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August 31, 2007

Ex Parte

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

Re: Petitions of AT&T Inc., BellSouth Corporation, the Embarq Local Operating Companies, and Qwest Under 47 U.S.C. § 160(c) for Forbearance from Title II and Computer Inquiry Rules with Respect to Broadband Services, WC Docket Nos. 06-125 & 06-147;

Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services, WC Docket No. 04-440

Dear Ms. Dortch:

Verizon submits this letter in response to the August 23, 2007 letter from Thomas J. Navin, Chief of the Commission's Wireline Competition Bureau, requesting "market data to enable a 'local market analysis'" for the broadband services at issue in the pending forbearance petitions. As an initial matter, although the letter was issued in WC Docket Nos. 04-440, 06-125, and 06-147, there is no pending forbearance petition in the first docket. Verizon's petition for forbearance was granted by operation of law almost a year and a half ago, and, as explained below, it would be unlawful to issue an order ruling on that petition at this date.

There are, however, pending forbearance petitions in the other two dockets, and those petitioners have shown that there is extensive competition nationwide to provide stand-alone broadband transmission services to the sophisticated, highly lucrative enterprise customers that purchase such services. For several reasons, the Commission should grant the pending petitions and allow petitioners and other providers the full relief requested. First, Verizon's experience over the last year and a half of offering these sophisticated broadband services to enterprise customers on a private carriage basis confirms that the market works and that common carriage regulation is unnecessary. Second, the sophisticated nature of these particular broadband services, as well as the customers who purchase them, removes any need for common carriage regulation. In fact, in light of these characteristics, these are precisely the types of services that the Commission has recognized competitive providers are capable of providing on their own. Third, the Commission has consistently considered the appropriate regulatory framework for broadband services on a nationwide basis and courts have consistently affirmed that approach. The Commission should

continue to address broadband services on that basis. Local data serves no purpose in the context of these sophisticated broadband services. Finally, in no event could or should the Commission do anything at this time to affect the relief that Verizon was granted 17 months ago for its broadband services or to re-regulate those broadband services. Instead, the Commission should grant the pending petitions and provide these competitors and other providers with the full relief requested in these petitions.

1. Verizon's experience over the last year and half confirm that the market for the high-end, broadband services at issue in the pending petitions works, and that outdated common carriage regulation is unnecessary to protect the sophisticated customers who purchase such services. Therefore, the Commission should grant the full requested relief and allow these competitors and any others the flexibility to provide customized, broadband offerings to meet the particularized needs of their customers.

The stand-alone broadband services at issue in the pending forbearance petitions are the same high-end, enterprise services for which Verizon already received relief. These services, which are among the most sophisticated services on the market, include (1) all packet-switched services capable of 200 kbps in each direction and (2) all non-TDM-based optical networking, optical hubbing, and optical transmission services.¹ These services do not include traditional TDM-based special access services, such as traditional DS-1s or DS-3s. *Id.*

Over the last 17 months, Verizon has embraced the deregulatory relief resulting from the grant of its petition for forbearance by operation of law, and has actively engaged with its customers on the transition of these broadband services to private carriage arrangements. Not surprisingly, given the intense competition for broadband services, the market is working. Verizon has already detariffed or grandfathered many of the broadband transmission services for which Verizon obtained regulatory relief through the deemed grant of its petition. Verizon already has entered into private carriage arrangements with approximately two hundred wholesale and retail customers with a value of more than \$1 billion in total. Verizon has also rolled out new and innovative services, such as a bandwidth-on-demand service.² Forbearance has also enabled Verizon to design and offer new, integrated optical IP services without the need to engage in complex regulatory determinations of how to treat the broadband transmission components of

¹ See Edward Shakin Letter to Marlene Dortch, *Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, WC Docket No. 04-440, at 2-3 (filed Feb. 7, 2006), attached hereto as Attachment 1.

