

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, D.C. 20007-5108

(202) 342-8400

EX PARTE OR LATE FILED

FACSIMILE

(202) 342-8451

www.kelleydrye.com

NEW YORK, NY
TYSONS CORNER, VA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ
BRUSSELS, BELGIUM

AFFILIATE OFFICES
MUMBAI, INDIA

~~SECRET FILE COPY ORIGINAL~~

DIRECT LINE: (202) 342-8625

EMAIL: bfreedson@kelleydrye.com

ORIGINAL

November 9, 2007

VIA HAND DELIVERY

REDACTED – FOR PUBLIC INSPECTION

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

FILED/ACCEPTED

NOV - 9 2007

Federal Communications Commission
Office of the Secretary

Re: Notification of Ex Parte Presentation in WC Docket No. 06-172

Dear Ms. Dortch:

On November 8, 2007, Lisa R. Youngers of XO Communications, LLC, and Brad E. Mutschelknaus and Genevieve Morelli of Kelley Drye & Warren LLP, met with Ian Dillner, Legal Advisor to Chairman Kevin J. Martin. At the meeting, the parties demonstrated that data submitted in the above-referenced proceeding before the Commission does not demonstrate significant levels of facilities-based competition within any of the Metropolitan Statistical Areas subject to the Verizon Petitions. The attached documents were distributed at the meeting.

Please note, this *ex parte* filing is redacted for public inspection, in accordance with the terms of the Second Protective Order in the above-referenced proceeding.¹ As required by the Second Protective Order, unredacted copies of the same have been delivered to the Commission Secretary, and to Gary Remondino of the Wireline Competition Bureau, under separate cover.

¹ *In the Matter of the Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, WC Docket No. 06-172, Order, DA 07-208 (rel. Jan. 25, 2007) ("Second Protective Order").*

KELLEY DRYE & WARREN LLP

Ms. Marlene Dortch, Secretary
Federal Communications Commission
November 9, 2007
Page Two

Please feel free to contact the undersigned counsel at (202) 342-8625 if you have any questions, or require further information.

Respectfully submitted,

A handwritten signature in black ink that reads "Brett H. Freedson". The signature is written in a cursive, flowing style.

Brett Heather Freedson

cc (via email): Jeremy Miller
Tim Stelzig

SLIDE PRESENTATION

**DATA DEMONSTRATING THE
INSIGNIFICANCE OF FACILITIES-BASED
COMPETITION IN VERIZON UNE
FORBEARANCE MARKETS**



Thursday, November 8, 2007

**Presentation Sponsored by
Covad Communications and
XO Communications**

REDACTED FOR PUBLIC INSPECTION

EVEN THE LARGEST FACILITIES-BASED CLECs REACH VERY FEW BUILDINGS

- XO Connects to Only 142 Buildings in the Markets at Issue

MSA	GeoResults Number of XO Lit Buildings ^{1/}	Confirmed Number of XO Lit Buildings
Boston	34	24
New York	50	53
Philadelphia	40	50
Pittsburgh	7	15
Total	131	142

XO's and Verizon's GeoResults data is different for each of these markets. This is likely attributable in part to the timing of the GeoResults data performed for each company. Also, XO had its figures scrubbed and produced by GeoResults whereas it is our understanding that Verizon arrived at its figures by accessing the underlying database itself. For purposes of this table, XO used the higher of the two GeoResults figures for each market.

REDACTED FOR PUBLIC INSPECTION

EVEN THE LARGEST FACILITIES-BASED CLECS REACH VERY FEW BUILDINGS (cont'd)

- XO Loop Facilities Reach a De Minimis Percentage of Commercial Buildings

MSA	Commercial Buildings	Confirmed Number of XO Lit Buildings	% Commercial XO Lit Buildings
Boston	192,227	24	0.01%
New York	446,122	53	0.01%
Philadelphia	217,725	50	0.02%
Pittsburgh	85,694	15	0.01%
Providence	56,927	0	0%
Virginia Beach	72,229	0	0%
Total	1,070,924	142	0.01%

- One Communications has Deployed Loop Facilities to Only ****BEGIN CONFIDENTIAL [] END CONFIDENTIAL**** Customer Locations
- Time Warner Telecom's Experience is Similar – It Connects to Only ****BEGIN CONFIDENTIAL [] END CONFIDENTIAL**** Buildings

REDACTED FOR PUBLIC INSPECTION

VERIZON'S DATA MISREPRESENTS THE INCIDENCE OF CLEC LIT BUILDINGS – GROSS MISCOUNTING OF QWEST LOCATIONS DISTORTS VERIZON'S DATA

*****BEGIN CONFIDENTIAL**

MSA	Verizon's Number of Qwest Lit Buildings	Qwest's Wholesale List of On-Net Buildings ^{1/}	GeoResults' Number of Qwest Lit Buildings
Boston			
New York			
Philadelphia			
Pittsburgh			
Providence			
Virginia Beach			
Total			

1/ These figures include carrier hotels, as well as addresses to which Qwest makes available no DS0, DS1 or DS3 services. If these addresses were backed-out, the totals would be substantially lower.

