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VIA HAND DELIVERY AND ECFS

March 28, 2008

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Suite 5-C327
Washington, DC 20554

FILED/ACCEPTED
MAR 28 2008
Federal Communications Commission
Office of the Secretary

**Re: Petition of the Verizon New England for Forbearance
Pursuant to 47 U.S.C. § 160(c) in Rhode Island, WC
Docket No. 08-24**

Dear Ms. Dortch:

In accordance with the *Second Protective Order* in the above-referenced proceeding,¹ enclosed for filing are two copies of the redacted version of the attached Opposition being submitted by a group of 24 CLECs.

Under separate cover and in accordance with the *Second Protective Order* in this proceeding,² copies of the Highly Confidential Information are being submitted to you along with Gary Remondino, Jeremy Miller and Tim Stelzig of the Wireline Competition Bureau.

To the extent any party wishes to access the Highly Confidential Information associated with this filing, it should send its request in writing to Christine Johnson (christine.johnson@bingham.com) and Nguyen Vu (nguyen.vu@bingham.com) along with executed Acknowledgments of Confidentiality associated with the *Second Protective Order*.

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¹ *Petition of the Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160(c) in Rhode Island, WC Docket No. 08-24, Second Protective Order, DA 08-471, ¶ 14 (WCB rel. Feb. 27, 2008) (“Second Protective Order”).*

² *Id.*

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Also enclosed is an extra copy of this redacted filing, please date stamp and return it to the courier. Should you have any questions about this filing, please contact me.

Sincerely,



Nguyen T. Vu

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Petition of Verizon New England for) WC Docket No. 08-24
Forbearance Pursuant to)
47 U.S.C. § 160(c) in Rhode Island)
)
)

OPPOSITION

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Summary

The Commission should adopt strengthened forbearance standards. Factors that were not addressed in the *Verizon Six MSA Forbearance Order* must be considered in order to justify a grant of a petition seeking forbearance from Section 251 obligations. The Commission should limit “coverage” to those competitors who are ready, willing and able as of the date of the filing of the forbearance petition to deliver substitute services over their own facilities; ensure that a grant of forbearance relief will not result in a duopoly; not count competition that relies on the ILEC’s wholesale products; conduct a forbearance analysis for each affected customer market segment; and require an actual, robustly competitive wholesale market in existence at the time the Petition is filed

Verizon’s approach to selecting a geographic forbearance area is arbitrary. The Commission should require an area for forbearance that has a basis in economic or market analysis, such as entire MSA. Verizon proposal has no basis other than serving Verizon’s expedient goal of crafting an area where it thinks it might meet market share tests.

Verizon has not shown sufficient competition even under the incomplete approach of the *Verizon Six MSA Forbearance Order*. Estimates of residential lines derived from white page listings rather than actual line data are an insufficient basis to determine competitor market share. But even with its white pages estimates, Verizon has not shown sufficient competitor market share because it uses national rather than more accurate regional CDC “cut-the-cord” wireless figures; it counts its own wireless customers as competitors; and because it counts its own

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wholesale products as competitive lines. Verizon's access line loss percentages are seriously overstated and misleading in many respects because Verizon is gaining lines because of FiOS and because Verizon cannot show that all lost lines represent lines actually gained by facilities-based competitors.

Verizon has not shown competition in the enterprise market because it relies on information that the Commission has already rejected such as information gleaned from websites, fiber miles, and number of competitor networks. Verizon has essentially defaulted on its obligation to show a competitive wholesale market. It merely states that Cox provides wholesale service without any supporting information.

The Commission should reject Verizon's proposed justification for forbearance based on alleged non-impairment. Where CLECs are unimpaired in Rhode Island, Verizon has already obtained all the relief in Rhode Island to which it is entitled based on non-impairment.

Verizon has not met the statutory standard for forbearance because forbearance would lead to higher prices and fewer choices of service options and service providers for consumers. Forbearance would harm competition.

