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November 7, 2007

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Ex Parte

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

Re: ***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:

The Third Circuit's recent decision upholding the *Wireline Broadband Order*¹ in full confirms the points that Verizon has consistently made with regard to wireline broadband services, regardless of whether carriers sell those services as inputs to an Internet access service. In particular, the Third Circuit expressly rejected challenges to the Commission's determination that "wireline broadband Internet access service should not be subject to mandatory common carrier regulation under Title II."² The Third Circuit also upheld the Commission's refusal to subject such services to *Computer Inquiry* requirements, finding that the Commission properly "considered how the market for broadband services is likely to develop" and the role of "emerging broadband platforms [that] will exert competitive pressure and gain market share."³ And the Third Circuit found persuasive the Commission's "judgment that continued regulation of wireline broadband providers under *Computer II* would harm consumers" by "impeding the development and deployment" of new and innovative services.⁴

¹ Report and Order, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853 (2005) ("*Wireline Broadband Order*"), *petitions for review denied*, *Time Warner Telecom, Inc. v. FCC*, Nos. 05-4769 *et al.*, - F.3d -, 2007 WL 2993044 (3d Cir. Oct. 16, 2007).

² *Time Warner Telecom*, 2007 WL 2993044, at *12.

³ *Id.* at *13.

⁴ *Id.* (quoting *Wireline Broadband Order* ¶ 65).

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The Third Circuit's decision thus provides further support for Verizon's long-standing position that the Commission should grant *all carriers*, no matter what type, the same flexibility to provide customized, broadband offerings to meet the particularized needs of their customers that Verizon has had since March 2006. Indeed, the concrete evidence from the past 19 months — in which Verizon has successfully negotiated hundreds of private carriage arrangements for all kinds of enterprise broadband services with all types of wholesale and retail customers — confirms that such flexibility is warranted for all such services. Although the Commission, in recent orders, has limited relief to a subset of carriers' enterprise broadband services and has retained some common carrier and *Computer Inquiry* requirements, both the Third Circuit's decision and Verizon's experience show that the Commission should go further and grant all providers the flexibility to offer all enterprise broadband services on a private carriage basis.

1. As Verizon has explained, its experience over the past 19 months confirms that the market for high-end, enterprise broadband services works, and that outdated common carrier and *Computer Inquiry* regulation is unnecessary to protect the sophisticated customers that purchase such services.⁵ Since its petition was granted by operation of law, Verizon has actively engaged with its customers on transitioning its existing broadband services to private carriage arrangements,⁶ and it has also rolled out new and innovative variations of those broadband services. Forbearance has enabled Verizon to make these offerings — such as Bandwidth on Demand, which provides customers with “Just-in-Time” provisioning of additional capacity for their data, video, voice, and multimedia needs⁷ — without the need to engage in complex regulatory determinations of how to treat the broadband transmission components of those services or to design those integrated services to satisfy regulatory requirements rather than the needs of its customers.

Verizon currently has signed wholesale agreements for enterprise broadband services — including older services such as ATM and Frame Relay as well as newer services such as Verizon Optical Networking and Transparent LAN Service — with 46 carrier customers unaffiliated with Verizon (including carriers of all sizes, large and small) as well as Internet service providers unaffiliated with Verizon.⁸ Ironically, those carrier customers include many of the parties that are complaining that forbearance from common carriage requirements for enterprise broadband services would be unworkable. In addition, Verizon has signed retail agreements for a variety of enterprise

⁵ See, e.g., Letter from Dee May, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 04-440 *et al.*, at 2-3 (FCC filed Sept. 4, 2007) (“*Verizon Sept. 4, 2007 Ex Parte*”); Opposition of Verizon at 3, 11, WC Docket No. 04-440 (FCC filed Aug. 13, 2007) (“*Verizon Opposition*”); Comments of Verizon at 5, *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, WC Docket No. 06-125 (FCC filed Sept. 20, 2007).

