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May 12, 2008

Via Hand Delivery

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FILED/ACCEPTED
MAY 12 2008
Federal Communications Commission
Office of the Secretary

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

Dear Ms. Dortch:

On behalf of Verizon, attached are the Reply Comments of Verizon and supporting material for filing in the above-captioned proceeding (“Reply”). These Reply Comments and supporting material contain Confidential and Highly Confidential Information. Confidential Information has been marked “CONFIDENTIAL – SUBJECT TO FIRST PROTECTIVE ORDER” in accordance with the First Protective Order in this proceeding.¹ Highly Confidential Information has been marked “HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 08-24 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION” in accordance with the Second Protective Order in this proceeding.²

¹ *Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160(c) in Rhode Island*, First Protective Order ¶ 5, WC Docket No. 08-24, DA 08-470 (rel. Feb. 27, 2008) (“First Protective Order”).

² *Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160(c) in Rhode Island*, Second Protective Order ¶ 14, WC Docket No. 08-24, DA 08-471 (rel. Feb. 27, 2008) (“Second Protective Order”).

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In accordance with the Public Notice³ and the Second Protective Order,⁴ we are providing:

- a. One original and six copies of the Redacted Reply (in paper form), and
- b. One original of the Highly Confidential Reply (in paper form).

Verizon is delivering under separate cover:

- a. Two copies of the Highly Confidential Reply (in paper form) to Gary Remondino;
- b. One copy of the Highly Confidential Reply (in electronic form) to Tim Stelzig and Denise Coca;
- c. One copy of the Redacted Reply (in electronic form) to the Competition Policy Division; and
- d. One copy of the Redacted Reply (in electronic form) to Best Copy and Printing, Inc.

All inquiries relating to access (subject to the terms of the applicable protective orders) to any confidential information submitted in this Reply should be addressed to:

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

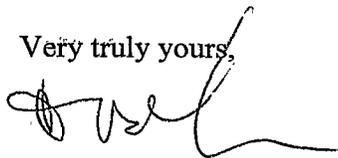
Thank you for your assistance in this matter. Please contact me at 202-326-7930 if you have any questions regarding this filing.

³ FCC Public Notice, *Pleading Cycle Established for Comments on Motion To Dismiss or Deny Verizon Rhode Island Petition for Forbearance*, WC Docket No. 08-24, DA 08-651, at 2 (Mar. 21, 2008).

⁴ Second Protective Order ¶ 14.

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Very truly yours,



Evan T. Leo

Attachment

cc: Competition Policy Division, Wireline Competition Bureau
Best Copy and Printing, Inc.
Gary Remondino (Highly Confidential version)
Tim Stelzig (Highly Confidential version)
Denise Coca (Highly Confidential version)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

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I. INTRODUCTION AND SUMMARY

The Commission should grant Verizon's forbearance petition for the state of Rhode Island. The level of competition in Rhode Island meets both the coverage threshold test the Commission established in the Omaha and Anchorage orders, and the new share-of-residential-lines test the Commission applied in the *Six MSA Order*.¹ By the Commission's own measure, Verizon now serves fewer than **[Begin Confidential]** **[End Confidential]** of the residential access lines in the state. Accordingly, the requested relief should be granted.

The commenters do not seriously dispute that Verizon meets the Commission's coverage threshold and share-of-residential-lines tests. The commenters instead argue that the Commission should impose more demanding criteria than it has used in the past. For example, the commenters rehash claims that the Commission should not place significant or any weight on competition from cable or wireless. But this Commission and the D.C. Circuit have repeatedly rejected such arguments and the commenters provide no basis for taking a different approach here. Moreover, it would be irrational to wholly ignore wireless competition, particularly given the large and increasing number of consumers who use wireless instead of any wireline service.

The commenters also complain about the geographic areas for which Verizon seeks relief. Consistent with the Commission's prior forbearance decisions, Verizon's

¹ *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*").

petition seeks relief for the area defined by Cox's contiguous cable franchise territory, which in this case covers the state of Rhode Island. Verizon's petition demonstrates that within that area it is appropriate to analyze competition on a rate-center basis, rather than on a wire-center or MSA basis. As Verizon explained, rate centers equally reflect the areas in which competing carriers and Verizon provide local telephone service, and Cox and other cable operators internally track their coverage by rate center. There is accordingly no basis to the commenters' claim that it would be more appropriate to use an MSA or wire-center analysis to decide this petition.

