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FILED/ACCEPTED
MAR 3 1 2008
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March 31, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

REDACTED –
FOR PUBLIC INSPECTION

Re: 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

Dear Ms. Dortch:

This is the cover letter for the 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 ("Petition").

This Petition contains confidential and highly confidential information. We are filing highly confidential and redacted versions of the Petition. The Petition consists of a stand-alone document entitled <u>Petition of the Verizon Telephone Companies for Forbearance</u> and attachments.

Specifically, we are herewith submitting for filing:

a. One original of the highly confidential Petition (in paper form);

b. One original of the redacted Petition (in paper form); and

c. Two copies of the redacted Petition (in paper form).

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

All inquiries relating to access (subject to the terms of any applicable protective order) to any confidential or highly confidential information submitted by Verizon in support of this Petition should be addressed to:

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

Very truly yours,

Edward Shakin

Edward H. Shakin

Enclosures

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MAR 3 1 2008

Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
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	)))))	WC Docket No. ______

PETITION OF THE VERIZON TELEPHONE COMPANIES FOR FORBEARANCE

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March 31, 2008

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I. INTRODUCTION AND SUMMARY

This forbearance petition[1] seeks – for that portion of the Virginia Beach Metropolitan Statistical Area ("MSA") where Cox is the incumbent cable operator[2] – substantially the same regulatory relief that the Commission granted in the *Omaha Forbearance Order*.[3] Throughout this area, Verizon faces extensive facilities-based competition for mass-market and enterprise customers alike. As demonstrated in this petition and in the accompanying supporting materials, this level of competition meets any possible forbearance standard, including the one recently applied in the *Six MSA Order*.[4]

Cox was one of the first cable companies in the country to deploy cable telephony, and Virginia Beach was among the first of its markets where it offered telephony service. Cox began providing telephony service in Virginia Beach in 1998, and has since upgraded its network to provide telephony services in every rate center in its franchise area.

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[1] The Verizon companies participating in this filing ("Verizon") are Verizon Virginia Inc. and Verizon South Inc.

[2] This portion of the Virginia Beach MSA comprises Verizon's incumbent local service territory in the following counties and independent cities located wholly within the Virginia Beach-Norfolk-Newport News, VA-NC MSA: Virginia Beach City, Norfolk City, Chesapeake City, Newport News City, Hampton City, Portsmouth City, York County, James City County, Gloucester County, Poquoson City, and Williamsburg City. *See* Attach. A.

[3] *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) ("*Omaha Forbearance Order*").

[4] *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, 22 FCC Rcd 21293 (2007) ("*Six MSA Order*").

Cox has been competing aggressively in Virginia Beach for all types of customers and has achieved significant success. That competition, taken together with extensive wireless and other forms of competition, readily satisfies the forbearance standard that the Commission applied in the *Six MSA Order*. Whether the Commission looks at the lines that Verizon has lost or the known share of lines that competitors now serve, the evidence demonstrates that competing providers are now serving **[Begin Confidential]** **[End Confidential]** or more of the residential lines in the Virginia Beach MSA.

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

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

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

II. *THE LEVEL OF COMPETITION IN COX'S SERVICE TERRITORY IN* THE VIRGINIA BEACH MSA SATISFIES THE COMMISSION'S FORBEARANCE CRITERIA FOR BOTH DOMINANT CARRIER AND UNBUNDLING REGULATION

Competition in the portion of the Virginia Beach MSA where Cox is the incumbent cable operator meets both the coverage threshold test the Commission established in the Omaha and Anchorage orders, and the share-of-residential-lines test the Commission applied in the *Six MSA Order*. Cox provides telephony services throughout the entire area for which Verizon is seeking relief, as do multiple competing wireless providers and over-the-top VoIP providers, and both the numbers of lines that Verizon has lost and the known lines that competitors have won demonstrate that competing providers now serve **[Begin Confidential]** **[End Confidential]** or more of the residential lines in this area. *See* Attach. B. The Commission accordingly should grant Verizon substantially the same relief that it granted in the *Omaha Forbearance Order*.[5]

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

As an initial matter, it is consistent with both the Act and Commission precedent to analyze forbearance for the portion of the Virginia Beach MSA for which Verizon seeks relief here. The statute provides that forbearance from applying any regulation to a telecommunications carrier should be determined with respect to "any or some of its or their geographic markets." 47 U.S.C. § 160(a). The portion of the Virginia Beach MSA for which Verizon seeks relief is a reasonable geographic market for purposes of analysis.