The Commission should promptly deny the Petition..

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Petition of Verizon New England for) WC Docket No. 08-24
Forbearance Pursuant to)
47 U.S.C. § 160(c) in Rhode Island)
)
)

OPPOSITION

The undersigned competitive carriers submit this Opposition to the above-captioned petition¹ of Verizon New England seeking forbearance from application of important regulatory obligations to it in most of the state of Rhode Island.²

I. THE COMMISSION SHOULD ADOPT STRENGTHENED FORBEARANCE STANDARDS

As discussed in this Opposition, Verizon has not justified forbearance using the tests applied by the Commission in the *Verizon Six MSA Forbearance Order* for denying Verizon’s earlier Petitions. But it is additionally not the case that the tests discussed in the *Verizon Six MSA Order* are all that it is necessary to obtain a grant. As discussed in this section of this Opposition, other factors that were not addressed in the *Verizon Six Forbearance MSA Order* must be considered in order to justify a grant of a petition seeking forbearance from Section 251 and other regulatory obligations.

¹ *Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160(c) in Rhode Island, WC Docket No. 08-24 (filed Feb. 14, 2008). (“Verizon Petition”).*

² *Pleading Cycle Established for Verizon New England's Petition for Forbearance in Rhode Island, Public Notice, WC Docket No. 08-24, DA 08-469 (WCB rel. February 27, 2008).*

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A. The Coverage Threshold Should be More Stringently Applied.

In its prior forbearance orders, the Commission reasoned that it would be appropriate to forbear “only in wire centers where a competitor has facilities coverage of at least 75% of the end user locations accessible from a wire center”³ with “coverage” defined as existing where a competitor “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.”⁴

Rather than engaging in predictive judgment and speculating as to whether a competitor may be “willing and able” to deliver substitute services “within a commercially reasonable time” in the future, the Commission should strengthen the coverage test to mean those competitors who are *ready, willing and able as of the date of the filing of the forbearance petition* to deliver substitute services to the applicable customer premises. This would provide a more meaningful assessment of genuinely substitutable actual service “coverage” within a wire center.

³ 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*, WC Docket No. 05-281, Memorandum Opinion and Order, 22 FCC Rcd 1958, 1977, ¶ 31 (2007), *appeals dismissed, Covad Communications Group, Inc. v. FCC*, Nos. 07-70898, 07-71076, 07-71222 (9th Cir. 2007) (dismissing appeals for lack of standing) (“*Anchorage UNE Forbearance Order*”); see also *Petitions of Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Memorandum Opinion and Order, FCC 07-212, ¶ 37 (rel. Dec. 5, 2007), *appeal pending, Verizon v. FCC*, No. 08-1012 (D.C. Cir. filed Jan. 14, 2008) (“*Verizon Six MSA Forbearance Order*”).

⁴ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415, 19444, n. 156 (2005), *aff’d, Qwest Corp. v. FCC*, 482 F.3d 471 (D.C. Cir. 2007) (“*Omaha Forbearance Order*”).

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B. The Commission Should Consider Barriers to Entry and the Risks of Creating a Duopoly

Section 10(a)(1) requires that the Commission consider whether enforcement of a statute or rule is necessary to ensure that a carrier's charges, practices, classifications, or regulations are just and reasonable or not unjustly or unreasonably discriminatory.⁵ To comply with this mandate, the Commission should ensure that this and any future examination of a forbearance request take adequate account of the barriers to entry that exist and which could be exacerbated by forbearance.

The Commission has observed numerous times that the telecommunications industry is characterized by extremely high barriers to entry, including high fixed and sunk costs, network effects, and economies of scale.⁶ Where two firms (such as an ILEC and a cable company) have already deployed last-mile facilities to all or a significant portion of the geographic market in question for delivery of telecommunications (and other) services, a substantial risk exists that the market will devolve into a duopoly -- particularly if neither firm is required or incented to provide access to their last-mile facilities to new entrants facing these barriers to entry. The Commission has consistently expressed concerns about the anticompetitive implications of

⁵ 47 U.S.C. § 160(a)(1).

