

Beach MSA for which Verizon is seeking relief and, therefore, possesses “the necessary facilities to provide enterprise services.” *Omaha Forbearance Order* ¶ 66. In deciding to grant forbearance from unbundling regulations in Omaha, the Commission found the fact that Cox’s existing network did not necessarily reach every individual business location as “not . . . dispositive” in light of the other evidence demonstrating Cox’s incentives and ability to serve these customers. *Id.* ¶ 66 n.174. Thus, the Commission did not impose an independent test requiring that Cox (or Cox plus another competitor) be capable of serving 75 percent of business locations in a particular wire center. *See id.* ¶¶ 66 & n.174, 69. Rather, the Commission granted unbundling relief in a wire center based on Cox’s coverage of *all* “end user locations accessible from that wire center.” *Id.* ¶ 69. In any event, given that Cox provides telephony service throughout its entire service territory in the Virginia Beach MSA and also competes aggressively for enterprise customers throughout this area – including in Virginia Beach, Norfolk, and Newport News, where high-capacity demand is heavily concentrated, *see Lew/Wimsatt/Garzillo Decl. Exh. 9* – it is apparent that Cox has deployed facilities to serve enterprise customers in all locations where enterprise customers are concentrated. Thus, as in Omaha, the

The Commission noted that “[m]ost of the cable operators state that their networks are primarily in residential areas and their provision of services to enterprise customers are still in the initial stages.” *Id.* ¶ 37 n.116. In support of that statement, the Commission referenced statements made in the record by Comcast, Charter, Time Warner Cable, and RCN. *See id.* Tellingly, however, the Commission did not reference or cite any statement by Cox, which did not deny – but instead confirmed – that it was competing aggressively for enterprise customers in the Virginia Beach MSA. *See Cox Six MSA Comments at 27* (providing the number of Cox business voice customers in the Virginia Beach MSA); *Cox 11/21/07 Six MSA Letter, Attach. at 3-5* (providing the number of Cox Commercial Customers, including the number of DS0, DS1, DS3, and OCn or higher customers).

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Commission “must conclude that Cox poses a substantial competitive threat . . . for higher revenue enterprise services.” *Omaha Forbearance Order* ¶ 66.

Second, as in Omaha, Cox has had “strong success in the mass market” in Cox’s service territory in the Virginia Beach MSA and possesses “technical expertise,” “economies of scale and scope,” “sunk investments in network infrastructure,” and “established presence and brand,” all of which the Commission recognized make Cox a competitive threat for enterprise customers. *Id.* Virginia Beach was the first market that Cox Business (then known as Cox Fibernet) entered, in 1993. *See* Lew/Wimsatt/Garzillo Decl. ¶ 43. Cox has been providing phone service in Virginia Beach even longer than it was providing telephone service in Omaha at the time of the Omaha forbearance proceeding. *See* Affidavit of David L. Teitzel at 12 (Exh. A to Qwest Omaha Petition).²¹ As discussed above, Cox has had comparably strong success in the mass market in Virginia Beach as in Omaha, notwithstanding the fact that Verizon has deployed FiOS in Virginia Beach whereas Qwest had made no comparable investment to upgrade its network in Omaha. Cox’s Virginia Beach system also is larger than its Omaha system,²² and therefore has comparable or greater economies of scope and scale.

²¹ Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c), *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 (FCC filed June 21, 2004) (“Qwest Omaha Petition”).

²² Compare Carolyn Shapiro, *Channeling Value*, *Virginian-Pilot*, July 9, 2006, at D1 (reporting approximately 415,000 cable subscribers served by Cox’s Hampton Roads system), with Cox Communications Omaha, Form 325, Physical System ID 008575, Reference Number 184051638, available at <https://fjallfoss.fcc.gov/csb/coals/index.html> (as of 2006, Cox reports serving 224,491 cable subscribers in Omaha and passing 335,421 homes).

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Third, Cox's "current marketing efforts and emerging success in the enterprise market" is at least as advanced in Cox's service territory in the Virginia Beach MSA as in Omaha. *Omaha Forbearance Order* ¶ 66. The evidence shows that "Cox is actively marketing itself to enterprise customers, has succeeded in attracting a large number of significant [Virginia Beach] businesses as customers," and has steadily increased the number of business customers over the past several years. *Id.* Cox's website has a page devoted to providing business services in Virginia Beach. *See Cox Business, Hampton Roads*, http://www.coxbusiness.com/systems/va_hamptonroads/index.html; Lew/Wimsatt/Garzillo Decl. ¶ 43 & Exh. 13. Cox states that it "serves businesses of every size in many locations throughout the Hampton Roads area." *Id.*²³ Cox has won many significant Virginia Beach enterprises as customers in recent years, including the Virginia Beach school system, for which Cox deployed a wide area network to interconnect 57 schools. *See Lew/Wimsatt/Garzillo Decl.* ¶ 45. Cox Business was recently approved by the Government Services Administration ("GSA") for a Schedule 70 program that allows Cox Business "to support GSA, local, state and federal government agencies with a full suite of high-speed Internet and advanced data solutions across Norfolk, Virginia Beach, Chesapeake and the peninsula area."²⁴ In the Six MSA forbearance proceeding, Cox provided the number of business customers it was serving

