Second, as in Omaha, Cox has had "strong success in the mass market" in Rhode Island and possesses "technical expertise," "economies of scale and scope," "sunk investments in network infrastructure," and "established presence and brand," all of which the Commission recognized make Cox a competitive threat for enterprise customers. *Id.* Cox has been providing phone service in Rhode Island since 2000 – roughly the same amount of time that it was providing telephone service in Omaha at the time of the Omaha forbearance proceeding. *See* Lew/Wimsatt/Garzillo Decl. ¶ 15. As Paul Cronin, Region Manager for Cox's New England operations, notes: "[T]he Cox New England operation has been here for a while, it's a well-established brand in the marketplace, we have a very good reputation with the consumers in this marketplace, and we score very high with our customer satisfaction scores in this marketplace." David Ortiz, *Cox N.E. Executive Welcomes Competition with Verizon*, Providence Bus. News (Dec. 24, 2007), http://www.pbn.com/private/27b5429c1d.html. As discussed above, Cox has had comparably strong success in the mass market in Rhode Island as in Omaha, notwithstanding the fact that Verizon has deployed FiOS in Rhode Island whereas Qwest had made no comparable investment to upgrade its network in Omaha. Cox's Rhode Island system also is larger than its Omaha system,[20] and therefore has comparable or greater economies of scope and scale.

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[20] *Compare* Cox Com Inc., Form 325, Physical System ID 008685, Reference Number 184027334, *available at* https://fjallfoss.fcc.gov/csb/coals/index.html (as of 2006, Cox reports serving 308,230 cable subscribers in Rhode Island and passing 485,962 homes), *with* Cox Communications Omaha, Form 325, Physical System ID 008575, Reference Number 184051638, *available at* https://fjallfoss.fcc.gov/csb/coals/index.html (as of 2006, Cox reports serving 224,491 cable subscribers in Omaha and passing 335,421 homes).

Third, Cox's "current marketing efforts and emerging success in the enterprise market" is at least as advanced in Rhode Island as in Omaha. *Omaha Forbearance Order* ¶ 66. The evidence shows that "Cox is actively marketing itself to enterprise customers, has succeeded in attracting a large number of significant [Rhode Island] businesses as customers," and has steadily increased the number of business customers over the past several years. *Id.* Cox's website has a page devoted to providing business services in Rhode Island. *See* Cox Business Services, *Rhode Island*, http://www.coxbusiness.com/systems/ri_rhodeisland/index.html; Lew/Wimsatt/Garzillo Decl. ¶ 43 & Exh. 13. Cox states that it "serves businesses of every size in many locations throughout the Rhode Island area." *Id.* Cox has won many significant Rhode Island enterprises as customers in recent years, including the Town of Cumberland, the Ocean State Higher Education, Economic Development and Administrative Network (Rhode Island's eight-college network), Quonset Davisville Port and Commerce Park (a 3,000-acre industrial and commerce park in North Kingstown), and Care New England (a large healthcare consortium of hospitals and offices based in Warwick). *See* Lew/Wimsatt/Garzillo Decl. ¶ 45. In the Six MSA forbearance proceeding, Cox provided the number of business customers it was serving in Rhode Island and stated that its presence in the enterprise market is "growing." *See* Cox Six MSA Comments at 32. Cox also confirmed that it serves both "small businesses and large enterprises." *Id.*[21]

[21] In the Six MSA proceeding, Cox refused to answer the Commission's request for information regarding the number of enterprise locations it was serving and capable of serving with its network, but the Commission should require that Cox provide that information here.

Fourth, in addition to the fact that Cox's cable network is capable of reaching many enterprise customers, Cox has also deployed fiber facilities to many enterprise locations. In June 2007, Cox "announced it ha[d] completed a multi-million dollar expansion of its fiber-optic-based broadband network in Rhode Island. The Extendable Optical Network (EON) was completed in 13 months with 'minimal customer disruption.'" *Cox Completes EON Optical Network in R.I.*, Providence Bus. News (June 6, 2007), http://www.pbn.com/stories/25801.html (quoting Paul Cronin, New England Vice President and Region Manager for Cox).