II. VERIZON'S PETITION MEETS BOTH THE COVERAGE THRESHOLD AND SHARE-OF-RESIDENTIAL-LINES TESTS

Verizon 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*. Although the commenters quibble with a few aspects of Verizon's showing, their claims are misplaced.

A. Coverage Threshold Test

Verizon's petition demonstrates that Verizon meets the Commission's "coverage threshold test" in Rhode Island, which provides relief in every wire center where cable voice services could be made available, within a commercially reasonable time, to 75 percent of homes in the wire center. See R.I. Pet'n at 4-9; *Anchorage Forbearance Order*² ¶¶ 31-32; *Omaha Forbearance Order*³ ¶¶ 57, 59-60. Verizon provided evidence

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*

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of Cox's public statements, including sworn testimony to state regulators, that Cox provides telephone services across "the entire state" and "statewide" in Rhode Island. *See* R.I. Pet'n at 6-8 & Attach. B. Verizon also explained that, because the evidence indicates that Cox provides telephony services throughout the state of Rhode Island, it is unnecessary to analyze cable facilities coverage at a more granular geographic level, but that even if the Commission were to do so it should analyze coverage at the level of individual rate exchange areas (or rate centers), rather than at the wire center serving area level. *See id.* at 7-8.

Cox does not dispute the accuracy of any of its prior statements that it provides voice coverage throughout Rhode Island.⁴ Although Cox claims (at 3) that data it previously supplied in the Six MSA proceeding show that **[Begin Confidential]**

[End Confidential] it does not claim, much less prove, that this is still the case based on *current* data. Cox's failure to provide probative evidence in its possession strongly suggests that the data are unfavorable, and Cox's failure to produce the data should be

Anchorage Study Area, Memorandum Opinion and Order, 22 FCC Rcd 1958 (2007) ("*Anchorage Forbearance Order*").

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 There is no basis to Access Point *et al.*'s claim (at 16-17) that Cox's public statements, including its sworn affidavits to regulators and Cox's website are too "vague" and "circumstantial." If true, Cox's statements are dispositive. And Access Point *et al.* fails to provide any basis or evidence to suggest that Cox was anything less than truthful in making those statements.

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construed against it. *See International Union, UAW v. NLRB*, 459 F.2d 1329, 1336 (D.C. Cir. 1972) (party's failure to produce "relevant evidence within [their] control" "gives rise to an inference that the evidence is unfavorable to [them]."). In any event, the Commission should require Cox to provide immediately current data regarding its voice coverage in Rhode Island. *See also Covad et al.* at 39 ("The Commenters cannot address the competitive impact of Cox's presence in a comprehensive manner until Cox supplies additional data.").

Several commenters complain that Verizon has failed to provide cable coverage data on a more granular basis, such as the wire-center level. *See Access Point et al.* at 16-17; *One Communications et al.* at 33; *Covad et al.* at 29-30. There is no basis to these claims. As an initial matter, the evidence shows that voice service is already available throughout Rhode Island, so there is no need for a more granular analysis. The Commission has held that where competition is fairly uniform across a given geographic area, it is unnecessary to conduct a more granular geographic analysis.⁵

Additionally, as Verizon previously explained, rate centers equally reflect the areas in which competing carriers and Verizon provide local telephone service. *See R.I. Pet'n* at 7-8. Verizon also explained that Cox and other cable operators internally track

⁵ *See, e.g., 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, ¶¶ 66-67 (1997) (holding that because competitive choices for interexchange service are fairly uniform nationwide, the interexchange market should be analyzed as national in scope); *Motion of AT&T Corp. To Be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271, ¶ 22 (1995).

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their coverage by rate center. *See id.* at 8-9. One Communications *et al.* concede (at 14) that “Cox advertises its service on a rate center basis,” but argue (at 13) that rate center data can be converted to wire centers. But the mere fact that data can be converted to a different geographic area – which incidentally is not a precise process – does not justify imposing such a requirement. It is far more sensible to use a geographic framework that actually reflects the areas that providers use in the ordinary course of business.

