	23606	Parts	Harpersville	10/11/06	LSWF341011200616285501614
Norfolk	VA	23518	Loop Length Exceeds Svc. Requested	Granby St.	10/12/06	LSWB351012200612043205081
Chesapeake	VA	23320	Loop Length Exceeds Svc. Requested	Indian River Rd.	10/12/06	LSWF421011200617000401628
Norfolk	VA	23508	Loop Length Exceeds Svc. Requested	West Little Ck.	10/12/06	LSWB351012200612075105167
Chesapeake	VA	23324	DLC - No Copper	Guerriere	10/13/06	LSWB341013200614210908676
Chesapeake	VA	23320	Load Coils	Indian River Rd.	10/13/06	LSWB341013200610363304386
Williamsburg	VA	23188	Parts	Williamsburg	10/13/06	LSWB341013200609142002634
Williamsburg	VA	23188	Parts	Williamsburg	10/16/06	LSWF411016200612124301002
Norfolk	VA	23518	Parts	Granby St.	10/17/06	LSWB341017200613020407342
Williamsburg	VA	23185	DLC - No Copper	Williamsburg	10/17/06	LSWB341017200609273602304
Williamsburg	VA	23188	Parts	Williamsburg	10/17/06	LSWB341017200611271505109
Yorktown	VA	23693	DLC - No Copper	Harpersville	10/18/06	LSWB341017200615255110799
Williamsburg	VA	23185	DLC - No Copper	Williamsburg	10/18/06	LSWF341018200611130900856
Williamsburg	VA	23185	DLC - No Copper	Williamsburg	10/18/06	LSWB411018200613544108189

Poquoson	VA	23662 Parts	Drummonds Corner	10/19/06	LSWF421019200611180100638
Portsmouth	VA	23707 Load Coils	High Street	10/19/06	LSWF421019200611563700801
Portsmouth	VA	23707 DLC - No Copper	High Street	10/19/06	LSWF421019200611534900787
Williamsburg	VA	23188 Parts	Williamsburg	10/19/06	LSWF421019200611185500639
Hampton	VA	23669 DLC - No Copper	Queen St.	10/20/06	LSWB411020200610505403373

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

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

**OPPOSITION OF CAVALIER TELEPHONE SUBSIDIARIES
TO VERIZON'S PETITIONS FOR FORBEARANCE**

Exhibit "C"

Perkins, Stephen

From: Clift, Marty
Sent: Thursday, September 21, 2006 5:15 PM
To: 'thomas.caldwell@verizon.com'
Subject: RE: Request for Agreement

[I appreciate your prompt response and candor.](#)

From: thomas.caldwell@verizon.com [mailto:thomas.caldwell@verizon.com]
Sent: Thursday, September 21, 2006 5:13 PM
To: Clift, Marty
Subject: Re: Request for Agreement

Marty
I want to acknowledge your note although I do not have any additional information.
Tom

----- Original Message -----
From: "Clift, Marty" [mwclift@cavtel.com]
Sent: 09/21/2006 12:00 PM
To: Thomas Caldwell
Subject: RE: Request for Agreement

[I am not trying to be trite, but how can we objectively review those petitions, when we have no idea of what happens post forbearance?](#)

From: thomas.caldwell@verizon.com [mailto:thomas.caldwell@verizon.com]
Sent: Thursday, September 21, 2006 11:56 AM
To: Clift, Marty
Subject: Re: Request for Agreement

Marty
We do not have draft agreements.
Tom

----- Original Message -----
From: "Clift, Marty" [mwclift@cavtel.com]
Sent: 09/21/2006 11:08 AM
To: Thomas Caldwell
Subject: Request for Agreement

With respect to Verizon's Forbearance Petitions, would you please provide a copy of the planned commercial agreement, that Verizon plans to introduce if those forbearance petitions are granted?

Second, on July 24, Verizon served notice to the FCC of a planned copper retirement in Christiansburg, Virginia. Based upon our previous conversations, the continued availability of copper loops is of critical importance to us, and thus the Christiansburg Notice caught our attention. While Cavalier does not service Christiansburg, we do have some questions about this notice, process, and future notices. I have placed two calls to Rose Clayton, the person instructed to call on the notice, but Rose has not called me back. If Rose is unavailable, would you please have someone call me who may be familiar with this activity.

Thank you.

3/5/2007

Marty
804-422-4515

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

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

**OPPOSITION OF CAVALIER TELEPHONE SUBSIDIARIES
TO VERIZON'S PETITIONS FOR FORBEARANCE**

Exhibit "D"



December 15, 2006

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
Washington, DC 20554

Re: 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

Dear Ms. Dortch:

It is the understanding of McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”) that some Commissioners view the Commission's grant of forbearance in the Omaha, Nebraska market as a template to follow in the current forbearance proceeding based on the notion that it proves that forbearance can result in a viable model of competition.¹ As the most impacted competitive local exchange carrier in the Omaha market, McLeodUSA wants to make it clear in this proceeding that the forbearance granted by the FCC in the Omaha market has made it extremely difficult for McLeodUSA to remain in the Omaha market and has severely devalued the investment in our network facilities in that market. Barring relief from the appellate court in the appeal of the *Omaha Forbearance Order*, McLeodUSA will either sell or cease its operations in the Omaha market, despite its enormous investment in its own network facilities.