² The characteristics of these services and customers, and the need to provide innovative and customized offerings, shows why forbearance should not be limited to the particular stand-alone broadband transmission services that a particular carrier is offering while its petition is pending. Requiring incumbent LECs that are rolling out new broadband services to file new petitions for forbearance — and to wait as much as 15 months to obtain the flexibility forbearance provides — would deter carriers from investing in the development and deployment of such new and innovative broadband services, contrary to Congress's goals of promoting advanced services.

those services, or the need to design those integrated services to satisfy regulatory requirements rather than the needs of its customers.³

Verizon's and its customers' successes in moving to private carriage arrangements for broadband services — and the absence of any evidence of harms resulting from the grant of its petition — confirm that the regulations and statutory provisions from which Verizon sought forbearance remain unnecessary to protect consumers or to ensure just and reasonable rates and that enforcement of those rules and provisions is not in the public interest.⁴ Likewise, Verizon's competitors who have filed the pending forbearance petitions should be extended this same relief, so that they too can craft unique and customized offerings to meet their customers' demands.

2. The sophisticated nature of these broadband services, as well the customers who purchase them, confirm that common carriage regulation is inappropriate. The packetized and optical stand-alone broadband transmission services at issue are sold primarily to enterprise customers that purchase those services to connect their locations across the country and around the world. The enterprise customers that purchase these wireline broadband transmission services, moreover, are “highly sophisticated” and can “negotiate for significant discounts.”⁵ This level of sophistication is “significant not only because it demonstrates that these users are aware of the multitude of choices available to them, but also because they show that these users are likely to make informed choices based on expert advice” to “seek out best-price alternatives.”⁶ Indeed, the Commission recently reaffirmed that the “sophistication of the enterprise customers that tend to purchase” stand-alone broadband transmission at issue here, along with the “large revenues these customers generate,” confirms that competition can and will discipline prices for such services, in the absence of regulation.⁷

Moreover, as the Commission has recognized previously, competitive providers are able to offer both categories of high-end broadband transmission services at issue here on their own, and the distinction drawn by the petitions between traditional, TDM-based transmission services and newer, packetized and optical broadband transmission services is consistent with the

³ See, e.g., 47 U.S.C. § 157 note, 230(a).

⁴ See, e.g., *BellSouth Telecomms., Inc. v. FCC*, 469 F.3d 1052, 1060 (D.C. Cir. 2007) (holding that agencies have “no license to ignore the past when the past relates directly to the question at issue” and provides “data against which to test the [relevant] proposition[s]” on which the agency’s decision is based).

⁵ Memorandum Opinion and Order, *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, ¶ 75 (2005) (“*Verizon-MCI Order*”).

⁶ *Id.* ¶ 76.

⁷ Memorandum Opinion and Order, *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)). For Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, FCC 07-147, WC Docket No. 06-109, ¶ 99 (Aug. 20, 2007) (“*ACS Broadband Forbearance Order*”).

Commission's own prior decisions⁸ and Congress's own policy preference for promoting the deployment and development of broadband facilities.⁹

First, the Commission has made clear that competitive providers can, and should be encouraged to, deploy their own facilities for packet switching and to provide packetized services. For example, in the *Triennial Review Order*, the Commission recognized that “the record shows that a wide range of competitors are actively deploying their own packet switches, including routers and DSLAMs to serve both the enterprise and mass markets.” *Id.* ¶ 538. Likewise, the Commission denied competitive providers unbundled access to any “transmission facility between the central office and the customer’s premises (including fiber feeder plant) that is *used to transmit packetized information.*” *Id.* ¶ 288 (emphasis added). The Commission noted that a contrary rule for packetized services and facilities would “blunt the deployment of advanced telecommunications infrastructure by incumbent LECs and the incentive for competitive LECs to invest in their own facilities, in direct opposition to the express statutory goals authorized by section 706. *Id.*

In any event, as noted above, the pending petitions for forbearance — no different from the Verizon petition that was granted by operation of law — do not cover TDM-based special access facilities, such as DS-1s and DS-3s, which will remain available through federal tariffs, subject to common carrier regulation, even after the Commission grants the full relief sought in the still-pending petitions. As the Commission repeatedly has recognized, competitors are creating and selling their own packetized broadband transmission services by combining these traditional TDM-based “special access facilities” with *their own* “packet switch[es],”¹⁰ as well as by deploying their own facilities or using third-party facilities. The Commission recently reaffirmed its prior findings that competitors can provide stand-alone broadband transmission services “by relying on special access TDM loops (in addition to [their] own facilities).”¹¹

Second, with respect to optical services and facilities, the Commission has recognized that there is “substantial deployment of competitive fiber loops at OCn capacity and competitive carriers confirm they are often able to economically deploy these facilities to the large enterprise customers that use them.”¹² Competing carriers are able to deploy new OCn-level facilities without significant difficulty because these types of facilities “produce revenue levels which can justify the high cost of loop construction, providing the opportunity for competitive LECs to offset the fixed and sunk costs associated with the loop construction.”¹³

⁸ See, e.g., *Triennial Review Order* ¶ 213.