In any event, Verizon supplied with its petition data showing that, based on Cox’s residential directory listings, Cox was providing voice service to customers [Begin

Highly Confidential]

[End

Highly Confidential] covered in the petition. *See* Lew/Wimsatt/Garzillo Decl.⁶ ¶¶ 7, 17

& Exh. 5. And attached to the accompanying Reply Declaration of Patrick Garzillo are data that allocate these rate-center data to wire centers. *See* Garzillo Reply Decl.,⁷ Exh.

1. As that declaration further explains, however, this allocation process is necessarily imperfect and it is more accurate to rely on rate center data. Regardless, the data on which the Commission relied to perform a more granular analysis in the Omaha, Anchorage, and Six MSA proceedings were obtained from the cable operators themselves, because only those entities have access to precise information on the

⁶ Declaration of Quintin Lew, John Wimsatt, and Patrick Garzillo Regarding Competition in Rhode Island (filed Feb. 14, 2008) (“Lew/Wimsatt/Garzillo Decl.”) (attached as Attach. E to R.I. Pet’n).

⁷ Reply Declaration of Patrick Garzillo (“Garzillo Reply Decl.”) (attached as Reply Attach. A hereto).

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availability of their voice services. *See Anchorage Forbearance Order* ¶ 28; *Omaha Forbearance Order* ¶ 28; *Six MSA Order* ¶ 23.

B. Share-of-Residential Lines Test

Verizon's petition also demonstrates that the share-of-residential-lines test is satisfied in Rhode Island. As of January 2008, competitors' share of residential lines in Rhode Island is at least **[Begin Confidential]** **[End Confidential]** percent, when all cut-the-cord wireless subscribers (including those of Verizon Wireless) are included, as they should be, on the competitive side of the ledger. *See R.I. Pet'n at 13-14 & Attach.*

A. Verizon also explained, however, that even when Verizon Wireless cut-the-cord subscribers are attributed to Verizon, competitors' share of residential lines in Rhode Island would still be approximately **[Begin Confidential]** **[End Confidential]** or more, which likewise meets the Commission's test. *See id.* at 15-16. Verizon demonstrated that both of these figures were conservative because they exclude certain forms of competition that Verizon faces, such as competition from over-the-top VoIP providers like Vonage, Skype, and others. *See id.* at 16-17.

Verizon's petition further demonstrates that 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 Rhode Island, and that the requested forbearance is appropriate. *See R.I. Pet'n at 17-18.* Verizon demonstrated that this was true even after addressing the one concern the *Six MSA Order* raised with these data (the loss of second lines to DSL), and also after accounting for

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other factors that might cause a decrease in retail lines. *See id.* at 18-20; *Six MSA Order* ¶ 32.

Several CLEC commenters take issue with Verizon's use of Cox's residential directory listings to gauge the number of Cox's retail residential lines. *See Access Point et al.* at 18; *One Communications et al.* at 28-29. These parties claim that directory listings are "estimates" that may not be reliable because "CLECs are more likely to serve specialized sets of customers that may well have different practices in terms of listing lines in white pages." *Access Point et al.* at 18, 19. Not one of the two dozen CLECs making this claim states that its practices differ. In any event, the practices of CLECs are irrelevant here. Verizon used directory listings only for Cox, and Cox has not argued, much less shown, that Verizon has overstated its lines. *See Sprint Communications Co. v. FCC*, 274 F.3d 549, 562 (D.C. Cir. 2001). In fact, Cox's silence suggests that the opposite is likely to be true, and the Commission should require Cox to provide immediately accurate information about the number of subscribers and lines it serves.⁸

The Commenters also argue that the Commission should ignore data regarding Verizon's loss of retail lines. *Access Point et al.* argue (at 23) that "it is likely that a large proportion of the lost residential lines are second lines that were replaced by Verizon's

⁸ Several commenters note that Qwest has recently stated that only about 75 percent of its residential lines are listed in the white pages directory. *See One Communications et al.* at 28. Qwest's practices are irrelevant here. Verizon has explained that the listings data provided here include unlisted numbers, and also that the correlation between its own residential lines and residential directory listings is more than 99 percent. *Lew/Wimsatt/Garzillo Decl.* ¶¶ 19-20. And while it may be true that the correlation for Cox is lower, that would only make Verizon's estimate of Cox's lines conservative.

