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WC Docket No. 08-24
March 28, 2008

dominant carrier and unbundling rules.⁵⁴ Although Verizon claims that the number of residential white pages listings is an accurate indicator of the number of residential lines it and competitors are serving because the correlation between white page residential listings and Verizon's total residential lines is high, it has not demonstrated that there would be a similar correlation for competitive carriers. CLECs do not serve a legacy monopoly customer base. CLECs are more likely to serve specialized sets of customers that may well have different practices in terms of listing lines in white pages.

Verizon notes that the Commission used white page listings to some extent to calculate market share in determining whether to forbear from applying the Commission's dominant carrier rules to Qwest's provision of in-region, interstate, interLATA telecommunications services on an integrated basis.⁵⁵ But this calculation was not the primary market share analysis on which the Commission relied in that proceeding.⁵⁶ And, in any event and as noted above, the Commission has previously required "actual line counts," not estimates, to forbear from Section 251(c)(3) obligations. Therefore, the Commission should not rely on white pages listings in this proceeding to measure market share.

⁵⁴ *Verizon Six MSA Forbearance Order*, n.89 (noting that the Commission relies on actual line counts) & n.115 (noting that in the *Qwest Omaha* or *ACS UNE* forbearance proceedings, "the Commission relied upon actual line counts submitted by the incumbent LEC and the major cable provider in the market ..." to calculate market shares, and citing *Omaha Forbearance Order*, ¶ 28-29, 58 n.152; *Anchorage UNE Forbearance Order*, ¶ 28).

⁵⁵ Verizon Petition at 11.

⁵⁶ *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 (2007).

REDACTED - FOR PUBLIC INSPECTION

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WC Docket No. 08-24
March 28, 2008

Second, even using white page listings to calculate market share, Verizon's market share analysis is flawed and when corrected, demonstrates that the competitive market share test is not satisfied. In particular, Verizon states that *competitors'* share of residential lines in Rhode Island is at least **[Begin Highly Confidential] --[End Highly Confidential]** percent as of January 2008.⁵⁷ However, Verizon has included Verizon wireless "cut-the-cord" customers on the "competitive side of the ledger."⁵⁸ This approach fails to adhere to the market share calculation the Commission employed in the *Verizon Six MSA Forbearance Order*. As the Commission explained, "attributing Verizon Wireless' share to Verizon" is appropriate and consistent with precedent because "a wireline affiliated [wireless] carrier would have an incentive to protect its wireline customer base from intermodal competition."⁵⁹ Moreover, Verizon's market share analysis includes the Center for Disease Control's national wireless substitution percentage of 13.6 percent rather than the Northeast wireless penetration figure of 8.8 percent.⁶⁰ Correcting these flaws, *Verizon's* market share as calculated in the *Verizon Six MSA Forbearance Order* would be **[Begin Highly Confidential] -- [End Highly Confidential]** percent of the residential

⁵⁷ Verizon Petition at 14.

⁵⁸ *Id.*

⁵⁹ *Verizon Six MSA Forbearance Order*, Appendix B at n.6 (internal quotations and citation omitted).

⁶⁰ Stephen J. Blumberg and Julian V. Luke: *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, Division of Health Interview Statistics, January-June 2007*, National Center for Health Statistics, CDC, (rel. Dec. 12, 2007) ("*CDC Survey*"), at 7, n.5 ("Northeast includes Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, and Pennsylvania.").

REDACTED - FOR PUBLIC INSPECTION

Access Point; Alpheus; ATX; Bridgecom; Broadview; Cavalier; CIMCO; Close Call; CP Telecom; Deltacom; DSLnet; Globalcom; Lightyear; Matrix; McLeodUSA; MegaPath; PAETEC; Consolidated; RNK; segTEL; Talk America; TDS Metrocom; & TelePacific Communications
WC Docket No. 08-24
March 28, 2008

lines in Rhode Island, failing to meet the market share forbearance standard the Commission has previously employed.

