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FILE CO

November 16, 2007

FILED/ACCEPTED
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Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554

Re: *Petition 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 this filing, the undersigned carriers submit further evidence clearly demonstrating that Verizon has fallen far short of the mark for facilities-based market penetration set by the Commission in the *Omaha Forbearance Order*[1] in the Boston, Providence, Philadelphia, Pittsburgh, and Virginia Beach Metropolitan Statistical Areas ("MSAs").[2] The

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1 *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) ("*Omaha Forbearance Order*"), *aff'd Qwest Corporation v. Federal Communications Commission*, Case No. 05-1450, (D.C. Cir. Mar. 23, 2007) ("*Qwest Omaha*").

2 The undersigned carriers filed a letter on November 13, 2007 addressing the data filed by Time Warner Cable for the New York MSA. *See* Letter from Brad E. Mutschelknaus, Counsel to Covad Communications Group, et al. to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (filed Nov. 13, 2007) ("*Nov. 13th Ex Parte*"). A filing supplementing that letter and providing results for the entire New York MSA will be submitted once each of the other cable companies serving portions of the New York MSA has produced its data.

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data recently filed by Comcast Cable Communications, LLC ("Comcast"),[3] Cox Communications, Inc. ("Cox"),[4] Charter Communications, Inc. ("Charter"),[5] and RCN Telecom Services, Inc. ("RCN")[6] confirms data previously filed by the undersigned carriers[7] that the level of market penetration achieved by cable-based providers in the residential and business markets in the Boston, Providence, Philadelphia, Pittsburgh, and Virginia Beach MSAs does not come close to the level of loop-based competition reported to exist in the Omaha MSA at the time of the *Omaha Forbearance Order*.

Boston MSA

Comcast is the major incumbent cable operator in the Boston MSA.[8] In addition, Charter serves *** **BEGIN HIGHLY CONFIDENTIAL [ ]** *** **END HIGHLY CONFIDENTIAL** wire centers in the Boston MSA[9] and RCN Telecom Services, Inc. ("RCN") operates an overbuild cable network in parts of the Boston MSA.[10] The recent submission to the Commission of line count data by Comcast, Charter, and RCN permits the calculation of overall cable-based market penetration in the Boston MSA. The results are compelling and provide indisputable evidence that the level of cable-based market penetration in the Boston MSA is

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3 Letter from Michael C. Sloan, Counsel to Comcast Cable Communications, LLC. to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (Nov. 9, 2007) ("*Comcast Data Ex Parte*").

4 Letter from J.G. Harrington, Counsel to Cox Communications, LLC to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (filed Oct. 30, 2007) ("*Cox Data Ex Parte*").

5 Letter from K.C. Halm, Counsel to Charter Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (filed Nov. 6, 2007) ("*Charter Data Ex Parte*").

6 Letter from Philip J. Macres, Counsel to RCN Telecom Services, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (filed Nov. 9, 2007) ("*RCN Data Ex Parte*").

7 *See* Letter from Brad Mutschelknaus and Genevieve Morelli, Counsel to Covad Communications Group, NuVox Communications and XO Communications, LLC to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (Nov. 5, 2007) ("*Nov. 5th Ex Parte*").

8 *See* Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston Metropolitan Statistical Area (filed Sept. 6, 2006) ("*Verizon Petition – Boston*"), at 4.

9 *Charter Data Ex Parte*, at 3.

10 *Verizon Petition – Boston*, at 4.

nowhere near the level believed to exist in Omaha at the time of the *Omaha Forbearance Order*. The aggregate cable-based switched voice market share in the Boston MSA is a mere ***** BEGIN HIGHLY CONFIDENTIAL [ ] *** END HIGHLY CONFIDENTIAL** percent.

Although the market share figures detailed above encompass both residential and business markets within the Boston MSA, the ***** BEGIN HIGHLY CONFIDENTIAL [ ] *** END HIGHLY CONFIDENTIAL** percent market share attributable to cable-based competition is comprised almost exclusively of competition in the residential market and the level of cable-based competition in the business market ***** BEGIN HIGHLY CONFIDENTIAL [ ] *** END HIGHLY CONFIDENTIAL**.[11] A precise business market share cannot be calculated because Comcast did not distinguish between business and residential customers and lines in the data it submitted in the docket.[12] It should be noted, however, that the **BEGIN HIGHLY CONFIDENTIAL [ ] *** END HIGHLY CONFIDENTIAL** percent overall market share may be attributed for the most part to residential competition, since Comcast has stated that it is "just beginning to roll out . . . business offerings, and while some small businesses may subscribe to those services . . ., Comcast does not currently track them separately."[13] Moreover, Charter has reported that it serves a mere **BEGIN HIGHLY CONFIDENTIAL [ ] *** END HIGHLY CONFIDENTIAL** business lines in the Boston MSA.[14]

Providence MSA

The major incumbent cable operators in the Providence MSA are Cox and Comcast[15] and the recent submission to the Commission of line count data by Cox and Comcast permits the calculation of overall cable-based market penetration in the Providence MSA. As in the Boston MSA, the results provide clear and convincing evidence that the level of cable-based market penetration in the Providence MSA is nowhere near the level believed to exist in Omaha at the time of the *Omaha Forbearance Order*. The aggregate cable-based market share in the

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11 In the *Nov. 5th Ex Parte*, the uncorrected (*i.e.*, inflated) business market share for cable-based providers in the Boston MSA was estimated to be **BEGIN HIGHLY CONFIDENTIAL *** [ ] *** END HIGHLY CONFIDENTIAL** percent. *See Nov. 5th Ex Parte*, at Table 5.