²³ Cox's Hampton Roads system covers the entire portion of the Virginia Beach MSA for which Verizon is seeking relief, as well as portions of King William, King and Queen, and New Kent Counties in Virginia, and Currituck County in North Carolina. *See Lew/Wimsatt/Garzillo Decl.* ¶ 14 n.17.

²⁴ Cox News Release, *Cox Business Solutions Address Needs of Government Organizations* (Jan. 14, 2008) ("Cox: 1/14/08 News Release").

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in the Virginia Beach MSA. See Cox Six MSA Comments at 27; Cox 11/21/07 Six MSA Letter, Attach. at 3-5.²⁵

Fourth, in addition to the fact that Cox's cable network is capable of reaching many enterprise customers, Cox has also deployed fiber facilities to many enterprise locations. A Cox Business executive remarked that, "[w]ith more than 575,000 fiber optic miles in Hampton Roads, Cox Business provides a perfect solution for government agencies and other businesses requiring reliable networks and diverse routing." Cox 1/14/08 News Release (quoting Mike Braham, vice president, Cox Business Hampton Roads). Cox also claims that "CoxSmart buildings" – commercial real estate properties with full telecommunications capabilities from Cox – "have become the most advanced business-building models in Hampton Roads." Cox Business, *CoxSmart Commercial Building Program*, http://www.coxbusiness.com/pdfs/coxsmart_hrDS_0407.pdf; see Lew/Wimsatt/Garzillo Decl. ¶ 45. Finally, Cox provides wholesale services in Cox's service territory in the Virginia Beach MSA. In the Omaha proceeding, the Commission found that "[t]he record does not reflect any significant alternative sources of wholesale inputs for carriers in this geographic market." *Omaha Forbearance Order* ¶ 67. The Commission nonetheless found that the ILEC's "own wholesale offerings will continue to be adequate" without offerings from other competitors. *Id.* The Commission also noted that it "previously has rejected arguments 'that a fully competitive wholesale market is a mandatory precursor to a finding that section 10(a)(1) is satisfied.'" *Id.* ¶ 71

²⁵ In the Six MSA proceeding, Cox refused to answer the Commission's request for information regarding the number of enterprise locations it was serving and capable of serving with its network, but the Commission should require that Cox provide that information here.

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(quoting *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, Memorandum Opinion and Order, 19 FCC Rcd 21496, ¶ 28 (2004)).

Thus, although it is by no means a requirement that Cox provide wholesale services to satisfy the standards for forbearance, the fact that it does so in its service territory in the Virginia Beach MSA provides further evidence that competition in the MSA is extensive and that these standards are met. According to Cox's website, "Cox Carrier Access service is the ideal solution for secure and reliable connections to your voice and data customers." Cox Business, *Cox Carrier Access*, http://www.coxbusiness.com/pdfs/cox_carrier.pdf. Cox allows carrier customers to "[c]hoose from multiple bandwidths to connect your network to your customer's location, to provide connectivity between your POPs, or to connect you with other serving wire centers." *Id.* Cox offers loop services from DS-1 to OC-192. *See id.*

2. *Additional Sources of Enterprise Competition*

In Omaha, the Commission explained that its decision was based primarily on its "determination that Cox was a substantial competitive threat to Qwest for higher revenue enterprise services" and that evidence regarding additional "competitive deployment in the *Qwest Omaha Forbearance Order* was incidental and supplemental to" its findings regarding cable "and was limited to the deployment of transport rather than last-mile facilities." *Six MSA Order* ¶ 40 n.131.²⁶ In Cox's service territory in the Virginia Beach

²⁶ Because the Commission found that competition from cable did not, standing alone, satisfy the coverage threshold test in the six MSAs as was the case in Omaha and Anchorage, the Commission also looked at whether other sources of competition for enterprise customers met this test. The Commission noted that, "[w]hile Verizon and other parties submitted certain evidence from a commercial data provider regarding competitive LEC lit buildings, the facilities 'coverage' suggested by those data do not

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MSA, as in Omaha, there are other extensive competitive facilities-based networks, as well as many CLECs that provide retail competition in the MSA.