END CONFIDENTIAL ***

REDACTED FOR PUBLIC INSPECTION

THE CORRECT INCIDENCE OF CLEC LIT BUILDINGS IS AS FOLLOWS

- Use of GeoResults Data Corrects Two Flaws in Verizon's Data: Over-Reporting and Double-Counting

*****BEGIN CONFIDENTIAL**

MSA	VZ Reported "Carrier-Building Instances"	GeoResults CLEC <i>Lit Buildings</i> (including MCI)
Boston		
New York		
Philadelphia		
Pittsburgh		
Providence		
Virginia Beach		
Total		

END CONFIDENTIAL ***

REDACTED FOR PUBLIC INSPECTION

GEORESULTS DATA CONFIRMS THAT ALL FACILITIES-BASED CLECS *IN THE AGGREGATE* DO NOT CONNECT TO A SIGNIFICANT PORTION OF COMMERCIAL BUILDINGS

MSA	Commercial Buildings	Commercial CLEC Lit Buildings	% Commercial CLEC Lit Buildings (including MCI)
Boston	192,227	234	0.12%
New York	446,122	429	0.09%
Philadelphia	217,725	320	0.14%
Pittsburgh	85,694	162	0.18%
Providence	56,927	233	0.40%
Virginia Beach	72,229	1,395	1.9%
Total	1,070,924	2,773	0.25%

REDACTED FOR PUBLIC INSPECTION

MANY WIRE CENTERS HAVE *NO COMMERCIAL BUILDINGS* CONNECTED TO CLEC FIBER

MSA	Number of Wire Centers	Number of Wire Centers With No CLEC Lit Fiber	% of Wire Centers With No CLEC Lit Fiber
Boston	131	69	53%
New York	115	52	45%
Philadelphia	156	78	50%
Pittsburgh	149	114	77%
Providence	33	11	33%
Virginia Beach	58	16	28%

REDACTED FOR PUBLIC INSPECTION

**IN FACT, FACILITIES-BASED CLECS DO NOT CONNE
TO A SIGNIFICANT PORTION OF COMMERCIAL
BUILDINGS IN ANY *INDIVIDUAL WIRE CENTER***

Wire Centers in Each MSA With Highest % of CLEC Lit Buildings	Commercial Buildings	Commercial CLEC Lit Buildings	% Commercial CLEC Lit Buildings
Boston WLHMMawe	1,007	15	1.49%
New York NYCMNYBS	4,008	44	1.07%
Philadelphia PHLAPALO	4,676	32	0.68%
Pittsburgh PITBPADT	4,137	45	1.09%
Providence PRVDRIWA	8,129	79	0.97%
Virginia Beach NRFLVABL	1,654	71	4.29%

REDACTED FOR PUBLIC INSPECTION

FACILITIES-BASED CLECS CANNOT CONNECT TO SUBSTANTIALLY MORE COMMERCIAL BUILDINGS WITHIN A COMMERCIALY REASONABLE TIME

MSA	% of Total Commercial Buildings Within 500 ft. of XO facilities	% Within 1000 ft.
Boston	0.7%	1.6%
New York	1.9%	4.2%
Philadelphia	2.7%	6.0%
Pittsburgh	0.8%	1.7%

REDACTED FOR PUBLIC INSPECTION

CABLE TELEPHONY MARKET PENETRATION FALLS FAR SHORT OF THE LEVEL THAT EXISTED IN OMAHA

- The Cable Penetration Levels in the Six Verizon Markets Range from Less Than ¼ to ½ of Levels Found in Omaha
- Using E911 Data Filed by Verizon, We Estimated the *Maximum Potential* Cable Market Penetration in Each Market at Issue

*****BEGIN HIGHLY CONFIDENTIAL*****

Market	Residential	Business	Combined
Boston			
New York			
Philadelphia			
Pittsburgh			
Providence			
Virginia Beach			

*****END HIGHLY CONFIDENTIAL*****

REDACTED FOR PUBLIC INSPECTION

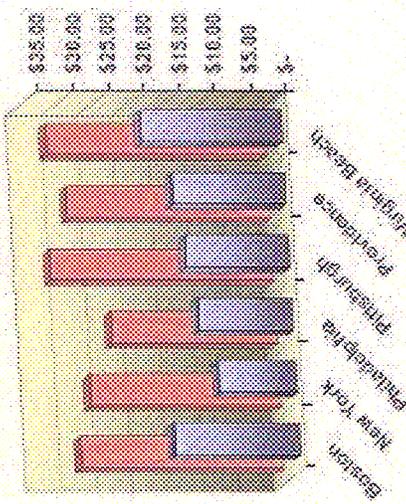
THESE ESTIMATES ARE CONFIRMED BY DATA ACTUALLY FILED BY CABLE COMPANIES

- RCN Says That it Serves ****BEGIN CONFIDENTIAL [] END CONFIDENTIAL**** of Homes That its Network Reaches in Boston and ****BEGIN CONFIDENTIAL [] END CONFIDENTIAL**** in Philadelphia
- Time Warner Cable Says That its Penetration Rate to Serviceable Homes in New York is Less Than 10%. Its *Actual* Share of the Total Residential Market in New York is Approximately ****BEGIN CONFIDENTIAL [] END CONFIDENTIAL****
- Comcast serves only approximately ****BEGIN CONFIDENTIAL [] END CONFIDENTIAL**** of the homes it passes in Boston, ****BEGIN CONFIDENTIAL [] END CONFIDENTIAL**** of the homes it passes in Philadelphia, and **** BEGIN CONFIDENTIAL [] END CONFIDENTIAL**** of the homes it passes in Pittsburgh

REDACTED FOR PUBLIC INSPECTION

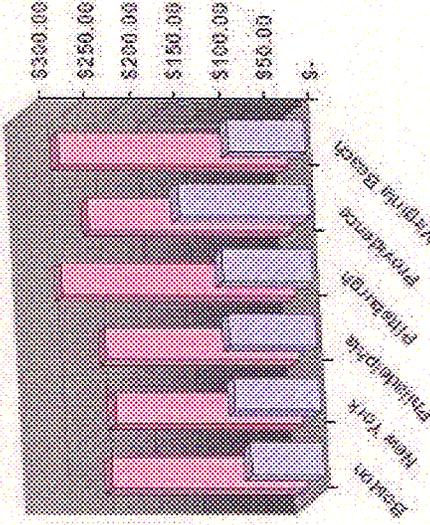
GRANTING VERIZON'S PETITIONS WOULD DIRECTLY CAUSE A HUGE SPIKE IN WHOLESALE FACILITY COSTS