⁶ As Verizon has explained, after its petition was granted by operation of law, Verizon left its existing tariffs in place for a period of time while it negotiated private carriage arrangements. See Verizon's Petition for Waiver of the Price Cap Rules at 6-8, *Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies*, WC Docket No. 07-31 (FCC filed Feb. 9, 2007) (“*Verizon Price Cap Waiver Petition*”), attached to Letter from Dee May, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-440 (FCC filed Oct. 23, 2007). Now, Verizon has detariffed or grandfathered the bulk of those broadband transmission services.

⁷ See Verizon Partner Solutions: Bandwidth on Demand, <http://www22.verizon.com/wholesale/solutions/solution/BoD.html>.

⁸ See Exhibit 1 (listing the unaffiliated carrier and ISP customers).

broadband services — again, including ATM, Frame Relay, Verizon Optical Networking, and Transparent LAN Service, among others — with more than 200 end-user customers. These end-user customers include public schools and school districts, banks and financial institutions, hospitals and health care facilities, book publishers, delivery services, and hotel chains, among many others.⁹ In total, the private carriage arrangements Verizon has entered into since March 2006 have a value of more than \$1.5 billion. Any order concerning the regulation of enterprise broadband services that failed to take into account this evidence of a highly-functioning market — and, in particular, any order issued without meaningful opportunity to consider, on a complete and current record, these events and the interests of customers that have entered into private carriage arrangements for these services — would not constitute reasoned decisionmaking.

In making any future rulings with regard to the regulation of enterprise broadband services, the Commission must consider this concrete evidence, as the Commission has “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.¹⁰ In addition, the Commission must consider evidence showing that “[t]here are a myriad of providers prepared to make competitive offers to enterprise customers demanding packet-switched data services”; that those “competitors can readily respond” if one market participant were to seek to impose unjust or unreasonable rates, terms, or conditions; and that the “sophistication of the enterprise customers that tend to purchase broadband telecommunications services” enables them to seek out the best-priced alternatives. *E.g.*, *AT&T Broadband Forbearance Order*¹¹ ¶¶ 22, 24-25 (citing prior orders). All of this evidence confirms that, no different from wireline broadband Internet access services, there is no basis for the Commission to subject stand-alone enterprise broadband services to either common carrier or *Computer Inquiry* regulation because Verizon and the many other participants in the broadband marketplace have “little or no market power” with respect to those services.¹²

2. Despite the Third Circuit’s decision and this concrete evidence, the Commission, in recent orders, has denied other carriers much of the relief that they sought and that Verizon received by operation of law in March 2006. In doing so, the Commission gave no consideration to the concrete experience of the past 19 months and the private carriage arrangements that Verizon has entered into with hundreds of customers, which confirm both that the § 10(a) criteria are satisfied with respect to *all* of the regulatory obligations for which those other carriers had sought forbearance and that there is no market failure that would warrant such regulations.

⁹ See Exhibit 2 (listing the end-user customers).

¹⁰ *BellSouth Telecomms., Inc. v. FCC*, 469 F.3d 1052, 1060 (D.C. Cir. 2006).

¹¹ Memorandum Opinion and Order, *Petitions for AT&T Inc. and BellSouth Corporation for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, 22 FCC Rcd 18705 (2007) (“*AT&T Broadband Forbearance Order*”).

¹² *Cox Cable Communications, Inc., Commline, Inc. and Cox DTS, Inc.*, 102 F.C.C.2d 110, ¶ 27 (1985), *vacated as moot*, 1 FCC Rcd 561, ¶ 5 (1986); see *National Ass’n of Regulatory Util. Comm’rs v. FCC*, 525 F.2d 630, 641-43 (D.C. Cir. 1976); see also *Virgin Islands Tel. Corp. v. FCC*, 198 F.3d 921, 925-27 (D.C. Cir. 1999) (explaining that, “under the first part of the *NARUC I* test,” the question is whether “the public interest requires common carrier” regulation) (internal quotation marks omitted).