⁶ See *Anchorage UNE Forbearance Order*, ¶ 31; see also *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, 98-147, 18 FCC Rcd 16978, ¶¶ 85-91 (2003), corrected by Errata, 18 FCC Rcd 19020 (2003), *aff'd in part, remanded in part, vacated in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), cert. denied sub nom. *Nat'l Ass'n Regulatory Util. Comm'rs v. United States Telecom Ass'n*, 125 S. Ct. 313 (2004).

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duopolies,⁷ and has specifically rejected for just this reason the proposition that a single facilities-based (cable company) competitor should be deemed sufficient to justify releasing ILECs from unbundled access requirements.⁸ The Commission's observations in that 1999 decision are prescient in considering now the impact of a cable company's operations on the competitive state of the market and the ILEC's obligations:

[A]lthough Congress fully expected cable companies to enter the local exchange market using their own facilities, including self-provisioned loops, Congress still contemplated that incumbent LECs would be required to offer unbundled loops to requesting carriers. A standard that would be satisfied by the existence of a single competitive LEC using a non-incumbent LEC element to serve a specific market . . . would be inconsistent with the Act's goal of creating robust competition in telecommunications. . . . Indeed, such a standard would more likely create stagnant duopolies comprised of the incumbent LEC and the first new entrant in a particular market. An absence of multiple providers serving various markets would significantly limit the benefits of competition that would otherwise flow to consumers.⁹

In light of the Commission's prior stated concerns about the anticompetitive implications of duopolies and the focus in Section 10(a)(1) on ensuring continuing availability of just and reasonable practices and charges, the Commission should carefully consider existing barriers to

⁷ See, e.g., *Application of EchoStar Communications Corporation*, Order, 17 FCC Rcd 20559, 20604-05, ¶¶ 99-102 (2002) (noting that a merger resulting in a duopoly would "create a strong presumption of significant anticompetitive effects"); *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, First Report and Order, 11 FCC Rcd 18455, 18470, ¶ 27 (1996) (stating that a duopoly market was "imperfectly competitive").

⁸ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-96, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, ¶ 55 (1999) ("*UNE Remand Order*") (subsequent history omitted).

⁹ *Id.*

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entry in the affected markets and the risk that a duopoly could arise by relieving an ILEC from the requirement to provide unbundled access to last-mile facilities. The Commission should ensure that a grant of forbearance relief will not result in a duopoly of the ILEC and its cable company competitor to the exclusion of other providers who do not possess the same last-mile network.

The Commission has not previously, adequately done so, however. In the *Omaha Forbearance Order*, the Commission dismissed concerns about creation of a duopoly between Qwest and Cox on the basis that “actual and potential competition from established competitors . . . minimizes the risk of duopoly and of coordinated behavior or other anticompetitive conduct in this market.”¹⁰ Unfortunately, one of the largest competitor to Qwest and Cox in Omaha -- McLeodUSA -- will exit the market because of its inability to secure wholesale inputs at prices that allow it to remain competitive.¹¹ Therefore, for all practical purposes a duopoly will be the result of the Commission’s forbearance in Omaha, if that decision is not changed.¹² Therefore, the Commission should not forebear in a market until barriers to competitive entry, and the risk of a duopoly, have been removed.

¹⁰ *Omaha Forbearance Order*, 20 FCC Rcd at 19452, ¶ 71.

¹¹ See Petition for Modification of McLeodUSA Telecommunications Services, Inc., WC Docket No 04-223, at 4-12 (filed July 23, 2007) (“McLeodUSA Petition for Modification”). See also “Verizon Seeks Forbearance in All of Rhode Island,” xchange Magazine, Feb. 15, 2008 (available at <http://www.xchangemage.com/articles/525/verizon-seeks-forbearance-in-all-of-rhode-isl.html>) (visited Mar. 25, 2008). This also highlights again the perils of engaging in predictive judgment as to the state of competition in a particular market in lieu of reliance upon an analysis of actual competition.

