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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:

Cavalier submits this letter to provide additional information concerning the existing state of competition in the Virginia Beach MSA, and the harm to competition that would result if Verizon were granted forbearance from its obligation to provision basic and DSL qualified copper (*i.e.*, conditioned 2- and 4- wire) loops as § 251(c)(3) unbundled network elements (copper loop UNEs) there.

Cavalier is the leading UNE-based competitor in the Virginia Beach MSA, and the only one that offers service to residential customers. Cavalier currently serves over 16,000 business lines and 30,000 residential lines in the Virginia Beach MSA. It offers traditional voice telephone service, Internet access, and Internet Protocol Television (“IPTV”) service, all over copper loop UNEs. Thus, Cavalier provides a third alternative to Verizon and Cox in both the telephone and video markets.

Copper loop UNEs are not just used to provide Plan Old Telephone Service. Competitors are able to provision innovative, reliable, and cost effective broadband services over them, including IPTV services that compete directly with cable and satellite television. IPTV delivers television programming to households via a high-speed connection using Internet protocols.¹ It “requires a subscription and IPTV set-top box,

¹ wiseGEEK, What is IPTV, <http://www.wisegeek.com/what-is-iptv.htm> (accessed Nov. 15, 2007).

and offers key advantages over existing TV cable and satellite technologies. IPTV is typically bundled with other services like Video on Demand (VOD), voice over IP (VOIP) or digital phone, and Web access, collectively referred to as *Triple Play*.² IPTV adds many advantages such as “the ability for digital video records (DVRs) to record multiple broadcasts at once or view picture-in-picture without the need for multiple tuners.”³ With IPTV, “one can watch one show, while using picture-in-picture to channel surf.”⁴

Cavalier’s IPTV offering uses the strengths of Internet delivery systems to transport Digital TV to its customer’s televisions, similar to the way Internet content is delivered to computers. Cavalier’s IPTV product is delivered through its own private network and is completely independent of the public Internet. Cavalier’s television content is received from national and local content providers. It is then sent through its cutting edge video trans-coders for real-time conversion to a top quality MPEG4 video stream. Cavalier was the first in the nation to use MPEG4 technology. MPEG4 delivers customers high-resolution television that’s less subject to degradation. These video streams of data are then routed via collocations in Verizon central office (CO) buildings, along with Internet and telephone services, over Cavalier’s network. From these COs the signal is converted to a DSL transmission and sent to Cavalier’s broadband modem at the customer’s home. The signal is then routed to the installed set top boxes connected to the customers’ televisions where it is displayed clear and sharp. As noted above, these set top boxes have the ability to communicate with Cavalier’s middleware servers, allowing additional layers of features and functionality along with the premium television service.

Cavalier offers its IPTV service bundled with existing Telephone and Broadband internet service. Cavalier's "Triple Play" offers local and long distance phone service, high speed DSL internet and 150 channels, all for \$79.95 a month.⁵ Although Cavalier

² *Id.*

³ *Id.*

⁴ *Id.* Another advantage of IPTV is that “it uses Internet protocols to provide two-way communications for *interactive* television.” *Id.* For instance, one “application might be in game shows in which the studio audience is asked to participate by helping a contestant choose between answers.” *Id.* In this situation, “IPTV opens the door to real-time participation from people watching at home. Another application would be the ability to turn on multiple angles of an event, such as a touchdown, and watch it from dual angles simultaneously using picture-in-picture viewing.” *Id.* A sports addicts dream. Moreover, “one can also receive web service notifications while watching IPTV for things such as incoming email and instant messages.” *Id.* If IPTV is packaged with a digital phone, Caller ID might pop up on the television screen as the telephone rings. *Id.*

⁵ Cavalier’s IPTV service comes with 150 channels of digital entertainment, 2 digital set top boxes, universal remote control , interactive program guide, on-screen

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has only recently introduced its IPTV service in the Virginia Beach MSA, it already has nearly 3000 customers for its triple play offering. Cavalier is able to provision these competitive retail services over Verizon's copper loop UNEs. Consistent with the *TRO*, Cavalier and other CLECs have invested substantial amounts in deploying equipment that unleashes "the full potential of the embedded copper loop plant."⁶ Unbundling of copper standalone copper facilities has significantly increased investment, just as the Commission envisioned.⁷