The requested relief is limited to the area in the Virginia Beach MSA where Cox is the incumbent cable operator. In prior decisions, the Commission has determined that forbearance is appropriate only in those areas where cable voice services are widely available. *See Omaha Forbearance Order* ¶¶ 28, 69. This petition accordingly is tailored to those areas in the Virginia Beach MSA where this is the case, and responds to concerns that Verizon's prior forbearance petition, for the entire Virginia Beach MSA, was too broad.

The Cox service territory in the Virginia Beach MSA is comprised of 11 contiguous counties and independent cities, which are listed in Attachment A.[6] Given that MSAs themselves are simply a collection of counties and independent cities, it is reasonable to subdivide the MSA along these lines. These 11 counties and independent cities contain approximately 91 percent of the population within the Virginia Beach

[6] An independent city is "[a]n incorporated city that is a primary division of a State and legally not part of any county. The Census Bureau treats an independent city as both a county equivalent and [minor civil division] equivalent for data tabulation purposes." U.S. Census Bureau, *Census Geographic Glossary*, http://www.census.gov/geo/lv4help/cengeoglos.html. "Counties or equivalent entities form the geographic 'building blocks' for metropolitan . . . statistical areas throughout the United States . . . ." U.S. Census Bureau, *About Metropolitan and Micropolitan Statistical Areas*, http://www.census.gov/population/www/estimates/aboutmetro.html.

MSA. *See* Attach. A; Lew/Wimsatt/Garzillo Decl. ¶ 4; U.S. Census Bureau, *Metropolitan and Micropolitan Statistical Area Population and Estimated Components of Change*, http://www.census.gov/population/estimates/metro_general/2006/CBSA-EST2006-alldata.csv.[7]

A. Competition for Mass-Market Customers in Cox's Service Territory in the Virginia Beach MSA

1. Cable Facilities Coverage

In both Omaha and Anchorage, the dispositive factor in granting forbearance from unbundling obligations was the extent to which cable voice services were *available*. In both cases, the Commission adopted a "coverage threshold test" that provided relief in every wire center in which cable voice services could be made available, within a commercially reasonable time, to 75 percent of homes in the wire center. *See Anchorage Forbearance Order*[8] ¶¶ 31-32; *Omaha Forbearance Order* ¶¶ 57, 59-60. For purposes of applying this test, the Commission found that an "intermodal competitor 'covers' a location where it uses its own network, including its own loop facilities, through which it is willing and able, within a commercially reasonable time, to offer the full range of

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[7] With the exception of one small island in Currituck County, North Carolina, these 11 counties and independent cities comprise everywhere in the Virginia Beach MSA where Cox is the incumbent cable operator. Verizon is not seeking relief for Knotts Island in Currituck County because Cox has previously indicated that it does not provide voice service there. *See* Comments of Cox Communications, Inc. at 26, WC Docket No. 06-172 (FCC filed Mar. 5, 2007) ("Cox Six MSA Comments") ("Cox does not even hold a certificate of public convenience and necessity to provide telephone service in North Carolina."). Verizon is not the incumbent local exchange carrier for the rest of Currituck County, North Carolina.

[8] *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, Memorandum Opinion and Order, 22 FCC Rcd 1958 (2007) ("*Anchorage Forbearance Order*").

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services that are substitutes for the incumbent LEC's local service offerings." *Omaha Forbearance Order* ¶ 60 n.156. The Commission found "competition to be sufficient to justify forbearance in wire center service areas where Cox is willing and able within a commercially reasonable time of providing service to [Redacted] percent of the end user locations accessible from that wire center." *Id.* ¶ 69; *see Anchorage Forbearance Order* ¶ 31 (it is "appropriate to grant forbearance relief only in wire center service areas where a competitor has facilities coverage of at least 75 percent of the end user locations accessible from a wire center").