⁹ See 47 U.S.C. §§ 157 note, 230.

¹⁰ Memorandum Opinion and Order, *Petition for Waiver of Pricing Flexibility Rules for Fast Packet Services*, 20 FCC Rcd 16840, ¶ 11 (2005).

¹¹ *ACS Broadband Forbearance Order* ¶ 102.

¹² Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533, ¶ 183 (2005); see also *Triennial Review Order* ¶ 315.

¹³ *Triennial Review Order* ¶ 316.

To the extent that some commenters continue to oppose the pending petitions, their reasons for doing so likely differ depending on their differing business plans. As explained by independent analysts, some competing providers have chosen to invest heavily to deploy an extensive competing network at the time of their entry into the market and have then focused on attracting customers to fill their network.¹⁴ (Analysts cite Time Warner Telecom as an example. *Id.*) Such facilities-based competitors obtain a relative advantage from keeping incumbents subject to regulations that hamper their flexibility to meet and beat competition by designing and offering service packages and rates that enterprise customers demand. Other providers, however, have taken a “smart build” approach, and lease existing ILEC facilities on a wholesale basis while they build a customer base in an area, and then invest in their own facilities. *Id.* These providers tend to benefit when carriers are afforded the flexibility to negotiate customized arrangements to meet their particular needs. Regardless of the regulatory incentives of competitive providers, the forbearance provision, however, embodies the basic antitrust principle that government regulation of the marketplace is “for the protection of *competition*, not *competitors*” and their particular business plans.¹⁵

3. As did Verizon in the long-since-terminated proceeding on its forbearance petition, the petitioners with pending forbearance petitions have supported their requests for relief by submitting evidence showing the extensive competition nationwide to provide broadband transmission services to enterprise customers. In reviewing the state of competition to provide stand-alone broadband transmission services to enterprise customers with respect to the still-pending petitions in WC Docket Nos. 06-125 and 06-147, the Commission should follow its repeated decisions to review the competitiveness of broadband services at the nationwide level. For example, when the Commission classified cable modem service as an information service and held that the *Computer Inquiry* rules should not apply to cable modem service, the Commission stressed that it was considering “the appropriate *national* framework for the regulation of cable modem service.”¹⁶ The Supreme Court upheld the Commission’s adoption of these nationwide rules based on the Commission’s consideration of national “market conditions.”¹⁷

In the *Triennial Review Order*, the Commission likewise concluded — on a nationwide basis — that incumbent LECs did not have to unbundle certain broadband elements, irrespective of the type of customer served using those elements.¹⁸ The D.C. Circuit upheld the Commission’s decision not to require unbundling of these elements on a nationwide basis.¹⁹ The Commission itself later noted that “the D.C. Circuit upheld the Commission’s findings in the *Triennial Review*

¹⁴ See CIBC World Markets, “Enterprise Outlook Update: Pricing and Volume Continue to Improve,” at 6-7 (July 30, 2007) (describing different business models pursued by CLECs).

¹⁵ *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977) (internal quotation marks omitted).

¹⁶ Declaratory Ruling and Notice of Proposed Rulemaking, *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 FCC Rcd 4798, ¶ 56 (2002).

¹⁷ *National Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 125 S. Ct. 2688, 2711 (2005).

¹⁸ *Triennial Review Order* ¶¶ 210, 241-246, 255-263, 272-280, 285-295.

¹⁹ *United States Telecom. Ass’n v. FCC*, 359 F.3d 554, 578-85 (D.C. Cir. 2004).

