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WC 08-24


FILED/ACCEPTED

FEB 14 2008

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February 14, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
455 12th Street, SW
Washington, DC 20554

**REDACTED –
FOR PUBLIC INSPECTION**

*Re: Petition of Verizon New England for Forbearance Pursuant to
47 U.S.C. § 160(c) in Rhode Island*

Dear Ms. Dortch:

This is the cover letter for the Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160(c) in Rhode Island (“Petition”).

This Petition contains confidential and highly confidential information. We are filing highly confidential and redacted versions of the Petition. The Petition consists of a stand-alone document entitled Petition of Verizon New England for Forbearance and attachments.

Specifically, we are herewith submitting for filing:

- a. One original of the highly confidential Petition (in paper form);
- b. One original of the redacted Petition (in paper form); and
- c. Two copies of the redacted Petition (in paper form).

We are also tendering to you certain copies of this letter for date-stamping purposes. Please date-stamp and return these materials.

Thank you for your assistance in this matter. If you have any questions, please call me at 703-351-3099.

Very truly yours,



Edward H. Shakin

Enclosures

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Petition of Verizon New England for) WC Docket No. _____
Forbearance Pursuant to)
47 U.S.C. § 160 in Rhode Island)
)

FILED/ACCEPTED

FEB 14 2008

Federal Communications Commission
Office of the Secretary

**PETITION OF VERIZON NEW ENGLAND
FOR FORBEARANCE**

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ATTACHMENTS

- Attachment A: Competitors’ Share of Residential Lines in Rhode Island (Excl. Block Island)
- Attachment B: Petition of Cox Rhode Island Telecom, L.L.C., Docket No. 3533 (R.I. PUC filed June 30, 2003)
- Attachment C: Cox Communications, *Voice over Internet Protocol: Ready for Prime Time* (May 2004)
- Attachment D: Declaration of Joseph Dunbar
- Attachment E: Declaration of Quintin Lew, John Wimsatt, and Patrick Garzillo

I. INTRODUCTION AND SUMMARY

This forbearance petition seeks in the state of Rhode Island¹ substantially the same regulatory relief that the Commission granted in the *Omaha Forbearance Order*.² Throughout the state, Verizon faces extensive facilities-based competition for mass-market and enterprise customers alike. As demonstrated in this petition and in the accompanying supporting materials, this level of competition meets any possible forbearance standard, including the one recently applied in the *Six MSA Order*.³

Rhode Island was one of the first places in the country where cable telephony was deployed extensively. Cox began deployment in 2000, and has since upgraded its network to provide telephony services to more than 99 percent of the households in Rhode Island, including in every individual rate center in the state. Cox itself has stated that it is willing and able to provide telephony services “statewide” and to “the entire state.”

Cox has been competing aggressively in Rhode Island for all types of customers and has achieved significant success. That competition, taken together with extensive wireless and other forms of competition, readily satisfies the forbearance standard that the Commission recently applied in the *Six MSA Order*. Whether the Commission looks

¹ The Verizon entity participating in this filing (“Verizon”) is Verizon New England. References to Rhode Island mean Verizon’s incumbent local service territory in Rhode Island. Verizon is not seeking relief for the Block Island rate center in Rhode Island.

² *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*”).

³ *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*, Memorandum Opinion and Order, WC Docket No. 06-172, FCC 07-212 (rel. Dec. 5, 2007) (“*Six MSA Order*”).

at the lines that Verizon has lost, or the known share of lines that competitors now serve, the evidence demonstrates that competing providers are now serving **[Begin Confidential]** **[End Confidential]** or more of the residential lines in Rhode Island.

With respect to enterprise customers, the Commission has previously found that competition is vigorous in Verizon's service areas, and that is equally true in Rhode Island as elsewhere. Cox has been just as aggressive in competing for enterprise customers in Rhode Island as in Omaha and Anchorage, and other forms of competition – such as fiber and fixed wireless – are more advanced in Rhode Island than in Omaha and Anchorage.

Finally, the Commission has found that the other factors relevant to the forbearance inquiry are satisfied in Rhode Island to the same extent as in prior orders. Indeed, because competition as a whole is greater in Rhode Island than in those prior cases, the cost of continued regulation is even greater than in the past.

In light of all this, there is no need for a lengthy 12- or 15-month review of this petition. The requested forbearance should be granted promptly.