In the *Omaha Forbearance Order*, the Commission made a predictive judgment that, notwithstanding forbearance from UNE obligations, Qwest would continue to make wholesale offerings of loops and transport to its competitors, based in part on the fact that Qwest had entered into some commercial agreements with UNE-P providers.² Consistent with the

¹ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. Sec. 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, FCC 05-170, WC Docket No. 04-223, released December 2, 2005 (“*Omaha Forbearance Order*”), *appeal pending, Qwest v. FCC*, Case No. 05-1450 (DC Circuit).

² *Omaha Forbearance Order* at ¶ 82. McLeodUSA, as noted in other filing, has entered into a QPP with Qwest which it uses to provide 144 alarm circuits in Omaha. McLeodUSA has not found that pricing under the QPP permits it to provision new customers.

information McLeodUSA provided in earlier filings in the Omaha proceeding,³ Qwest continues to steadfastly refuse to negotiate any commercial or Section 271 pricing for the delisted high capacity UNEs for the affected central offices (“COs”). Instead, Qwest’s has only offered tariffed special access and tariffed discounts on special access pricing as a replacement for the delisted high capacity UNEs. The Commission’s prediction that Qwest would negotiate a fair price with McLeodUSA outside the umbrella of regulation was patently incorrect.

It is also noteworthy that McLeodUSA has approached Cox Communications on at least two occasions regarding its willingness to entertain a commercial arrangement for McLeodUSA to lease from Cox last mile network facilities. McLeodUSA was rebuffed on both occasions.

Thus, McLeodUSA’s only option has been to replace delisted high capacity UNE loops and transport by leasing such facilities from Qwest at special access pricing. An especially egregious component of Qwest’s special access pricing are the exorbitant non-recurring charges (“NRCs”). Qwest charges \$618.25 to install each high capacity circuit. The \$618.25 NRC compares to a \$124.61 NRC for a comparable DS1 UNE. By itself, the special access NRC is a significant market barrier for acquiring new enterprise business customers. In addition, the forbearance enabled Qwest to increase the monthly recurring charge for high capacity loops from \$76.42 to \$202.22. By forcing McLeodUSA to special access pricing, Qwest has been able to relegate McLeodUSA to essentially being a CAP provider in the Omaha market, forcing it to target its limited sales efforts to large and very large business customers. Relegating a competitive provider that has invested tens of millions of its own capital in operating its own local network infrastructure to a CAP provider is certainly not the model of facilities-based competition that McLeodUSA believes was envisioned by the 1996 Telecommunications Act.

Once it became clear that Qwest was unwilling to negotiate what the Commission had predicted would be reasonable commercial or Section 271 pricing, McLeodUSA made several strategic decisions with respect to the Omaha market. First, McLeodUSA removed most of the employees from the market and attempted only to service our existing customer base and sell enough to minimize churn, and maintain the *status quo* pending appeal of the *Omaha Forbearance Order*. Second, McLeodUSA ceased all sales for residential and business POTs service in the Omaha market. At this time, McLeodUSA is not selling services less than a DS1 level offering unless the customer requests POTs as an ancillary service. McLeodUSA has forecasted net customer loss in the Omaha market in 2007 and beyond since the market is not economically viable in light of Qwest's special access rates.

Thus, while the Commission’s analysis in its *Omaha Forbearance Order* appeared to rely on the existence of McLeodUSA as an established competitive provider to bolster its predictive judgment that competition would continue after forbearance was granted, the Commission cannot reach the same conclusion in this proceeding. Experience over the past year has shown the Commission’s predictions to be mistaken. The reality is that established or not, a competitive provider cannot survive if the incumbent local exchange carrier is permitted to set

³ Motion for Stay, McLeodUSA Telecommunications Services, Inc., WC Docket No. 04-223, filed February 3, 2006, p. 11; Letter to Marlene H. Dortch from William A. Haas, Associate General Counsel, McLeodUSA Telecommunications Services, Inc., WC 04-223, filed September 14, 2005, p. 3.

wholesale prices for bottleneck last mile and transport facilities without some reasonable measure of regulatory supervision of that wholesale pricing.

In addition to severely limiting McLeodUSA's ability to effectively compete in most customer segments in the Omaha market, the *Omaha Forbearance Order* has significantly devalued McLeodUSA's network assets in the Omaha market. McLeodUSA has been consolidating its operations in the past twelve months, and while its assets have been valued by suitors at reasonable prices in other states such as North Dakota and South Dakota, no parties have shown any interest in the Omaha market due to the FCC's forbearance decision. The *Omaha Forbearance Order* has deterred all investment in Omaha except for the incumbent and Cox. Thus, the result of the *Omaha Forbearance Order* will be a duopoly between the incumbent cable provider and the ILEC in the small, medium and enterprise business market segment, and to the extent mobile phones are not considered a substitute by some segment of residential customers, the residential market as well. Such a limited version of facilities-based competition is not the result that McLeodUSA believes Congress intended in the Telecommunications Act of 1996.

As previously noted, barring court relief in the appeal of the *Omaha Forbearance Order*, McLeodUSA will either sell or cease its operations in the Omaha market, despite its enormous investment there in its own network facilities.

For all the reasons previously advanced by McLeodUSA, the Commission should deny the forbearance in this docket.

Sincerely,

/s/

Chris MacFarland
Group Vice President - Chief Technology Officer

Cc: Dan Gonzalez
Michelle Carey
Russell Hanser
Scott Deutchman
Scott Bergmann
Thomas Navin
Ian Dillner
Julie Veach
Jeremy Miller
Tim Stelzig