The Commission justified its decision to retain non-dominant carrier regulation under Title II for those carriers' enterprise broadband services, as well as the *Computer Inquiry* requirements that apply to all non-BOC, facilities based wireline carriers, on the ground that it did not want to "confer a regulatory advantage" on the petitioner by eliminating certain obligations that would continue to apply to other, non-BOC, non-ILEC wireline carriers. *E.g.*, *AT&T Broadband Forbearance Order* ¶¶ 58, 51, 67-68.¹³ However, such potential regulatory disparity cannot, standing alone, be a ground for denying forbearance to one carrier, as the Commission could readily eliminate such disparities by extending forbearance to *all* carriers. Such a result would be consistent not only with the Third Circuit's recent decision and the concrete evidence of the past 19 months, but also with the text of § 10 — which contemplates forbearance for a "class of telecommunications carriers"¹⁴ — and with Congress's express instruction to use "regulatory forbearance" to "remove barriers to [broadband] infrastructure investment."¹⁵ Such a result would also be consistent with the Commission's own repeated findings that enterprise broadband services are intensely competitive and that *no* carrier has the kind of market power that could warrant common carrier regulation or *Computer Inquiry* requirements.¹⁶

Moreover, maintaining for enterprise broadband services the "transmission access [and] nondiscrimination requirements" from the *Computer Inquiry Rules*, *AT&T Broadband Forbearance Order* ¶ 58, continues to force wireline carriers to perform the "radical surgery" of separating a telecommunications offering from otherwise integrated information services, which increases costs and contributes to inefficient network designs.¹⁷ That is because "vendors do not create new technologies with the *Computer Inquiry* requirements in mind," forcing "carriers [to] make either of two less-than-optimal choices": waiting for the manufacturer to re-engineer the technology to comply with those rules or using only a limited subset of the equipment's capabilities.¹⁸ The Commission rightly considered those costs and inefficiencies in the *Wireline Broadband Order*, but the same issues will arise with future broadband information services that do not provide Internet access. Indeed, as carriers increasingly use IP to provide services it becomes increasingly difficult to determine what portion of the integrated service is an information service and what portion is transmission — a problem compounded by the Commission's decision not to address that issue. The

¹³ The Commission briefly asserted that §§ 201 and 202(a), as applied to non-dominant carriers, "provide essential safeguards" against "unjust, unreasonable, or unreasonably discriminatory rates, terms, and conditions in connection with [enterprise broadband] services." *AT&T Broadband Forbearance Order* ¶ 67. But this "*ipse dixit* conclusion, coupled with [a] failure to respond to contrary arguments [in favor of extending forbearance to other carriers] resting on solid data, epitomizes arbitrary and capricious decisionmaking." *Illinois Pub. Telecomms. Ass'n v. FCC*, 117 F.3d 555, 564 (D.C. Cir. 1997).

¹⁴ 47 U.S.C. § 160(a) (emphasis added).

¹⁵ *Id.* § 157 note (codifying Telecommunications Act of 1996, § 706) (emphasis added).

¹⁶ In addition, the Commission's reliance on regulatory disparity, standing alone, to *deny* forbearance, conflicts with its conclusion, elsewhere in the *AT&T Broadband Forbearance Order*, that "regulatory parity, standing alone," is not a "sufficient basis to *grant* forbearance." *AT&T Broadband Forbearance Order* ¶ 50 n.185 (emphases added).

¹⁷ Declaratory Ruling and Notice of Proposed Rulemaking, *Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities*, 17 FCC Rcd 4798, ¶ 43 (2002), *aff'd*, *National Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005).

¹⁸ *Wireline Broadband Order* ¶ 65.

obligation to break apart such new services into their component parts will provide a significant further disincentive to the development and deployment of new and innovative broadband services.¹⁹

No different from other Title I broadband services, enterprise broadband services also should not be subject to the various public policy obligations that ceased to apply to Verizon's services when its petition was granted by operation of law. The extensive competition for such services, along with the sophistication of the enterprise customers that purchase them, ensure that these public policy regulations are not necessary to protect consumers or to ensure just and reasonable practices, and that forbearance is in the public interest.²⁰ For example, to the extent these sophisticated customers have concerns about the use of their CPNI, they can negotiate the inclusion of terms in their contracts that govern the manner in which such information can be used. Privacy provisions are commonplace in commercial agreements of all kinds in today's markets, and parties to private-carriage contracts can tailor the restrictions to their specific needs, no different from their ability to do so in private carriage agreements for other Title I broadband services. Indeed, the private-carriage contracts Verizon has entered into since March 2006 typically contain such provisions.²¹