Order that it was appropriate to relieve the BOCs from unbundling obligations on a national basis for the broadband elements at issue.”²⁰

Following the analysis in the *Triennial Review Order*, the Commission next granted forbearance, “on a national basis,” from § 271 insofar as it applied to the “broadband elements” as to which the Commission had just refused to require unbundling.²¹ The D.C. Circuit upheld this decision in full as well. The D.C. Circuit held that the forbearance statute permits the Commission to “forbear on a nationwide basis — without considering more localized regions individually” and rejected the argument that the Commission must consider “market conditions in particular geographic markets,” holding further that the forbearance statute “imposes no particular mode of market analysis or geographic rigor.”²² The D.C. Circuit similarly found that the Commission “reasonably eschewed a more elaborate snapshot of the current market in deciding whether to forbear” based on its “view of the broadband market as still emerging and developing” and rejected claims that “competition can only . . . be assessed by focusing on . . . specific . . . geographic markets.”²³ In reaching these rulings, the D.C. Circuit was agreeing with the Commission’s own conclusion that it was appropriate to “evaluate[] the broadband marketplace . . . on a nationwide basis to determine whether the statutory criteria for forbearance were satisfied.”²⁴

In the *Wireline Broadband Order*, the Commission again considered a nationwide broadband marketplace and rejected arguments that it is required to consider narrower geographic areas, because those arguments are “premised on data that are both limited and static,” which is inappropriate in light of the “[c]ontinuous change and development [that] are likely to be the hallmark of the marketplace for broadband Internet access at both the retail and wholesale levels over the next several years.”²⁵ Before the Third Circuit, the Commission is defending the national approach in the *Wireline Broadband Order*, explaining that its decision not to “distinguish[] between specific geographic and product markets” in the context of broadband services was appropriate, because “static marketplace dominance analysis” is not useful in the context of “an emerging market that will likely experience rapid technological and competitive changes before it reaches maturity.”²⁶ And, consistent with all of the preceding orders, the Commission’s most recent orders with respect to broadband over power line and wireless broadband services again used a nationwide analysis, without consideration of narrower geographic regions.²⁷

²⁰ Report and Order, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853, ¶ 23 (2005) (“271 Broadband Forbearance Order”).

²¹ *Id.* ¶ 12.

²² *EarthLink, Inc. v. FCC*, 462 F.3d 1, 8 (D.C. Cir. 2006) (internal quotation marks omitted).

²³ *Id.* at 9.

²⁴ Brief for Respondents at 21-22, *EarthLink, Inc. v. FCC*, No. 05-1087 (D.C. Cir. Feb. 6, 2006) (emphasis added).

²⁵ *Wireline Broadband Order* ¶¶ 50, 56.

²⁶ Brief for Respondents at 50-58, *Time Warner Telecom v. FCC*, Nos. 05-4769 *et al.* (3d Cir. oral arg. Mar. 16, 2007) (internal quotation marks omitted).

²⁷ See Memorandum Opinion and Order, *United Power Line Council’s Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, 21 FCC Rcd 13281 (2006); Declaratory Ruling, *Appropriate Regulatory*

The Commission's determination that broadband must be analyzed on a nationwide basis, moreover, is consistent with the manner in which analysts review those services. For example, Time Warner Telecom has recently touted a report by Vertical Systems Group — which Time Warner Telecom states “provides in-depth, accurate, defensible statistics and analysis” on the stand-alone broadband transmission services at issue in the pending petitions — that provides information on the “U.S. Port Share” of “Retail Business Ethernet Service.”²⁸ That report, moreover, shows that Time Warner Telecom saw a 28 percent market share growth in the last six months and that companies other than AT&T, Qwest, and Verizon supply more than 56 percent of Ethernet ports to business customers nationally.²⁹ A recent Lehman Brothers report likewise reviews enterprise data services, such as the broadband transmission services at issue in the pending proceedings, on a nationwide basis, reporting that companies other than AT&T, Qwest, and Verizon currently have won 56 percent of that enterprise business nationally, with these other companies expected to continue increasing their share over the next few years.³⁰ The Commission recently pointed to similar, but older reports in noting that “available data suggest that there are a number of competing providers for [broadband transmission] services and the marketplace appears highly competitive.”³¹

Given the extensive competition nationally to provide broadband transmission services to enterprise customers, it should come as no surprise that data on smaller geographic areas, while unnecessary to consider, shows the same extensive competition. For example, in support of Verizon's forbearance petition that was granted by operation of law, Verizon pointed the Commission to third-party survey results compiled by Harte-Hanks for each of the twelve states (as well as the District of Columbia) in the former Bell Atlantic/NYNEX territories and six different MSAs in the former GTE territory and that Verizon had submitted, and the Commission had relied on, in the Verizon-MCI merger proceeding.³² Just like the national data Verizon had submitted, the Harte-Hanks data confirmed that the degree of competition that Verizon faces warrants forbearance. More recent Harte-Hanks data, which Verizon submitted in a different proceeding and which provide state-specific and MSA-specific data on the broadband transmission services at issue with respect to other carriers' pending forbearance petitions, likewise confirm that

Treatment for Broadband Access to the Internet Over Wireless Networks, 22 FCC Rcd 5901 (2007).