Verizon also asserts that if the Commission is unwilling to count Verizon wireless “cut-the-cord” customers as competitive lines, it should exclude them from the analysis entirely. Under this approach, Verizon claims that competitors have approximately **[Begin Highly Confidential]** --**[End Highly Confidential]** percent market share. But there is no basis for excluding Verizon’s “cut-the-cord” customers except that the Commission should exclude all “cut-the-cord” wireless in general. Removing wireless cut-the-cord altogether is the correct approach, at a minimum, because that is what the Commission did in its market share calculations in the *Omaha Forbearance Order* and *Anchorage UNE Forbearance Order*.

Verizon’s showing of residential market share is also flawed because it counts its wholesale products, *i.e.*, Wholesale Advantage and resale, as competitor lines. As explained, the Commission may not consider these products as supporting a grant of the Petition because they do not constitute independent facilities-based competition. If considered at all, Verizon’s resale and Wholesale Advantage lines should be attributed to Verizon since the services are provisioned over Verizon’s facilities in which case it would have a **[Begin Highly Confidential]** --**[End Highly Confidential]** percent market share. If, Section 251(c)(4) resale and Wholesale Advantage Service lines are excluded from the equation altogether, Verizon’s market share is **[Begin Highly Confidential]**--**[End Highly Confidential]** percent.

Third, Verizon contends that its market share percentages are conservative because it excludes competition from over-the-top and nomadic VoIP services such as Vonage, Skype, and

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WC Docket No. 08-24
March 28, 2008

others. But as Verizon noted, the Commission has found that these types of VoIP providers do not “offer close substitute services.”⁶¹ For all the reasons provided in the *Verizon Six MSA Order*, the Commission should not count over-the-top VoIP providers as competitor lines.⁶²

Accordingly, Verizon’s Petition does not satisfy the Commission’s threshold market share requirements to support forbearance from dominant carrier or unbundling regulations in Rhode island. Although the Commission should apply a more rigorous and complete standard for purposes of considering a grant of the Petition, if it applies the same approach as in the *Verizon Six MSA Forbearance Order* the Commission must find again that Verizon’s “market share[] [is] sufficiently high to suggest that competition” in Rhode Island “is not adequate to ensure that the ‘charges, practices, classifications or regulations ...for [] or in connection with that ... telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory’ absent the regulations at issue.”⁶³

D. The Commission Should Reject Verizon’s Showing of Line Loss

Verizon asserts that forbearance is warranted since its retail switched access lines in Rhode Island have steadily declined.⁶⁴ The Commission has already rejected the view that line share loss shows competition sufficient to justify forbearance. “[W]e reject Verizon’s attempt to

⁶¹ *Verizon Six MSA Forbearance Order*, ¶ 23. As the Commission clarified, “we recognize competition from entities such as cable operators that utilize VoIP technology to provide voice services to their customers over their own network facilities - that is, providers of ‘fixed’ VoIP service.” *Id.*, at n.72.

⁶² *Id.*, ¶ 23.

⁶³ *Id.*, ¶ 27.

⁶⁴ Verizon Petition at 17-18, & 30-31.

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WC Docket No. 08-24
March 28, 2008

demonstrate that a particular MSA is competitive by calculating percentage reductions in retail lines.”⁶⁵ The Commission found that “[t]here are many possible reasons for such decreases unrelated to the existence of last-mile facilities-based competition. For example, . . . , the abandonment of a residential access line does not necessarily indicate capture of that customer by a competitor, but may indicate that the consumer converted a second line used for dial-up Internet access to an incumbent LEC broadband line for Internet access.”⁶⁶

In fact, Verizon’s access line loss percentages are seriously overstated and misleading in many respects. First, as Verizon admits, they do not attribute MCI to Verizon prior to 2008.⁶⁷ Second, it is likely that a large proportion of the lost residential lines are second lines that were replaced by Verizon’s own DSL lines, which rose from 150,000 in 2000 to over 8.2 million in 2007.⁶⁸ Third, Verizon’s wireline losses are aligned with the industry ILEC trends in subscribership (*i.e.*, the declines are not a product of competitive conditions specific to Rhode

⁶⁵ *Verizon Six MSA Forbearance Order*, ¶ 32.