¹² See McLeodUSA Petition for Modification at 14.

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C. Independent Facilities-Based Competition

In both the *Omaha* and *Anchorage UNE Forbearance Orders*, the Commission granted forbearance only in areas in which at least one competitor was offering its own extensive last mile facilities, finding that granting forbearance in areas, “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.”¹³

In determining whether there is substantial competition within last mile facilities, the Commission must look to see if any intermodal competitor, “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.”¹⁴ A showing of competitive investment in last mile facilities alone is not enough to justify forbearance of the requirements of Section 10. There must also be evidence that the competitor is winning market share and is actually providing services over its own network to customers.¹⁵

Under this standard, showings of competition based on use of Verizon’s own facilities cannot justify forbearance. As the Commission has previously found, despite the seeming appearance of competition within a wire center, if those competitors are reliant on an ILEC’s

¹³ *Omaha Forbearance Order*, ¶¶ 59-60; *see also Anchorage UNE Forbearance Order*, ¶ 31.

¹⁴ *Omaha Forbearance Order*, n.156; *see also Anchorage UNE Forbearance Order*, ¶ 32.

¹⁵ *Omaha Forbearance Order*, ¶ 64, n.177, & ¶ 69, *Anchorage UNE Forbearance Order*, ¶ 28.

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wholesale components, competition does not truly exist.¹⁶ The Commission in the *Verizon Six MSA Forbearance Order* counted Verizon's resale and UNE-P replacement products as competitor lines to show that even with counting wholesale products as competitor lines, there was insufficient competition to justify forbearance.¹⁷ The Commission may not count Verizon wholesale products as competitor lines to justify a grant of forbearance because they do not constitute independent facilities-based competition. Therefore, as discussed elsewhere in this Opposition, the Commission must reject Verizon's attempt to justify forbearance here in part on the basis of these wholesale products.

D. The Statutory Standards for Forbearance Must be Applied to Each Market Segment for which Forbearance Is Requested

Rather than Verizon's narrow minded focus on a "share-of-residential-lines test" as essentially the only relevant market segment analysis, the Commission must conduct a complete analysis of current competition in each customer segment and product market for which Verizon seeks forbearance. To determine "the extent to which . . . forbearance will enhance competition,"¹⁸ and whether a grant of relief meets the statutory criteria,¹⁹ the Commission must conduct a separate analysis of the extent to which competition exists within each market segment, *i.e.*, mass market, small and medium enterprises ("SMEs"), and larger enterprises, as

¹⁶ *Anchorage UNE Forbearance Order*, ¶ 30; *Omaha Forbearance Order*, n.105.

¹⁷ *Verizon Six MSA Order*, ¶ 27.

¹⁸ 47 U.S.C. § 160(b).

¹⁹ *Id.* at § 160(a)(1)-(3).

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well as each transport or loop type, *i.e.*, DS0, DS1, and DS3.²⁰ The Commission took an initial, though inadequate, step toward such an analysis in the *Omaha Forbearance Order*. There, the Commission did not simply find that the substantial penetration of a cable company competitor (Cox) in the retail residential market justified forbearance relief for Qwest. Rather, the Commission also considered Cox's capability to deliver services to enterprise customers.²¹

To satisfy the requirements of Section 10 with respect to the "protection of consumers" and the promotion of "competitive market conditions,"²² Verizon must be required to demonstrate with specificity the existence of *actual* competition -- the presence of an active competitor winning market share and providing services over its own network -- in each of the affected market segments.²³ Providing evidence of purported competition in one market segment

²⁰ See *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order On Remand, 20 FCC Rcd 2533, ¶ 210 (2005), *aff'd*, *Covad Comm'ns Co v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

²¹ *Omaha Forbearance Order*, ¶ 66. As discussed below, however, the reliance on predictive judgments in the *Omaha Forbearance Order* with respect to Cox's *potential* "competitive threat" to Qwest in the enterprise telecommunications market does not comport with the requirements for granting relief under Section 10 of the Act, and a more stringent analysis of *actual* competition should be applied.