²⁸ See Time Warner Telecom Grows Ethernet Market Share, http://www.twtelecom.com/Documents/Announcements/News/2007/VSG_TWTC_Mid_year07Ethernet.pdf

²⁹ See *id.*

³⁰ See *id.*

³⁰ See Thomas O. Seitz, Lehman Brothers Equity Research, *Telecom Services – Wireline*, at 11 (Oct. 18, 2006) (“*Lehman Brothers Oct. 2006*”).

³¹ *ACS Broadband Forbearance Order* ¶ 98 & n.270.

³² See *Verizon Feb. 7, 2006 Ex Parte* at 12-13; Letter from Dee May, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-75 (FCC filed Sept. 20, 2005); Memorandum Opinion and Order, *Verizon Communications Inc. and MCI Inc., Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, ¶¶ 70-73 & n.196 (2005).

all segments of the business marketplace are competitive.³³ Therefore, even if the Commission were to depart from its consistent practice of reviewing broadband competition on a nationwide basis — which it should not do — the outcome of that analysis would be no different: there is extensive competition in all areas for the stand-alone broadband transmission services that enterprise customers demand.

The Commission's recent order granting in part ACS's petition for forbearance does not reflect a change in the Commission's consistent nationwide analysis for broadband services. ACS's petition was not a pure "me too" petition related to broadband services, but instead was a more complicated petition involved various types of relief from numerous different services. The petition was not limited to broadband services, but instead also included many services for which the Commission previously has used a different level of analysis. Also, ACS is a rate-of-return carrier that provides service, and operates in a highly unique area, in a small territory that is physically far removed from the lower, contiguous, 48 states. The Commission's analysis, therefore, focused on the unique nature of ACS's requested relief and does not reflect a shift from its consistent approach to analyzing broadband services on a nationwide basis.³⁴

4. Finally, regardless of the relief granted to the petitioners with pending forbearance petitions, in no event could the Commission do anything at this time to affect the relief that Verizon was granted for its stand-alone broadband services or to re-regulate those services.³⁵

In December 2004, Verizon filed its forbearance petition that, as clarified in light of subsequent developments at the Commission, sought for Verizon's stand-alone broadband transmission services the same relief the Commission provided in the *Wireline Broadband Order*³⁶ for broadband transmission services that are used for, or as an input to, broadband Internet access services.³⁷ When the March 19, 2006 statutory deadline for ruling on Verizon's petition for forbearance passed without Commission action, that petition, as clarified, was granted by operation of law, thus terminating the proceedings on Verizon's petition. As Verizon has explained, the Commission therefore lacks authority to issue a belated order on Verizon's petition. At a minimum, the Commission could not re-regulate any broadband services that were the subject of that petition without first initiating a new proceeding and compiling a new record. And that

³³ See Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, at 1-2, Attach. A & Exh. 4.4 (FCC filed Apr. 11, 2007).

³⁴ E.g., *ACS Broadband Forbearance Order* ¶¶ 3, 61.

³⁵ See Opposition of Verizon, *Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, WC Docket No. 04-440 (filed Aug. 13, 2007), attached as Attachment 2.

³⁶ Report and Order, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853 (2005), *petitions for review pending*, *Time Warner Telecom Inc. v. FCC*, Nos. 05-4769 *et al.* (3d Cir. argued Mar. 16, 2007).