Finally, Cox provides wholesale services in the Providence MSA. In the Omaha proceeding, the Commission found that "[t]he record does not reflect any significant alternative sources of wholesale inputs for carriers in this geographic market." *Omaha Forbearance Order* ¶ 67. The Commission nonetheless found that the ILEC's "own wholesale offerings will continue to be adequate" without offerings from other competitors. *Id.* The Commission also noted that it "previously has rejected arguments 'that a fully competitive wholesale market is a mandatory precursor to a finding that section 10(a)(1) is satisfied.'" *Id.* ¶ 71 (quoting *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, Memorandum Opinion and Order, 19 FCC Rcd 21496, ¶ 28 (2004)). Thus, although it is by no means a requirement that Cox provide wholesale services to satisfy the standards for forbearance, the fact that it does so in Rhode Island provides further evidence that competition in the state is extensive and that these standards are met. According to Cox's website, "Cox Carrier Access service is the ideal solution for secure and reliable connections to your stand-

alone or integrated voice and data customers." Cox Business Services, *Rhode Island*, http://www.coxbusiness.com/systems/ri_rhodeisland/index.html. Cox allows carrier customers to "[c]hoose from multiple bandwidths to connect your network to your customer's location, to provide connectivity between your POPs, or to connect you with other serving wire centers." Cox Business Services, *Rhode Island*, *Cox Carrier Access*, http://www.coxbusiness.com/pdfs/cox_carrier.pdf. Cox offers loop services from DS-1 to OC-192. *See id.*

2. Additional Sources of Enterprise Competition

In Omaha, the Commission explained that its decision was based primarily on its "determination that Cox was a substantial competitive threat to Qwest for higher revenue enterprise services" and that evidence regarding additional "competitive deployment in the *Qwest Omaha Forbearance Order* was incidental and supplemental to" its findings regarding cable "and was limited to the deployment of transport rather than last-mile facilities." *Six MSA Order* ¶ 40 n.131.[22] In Rhode Island, as in Omaha, there are other extensive competitive facilities-based networks, as well as many CLECs that provide retail competition in the state.

[22] Because the Commission found that competition from cable did not, standing alone, satisfy the coverage threshold test in the six MSAs as was the case in Omaha and Anchorage, the Commission also looked at whether other sources of competition for enterprise customers met this test. The Commission noted that, "[w]hile Verizon and other parties submitted certain evidence from a commercial data provider regarding competitive LEC lit buildings, the facilities 'coverage' suggested by those data do not approach the 75 percent threshold relied upon by the Commission in the past." *Six MSA Order* ¶ 37. The Commission made clear that it was evaluating these data only because enterprise competition from cable alone was inadequate, and was not "adopt[ing] a different approach" from the "75% threshold relied upon in the context of cable facilities deployment in prior orders." *Id.* ¶ 37 n.118.

There are a wide variety of competitors serving enterprise customers in Rhode Island, including traditional telecom carriers such as AT&T, Sprint, PAETEC, and One Communications, as well as managed service providers, systems integrators, and equipment vendors. *See* Lew/Wimsatt/Garzillo Decl. ¶ 41. In the *Verizon/MCI Merger Order*, the Commission found that retail competition for enterprise customers is "strong" and will remain so "because medium and large enterprise customers are sophisticated, high-volume purchasers of communications services that demand high-capacity communications services, and because there [are] a significant number of carriers competing in the market." *Verizon/MCI Merger Order* ¶ 56. The Commission noted that Verizon competes with a long list of competitors, "includ[ing] interexchange carriers, competitive LECs, cable companies, other incumbent LECs, systems integrators, and equipment vendors." *Id.* ¶ 64. The Commission concluded that these "myriad providers are prepared to make competitive offers" and that they therefore "ensure that there is sufficient competition." *Id.* ¶ 74. These facts all remain true today, both as a general matter and with respect to Rhode Island.