²² 47 U.S.C. § 160(a)(2) and (b).

²³ See *Petition for Forbearance from E911 Accuracy Standards Imposed on Tier III Carriers for Locating Wireless Subscribers Under Rule Section 20.18(h)*, Order, 18 FCC Rcd 24648, ¶ 24 (2003) (stating that in "pursuing relief through the vehicle of forbearance, . . . the Petitioner [has] the obligation to provide evidence demonstrating with specificity why [it] should receive relief under the applicable substantive standards"). See also *Omaha Forbearance Order*, 20 FCC Rcd at 19477, ¶ 64 and n.177 (specifically finding that Cox had already "captured [a substantial portion] of the residential voice market in the Omaha MSA").

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(e.g., the residential mass market) can hardly be considered specific evidence of the state of competition in *other* market segments (e.g., SME voice and broadband services).

Accordingly, the Commission should determine that Verizon and any other petitioner seeking forbearance with respect to unbundling obligations must demonstrate *with specificity* a current existence of “robust” competition *in each affected market segment* as of the date that the petition is filed.²⁴

E. There Must be a Robustly Competitive and Ubiquitous Facilities-Based Wholesale Market

The Commission must not only examine the status of competition in each retail market segment, but also the role of the wholesale market at the wire center level.²⁵ The Commission found in the *Omaha Forbearance Order* that facilities-based wholesale competition “minimizes the risk of duopoly and of coordinated behavior or other anticompetitive conduct.”²⁶ The Commission must find that sufficient competition exists to ensure that the ILEC will continue to offer loops and transport that competitors may not duplicate at wholesale on terms and conditions that will permit competition. The record must support the conclusion that the ILEC has “very strong market incentives” to continue offering loops and transport on a wholesale basis to competitors on reasonable terms and conditions that would permit competition despite the

²⁴ See *Anchorage UNE Forbearance Order*, ¶ 28; see also *Verizon Six MSA Forbearance Order*, ¶ 37 (noting record evidence demonstrating the “comparatively limited role of the cable operators in serving enterprise customers in these [metropolitan statistical areas] today”).

²⁵ *Anchorage UNE Forbearance Order*, ¶ 10.

²⁶ *Omaha Forbearance Order*, ¶ 71.

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elimination of UNEs.²⁷ This very strong incentive will not exist unless there is an independent facilities-based provider of loops that could absorb retail customers that could migrate off Verizon's network if Verizon fails to make reasonable wholesale offerings.²⁸ Without such a competitive showing, and in the absence of the regulatory necessity to do so, there is absolutely no incentive for Verizon to offer its own last mile facilities at competitive rates and terms—as has already been proven in Omaha.²⁹ In this case, because Verizon has not alleged, much less shown, significant independent facilities-based wholesale competition for copper, DS0, DS1 and DS3 services, the Commission cannot find that Verizon has strong incentives to make reasonable wholesale offerings.

Nor has Verizon attempted to show that the rates, terms and conditions for wholesale services that it offers or intends to offer as substitutes for unbundled network elements, including copper, DS0, DS1 and DS3 loop and transport facilities along with dark fiber transport are just and reasonable and will promote competitive market conditions in Rhode Island.³⁰

The Commission's "predictive judgment" in the *Omaha Order* that Qwest would make reasonable wholesale offerings in that MSA has proven erroneous and, therefore, does not provide any guidance in this proceeding. The Commission should grant forbearance, assuming other requirements are met, only if there is an actual, robustly competitive and

²⁷ *Omaha Forbearance Order*, ¶ 81; *Anchorage UNE Forbearance Order*, ¶¶ 39-42.

²⁸ *Omaha Forbearance Order*, ¶ 81.