There are a wide variety of competitors serving enterprise customers in Cox's service territory in the Virginia Beach MSA, including traditional telecom carriers such as AT&T, Sprint, Level 3, Cavalier, and PAETEC, as well as managed service providers, systems integrators, and equipment vendors. *See* Lew/Wimsatt/Garzillo Decl. ¶ 42. In the *Verizon/MCI Merger Order*, the Commission found that retail competition for enterprise customers is "strong" and will remain so "because medium and large enterprise customers are sophisticated, high-volume purchasers of communications services that demand high-capacity communications services, and because there [are] a significant number of carriers competing in the market." *Verizon/MCI Merger Order* ¶ 56. The Commission noted that Verizon competes with a long list of competitors, "includ[ing] interexchange carriers, competitive LECs, cable companies, other incumbent LECs, systems integrators, and equipment vendors." *Id.* ¶ 64. The Commission concluded that these "myriad providers are prepared to make competitive offers" and that they therefore "ensure that there is sufficient competition." *Id.* ¶ 74. These facts all remain true today, both as a general matter and with respect to Cox's service territory in the Virginia Beach MSA.

approach the 75 percent threshold relied upon by the Commission in the past." *Six MSA Order* ¶ 37. The Commission made clear that it was evaluating these data only because enterprise competition from cable alone was inadequate, and was not "adopt[ing] a different approach" from the "75% threshold relied upon in the context of cable facilities deployment in prior orders." *Id.* ¶ 37 n.118.

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A number of competitors in Cox's service territory in the Virginia Beach MSA are using their own or other alternative facilities to serve enterprise customers. According to GeoTel, a leading provider of telecommunications facilities information, there are at least two known competing providers that operate fiber networks within Cox's service territory in the Virginia Beach MSA, and those networks span at least [Begin Confidential] [End Confidential] route miles. See Lew/Wimsatt/Garzillo Decl. ¶ 10.²⁷ GeoTel's data do not include Cox or AT&T, which are two of the largest providers of competitive fiber in Virginia Beach. See *id.* In the *Six MSA Order*, the Commission found that Verizon's data on competitive fiber "combine competitive deployment in those wire centers where the triggers [for UNE relief] have already been satisfied with those wire centers that do not meet the triggers." *Six MSA Order* ¶ 40. That same concern is not warranted here, because Verizon has not obtained full relief from its unbundling obligations in *any* of the wire centers in Cox's service territory in the Virginia Beach MSA.

Fixed wireless also is now capable of providing enterprise customers with an alternative way to obtain access to voice and data services, and it enables other carriers to

²⁷ As GeoTel itself recognizes, its information regarding CLEC fiber routes, while extensive, is not comprehensive. GeoTel continually works to update its databases, and it provides Verizon with updates approximately every six months. Each of these updates contains new information. Moreover, GeoTel does not have complete data for every CLEC. During the course of the Verizon/MCI merger, for example, Verizon received other confidential sources of data that showed additional CLEC fiber beyond what is contained in the GeoTel data. Thus, there is reason to believe that the GeoTel information understates, perhaps significantly, the extent to which CLECs have self-provisioned high-capacity transport facilities. See Lew/Wimsatt/Garzillo Decl. ¶ 10.

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extend their existing networks quickly and efficiently.²⁸ At least three major fixed wireless providers – AccessNet, Atrius Technologies, and NET Telcos – already provide service in Cox’s service territory in the Virginia Beach MSA. *See* Lew/Wimsatt/Garzillo Decl. ¶¶ 56-58. AccessNet provides “symmetrical, broadband wireless access services from 256 Kbps to 1 Gig,” and its “wireless point to multi-point wireless network effectively bypasses the [LEC] wireline infrastructure” and is “[b]acked by [AccessNet’s] fiber optic network.”²⁹ AccessNet’s offerings range from “broadband wireless Internet access solutions [that] are perfect for moderate to light corporate users with generally under 40 workstations,” to “carrier class” service “targeted at bandwidth hungry enterprises that require more robust amounts of bandwidth for mission critical applications.”³⁰ Atrius Technologies claims that it “owns and operates one of the largest privately owned Data Networks in the Hampton Roads Virginia area.”³¹ Atrius is “aggressively building out its BroadNet Metropolitan Fiber Optic and Fixed Wireless Networks in Hampton Roads and is able to leverage an unprecedented economy of scale to offer very high speed Data and Internet connections up to 1 GB over a[n] extremely

²⁸ *See Appropriate Regulatory Treatment for Broadband Access to the Internet over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, ¶ 14 (2007) (fixed wireless networks “typically have a reach of one to five miles” and merely require that customers “have a rooftop antenna that can establish a line-of-sight connection with the network transmitter”); *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, ¶ 48 (2007) (“fixed wireless offers the potential of being a cost-effective substitute for fiber as a last-mile connection to commercial buildings”).