In the *Six MSA Order*, the Commission recognized that "the evidence does show that cable operators have deployed facilities that meet the 75 percent coverage threshold in some wire centers. Thus, future relief from unbundling obligations might be warranted in such wire centers . . . ." *Six MSA Order* ¶ 36. Verizon easily meets the coverage threshold test in Cox's service territory in the Virginia Beach MSA, where Cox has deployed telephony services throughout its footprint. This is true both for Cox's service territory in the MSA as a whole and for each individual rate center within that territory, which, as discussed below, the Commission should analyze instead of wire centers.[9]

Cox's website indicates that it offers telephony services throughout its service territory in the Virginia Beach MSA. Cox lists each of the rate centers in its Virginia Beach service territory among the "areas [that] are serviceable today." Cox, *Cox*

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

Hampton Roads, Digital Telephone FAQ's, http://www.cox.com/hr/help/telephone/faq-phone.asp (visited Mar. 11, 2008); *see* Lew/Wimsatt/Garzillo Decl. ¶ 15 & Exh. 3. Cox's state tariff provides that, "[w]here facilities are available, Cox exchanges are defined by the . . . areas which are equivalent to similarly named [Verizon] Exchanges and Zones," and all 13 rate centers within the Virginia Beach MSA are listed and included within Cox's local calling areas. *See* Cox Virginia Telcom, Inc., VA S.C.C. Tariff No. 1, § 3.1.1, *available at* http://www.cox.com/telephone/statetariffs/virginia/VALocal/VALOC12-08-07PIN.pdf (included in Lew/Wimsatt/Garzillo Decl. Exh. 3). Thus, Cox offers telephone service in each of these rate centers.

Because the evidence above indicates that Cox provides telephony services throughout the entire portion of the Virginia Beach MSA for which Verizon is seeking relief, it is unnecessary to analyze cable facilities coverage at a more granular geographic level. Even if the Commission were to do so, however, it should analyze coverage at the level of 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.[10] Rate centers equally reflect the areas in which competing carriers and Verizon provide local telephone service.

A rate exchange area is the basic building block for the local switching services provided by local carriers. This is typically a specific geographic area drawn around a

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

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single point on a map – that point being the "rate center." *See* Ind. Anal. Div., Comm. Carr. Bur., FCC, *Local Competition* at 41 & n.17 (Dec. 1998) ("Rate exchange areas are geographically defined areas within which calls that originate and terminate (i.e., remain within the area) are considered local calls."). Each telephone number is associated with a unique "rate exchange area." A wire center serving area is the area served by an incumbent phone company's central-office switch. In many areas, there is a one-to-one correlation between phone company switches and rate centers. In more densely populated urban areas, however, a single rate exchange area will more typically represent a tight geographic cluster of switches. The 13 rate centers in Cox's service territory in the Virginia Beach MSA consist of 39 wire centers. *See* Lew/Wimsatt/Garzillo Decl. ¶ 7 n.8.

As noted above, Cox itself delineates its coverage areas by rate center, and in previous filings has stated that it "does not provide service or track customer locations by wire center because Cox's network does not correspond with Verizon's wire centers." Letter from J.G. Harrington, Counsel for Cox Communications, Inc., to Marlene Dortch, Secretary, FCC, Attach. at 1, WC Docket No. 06-172 (Nov. 21, 2007) ("Cox 11/21/07 Six MSA Letter"). Other cable operators have also informed the Commission that they track their coverage by rate center. *See, e.g.*, Letter from K.C. Halm, Counsel for Charter Communications, to Marlene H. Dortch, Secretary, FCC, at 2, WC Docket No. 06-172 (Nov. 6, 2007) ("[F]rom an operational perspective Charter does not provide service or track customer locations, or line counts, using wire center boundary designations.

Instead, Charter generally relies upon rate center boundary designations to track customer locations and similar information.").

2. Competitors' Share of Residential Lines

In the *Omaha Forbearance Order*, the Commission considered competitors' share of residential lines as part of its analysis of whether to forbear from dominant-carrier regulation. This is consistent with the Commission's established practice in previous non-dominance decisions where it examined market share as one of several factors that it considered. *See, e.g., Motion of AT&T Corp. To Be Reclassified As a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271, ¶¶ 67-72 (1995). And, consistent with those prior orders, the Commission made clear both that it was not establishing a bright-line market-share test to obtain relief, and that it was looking at market share only as one of several factors relevant in measuring competition. *See Omaha Forbearance Order* ¶ 17 n.52 ("We are mindful that, when determining whether a carrier has market power in conducting a dominance analysis, the Commission must not limit itself to market share and look to all four factors that the Commission traditionally considers.") (citing *AT&T Corp. v. FCC*, 236 F.3d 729, 736-37 (D.C. Cir. 2001)).[11]