3. For all of the same reasons, carriers' flexibility to meet enterprise customers' needs through private carriage arrangements should extend to newly introduced enterprise broadband services, as well as those available in the marketplace today.²² Indeed, forbearance is particularly appropriate for newly introduced services to provide the appropriate incentives to develop and

¹⁹ The Commission also briefly addressed regulations that apply under § 251(c) and § 271, *see AT&T Broadband Forbearance Order* ¶¶ 69-70, but the enterprise broadband services at issue are *not* UNEs under § 251(c) and the Commission has already granted forbearance from any § 271 requirements that might apply to such broadband services — with both determinations reached in decisions that the D.C. Circuit upheld. *See EarthLink*, 462 F.3d 1; *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); *see also AT&T Broadband Forbearance Order* ¶ 8 (describing the Commission's prior orders regarding broadband services).

²⁰ In addressing these obligations in recent orders, the bulk of the Commission's analysis has focused on CALEA and universal service. *E.g.*, *AT&T Broadband Forbearance Order* ¶¶ 72-74. But Verizon expressly excluded such obligations from the scope of its forbearance request. *See* Letter from Susanne A. Guyer, Senior Vice President, Federal Regulatory Affairs, Verizon, to Marlene Dortch, Secretary, FCC, WC Docket No. 04-440, at 1 (FCC filed Feb. 17, 2006); Reply Comments of Verizon in Support of Its Petition for Forbearance at 31-32, WC Docket No. 04-440 (FCC filed Mar. 10, 2005).

²¹ The Commission has stated that it retains authority pursuant to its ancillary jurisdiction under Title I "to adopt" in the future, and in response to an actual demonstration of market failure, "non-economic regulatory obligations that are [later proven] necessary . . . in this dynamically changing broadband era." *Wireline Broadband Order* ¶ 111.

²² *See* Letter from Dee May, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-440, at 1 & Attach. at 2-6 (FCC filed Oct. 9, 2007). Indeed, just like the more recent petitioners, Verizon had sought forbearance for "all broadband services that [it] does *or may* offer." Petition of the Verizon Telephone Companies for Forbearance at 1-2, WC Docket No. 04-440 (FCC filed Dec. 20, 2004). Verizon's later clarification reiterated that it sought forbearance for two "*categories* of services." Ex Parte Letter from Edward Shakin, Vice President and Associate General Counsel, Verizon, to Marlene Dortch, Secretary, FCC, WC Docket No. 04-440, at 2-3 (FCC filed Feb. 7, 2006) (emphasis added) ("*Verizon Feb. 7, 2006 Ex Parte*"). Although Verizon provided a "description of the services that Verizon offers that qualify under each of these two categories," Verizon never suggested that it sought forbearance only as to its current services that are "include[d]" in those categories, as opposed to *all* services that fit within those categories that Verizon does or may offer. *Id.* at 2-3 & Attach. 1. Indeed, Verizon's subsequent filings to the Commission were clear that Verizon understood that, as a result of the grant of its petition by operation of law, "*all new broadband services* that Verizon introduces will now be sold on a purely private carriage basis." *Verizon Price Cap Waiver Petition* at 7.

deploy those services. As Dr. Alfred Kahn has explained, although new services offer the “prospects of large benefits,” they also entail “significant costs and . . . unusual degrees of risk,” as there are “no guarantee[s] that [a] particular technology will prevail in competition with others or that consumers will sufficiently value the services it makes possible.”²³ Therefore, “any regulation of new services is problematic, because it increases the cost and decreases the attractiveness of offering them,” and “the general rule is that neither new services nor the underlying facilities that produce them should be subject to regulation.”²⁴ The Commission has recognized that this is particularly true “in the area of broadband deployment,” where “enormous investment [is] required” and regulation “undermine[s] the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology.”²⁵

