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November 29, 2007

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 a letter filed yesterday, Verizon has made yet another feeble attempt to convince the Commission that its above-captioned petitions for forbearance from Section 251(c)(3) unbundling obligations should not be denied.[1] This latest effort, like each of its predecessors, falls far short of the bar set in Section 10 and illustrates once again why Verizon's petitions should be denied in their entirety.

In a previous submission, Verizon urged the Commission to consider competition from intermodal competitors (in particular, wireless and over-the-top VoIP providers) in its analysis of the state of competition in the six Metropolitan Statistical Areas ("MSAs") at issue.[2]

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1 *See* Letter from Evan T. Leo, Counsel to Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (filed Nov. 28, 2007) ("*Nov. 28th Verizon Ex Parte*").

2 Letter from Evan T. Leo, Counsel to Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (filed Nov. 16, 2007) ("*Nov. 16th Verizon Ex Parte*").

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Verizon contended that once these alternatives (*i.e.*, wireless and over-the-top VoIP) are taken into account, its share of mass market voice connections in each of these MSAs ranges from a high of **BEGIN CONFIDENTIAL *** [ ] *** END CONFIDENTIAL** to a low of **BEGIN CONFIDENTIAL *** [ ] *** END CONFIDENTIAL**.[3] Verizon concluded that these figures show that competitive conditions in each of these MSAs are far above what is required to make a showing under Section 10 of effective competition.[4]

The undersigned carriers and other interested parties responded by reiterating the fundamental precept that wireless and VoIP services are not to be included in the Commission's forbearance analysis.[5] First, as has been pointed out numerous times in this proceeding, over-the-top VoIP services, by definition, ride the facilities of another provider and, as such, are not a source of facilities-based competition.[6] Since the Commission has clearly stated in both the *Omaha Forbearance Order* and the *Anchorage Forbearance Order* that facilities-based competition is the only relevant competition for purposes of determining whether the Section 10 forbearance criteria have been met,[7] the inclusion of VoIP-based competition in the forbearance

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3 *Id.*, at 8.

4 *Id.*, at 9. Importantly, Verizon's analysis of mass market connections addresses only one of the product markets (*i.e.*, the mass (or residential) market) the Commission must consider in its forbearance analysis. Verizon ignores the fact that the Commission must separately analyze facilities-based providers' network coverage and penetration in the enterprise market and the wholesale market as well as the mass market.

5 *See, e.g.,* Letter from Brad E. Mutschelknaus, Counsel to Broadview Networks, Inc. et al., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (filed Nov. 20, 2007) ("*Nov. 20th Broadview Ex Parte*"); Letter from John T. Nakahata, Counsel to EarthLink, Inc. et al., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (filed Nov. 21, 2007) ("*Nov. 21th EarthLink Ex Parte*"); Letter from Thomas Jones, Counsel to One Communications Corp., et al., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (filed Nov. 26, 2007) ("*Nov. 26th One Communications Ex Parte*").

6 *See, e.g., Nov. 20th Broadview Ex Parte*, at 7.

7 *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, at ¶ 60 (2005) ("*Omaha Forbearance Order*"), *aff'd Qwest Corporation v. Federal Communications Commission*, Case No. 05-1450, (D.C. Cir. Mar. 23, 2007) ("*Qwest Omaha*"); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, As Amended, for Forbearance From Sections 251(c)(3)*

analysis clearly is inappropriate. Further, wireless services cannot be included in the Commission's forbearance analysis because Verizon has failed to make the fact-specific showing the Commission has stated is required before any refinement of the *Omaha* standard to include wireless is possible.[8]

In its *ex parte* letter filed yesterday, Verizon once again appeals to the Commission to consider its purported share of mass market connections and to ignore the unequivocal directive to exclude competition from wireless and VoIP services in determining the extent of facilities-based competition in the product and geographic markets at issue. Verizon attempts to "correct" its previous calculation of mass market connections (which was based on residential E911 listings) by computing its share of mass market connections using cable-reported data in place of E911 listings.[9] Verizon's revised calculations suffer from the same fatal defect as its original calculations however. Verizon improperly continues to insist that wireless and VoIP services be included in the Commission's competitive analysis. In contrast, an accurate assessment of the status of cable-based competition based on the data recently filed by cable companies has previously been placed on the record.[10] The following table summarizes the previously-filed data showing cable penetration (based on data filed by the cable companies themselves) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach MSAs.

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and 252(d)(1) in the Anchorage Study Area, Memorandum Opinion and Order, 22 FCC Rcd 1958, at ¶ 29 (2007) ("*Anchorage Forbearance Order*").

8 *See Nov. 20th Broadview Ex Parte*, at 7-8

9 *Nov. 16th Verizon Ex Parte*, at 1.

10 *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 Covad Ex Parte*"); 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. 16, 2007) ("*Nov. 16th Covad Ex Parte*").

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As Table 1 shows, cable penetration in the residential market does not come close to the levels Verizon has improperly calculated in any of the six MSAs at issue and, most importantly, cable providers' own data proves that the level of cable-based penetration in the six MSAs is nowhere near the market penetration understood to have been achieved by Cox in the Omaha MSA at the time of the *Omaha Forbearance Order*.

Finally, Verizon alleges that it is "appropriate to include Wholesale Advantage and resale lines in the [mass market connection] analysis" since to do so "is consistent with both the Omaha and Anchorage decisions."[11] Verizon is wrong. The Commission could not have been clearer in those orders that competitive entry must truly be facilities-based in order to be relied upon as a basis for Section 251(c)(3) forbearance.[12] As stated by the Commission in the *Omaha Forbearance Order*:

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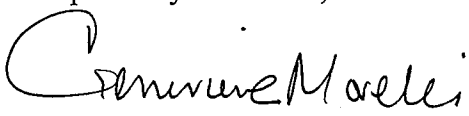
11 *Nov. 16th Verizon Ex Parte*, at 2.

12 *See Omaha Forbearance Order*, at n. 156, ¶ 69; *Anchorage Forbearance Order*, at ¶ 21.

> We find that forbearing from section 251(c)(3) and the other market-opening provisions of the Act and our regulations where no competitive carrier has constructed substantial competing "last-mile" facilities is not consistent with the public interest and likely would lead to a substantial reduction in the retail competition that today is benefiting customers in the Omaha MSA.[13]

In sum, notwithstanding the considerable resources at its disposal, after nearly fifteen months, Verizon has fallen far short of the mark and has utterly failed to meet its burden of proof that sufficient facilities-based competition exists today in any product or geographic market within any of the six MSAs at issue to justify forbearance from the pro-competitive unbundling requirements of Section 251(c)(3). The Commission should immediately conclude this proceeding by denying Verizon's Petitions in their entirety. The record in this proceeding supports no other resolution.

Respectfully submitted,



Brad E. Mutschelknaus
Genevieve Morelli

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13 *Omaha Forbearance Order*, at ¶ 60.