The Commission did not apply a market-share test to its unbundling analysis, however. In both the Omaha and Anchorage orders, the Commission did, in the context

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

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

Despite the fact that the Commission did not apply a market-share test for unbundling relief in either Omaha or Anchorage, the Commission did employ a market share test in the *Six MSA Order*, which Verizon has appealed. To measure share, the Commission adopted a methodology that counted competition from cable, traditional CLECs (including those that rely on Verizon's Wholesale Advantage service and Section 251(c)(4) resale), and wireless "cut the cord" competition. *See Six MSA Order* ¶ 37 & App. B. Applying this methodology to the record then before it, the Commission held that Verizon did not meet the share threshold for any of the six MSAs, including in the Virginia Beach MSA as a whole where Verizon demonstrated that competitive share of residential lines was **[Begin Confidential]** **[End Confidential]** percent. *See id.* ¶¶ 27 & n.91, 37.

Current data demonstrate that the forbearance standard applied by the Commission in the *Six MSA Order* unquestionably is satisfied in Cox's service territory in the Virginia Beach MSA. Indeed, while Verizon obviously does not have access to its competitors' own data on the number of residential customers they serve in this area, more limited data that are available to Verizon demonstrate that competitors' share of

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residential lines is at least ***[Begin Confidential]*** ***[End Confidential]*** percent as of February 2008. Cox alone is serving approximately **[Begin Highly Confidential]** **[End Highly Confidential]** residential lines in its service territory in the Virginia Beach MSA as of February 2008, based on the number of directory listings it has obtained. *See* Lew/Wimsatt/Garzillo Decl. ¶ 17.[12] As described in the Lew/Wimsatt/Garzillo Declaration, the number of residential directory listings a carrier has obtained is an accurate indicator of the number of lines it is serving.[13] *See id.* ¶¶ 18-20; *see also Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, Memorandum Opinion and Order, 22 FCC Rcd 5207, ¶ 17 & n.62 (2007) (relying on Qwest's residential white pages listings to calculate market share). In the case of Verizon's own residential retail customers in Cox's service territory in the Virginia Beach MSA, for example, the number of residential directory listings is within 4 percent of the number of residential switched access lines. The number of directory listings as of February 2008 (excluding those for the former MCI) is approximately **[Begin Confidential]** **[End Confidential]**, while the number of residential retail switched access lines is approximately **[Begin Confidential]** **[End Confidential]**, including approximately **[Begin Confidential]** **[End Confidential]** primary residential lines. *See* Lew/Wimsatt/Garzillo Decl. ¶ 20 & Exh. 5.

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

[13] Directory listings are obtained from the database that supports Verizon's directory assistance and white page directories.

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In addition to competition from cable, Verizon faces extensive competition from wireless providers. Mass-market customers are increasingly using wireless services in place of traditional wireline telephone services. Wireless services are therefore appropriate to include in the forbearance analysis. In the Commission's most recent analysis of the extent of competition between wireless and wireline services, it calculated the number of customers who have cut the cord using the Centers for Disease Control's ("CDC") estimate that, as of December 2006, "12.8% of households exclusively subscribe to a mobile wireless service." *Six MSA Order* App. B & n.2.[14] The Commission noted that "[r]eliance on this government estimate of 'cut the cord' wireless substitution is consistent with the Commission's reliance on such government survey data in prior proceedings." *Id.* App. B n.2. A week after the Commission released the *Six MSA Order*, the CDC released an updated analysis that places the rate of wireless substitution at 13.6 percent, as of the end of June 2007. *See* Stephen J. Blumberg & Julian V. Luke, Div. of Health Interview Statistics, Nat'l Ctr. for Health Statistics, CDC, *Wireless Substitution: Early Release Estimates from the National Health Interview Survey, January-June 2007*, at 2 (Dec. 10, 2007) ("*CDC Wireless Substitution Survey*"). Applying the CDC's updated analysis, there are approximately **[Begin Confidential]**

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

[End Confidential] wireless households in Cox's service territory in the Virginia Beach MSA that have cut the cord. *See* Attach. B.[15]

In addition to cable and wireless substitution, a number of traditional CLECs provide service in Cox's service territory in the Virginia Beach MSA. *See* Lew/Wimsatt/Garzillo Decl. ¶¶ 29-31. The Commission has held that it is appropriate to include in the analysis of market share the number of Verizon residential Wholesale Advantage lines and Verizon resold lines. *See Six MSA Order* ¶ 27 & n.89, App. B. As of the end of December 2007, competitors in Cox's service territory in the Virginia Beach MSA were serving approximately **[Begin Confidential]** **[End Confidential]** residential lines using Wholesale Advantage and approximately **[Begin Confidential]** **[End Confidential]** residential lines using resale. *See* Lew/Wimsatt/Garzillo Decl. ¶ 30 & Exh. 7.