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own DSL lines.” *See also* Comptel at 17; Covad at 30-31. This is wrong and irrelevant. Verizon’s petition demonstrates that, 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.11. Verizon explained that even if the Commission attributed *all* lost second lines to Verizon despite evidence that the actual percentage is much lower, Verizon *still* has lost [Begin Confidential] [End Confidential] or more of its total residential lines in Rhode Island.⁹ There is likewise no merit to Comptel’s claim (at 17) that the access line decline could be explained by population decline. As Verizon explained, the net annual declines in access lines began in 2000, and since *that* time the population in Rhode Island has *increased* by 0.7 percent. *See* Lew/Wimsatt/Garzillo Decl. ¶ 8.¹⁰

⁹ Access Point *et al.* also argue (at 21-22) that the percentage decline in residential lines does not attribute MCI’s lines to Verizon prior to 2008. That is not true. Verizon’s petition explained that, while it was calculating the decline in lines as of year-end 2007, the former MCI residential lines that Verizon used in that calculation were as of January 2008, not year-end 2007 like the other data. Access Point *et al.* misconstrues (at 23 n.67) Verizon’s statement clarifying that the data were of slightly different vintages as a “clever” way of stating that Verizon was excluding the MCI data entirely, which is not the case. Access Point *et al.* also claim (at 24) that declines in Verizon’s residential lines “are likely more than offset by millions of customers added by Verizon Wireless.” But this supports the view that millions of subscribers – including those of Verizon Wireless – view wireless service as a viable alternative for Verizon’s wireline service.

¹⁰ Comptel also claims (at 17-18) that the population of Rhode Island peaked in 2004 and has decreased every year since, and also that the number of vacant homes in Rhode Island increased between 2000 and 2006. With respect to population, the relevant time frame begins when Verizon’s access lines peaked in 1999. *See* R.I. Pet’n at 17-18. Moreover, in the last three years the population declines have been minimal (0.57 percent in 2005, 0.48 percent in 2006, and 0.36 percent in 2007) and do not account for even a small

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III. THE COMMISSION SHOULD REJECT THE COMMENTERS' ATTEMPTS TO MODIFY THE PREVIOUSLY APPLIED TESTS

Because they are unable to prove that Verizon fails the coverage threshold and share-of-residential-lines tests, the commenters are left to argue that the Commission should raise the bar and modify those tests in order for these parties to maintain a competitive advantage by subjecting Verizon to needless regulation. There is no basis for such an approach.

A. The Commission Should Reject Attempts To Exclude Wireless Cut-the-Cord Competition from the Analysis

In its calculation of competitors' share of residential lines, the Commission previously included the percentage of households who have cut the cord according to the most recent official government estimate by the Center for Disease Control ("CDC") – which as of the end of June 2007 was 13.6 percent. *See* R.I. Pet'n at 12-13; 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*"); *Six MSA Order* ¶ 27 n.89 & App. B.

Several commenters argue that the Commission should reject its prior approach and ignore competition from wireless, claiming that wireless service is not a perfect

fraction of the access line declines. *See* U.S. Census Bureau, *County Population Datasets*, <http://www.census.gov/popest/counties/files/CO-EST2007-ALLDATA.csv> (2007 estimate). With respect to vacant homes, there are many factors that could explain an increase – such as an increase in the number of vacation homes in Rhode Island, so it is improper to assume, as Comptel does, that such increase represents a concomitant population decline.

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substitute for wireline for *all* customers. See *One Communications et al.* at 17; *Covad et al.* at 20-21. But this is not the correct test. Different services can impact the ability to raise prices so long as they are considered reasonably interchangeable by “marginal” customers – that is, the subset of customers who will switch between the services in the putative market in response to small changes in relative prices. The Commission has recognized that in order for two competing technologies to constrain each other’s prices, it “only requires that there be evidence of sufficient substitution for significant segments of the mass market,” not that every customer views the two services as substitutes. See *Verizon/MCI Order*¹¹ ¶ 91; J. Gregory Sidak & Hal J. Singer, *Evaluating Market Power with Two-Sided Demand and Preemptive Offers To Dissipate Monopoly Rent: Lessons for High-Technology Industries from the Antitrust Division’s Approval of the XM-Sirius Satellite Radio Merger*, at 5, n.11 (May 1, 2008) (“it is the *marginal* customer who constrains prices”).¹² That test is satisfied here.