A number of competitors in Rhode Island are using their own or other alternative facilities to serve enterprise customers. According to GeoTel, a leading provider of telecommunications facilities information, there are at least four known competing providers that operate fiber networks within the Providence MSA, and those networks span at least **[Begin Confidential]** **[End Confidential]** route miles. *See*

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Lew/Wimsatt/Garzillo Decl. ¶ 10.[23] GeoTel's data do not include Cox or AT&T, which are two of the largest providers of competitive fiber in the state. *See id.* In the *Six MSA Order*, the Commission found that Verizon's data on competitive fiber "combine competitive deployment in those wire centers where the triggers [for UNE relief] have already been satisfied with those wire centers that do not meet the triggers." *Six MSA Order* ¶ 40. That same concern is not warranted here, because Verizon has not obtained full relief from its unbundling obligations in *any* of the wire centers in Rhode Island.

Fixed wireless also is now capable of providing enterprise customers with an alternative way to obtain access to voice and data services, and it enables other carriers to extend their existing networks quickly and efficiently.[24] At least one major fixed wireless provider – Towerstream – already provides service in Rhode Island. *See* Lew/Wimsatt/Garzillo Decl. ¶ 56. Towerstream claims to be "a recognized leader in the

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[23] As GeoTel itself recognizes, its information regarding CLEC fiber routes, while extensive, is not comprehensive. GeoTel continually works to update its databases, and it provides Verizon with updates approximately every six months. Each of these updates contains new information. Moreover, GeoTel does not have complete data for every CLEC. During the course of the Verizon/MCI merger, for example, Verizon received other confidential sources of data that showed additional CLEC fiber beyond what is contained in the GeoTel data. Thus, there is reason to believe that the GeoTel information understates, perhaps significantly, the extent to which CLECs have self-provisioned high-capacity transport facilities. *See* Lew/Wimsatt/Garzillo Decl. ¶ 10.

[24] *See Appropriate Regulatory Treatment for Broadband Access to the Internet over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, ¶ 14 (2007) (fixed wireless networks "typically have a reach of one to five miles" and merely require that customers "have a rooftop antenna that can establish a line-of-sight connection with the network transmitter"); *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, ¶ 48 (2007) ("fixed wireless offers the potential of being a cost-effective substitute for fiber as a last-mile connection to commercial buildings").

fixed wireless and WiMAX industries."[25] It "currently serves businesses of all sizes in . . . Providence/Newport, RI."[26] It states that, "[b]ecause Towerstream owns its entire network, it is not dependant on the phone company and it is able to deliver high quality symmetrical bandwidth to customers with faster installation at a significantly lower price than the competition."[27] Towerstream states that it is able "deliver high availability wireless broadband to area businesses with 99.999% reliability for a fraction of traditional carrier costs."[28]

As in Omaha, competitors in Rhode Island also are competing extensively using special access obtained from Verizon. In the *Omaha Forbearance Order*, the Commission considered "evidence that a number of carriers . . . had success competing for enterprise services using DS1 and DS3 special access channel terminations obtained from Qwest" as relevant in its analysis of enterprise competition. *Omaha Forbearance Order* ¶ 68. The Commission held that "this competition that relies on Qwest's wholesale inputs – which must be priced at just, reasonable and nondiscriminatory rates . . . – supports our conclusion that section 251(c)(3) unbundling obligations are no longer necessary to ensure that the prices and terms of Qwest's telecommunications offerings

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[25] Towerstream, *About Towerstream*, http://www.towerstream.com/index.asp?ref=company.

[26] Towerstream Press Release, *Towerstream Signs 100+ Contracts in December* (Jan. 8, 2008).

[27] Towerstream, *What We Do*, http://www.towerstream.com/index.asp?ref=products.