2-Wire Analog Loops:
UNE Cost and Cost if Forbearance is Granted
(Recurring per Month)



	Boston	New York	Philadelphia	Pittsburgh	Providence	Virginia Beach
UNE Cost	\$17.85	\$30.90	\$13.38	\$14.88	\$18.97	\$18.97
Cost if Forbearance is Granted	\$28.33	\$25.76	\$23.04	\$11.45	\$25.58	\$25.58

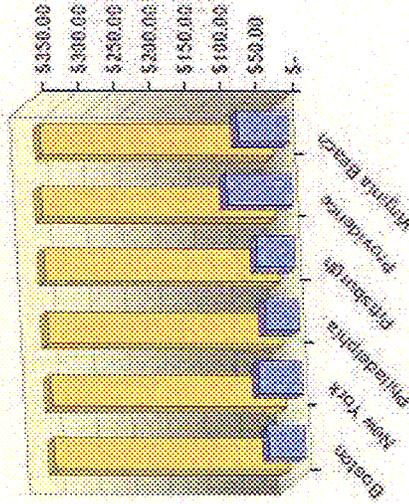
DSL Loops:
UNE Cost and Cost if Forbearance is Granted
(Recurring per Month)



	Boston	New York	Philadelphia	Pittsburgh	Providence	Virginia Beach
UNE Cost	\$236.34	\$64.65	\$98.00	\$98.71	\$48.47	\$48.47
Cost if Forbearance is Granted	\$237.71	\$274.28	\$235.16	\$482.11	\$238.89	\$238.89

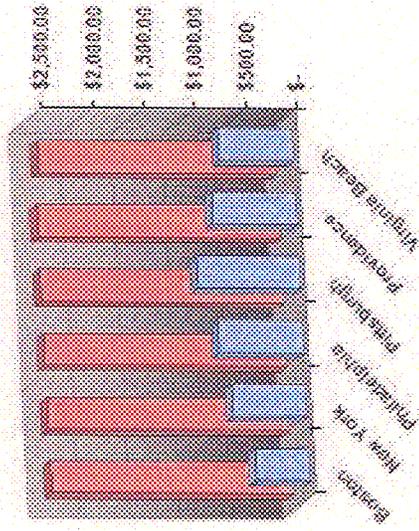
GRANTING VERIZON'S PETITIONS WOULD DIRECTLY CAUSE A HUGE SPIKE IN WHOLESALE FACILITY COSTS (cont'd)

DS1 Transport:
UNE Cost and Cost if Forbearance is Granted
(Recurring per Month)



	Boston	New York	Philadelphia	Pittsburgh	Virginia Beach
UNE Cost	\$311.30	\$347.25	\$342.46	\$338.70	\$338.70
Cost if Forbearance is Granted	\$311.34	\$351.44	\$351.44	\$358.70	\$358.07

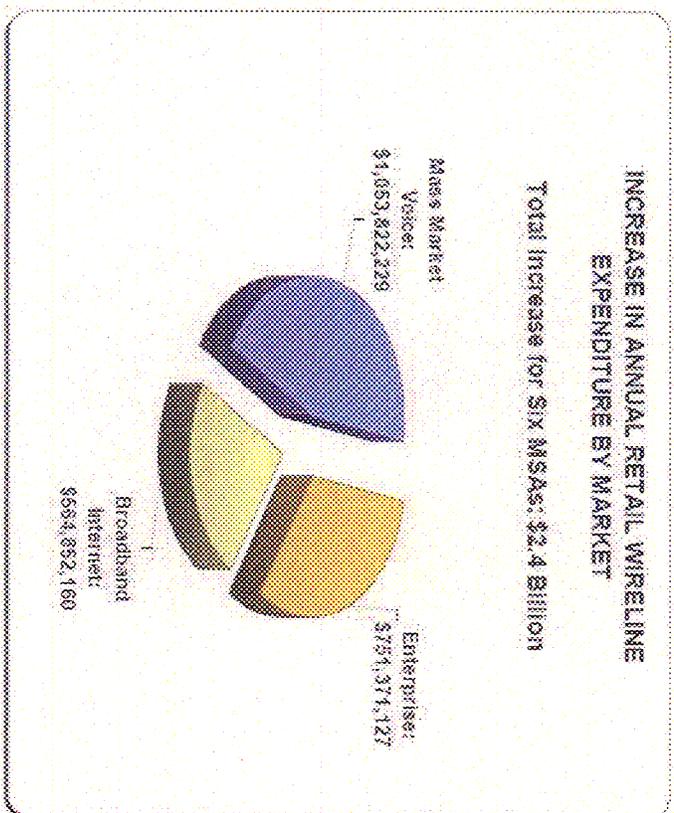
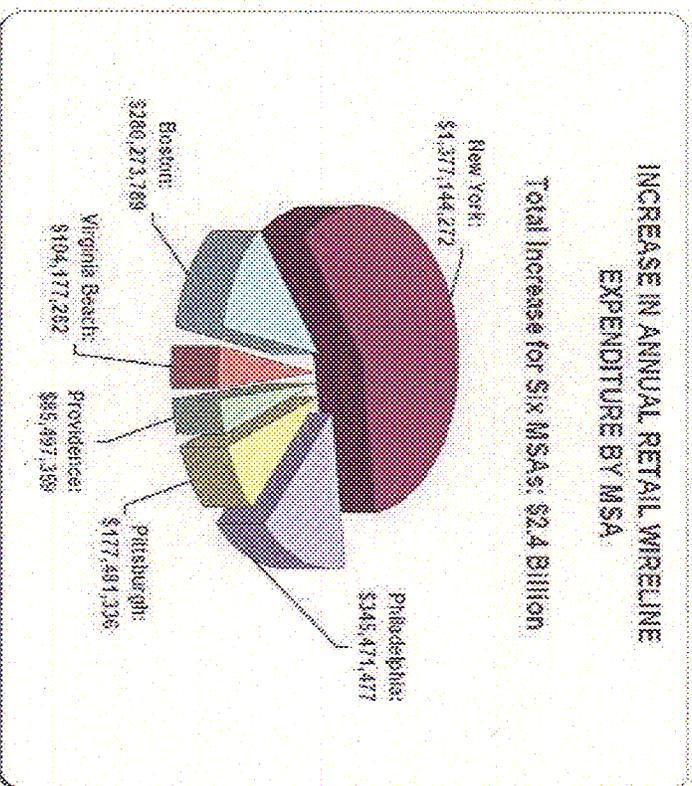
DS3 Transport:
UNE Cost and Cost if Forbearance is Granted
(Recurring per Month)



