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ATTORNEYS AT LAW

July 30, 2007

Ex Parte – Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: *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*

Dear Ms. Dortch:

On July 30, 2007, Christopher Putala, Executive Vice President, Public Policy, EarthLink, Inc., Amy Mehlman of Mehlman Capital Strategies, and John Nakahata of Harris, Wiltshire & Grannis, LLP, met with John Hunter, Chief of Staff & Senior Legal Advisor, Wireline Issues. The points made during that meeting are attached.

Please let me know if you have any questions or concerns.

Sincerely,



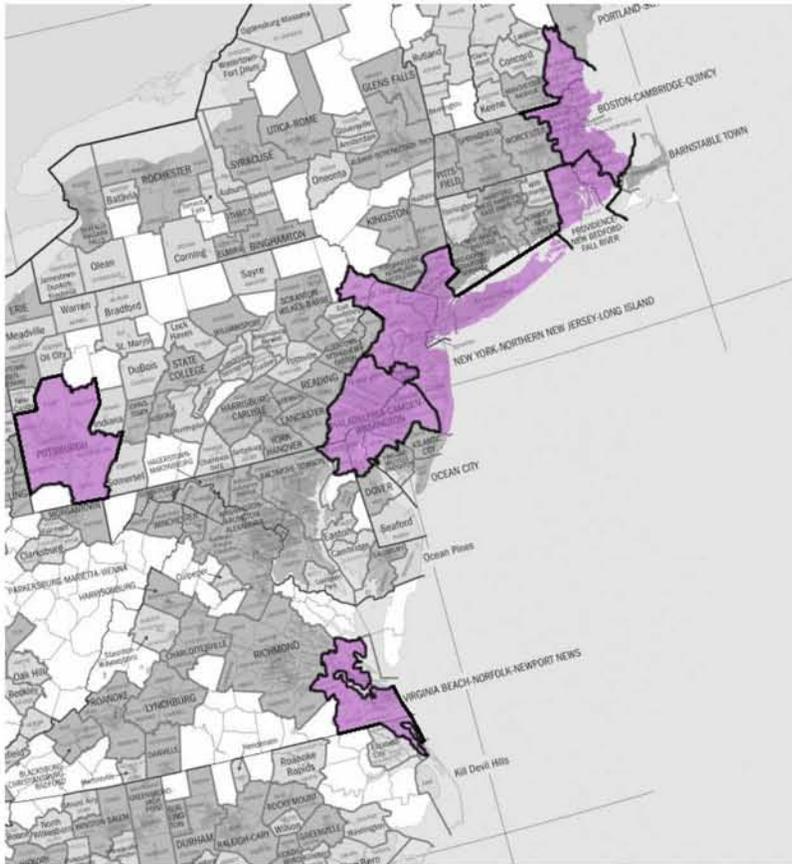
John T. Nakahata
Counsel for EarthLink, Inc.

Verizon UNE Forbearance Petition Harms Consumers and Voice and Broadband Competition

Presentation of EarthLink, Inc.

July 2007

Verizon's Petition Affects Choices for Millions of Consumers and Businesses



- Directly affects –
 - 6 MSAs including parts of 10 states from New Hampshire to North Carolina.
 - 35 million Americans.
 - 13 million households.
- **Indirectly affects every place nationwide where cable telephony is deployed.**

EarthLink and New Edge Innovative UNE-L Based Offerings

● EarthLink

- Line Powered Voice and ADSL2+ - Innovative UNE-L based bundle.
 - Can serve large numbers. Passes over 12 million households nationally. Can serve nearly 4 million in NY and Philadelphia MSAs alone.
 - Line Powered Voice works even when the electricity goes off (same as traditional phone service).
 - Line Powered Voice runs on existing household wiring.
 - ADSL2+ yields up to 8 Mbps downstream data.

● New Edge

- Uses UNE-L to provide broadband productivity solutions for small and medium-sized businesses.
- Customers include franchises, convenience stores, generally located outside of central business districts.
- Products help business manage inventory and sales, monitor employee attendance, provide security.

UNE-L Broadband - An Independent Competition Option

- UNE-L Broadband is facilities-based competition that only relies on the ILEC to rent the use of the loop for last-mile transmission.
- UNE-L Broadband providers –
 - Invest to supply their own DSLAMs, middle mile and backbones.
 - Offer services priced independent of the ILEC broadband services, because the loop is rented at cost-based rates and the ILEC cannot increase the loop price when it wants to raise its own retail broadband rates.
 - Make their own technology decisions, and can decide to offer faster services than the ILEC.
 - Independently decide what innovative applications and bundles to offer.