¹¹ *Verizon Communications Inc. and MCI Inc., Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, Memorandum Opinion and Order (2005) (“*Verizon/MCI Order*”).

¹² For the same reason, there is no merit to the claim that a recent Verizon survey “shows that even it does not believe that wireless and wireline services are in the same product market and that the vast majority of customers do not plan to cut the cord.” *One Communications et al.* at 18; see also *Covad et al.* at 21. In any event, the survey involved only existing landline subscribers, and not the approximately 14 percent of subscribers nationwide who have *already* decided to cut the cord. Moreover, even within that group, approximately 17 percent of households stated that they would consider cutting the cord in the future. See Verizon News Release, *New Survey Shows 83 Percent of Consumers Continue To Rely on Landline Voice Service for Its Quality, Safety Features* (Mar. 27, 2008), <http://newscenter.verizon.com/press-releases/verizon/2008/new-survey-shows-83-percent-of.html>. Taken together with customers who have already cut the cord, this is fully consistent with the evidence in Verizon’s petition that, by 2010,

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One Communications *et al.* claim (at 21) that “[w]hile it might be true that Verizon’s wireline division would be hurt by losses to Verizon Wireless, Verizon Communications Inc. has a substantial interest in keeping Verizon’s wireline customers from abandoning the Verizon families of companies completely.” That is true, but irrelevant. Regardless of Verizon’s incentives to keep customers on its wireline or wireless network, its ability to do so is dictated by competition. And the evidence shows that Verizon has been losing substantial numbers of wireline customers and that wireless is highly competitive. *See* R.I. Pet’n at 12-13, 17-18, 20.

One Communications *et al.* further argue (at 22-24) that Verizon could use “wireless/wireline bundling” to retain customers. But given that the Commission includes only cut-the-cord competition in its analysis, this claim is likewise irrelevant to the analysis. In any event, such wireless/wireline bundles are highly beneficial to consumers, and can be copied by other competitors through joint ventures or other arrangements. Thus, Verizon has no unique ability to retain wireless or wireline customers.

The commenters next claim that, if the Commission is going to include cut-the-cord wireless in the analysis, it should modify the approach it took in the *Six MSA Order*, which used CDC’s nationwide average of cut-the-cord households (13.6 percent), and instead use the lower figure for the Northeast region (8.8 percent). *See* Access Point *et*

analysts expect 20-33 percent of consumers to cut the cord. *See* Lew/Wimsatt/Garzillo Decl. ¶ 25 & n.35.

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al. at 19; Sprint at 4; One Communications *et al.* at 30-31; Comptel at 14-15. These claims are misplaced.

As an initial matter, even if the cut-the-cord figure for the Northeast rather than the national average was used, Verizon still would meet the test. Even under that approach, the data show that competitors are serving **[Begin Confidential]** **[End Confidential]** of all residential lines in Rhode Island as of January 2008. *See* Reply Attach. B (attached hereto). Although Access Point *et al.* claim (at 21) that competitors' share would be only **[Begin Confidential]** **[End Confidential]** percent under such an approach, that result is not mathematically correct.¹³ Moreover, their comments ultimately show why a bright-line test is ill-founded – whether the correct number is **[Begin Confidential]** **[End Confidential]** percent, there is no question that competition is robust and the statutory forbearance criteria are met.

In any event, the commenters fail to provide persuasive evidence that the cut-the-cord rate in Rhode Island is closer to the eight other states that comprise the Northeast than it is to the national average. Although Verizon is not aware of any evidence regarding the rate of wireless displacement at the state level,¹⁴ the ratio of wireless

¹³ Covad *et al.* argue (at 35-36) that the CDC survey provides lower and upper bounds for its estimate of Northeast households who cut the cord, and argue that the Commission should use the lower bound. As noted above, it is not appropriate to use the Northeast figure as opposed to the national average (for which there is a 100-percent confidence interval and thus no lower and upper bound due to larger sample sizes). In any event, even with respect to the Northeast, there is an equally strong case for using the upper bound, which is 10.81 percent.

¹⁴ One Communications *et al.* claim (at 31) that “the most appropriate means of counting cut-the-cord customers in Rhode Island would be to rely on the actual customer counts,”

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subscribers to population provides a reasonable proxy to test whether a given state is closer to the regional or national average. The ratio of wireless subscribers to the population for Rhode Island is 78 percent, which is the same as the ratio for the nation as a whole.¹⁵ This makes it likely that the rate of cut-the-cord households in Rhode Island is at or at least closer to the national average than to the CDC average for the Northeast region.