²⁹ McLeodUSA Petition for Modification at 4-12.

³⁰ See Comments of Access Point *et al.*, WC Docket No. 07-267, at 27-28 (filed March 24, 2008).

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ubiquitous wholesale market in existence at the time the Petition is filed and the ILEC demonstrates that its rates and terms for § 251(c)(3) alternatives are just and reasonable. This approach will eliminate the potential for erroneous predictive judgments and the attendant risk of harming competition.

II. VERIZON PROPOSES AN ARBITRARY GEOGRAPHIC AREA

Verizon's approach to selecting a geographic area in which to request forbearance is exactly the opposite to what it should be. It chooses an area, no matter how otherwise arbitrary, that it thinks it has the best chance to meet the forbearance test that it believes that the Commission should apply, in this case the incomplete test the Commission employed in the *Verizon Six MSA Forbearance Order*. While this might serve Verizon's interests, the Commission should instead insist on a selection of an economic area that has a basis rooted in a rational economic analysis and then apply the appropriate forbearance test in that area.

An MSA as determined by the U.S. Bureau of the Census and the Office of Management and Budget ("OMB") is a metropolitan area comprised of a large population nucleus, together with adjacent communities having a high degree of social and economic integration.³¹ Because an MSA has a high degree of internal economic and social coherence, it is more likely that any estimation of competition, or application of a single competitive test to the entire area, if otherwise accurate, will be correct anywhere in the MSA. An MSA, therefore, achieves some level of rationality for use as an area in which the Commission may consider forbearance.

³¹ The most recent OMB definition of metropolitan areas is contained in OMB Bulletin No. 07-01 (Dec. 18, 2006). See <http://www.whitehouse.gov/omb/bulletins/fy2007/b07-01.pdf>.

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But part of an MSA, as Verizon proposes here by lopping off the Massachusetts portions of the Providence MSA, makes no sense at all. In fact, forbearance in only part of an MSA would likely lead to marketplace dysfunctions because critical economic inputs to competitive telecommunications services would be unavailable in part of an area that otherwise has a high degree of social and economic integration. This could lead to pricing distortions and dislocations within the MSA and potentially weaken the social and economic integration that previously existed, resulting in significant harms including reductions in growth and productivity. Forbearance in part of an otherwise cohesive economic unit would constitute undue government interference in marketplace dynamics. The Commission acknowledged related concerns in the *Verizon Six MSA Forbearance Order*.³² The fact that a different cable operator may serve the omitted parts of the Providence MSA merely shows the expedience of Verizon's proposed geographic area aimed at removing areas of the economic unit that may have a lesser degree of cable penetration. Therefore, the Commission should reject Verizon's proposal to consider forbearance in only part of the Providence MSA.

While there might be other areas than an MSA that have some economic basis that could warrant consideration for forbearance, a state is not one of them. A state is an area defined by geographical, historical, or political facts that have nothing to do with coherent, integrated economic markets for which it might be appropriate to apply a single test to determine that competitive conditions exist throughout the area. States may, and usually are, comprised of areas that are quite different in terms of social or economic integration, such as urban and rural

³² *Verizon Six MSA Forbearance Order*, n.102.

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areas. Measuring market share or “coverage” on a state-wide basis would disserve rural areas because significant competition in urban areas might permit market share tests to be met throughout the state even though there is limited or no competition in rural areas. A state is simply too crude for purposes of measuring competition, although it might benefit BOCs in some cases.

Contrary to Verizon’s contention,³³ the state of Rhode Island is not a reasonable area for purposes of measuring competition or granting forbearance based on the flimsy rationale that the state may have a tenuous relationship to study areas or ARMIS reporting. Study areas (which are also used for ARMIS reporting) are not based on any assessment of economic markets or competition. Study areas are derived from ILECs’ legacy monopoly local service areas and used to determine costs and rates. They are unrelated to assessing or defining competitive markets. ARMIS reporting areas were designed for reporting convenience and practicality.³⁴ Although the Commission granted forbearance from dominant carrier regulation to ACS in the Anchorage study area,³⁵ the state of Rhode Island is not a study area. Rhode Island is part of the Verizon New England study area.³⁶ Therefore, study areas even if otherwise appropriate for forbearance could not support the state of Rhode Island as an area in which to consider forbearance.³⁷

³³ Verizon Petition at 3-4.