Taken as a whole, the number of cable, cut-the-cord wireless, and Wholesale Advantage and Resale lines in Cox's service territory in the Virginia Beach MSA was more than **[Begin Confidential]** **[End Confidential]** as of February 2008.[16] By comparison, as of February 2008, Verizon (including the former MCI) had obtained approximately **[Begin Confidential]** **[End Confidential]** directory listings for its retail residential customers. *See* Lew/Wimsatt/Garzillo Decl. Exh. 5; Attach. B. Thus, competitors' share of residential lines in Cox's service territory in the Virginia Beach MSA is approximately **[Begin Confidential]** **[End Confidential]** percent. *See* Fig. 1.

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

[16] Some of these data are as of December 2007. *See* Attach. B.

[Begin Confidential]

[End Confidential]

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

Moreover, the nature of wireless competition makes it appropriate to treat Verizon Wireless as distinct from Verizon wireline. Verizon Wireless faces competition from three other national wireless carriers, one or more regional carriers, plus a number of Mobile Virtual Network Operators. *See* Lew/Wimsatt/Garzillo Decl. ¶¶ 21-22; *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, *Twelfth Report*, *WT Docket No. 07-71, FCC 08-28*, ¶¶ 18, 21-23 (rel. Feb. 4, 2008). Verizon Wireless cannot afford not to compete aggressively against these other wireless carriers in order to protect its wireline business; to the contrary, Verizon Wireless is successful precisely because of how aggressively it competes. And the competition that Verizon Wireless provides in wireless affects Verizon's wireline business, just as if Verizon Wireless were an unaffiliated competitor.

In the *Six MSA Order*, the Commission counted Verizon Wireless lines together with Verizon wireline access lines as "Verizon residential local service customers." The Commission reasoned that "a wireline-affiliated [wireless] carrier would have an *incentive* to protect its wireline customer base from intermodal competition." *Six MSA Order* App. B n.6 (internal quotation marks omitted; alteration in original; emphasis added). But even assuming that were true, Verizon would not have the *ability* to do so given the intense competition that Verizon Wireless faces from multiple other unaffiliated wireless carriers. Thus, if the Commission is unwilling to treat Verizon Wireless cut-the-cord customers as equivalent to competitive lines, it should, at the very least, not attribute these customers to Verizon and instead should exclude them from the analysis entirely. Under this approach, competitors have approximately **[Begin Confidential]** **[End Confidential]** percent of the residential lines in Cox's service territory in the Virginia Beach MSA. But even if the Commission were to follow the approach in the *Six MSA Order* and attribute Verizon Wireless customers who have cut the cord to Verizon, competitors' share of residential lines in this area would still be approximately **[Begin Confidential]** **[End Confidential]** or more.

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The approach to calculating competitors' share of residential lines set forth above is conservative for the additional reason that it excludes certain forms of competition that Verizon faces. For example, it excludes competition from over-the-top VoIP services such as Vonage, Skype, and others.[17] In the *Six MSA Order*, the Commission excluded such competition, claiming that "there are no data in the record that justify finding that these providers offer close substitute services." *Six MSA Order* ¶ 23. But that misrepresents the evidence that Verizon submitted in that proceeding and also ignores the current state of facts, which shows that these services are viewed as close substitutes for traditional voice service. Indeed, the Commission itself previously has recognized that "some proportion of mass market consumers may view certain over-the-top VoIP services as substitutes for wireline local service." *Verizon/MCI Merger Order*[18] ¶ 89. There are currently an estimated 2.8 million over-the-top VoIP subscribers nationwide; in Cox's service territory in the Virginia Beach MSA there are at least 20 "over-the-top" VoIP providers that currently offer services with features comparable to Verizon's wireline telephone service, at prices that typically are lower than Verizon's prices, even when the price of the underlying broadband connection needed for VoIP service is taken into account. *See* Lew/Wimsatt/Garzillo Decl. ¶¶ 33-35 & Exh. 2. Although these providers do not operate their own loop and transport networks, the services they offer

[17] It also excludes other forms of actual and potential competition, such as WiFi, WiMax, BPL, e-mail, and Instant Messaging. *See* Lew/Wimsatt/Garzillo Decl. ¶ 32.