[28] Towerstream Press Release, *Towerstream Launches High Availability Fixed Wireless Broadband Solution in Seattle; Continuing Expansion to Largest U.S. Cities* (Jan. 30, 2007).

are just and reasonable and nondiscriminatory under section 10(a)(1)." *Id.*[29] In the *Six MSA Order*, the Commission affirmed its conclusion that competitive use of special access is relevant in the forbearance analysis, but found that it "cannot readily determine the extent to which these wholesale inputs are used to compete for local exchange services, interexchange services, or mobile wireless services." *Six MSA Order* ¶ 38.

Based on Verizon's wholesale billing records from January 2008, competitors *other than wireless carriers* are using Verizon's special access services to serve business customers in **[Begin Confidential]** **[End Confidential]** in Rhode Island in which Verizon serves switched business lines. *See* Lew/Wimsatt/Garzillo Decl. ¶ 39. As of the end of December 2007, these competitors were serving approximately **[Begin Confidential]** **[End Confidential]** voice-grade-equivalent lines using DS3s and approximately **[Begin Confidential]** **[End Confidential]** voice-grade-equivalent lines using DS1s, with special access service obtained from Verizon. *See id.*

3. Decrease in Verizon's Business Switched Access Lines

As noted above, the Commission did not conduct any independent market-share test with respect to enterprise customers in Omaha and Anchorage. Indeed, the Commission did not even have the data to perform a market-share calculation for these customers. Nonetheless, the data here show that competing carriers are serving a significant percentage of switched business access lines in Rhode Island, which provides additional evidence that forbearance is warranted.

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[29] The forbearance that Verizon seeks here will not eliminate Verizon's obligations under Sections 201 and 202 to provide traditional TDM technology on just, reasonable, and nondiscriminatory terms.

Verizon's switched business access lines have declined significantly in Rhode Island. Between January 1999 and year-end 2007, Verizon's retail switched business lines in Rhode Island (including those lines served by the former MCI but excluding payphone lines) have declined from approximately **[Begin Confidential]** **[End Confidential]** to **[Begin Confidential]** **[End Confidential]**, a decrease of approximately **[Begin Confidential]** **[End Confidential]** percent. *See* Lew/Wimsatt/Garzillo Decl. ¶ 12; Dunbar Decl. ¶ 2.[30] According to data that competing carriers report to the FCC, competitors were serving approximately 98,000 business switched access lines in Rhode Island as of December 2006, not including lines served via UNEs. *See* Ind. Anal. & Tech. Div., Wireline Compet. Bur., FCC, *Local Telephone Competition: Status As of December 31, 2006*, Tables 11 & 12 (Dec. 2007).

III. EACH OF THE STATUTORY CRITERIA FOR FORBEARANCE IS SATISFIED

As the Commission found in the *Omaha Forbearance Order*, evidence of competition satisfies the first two prongs of the forbearance test and also supports a finding that the third prong of the forbearance test (47 U.S.C. § 160(a)(3)) is met – that eliminating the regulations in question is in the public interest. *See Omaha Forbearance Order* ¶¶ 47, 75. In the *Omaha Forbearance Order*, the Commission also identified additional reasons why forbearance from the regulations at issue was warranted, which apply with equal force here.

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[30] In the *Six MSA Order*, the Commission 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 MCI and thereby eliminate this concern. *See* Lew/Wimsatt/Garzillo Decl. ¶ 12; Dunbar Decl. ¶ 2.