12 *See Comcast Data Ex Parte*, at 3.

13 *Id.*

14 *Charter Data Ex Parte*, at 4.

15 *See* Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Providence Metropolitan Statistical Area (filed Sept. 6, 2006), at 4.

Providence MSA is a mere *** **BEGIN HIGHLY CONFIDENTIAL [ ] *** END HIGHLY CONFIDENTIAL** percent.[16]

Further, the market share attributable to cable-based competition in the business market is far less than the extremely modest **BEGIN HIGHLY CONFIDENTIAL [ ] *** END HIGHLY CONFIDENTIAL** percent combined residential and business market share within the Providence MSA. The MSA-wide business market share is *** **BEGIN HIGHLY CONFIDENTIAL [ ] *** END HIGHLY CONFIDENTIAL** percent.[17] A precise business market share cannot be calculated because, as noted above, Comcast did not distinguish between business and residential customers and lines in the data it submitted in the docket.[18] Moreover, the business market data submitted by Cox is stated in terms of data network connections, not switched access lines. Nevertheless, the **BEGIN HIGHLY CONFIDENTIAL [ ] *** END HIGHLY CONFIDENTIAL** percent penetration level provides a reasonable approximation of the business market share cable-based competitors have been able to achieve in the Providence MSA.[19] While residential market penetration in the Providence MSA is greater than business market penetration, it still comes nowhere close to the level understood to exist in Omaha at the time of the *Omaha Forbearance Order*. MSA-wide residential market penetration in Providence is **BEGIN HIGHLY CONFIDENTIAL [ ] *** END HIGHLY CONFIDENTIAL** percent.

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16 Because the data submitted by Cox for the business market in the Providence MSA is stated in terms of the data speed of the connection, the comparison must also include data connections provided by Verizon (as private line and special access). Similarly, the combined residential/business market penetration figure listed above is based on the number of network connections (*i.e.*, voice plus data), not switched access lines, for the voice component of the calculation.

17 As noted above, Comcast did not submit business market-specific share data. Since it has only recently begun offering service to business customers, however, its business market penetration likely is negligible. In the *Nov. 5th Ex Parte*, the uncorrected (*i.e.*, inflated) business market share for cable-based providers in the Providence MSA was estimated to be **BEGIN HIGHLY CONFIDENTIAL *** [ ] *** END HIGHLY CONFIDENTIAL** percent. *See Nov. 5th Ex Parte*, at Table 5.

18 *See Comcast Data Ex Parte*, at 3.

19 Given the critical importance on non-switched services in the business market, it is more appropriate to measure relative penetration by counting network connections than focusing exclusively on switched access lines.

Virginia Beach MSA

The major incumbent cable operator in the Virginia Beach MSA is Cox[20] and the very recent submission to the Commission of residential line count data by Cox permits the calculation of cable-based residential market penetration in the Virginia Beach MSA.[21] As in the Boston and Providence MSAs, the results provide unequivocal evidence that the level of cable-based market penetration in the Virginia Beach MSA is nowhere near the level believed to exist in Omaha at the time of the *Omaha Forbearance Order*. The residential cable-based market share in the Virginia Beach MSA is *** **BEGIN HIGHLY CONFIDENTIAL [ ]** *** **END HIGHLY CONFIDENTIAL** percent.[22]

Philadelphia and Pittsburgh MSAs

The major incumbent cable operator in the Philadelphia and Pittsburgh MSAs is Comcast.[23] Comcast's recently filed data shows its residential market share (stated in terms of homes passed) in the Philadelphia MSA is **BEGIN HIGHLY CONFIDENTIAL [ ]** *** **END HIGHLY CONFIDENTIAL** percent and its residential market share (stated in terms of homes passed) in the Pittsburgh MSA is **BEGIN HIGHLY CONFIDENTIAL [ ]** *** **END HIGHLY CONFIDENTIAL** percent. As noted above, Comcast did not submit business market-specific share data. Since it has only recently begun offering business services, however, its business market share is likely to be negligible.

In sum, the data submitted by Cox, Comcast, Charter, and RCN confirms that the level of loop-based competition in the residential and business markets within the Boston, Providence, Virginia Beach, Philadelphia, and Pittsburgh MSAs is a small fraction of the loop-based competitive market penetration reported to exist in Omaha at the time of the *Omaha Forbearance Order*. Thus, a critical element of proof has not been met by Verizon and its

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20 *See* Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Virginia Beach Metropolitan Statistical Area (filed Sept. 6, 2006), at 4.

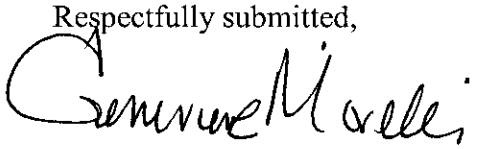
21 Cox has not yet produced market penetration data for the business market in the Virginia Beach MSA.

22 In determining Cox's residential market penetration, this calculation used the estimate of lines served by Cavalier as filed by Verizon in this proceeding.

23 *See* Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Philadelphia Metropolitan Statistical Area (filed Sept. 6, 2006), at 4; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Pittsburgh Metropolitan Statistical Area (filed Sept. 6, 2006), at 4.

petitions for Section 251(c)(3) forbearance in the Boston, Providence, Virginia Beach, Philadelphia, and Pittsburgh MSAs must be denied.

Respectfully submitted,



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