II. THE LEVEL OF COMPETITION IN RHODE ISLAND SATISFIES THE COMMISSION'S FORBEARANCE CRITERIA WITH RESPECT TO BOTH DOMINANT CARRIER AND UNBUNDLING REGULATION

Competition in Rhode Island meets both the coverage threshold test the Commission established in the Omaha and Anchorage orders, and the share-of-residential-lines test the Commission applied in the *Six MSA Order*. Cox provides telephony services statewide, as do multiple competing wireless providers and other VoIP providers, and both the numbers of lines that Verizon has lost and the known lines that competitors have won demonstrate that competing providers now serve **[Begin**

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Confidential] **[End Confidential]** or more of the residential lines in the state. *See* Attach. A. The Commission should accordingly grant Verizon substantially the same relief that it granted in the *Omaha Forbearance Order*.⁴

As an initial matter, it is consistent with both the Act and Commission precedent to analyze forbearance for the state of Rhode Island. The statute provides that forbearance from applying any regulation to a telecommunications carrier should be determined with respect to “any or some of its or their geographic markets.” 47 U.S.C. § 160(a). The state of Rhode Island is a reasonable geographic market for purposes of analysis. The state of Rhode Island is a discrete reporting area under ARMIS. *See* Lew/Wimsatt/Garzillo Decl. ¶ 6 n.4.⁵ In the *Anchorage Dominance Forbearance Order*,⁶

⁴ Specifically, Verizon requests that the Commission forbear from applying loop and transport unbundling regulation pursuant to 47 U.S.C. § 251(c), *see* 47 C.F.R. § 51.319(a), (b), (e). The Commission has determined that Section 251(c) has been “‘fully implemented’ for all incumbent LECs nationwide.” *Omaha Forbearance Order* ¶¶ 51, 53; *see* 47 U.S.C. § 160(d). Verizon also seeks forbearance from the dominant-carrier tariffing requirements set forth in Part 61 of the Commission’s rules (47 C.F.R. §§ 61.32, 61.33, 61.38, 61.58, 61.59); from price cap regulation set forth in Part 61 of the Commission’s rules (*id.* §§ 61.41-61.49); from the Computer III requirements, including Comparably Efficient Interconnection (“CEI”) and Open Network Architecture (“ONA”) requirements; and from dominant-carrier requirements arising under Section 214 of the Communications Act and Part 63 of the Commission’s rules concerning the processes for acquiring lines, discontinuing services, assignments or transfers of control, and acquiring affiliations (*id.* §§ 63.03, 63.04, 63.60-63.66). This is the same relief that Verizon sought in the Six MSA proceeding. *See Six MSA Order* ¶ 1 n.4 (listing the regulations from which Verizon seeks forbearance); *id.* ¶ 17 (finding that Verizon’s petitions provided adequate specificity of relief sought).

⁵ Rhode Island is part of the Verizon New England study area, but Verizon is required to provide separate reports for each state within the study area, and also is required to charge uniform interstate switched access rates throughout the state of Rhode Island. *See* Lew/Wimsatt/Garzillo Decl. ¶ 6 n.4. This also obviates any concerns regarding geographic rate averaging. *See Six MSA Order* ¶ 32 n.102 (“In the future, applicants for forbearance relief from dominant carrier regulation should address whether and how a

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the Commission granted ACS forbearance from dominant-carrier regulation for the Anchorage study area, which is likewise a discrete reporting area under ARMIS, and it is therefore consistent with that precedent to analyze the state of Rhode Island here.⁷

Moreover, the state of Rhode Island is *smaller* than the Providence MSA, which includes parts of Massachusetts, and has unique attributes not shared by the Massachusetts areas of the Providence MSA. In particular, Rhode Island is served by a different cable operator (Cox) than the Massachusetts part of the Providence MSA (Comcast). Of course, in different circumstances, it still may be more appropriate to consider relief on an MSA-basis, as the Commission has done in the past.

A. Competition for Mass-Market Customers in Rhode Island

1. Cable Facilities Coverage

In both Omaha and Anchorage, the dispositive factor in granting forbearance from unbundling obligations was the extent to which cable voice services were *available*. In

grant of relief at the geographic level they seek would impact other rates in the applicable study area.”).

⁶ *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, Memorandum Opinion and Order, 22 FCC Rcd 16304 (2007) (“*Anchorage Dominance Forbearance Order*”).

⁷ With respect to unbundling regulation, the Commission has granted forbearance on a wire-center basis. In Anchorage, the Commission considered the wire centers within the Anchorage study area, while in Omaha the Commission considered the wire centers within the Omaha MSA. See *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) and 252(d)(1) in the Anchorage Study Area*, Memorandum Opinion and Order, 22 FCC Rcd 1958, ¶¶ 14, 16 (2007) (“*Anchorage Forbearance Order*”); *Omaha Forbearance Order* ¶ 61. As discussed below, the Commission should analyze rate centers in place of wire centers here.