Although various enterprise broadband services differ in their particulars, all offer broadband-speed data transmission to enterprise customers. These services are substitutes for each other from an economic perspective and enterprise customers are using newer services, like IP-VPN and Ethernet, to replace more mature services, like Frame Relay and ATM.²⁶ The intense competition to provide all of these services to enterprise customers — and the sophistication of those customers in choosing the particular service that best meets their needs — will continue to exist as carriers deploy additional enterprise broadband services. Indeed, those new broadband services will face competition from existing services, as well as from other carriers deploying their own new services. Therefore, in a marketplace that the Commission has repeatedly recognized is developing and in which new and innovative services are being deployed,²⁷ it would make no sense to subject newly developed enterprise broadband services to greater regulation than existing services. The disincentives such a rule would create are directly contrary to Congress’s express goals of promoting advanced services.²⁸

But that is exactly the rule the Commission has adopted in recent orders, granting forbearance only with respect to broadband services that the petitioner currently offers. *E.g.*, *AT&T Broadband Forbearance Order* ¶ 40. The Commission asserted that it could not forbear with respect to services introduced in the future because the Commission does not know “the precise nature of such future services.” *E.g.*, *id.* But the Commission never explained why such precision is required, especially when the Commission simultaneously found that, in light of the “emerging and

²³ Declaration of Alfred E. Kahn and Timothy J. Tardiff ¶¶ 10-11 (Dec. 18, 2001) (“Kahn/Tardiff Decl.”) (attached to Comments of the Verizon Telephone Companies, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338 *et al.* (filed Apr. 5, 2002)).

²⁴ Kahn/Tardiff Decl. ¶¶ 6, 13 (emphasis omitted).

²⁵ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, ¶ 3 (2003) (subsequent history omitted).

²⁶ *See, e.g.*, Joan Engebretson, *Carrier Ethernet Growth Outpaces MPLS VPNs*, *Telephony’s Guide to Carrier Ethernet* at 4-7 (Sept. 2007), available at <http://www.telephony-digital.com/telephony-magazine/20070910/?pg=42>.

²⁷ *See, e.g.*, *EarthLink, Inc. v. FCC*, 462 F.3d 1, 9 (D.C. Cir. 2006) (affirming Commission’s reliance on its “view of the broadband market as still emerging and developing”).

²⁸ *See* 47 U.S.C. § 157 note (codifying Telecommunications Act of 1996, § 706); *id.* § 230.

evolving nature of this market,” it was “not . . . essential to have . . . detailed information” on the petitioners’ existing broadband services and the Commission could review those services “generally.” *E.g., id.* ¶¶ 19-20, 23. The “general[]” nature of any future services would be the same as the existing services for which all of the recent petitioners’ sought forbearance — they will be either packet-switched services capable of 200 kbps in each direction or non-TDM-based, OCn-level optical services.²⁹ Nothing in various orders the Commission has adopted recently justifies imposing on the broadband marketplace the inefficiencies and disincentives associated with requiring multiple forbearance petitions for each and every new broadband service.³⁰

In all events, any regulatory relief with respect to existing enterprise broadband services should apply to generic service names — such as Frame Relay Services, Ethernet-Based Services, and so on — rather than to the particular brand (or marketing) names a given carrier uses at a specific point in time. Carriers seeking forbearance for their broadband enterprise services took different approaches in identifying the kinds of services they offer that fall within the two categories of broadband services for which all petitioners sought forbearance. For example, both Verizon and Embarq identified brand (or marketing) names for some of their services, such as Verizon’s Intellilight Broadband Transport™ and Embarq’s OptipointSM OC-3 OC192, in their illustrative lists of services falling within those two categories.³¹ In contrast, AT&T and Frontier identified services by their generic names, such as Ethernet-Based Service and Optical Transport Service, in their similar illustrative lists.³² Although there is no reason for the Commission to limit relief to existing services in the first place, it would be even more arbitrary for the Commission’s orders to result in greater relief where carriers listed generic service names rather than brand names. Such a rule would create regulatory disparities among otherwise identically situated carriers and, moreover, ignores that a service is defined by its capabilities rather than the particular brand name under which a carrier markets it. Service names may change over time or even vary within a company depending on the particular entity selling the service, even as the underlying service — Ethernet-Based or Optical Transport, for example — remains the same.

