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*Via ECFS*

November 9, 2007

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Room TW-A325  
Washington, DC 20554

Re: **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, WC Docket No. 06-172**

Dear Ms. Dortch:

I am writing in response to the October 29, 2007 ex parte presentation EarthLink filed in the above-captioned proceeding. *See* Presentation of EarthLink, Inc. in WC Docket No. 06-172 (Oct. 29, 2007), attached to Letter from John T. Nakahata, Harris, Wiltshire & Grannis, to Marlene Dortch, FCC, WC Docket No. 06-172 (Oct. 30, 2007). EarthLink's principal claim is that forbearance will harm consumers for the broadband services that EarthLink provides using unbundled loops. EarthLink is wrong.

As an initial matter, EarthLink does not – and could not – claim that there is a lack of facilities-based competition for broadband services. EarthLink's own SEC filings state just the opposite. For example, EarthLink's most recent 10-Q states that, in addition to cable and DSL, “[a]n increasing array of alternative broadband access technologies, such as wireless broadband and broadband over power lines, are now available.” EarthLink, Inc., Form 10-Q, at 21 (SEC filed Nov. 2, 2007). EarthLink further notes that, consistent with this rapidly growing competition, “the pricing for broadband services . . . has been declining and is approaching prices for traditional dial-up services, making it a more viable option for consumers that continue to rely on dial-up connections for Internet access.” *Id.* at 20. EarthLink concedes that competition is driving down not only retail

prices, but also wholesale prices: “Broadband ARPU declined 14% during the year ended December 31, 2005 compared to the prior year due primarily to lower retail DSL ARPU resulting from the increased use of promotional pricing and general declines in retail DSL prices *introduced as a result of declines in costs from our DSL service providers.*” EarthLink, Inc., Form 10-K at 45 (SEC filed Mar. 1, 2007) (emphasis added). EarthLink also states that “[c]ompetition in the market for Internet access services is likely to continue increasing,” given the various competitive alternatives available. *Id.* at 13.

Because EarthLink cannot argue that broadband competition is lacking, it is left to claim (at 5) that Verizon did not adequately respond to “EarthLink’s detailed comments on how forbearance harms broadband competition.” In fact, Verizon made an extensive showing that in each of the six MSAs, cable companies are providing broadband services to mass-market and enterprise customers. *See* Verizon Oct. 10, 2007 Ex Parte, Attachs. G & I, Supplement to Attach. I. In addition, Verizon demonstrated that other sources of intermodal competition – such as mobile and fixed wireless – are capable of and are being used to provide broadband services to all kinds of customers in the six MSAs. *See* Verizon Oct. 10, 2007 Ex Parte, Attachs. G & I, Supplement to Attach. I. Verizon also explained that the Commission itself has found that there is facilities-based competition for broadband services provided to both mass-market and enterprise customers. *See* Verizon Reply at 32 & n.61; *Wireline Broadband Order* ¶¶ 41-46; *Triennial Review Order* ¶¶ 272-97; *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, Memorandum Opinion and Order, 19 FCC Rcd 21496, ¶ 22 (2004).

EarthLink next suggests (at 4) that, facilities-based competition aside, “UNE-L Broadband” provides “an Independent Competition Option.” That misses the point entirely. Unbundling is an extreme regulatory remedy designed to allow a transition to facilities based competition. Where facilities-based competition already exists, unbundling is not only unnecessary, but also counterproductive because it has the effect of discouraging investment. *See Triennial Review Order* ¶ 3; *USTA*, 290 F.3d at 428-29. The UNE-based services that EarthLink provides clearly are not necessary to promote facilities-based competition. Tellingly, EarthLink refuses to provide information on the number of customers it is serving in the six MSAs. Its 10-Q states that *nationwide* it serves only 1 million residential broadband access subscribers, and only 68,000 business broadband access subscribers. *See* EarthLink, Inc., Form 10-Q, at 25 (SEC filed Nov. 2, 2007). By comparison, cable companies alone already provide broadband service to more than 30 million subscribers nationwide. *See* Simon Flannery, Morgan Stanley, *The Broadband Report 3Q07*, at 13 Exh. 29 (Oct. 18, 2007).<sup>1</sup> Thus, there is no basis to believe that UNE-L broadband is necessary to promote competition or restrain prices. In any event, where unbundling has been eliminated, Verizon has continued to provide

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<sup>1</sup> These data also put the lie to Covad’s claim that “UNE loops are a critical component in the availability of affordable broadband and bundled communications services for mass market customers.” Letter from Angela Simpson, Covad, to Marlene Dortch, FCC, WC Docket No. 06-172 (Nov. 5, 2007).

service to competing providers under commercial agreements, such as replacements for former line-sharing arrangements and UNE-platforms.

Finally, anticipating the weakness of its factual arguments, EarthLink asserts (at 6) that forbearance would undermine the “‘new wires, new rules’ roadmap to broadband deregulation.” But that policy was never intended to preserve unbundling indefinitely or ubiquitously. To the contrary, the Commission specifically left open the possibility that it would provide relief from unbundling in the future, as competition evolved. *See Triennial Review Order* ¶ 246 (“As we continue to assess impairment in the future, we recognize that the increased presence of viable alternative platforms may help increase competitive alternatives, both retail and wholesale, in the narrowband and broadband mass markets. The presence of such alternatives in the future may enable us to find that requesting carriers are no longer impaired in their ability to compete without access to incumbent LEC loops.”). As Verizon has demonstrated, there can be no question that competition has advanced significantly in the four years since the *Triennial Review Order*, and that forbearance from unbundling regulation is therefore appropriate.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Joseph Jackson". The signature is written in a cursive, flowing style.

cc: Nick Alexander  
Marcus Maher  
Jeremy Miller  
Dana Shaffer  
Don Stockdale