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both cases, the Commission adopted a “coverage threshold test” that provided relief in every wire center in which cable voice services could be made available to 75 percent of homes in the wire center within a commercially reasonable time. *See Anchorage Forbearance Order* ¶¶ 31-32; *Omaha Forbearance Order* ¶¶ 57, 59-60. For purposes of applying this test, the Commission found that an “intermodal competitor ‘covers’ a location where it uses its own network, including its own loop facilities, through which it is willing and able, within a commercially reasonable time, to offer the full range of services that are substitutes for the incumbent LEC’s local service offerings.” *Omaha Forbearance Order* ¶ 60 n.156. The Commission found “competition to be sufficient to justify forbearance in wire center service areas where Cox is willing and able within a commercially reasonable time of providing service to [Redacted] percent of the end user locations accessible from that wire center.” *Id.* ¶ 69; *see Anchorage Forbearance Order* ¶ 31 (it is “appropriate to grant forbearance relief only in wire center service areas where a competitor has facilities coverage of at least 75 percent of the end user locations accessible from a wire center”).

In the *Six MSA Order*, the Commission recognized that “the evidence does show that cable operators have deployed facilities that meet the 75 percent coverage threshold in some wire centers. Thus, future relief from unbundling obligations might be warranted in such wire centers” *Six MSA Order* ¶ 36. Verizon easily meets the coverage threshold test in Rhode Island, where Cox has deployed telephony services throughout its footprint. This is true both for the state as a whole and for each individual rate center

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within the state, which, as discussed below, the Commission should analyze in place of wire centers.⁸

Cox's own statements indicate that it is "willing and able, within a commercially reasonable time," to provide telephony services to mass-market customers throughout the state of Rhode Island.⁹ First, in June 2003, Cox filed a petition with the Rhode Island Public Utilities Commission to be designated as an Eligible Telecommunications Carrier pursuant to 47 U.S.C. § 214(e), "in order to receive funding and/or reimbursement from the available Federal universal support mechanisms." Petition of Cox Rhode Island Telecom, L.L.C. at 1, Docket No. 3533 (R.I. PUC filed June 30, 2003) (Attach. B). Cox's petition represents that it "offers all services required by the Universal Service Order and by the [Rhode Island PUC] throughout the areas for which it seeks ETC designation," which it defines as "the entire state." *Id.* at 2, 3. Cox's petition is supported by the sworn testimony of Jennifer Marrapese, Vice President of Regulatory Affairs of Cox Rhode Island Telecom, L.L.C.

⁸ Although the evidence submitted here establishes a *prima facie* case that the coverage threshold test is met, the Commission can and should request that Cox provide data regarding its voice coverage in the state. Cox previously provided such data to the Commission in the Six MSA proceeding, but it is important to require Cox also to update those data given the rapid rate at which it appears to be adding new customers.

⁹ The one part of Rhode Island in which Cox does not provide cable service is Block Island, which has approximately 1,000 residents. Block Island has historically been served by a small independent cable operator, but, in October 2006, that cable operator went out of business and the Island no longer receives cable service. *See* Timothy C. Barmann, *After Mounting Losses, Cable TV Operator on Block Island Calls It Quits*, Providence J.-Bull., Jan. 16, 2007, at E1. As a result, Verizon is not including Block Island in this petition, and the data provided here do not include Block Island. *See supra* note 1. Verizon is not able to remove any former MCI business lines in Block Island from the totals, but to the extent there are such lines, they are *de minimis*.

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Second, Cox's website indicates that it offers telephony services throughout the state. Cox offers its Rhode Island customers a "toll-free calling guide" that provides the toll-free calling area for customers located in different parts of the state. *See* Lew/Wimsatt/Garzillo Decl. ¶ 15 & Exh. 3. Cox provides separate toll-free calling areas for each of the 24 exchanges (or rate centers) in the state of Rhode Island (excluding the Block Island rate center). *See* Cox, *Digital Telephone, Rhode Island Toll-Free Calling Guide*, http://www.cox.com/newengland/telephone/tollfree_ri.asp. Thus, Cox offers telephone service in each of these rate centers. According to the North American Numbering Plan Administration, Cox has obtained NPA-NXX codes in Rhode Island for each of these 24 rate centers. *See* Lew/Wimsatt/Garzillo Decl. ¶ 16.

Third, other Cox statements indicate that it provides cable telephony throughout Rhode Island. A Cox white paper from May 2004 states that "Cox Digital Telephone service is available to . . . Rhode Island statewide." Cox Communications, *Voice over Internet Protocol: Ready for Prime Time* at 4 (May 2004) (Attach. C); *see also* Timothy C. Barmann, *Verizon Waiting for the Call on Long-Distance Service*, Providence J.-Bull., Nov. 4, 2001, at E1 ("Cox has aggressively pursued the local telephone business in Rhode Island, and now about 95 percent of the state's residents can choose the cable company to deliver local telephone service.").