⁶⁶ *Verizon Six MSA Forbearance Order*, ¶ 32; *see also* Trends in Telephone Service, Industry Analysis Division, Wireline Competition Bureau, 7-1 (February 2007) (observing that “the number of lines provided by wireline carriers has declined, likely due to some consumers substituting wireless service for wireline service, and some households eliminating second lines when they move from dial-up Internet service to broadband service.”); *Anchorage UNE Forbearance Order*, ¶ 28 n.88 (citing Trends in Telephone Service, Industry Analysis Division, Wireline Competition Bureau, 7-1 (June 2005)).

⁶⁷ *See, e.g.*, Verizon Petition, Attachment E at 5 and n.10 (cleverly stating that the declines in lines are “as of year-end 2007” but noting the residential lines served by the former MCI are “as of January 2008”).

⁶⁸ Verizon 2000 Annual Report at 7; Verizon 2007 Annual Report at 3; *see also* Sprint Nextel Corporation’s Opposition to Petitions for Forbearance, WC Docket No. 06-172 (filed Mar. 5, 2007) at 13; *see also* Comments of National Association of State Utility Consumer Advocates *et al.*, WC Docket No. 06-172, at 65 (filed Mar. 5, 2007); *see also* Comments of Broadview Networks, Inc. *et al.*, WC Docket No. 06-172, at 26 (filed Mar. 5, 2007).

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Access Point; Alpheus; ATX; Bridgecom; Broadview; Cavalier; CIMCO; Close Call; CP Telecom; Deltacom; DSLnet; Globalcom; Lightyear; Matrix; McLeodUSA; MegaPath; PAETEC; Consolidated; RNK; segTEL; Talk America; TDS Metrocom; & TelePacific Communications
WC Docket No. 08-24
March 28, 2008

Island at issue),⁶⁹ and are likely more than offset by millions of customers added by Verizon Wireless and broadband and FiOS lines.⁷⁰ In fact, Verizon has publicly stated that its FiOS service and long-term contract arrangements⁷¹ are prompting access line *gains*. During Verizon's 2007 Third Quarter Earnings Conference Call, it announced that "*Take Rhode Island, for example. We began offering FiOS TV in parts of the state earlier this year. In those markets where we offer FiOS TV, we are actually seeing access line gains ...*"⁷² Likewise, in Verizon's 2007 Second Quarter Earnings Conference Call, Verizon specifically stated that "Clearly we see a correlation between FiOS penetration and line loss improvements..."⁷³ Verizon's line loss argument has no merit whatsoever, is not reflective of future trends, and does not support the forbearance relief it requests.

In any event, Verizon's line loss statistics alone cannot and do not show that *facilities-based* competition in Rhode Island is sufficient to meet the statutory forbearance standard, since Verizon cannot show that all of the lost lines represent lines actually gained by facilities-based competitors.

⁶⁹ See, e.g., FCC, *Local Telephone Competition: Status as of June 30, 2007*, at Table 1 and 2 (March 2008); see Comments of the National Association of State Utility Consumer Advocates, WC Docket No. 06-172, at 66 (filed March 5, 2007).

⁷⁰ Verizon 2000 Annual Report at 6-7; Verizon 2007 Annual Report at 3..

⁷¹ For instance for Verizon's bundled offerings require "one and two year commitment[s]." See <http://www22.verizon.com/ForYourHome/NationalBundles/NatBundlesHome.aspx#>

⁷² VZ-Q3 2007 Verizon Earnings Conference Call, Statement of Doreen Toben, Verizon Chief Financial Officer, at 4 available at http://investor.verizon.com/news/20071029/3Q07_vz_transcript.pdf.