	Boston	New York	Philadelphia	Pittsburgh	Virginia Beach
UNE Cost	\$1,722.12	\$2,376.30	\$2,376.30	\$2,376.30	\$2,376.30
Cost if Forbearance is Granted	\$1,805.75	\$2,376.30	\$2,376.30	\$2,376.30	\$2,376.30

AS RETAIL CARRIERS PASS THROUGH INCREASED WHOLESALSALE COSTS, GRANTING VERIZON'S PETITIONS WOULD RESULT IN:

- \$2.4 Billion Increase in Telecom Expenditures



REDACTED FOR PUBLIC INSPECTION

AS RETAIL CARRIERS PASS THROUGH INCREASED WHOLESALE COSTS, GRANTING VERIZON'S PETITIONS WOULD RESULT IN:

- 24% Increase in Residential Wireline Bills

Relative Increase in Residential Annual Retail Expenditures

MSA	Residential Voice and Broadband Internet	
	Annual Increase per Household	% Residential Wireline Expenditure
Boston	\$ 93	20%
New York	\$ 132	28%
Philadelphia	\$ 37	10%
Pittsburgh	\$ 120	26%
Providence	\$ 96	20%
Virginia Beach	\$ 84	17%
Combined 6 MSAs	\$ 114	24%

Relative Increase in Total Annual Retail Expenditures

MSA	Total Voice and Broadband as % Total Retail Wireline Revenues
Boston	11%
New York	13%
Philadelphia	11%
Pittsburgh	15%
Providence	11%
Virginia Beach	12%
Combined 6 MSAs	13%

- AT&T's Recent Rate Increase in VA is Directly Attributable to the Loss of DSO UNEs (UNE-P) There 1/

1/ Petition of AT&T Communications of Virginia, LLC for Approval to Exceed Price Ceilings, PJUC-2007-00090 (VA SCC, filed Oct. 12, 2007).

THE FEDERAL GOVERNMENT AS CONSUMER RECENTLY TOLD STATE REGULATORS THAT VERIZON FACES INSUFFICIENT COMPETITION TO WARRANT ADDITIONAL DEREGULATION

- “...Enterprise users such as federal agencies need more competition for retail services...there are several indications that actual competition is inadequate.”
- “...competition has not been sufficient to limit Verizon’s pricing power...Verizon has been increasing its rates....”
- “ If there were strong competition, as Verizon contends, the company would not be increasing its prices....”
- “...the quality of Verizon’s services has been deficient. If there were strong competition, as Verizon asserts, the company would be forced to maintain high quality services so that customers do not switch....”
- “...intermodal competition often has a number of major shortcomings, especially for business users.”

THE FEDERAL GOVERNMENT AS CONSUMER RECENTLY TOLD STATE REGULATORS THAT VERIZON FACES INSUFFICIENT COMPETITION TO WARRANT ADDITIONAL DEREGULATION (cont'd)

- " Verizon's recent actions to increase charges for services to its business users, particularly in the New York City area where competition should be the most intense, show that the company still has a great deal of market power throughout its service area."
- " ...there is not much wireline competition as federal agencies would like in order to help control telecommunications prices."
- " By any reasonable standard, [Verizon] has great market power."
- " ...wireline competition has not been increasing. Indeed, for the first half of 2006, there was a decline in the amount of competition in New York State...."
- " ...it is unlikely that wireline competition will increase much in the near future...mergers have eliminated alternative suppliers of telecommunications services."

THE FEDERAL GOVERNMENT AS CONSUMER RECENTLY TOLD STATE REGULATORS THAT VERIZON FACES INSUFFICIENT COMPETITION TO WARRANT ADDITIONAL DEREGULATION (cont'd)

- " Deficiencies in the quality of Verizon's services in New York State also show that competition has been inadequate."
- " ...for the vast majority of business subscribers in the State of New York, intermodal telecommunications services do not represent a viable substitute for the traditional landline offerings of the incumbent...and...do nothing to diminish or constrain the market power of [Verizon]."
- " ...services offered by cable companies are often not a significant part of the competitive marketplace for business and government users."

