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EX PARTE OR LATE FILED

ORIGINAL

November 8, 2007

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Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY AND ELECTRONIC FILING (ECFS)

REDACTED – FOR PUBLIC INSPECTION

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

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

Dear Ms. Dortch:

On November 7, 2007, Angela Simpson of Covad Communications Group, Heather B. Gold and Lisa R. Youngers of XO Communications, LLC, and Brad E. Mutschelknaus and Genevieve Morelli of Kelley Drye & Warren LLP met with Scott Bergmann, Legal Advisor to Commissioner Jonathan S. Adelstein. At the meeting, the parties discussed that data submitted in the above-referenced proceeding does not demonstrate significant levels of facilities-based competition within any of the Metropolitan Statistical Areas subject to the Verizon Petitions. The attached presentation, and other documents were distributed at the meeting.

Please note, this *ex parte* filing has been 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 this filing also have been delivered to the Commission Secretary, and two copies of the same have been delivered to Mr. Gary Remondino of the Wireline Competition Bureau, under separate cover.

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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").

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

Respectfully submitted,

Brett Heather Freedson

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

[redacted]

Wednesday, November 7, 2007

Presentation Sponsored by
Covad Communications and
XO Communications

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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**

1/ 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 dip 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.

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

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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***

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 *Lit Buildings* (including MCI)
Boston		
New York		
Philadelphia		
Pittsburgh		
Providence		
Virginia Beach		
Total		

END CONFIDENTIAL***

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%

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%

IN FACT, FACILITIES-BASED CLECS DO NOT CONNECT 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%

FACILITIES-BASED CLECS CANNOT CONNECT TO SUBSTANTIALLY MORE COMMERCIAL BUILDINGS WITHIN A COMMERCIALLY 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%

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			

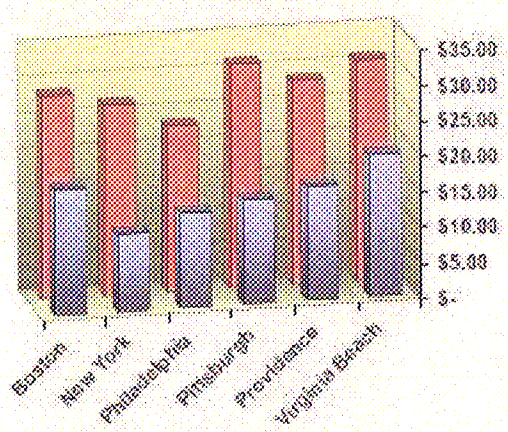
END HIGHLY CONFIDENTIAL

THESE ESTIMATES ARE CONFIRMED BY DATA ACTUALLY FILED BY CABLE COMPANIES

- RCN Says That is 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 its passes in Philadelphia, and **** BEGIN CONFIDENTIAL** [ ] **END CONFIDENTIAL**** of the homes it passes in Pittsburgh

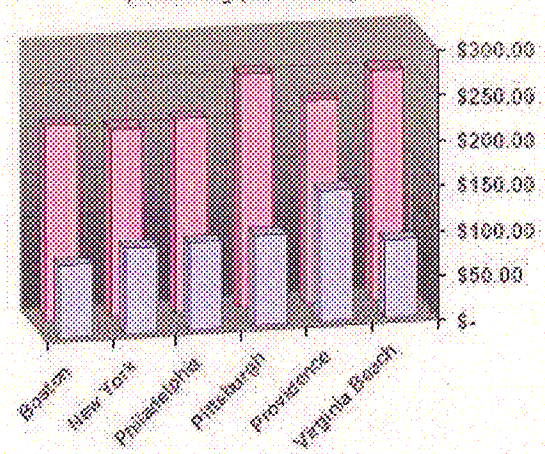
GRANTING VERIZON'S PETITIONS WOULD DIRECTLY CAUSE A HUGE SPIKE IN WHOLESALE FACILITY COSTS

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	$17.65	$10.90	$13.36	$14.58	$15.97	$19.88
Cost if Forbearance is Granted	$25.53	$26.76	$23.28	$31.45	$28.58	$31.01

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

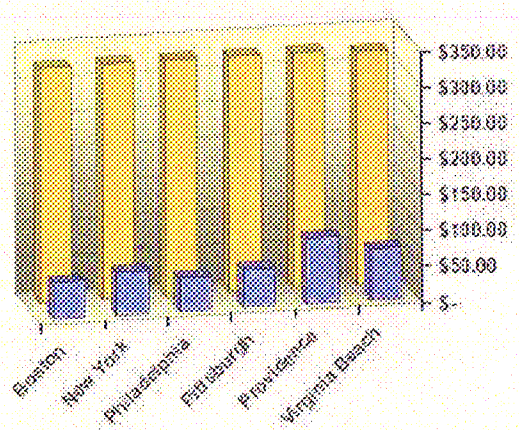


	Boston	New York	Philadelphia	Pittsburgh	Providence	Virginia Beach
UNE Cost	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Cost if Forbearance is Granted	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

REDACTED FOR PUBLIC INSPECTION

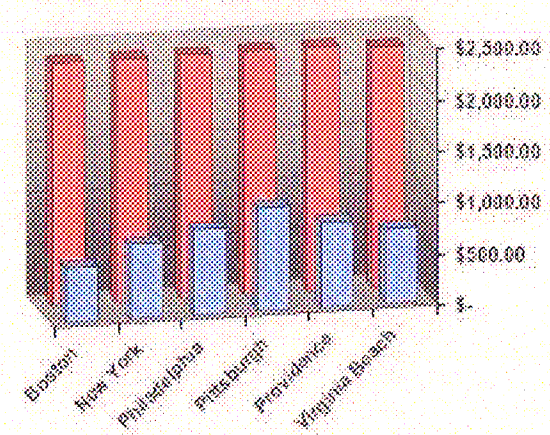
GRANTING VERIZON'S PETITIONS WOULD DIRECTLY CAUSE A HUGE SPIKE IN WHOLESALE FACILITY COSTS (cont'd)