As demonstrated above, competition in Rhode Island is even more advanced than in Omaha. Cable voice services in Rhode Island are just as widely available as they were in Omaha, and other types of competition are even more widespread. In light of this competition, it is clear that the market is suitable for competitive supply, and that TELRIC rates are not necessary to ensure just and reasonable prices, 47 U.S.C. § 160(a)(1), and, in fact, perpetuate rates well below those that carriers would agree to through arms-length negotiation.[31] Likewise, continuing to impose UNE obligations in the face of vibrant competition is not only unnecessary, but harms consumers – rather than "protect[s]" them, *id.* § 160(a)(2) – because it discourages investment in, and deployment of, innovative products and services. The purpose of this criterion is to protect retail consumers, not to guarantee that competitors can purchase wholesale inputs at artificially low, regulated prices. When an ILEC faces capable intermodal competitors in a particular market, continuing to impose UNE regulations simply places the ILEC at a competitive disadvantage vis-à-vis those intermodal competitors (which need not share

[31] The Commission reached exactly that conclusion in the context of 47 U.S.C. § 271, when it rejected claims that TELRIC rates should apply to elements provided only to satisfy Section 271. *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 663 (2003) ("*TRO*"); *see also USTA II*, 359 F.3d at 589 (affirming the Commission's conclusion because there is "no serious [textual] argument" that the pricing standard in Section 252(d)(1) applies to Section 271 elements and there is "nothing unreasonable in the Commission's decision to confine TELRIC pricing to instances where it has found impairment"). Instead, the Commission has said that, for Section 271 elements, "the market price should prevail, as opposed to a regulated rate." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, ¶ 473 (1999); *see also TRO* ¶ 664 (a BOC may satisfy the "just" and "reasonable" standard for Section 271 elements by "showing that it has entered into arms-length agreements with other, similarly situated purchasing carriers to provide the element at that rate").

their facilities at artificially low rates), with no cognizable benefits to offset the significant social costs. Although such a regime benefits CLEC competit*ors*, it does not promote competit*ion*; indeed, it retards the type of facilities-based competition that the Act seeks to foster. *See USTA II*, 359 F.3d at 582 (in light of "competition from cable providers," consumers "will still have the benefits of competition" – which is the goal of the 1996 Act – "even if *all CLECs* were driven from the broadband market") (emphasis added).[32]

For many of the same reasons, eliminating unbundling obligations is in the public interest. *See* 47 U.S.C. § 160(a)(3). As the Commission found in Omaha, the costs of the unbundling obligations that Verizon faces in Rhode Island outweigh the benefits. *See Omaha Forbearance Order* ¶ 76. Given the extensive facilities-based competition that already exists in Rhode Island, and the potential for even greater facilities-based competition to emerge, any potential benefits from unbundling regulation are slim, while the costs of such regulatory intervention are significant. *See id.* ¶ 77. Forbearance will give both Verizon and other facilities-based competitors greater incentives to continue to invest in facilities, which will ensure the continued growth of long-lasting facilities-based competition. Eliminating unbundling regulation also will "further the public interest by increasing regulatory parity" between telecommunications providers in Rhode Island. *Id.*

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[32] *See also Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977) (government regulation of the marketplace is "for the protection of *competition*, not *competitors*") (internal quotation marks omitted); *Marrese v. American Acad. of Orthopaedic Surgeons*, 706 F.2d 1488, 1497 (7th Cir. 1983) (Posner, J.) ("policy of competition is designed for the ultimate benefit of consumers rather than of individual competitors"), *rev'd on other grounds*, 470 U.S. 373 (1985).

¶ 78; *see id.* ¶ 49. Asymmetrical regulation imposes artificial price constraints that delay and impede full and fair competition among providers and harms consumers.[33]

Eliminating dominant carrier regulations that apply to interstate switched access services also is consistent with the public interest where vigorous local competition has emerged. *See Omaha Forbearance Order* ¶ 47. As the Commission stated "[i]n these environments that are competitive for end users, applying these dominant carrier regulations to [Verizon] limits its ability to respond to competitive forces and, therefore, its ability quickly to offer consumers new pricing plans or service packages." *Omaha Forbearance Order* ¶ 47. The Commission has similarly recognized in other contexts that certain "regulations associated with dominant carrier classification can also have undesirable effects on competition."[34] For example, the Commission has recognized that tariffing requirements "impose significant administrative burdens on the Commission and the [BOCs]," and "adversely affect competition." *LEC Classification Order* ¶ 89. For these reasons, dominant-carrier regulation of the switched access market is not only unnecessary to ensure just, reasonable, and nondiscriminatory rates and to protect consumers, but it would be affirmatively detrimental to competition and harmful to the public interest.