****All quotations taken for the Initial Comments of the United States Department of Defense and All Other Federal Executive Agencies, filed on October 22, 2007 in Case No. 06-C-0897 before the New York Public Service Commission****

-
- Verizon Has Failed to Prove the Existence of Adequate Loop-Based Competition
 - The Retail Rate Increases Likely to Result from Forbearance Fail the “Public Interest” Test

**THE COMMISSION MUST
“JUST SAY NO”**

COMPARISON CHART

ORDER
FOR BEARANCE
FRAMEWORK AND
REQUIREMENTS

SHOWING MADE BY
VERIZON INC'S MSA
FOR BEARANCE
DOCKET
(EXC'D 001-06-172)

RECORD EVIDENCE
IN VERIZON INC'S MSA
FOR BEARANCE
DOCKET
(EXC'D 001-06-172)

Competitive Facilities

Coverage: Petitioning party must show separately for each product market that competitors have constructed competing last-mile facilities in a wire center and that each of those competitors is willing and able to use its facilities, including its own loop facilities, within a commercially reasonable period of time to provide a full range of services that are substitutes for the ILEC's local services to 75% of the end user locations in the wire center.

The only data submitted by Verizon that is directed to this requirement is competitive fiber route maps.¹ The fiber route maps do not meet this standard. The fiber maps:

- Are not product and geographic market specific, so cannot be measured against the 75% coverage requirement. (The only wire center-specific data filed by Verizon is not limited to carriers using their own last-mile facilities.)
- Do not identify the fiber providers Verizon claims are operating each route.
- Do not identify the extent to which this fiber can be used to provide competitively-available local telecom services, so they do not address the substitutability requirement.
- Fail to acknowledge that passing a location does not necessarily enable the fiber owner to provide service at that location.

Commenters have shown that in the vast majority of cases commercial buildings are not located directly on competitive fiber routes and that additional facilities must be constructed in order to serve customers via fiber.² XO, for example, has shown that its fiber passes only, on average, between 1.6% and 6% of commercial buildings in the affected markets.³ In any event, the time and costs associated with additional construction are significant. Realistically, competitive fiber providers cannot add a customer location to their network unless customer demand at the location exceeds three DS3's of capacity.⁴

OMAHA
FORBEARANCE
ORDER
FRAMEWORK AND
REQUIREMENTS

SHOWING MADE BY
VERIZON IN 6 MSA
FORBEARANCE
DOCKET
(AVC Docket No. 06-172)

RECORD EVIDENCE
IN VERIZON 6 MSA
FORBEARANCE
DOCKET
(AVC Docket No. 06-172)

Use of Competitive Last-Mile Facilities: Petitioning party must show separately for each product market that competitors are actually using their last-mile facilities to provide substitutable local telecom services to end users in each wire center.

Market Penetration: Petitioning party must show separately for each product market that facilities-based competitive carriers have been successful in winning customers.

Verizon and competitive carriers must be shown to have roughly equal market positions.

The only data submitted by Verizon that addresses this requirement is several lists of competitor carrier lit buildings and circuits.⁵ The lists do not meet this standard. The lists:

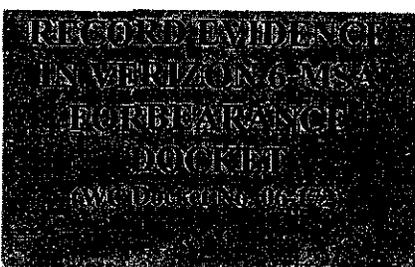
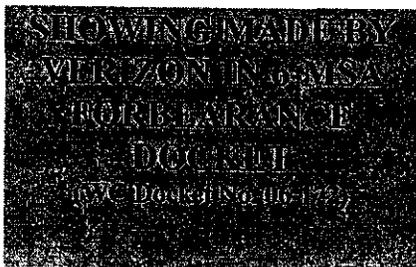
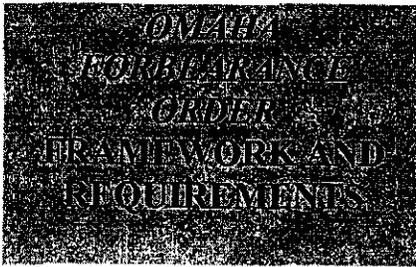
- Are not product and geographic market specific.
- Do not show competitors are using fiber to provide commercially-available local telecom services.

Verizon has produced no credible data showing the product market-specific customer penetration achieved by individual facilities-based competitive carriers. Verizon's "proof" is limited to E911 database-derived line counts and MSA-level lit building circuit counts for selective individual competitive carriers.⁷

The GeoResults industry-wide lit building data filed in the docket and the carrier-specific lit building data submitted by XO prove that competitive carriers actually serve a miniscule number (and percentage) of end user locations via their own facilities (including last-mile facilities) in any given wire center within the 6 MSAs at issue.⁶

The record in this docket shows:

- Carrier line counts culled by Verizon from the E911 database are not an accurate measure of CLEC market presence.⁸
 - E911 database line counts inflate CLEC market penetration.⁹
 - Verizon's E911 line counts do not specify facilities-based market penetration.¹⁰
- Mass market penetration by cable companies does not come close to meeting the *Omaha* standard. Penetration levels are



Multiple Competitors:
 Petitioning party must show separately for each product and geographic market that there are multiple facilities-based competitive carriers providing substitutable local telecom services to end users in each wire center.