²⁹ AccessNet, *AccessNet Wireless*, <http://www.accessnet.com/services/wireless.htm>.

³⁰ *Id.*

³¹ Atrius Technologies Weblog, *Atrius Launches the SmartBuilding Network* (Aug. 10, 2006), <http://blog.pinn.net/>.

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secure private network.”³² NET Telcos (formerly known as Continental VisiNet Broadband) claims that it “currently operates Virginia’s largest broadband wireless network,” and in 2007 the company began providing “integrated internet, data and datacenter solutions for businesses . . . in the Hampton Roads market.”³³ NET Telcos’ offering includes “custom designed data network solutions and data center services aimed at mid-sized businesses and institutions.”³⁴ NET Telcos has a “portfolio of over 300 Wireless Links managed in the Hampton Roads market.”³⁵

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

³² *Id.*

³³ NET Telcos Press Release, *Business-Class Products Now Available Across Virginia* (Jan. 15, 2007).

³⁴ *Id.*

³⁵ NET Telcos Press Release, *Continental VisiNet Broadband/NET Telcos Enables Waterside Festival Marketplace with WiFi in Preparation for Sail Virginia Tourists and Sailors* (Feb. 27, 2007) (quoting NET Telcos regional manager Danny Cullen).

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nondiscriminatory under section 10(a)(1).” *Id.*³⁶ In the *Six MSA Order*, the Commission affirmed its conclusion that competitive use of special access is relevant in the forbearance analysis, but found that it “cannot readily determine the extent to which these wholesale inputs are used to compete for local exchange services, interexchange services, or mobile wireless services.” *Six MSA Order* ¶ 38.

Based on Verizon’s wholesale billing records from December 2007, competitors *other than wireless carriers* are using Verizon’s special access services to serve business customers in [Begin Confidential] [End Confidential] percent of wire centers in Cox’s service territory in the Virginia Beach MSA in which Verizon serves switched business lines. *See* Lew/Wimsatt/Garzillo Decl. ¶ 40. These competitors were serving approximately [Begin Confidential] [End Confidential] voice-grade-equivalent lines using DS3s and more than [Begin Confidential] [End Confidential] voice-grade-equivalent lines using DS1s, with special access service obtained from Verizon. *See id.*

3. *Decrease in Verizon’s Business Switched Access Lines*

As noted above, the Commission did not conduct any independent market-share test with respect to enterprise customers in Omaha and Anchorage. Indeed, the Commission did not even have the data to perform a market-share calculation for these customers. Nonetheless, the data here show that competing carriers are serving a

³⁶ The forbearance that Verizon seeks here will not eliminate Verizon’s obligations under Sections 201 and 202 to provide traditional TDM technology on just, reasonable, and nondiscriminatory terms.

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significant percentage of switched business access lines in the Virginia Beach MSA, which provides additional evidence that forbearance is warranted.

Verizon's switched business access lines have declined significantly in Cox's service territory in the Virginia Beach MSA. Between year-end 1999 and year-end 2007, Verizon's retail switched business lines in Cox's service territory in the Virginia Beach MSA (including those lines served by the former MCI but excluding payphone lines) have declined from approximately [Begin Confidential] [End Confidential] to approximately [Begin Confidential] [End Confidential], a decrease of approximately [Begin Confidential] [End Confidential] percent. *See* Lew/Wimsatt/Garzillo Decl. ¶ 12.³⁷

III. EACH OF THE STATUTORY CRITERIA FOR FORBEARANCE IS SATISFIED

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

³⁷ In the *Six MSA Order*, the Commission cited concerns that Verizon's data failed to include lines served by MCI. *See Six MSA Order* ¶ 39 n.129. The retail access line data presented here include MCI and thereby eliminate this concern. *See* Lew/Wimsatt/Garzillo Decl. ¶ 12 n.13.