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caller ID, 3 FREE months of premium channel package (Choice of HBO, Cinemax, Showtime, or Starz). Its Hi-Speed Internet service comes with DSL modem (\$99 value), pop-up blocker, dedicated high-speed connection, Internet speeds up to 15 Mbps, 3 email addresses, personal web space, ISP support 24/7. Its phone service comes with unlimited local phone calls, free Cav2Cav long distance phone calls (between Cavalier Residential Customers), 5¢ a minute long distance rate (All US States, US Territories & Canada), Plus 12 FREE Calling Features (Voice Mail, Caller ID, Call Waiting, Anonymous Call Rejection, Call Blocking, Last Call Connect, Bill Viewer, Remote Call Forwarding, Repeat Dialing, Speed Dialing, Three Way Calling. *See* http://www.cavtel.com/forhome/tv_packages.php.

⁶ *See* Letter from Andrew D. Lipman, Counsel for Cavalier *et al.*, to Marlene Dortch, Secretary, FCC, WC Docket No. 06-172 (filed Oct. 3, 2007) at 7 (citing and quoting *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 244 (2003) ("*TRO*") (history omitted)).

⁷ Verizon argues that it should not be required to offer copper loops UNEs to provision broadband services because the retail services are competitive. *See* Letter from Joseph Jackson, Associate Director of Federal Regulatory, Verizon, to Marlene Dortch, Secretary, FCC, WC Docket No. 06-172 (filed Nov. 9, 2007). Verizon is wrong. As the Commission found in the *Wireline Broadband Internet Access Services Order*, "regardless of how [it] classifies wireline broadband Internet access service, including its transmission component, competitive LECs should still be able to purchase UNEs, including UNE loops to provide stand-alone DSL telecommunications service, pursuant to section 251(c)(3) of the Act." *See Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 USC §160(c) with Regard to Broadband Services Provided via Fiber to the Premises; Petition of the Verizon*

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Further, there is no alternative method of provisioning these services without access to copper loops. Cavalier has made capital investments in equipment that is designed to transmit broadband signals over copper, and this investment would be stranded if Cavalier no longer had access to copper facilities. Overbuilding copper wires throughout a metropolitan area, as the Commission is well aware, is simply not a feasible alternative. No wholesale services are available over the Cox network (and, even if Cox did choose to provide wholesale access, its hybrid fiber-coaxial network technology is not compatible with Cavalier's equipment). Verizon does not offer any special access or commercial wholesale product today that provides access to conditioned copper loops capable of transmitting broadband frequencies.

If Verizon were granted forbearance, there is no assurance that it would offer a form of loop access that would be suitable for use with Cavalier's technology. In its Omaha forbearance decision, the Commission noted that Qwest would be required to continue offering access to loops under Section 271(c)(2)(B)(iv); however, the record in that case did not address the provision of IPTV and other broadband services over copper loops, and therefore the Commission did not need to consider whether Section 271 loop offerings would provide all the same technical capabilities as Section 251 UNEs. Moreover, seventeen (17) of the Verizon wire centers in the Virginia Beach MSA are former GTE exchanges (see Appendix attached hereto), in which Section 271 obligations do not apply.

Finally, as discussed in previous *ex parte* submissions, Verizon's past practice in the wholesale market where it has been relieved from unbundling obligations gives the Commission every reason to anticipate that any post-forbearance wholesale offering Verizon does make available will be priced at levels that preclude effective retail competition over Verizon loops.

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Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided via Fiber to the Premises; Consumer Protection in the Broadband Era, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶ 126 (2005) (*Wireline Broadband Internet Access Services Order*), *aff'd*, *Time Warner Telecom v. FCC*, No. 05-4769 (and consolidated cases), slip op. at 33 (3rd Cir Oct. 16, 2007). As the Commission explained, this regulatory regime is designed to "promote the availability of competitive broadband Internet access services to consumers, via multiple platforms, while ensuring adequate incentives are in place to encourage the deployment and innovation of broadband platforms consistent with our obligations and mandates under the Act." *Id.* ¶ 3. For the reasons discussed herein, Cavalier is doing just that by providing competitively priced and cutting edge services and technology to end users over DSL qualified copper loop UNEs.

