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Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 06-172

Dear Ms. Dortch:

Columbia Capital and M/C Venture Partners (the "Telecom Investors") write this letter in response to Verizon's recent advocacy in this proceeding. While Verizon's petitions originally claimed that the covered markets not only met but exceeded the benchmarks for facilities-based competition in Omaha and Anchorage, Verizon's recent filings ask the Commission to ignore those benchmarks. Verizon makes these requests because it has not met and can not carry its burden to prove the level of competition the Commission deems sufficient to justify the forbearance Verizon seeks. Although the Telecom Investors do not agree that the standards applied in Omaha and Anchorage provide sufficient protection against monopolization in wholesale markets, Verizon has failed to demonstrate that it would be entitled to forbearance even under those too-lax precedents.

Verizon's petitions should be denied in their entirety for the following reasons:

- Verizon's markets are not nearly as competitive as Omaha or Anchorage and its petitions fail the threshold criteria established in the Omaha and Anchorage forbearance decisions;

- Unlike Verizon's markets, both the Omaha and Anchorage markets lacked a substantial presence by UNE-L based competitors who had made substantial investments to provide innovative services; and

- Neither the Omaha nor Anchorage decisions addressed the public interest benefits of UNE-L based competition and innovation nor the economic costs of their elimination.

Despite assertions for the past year that its petitions met the standard established in Omaha and applied in Anchorage, Verizon's latest round of advocacy urges the Commission to abandon the Omaha and Anchorage forbearance analysis because Verizon

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cannot satisfy the threshold criteria established in those orders. Instead Verizon asserts that a "market share test would likewise be inappropriate with respect to unbundling requirements."[1]

Verizon is simply wrong. Its claim that market share was irrelevant in Omaha and Anchorage ignores the text of those orders relying on the capture of significant market share by cable competitors in justifying the Commission's conclusions under all three prongs of the statutory forbearance criteria.[2]

Verizon is also wrong in asserting that the Commission should focus "on whether competition is possible, not whether (or to what extent) actual competition is already occurring."[3] The Commissions threshold criteria in both Omaha and Anchorage was the cable company's "strong success" in attracting market share from the incumbent LEC.[4] Verizon misleadingly cites to paragraph 63 of the *Omaha Forbearance Order* to support its claim that the Omaha analysis focused on potential competition rather than actual competition and a market share threshold. But paragraph 63 provides no such support. Instead that paragraph cites to sections of the *TRRO* to rebut CLEC claims that the *Omaha Forbearance Order* amounted to a reversal of course from the *TRRO*.[5] Paragraph 63 makes no explicit or implicit references to potential competition.

While paragraph 63 does refer to the *TRRO*, the impairment standard adopted in that order already "properly accounts for potential competition"[6] by incorporating reasonable inferences about potential competition even where no such competition has developed to date."[7] Thus, the potential competition analysis Verizon urges the Commission to employ in applying the forbearance standard is already addressed by the *TRRO*'s impairment standards and is reflected in the wire centers where Verizon has reduced unbundling obligations due to the *TRRO*'s impairment criteria.

Lowering the bar for Verizon in this proceeding by giving even more weight to potential competition than is already accounted for in the Commission's impairment analysis is

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1 *Ex Parte* Letter from Evan T. Leo, Kellogg, Huber, Hansen, Todd, Evans & Figel, Counsel for Verizon, at p. 6 (Nov. 16, 2007) ("Verizon Nov. 16 *Ex Parte*").

2 *Omaha Forbearance Order*, ¶¶ 66, 73, 75, ¶¶ 28, 48-49.

3 Verizon Nov. 16 *Ex Parte* at p. 6.

4 *See Omaha Forbearance Order* ¶ 66; *Anchorage Forbearance Order*, ¶ 28 (analyzing GCI's "capture[]" of significant retail market share).

5 *Omaha Forbearance Order*, ¶ 63 n.164.

6 *TRRO*, ¶ 121.

7 *TRRO*, ¶ 90.

unjustified and would be contrary to the public interest. Unlike the Omaha market, there is significant UNE-L based competition in Verizon's markets and elimination of that competition through the grant of forbearance would significantly deter future investment and innovation in UNE-L competition nationwide.[8] The *Omaha Forbearance Order* observed that "competition based on UNE loops and transport make up a minor portion of the competition in the Omaha MSA."[9] That can not be said of Verizon's markets, where competitors make substantial use of Verizon's UNE loops to serve customers.[10]

Lastly, because both Omaha and Anchorage lacked the robust UNE-L based competition, the corresponding forbearance decisions lacked any meaningful discussion of either the public interest benefits of UNE-L based competition and innovation or the economic costs of their elimination. We have presented that discussion in our filings in this proceeding and, coupled with Verizon's failure to meet its burden, they provide ample justification for the Commission to deny Verizon's forbearance petitions.

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8 *See Ex Parte* Letter from Andrew D. Lipman, Bingham McCutchen LLP, Counsel for M/C Venture Partners and Columbia Capital, November 19, 2007, for a comprehensive discussion of the impact forbearance would have on innovation and investment in competition.

9 *Omaha Forbearance Order*, ¶ 68. *See also Anchorage Forbearance Order*, ¶ 36.

10 *See* Comments of ACN Communications Services, Inc. *et al.*, at 18 (filed March 5, 2007).

For these reasons, the Commission should deny Verizon's forbearance petitions.

Respectfully submitted,

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