Because the evidence above indicates that Cox provides telephony services throughout the entire state of Rhode Island, it is unnecessary to analyze cable facilities coverage at a more granular geographic level. Even if the Commission were to do so, however, it may analyze coverage at the level of individual rate exchange areas (or rate

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centers), rather than at the wire center serving area level as the Commission has done in previous forbearance orders.¹⁰ Rate centers equally reflect the areas in which competing carriers and Verizon provide local telephone service.

A rate exchange area is the basic building block for the local switching services provided by local carriers. This is typically a specific geographic area drawn around a single point on a map – that point being the “rate center.” *See* Ind. Anal. Div., Comm. Carr. Bur., FCC, *Local Competition* at 41 & n.17 (Dec. 1998) (“Rate exchange areas are geographically defined areas within which calls that originate and terminate (i.e., remain within the area) are considered local calls.”). Each telephone number is associated with a unique “rate exchange area.” A wire center serving area is the area served by an incumbent phone company’s central-office switch. In many areas, there is a one-to-one correlation between phone company switches and rate centers. In more densely populated urban areas, however, a single rate exchange area will more typically represent a tight geographic cluster of switches. The 24 rate centers in Rhode Island (excluding Block Island) consist of 29 wire centers. *See* Lew/Wimsatt/Garzillo Decl. ¶ 7 n.9.

As noted above, Cox itself delineates its coverage areas by rate center, and in previous filings has stated that it “does not provide service or track customer locations by wire center because Cox’s network does not correspond with Verizon’s wire centers.” Letter from J.G. Harrington, Counsel for Cox Communications, Inc., to Marlene Dortch,

¹⁰ In light of the evidence set forth above, however, even if the Commission were to analyze Cox’s coverage on a wire-center basis, the result would be the same, given that Cox admits to serving the entire state. In any event, Verizon has supplied certain data here on a wire-center as well as a rate-center basis. *See* Lew/Wimsatt/Garzillo Decl. Exhs. 6 & 7.

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Secretary, FCC, Attach. at 1, WC Docket No. 06-172 (Nov. 21, 2007). Other cable operators have also informed the Commission that they track their coverage by rate center. *See, e.g.*, Letter from K.C. Halm, Counsel for Charter Communications, to Marlene H. Dortch, Secretary, FCC, at 2, WC Docket No. 06-172 (Nov. 6, 2007) (“[F]rom an operational perspective Charter does not provide service or track customer locations, or line counts, using wire center boundary designations. Instead, Charter generally relies upon rate center boundary designations to track customer locations and similar information.”).

2. Competitors’ Share of Residential Lines

In the *Omaha Forbearance Order*, the Commission considered competitors’ share of residential lines as part of its analysis of whether to forbear from dominant-carrier regulation. This is consistent with the Commission’s established practice in previous non-dominance decisions where it examined market share as one of several factors that it considered. *See, e.g., Motion of AT&T Corp. To Be Reclassified As a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271, ¶¶ 67-72 (1995). And, consistent with those prior orders, the Commission made clear both that it was not establishing a bright-line market-share test to obtain relief, and that it was looking at market share only as one of several factors relevant in measuring competition. *See Omaha Forbearance Order* ¶ 17 n.52 (“We are mindful that, when determining whether a carrier has market power in conducting a dominance analysis, the Commission must not limit itself to market share

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and look to all four factors that the Commission traditionally considers.”) (citing *AT&T Corp. v. FCC*, 236 F.3d 729, 736-37 (D.C. Cir. 2001)).¹¹

The Commission did not apply a market-share test to its unbundling analysis, however. In both the Omaha and Anchorage orders, the Commission did, in the context of its unbundling analysis, undertake a general examination of “the status of competition in the retail market as well as the role of the wholesale market.” *Omaha Forbearance Order* ¶ 65; *Anchorage Forbearance Order* ¶ 10. It did so, however, only to confirm that the retail services offered by Cox were achieving some degree of acceptance, which in turn confirmed that Cox was a meaningful alternative to Qwest’s own services. This examination did not involve, and is not equivalent to, a market-share test.