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As demonstrated above, competition in Cox's service territory in the Virginia Beach MSA is even more advanced than in Omaha. Cable voice services in Cox's service territory in the Virginia Beach MSA are just as widely available as they were in Omaha, and other types of competition are even more widespread. In light of this competition, it is clear that the market is suitable for competitive supply and that TELRIC rates are not necessary to ensure just and reasonable prices, 47 U.S.C. § 160(a)(1), and, in fact, perpetuate rates well below those that carriers would agree to through arms-length negotiation.³⁸ Likewise, continuing to impose UNE obligations in the face of vibrant competition is not only unnecessary, but harms consumers – rather than “protect[s]” them, *id.* § 160(a)(2) – because it discourages investment in, and deployment of, innovative products and services. The purpose of this criterion is to protect retail consumers, not to guarantee that competitors can purchase wholesale inputs at artificially low, regulated prices. When an ILEC faces capable intermodal competitors in a

³⁸ The Commission reached exactly that conclusion in the context of 47 U.S.C. § 271, when it rejected claims that TELRIC rates should apply to elements provided only to satisfy Section 271. *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 663 (2003) (“TRO”); *see also United States Telecom Ass’n v. FCC*, 359 F.3d 554, 589 (D.C. Cir. 2004) (“USTA II”) (affirming the Commission’s conclusion because there is “no serious [textual] argument” that the pricing standard in Section 252(d)(1) applies to Section 271 elements and there is “nothing unreasonable in the Commission’s decision to confine TELRIC pricing to instances where it has found impairment”). Instead, the Commission has said that, for Section 271 elements, “the market price should prevail, as opposed to a regulated rate.” *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, ¶ 473 (1999); *see also TRO* ¶ 664 (a BOC may satisfy the “just” and “reasonable” standard for Section 271 elements by “showing that it has entered into arms-length agreements with other, similarly situated purchasing carriers to provide the element at that rate”).

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particular market, continuing to impose UNE regulations simply places the ILEC at a competitive disadvantage vis-à-vis those intermodal competitors (which need not share their facilities at artificially low rates), with no cognizable benefits to offset the significant social costs. Although such a regime benefits CLEC competitors, it does not promote competition; indeed, it retards the type of facilities-based competition that the Act seeks to foster. See *USTA II*, 359 F.3d at 582 (in light of “competition from cable providers,” consumers “will still have the benefits of competition” – which is the goal of the 1996 Act – “even if *all CLECs* were driven from the broadband market”) (emphasis added).³⁹

For many of the same reasons, eliminating unbundling obligations is in the public interest. See 47 U.S.C. § 160(a)(3). As the Commission found in Omaha, the costs of the unbundling obligations that Verizon faces in the Virginia Beach MSA outweigh the benefits. See *Omaha Forbearance Order* ¶ 76. Given the extensive facilities-based competition that already exists in Cox’s service territory in the Virginia Beach MSA, and the potential for even greater facilities-based competition to emerge, any potential benefits from unbundling regulation are slim, while the costs of such regulatory intervention are significant. See *id.* ¶ 77. Forbearance will give both Verizon and other facilities-based competitors greater incentives to continue to invest in facilities, which will ensure the continued growth of long-lasting facilities-based competition.

³⁹ See also *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977) (government regulation of the marketplace is “for the protection of *competition*, not *competitors*”) (internal quotation marks omitted); *Marrese v. American Acad. of Orthopaedic Surgeons*, 706 F.2d 1488, 1497 (7th Cir. 1983) (Posner, J.) (“policy of competition is designed for the ultimate benefit of consumers rather than of individual competitors”), *rev’d on other grounds*, 470 U.S. 373 (1985).

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Eliminating unbundling regulation also will “further the public interest by increasing regulatory parity” between telecommunications providers in the Virginia Beach MSA. *Id.* ¶ 78; *see id.* ¶ 49. Asymmetrical regulation imposes artificial price constraints that delay and impede full and fair competition among providers and harms consumers.⁴⁰

Eliminating dominant-carrier regulations that apply to interstate switched access services also is consistent with the public interest where vigorous local competition has emerged. *See Omaha Forbearance Order* ¶ 47. As the Commission stated, “[i]n these environments that are competitive for end users, applying these dominant carrier regulations to [Verizon] limits its ability to respond to competitive forces and, therefore, its ability quickly to offer consumers new pricing plans or service packages.” *Id.* The Commission has similarly recognized in other contexts that certain “regulations associated with dominant carrier classification can also have undesirable effects on competition.”⁴¹ For example, the Commission has recognized that tariffing requirements “impose significant administrative burdens on the Commission and the [BOCs],” and “adversely affect competition.” *LEC Classification Order* ¶ 89. For these reasons, dominant-carrier regulation of the switched access market is not only unnecessary to ensure just, reasonable, and nondiscriminatory rates and to protect consumers, but it would be affirmatively detrimental to competition and harmful to the public interest.

⁴⁰ *See, e.g., Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶¶ 45, 71, 79 & n.241 (2005).

⁴¹ *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, ¶ 90 (1997) (“*LEC Classification Order*”).