Verizon Fails to Show UNE-L Forbearance Won't Harm Broadband Consumers & Competition

- Verizon presents no evidence or analysis to show that it meets the forbearance standards with respect to UNE-based broadband services.
 - No discussion of the amount of independent, non-UNE-based broadband competition in each wirecenter.
 - No analytical response to EarthLink's detailed comments.

- Verizon falsely asserts, "as the Commission has recognized, the underlying broadband connections are supplied in a competitive market." (VZ Reply Comments at 31 & n. 61)
 - FCC made no such finding in the absence of UNE-L. *Triennial Review Order* expressly retained copper loop unbundling "to ensure that requesting carriers have access to the copper facilities they need in order to provide narrowband **or broadband** services to customers served by copper local loops." (*TRO*, ¶ 250)
 - Wireline *Broadband Order* expressly preserved and relied upon UNE-L. (¶¶ 6, 57) "Increased intermodal and **intramodal** competition will continue to encourage these two broadband providers to deploy broadband Internet access services throughout their respective service areas." (¶ 57)

Even Verizon's Voice Market "Proof" is Flawed and Incomplete

- Verizon includes UNE-L lines in its "market share" data, even though the FCC has rejected inclusion of UNE-based competitors in analyzing requests for UNE forbearance.
- Verizon's use of E911 data is wholly misleading. Verizon uses E911 data as a "proxy" for CLEC customer lines. But according to Verizon's own expert in Virginia, this is incorrect. E.g.:
 - "There is not, however, a one-to-one correspondence between E-911 listings which are associated with customer telephone numbers and access lines (or their equivalents)."
 - "This is particularly true for business applications that employ trunk arrangements [e.g PBX] whereby many stations, and therefore many E-911 listings, may be served with a relatively small number of lines. . . . [A]t the state level, ratios of business E-911 listings to access lines in the 2:1 neighborhood are not unexpected."
 - "[C]ompany Official Lines are included in the E-911 listing count."
[West Rebuttal Test., Virg. State Corp. Comm., Docket PUC-2007-00008, at 7, 14]
- Verizon presents no "coverage" data comparable to *Omaha* and *Anchorage*.

Omaha nor *Anchorage* Do Not Inform FCC About Forbearance For UNE-L Broadband

- *Omaha* – No indication that any companies were using UNE-L to provide mass-market broadband services.
- No basis for an FCC predictive judgment that Verizon will provide loops at reasonable rates.
 - Verizon does not offer alternatives in tariff or otherwise.
 - Verizon provided no terms when requested. (Alpheus et al., July 10, 2007 ex parte at 6)
 - Wholesale Advantage is UNE-P replacement, and cannot be used for higher-bandwidth services.
 - Verizon 271 UNE rates in state proceedings are astronomical.
 - Recurring DS0 loop rates up 90-300%.
 - In Omaha,
 - DS-0 Loop Price is Up 30%, with rates for some higher capacity loops more than doubling.
 - At least one carrier is leaving the market (McLeod) and another abandoned entry plans (Integra).
- *Anchorage* – CLEC was generally not using UNEs to provide mass market broadband, and was cable co. migrating to cable network.

State and Local Governments Oppose Verizon's Forbearance Request

- **Virginia**
 - Virginia State Corp. Comm.
 - Virginia Office of Attorney General
- **Maryland**
 - Maryland Office of People's Counsel
- **Delaware**
 - Delaware PSC
- **Pennsylvania**
 - Pennsylvania PUC
 - Pennsylvania Office of Consumer Advocate
 - City of Philadelphia
- **New Jersey**
 - New Jersey Board of Public Utilities
 - New Jersey Division of Rate Counsel
- **New York**
 - New York Department of Public Service
 - City of New York
- **Connecticut**
 - Connecticut Consumer Counsel
- **Massachusetts**
 - Massachusetts Department of Telecommunications & Cable
 - Massachusetts Office of Attorney General
- **New Hampshire**
 - New Hampshire Public Service Board
 - New Hampshire Office of Consumer Advocate
- **National Association of State Utility Consumer Advocates**

Verizon's Forbearance Petitions Must Be Denied

- Verizon cannot prove that forbearance will not harm consumers and competition in the broadband and voice markets.
- Forbearance buttresses a fixed broadband duopoly, likely leading to higher prices, fewer choices, and slower broadband adoption.
- Forbearance eliminates a market-based protection for a neutral internet.
- Forbearance short circuit's the "new wires, new rules" policy adopted in the *TRO* and *TRRO* without any clear basis.