³⁷ See Letter from Edward Shakin, Vice President and Associate General Counsel, Verizon, to Marlene Dortch, Secretary, FCC, WC Docket No. 04-440 (FCC filed Feb. 7, 2006) ("*Verizon Feb. 7, 2006 Ex Parte*").

record in any event would not justify a finding of the existence of the type of market failure that would justify regulation in the first instance.³⁸

The statute's forbearance provision states that "[a]ny such petition shall be deemed granted if the Commission does not deny the for failure to meet the requirements for forbearance under section (a) within one year after the Commissions receives it." 47 U.S.C. § 160(c). The Commission has held, in the analogous context of the "deemed lawful" provision in § 204(a)(3), that "the term 'deemed[]' . . . is *not ambiguous*" and "must be read" to mean "conclusive."³⁹ The D.C. Circuit expressly upheld that determination⁴⁰ and the Commission later found that, "[g]iven the Court's conclusion," the Commission "cannot adopt [a] reading" of "deemed lawful" as "ambiguous" and as creating merely a "presumption" of lawfulness that "may be rebutted."⁴¹ These same principles apply to the "deemed granted" language in § 160(c), render the deemed grant of Verizon's petition "conclusive," and preclude the Commission from issuing an order now on Verizon's petition.

Indeed, courts of appeals have previously vacated agency orders purporting to deny an application that "shall be deemed to have been granted" when the agency "fail[ed] . . . to act on" it within a specified time period.⁴²

Nor could the Commission issue an order today as a "reconsideration" of the grant by operation of law of Verizon's petition for forbearance. As the Commission has explained to the D.C. Circuit, when Verizon's petition was granted by operation of law, the Commission did not adopt or issue "a reviewable FCC order," nor did it take "any reviewable agency 'action.'"⁴³ Reconsideration can occur only following "an order, decision, report, or action" by the Commission or by a designated entity within the Commission.⁴⁴ Because the deemed grant of Verizon's petition did not involve any agency action — as the Commission has told the D.C.

³⁸ See Opposition of Verizon, WC Docket No. 04-440 (Aug. 13, 2007) (Exh. A hereto); see also Reply Comments of Verizon at 4-9, WC Docket Nos. 06-125 & 06-147 (Aug. 31, 2006); Reply Comments of Verizon at 1-4, WC Docket No. 04-440 (Aug. 17, 2007) (Exh. B hereto).

³⁹ Memorandum Opinion and Order, *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, 12 FCC Rcd 2170, ¶ 19 (1997) ("*Streamlined Tariff Order*") (emphasis added); see also Brief for Respondents at 33, *In re Core Commc'ns, Inc.*, Nos. 04-1368 *et al.* (D.C. Cir. July 25, 2005) ("*FCC Core Communications Brief*") (describing the "deemed lawful" clause in § 204(a)(3) as "an analogous provision" to the "deemed granted" clause in § 160(c)).

⁴⁰ See *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 406, 412 (D.C. Cir. 2002).

⁴¹ Order on Reconsideration, *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, 17 FCC Rcd 17040, ¶¶ 4-5 (2002) ("*Streamlined Tariff Reconsideration Order*").

⁴² See, e.g., *Tri-State Bancorporation, Inc. v. Board of Governors of the Federal Reserve System*, 524 F.2d 562, 564, 567-68 (7th Cir. 1975) (quoting 12 U.S.C. § 1842(b)) (internal quotation marks omitted).

⁴³ Brief for the FCC at 16, 21, *Sprint Nextel Corp. v. FCC*, No. 06-1111 *et al.* (D.C. Cir. oral arg. Oct. 15, 2007).

⁴⁴ 47 U.S.C. § 405(a); see 47 C.F.R. §§ 1.106(a), 1.429(a) (providing for reconsideration of "final" agency action only).

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Circuit — there is nothing to reconsider. In any event, Congress set a strict 30-day time limit on the filing of petitions for reconsideration, and that time has long since passed, even assuming the deemed grant of Verizon's petition could be treated as an action subject to reconsideration, which it cannot.⁴⁵ Similarly, the Commission's rules establish a 30-day period in which the Commission can grant reconsideration on its own motion.⁴⁶ Again, any such period has long since passed.

Accordingly, the Commission should grant the pending forbearance petitions and allow the petitioners and any other providers the full requested relief from common carriage regulation for the sophisticated broadband services at issue here.

Sincerely,

A handwritten signature in cursive script that reads "Dee May".

cc: T. Navin
W. Dever
W. Kehoe
M. Maher
C. Shewman
D. Stockdale

⁴⁵ See 47 U.S.C. § 405(a).

⁴⁶ See 47 C.F.R. § 1.108.