⁷³ VZ-Q2 2007 Verizon Earnings Conference Call, Statement of Doreen Toben, Verizon Chief Financial Officer, at 5.

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WC Docket No. 08-24
March 28, 2008

E. Verizon Has Not Shown Robust Facilities-Based Competition in the Enterprise Market

Verizon's attempt to depict the Rhode Island enterprise market as having robust facilities-based competition is without merit. As discussed below, it relies heavily on Cox's presence as a competitor but provides no actual data that Cox is a significant competitor in this market. Rather, Verizon does nothing more than feebly resuscitate speculative and anecdotal evidence along with other information that the Commission rejected in the *Verizon Six MSA Forbearance Order*.

Verizon initially points to Cox's website advertising, asserting that Cox competes aggressively for enterprise customers and has deployed facilities to serve enterprise customers in all locations where enterprise customers are located in Rhode Island.⁷⁴ Yet, Verizon ignores the fact that "[e]ven where cable television [copper coaxial] networks reach [] business customers," the networks "typically lack the capacity to serve large numbers of business customers that require telecommunications and Internet services at DS-1 and higher speeds."⁷⁵ Moreover and as the record in the Commission's special access proceeding demonstrates, cable operators, such as Cox, cannot offer sufficient service level guarantees to support competitive enterprise services and have severe security and reliability concerns.⁷⁶

⁷⁴ Verizon Petition at 21-22, 25.

⁷⁵ Comments of XO *et al.*, WC Docket No. 05-35, at Declaration of Ajay Govil, XO ¶ 24 (filed Aug. 8, 2007).

⁷⁶ Comments of XO *et al.*, WC Docket No. 05-35, at Declaration of Ajay Govil, XO ¶ 22-24 (filed Aug. 8, 2007); Ad Hoc Comments, WC Docket No. 05-25, at 7 (FCC filed August 8, 2007).

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Access Point; Alpheus; ATX; Bridgecom; Broadview; Cavalier; CIMCO; Close Call; CP Telecom; Deltacom; DSLnet; Globalcom; Lightyear; Matrix; McLeodUSA; MegaPath; PAETEC; Consolidated; RNK; segTEL; Talk America; TDS Metrocom; & TelePacific Communications
WC Docket No. 08-24
March 28, 2008

Verizon goes on to assert that Cox has fiber facilities to many enterprise locations,⁷⁷ however, it fails to show precisely where Cox's purported fiber cable network is in relation to the enterprise customers, if it is lit and operational, or how many customers or what percentage of customers in what wire centers actually have access to these fiber facilities. Based on references that it pulled from websites, Verizon asserts that: Cox has all the attributes the Commission identified in the *Omaha Forbearance Order* to make it a competitive threat for enterprise customers in Rhode Island; Cox's marketing efforts and emerging success in the enterprise market is at least as advanced in Rhode Island as in Omaha; and Cox offers wholesale services in the Providence MSA.⁷⁸ But Verizon flagrantly disregards Cox's own statement to the Commission just last year that its "*presence in the Providence enterprise market remains limited.*"⁷⁹ In any event and as the Commission has previously found, Verizon's reliance on website postings are unpersuasive⁸⁰ and simply do not constitute evidence of actual, sustainable, and robust competition in the enterprise market.

Nor do the other Rhode Island competitors that Verizon identifies in its petition show significant enterprise competition. While Verizon maintains that "there are other extensive competitive facilities-based networks, as well as many CLECs that provide retail competition in the state,"⁸¹ CLECs "use[] unbundled network elements (UNEs), particularly unbundled loops,

⁷⁷ Verizon Petition at 25.

⁷⁸ *Id.* at 25.

⁷⁹ Comments of Cox Communications, Inc., WC Docket 06-172 (filed Mar. 5, 2007) at 32.

⁸⁰ *Verizon Six MSA Forbearance Order*, ¶ 40.

⁸¹ Verizon Petition, at 26.