²⁹ Similarly, although the Commission stated that it did “not know the competitive conditions associated with such potential services,” *AT&T Broadband Forbearance Order* ¶ 40; *accord id.* ¶¶ 44, 51, the “myriad” providers will remain and can still “readily respond” to such new services and the enterprise customers that purchase those services will remain “sophisticat[ed]” and able to seek out the best deals from those myriad providers and the various broadband services, *id.* ¶¶ 22, 24-25.

³⁰ See also 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*, 22 FCC Rcd 16034, ¶¶ 112, 115, 119 (2007); Memorandum Opinion and Order, *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements and Petition of the Frontier and Citizens ILECs for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, WC Docket No. 06-147, FCC 07-184, ¶¶ 39, 43, 49 (rel. Oct. 24, 2007) (“*Embarq Broadband Forbearance Order*”).

³¹ See *Verizon Feb. 7, 2006 Ex Parte Attach. A; Embarq Broadband Forbearance Order* ¶ 14 n.55.

³² See *AT&T Broadband Forbearance Order* ¶ 14 n.58; *Embarq Broadband Forbearance Order* ¶ 14 n.55.

4. Finally, for reasons Verizon has previously set forth at length, the Commission lacks authority to rule today on Verizon's petition.³³ Instead, if the Commission were to seek to re-impose regulatory obligations on Verizon's enterprise broadband services, at the very most it could only do so in a new proceeding, with full opportunity for comment, and would have to find on that complete record the type of market failure for broadband services that would justify regulation in the first instance. The Commission, however, has not opened a new docket with respect to Verizon's enterprise broadband services, nor, more importantly, has it sought to compile an updated record. Indeed, even the few CLECs that filed a motion seeking a belated ruling on Verizon's petition asked for a decision on the record as it stood on March 19, 2006,³⁴ and made no reference to any events since March 2006. This is unsurprising. Although the record before the Commission in March 2006 warranted granting Verizon's petition in full, as discussed above, the Third Circuit's recent decision and the events of the past 19 months — including the concrete evidence, in the form of hundreds of private carriage agreements, that the market for enterprise broadband services is working very well in the absence of intrusive regulation — have eliminated any possible doubt.³⁵

* * *

In sum, now that the Third Circuit has affirmed the *Wireline Broadband Order* in full, the appropriate, pro-competitive, pro-consumer course is for the Commission to extend to all carriers providing enterprise broadband services the flexibility to meet the needs of their enterprise broadband customers through private carriage arrangements under Title I.

Sincerely,



William H. Johnson
Assistant General Counsel

³³ See, e.g., *Verizon Opposition* at 1-15; Reply Comments of Verizon at 4, WC Docket No. 04-440 (FCC filed Aug. 17, 2007); *Verizon Sept. 4, 2007 Ex Parte* at 8-10.

³⁴ See Reply to Motion for Expedited Order on Verizon Petition for Forbearance at 4, WC Docket No. 04-440 (FCC filed Aug. 17, 2007) (“[T]he Movants are requesting that an order be issued addressing the merits of Verizon’s forbearance request based on the original record.”) (emphasis added).

³⁵ In all events, if the Commission decides, after the initiation of a new proceeding and on the basis of a complete and current record, to re-impose any regulations on Verizon’s enterprise broadband services, existing customers’ private carriage arrangements would have to be grandfathered and remain in effect, unaffected by any re-imposed regulations throughout the term of such agreements, including any optional term extensions provided to Verizon’s customers under these agreements. Any other result would be inequitable, given in particular that such agreements were negotiated under a private carriage legal framework.

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