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November 15, 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:

In recent days, most of the cable television companies operating in the MSAs that are the subject of the above-captioned petition have filed data with the Commission concerning the numbers of customers they serve and locations they are able to serve. Our analysis of this data has led to several conclusions, which we now present to the Commission.

It is now clear that *none* of the six MSAs has reached a level of facilities-based mass market competition comparable to that found by the Commission in Omaha and Anchorage. Although residential facilities-based competition is not the sole factor to take into account in review of the Petitions, it is one that the Commission found very significant in both of its previous UNE forbearance decisions.[1] Based upon the most

[1] The Commission found in Omaha that "the substantial intermodal competition for telecommunications services provided over Cox's own extensive facilities is sufficient to grant Qwest forbearance from the application of its section 251(c)(3) obligations," in light of other considerations. *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Doc. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415, ¶ 59 (2005) ("*Omaha Forbearance Order*"); and specifically cited to Cox's residential market penetration in

(Footnote Continued on Next Page.)

recent data supplied by the cable companies, we estimate these companies' share of total residential lines in the six MSAs as follows:

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	Residential Market Share of Facilities-Based Providers	
MSA Name	*Verizon Estimate*	*Revised Estimate*
BOSTON-CAMBRIDGE-QUINCY, MA-NH	%	%
NEW YORK-NORTHERN NJ-LONG ISLAND, NY-NJ-PA	%	%
PHILADELPHIA-CAMDEN-WILMINGTON, PA-NJ-DE-MD	%	%
PITTSBURGH, PA	%	%
PROVIDENCE-NEW BEDFORD-FALL RIVER, RI-MA	%	%
VIRGINIA BEACH-NORFOLK-NEWPORT NEWS, VA-NC	%	%

[END HIGHLY CONFIDENTIAL]

These estimates were calculated as follows: From Verizon's Reply Comments, Exhibit 1, we took Verizon's report of its own lines (both retail and switched wholesale), and its estimate (from E911 database records) of competitive carriers' residential lines (both facilities-based and on non-switched Verizon wholesale facilities). From Verizon's Reply Comments, Exhibit 3, we took Verizon's company-specific estimates of residential lines served by named cable companies. The ratio of these two figures provides the "Verizon Estimate" of cable market share in the first column.

We then took the actual line counts reported by the cable companies (with one exception, noted below), and recomputed the market share ratio using these values in the numerator. We also adjusted the denominator (total residential lines) by the difference between the residential lines reported by the cable companies and the original Verizon estimate of their lines.

In the New York MSA, no actual subscribership data was available from Cablevision, so we used Verizon's initial estimate in the absence of any more reliable data.

(Footnote continued from Previous Page.)

paragraph 66. *See also Petition of ACS Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, WC Docket No. 05-281, FCC 06-188 at para. 28 (released January 30, 2007).

We also note that, while Verizon's data was generally based on December 2006 figures, with several exceptions noted in its Reply Comment exhibits, the cable companies generally did not report the date as of which their figures were gathered, except for Time Warner (June 2007) and RCN (June and September 2007). There may therefore be some minor discrepancies in the data due to the different time periods reflected.

In addition to allowing a more precise calculation of cable residential market share, this data also confirmed that Verizon's E911-based estimates are not reliable. Even aggregated at the MSA level, there were large errors in Verizon's estimates – and the errors went in both directions. Verizon overestimated cable market share in the **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** MSA by about **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** percent; and it underestimated cable market share in the **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** percent. Verizon's technique of estimating competitive market share based on E911 database counts, in short, was only slightly more accurate than throwing darts at a page full of numbers.

At the wire center level, however, both the Verizon estimates and the cable company reports appear to be entirely unusable. Several of the cable companies stated in their submissions that they do not design their networks or maintain their records based on Verizon wire center boundaries, which is entirely understandable. Time Warner was the only company to provide a detailed explanation of how it attempted to assign its customer counts to wire centers, and we have already pointed out the flaws in that method. The other cable companies either made no attempt to provide data by wire center, or provided no explanation of how they made the allocation. The cable companies' reported subscribership by wire center is wildly different than Verizon's estimates, sometimes by thousands of percentage points.

Because any wire center-level figures provided by the cable companies are based on unknown and unreliable allocation methods, rather than actual internal data, we urge the Commission not to rely on wire center subscribership figures for any purpose. Cable company estimates of their *coverage* in wire center areas may be somewhat more reliable, depending on how they were performed, because of the nature of cable networks. These networks typically are designed to be capable of serving all, or nearly all, residences within a particular contiguous geographic area, usually corresponding to a franchise granted by a local government. If the cable company can compare its franchise area to Verizon's wire center boundary, it can probably arrive at a fairly good estimate of its overall coverage level on this basis. The same is not true of cable subscribership, which requires knowledge of the actual wire center(s) serving individual customers.

The Commission's forbearance decisions in both Omaha and Anchorage analyzed competitors' market share only on a market-wide basis, and not at the level of individual wire centers. Given the inherent unreliability of wire center data for this purpose, there can be no justification for departing from that practice in this case.

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Respectfully submitted,

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