REDACTED - FOR PUBLIC INSPECTION

Access Point; Alpheus; ATX; Bridgecom; Broadview; Cavalier; CIMCO; Close Call; CP Telecom; Deltacom; DSLnet; Globalcom; Lightyear; Matrix; McLeodUSA; MegaPath; PAETEC; Consolidated; RNK; segTEL; Talk America; TDS Metrocom; & TelePacific Communications
WC Docket No. 08-24
March 28, 2008

... as [a] primary vehicle for serving and acquiring customers.”⁸² As the Commission stated in the *Omaha Forbearance Order*, which is equally applicable here, “forbearance from application of section 251(c)(3) on the basis of competition that exists only due to section 251(c)(3) would undercut the very competition being used to justify the forbearance.”⁸³ The Commission should again “decline to engage in that type of circular justification.”⁸⁴

Verizon also asserts there are at least four competitors in Rhode Island that are using their own or other alternative facilities to serve enterprise customers and have networks that span a certain number of route miles.⁸⁵ It points to GeoTel fiber route mile information and website marketing of these carriers.⁸⁶ The Commission flatly rejected this type of evidence to justify forbearance and held that “[w]e do not find persuasive any of the competitive fiber network data that Verizon has filed in this docket, including... the number of route miles on these networks; the number of wire centers in an MSA that a competing fiber provider can reach; or the materials from competitors’ web-sites describing their service offerings and territories.”⁸⁷ The Commission emphasized that, “just as the *Triennial Review Remand Order* found the number of

⁸² *Omaha Forbearance Order*, at n.4.

⁸³ *Omaha Forbearance Order*, ¶ 68 n.185.

⁸⁴ *Id.*

⁸⁵ Verizon also asserts that fixed wireless is another means by which carriers may extend their existing networks. This claim has been fully refuted in the Commission special access proceeding. Sprint has explained that this is nascent and limited technology and XO has emphasized that “fixed wireless is not an option.” Comments of XO *et al.*, WC Docket No. 05-35 (filed Aug. 8, 2007) at Declaration of Ajay Govil, XO ¶ 21; Reply Comments of Sprint, WC Doc. No. 05-25, at 14 (filed Aug. 15, 2007).

⁸⁶ Verizon Petition at 20-28.

⁸⁷ *Verizon Six MSA Forbearance Order*, ¶ 40.

Access Point; Alpheus; ATX; Bridgecom; Broadview; Cavalier; CIMCO; Close Call; CP Telecom; Deltacom; DSLnet; Globalcom; Lightyear; Matrix; McLeodUSA; MegaPath; PAETEC; Consolidated; RNK; segTEL; Talk America; TDS Metrocom; & TelePacific Communications
WC Docket No. 08-24
March 28, 2008

route miles, lists of fiber wholesalers, and counts of competitive networks to be unreliable and unsuitable as triggers for the impairment test, we also find that such data are not informative for identifying where any unbundling relief would be warranted.”⁸⁸ Moreover, “[m]any of these data are even less relevant...here, as Verizon’s submissions combine competitive deployment in those wire centers where the triggers have already been satisfied with those wire centers that do not meet the triggers.”⁸⁹ The same conclusions are fully applicable here.

Lastly, Verizon contends that UNE forbearance is warranted because local exchange, interexchange and wireless competitors in Rhode Island are competing extensively using Verizon’s special access services. The Commission has previously rejected this argument as well, holding that “competition that relies on Verizon’s own facilities is not a sufficient basis to grant forbearance from UNE requirements.”⁹⁰ The Commission emphasized that it already “eliminated UNE obligations for the exclusive provision of interexchange service or mobile wireless service based on the fact that competition for such services arose in the absence of UNEs” and that “Verizon has received relief from unbundling obligations in wire centers in ...[Rhode Island], based on the competitive triggers established in the *Triennial Review Remand Order*.”⁹¹ The Commission accordingly found that it would not be “in the public interest to grant additional relief from UNE obligations based on that same competition” and emphasized

⁸⁸ *Id.*

⁸⁹ *Id.*, ¶ 40.