Verizon has produced no data for each product and geographic market showing service by multiple facilities-based competitive carriers. Verizon's "evidence" of competition is limited to E911 database-derived line counts and MSA-level lit building circuit counts for selective individual competitive carriers.¹⁴

generally half or less than those found in Omaha.¹¹

- Cable facilities cannot routinely be used to serve enterprise customers.¹²
- Competitive carriers today serve a miniscule number (and percentage) of end user locations via their own fiber facilities (including last-mile facilities) in any given wire center within the 6 MSAs at issue.¹³

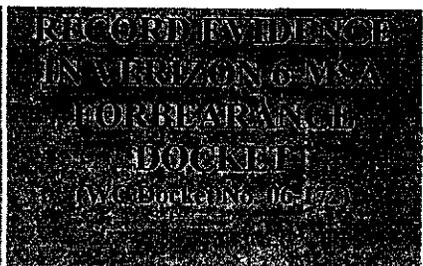
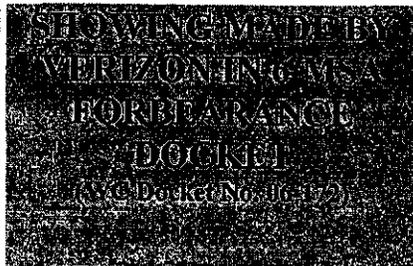
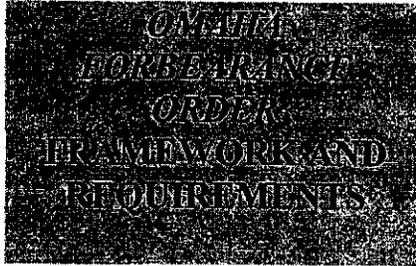
Sustainable competition by multiple facilities-based carriers does not exist today in any product or geographic market. The record shows:

In the mass market –

- Cable companies compete but have not achieved close to the market penetration that Cox enjoyed in Omaha.¹⁵
- No other competitive carriers provide mass market service using their own local loop facilities.¹⁶

In the enterprise market –

- Cable companies are unable today to use their own facilities to offer the types of



Wholesale Market Incentives: Petitioning party must show that in the absence of a Section 251 unbundling requirement, it would have the incentive and ability to make attractive wholesale offerings available to competitors who do not have their own last-mile facilities.

Verizon asks the Commission to trust that it will make its loop and transport facilities available on a wholesale basis at just and reasonable and non-discriminatory rates and terms if forbearance is granted.¹⁹

Verizon points to Wholesale Advantage agreements for UNE (*i.e.*, local switching) replacement facilities as evidence it will “do the right thing.”²⁰

services required by most enterprise businesses.¹⁷

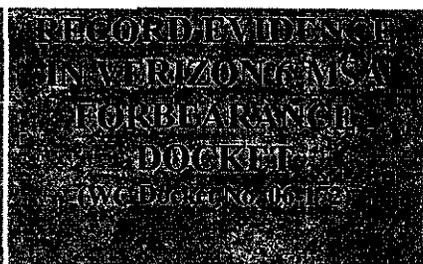
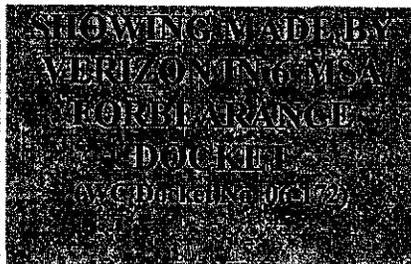
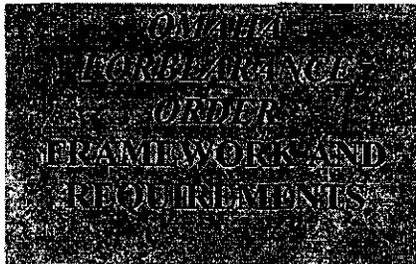
- Non-cable competitors today serve a miniscule percentage of enterprise customers via their own facilities (including last-mile facilities) in any given wire center within the 6 MSAs at issue.¹⁸

The record is replete with evidence from Omaha that the Commission cannot rely on a prediction that post-forbearance Verizon will treat competitors that require access to its loops and transport fairly.²¹ No such commercially-reasonable wholesale deal was offered in Omaha.²² As a result, McLeodUSA intends to withdraw from that market, and Integra will not enter.²³

Verizon’s Wholesale Advantage agreements do not provide CLECs with an economically-viable opportunity to compete.²⁴

Verizon has been unwilling to make a DS0 loop replacement product available to CLECs.²⁵

Verizon represents that its special access services will be



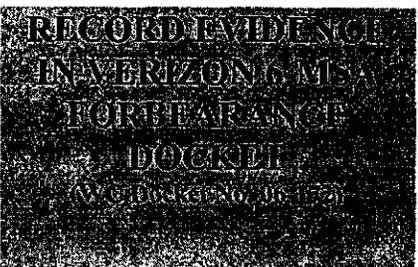
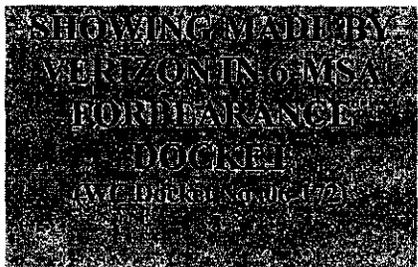
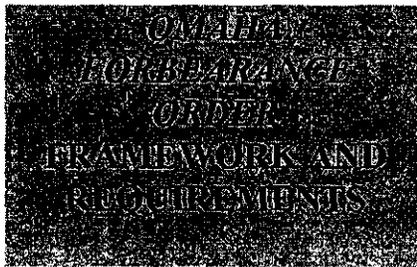
Special Access Usage: Use of Verizon's special access services by competitors is only relevant to the Commission's forbearance analysis once it has been determined for each product and geographic market that multiple competitors have the required facilities coverage and have achieved considerable market share.