Accordingly, if Verizon were relieved of offering its copper facilities, Cavalier would likely have to stop marketing its innovative service packages in the Virginia Beach MSA, and would be unlikely to invest further in this technology or to deploy these services in other markets.⁸ This competitively harmful result would, in turn, also adversely affect Cavalier's ability to offer wholesale services, because doing so is directly dependent on its ability to offer retail services. Cavalier has long haul fiber transport throughout the Northeast, including the Virginia Beach MSA. Its fiber is used for backbone transport; it connects to Verizon COs, carrier POPs, and carrier hotels, not end user locations.⁹ Cavalier offers transport on a wholesale basis to wireless and other providers. Cavalier's ability to offer wholesale transport is contingent, however, on its ability to offer retail services it provisions over UNE loops it obtains from Verizon. Cavalier's wholesale business could not survive as a stand-alone business – its backbone network is used primarily to deliver its own services, and the sale of excess capacity in the wholesale market is secondary.

For the above reasons and as record demonstrates, forbearance would unequivocally harm both the competitors whose services rely on these copper facilities and the subscribers of these services. Consumers would face both reduced access to advanced services, and higher prices for basic telecommunications services. Section 10 of the Act does not permit forbearance in such instances¹⁰ and therefore, Verizon should not be relieved of its § 251(c)(3) obligation to offer them.

⁸ It would be a poor use of its investors' money for Cavalier to invest in introducing IPTV and other broadband services in any market in the country if there were a significant risk that doing so would hasten an ILEC forbearance filing that would undermine the ability to offer these services.

⁹ Cavalier serves a total of ten (10) end-user buildings in the Virginia Beach MSA over its own facilities, which are facilities it acquired from another company. Cavalier does not have the capability to extend its facilities to other end-user premises, and has no intention of doing so. Cavalier does not offer any wholesale services to end-user locations and does not offer an alternative to Verizon's loop services.

¹⁰ See 47 U.S.C. § 160(a)(2) (if "enforcement of such regulation or provision is [] necessary for the protection of consumers," forbearance is not appropriate); 47 U.S.C. § 160(a)(3) & (b) (the public interest does not support forbearance if doing so would not enhance or promote competition among providers of telecommunications services).

