

Before the
Federal Communications Commission
Washington, D.C. 20554

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

COMMENTS OF COMPTTEL IN SUPPORT OF MOTION TO DISMISS

COMPTTEL respectfully submits these comments in support of Access Point Inc.’s *et al.* (Joint Movants) Motion to Dismiss or, in the Alternative, Deny Verizon New England’s Petition for Forbearance for the State of Rhode Island.¹ The Commission should dismiss this Petition without delay as Verizon has failed to present any new or additional evidence that would warrant a different result than that the Commission reached for the Providence MSA just four months ago.² Verizon has appealed the Commission’s decision denying its request for forbearance for the Providence MSA³ and its new Petition, which merely reargues issues that were decided by the Commission in the *Verizon 6 MSA Order*, is tantamount to a late filed, procedurally improper petition for reconsideration.

¹ Public Notice, DA 08-651, released March 21, 2008.

² *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, Memorandum Opinion and Order, WC Docket No. 06-172, FCC 07-212 (rel. Dec. 5, 2007)(“*Verizon 6 MSA Order*”).

³ *See Verizon Telephone Companies v. Federal Communications Commission*, Case No. 08-1012 (D.C. Cir. Filed January 14, 2008).

On September 6, 2006, Verizon filed six forbearance petitions seeking substantial deregulation within six major Metropolitan Statistical Areas (“MSAs”), including the Providence MSA which encompasses virtually the entire the State of Rhode Island. In those Petitions, Verizon sought forbearance from dominant carrier regulation, Section 251(c)(3) loop and transport unbundling obligations, and all Computer III obligations. The Commission denied Verizon’s Petitions in their entirety, “find[ing] that the record evidence does not satisfy the section 10 forbearance standard with respect to any of the forbearance requests.”⁴

The current version of Verizon’s request for forbearance relief in Rhode Island contains virtually the same evidence that was before the Commission when it determined that Verizon’s evidence was insufficient to meet the stringent standards of Section 10 of the Communications Act, 47 U.S.C. § 160. A significant portion of its Petition is devoted to seeking a reversal of the Commission’s findings and decision in the *Verizon 6 MSA Order*. For example, Verizon argues that Verizon Wireless cut-the-cord line counts should be attributed to the competitive side of the ledger in conducting the market share analysis,⁵ even though the Commission previously determined to the contrary.⁶ In addition, Verizon re-argues that the Commission should consider over-the-top VoIP providers in its forbearance analysis⁷ despite the fact that it presented no market specific evidence of VoIP subscribership or even any evidence that consumers in Rhode Island consider over-the-top VoIP a close substitute for Verizon’s wireline service. The

⁴ *Verizon 6 MSA Order*.

⁵ Verizon Petition at 14.

⁶ *Verizon 6 MSA Order* at Appendix B.

⁷ Verizon Petition at 16-17.

Commission has previously rejected Verizon's VoIP argument due to its failure of proof.⁸ Finally, the Commission has already rejected as unpersuasive Verizon's arguments that loss of retail lines demonstrates the competitiveness of the market;⁹ as unreliable Verizon's citation to commercially available fiber network data, including fiber route miles and the number of wire centers that a competing fiber provider can reach;¹⁰ and as uninformative and insufficient for purposes of identifying where unbundling relief would be warranted, materials from competitors' web sites describing their service offerings and territories.¹¹ Rather than attempt to remedy its deficient evidentiary showing, Verizon has merely cited to the same type of information in seeking forbearance relief for the state of Rhode Island.¹²

Verizon's Petition is nothing more than a thinly disguised and woefully belated effort to obtain reconsideration of the Commission's decision in the *Verizon 6 MSA Order* and should be dismissed on that basis. Its Petition for Review of the Commission's decision is pending before the D.C. Circuit and Verizon will have a full and fair opportunity to attempt to convince the Court that the Commission was wrong in rejecting its plea for forbearance in the Providence MSA. As the Joint Movants point out, Verizon should not be allowed to repackage its Providence MSA Petition as a Petition for the same forbearance relief in the State of Rhode Island and demand a different result.

⁸ *Verizon 6 MSA Forbearance Order* at ¶ 23.

⁹ Verizon Petition at 17-20; *Verizon 6 MSA Forbearance Order* at ¶ 32.

¹⁰ *Verizon 6 MSA Forbearance Order* at ¶¶ 40, 41.

¹¹ *Verizon 6 MSA Forbearance Order* at ¶ 40.

¹² Verizon Petition at 19-20, 23-25, 26-35.

As the CLEC Group showed, the proceeding on Verizon's forbearance Petitions, including that for the Providence MSA, "involved the active participation of over seventy different entities and resulted in a written record totaling in excess of five hundred separate documents."¹³ Commissioner Copps, in his separate statement, cited the significant amount of Commission resources spent adjudicating the Verizon forbearance Petitions.¹⁴ With the ink barely dry on the Commission's denial of Verizon's Providence MSA Petition, Verizon has re-filed, asking for the same relief for the State of Rhode Island, a subset of the Providence MSA. Yet, Verizon has presented no new evidence or changed circumstances that would warrant a different result.

It is worth mentioning that on the first business day after comments were filed on its Rhode Island Petition, Verizon filed a virtually identical forbearance petition for a portion of the Virginia Beach MSA.¹⁵ It appears that Verizon's strategy is to continuously file formulaic, "search and replace" petitions for forbearance from dominant carrier and unbundling regulation until they are granted without regard to the drain on the Commission's resources, or the lack of merit in the petitions themselves. Verizon's conduct demonstrates a lack of respect for the Commission's processes, which the Commission should not countenance. The Commission should act decisively to put a

¹³ CLEC Group Motion at 3.

¹⁴ Statement of Commissioner Copps, *Concurring, Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, Memorandum Opinion and Order, WC Docket No. 06-172, FCC 07-212 (2007).

¹⁵ Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in Cox's Service Territory in the Virginia Beach Metropolitan Statistical Area, filed March 31, 2008.

stop to Verizon's abuse of the forbearance process and halt its attempt to control the Commission's agenda by dismissing the Rhode Island Petition without delay.

For the foregoing reasons, the Commission should grant the Joint Movants' Motion to Dismiss or, in the Alternative, Deny Verizon New England's Petition for forbearance from dominant carrier, Computer III and unbundling regulation for the State of Rhode Island.

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Respectfully submitted,

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