⁹⁰ *Id.*, ¶ 42.

⁹¹ *Id.*, ¶ 38.

Access Point; Alpheus; ATX; Bridgecom; Broadview; Cavalier; CIMCO; Close Call; CP Telecom; Deltacom; DSLnet; Globalcom; Lightyear; Matrix; McLeodUSA; MegaPath; PAETEC; Consolidated; RNK; segTEL; Talk America; TDS Metrocom; & TelePacific Communications
WC Docket No. 08-24
March 28, 2008

that “the Commission repeatedly has recognized that the availability of UNEs is a competitive constraint on special access pricing.”⁹²

Accordingly, Verizon has not shown competition in the enterprise market.

F. Verizon Has Not Shown Robust and Ubiquitous Facilities-Based Competition in the Wholesale Market

Verizon’s showing of wholesale competition is merely the statement that Cox makes wholesale offerings.⁹³ It has not shown what wholesale services Cox may provide and whether Cox provides wholesale service to any or more than a few customer locations. Indeed, consistent with the Commission’s previous finding, nothing in Verizon’s petition “reflects any significant alternative sources of wholesale inputs for carriers” in Rhode Island.⁹⁴ Therefore, Verizon has essentially defaulted on its obligation to show the existence of a viable and ubiquitous facilities-based wholesale market in the absence of UNEs. There is no basis on the current record to make a finding that there is such a competitive market in Rhode Island, or that there would be in a forborne UNE environment.

IV. THE STATUTORY CRITERIA FOR FORBEARANCE ARE NOT MET

Section 10(a) states that the FCC “shall forbear from applying any regulation or any provision [of the Act] ... to a telecommunications carrier or telecommunications service” if it determines that:

⁹² *Id.*, ¶ 38.

⁹³ Verizon Petition, at 25.

⁹⁴ *Verizon Six MSA Forbearance Order*, ¶ 38.

REDACTED - FOR PUBLIC INSPECTION

Access Point; Alpheus; ATX; Bridgecom; Broadview; Cavalier; CIMCO; Close Call; CP Telecom; Deltacom; DSLnet; Globalcom; Lightyear; Matrix; McLeodUSA; MegaPath; PAETEC; Consolidated; RNK; segTEL; Talk America; TDS Metrocom; & TelePacific Communications
WC Docket No. 08-24
March 28, 2008

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations, by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.⁹⁵

All three prongs of this standard must be afforded a plain meaning interpretation⁹⁶ and must be satisfied before the Commission grants a petition for forbearance. The prongs “are conjunctive,” meaning that “[t]he Commission could properly deny a petition for forbearance if it finds that any one of the three prongs is unsatisfied.”⁹⁷

Verizon has not justified forbearance under these standards. In the absence of a showing of robust competition, market forces will be insufficient to discipline prices. Forbearance would permit Verizon to raise its retail rates to even higher unreasonable levels. In the absence of wholesale competition, Verizon would be able raise prices of critical inputs provided to its competitors causing them to raise prices or exit the market. Forbearance would lead to higher prices for consumers and few choices of service options and service providers. For these same reasons, forbearance would not serve the public interest.

⁹⁵ 47 U.S.C. § 160(a)(1)-(3).

⁹⁶ *AT&T v. FCC*, 452 F.3d at 836 (rejecting the Commission’s “new rule” that “conflicts with the statute’s plain meaning”).

⁹⁷ *In re Core Commu’ns., Inc.*, 455 F.3d 267 (D.C. Cir. 2006), quoting *Cellular Telecomms. & Internet Ass’n v FCC*, 330 F.3d 502, 509 (D.C. Cir. 2001).