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

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

3. Decline in Residential Retail Lines

The decline in Verizon's residential retail lines provides an independent basis to determine that competitors serve **[Begin Confidential]** **[End Confidential]** of the access lines in Cox's service territory in the Virginia Beach MSA and that the requested forbearance is appropriate. In the *Omaha Forbearance Order*, the Commission noted the "growth in Cox's residential access line base and corresponding decline in Qwest's base" as one of the factors in granting forbearance from dominant-carrier regulation. *Omaha Forbearance Order* ¶ 33. In the *Six MSA Order*, the Commission declined to consider this evidence, finding that "[t]here are many possible reasons for such decreases unrelated to the existence of last-mile facilities-based competition." *Six MSA Order* ¶ 32; *see id.* ¶ 39. But, even accounting for the one potential reason the Commission identified (the loss of second lines to DSL) as well as other factors that might cause a decrease in retail lines, the evidence shows that Verizon has lost **[Begin Confidential]** **[End Confidential]** or more of its residential access lines in Cox's service territory in the Virginia Beach MSA.[19]

Between year-end 1999 and year-end 2007, Verizon's residential retail lines in Cox's service territory in the Virginia Beach MSA declined from more than **[Begin Confidential]** **[End Confidential]** to approximately **[Begin Confidential]**

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[19] In the *Six MSA Order*, the Commission also cited concerns that Verizon's data failed to include lines served by MCI. *See Six MSA Order* ¶ 39 n.129. The retail access line data presented here include the former MCI and thereby eliminate this concern. *See* Lew/Wimsatt/Garzillo Decl. ¶ 8 n.9.

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

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The Commission's principal concern with relying on Verizon's residential line loss in the *Six MSA Order* was that it may reflect consumers who "converted a second line used for dial-up Internet access to an incumbent LEC broadband line for Internet access." *Six MSA Order* ¶ 32. It is not appropriate simply to treat second lines lost to DSL as equivalent to a Verizon access line, given that these are very different services and there is intense competition for broadband. Nor is it appropriate to assume that all second lines lost are recovered as a DSL line. But even if the Commission were to do so here, it would not matter; even attributing all lost second lines to Verizon, Verizon still has lost **[Begin Confidential]** **[End Confidential]** or more of its total residential lines. Moreover, this approach undoubtedly overstates the number of second lines that are dropped for DSL. Based on a limited study that Verizon performed in 2007, only about **[Begin Confidential]** **[End Confidential]** percent of customers dropped their second line for DSL, and that number is likely to be even lower today. *See* Lew/Wimsatt/Garzillo Decl. ¶ 8 n.10.

Another possible cause for a decrease in residential lines is population decline. But between 2000 and 2006, the population in Cox's service territory in the Virginia Beach MSA *increased* by 3 percent. *See* Lew/Wimsatt/Garzillo Decl. ¶ 8; U.S. Census Bureau, *Metropolitan and Micropolitan Statistical Area Population and Estimated Components of Change*, http://www.census.gov/population/estimates/metro_general/2006/CBSA-EST2006-alldata.csv. As a result, the absolute decline in Verizon's access lines understates the true extent of competition, as it fails to account for the growth in access lines that Verizon, based on historical trends, would have experienced but for rising competition. Figure 3 below charts Verizon's decline in residential retail access lines in relation to historical access line trends.

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B. Competition for Enterprise Customers in Cox's Service Territory in the Virginia Beach MSA

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

1. Cox's Provision of Service to Enterprise Customers

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

Each of these conclusions applies with equal force with respect to Cox's competition for enterprise customers in Cox's service territory in the Virginia Beach MSA.[20] First, Cox operates a ubiquitous cable network in the portion of the Virginia

[20] In the *Six MSA Order*, the Commission found that forbearance from unbundling regulations was not warranted with respect to enterprise customers, claiming that the "evidence in the record demonstrates the comparatively limited role of the cable operators in serving enterprise customers in these MSAs today." *Six MSA Order* ¶ 37.