Despite the fact that the Commission did not apply a market-share test for unbundling relief in either Omaha or Anchorage, the Commission did employ a share test in the *Six MSA Order*, which Verizon has appealed. To measure share, the Commission adopted a methodology that counted competition from cable, traditional CLECs (including those that rely on Verizon’s Wholesale Advantage service and Section 251(c)(4) resale), and wireless “cut the cord” competition. *See Six MSA Order* ¶ 37 & App. B. Applying this methodology to the record then before it, the Commission held that Verizon did not meet the share threshold for any of the six MSAs, including in the

¹¹ The Commission also looked at “market elasticities and structure” and found that the incumbent cable operator’s “extensive facilities build-out” and “growing success in luring” customers demonstrated that competitive supply was sufficient to meet demand and that entry barriers “are low.” *Omaha Forbearance Order* ¶¶ 35-37. In the *Six MSA Order*, the Commission stated that, “[w]ith respect to elasticity of demand and firm cost, size, and resources, we find no basis to reach different conclusions than those in” Omaha and Anchorage. *Six MSA Order* ¶ 31.

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Providence MSA as a whole where Verizon demonstrated that competitive share of residential lines was **[Begin Confidential]** **[End Confidential]** percent. *See id.* ¶¶ 27 & n.91, 37.

In contrast, current data demonstrate that the forbearance standard applied by the Commission in its recent order unquestionably is satisfied in Rhode Island. Indeed, while Verizon obviously does not have access to its competitors' own data on the number of residential customers they serve in the state, more limited data that are available to Verizon demonstrate that competitors' share of residential lines is at least **[Begin Confidential]** **[End Confidential]** percent as of January 2008. Cox alone is serving approximately **[Begin Highly Confidential]** **[End Highly Confidential]** residential lines in Rhode Island as of January 2008, based on the number of white pages listings it has obtained. *See* Lew/Wimsatt/Garzillo Decl. ¶ 17.¹² As described in the Lew/Wimsatt/Garzillo Declaration, the number of residential white pages listings a carrier has obtained is an accurate indicator of the number of lines it is serving. *See id.* ¶¶ 18-20; *see also* *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, Memorandum Opinion and Order, 22 FCC Rcd 5207, ¶ 17 & n.62 (2007) (relying on Qwest's residential white pages listings to calculate market share). In the case of Verizon's own residential retail customers in Rhode Island, for example, the number of residential white pages listings and the number of residential switched access

¹² The Commission can and should confirm these totals by requesting data from Cox, and it should do so sooner rather than later to avoid complaints about late-filed data that arose in prior proceedings.

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lines are within less than one percent of each other. The number of white pages listings as of January 2008 (including those for the former MCI) is approximately **[Begin Confidential]** **[End Confidential]**, while the number of residential retail switched access lines is approximately **[Begin Confidential]** **[End Confidential]**. *See* Lew/Wimsatt/Garzillo Decl. Exh. 5.

In addition to competition from cable, Verizon faces extensive competition from wireless providers. Mass-market customers are increasingly using wireless services in place of traditional wireline telephone services. Wireless services are therefore appropriate to include in the forbearance analysis. In the Commission's most recent analysis of the extent of competition between wireless and wireline services, it calculated the number of customers who have cut the cord using the Centers for Disease Control's estimate that, as of December 2006, "12.8% of households exclusively subscribe to a mobile wireless service." *Six MSA Order* App. B & n.2.¹³ The Commission noted that "[r]eliance on this government estimate of 'cut the cord' wireless substitution is consistent with the Commission's reliance on such government survey data in prior proceedings." *Id.* App. B n.2. A week after the Commission released the *Six MSA Order*, the CDC released an updated analysis that places the rate of wireless substitution at 13.6 percent, as of the end of June 2007. *See* Stephen J. Blumberg & Julian V. Luke, Div. of Health Interview Statistics, Nat'l Ctr. for Health Statistics, CDC, *Wireless*

¹³ Wireless substitution of minutes is even greater. The Yankee Group estimates that wireless subscribers make 68 percent of their long-distance calls and 51 percent of their local calls on their wireless phones. *See* Margo DeBoer, Yankee Group, *One in Seven US Households Say "No Thanks" to Wireline Phone Service in 2010* at 4 & Exh. 2 (Dec. 2006); Lew/Wimsatt/Garzillo Decl. ¶ 26.

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Substitution: Early Release Estimates from the National Health Interview Survey, January-June 2007, at 2 (Dec. 10, 2007) (“*CDC Wireless Substitution Survey*”).

Applying the CDC’s updated analysis, there are approximately 56,000 wireless households in Rhode Island that have cut the cord. *See* Attach. A.¹⁴

In addition to cable and wireless substitution, a number of traditional CLECs provide service in Rhode Island. *See* Lew/Wimsatt/Garzillo Decl. ¶ 30. The Commission has held that it is appropriate to include in the analysis of market share the number of Verizon residential Wholesale Advantage lines and Verizon resold lines. *See Six MSA Order* ¶ 27 & n.89, App. B. As of the end of December 2007, competitors in Rhode Island were serving approximately **[Begin Confidential]** **[End Confidential]** residential lines using Wholesale Advantage and approximately **[Begin Confidential]** **[End Confidential]** residential lines using resale. *See* Lew/Wimsatt/Garzillo Decl. ¶ 30 & Exh. 7.