One Communications *et al.* argue (at 30-31) that Rhode Island has a lower-than-average population of certain demographic groups (persons under 18, persons in poverty, Hispanics, and males) that are more likely than average to cut the cord. But the evidence they present is highly selective and misleading. For example, they neglect to mention that Rhode Island has a much *higher*-than-average population of several demographic groups that are *more* likely to cut the cord than average, including adults aged 18-24 (27.9 percent versus 12.6 percent for adults in general) and adults who rent their home (28.2 percent). With respect to the other demographic groups on which One Communications *et al.* rely, one (male) cuts the cord only slightly more than average (13.8 percent), and another (persons under 18) only slightly less than average (11.9 percent); each of the other groups on which they rely make up a smaller percentage of

and that “[i]t seems likely that Verizon retains this kind of data, and should be required to submit it in this proceeding if it does.” Verizon does not maintain these data in the ordinary course of business.

¹⁵ See Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Local Telephone Competition: Status As of June 30, 2007* at Table 14 (Mar. 2008) (mobile wireless lines as of June 30, 2007); U.S. Census Bureau, *State Population Datasets: Population Change: April 1, 2000 to July 1, 2007*, <http://www.census.gov/popest/national/files/NST-EST2007-alldata.csv> (July 1, 2007 population estimate).

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Rhode Island than the U.S as a whole; persons under the poverty level comprise 11.1 percent of Rhode Island compared to 13.3 percent for the U.S., while Hispanics comprise 11 percent of Rhode Island compared to 14.8 percent for the U.S. See U.S. Census Bureau, *American Fact Finder: Fact Sheet*, <http://factfinder.census.gov/> (demographic data for Rhode Island and the United States); *CDC Wireless Substitution Survey* at 3 & Table 2.

It also is important to distinguish between the cut-the-cord figure on which Verizon relied, which is 13.6 percent of *households*, and the regional cut-the-cord figure that commenters frequently cite, which is 8.8 percent of *adults* living in the nine states that comprise the Northeast region. See *CDC Wireless Substitution Survey* at Tables 1 & 2. In the Six MSA proceeding, the Commission clearly relied on the percent of *households* in its calculation, see *Six MSA Order*, App. B, and since the focus is on household landline service, the Commission should continue to do so here.

B. The Commission Should Reject Attempts To Exclude Wholesale Competition from the Analysis

There is likewise no merit to the argument several commenters make that the Commission should modify its calculation of competitors' share of residential lines by excluding competitors who provide service through non-UNE wholesale alternatives such as Wholesale Advantage and resale. See *Access Point et al.* at 6-7; *One Communications et al.* at 19; *Covad et al.* at 18; *Telecom Investors* at 5-9. Verizon's petition demonstrates that Verizon is making attractive wholesale offerings available in Rhode Island, even when it has no obligation to do so. See R.I. Pet'n at 13; Lew/Wimsatt/Garzillo Decl.

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¶ 30. This is consistent with the Commission's findings in prior forbearance orders that ILECs who face facilities-based competition have "the incentive to make attractive wholesale offerings available so that it will derive more revenue indirectly from retail customers who choose a retail provider other than [the ILEC]." *Omaha Forbearance Order* ¶ 67; *see also Anchorage Forbearance Order* ¶ 45.¹⁶ The D.C. Circuit upheld the Commission's determination in Omaha, explaining that "the *TRRO*¹⁷ explicitly recognized that an ILEC's tariffed offerings could, in certain circumstances, be an avenue for competitive entry," and that the Commission was reasonable to conclude those circumstances were met given "the combination of tariffed ILEC facilities and facilities-based competition." *Qwest Corp. v. FCC*, 482 F.3d 471, 480 (D.C. Cir. 2007).¹⁸

The Commission should also reject arguments to ignore special access in its competitive analysis. *See Sprint* at 13; *One Communications et al.* at 26-27; *Comptel* at 32-33. As the Commission has correctly recognized, competing carriers are capable of,

¹⁶ These previous findings put the lie to claims that wholesale and resale lines should be attributed to Verizon, or that the Commission's prior discussion of such competition should be treated as mere dicta. *See Access Point et al.* 21; *Covad et al.* at 37.