³⁴ *Automated Reporting Requirements for certain Class A and Tier 1 Telephone Companies*, CC Docket No. 86-182, Notice of Proposed Rulemaking, FCC 86-227 (May 7, 1986)

³⁵ See *Anchorage UNE Forbearance Order*, ¶ 2.

³⁶ Verizon Petition at n.5.

³⁷ Verizon has not complied with the Commission’s direction in the *Verizon Six MSA Forbearance Order* to specifically explain how a grant of relief at the geographic level it

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Verizon has not actually requested forbearance for the state of Rhode Island. It has excluded Block Island. Verizon states that it did not include Block Island because there is no cable operator there. But this also proves the point that Verizon is crafting a jerry-built area comprised of part of state and part of an MSA in a hope that maybe some variation of the Commission's forbearance tests can be met therein.

Verizon's proposal that the Commission "may analyze coverage at the level of the individual rate exchange areas (or rate centers), rather than at the wire center serving area level as the Commission has done in previous forbearance orders,"³⁸ like the state proposal, is no more than a fishing expedition. It states that "rate centers equally reflect the areas in which competing carriers and Verizon provide local telephone service."³⁹ But the Commission has already examined and denied Verizon's earlier application in which data was presented at the wire center level. Therefore, assuming that rate center and wire center information "equally reflect" competition, no useful purpose would be served by now considering the same situation but on a rate center basis.

Verizon's geographic proposals would permit an ILEC to gerrymander any forbearance area no matter how unwise or arbitrary. If Verizon's approach is accepted, there is nothing to

proposes might have disruptive impacts on rates in the study area. *See Verizon Six MSA Forbearance Order*, n.102 (explaining that "[i]n the future, applicants for forbearance relief from dominant carrier rate regulation should address whether and how a grant of relief at the geographic level they seek would impact other rates in the applicable study area.").

³⁸ Verizon Petition at 7-8.

³⁹ *Id.* at 8.

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prevent BOCs from proposing forbearance on a street or city block basis, no matter how unsupported and in spite of the serious market dislocations this would cause.

Accordingly, the Commission should reject Verizon's proposed geographic forbearance areas.

III. VERIZON HAS NOT SHOWN SUFFICIENT COMPETITION

A. Verizon Has Not Provided a Sufficient Market Segment Analysis

Verizon submits a flawed market share analysis of the residential market, but otherwise does not provide an analysis that would permit the Commission to apply forbearance standards to each market segment. Verizon does not differentiate between SMEs and larger enterprises, as it should, or between different kinds of transport or loop products. Although Verizon alleges "greater competition for enterprise customers in Rhode Island than in either Omaha or Anchorage,"⁴⁰ the "evidence" marshaled by Verizon in support of this point is both superficial and tangential, failing to provide any meaningful indication of actual competition in the Rhode Island enterprise market at all or within each market segment. Instead, Verizon falls back upon arguments about Cox's marketing efforts, its network "coverage," and its penetration in the *residential mass market segment* as proxies for any showing of actual competition in the enterprise market. For example, Verizon's first argument is simply that Cox has a ubiquitous network that *enables* potential delivery of enterprise services.⁴¹ Likewise, Verizon argues that Cox's success in the *mass market* must translate into Cox posing a "competitive threat" in the

⁴⁰ *Id.* at 20.

⁴¹ *Id.* at 22.

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market for *enterprise customers* in Rhode Island.⁴² As noted previously, the Commission should require evidence of actual competition at the time of the competition, not prognostications by the petitioner. Similarly, Verizon essentially makes no effort to show competition in the wholesale market.