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[33] *See, e.g.*, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶¶ 45, 71, 79 & n.241 (2005).

[34] *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, ¶ 90 (1997) ("*LEC Classification Order*").

IV. THE COMMISSION CANNOT MAINTAIN UNBUNDLING RULES WHERE THERE IS NO IMPAIRMENT

Where, as here, the record shows that competition without UNEs is possible – and the impairment standard in Section 251(d)(2) therefore is not met – the Commission must eliminate unbundling obligations.

In the *Triennial Review Remand Order*,[35] the Commission had determined that cable had not yet blossomed into a full substitute for local exchange and exchange access on a widespread basis, but recognized that cable companies might develop into facilities-based local exchange competitors in the future and invited parties to file forbearance petitions in any areas where that occurred. *See TRRO* ¶ 39 ("[I]ncumbent LECs remain free to seek forbearance from the application of our unbundling rules in specific geographic markets where they believe the . . . requirements for forbearance have been met."); *see also Omaha Forbearance Order* ¶ 63 & n.164. Having identified individual forbearance petitions as the vehicle through which the Commission would address the impairment issue going forward, the Commission cannot require continued unbundling in such proceedings where the statutory impairment standard is not met. Here, where the evidence demonstrates that competitive facilities-based alternatives are ubiquitous and competitors serve **[Begin Confidential]** **[End Confidential]** or more of the relevant market, there can be no serious dispute about impairment – there plainly is none – and it makes no sense to impose a continuing unbundling requirement on only one of several competitors.

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[35] *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533 (2005) ("*Triennial Review Remand Order*" or "*TRRO*").

Independent of the Commission's statement in the *TRRO* inviting ILECs to make "no impairment" showings through forbearance petitions, the Commission cannot lawfully retain unbundling obligations in the face of evidence of non-impairment. In the context of a forbearance petition, the Commission is not bound by the unbundling standards in the sense that it can remove unbundling requirements even where impairment is shown if the standards of Section 10 are met. But the opposite is not true – the Commission cannot in this or any other context retain an unbundling requirement where the evidence shows that the impairment standard is not met. *See United States Telecom Ass'n v. FCC*, 290 F.3d 415, 422 (D.C. Cir. 2002) ("*USTA I*") (Commission may not impose unbundling "without regard to the state of competitive impairment in any particular market."); *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 563 (D.C. Cir. 2004) ("*USTA II*").

The critical inquiry under the impairment standard is whether "'competition is *possible*'" without UNEs. *Covad Communications Co. v. FCC*, 450 F.3d 528, 540 (D.C. Cir. 2006) (quoting *USTA II*, 359 F.3d at 575) (emphasis added); *see also USTA II*, 359 F.3d at 571 (issue is "whether a market is suitable for competitive supply"). As the D.C. Circuit reaffirmed in *Covad*, "[t]he fact that [competitors] can viably compete without UNEs . . . *precludes* a finding that the [competitors] are impaired." 450 F.3d at 534 (internal quotation marks omitted; emphasis added). Thus, although the fact that competing carriers have obtained a high degree of market success is not a required factor for finding non-impairment – because competition can be demonstrated to be *possible* without UNEs before competitors have obtained even double-digit market shares – it is a

plainly sufficient one. In the context of the broadband market, for example, the D.C. Circuit held that line-sharing could not be required in light of the fact that competing carriers were serving at least half of all broadband connections. *See USTA I*, 290 F.3d at 428-29. The same conclusion is accordingly warranted here given that competing providers serve **[Begin Confidential]** **[End Confidential]** or more of narrowband connections and have experienced the same kind of success in capturing business customers as Cox did in Omaha, the type of competitive "success[ ]" (*Omaha Forbearance Order* ¶¶ 64, 66, 68) that the Commission relied on in the *Omaha Forbearance Order*.