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

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

In the *Triennial Review Remand Order*,⁴² the Commission had determined that cable had not yet blossomed into a full substitute for local exchange and exchange access on a widespread basis, but recognized that cable companies might develop into facilities-based local exchange competitors in the future and invited parties to file forbearance petitions in any areas where that occurred. *See TRRO* ¶ 39 (“[I]ncumbent LECs remain free to seek forbearance from the application of our unbundling rules in specific geographic markets where they believe the . . . requirements for forbearance have been met.”); *see also Omaha Forbearance Order* ¶ 63 & n.164. Having identified individual forbearance petitions as the vehicle through which the Commission would address the impairment issue going forward, the Commission cannot require continued unbundling in such proceedings where the statutory impairment standard is not met. Here, where the evidence demonstrates that competitive facilities-based alternatives are ubiquitous and that competitors serve [Begin Confidential] [End Confidential] or more of the relevant market, there can be no serious dispute about impairment – there plainly is none – and it makes no sense to impose a continuing unbundling requirement on only one of several competitors.

⁴² *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533 (2005) (“*Triennial Review Remand Order*” or “*TRRO*”).

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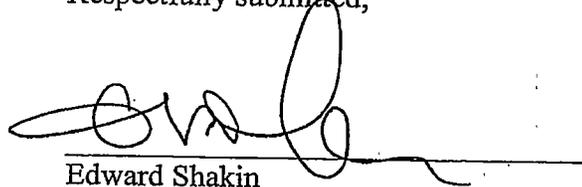
Circuit held that line-sharing could not be required in light of the fact that competing carriers were serving at least half of all broadband connections. *See USTA I*, 290 F.3d at 428-29. The same conclusion accordingly is warranted here given that competing providers serve [Begin Confidential] [End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

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V. CONCLUSION

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

Respectfully submitted,



Edward Shakin
Sherry Ingram
Verizon
1515 North Court House Road
Suite 500
Arlington, Virginia 22201
(703) 351-3065

Michael E. Glover
Of Counsel

Evan T. Leo
Kellogg, Huber, Hansen, Todd,
Evans & Figel, P.L.L.C.
1615 M Street, NW
Suite 400
Washington, DC 20036
(202) 326-7930

Attorneys for Verizon

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ATTACHMENT A**VIRGINIA BEACH-NORFOLK-NEWPORT NEWS, VA-NC MSA**

	Population (2006)	Housing Units (2006)
As Defined by the Office of Management and Budget (OMB)	1,649,457	677,014

AREAS FOR WHICH VERIZON IS SEEKING RELIEF

County	Population (2006)	Housing Units (2006)
Virginia Beach city, VA	435,619	173,307
Norfolk city, VA	229,112	97,240
Chesapeake city, VA	220,560	81,252
Newport News city, VA	178,281	77,954
Hampton city, VA	145,017	59,579
Portsmouth city, VA	101,377	42,675
York County, VA	61,879	24,221
James City County, VA	59,741	26,949
Gloucester County, VA	38,293	15,924
Poquoson city, VA	11,918	4,631
Williamsburg city, VA	11,793	4,598
Total	1,493,590	608,330

AREAS FOR WHICH VERIZON IS NOT SEEKING RELIEF

County	Population (2006)	Housing Units (2006)
Suffolk city, VA	81,071	31,573
Isle of Wight County, VA	34,723	14,162
Currituck County, NC	23,770	13,559
Mathews County, VA	9,184	5,717
Surry County, VA	7,119	3,673
Total	155,867	68,684

Sources:

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-aildata.csv.

U.S. Census Bureau, *County-Level Housing Unit Datasets*,
<http://www.census.gov/popest/housing/files/HU-EST2006-51.CSV> (VA) &
<http://www.census.gov/popest/housing/files/HU-EST2006-51.CSV> (NC).

RATE CENTERS**RATE CENTERS IN AREAS FOR WHICH VERIZON IS SEEKING RELIEF**

State	Rate Center
VA	GLOUCESTER
VA	HAYES
VA	NRFOLKZON1
VA	NRFOLKZON2
VA	NRFOLKZON3
VA	NRFOLKZON4
VA	NRFOLKZON6
VA	NWPTNWSZN1
VA	NWPTNWSZN2
VA	NWPTNWSZN3
VA	NWPTNWSZN4
VA	TOANO
VA	WILLIAMSBG

RATE CENTERS IN AREAS FOR WHICH VERIZON IS NOT SEEKING RELIEF

State	Rate Center
NC	KNOTTS IS
VA	CHUCKATUCK
VA	CLAREMONT
VA	CRITTENDEN
VA	DENDRON
VA	HOLLAND
VA	MATHEWS
VA	SMITHFIELD
VA	SUFFOLK
VA	SURRY
VA	WHALEYVL
VA	WINDSOR