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Respectfully submitted,

/s/ Philip J. Macres

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Appendix

Verizon Wire Centers in Virginia Beach MSA

ST	8CLLI	Wire Center Name	OCN#	OCN_NAME
NC	KNISNCXA	KNOTTS ISLAND	0509	VERIZON SOUTH INC.-NC (GTE)
VA	CHKTVAXA	CHUCKATUCK	0233	VERIZON SOUTH INC.-VA (GTE)
VA	CLMTVAXA	CLAREMONT	0233	VERIZON SOUTH INC.-VA (GTE)
VA	CRTDVAXA	CRITTENDEN	0233	VERIZON SOUTH INC.-VA (GTE)
VA	DNDRVAXA	DENDRON	0233	VERIZON SOUTH INC.-VA (GTE)
VA	GLCSVAXA	GLOUCESTER	0233	VERIZON SOUTH INC.-VA (GTE)
VA	GRBRVAXA	GREAT BRIDGE	0233	VERIZON SOUTH INC.-VA (GTE)
VA	GRBRVAXB	BATTLEFIELD	0233	VERIZON SOUTH INC.-VA (GTE)
VA	HAYSVAXA	HAYES	0233	VERIZON SOUTH INC.-VA (GTE)
VA	HCKRVAXA	HICKORY	0233	VERIZON SOUTH INC.-VA (GTE)
VA	HLLDVAXA	HOLLAND	0233	VERIZON SOUTH INC.-VA (GTE)
VA	MTHWVAXA	MATHEWS	0233	VERIZON SOUTH INC.-VA (GTE)
VA	PRANVAXA	PRINCESS ANNE	0233	VERIZON SOUTH INC.-VA (GTE)
VA	PUNGVAXA	PUNGO	0233	VERIZON SOUTH INC.-VA (GTE)
VA	SMFDVAXA	SMITHFIELD	0233	VERIZON SOUTH INC.-VA (GTE)
VA	SRRYVAXA	SURRY	0233	VERIZON SOUTH INC.-VA (GTE)
VA	WNSDVAXA	WINDSOR	0233	VERIZON SOUTH INC.-VA (GTE)
VA	CHSKVACD	CHURCHLAND VA	9213	VERIZON VIRGINIA, INC.
VA	CHSKVADC	DEEP CREEK VA	9213	VERIZON VIRGINIA, INC.
VA	CHSKVAGU	GUERRIERE VA	9213	VERIZON VIRGINIA, INC.
VA	DRVRVADR	DRIVER VA	9213	VERIZON VIRGINIA, INC.
VA	HMPNVAAB	ABERDEEN VA	9213	VERIZON VIRGINIA, INC.
VA	HMPNVADC	DRUMMONDS VA	9213	VERIZON VIRGINIA, INC.
VA	HMPNVAQN	QUEEN STREET VA	9213	VERIZON VIRGINIA, INC.
VA	HMPNVAWD	WOODLAND VA	9213	VERIZON VIRGINIA, INC.
VA	NRFLVABL	BRICKELL VA	9213	VERIZON VIRGINIA, INC.
VA	NRFLVABS	BUTE VA	9213	VERIZON VIRGINIA, INC.
VA	NRFLVAGS	GRANBY STREET VA	9213	VERIZON VIRGINIA, INC.
VA	NRFLVAOV	OCEAN VIEW VA	9213	VERIZON VIRGINIA, INC.
VA	NRFLVASP	SEWELLS POINT VA	9213	VERIZON VIRGINIA, INC.
VA	NRFLVAWC	WEST LITTLE CREEK VA	9213	VERIZON VIRGINIA, INC.
VA	NWNWVAHU	HUNTINGTON VA	9213	VERIZON VIRGINIA, INC.
VA	NWNWVAHV	HARPERSVILLE VA	9213	VERIZON VIRGINIA, INC.
VA	NWNWVAJF	JEFFERSON VA	9213	VERIZON VIRGINIA, INC.
VA	NWNWVAND	NETTLES DRIVE VA	9213	VERIZON VIRGINIA, INC.
VA	NWNWVAYK	YORKTOWN VA	9213	VERIZON VIRGINIA, INC.
VA	PTMOVAHF	HODGES FERRY VA	9213	VERIZON VIRGINIA, INC.
VA	PTMOVAHS	HIGH STREET VA	9213	VERIZON VIRGINIA, INC.
VA	SFFLVASK	SUFFOLK VA	9213	VERIZON VIRGINIA, INC.
VA	TOANVATO	TOANO VA	9213	VERIZON VIRGINIA, INC.
VA	VRBHVACC	CHINESE CORNER VA	9213	VERIZON VIRGINIA, INC.
VA	VRBHVACT	CENTERVILLE TNP. VA	9213	VERIZON VIRGINIA, INC.
VA	VRBHVAGN	GREAT NECK VA	9213	VERIZON VIRGINIA, INC.

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ST	8CLLI	Wire Center Name	OCN#	OCN_NAME
VA	VRBHVAIL	INDIAN LAKES VA	9213	VERIZON VIRGINIA, INC.
VA	VRBHVAIR	INDIAN RIVER VA	9213	VERIZON VIRGINIA, INC.
VA	VRBHVAPT	PLAZA TRAIL VA	9213	VERIZON VIRGINIA, INC.
VA	VRBHVARC	ROBBINS CORNER VA	9213	VERIZON VIRGINIA, INC.
VA	VRBHVASR	SALEM ROAD VA	9213	VERIZON VIRGINIA, INC.
VA	VRBHVAVB	VIRGINIA BEACH (32ND) VA	9213	VERIZON VIRGINIA, INC.
VA	WHVLVAWH	WHALEYVILLE VA	9213	VERIZON VIRGINIA, INC.
VA	WLBGVAWM	WILLIAMSBURG VA	9213	VERIZON VIRGINIA, INC.