V. CONCLUSION

For the foregoing reasons, Verizon requests that the Commission grant relief that is parallel to the relief granted in the *Omaha Forbearance Order* and forbear from loop and transport unbundling regulation pursuant to 47 U.S.C. § 251(c) and dominant-carrier regulations for switched access services in Rhode Island.

Respectfully submitted,

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Of Counsel

February 14, 2008

A

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B

Attachment B

LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.
A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

NEW YORK
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99 WASHINGTON AVENUE
SUITE 2020
ALBANY, NY 12210-2820
(518) 626-9000
FACSIMILE: (518) 626-9010

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RIYADH
(AFFILIATED OFFICE)
TASHKENT
BISHKEK
ALMATY
BEIJING

June 30, 2003

VIA FEDERAL EXPRESS

Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Designation as an Eligible Telecommunications Carrier

Dear Ms. Massaro:

On behalf of Cox Rhode Island Telcom, L.L.C., enclosed please find an original and nine copies of the Petition for designation as an Eligible Telecommunications Carrier.

Please time and date-stamp the extra copy of this letter and return it to me in the enclosed self-addressed, stamped envelope.

If you have any questions regarding this filing, please contact me.

Respectfully submitted,

Brian FitzGerald / BTF

Brian T. FitzGerald (#6568)

BTF/rsb
Enclosure
cc: Jennifer J. Marrapese, Esq.

AL 81780.1

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

Petition of Cox Rhode Island Telcom, L.L.C. for Certification as a Telecommunications Carrier "Eligible" To Receive Payments from the Federal Universal Service Fund	)	**Docket No.**

PETITION OF
COX RHODE ISLAND TELCOM, L.L.C.

NOW COMES Cox Rhode Island Telcom, L.L.C. ("Cox"), through its undersigned counsel, and files this Petition for designation as an "Eligible Telecommunications Carrier" throughout its service area in the State of Rhode Island, pursuant to 47 U.S.C. Section 214(e). Cox respectfully requests designation as an Eligible Telecommunications Carrier ("ETC") in order to receive funding and/or reimbursement from the available Federal universal support mechanisms. In support of this Petition, Cox respectfully submits the following:

APPLICANT

Cox is a Rhode Island limited liability company with its principal Rhode Island offices located at 9 J.P. Murphy Highway, West Warwick, Rhode Island 02893. Cox is a competitive local exchange company ("CLEC") authorized to provide telecommunications services throughout the State of Rhode Island pursuant to a Certificate of Public Convenience and Necessity granted by the Rhode Island Public Utilities Commission ("the Commission") on April 22, 1997 in Docket Number 2535.

ALLEGATIONS OF FACT

1. Section 214(e) of the Federal Telecommunications Act of 1996 ("the Act") requires state commissions, upon request, to designate more than one common carrier as an ETC in areas not served by a rural telephone company if the common carrier, throughout the service area for which that designation is sought: (i) offers the services that are supported by Federal universal service support mechanisms, and (ii) advertises the availability of such services.

2. Cox is a common carrier as defined in 47 U.S.C. § 153(10).[1]

3. Cox is a Certified Local Exchange Carrier and is authorized to provide local exchange service throughout the state of Rhode Island pursuant to the Commission's April 22, 1997 Order in Docket No. 2535.

4. Cox will provide the universal services required by 47 U.S.C. § 254 utilizing a combination of facilities owned, leased and maintained by Cox and services purchased at wholesale from Verizon and resold by Cox.

5. 47 U.S.C. § 214(e) provides that ETC designations shall be made for a "service area" determined by the state commission. Section 214(e) provides further that the "service area" shall be a geographic area established by the state commission. The Rhode Island Public Utilities Commission has determined that for companies such as Cox, whose operating authority was granted on February 8, 1996 or later, the service area shall be the entire state.