WIRE CENTERS

WIRE CENTERS IN AREAS FOR WHICH VERIZON IS SEEKING RELIEF

State	CLLI	Wire Center Name
VA	CHSKVACD	CHURCHLAND VA
VA	CHSKVADC	DEEP CREEK VA
VA	CHSKVAGU	GUERRIERE VA
VA	GLCSVAXA	GLOUCESTER
VA	GRBRVAXA	GREAT BRIDGE
VA	GRBRVAXB	BATTLEFIELD
VA	HAYSVAXA	HAYES
VA	HCKRVAXA	HICKORY
VA	HMPNVAAB	ABERDEEN VA
VA	HMPNVADC	DRUMMONDS VA
VA	HMPNVAQN	QUEEN STREET VA
VA	HMPNVAWD	WOODLAND VA
VA	NRFLVABL	BRICKELL VA
VA	NRFLVABS	BUTE VA
VA	NRFLVAGS	GRANBY STREET VA
VA	NRFLVAOD	OLD DOMINION UNIV VA
VA	NRFLVAOV	OCEAN VIEW VA
VA	NRFLVASP	SEWELLS POINT VA
VA	NRFLVAWC	WEST LITTLE CREEK VA
VA	NWNWVAHU	HUNTINGTON VA
VA	NWNWVAHV	HARPERSVILLE VA
VA	NWNWVAJF	JEFFERSON VA
VA	NWNWVAND	NETTLES DRIVE VA
VA	NWNWVAYK	YORKTOWN VA
VA	PRANVAXA	PRINCESS ANNE
VA	PRANVAXB	SHIPPS CORNER
VA	PTMOVAHF	HODGES FERRY VA
VA	PTMOVAHS	HIGH STREET VA
VA	PUNGVAXA	PUNGO
VA	TOANVATO	TOANO VA
VA	VRBHVACC	CHINESE CORNER VA
VA	VRBHVACT	CENTERVILLE TNP. VA
VA	VRBHVAGN	GREAT NECK VA
VA	VRBHVAIL	INDIAN LAKES VA
VA	VRBHVAIR	INDIAN RIVER VA
VA	VRBHVAPT	PLAZA TRAIL VA
VA	VRBHVARC	ROBBINS CORNER VA
VA	VRBHVASR	SALEM ROAD VA
VA	VRBHVAVB	VIRGINIA BEACH (32ND) VA
VA	WLBGVAWM	WILLIAMSBURG VA

WIRE CENTERS IN AREAS FOR WHICH VERIZON IS NOT SEEKING RELIEF

State	CLLI	Wire Center Name
NC	KNISNCXA	KNOTTS ISLAND
VA	CHKTVAXA	CHUCKATUCK
VA	CLMTVAXA	CLAREMONT
VA	CRFDVAXA	CRITTENDEN
VA	DNDRVAXA	DENDRON
VA	DRVRVADR	DRIVER VA
VA	HLLDVAXA	HOLLAND
VA	MTHWVAXA	MATHEWS
VA	SFFLVASK	SUFFOLK VA
VA	SMFDVAXA	SMITHFIELD
VA	SRFYVAXA	SURRY
VA	WHFLVAVH	WHALEYVILLE VA
VA	WNSVAXA	WINDSOR

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

In the Matter of)
)
Petition of the Verizon Telephone) WC Docket No. _____
Companies for Forbearance Pursuant to)
47 U.S.C. § 160(c) in Cox's Service Territory)
in the Virginia Beach Metropolitan Statistical)
Area)

**DECLARATION OF QUINTIN LEW, JOHN WIMSATT, AND PATRICK GARZILLO
REGARDING COMPETITION IN COX'S SERVICE TERRITORY IN THE
VIRGINIA BEACH METROPOLITAN STATISTICAL AREA**

I. INTRODUCTION AND SUMMARY

1. My name is Quintin Lew. My business address is One Verizon Way, Basking Ridge, NJ 07920. I am Senior Vice President – Marketing and Sales in the Verizon Partner Solutions Group (formerly known as Wholesale Markets) and have worked in this organization for over 4 years. In this capacity, I am responsible for competitive and market analysis as well as the product management and marketing of our Special Access Products. I have over 21 years with Verizon or its predecessors in most areas of marketing, strategic planning, and business development. In this capacity, I have information and knowledge relating to the sources of data described specifically in paragraphs 4-5, 9-12, 30-31, 36-39, and 41-62 of this declaration.