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



	Boston	New York	Philadelphia	Pittsburgh	Providence	Virginia Beach
UNE Cost	$51.30	$60.57	$47.23	$53.46	$51.44	$71.04
Cost if Forbearance is Granted	$328.70	$328.70	$328.70	$328.70	$328.70	$324.07

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



	Boston	New York	Philadelphia	Pittsburgh	Providence	Virginia Beach
UNE Cost	$527.12	$732.14	$632.24	$1,005.78	$627.69	$730.78
Cost if Forbearance is Granted	$2,375.30	$2,375.30	$2,375.30	$2,375.30	$2,375.30	$2,341.85

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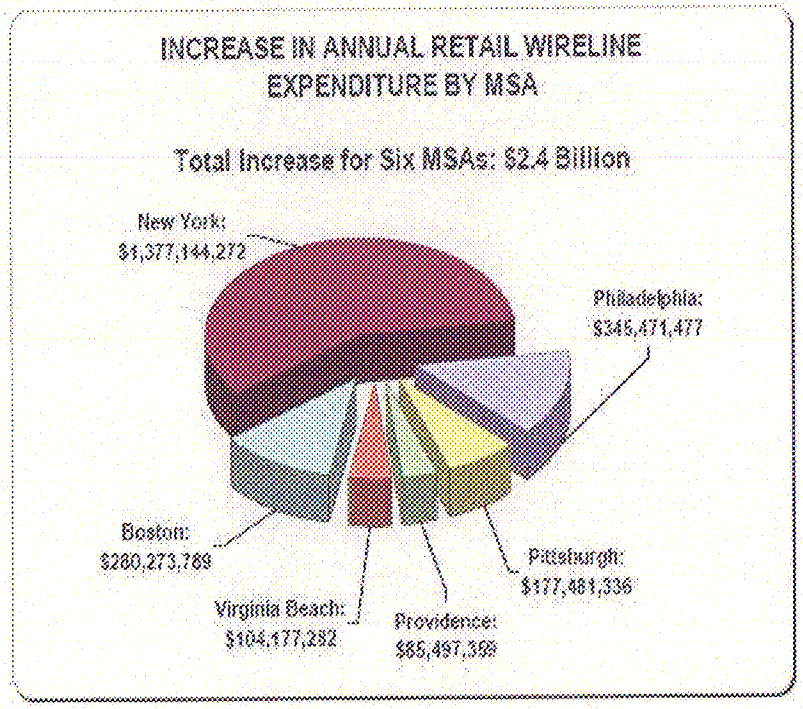
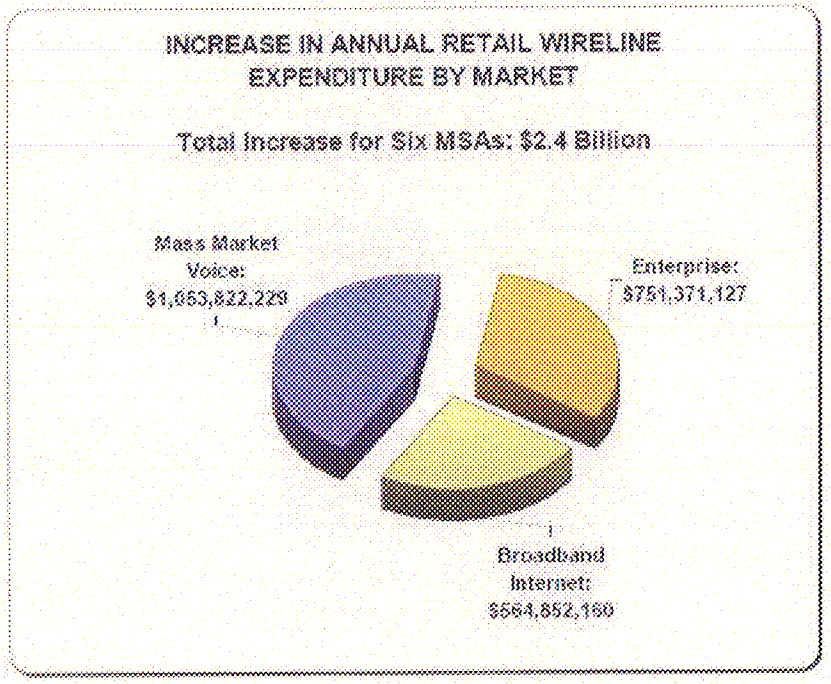
AS RETAIL CARRIERS PASS THROUGH INCREASED WHOLESALE COSTS, GRANTING VERIZON'S PETITIONS WOULD RESULT IN:

- *$2.4 Billion* Increase in Telecom Expenditures





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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	$ 92	20%
New York	$ 132	28%
Philadelphia	$ 87	19%
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, PUC-2007-00090 (VA SCC, filed Oct. 12, 2007).

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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

OMAHA FORBEARANCE ORDER FRAMEWORK AND REQUIREMENTS	SHOWING MADE BY VERIZON IN 6-MSA FORBEARANCE DOCKET (WC Docket No. 06-172)	RECORD EVIDENCE IN VERIZON 6-MSA FORBEARANCE DOCKET (WC Docket No. 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 (WC Docket No. 06-172)	RECORD EVIDENCE IN VERIZON 6-MSA FORBEARANCE DOCKET (WC 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.	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.	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]

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.
	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 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]
		  o E911 database line counts inflate CLEC market penetration.[9]
		  o 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