Access Point; Alpheus; ATX; Bridgecom; Broadview; Cavalier; CIMCO; Close Call; CP Telecom; Deltacom; DSLnet; Globalcom; Lightyear; Matrix; McLeodUSA; MegaPath; PAETEC; Consolidated; RNK; segTEL; Talk America; TDS Metrocom; & TelePacific Communications
WC Docket No. 08-24
March 28, 2008

Accordingly, the Commission must deny the Petition under the standards of Section 10(a).

V. VERIZON'S PROPOSED FORBEARANCE BASED ON IMPAIRMENT WOULD BE UNLAWFUL

Verizon contends that its Petition demonstrates that there is ubiquitous facilities-based competition and sufficient competitor market share to preclude a finding of impairment, anywhere in Rhode Island (other than Block Island).⁹⁸ Verizon contends that the Commission must forbear from application of UNE rules where there is no impairment.⁹⁹ It contends that the Commission may forbear even where CLECs are impaired but that it may not require unbundling where the evidence shows that the impairment standard is not met.¹⁰⁰

The Commission has rules in place that define where impairment exists.¹⁰¹ Verizon's Petition does not demonstrate under current rules that CLECs are unimpaired anywhere or in any wire center in Rhode Island. A cable operator's presence in the market does not change that result.¹⁰² Therefore, even assuming that the Commission must forbear where no impairment exists, there is no basis on the current record for forbearance based on Verizon's assertion of no impairment. In any event, pursuant to the Commission's unbundling rules, Verizon does not

⁹⁸ Verizon Petition, at 35.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 36.

¹⁰¹ *TRRO*, ¶ 5.

¹⁰² *UNE Remand Order*, ¶ (explaining that "although 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.").

Access Point; Alpheus; ATX; Bridgecom; Broadview; Cavalier; CIMCO; Close Call; CP Telecom; Deltacom; DSLnet; Globalcom; Lightyear; Matrix; McLeodUSA; MegaPath; PAETEC; Consolidated; RNK; segTEL; Talk America; TDS Metrocom; & TelePacific Communications
WC Docket No. 08-24
March 28, 2008

provide unbundled access in many areas in Rhode Island. Thus, Verizon has already obtained all the relief in Rhode Island to which it is entitled based on non-impairment. As the Commission previously held in the *Verizon Six MSA Forbearance Order*, it would not be “in the public interest to grant additional relief from UNE obligations...” beyond the relief provided in the *TRRO*.¹⁰³

There is no basis for Verizon’s apparent assumption that the Commission must consider claims of non-impairment based on individual ILEC petitions. Section 251(d) contemplates that the Commission shall implement the impairment standards via rulemaking.¹⁰⁴ And, as Verizon notes, the Commission has provided that forbearance may be used to provide unbundling relief in some cases notwithstanding impairment.¹⁰⁵ Therefore, insofar as Verizon wants to obtain relief based on alleged non-impairment, rather than forbearance standards, it may seek to obtain modified impairment rules.

If anything, the fact that CLECs are impaired under the Commission’s rules counsels against forbearance, as competitive carriers have argued.¹⁰⁶ Accordingly, the Commission should reject Verizon argument that alleged non-impairment supports forbearance.

¹⁰³ *Verizon Six MSA Forbearance Order*, ¶ 38.

¹⁰⁴ 47 U.S.C. § 251(b) (“Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section.”)

¹⁰⁵ Verizon Petition at 35-36 (citing *TRRO*).

¹⁰⁶ See, e.g., Opposition of Affinity Telecom, Inc. *et al.*, WC Docket No. 07-97, at 63-66 (filed Aug. 31, 2007).

Access Point; Alpheus; ATX; Bridgecom; Broadview; Cavalier; CIMCO; Close Call; CP Telecom; Deltacom; DSLnet; Globalcom; Lightyear; Matrix; McLeodUSA; MegaPath; PAETEC; Consolidated; RNK; segTEL; Talk America; TDS Metrocom; & TelePacific Communications
WC Docket No. 08-24
March 28, 2008

VI. CONCLUSION

The Commission should promptly deny the Petition.

Respectfully submitted,

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March 28, 2008