6. In its Universal Service Order implementing 47 U.S.C. § 214(e) and § 254, the Federal Communications Commission ("FCC") identified specific services that a

[1] A common carrier is defined in 47 U.S.C. § 153(10) as "any person engaged as a common carrier for hire in interstate or foreign communications by wire or radio or interstate or foreign radio transmission of energy, ..."

carrier must provided to be designated as an ETC and receive universal support.[2] The Commission also identified these services as state-required services for companies seeking designation as an ETC within Rhode Island. Cox offers all services required by the Universal Service Order and by the Commission throughout the areas for which it seeks ETC designation pursuant to its tariffs on file with the Commission. Those services are identified as follows:

Service Offered	**Yes/No**
1. Voice-grade access to public switched network	Yes
2. Local usage	Yes
3. Dual tone multi-frequency (DTMF) signaling or its functional equivalent	Yes
4. Single-party service or its functional equivalent	Yes
5. Access to emergency services, i.e., E911	Yes
6. Access to operator services	Yes
7. Access to interexchange services	Yes
8. Access to directory assistance	Yes
9. Toll blocking for qualifying low-income customers	Yes
10. Toll control for qualifying low-income customers[3]	N/A
11. Lifeline and Linkup service	Yes

[2] *Federal-State Joint Board on Universal Service,* 12 FCC Rcd. 8776, 8809-25 (1997) ("*Universal Service Order*"); see 47 C.F.R. § 54.101(a). Cox offers all services required by the Universal Service Order throughout the areas for which it seeks ETC designation pursuant to its tariffs on file with the Commission.

[3] On December 30, 1997, the FCC issued an order clarifying its definition of "toll limitation" services as either toll blocking or toll control and required carriers to offer only one, not necessarily both, of these services to be designated as an ETC. *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45 at Par. 115, Fourth order on Reconsideration, FCC 97-420 (rel. Dec. 31, 1997).

7. Cox advertises the availability of its services in media of general circulation throughout the State of Rhode Island.

8. Cox provides discounted services to schools, libraries, and rural health care providers in accordance with federal and state regulation, including 47 C.F.R. §§ 54.501-54.623.

9. Moreover, Cox's sister Telcom affiliate in Oklahoma has been deemed an "Eligible Telecommunications Carrier" for the purpose of receiving funding and/or reimbursement from the federal Universal Service Fund. See Application of Cox Oklahoma Telcom, L.L.C. Seeking Certification as an Eligible Carrier Pursuant to the Telecommunications Act of 1996 and the Oklahoma Telecommunications Act of 1997, Order No. 464785, June 21, 2002.

LEGAL AUTHORITY

Cox submits this petition pursuant to Section 214 of the Telecommunications Act of 1997, and pursuant to the Commission's Rules and Regulations Governing Certification of Telecommunications Carriers as "Eligible" to Receive Payments from the Federal Universal Service Fund, dated June 9, 1998.

PROPOSED PROCEDURAL SCHEDULE

Cox believes that the best, most efficient means of considering this Petition would be through a notice and comment period. Accordingly, pursuant to Section 1.10(a) of the Commission's Rules of Procedure and Practice, Cox proposes the following procedural schedule, and requests that its petition be acted upon within thirty (30) days:

Date	Action
June 30, 2003	Cox files petition with Rhode Island Public Utilities Commission for ETC designation
July 14, 2003	Interested parties/intervenors (if applicable) file comments on Cox's petition
July 21, 2003	Cox files reply comments in response to comments filed by interested parties/intervenors
July 30, 2003	Commission issues final decision on Cox's petition

RELIEF SOUGHT

Cox respectfully requests that the Commission issue an order designating Cox as an Eligible Telecommunications Carrier throughout the State of Rhode Island.

Respectfully submitted,

COX RHODE ISLAND TELCOM, L.L.C.
By Its Attorney

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