Taken as a whole, the number of cable, cut-the-cord wireless, and Wholesale Advantage and Resale lines in Rhode Island was approximately **[Begin Confidential]** **[End Confidential]** as of January 2008.¹⁵ By comparison, as of January 2008, Verizon (including the former MCI) had obtained approximately **[Begin Confidential]** **[End Confidential]** white pages listings for its retail residential customers. *See* Lew/Wimsatt/Garzillo Decl. Exh. 5; Attach. A. Thus, competitors’ share of residential

¹⁴ The number is likely higher given that the rate of wireless substitution has been steadily increasing. *See, e.g., CDC Wireless Substitution Survey* Table 1.

¹⁵ Some of these data are as of December 2007. *See* Attach. A.

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lines in Rhode Island is approximately **[Begin Confidential]** **[End Confidential]** percent. *See* Fig. 1.

[Begin Confidential]

[End Confidential]

The preceding analysis attributes Verizon Wireless customers who have cut the cord to the competitive side of the ledger, rather than treating them as equivalent to a Verizon wireline customer. This is appropriate for several reasons. As an initial matter, the relief sought here is for Verizon's wireline business, which is affected by losses to Verizon Wireless the same as if those losses were to another competitive provider. Likewise, from consumers' perspective, Verizon Wireless is viewed as an alternative to Verizon's regulated wireline service to the same extent as other wireless or competitive providers.

Moreover, the nature of wireless competition makes it appropriate to treat Verizon Wireless as distinct from Verizon wireline. Verizon Wireless faces competition from three other national wireless carriers, one or more regional carriers, plus a number of

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Mobile Virtual Network Operators. See Lew/Wimsatt/Garzillo Decl. ¶¶ 22-23; *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Twelfth Report, WT Docket No. 07-71, FCC 08-28, ¶¶ 18, 21-23 (rel. Feb. 4, 2008).

Verizon Wireless cannot afford not to compete aggressively against these other wireless carriers in order to protect its wireline business; to the contrary, Verizon Wireless is successful precisely because of how aggressively it competes. And the competition that Verizon Wireless provides in wireless affects Verizon’s wireline business, just as if Verizon Wireless were an unaffiliated competitor. In the *Six MSA Order*, the Commission counted Verizon Wireless lines together with Verizon wireline access lines as “Verizon residential local service customers.” The Commission reasoned that “a wireline-affiliated [wireless] carrier would have an *incentive* to protect its wireline customer base from intermodal competition.” *Six MSA Order App. B n.6* (internal quotation marks omitted; alteration in original; emphasis added). But even assuming that were true, Verizon would not have the *ability* to do so, given the intense competition that Verizon Wireless faces from multiple other unaffiliated wireless carriers. Thus, if the Commission is unwilling to treat Verizon Wireless cut-the-cord customers as equivalent to competitive lines, it should, at the very least, not attribute these customers to Verizon and instead should exclude them from the analysis entirely. Under this approach, competitors have approximately **[Begin Confidential]** **[End Confidential]** percent of the residential lines in Rhode Island. But even if the Commission were to follow the approach in the *Six MSA Order* and attribute Verizon Wireless customers who have cut

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the cord to Verizon, competitors' share of residential lines in Rhode Island would still be approximately **[Begin Confidential]** **[End Confidential]** or more.

The approach to calculating competitors' share of residential lines set forth above is conservative for the additional reason that it excludes certain forms of competition that Verizon faces. For example, it excludes competition from over-the-top VoIP services such as Vonage, Skype, and others.¹⁶ In the *Six MSA Order*, the Commission excluded such competition, claiming that "there are no data in the record that justify finding that these providers offer close substitute services." *Six MSA Order* ¶ 23. But that misrepresents the evidence that Verizon submitted in that proceeding and also ignores the current state of facts, which shows that these services are viewed as close substitutes for traditional voice service. Indeed, the Commission itself previously has recognized that "some proportion of mass market consumers may view certain over-the-top VoIP services as substitutes for wireline local service." *Verizon/MCI Merger Order*¹⁷ ¶ 89. There are currently an estimated 2.8 million over-the-top VoIP subscribers nationwide, and, in Rhode Island, there are more than 20 "over-the-top" VoIP providers that currently offer services with features comparable to Verizon's wireline telephone service, at prices that typically are lower than Verizon's prices, even when the price of the underlying broadband connection needed for VoIP service is taken into account. *See* Lew/Wimsatt/Garzillo Decl. ¶¶ 32-34 & Exh. 2. Although these providers do not operate

¹⁶ It also excludes other forms of actual and potential competition, such as WiFi, WiMax, BPL, e-mail, and Instant Messaging. *See* Lew/Wimsatt/Garzillo Decl. ¶ 31.