Verizon has submitted special access demand and revenue data in an effort to show that competition would be preserved even if CLECs could not access loop and transport UNEs and could only obtain Verizon's special access services.²⁷

appropriate DS1 and DS3 loop and transport replacements. The record here and in WC Doc. No. 05-25 shows that the special access market is not competitive and that Verizon is earning supracompetitive rates-of-return on its special access products.²⁶

The record evidence is that Verizon's data:

- Is not relevant because the threshold requirements of facilities coverage and market penetration have not been met.²⁸
- Is unreliable and misleading because Verizon:
 - Fails to include only special access used to provide local telecom service.²⁹
 - Fails to identify special access that CLECs are forced to use because they are unable to access UNEs.³⁰
 - Presents its data based on VGE capacity rather than number of circuits or customers served.³¹



¹ *In the Matter of Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston Metropolitan Statistical Area*, WC Docket No. 06-172, Petition of the Verizon Telephone Companies for Forbearance (“Boston Petition”), Declaration of Quintin Lew, Judy Verses and Patrick Garzillo Regarding Competition in the Boston Metropolitan Statistical Area, Exhibits 5, 6 (filed Sept. 6, 2006) (“Boston Declaration”); *In the Matter of Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the New York Metropolitan Statistical Area*, WC Docket No. 06-172, Petition of the Verizon Telephone Companies for Forbearance (“New York Petition”), Declaration of Quintin Lew, Judy Verses and Patrick Garzillo Regarding Competition in the New York Metropolitan Statistical Area, Exhibits 5, 6 (filed Sept. 6, 2006) (“New York Declaration”); *In the Matter of Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Philadelphia Metropolitan Statistical Area*, WC Docket No. 06-172, Petition of the Verizon Telephone Companies for Forbearance (“Philadelphia Petition”), Declaration of Quintin Lew, Judy Verses and Patrick Garzillo Regarding Competition in the Philadelphia Metropolitan Statistical Area, Exhibits 5, 6 (filed Sept. 6, 2006) (“Philadelphia Declaration”); *In the Matter of Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Pittsburgh Metropolitan Statistical Area*, WC Docket No. 06-172, Petition of the Verizon Telephone Companies for Forbearance (“Pittsburgh Petition”), Declaration of Quintin Lew, Judy Verses and Patrick Garzillo Regarding Competition in the Pittsburgh Metropolitan Statistical Area, Exhibits 5, 6 (filed Sept. 6, 2006) (“Pittsburgh Declaration”); *In the Matter of Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Providence Metropolitan Statistical Area*, WC Docket No. 06-172, Petition of the Verizon Telephone Companies for Forbearance (“Providence Petition”), Declaration of Quintin Lew, Judy Verses and Patrick Garzillo Regarding Competition in the Providence Metropolitan Statistical Area, Exhibits 5, 6 (filed Sept. 6, 2006) (“Providence Declaration”); *In the Matter of Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Virginia Beach Metropolitan Statistical Area*, WC Docket No. 06-172, Petition of the Verizon Telephone Companies for Forbearance (“Virginia Beach Petition”), Declaration of Quintin Lew, Judy Verses and Patrick Garzillo Regarding Competition in the Virginia Beach Metropolitan Statistical Area, Exhibits 5, 6 (filed Sept. 6, 2006) (“Virginia Beach Declaration”).

² See Opposition of Time Warner Telecom Inc., Cbeyond Inc., and One Communications Corp., WC Docket No. 06-172 (filed Mar. 5, 2007) (“TWTC et al. Opposition”), at 43-45.

³ *Ex Parte* Letter from John J. Heitmann, Counsel to XO Communications, LLC to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 30, 2007) at 10 (Table 7) (“XO’s Supplemental Data on Commercial Lit Buildings”); *Ex Parte* Letter from Brad E. Mutschelknaus, Counsel to Covad Communications Group, NuVox Communications and XO Communications, LLC to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 5, 2007) at 7-8 (“XO’s Supplemental Data on Loop Based Competition”).

⁴ *Id.*, at 10, n. 11 (citing Declaration of Ajay Govil on Behalf of XO Communications, LLC, in WC Docket No. 05-25 and RM-10593). See also TWTC et al. Opposition, at 17, 20-21, 22.