2. My name is John Wimsatt. My business address is One Verizon Way, VC21W423, Basking Ridge, New Jersey 07920. I am Senior Vice President – Product Marketing, and have worked for Verizon or its predecessors for more than 19 years. I am responsible for driving growth in DSL, FiOS TV, and FiOS Internet. My responsibilities also include marketing communications and marketing research. I coordinate marketing strategy and implementation with the Regional Marketing organization and lead the Verizon Enhanced

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Communities team. In this capacity, I have information and knowledge relating to the sources of data described specifically in paragraphs 4-8, 13-16, 18, and 21-35 of this declaration.

3. My name is Patrick Garzillo. My business address is One Verizon Way, Basking Ridge, New Jersey 07920-1097. I am Vice President – Finance, Service Costs and Analysis for Verizon, and I have more than 35 years of experience with Verizon and its predecessor companies. My current responsibilities include managing and supervising the development, preparation and analysis of economic cost information, embedded costs of regulated and non-regulated services, separated costs, supporting data, cost analysis, and Universal Service Fund related issues. I also support the development of key marketing strategies, regulatory policies, and legislative positions for Verizon through financial analysis associated with a broad array of state and federal regulatory issues. In this capacity, I have information and knowledge relating to the sources of data described specifically in paragraphs 4-12, 15, 17-20, 30, 39-41, 47-53, and 63-70 of this declaration.

4. The purpose of this declaration is to demonstrate that there is extensive competition for telecommunications services in Cox's service territory in the Virginia Beach-Norfolk-Newport News, VA-NC metropolitan statistical area ("Virginia Beach MSA"), based on the framework the Commission applied in the *Omaha*,¹ *Anchorage*,² and *Six MSA* orders.³ Our

¹ *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*").

² *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*").

³ *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*

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declaration focuses on the portion of the Virginia Beach MSA in which Cox is the incumbent cable operator. This portion of the MSA comprises Verizon's incumbent local service territory in the following counties and independent cities located wholly within the Virginia Beach 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. These 11 counties and independent cities are contiguous and contain approximately 91 percent of the population within the MSA.⁴

5. Our declaration and accompanying exhibits contain information collected from publicly available sources and internal Verizon databases. We have identified the sources of all publicly available information on which we rely. We also supervised the collection of data from Verizon's internal databases. Our declaration and exhibits accurately reflect the data contained in those databases. A summary of the data is set forth below.

6. According to U.S. Census Bureau data, there are approximately 608,000 homes and approximately 1.5 million people in Cox's service territory in the Virginia Beach MSA.⁵ As of the end of December 2007, Verizon was providing service to more than [BEGIN

Statistical Areas, Memorandum Opinion and Order, 22 FCC Rcd 21293 (2007) ("Six MSA Order").

⁴ See 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 ("Census Population Data") (2006 estimates). They represent approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent of Verizon's retail switched access lines within the MSA, including approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent of its retail residential lines and approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent of its retail business lines (including data for the former MCI).

⁵ U.S. Census Bureau, *County-Level Housing Unit Datasets*, <http://www.census.gov/popest/housing/files/HU-EST2006-51.CSV> ("Census Housing Data") (2006 estimates); *Census Population Data* (2006 estimate).

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CONFIDENTIAL] **[END CONFIDENTIAL]** switched access lines in Cox's service territory in the Virginia Beach MSA – approximately **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** residential lines (including more than **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** primary lines), and more than **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** business lines.⁶ These totals include residential and business lines served by the former MCI.

7. Verizon is seeking forbearance only in those portions of the Virginia MSA where Cox provides service.⁷ The company offers mass-market voice and broadband services throughout its service territory in the MSA. Verizon's data show that Cox is providing mass-market voice service to customers in **[BEGIN HIGHLY CONFIDENTIAL]**

[END CONFIDENTIAL].⁸

8. Competitive wireless services and over-the-top voice services also are available throughout the portion of the MSA for which Verizon seeks relief, and there are also traditional CLECs that serve mass-market customers. As a result of this competition, Verizon's retail residential switched access lines in Cox's service territory in the Virginia Beach MSA have

⁶ These and other Verizon access line data cited throughout this declaration are based on voice-grade equivalent lines.

⁷ Cox is the incumbent cable franchisee for the entire population in the 11 counties and independent cities for which Verizon seeks relief, with the exception of the Naval Security Group Activity Northwest Quarter premises in Chesapeake City, where Mediacom is the incumbent cable franchisee. See Media Bureau, FCC, *All Cable Communities Registered with the FCC*, <http://www.fcc.gov/mb/vax/registeredcuid.xls> ("FCC Cable Franchise Data") (cable franchises).

⁸ Verizon (including the former MCI) serves more than **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** retail residential and approximately **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** retail business switched access lines in the areas for which Verizon is not seeking relief. Excluding these areas, Verizon serves 13 rate centers and 39 wire centers in the Virginia Beach MSA.

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