¹⁷ *Verizon Communications Inc. and MCI Inc., Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433 (2005) ("*Verizon/MCI Merger Order*").

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their own loop and transport networks, they can be provided over competitive networks that do (such as cable networks), and therefore are an added source of competitive discipline on Verizon.

3. *Decline in Residential Retail Lines*

The decline in Verizon's residential retail lines provides an independent basis to determine that competitors serve **[Begin Confidential]** **[End Confidential]** of the access lines in Rhode Island and that the requested forbearance is appropriate. In the *Omaha Forbearance Order*, the Commission noted the "growth in Cox's residential access line base and corresponding decline in Qwest's base" as one of the factors in granting forbearance from dominant-carrier regulation. *Omaha Forbearance Order* ¶ 33. In the *Six MSA Order*, the Commission declined to consider this evidence, finding that "[t]here are many possible reasons for such decreases unrelated to the existence of last-mile facilities-based competition." *Six MSA Order* ¶ 32; *see id.* ¶ 39. But, even accounting for the one potential reason the Commission identified (the loss of second lines to DSL) as well as other factors that might cause a decrease in retail lines, the evidence shows that Verizon has lost **[Begin Confidential]** **[End Confidential]** or more of its residential access lines in Rhode Island.¹⁸

Between year-end 1999 and year-end 2007, Verizon's residential retail lines in Rhode Island declined from approximately **[Begin Confidential]** **[End Confidential]** to approximately **[Begin Confidential]** **[End Confidential]**, a

¹⁸ In the *Six MSA Order*, the Commission also cited concerns that Verizon's data failed to include lines served by MCI. *See Six MSA Order* ¶ 39 n.129. The retail access line data presented here include the former MCI and thereby eliminate this concern. *See Lew/Wimsatt/Garzillo Decl.* ¶ 8 n.10.

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decrease of approximately **[Begin Confidential]** **[End Confidential]**. *See* Lew/Wimsatt/Garzillo Decl. ¶ 8. During that same period, Verizon’s *primary* residential retail lines in Rhode Island declined from approximately **[Begin Confidential]** **[End Confidential]** to approximately **[Begin Confidential]** **[End Confidential]**, a decrease of approximately **[Begin Confidential]** **[End Confidential]** percent. *See id.* & Fig. 2. Although it is highly likely that some (perhaps considerable) fraction of second lines were used primarily for voice service and have been replaced by a competitive voice service, even if the Commission were to look solely at primary lines – which eliminates concerns about second lines lost to DSL – the evidence shows that Verizon has lost more than **[Begin Confidential]** **[End Confidential]** of the primary residential lines in Rhode Island.

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[End Confidential]

The Commission’s principal concern with relying on Verizon’s residential line loss in the *Six MSA Order* was that it may reflect consumers who “converted a second

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line used for dial-up Internet access to an incumbent LEC broadband line for Internet access.” *Six MSA Order* ¶ 32. It is not appropriate simply to treat second lines lost to DSL as equivalent to a Verizon access line, given that these are very different services and there is intense competition for broadband. Nor is it appropriate to assume that all second lines lost are recovered as a DSL line. But even if the Commission were to do so here, it would not matter; even attributing all lost second lines to Verizon, Verizon still has lost **[Begin Confidential]** **[End Confidential]** or more of its total residential lines. Moreover, this approach undoubtedly overstates the number of second lines that are dropped for DSL. Based on a limited study that Verizon performed in 2007, only about **[Begin Confidential]** **[End Confidential]** percent of customers dropped their second line for DSL, and that number is likely to be even lower today. *See* Lew/Wimsatt/Garzillo Decl. ¶ 8 n.11.

Another possible cause for a decrease in residential lines is population decline. But between 2000 and 2007, the population in Rhode Island *increased* by 0.7 percent. *See* Lew/Wimsatt/Garzillo Decl. ¶ 8; U.S. Census Bureau, *Population, Population Change and Estimated Components of Population Change*, <http://www.census.gov/popest/national/files/NST-EST2007-alldata.csv> (2007 estimate). As a result, the absolute decline in Verizon’s access lines understates the true extent of competition, as it fails to account for the growth in access lines that Verizon, based on historical trends, would have experienced but for rising competition. Figure 3 below charts Verizon’s decline in residential retail access lines in relation to historical access line trends.

