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September 21, 2007

**VIA ECFS**

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

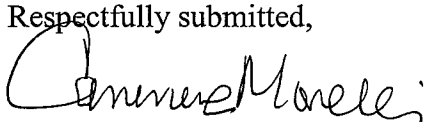
Re: *Ex Parte Notification*: WC Docket No. 06-172, Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas

Dear Ms. Dortch:

Yesterday, Lisa Youngers of XO Communications, LLC, Susan Berlin of NuVox Communications, Anthony Hansel of Covad Communications Group, William Haas of McLeodUSA Telecommunications Services, Inc., Francie McComb of Cavalier Telephone Corp., Karen Reidy and Jerry James, of COMPTEL, the undersigned and Brad Mutschelknaus, of Kelley Drye & Warren LLP, and Russell Blau of Bingham McCutchen, LLP, met with Jeremy Miller, Tim Stelzig, Denise Coca, Margaret Dailey, and Pamela Megna of the Policy Division of the Wireline Competition Bureau. At that meeting, we discussed the insufficiency of the evidence submitted by Verizon to justify forbearance from Section 251(c)(3) unbundling requirements.

The attached presentation was used during the meeting.

Respectfully submitted,



Genevieve Morelli

# VERIZON'S FAILURE TO JUSTIFY FORBEARANCE FROM SECTION 251(c)(3) UNBUNDLING OBLIGATIONS IN ITS "6 MARKETS" PETITIONS

Ex Parte Presentation
WC Docket No. 06-172
September 20, 2007

# VERIZON HAS FAILED TO JUSTIFY RELIEF FROM §251(c)(3) UNBUNDLING OBLIGATIONS

- **Verizon has not shown, pursuant to §10, that –**
  - **§251(c)(3) is unnecessary to ensure its charges and practices are just and reasonable and not unjustly or unreasonably discriminatory;**
  - **§251(c)(3) is unnecessary for the protection of consumers;**
  - **Further deregulation is in the public interest.**

# VERIZON CANNOT SATISFY THE COMMISSION'S ANALYTICAL FRAMEWORK FOR §251(c)(3) RELIEF

**Verizon has not shown, pursuant to the Commission's analytical framework, there is sufficient facilities-based competition in any product or geographic market to ensure sustainable competition if forbearance were granted.**

- Verizon has failed to demonstrate competitive facilities coverage for each geographic and product market.
  - Verizon disregards the Commission's requirement that it show for each product market that facilities-based competitors are able to serve, within a commercially reasonable amount of time, 75% of the customer locations in each wire center.
  - Verizon's fiber route data is severely flawed, including because it is not wire center based and provides no specificity about access to and use of the fiber facility.

# VERIZON CANNOT SATISFY THE COMMISSION'S ANALYTICAL FRAMEWORK FOR §251(c)(3) RELIEF

- Verizon has failed to show separately for each product market that at least two-facilities based competitors have sufficient competitive presence in each wire center.
  - The Commission has consistently held that duopoly markets are insufficiently competitive.
  - The Commission did not alter this view in the *Omaha* decision, but rather relied on its predictive judgment.
  - Because the Commission's predictive judgment has proven wrong in the Omaha market, the Commission must rely here on hard evidence that a duopoly will not result if forbearance is granted.

# VERIZON CANNOT SATISFY THE COMMISSION'S ANALYTICAL FRAMEWORK FOR §251(c)(3) RELIEF

- Verizon fails to show for each product market that each facilities-based competitor in a wire center is providing the full range of substitutable services.
  - As the Commission has indicated in prior proceedings, substitutability can be measured by examining the level of market penetration.

# VERIZON'S E911 CARRIER LINE COUNT DATA CANNOT BE USED TO JUSTIFY §251(c)(3) RELIEF

- Verizon's E911 carrier line count data are inherently inaccurate and cannot support its claim of robust competition in the 6 MSAs at issue.
  - As a threshold matter, Verizon's E911 carrier line counts improperly fail to differentiate lines provided by carriers over their own facilities from lines provided by carriers using UNEs or special access circuits.

# VERIZON'S E911 CARRIER LINE COUNT DATA CANNOT BE USED TO JUSTIFY §251(c)(3) RELIEF

- The staff of VA Corporation Commission ("VCC") found in its recent analysis of Verizon's E911 data that "relying on Verizon's data would likely result in overstating the CLEC's market shares in various wire centers."
  - The E911 database was never intended to demonstrate competitive presence, so it does not track the exact number of phone lines going to each customer location. Verizon sought to correct for this shortcoming by inserting its own assumptions and estimating techniques. But, the VCC staff found this resulted in inaccurate, inflated counts for each CLEC.
  - In the face of proof that its E911 data are inaccurate, Verizon backpedaled and stated that the E911 listings are intended merely to provide "useful insights into the competitive presence of facilities-based CLECs" and not as an accurate measure of competitive activity.

# VERIZON'S E911 CARRIER LINE COUNT DATA CANNOT BE USED TO JUSTIFY §251(c)(3) RELIEF

- The problems with Verizon's E911 data found in the VCC proceeding are confirmed by competitors' analysis of the data filed by Verizon in this docket.
- Verizon's data filed with the FCC overstate both the amount and geographic reach of competition.
  - Cavalier found the data overstated the overall number of lines by 44% in the residential market and 95% in the business market.
  - The data contains large numbers of "phantom" wire centers, where competitors have no presence – 37% of total claimed for Cavalier and 59% claimed for One Communications.

# VERIZON'S SPECIAL ACCESS DATA DO NOT SUPPORT FORBEARANCE FROM §251(c)(3)

- Verizon's special access data are irrelevant and erroneous.
  - The Commission's *Omaha* test requires coverage and penetration by facilities-based carriers – not reliance by competitors on Verizon's facilities.
  - Even if special access data are relevant (which they are not), Verizon's special access data are unreliable –
    - They ignore DS0 lines,
    - They do not distinguish between service categories (*e.g.* local versus interstate and CMRS),
    - They fail to account for lines where UNEs are not accessible,
    - They fail to distinguish between loops and transport, and
    - They overstate usage by relying on VGEs rather than circuits or customers.

# VERIZON'S SPECIAL ACCESS DATA DO NOT SUPPORT FORBEARANCE FROM §251(c)(3)

- Unbundling relief is not warranted where the special access market is not competitive.
  - Verizon already earns supra-competitive returns on its special access services.
  - Because UNEs serve as a check on even more excessive special access prices, unbundling relief would only lead to further increases in special access rates.

# VERIZON'S PETITIONS ARE EXTRAORDINARY IN SCALE AND SCOPE

- Prior §251(c)(3) forbearance petitions were for limited markets, *e.g.* Omaha and Anchorage. In contrast, Verizon's 6 petitions affect over 34M individuals along with an enormous number of businesses across 10 states.

- Verizon's request effectively would eviscerate the UNE rules established in the *Triennial Review* process, which were upheld by the court only last year.

- Because of the enormous impact relief would have on tens of millions of consumers, the Commission must ensure its analysis is rigorous and based on hard evidence.

# VERZION'S REQUEST FOR §251(c)(3) RELIEF SHOULD BE DENIED

For each of the 6 MSAs, Verizon has failed to meet the requirements of §10 and the Commission's framework for forbearance from unbundling requirements —

- It has not produced evidence to demonstrate that sufficient facilities-based competition exists in any wire center for any product market.
- It has failed to show how further UNE deregulation would promote competition and be in the public interest.

Accordingly, the petitions should be denied in their entirety.