- 5 Reply Comments of the Verizon Telephone Companies (“Verizon Reply Comments”), Reply Declaration of Quintin Lew, John Wimsatt and Patrick Garzillo, WC Docket No. 06-172 (“Verizon Reply Declaration”) (filed Apr. 18, 2007), at Exhibit 9.
- 6 Comments of Covad Communications Group, NuVox Communications and XO Communications, LLC, WC Docket No. 06-172 (filed Mar. 5, 2007) (“XO et al. Comments”), at 47-49; XO’s Supplemental Data on Commercial Lit Buildings; TWTC et al. Opposition, at 44-45.
- 7 Verizon Reply Declaration, at Exhibits 1.A-1.F, 2, 4, 9.
- 8 Comments of Cox Communications, Inc., WC Docket No. 06-172 (filed Mar. 5, 2007) (“Cox Comments”), at 27, 32; XO et al. Comments, at 12-14, Exhibit 1 (Declaration of Joseph Gillan) and Exhibit 2 (Declaration of Lisa R. Youngers); *Ex Parte* Letter from Joint CLECs to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 4, 2007), at 13-21 and Supplemental Declaration of Joseph Gillan (“Joint CLECs’ Comments on E911 Data”); *Ex Parte* Presentation of Covad Communications Group, NuVox Communications and XO Communications, LLC, WC Docket No. 06-172 (filed Sept. 21, 2007), at 8; XO’s Supplemental Data on Loop Based Competition, at 2-7.
- 9 *Id.*
- 10 Comments of Comcast Corporation, WC Docket No. 06-172 (filed Mar. 5, 2007) (“Comcast Comments”), at 4; Cox Comments, at 25, 31; Opposition of Charter Communications, Inc., WC Docket No. 06-172 (filed Apr. 18, 2007) (“Charter Opposition”), at 4-5; Comments of Time Warner Cable, WC Docket No. 06-172 (filed Mar. 5, 2007) (“TWC Comments”), at 12; TWTC et al. Opposition, at 15-17; *Ex Parte* Letter from Philip J. Macres, Counsel to RCN Telecom Services, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 9, 2007) (transmitting data requested by Commission Staff) (“RCN Data *Ex Parte*”); *Ex Parte* Letter from Brian W. Murray, Counsel to Time Warner Cable, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 9, 2007) (transmitting data requested by Commission Staff) (“TWC Data *Ex Parte*”).
- 11 Charter Opposition, at 4-5; Comcast Comments, at 4; Cox Comments, at 25-26, 27, 32; TWC Comments, at 4-5; Reply Comments of Covad Communications Group, NuVox Communications, and XO Communications, LLC (filed Apr. 18, 2007) (“XO et al. Reply Comments”), at 13-14; RCN Data *Ex Parte*; TWC Data *Ex Parte*; XO’s Supplemental Data on Loop-Based Competition, at 5-7.
- 12 *Ex Parte* Letter from Genevieve Morelli, Counsel to Covad Communications Group, NuVox Communications and XO Communications, LLC to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 25, 2007) (transmitting comments of the Department of Defense and the Federal Executive Agencies in proceedings before the New York Public Service Commission and Virginia State Corporation Commission) (“DOD/FEA Submissions”); *see also* Comments in Opposition of ACN Communications Services, Inc., et al. (filed Mar. 5, 2007) (“ACN et al. Opposition”), at 27; Comcast Comments, at 4-5; Cox Comments, at 27-28; TWC Comments, at 19-21; TWTC et al. Opposition, at 38-47; XO et al. Reply Comments, at 13-17.
- 13 *See* XO’s Supplemental Data on Loop-Based Competition, at 5-8.
- 14 *See infra*, at n. 7.
- 15 Charter Opposition, at 4-5; Comcast Comments, at 4; Cox Comments, at 25-26, 31-32; XO et al. Reply Comments, at 13-14; RCN Data *Ex Parte*; TWC Data *Ex Parte*; XO’s Supplemental Data on Loop-Based Competition, at 5-7.
- 16 Cox Comments, at 26-27; *see also* Charter Comments, at 3-4; Comcast Comments, at 3-4; XO’s Supplemental Data on Loop-Based Competition.

- 17 DOD/FEA Submissions; *see also* ACN et al. Opposition, at 27; Comcast Comments, at 4-5; Cox
Comments, at 27-28; TWC Comments, at 19-21; TWTC et al. Opposition, at 38-47; XO et al. Reply
Comments, at 13-17.
- 18 Joint CLECs' Comments on E911 Data, at 9-11; XO et al. Comments, at 47-49; XO's Supplemental Data
on Commercial Lit Buildings; TWTC et al. Opposition, at 44-45.
- 19 *See* Boston Petition, at 14-15; New York Petition, at 14-15; Philadelphia Petition, at 14-16; Pittsburgh
Petition, at 14-15; Providence Petition, at 13-14; Virginia Beach Petition, at 13-15; *see also* Verizon Reply
Comments, at 32 and Reply Declaration, at ¶ 51.
- 20 *Id.*
- 21 Letter from Philip J. Macres, Bingham, Counsel to Alpheus Communications, L.P. et al. to Marlene H.
Dortch, Secretary, Federal Communications Commission (Jul. 10, 2007), at 4-14 ("Ex Parte Letter on Loop
Unbundling"); Joint CLECs' Comments on E911 Data; *see also* ACN et al. Comments, at 34-35;
Opposition of Cavalier Telephone Subsidiaries to Verizon's Petitions for Forbearance (filed Mar. 5, 2007),
at 12; Comments of the City of Philadelphia (filed Mar. 5, 2007), at 25; Opposition of Monmouth
Telephone & Telegraph, Inc. (filed Mar. 5, 2007), at 12; Sprint Nextel's Opposition to Petitions for
Forbearance (filed Mar. 5, 2007), at 17-18; Telecom Investors' Opposition (filed Mar. 5, 2007), at 3; XO et
al. Comments, at 52-53, 54; XO et al. Reply Comments, at 8-9, 20-22.
- 22 *Ex Parte* Letter on Loop Unbundling, at 4-6 (footnotes omitted); XO et al. Comments, at 54.
- 23 Joint CLECs' Comments on E911 Data, at 10-11 (citing *In the Matter of Qwest Corporation Petition for
Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No.
04-223, Petition for Modification of McLeodUSA Telecommunications Services, Inc., (filed Jul. 23,
2007)); Comments of Integra Telecom, Inc. (filed Mar. 5, 2007), at 4. *See also* XO et al. Comments, at 54
(citing Letter from Chris McFarland, Group Vice President, McLeodUSA to Marlene H. Dortch, Secretary,
Federal Communications Commission, WC Docket No. 05-281 (Dec. 15, 2006)).
- 24 ACN et al. Comments, at 33; XO et al. Comments, at 52; XO et al. Reply Comments, at 8-9.
- 25 *Ex Parte* Letter on Loop Unbundling, at 6-7 (footnotes omitted).
- 26 Joint CLECs' Comments on E911 Data, at 21-28; *see also*, ACN et al. Comments, at 39; XO et al.
Comments, at 55-58; TWTC et al. Comments, at 31-32.
- 27 *See* Verizon Reply Declaration, at Exhibits 5, 6, 7 and 10.
- 28 Joint CLECs' Comments on E911 Data, at 21-28.
- 29 *Id.*, at 22-23.
- 30 *Id.*, at 23.
- 31 *Id.* 23-24.