Accordingly, the Petition should be rejected for failure to provide a sufficiently segmented market share analysis.

B. Verizon Has Not Shown Cable Coverage

As discussed above, the Commission should significantly strengthen its cable coverage test in several respects. But Verizon has not shown cable coverage even under the approach to measuring cable coverage that the Commission has employed previously.

First, Verizon's petition does not include any concrete factual information about the location or extent of actual facilities-based cable competitive facilities. Instead, it relies on vague assertions of the existence of cable competition that are at best circumstantial. Verizon cites to a petition filed by Cox to become an Eligible Telecommunications Carrier in Rhode Island that states that Cox offers services "required by the Universal Service Order and by the Rhode Island PUC" throughout the "entire state."⁴³ Verizon also cites to Cox's website where Cox purports to offer a "toll-free calling guide" for customers in different parts of Rhode Island as evidence that Cox is providing facilities-based telephony service throughout Rhode Island,⁴⁴

⁴² *Id.* at 23.

⁴³ *Id.* at 6.

⁴⁴ *Id.*

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and a local newspaper article touting Cox's telephony availability in Rhode Island.⁴⁵ This type of information is too vague to permit any findings of actual cable competition in any location in Rhode Island.

Second, Verizon has provided no evidence of cable coverage on a wire center basis. The current area for assessing cable coverage is no larger than individual wire centers. Assessing facilities-based competition on a wire center basis is consistent with the approach the Commission followed in assessing loop impairment in the *TRRO*,⁴⁶ and the approach the Commission used in assessing UNE loop forbearance petitions in Omaha,⁴⁷ Anchorage,⁴⁸ and the *Verizon Six-MSA Forbearance Order*.⁴⁹ Verizon's poorly supported sweeping assertions that cable facilities exist throughout the state does not provide sufficient granularity to permit the Commission to make a finding of facilities-based competition on a wire center, because no wire center information is provided, or on state-wide basis because "using such a broad geographic region would not allow [the Commission] to determine precisely where facilities-based competition exists."⁵⁰ Although Verizon suggests that the Commission should alternatively

⁴⁵ *Id.* at 7.

⁴⁶ See *Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533, ¶¶ 155-159 (rel. Feb. 4, 2005) ("*TRRO*") (subsequent history omitted).

⁴⁷ *Omaha Forbearance Order*, ¶¶ 60-61.

⁴⁸ *Anchorage UNE Forbearance Order*, ¶¶ 14-16.

⁴⁹ *Verizon Six MSA Forbearance Order*, ¶¶ 35-36.

⁵⁰ *Omaha Forbearance Order*, ¶ 69, n.186.

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consider forbearance on a rate center basis,⁵¹ it has not submitted any cable coverage information on that basis either.

Therefore, the Petition fails to show actual facilities-based coverage that is needed to support forbearance at any geographic level.

C. Verizon's Showing of Residential Line Share Is Insufficient

Verizon claims that the market share data it presents demonstrates that forbearance is justified under the approach to measuring competition applied by Commission in the *Verizon Six MSA Forbearance Order*. Apart from the fact, discussed above, that the approach employed in the *Verizon Six MSA Forbearance Order* is insufficient to justify a grant, Verizon has not satisfied that standard in any event.

First, Verizon relies on residential white page listings rather than actual line data to determine the market share of its competitors. As noted by Qwest in its recent filings concerning its pending UNE forbearance petitions for Denver, Minneapolis-St. Paul, Phoenix, and Seattle, using white pages listings produces only "estimates."⁵² Qwest recommends that the Commission obtain actual line counts.⁵³ Because white pages listings are estimates, the Commission's has relied on "actual" switched access lines when addressing petitions seeking forbearance from

⁵¹ Verizon Petition at 7-8.

⁵² See Letter from Melissa E. Newman, Qwest Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-97, at 4 (dated March 10, 2008).

⁵³ *Id.* at 5.