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B. Competition for Enterprise Customers in Rhode Island

The Commission has previously found that competition for enterprise customers is vigorous in Verizon's service areas, and that is equally true in Rhode Island as elsewhere. In fact, there is greater competition for enterprise customers in Rhode Island than in either Omaha or Anchorage, both in terms of facilities coverage and in terms of retail competition. Cox has been at least as aggressive in competing for enterprise customers in Rhode Island as in Omaha and Anchorage, and other forms of competition – such as fiber and fixed wireless – are more advanced in Rhode Island than in Omaha and Anchorage.

1. Cox's Provision of Service to Enterprise Customers

In the *Omaha Forbearance Order*, the Commission decided to forbear from loop and transport unbundling with respect to enterprise customers based on competition from

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Cox, the incumbent cable operator. *See Omaha Forbearance Order* ¶ 66; *see also id.* ¶ 67. The Commission found that Cox’s cable facilities were “capable of delivering both mass market and enterprise telecommunications services.” *Id.* ¶ 66. The Commission relied on Cox’s “strong success in the mass market, its possession of the necessary facilities to provide enterprise services, its technical expertise, its economies of scale and scope, its sunk investments in network infrastructure, its established presence and brand in the Omaha MSA, and its current marketing efforts and emerging success in the enterprise market.” *Id.* The Commission also noted that Cox had particularly strong incentives to compete for enterprise customers as compared to the mass market, because the “revenue potential” is greater. *Id.* The Commission found that, given that Cox was “actively marketing itself” to enterprise customers, that it had attracted a number of significant Omaha businesses as customers, and that its enterprise sales were growing, it was a “substantial competitive threat” for enterprise customers as well as mass-market customers. *Id.* ¶¶ 66, 67 n.177.

Each of these conclusions applies with equal force with respect to Cox’s competition for enterprise customers in Rhode Island.¹⁹ First, Cox operates a ubiquitous

¹⁹ In the *Six MSA Order*, the Commission found that forbearance from unbundling regulations was not warranted with respect to enterprise customers, claiming that the “evidence in the record demonstrates the comparatively limited role of the cable operators in serving enterprise customers in these MSAs today.” *Six MSA Order* ¶ 37. The Commission noted that “[m]ost of the cable operators state that their networks are primarily in residential areas and their provision of services to enterprise customers are still in the initial stages.” *Id.* ¶ 37 n.116. In support of that statement, the Commission referenced statements made in the record by Comcast, Charter, Time Warner Cable, and RCN. *See id.* Tellingly, however, the Commission did not reference or cite any statement by Cox, which did not deny – but instead confirmed – that it was competing aggressively for enterprise customers in the Rhode Island portion of the Providence

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cable network in Rhode Island and, therefore, possesses “the necessary facilities to provide enterprise services.” *Omaha Forbearance Order* ¶ 66. In deciding to grant forbearance from unbundling regulations in Omaha, the Commission found the fact that Cox’s existing network did not necessarily reach every individual business location as “not . . . dispositive” in light of the other evidence demonstrating Cox’s incentives and ability to serve these customers. *Id.* ¶ 66 n.174. Thus, the Commission did not impose an independent test requiring that Cox (or Cox plus another competitor) be capable of serving 75 percent of business locations in a particular wire center. *See id.* ¶¶ 66 & n.174, 69. Rather, the Commission granted unbundling relief in a wire center based on Cox’s coverage of *all* “end user locations accessible from that wire center.” *Id.* ¶ 69. In any event, given that Cox provides telephony service statewide and also competes aggressively for enterprise customers throughout the state – including in downtown Providence, where high-capacity demand is very heavily concentrated, *see* Lew/Wimsatt/Garzillo Decl. Exh. 9 – it is clear that Cox has deployed facilities to serve enterprise customers in all locations where enterprise customers are concentrated. Thus, as in Omaha, the Commission “must conclude that Cox poses a substantial competitive threat . . . for higher revenue enterprise services.” *Omaha Forbearance Order* ¶ 66.

MSA. *See* Comments of Cox Communications, Inc. at 32-33, WC Docket No. 06-172 (FCC filed Mar. 5, 2007) (“Cox Six MSA Comments”) (providing the number of Cox business voice customers in Rhode Island and stating that “the vast majority of Cox’s business customers are small businesses and large enterprises” and that “Cox’s Presence in the Providence Enterprise Market is Growing”); Letter from J.G. Harrington, Counsel for Cox Communications, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 06-172 (Oct. 30, 2007) (providing the number of Cox Commercial Customers, including the number of DS0, DS1, and DS3/OCn customers).

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