

REDACTED - FOR PUBLIC INSPECTION

Andrew D. Lipman
Russell M. Blau
Philip J. Macres
Direct Phone: 202.373.6000
Direct Fax: 202.373.6001
andrew.lipman@bingham.com
russell.blau@bingham.com
philip.macres@bingham.com

November 9, 2007

VIA HAND DELIVERY

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

**Re: *Ex Parte*, 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:

On November 5, 2007, Time Warner Cable ("Time Warner") submitted data relating to Time Warner's business and residential coverage in each wire center in the New York Metropolitan Service Area ("MSA"). As discussed below, Time Warner's data contains various obvious inaccuracies, and the remaining data is unverifiable; as a result, the Commission cannot rely on it. The undersigned carriers appreciate that Time Warner was working under considerable time pressure to respond to the Wireline Competition Bureau's data requests, and under these circumstances the errors in the data may be understandable. Nonetheless, at least some of Time Warner's submission is plainly wrong, and it is impossible to determine whether any of it is untainted by error.

First, the most glaring discrepancy in Time Warner's submission is the Exhibit 4 data in the "Homes" column that purports to portray the actual number of homes in wire centers that serve various wire centers in the New York MSA. When Time Warner's home total for a particular city is compared with the most recent United States Census ("US Census") total Housing Units for the same locality, it becomes obvious that there must be some serious methodological flaw in Time Warner's numbers, perhaps due to the haste with which they were compiled. Although wire center boundaries do not necessarily correspond to political or census subdivisions, in some cases the errors in Time Warner's data are so extreme that they cannot possibly be due to this type of discrepancy, as shown in Table 1 below:

Boston
Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Walnut Creek
Washington

Bingham McCutchen LLP
2020 K Street NW
Washington, DC
20006-1806

T 202.373.6000
F 202.373.6001
bingham.com

A/72311768.1

REDACTED - FOR PUBLIC INSPECTION

[BEGIN HIGHLY CONFIDENTIAL]

Table 1		
	Time Warner Reported Homes	2000 Census Housing Units

[END HIGHLY CONFIDENTIAL]

Although it is possible that Time Warner Cable does pass only **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** homes in Passaic, New Jersey, those homes obviously cannot constitute **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** percent of the homes in that wire center, as Time Warner’s data seems to indicate.

Because, as noted, wire center service areas generally do not correspond to census subdivisions, there is no simple way to verify the remainder of Time Warner’s “Home” totals. Consequently, there is no way for the Commission or other interested parties to determine whether Exhibit 4 contains other errors of equal or greater magnitude than those listed in Table 1 above. Because of this, the Commission should simply discard the column in Time Warner’s Exhibit 4 that purports to compute the percentage of homes its network covers.

Second, Time Warner does not maintain its residential and business line counts by Verizon’s wire centers and therefore employed Verizon’s suggested method of allocating Time Warner’s data to Verizon wire centers. As demonstrated in the undersigned’s November 6 ex parte letter, the Verizon allocation methodology is defective and produces inaccurate results.¹

Third, the list of wire centers in Time Warner’s Exhibit 4 (listing residential services) does not correspond to the wire centers appearing in Time Warner’s Exhibit 1

¹ See Letter from Andy Lipman, Counsel to the Alpheus Communications, L.P. *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 (filed Nov. 6, 2007).

REDACTED - FOR PUBLIC INSPECTION

(listing business services). Time Warner reports business customers, but not residential customers, in the following wire centers:

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

It reports residential, but not business, customers in the following wire centers:

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

These unexplained discrepancies cast further doubt on the reliability of Time Warner's data submission.

At bottom, the flaws in Time Warner's data render it useless and the Commission cannot reasonably rely on it. Therefore, Time Warner's estimates of the percentage of homes it passes in the New York MSA wire centers, as well as the residential and business line data Time Warner assigned to Verizon's wire centers based on Verizon's flawed methodology, should not be used to determine Time Warner's coverage or market share of voice lines by Verizon's wire centers.

REDACTED - FOR PUBLIC INSPECTION

Respectfully submitted,



Andrew D. Lipman
Russell M. Blau
Philip J. Macres
Nguyen T. Vu
BINGHAM MCCUTCHEN, LLP
2020 K Street, NW
Washington, DC 20006

Attorneys for

Alpheus Communications, L.P.;
ATX Communications, Inc.;
Cavalier Telephone Corporation;
CloseCall America, Inc.;
DSLnet Communications, LLC;
Eureka Telecom, Inc. d/b/a
InfoHighway Communications;
ITC^DeltaCom Communications, Inc.;
McLeodUSA Telecommunications
Services, Inc.;

MegaPath, Inc.
Mpower Communications Corp.;
Norlight Telecommunications, Inc.;
Penn Telecom, Inc.;
RCN Telecom Services, Inc.;
RNK Inc.;
segTEL, Inc.;
Talk America Holdings, Inc.;
TDS Metrocom, LLC; and
U.S. TelePacific Corp. d/b/a
TelePacific Communications

cc: Scott Bergmann
Scott Deutchman
Ian Dillner
John Hunter
Chris Moore
Dana Shaffer
Nick Alexander
Marcus Maher
Gary Remondino (2 paper copies hand delivered)
Jeremy Miller (via e-mail)
Tim Stelzig (via e-mail)