¹⁷ *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*"), *aff'd*, *Covad Communications Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

¹⁸ The Commission has also previously rejected concerns that various facilities-based competitors may not offer wholesale access to their facilities – although, as Verizon demonstrated, Cox does in fact do so in Rhode Island. *See R.I. Pet'n* at 25-26; *Omaha Forbearance Order* ¶¶ 67, 71. In light of these prior findings and the record here, there is no basis for concerns that various facilities-based competitors may not offer wholesale access to their facilities in Rhode Island. *See Access Point et al.* at 9-11, 30; *Comptel* at 28-29; *Covad et al.* at 48-49; *One Communications et al.* at 39-40; *Sprint* at 6.

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and are, competing successfully in the retail market using special access, and this form of competition is therefore relevant. *See Omaha Forbearance Order* ¶ 68; *Verizon/MCI Order* ¶¶ 52, 56, 81. As Verizon has demonstrated, competing carriers are using special access extensively in Rhode Island, much more extensively in fact than they are using UNEs.¹⁹ For example, as of the end of December 2007, competitors *other than wireless carriers* were serving more than [Begin Confidential] [End Confidential] DS3 lines and approximately [Begin Confidential] [End Confidential] DS1 lines with special access service obtained from Verizon, compared to [Begin Confidential] [End Confidential] DS3 lines and less than [Begin Confidential] [End Confidential] DS1 lines using UNEs. *See Garzillo Reply Decl., Exh. 2.*²⁰ The fact that a few competitors have chosen business models that depend on UNEs is not, as some commenters suggest, a legitimate consideration in the forbearance inquiry. *See One Communications et al.* at 26; *Comptel* at 27. The UNE regime was never intended to become a permanent fixture but was meant to facilitate network deployment.

¹⁹ *Access Point et al.* argue (at 31-32) that Verizon does “not provide unbundled access in many areas in Rhode Island,” but that is not the case. Verizon is required to provide high-capacity loops and transport in the bulk of the state: DS1 loops in 100 percent of Rhode Island wire centers; DS3 loops in 97 percent (28 of 29); DS1 transport on 96 percent of routes (391 of 406); and DS3 transport on 93 percent (378 of 406). *See Lew/Wimsatt/Garzillo Decl., Exh. 11.*

²⁰ *Comptel* (at 32) incorrectly states that Verizon “does not exclude the number of special access voice grade equivalent lines being used by its own wireless affiliate, Verizon Wireless.” Verizon presented data for wholesale special access lines provided to competitors in two formats: including and excluding known wireless companies (AT&T Mobility, Nextel, and T-Mobile). *See Lew/Wimsatt/Garzillo Decl. Exh. 9.* In both formats, volumes for “Verizon affiliates, former MCI, and unknown” were excluded from the data; Verizon Wireless data were therefore excluded altogether.

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C. There Is No Basis To Modify the Commission's Approach with Respect to Cable's Ability To Serve Business Customers

In Omaha, the Commission correctly recognized that with respect to business customers, the relevant inquiry is whether the incumbent cable operator is *capable* of serving business customers extensively, not how many customers it already has won. The Commission adopted several factors to guide this inquiry: whether Cox had “strong success in the mass market, . . . possession of the necessary facilities to provide enterprise services, . . . technical expertise, . . . economies of scale and scope, . . . sunk investments in network infrastructure, . . . established presence and brand in the Omaha MSA, and . . . current marketing efforts and emerging success in the enterprise market.” *Omaha Forbearance Order* ¶ 66; *see* R.I. Pet’n at 20-24. The Commission also looked at whether Cox was “actively marketing itself” to enterprise customers, whether it had attracted a number of significant Omaha businesses as customers, and whether its enterprise sales were growing. *Omaha Forbearance Order* ¶¶ 66, 67 n.177. In Omaha, the Commission answered each of these questions in the affirmative. *See id.* ¶¶ 66-67. Verizon’s petition demonstrates that the same is true in Rhode Island, *see* R.I. Pet’n at 21-26, which should be the end of the matter.

In its comments here, Cox does not dispute that it satisfies each of the factors the Commission previously identified, or that its success in competing for enterprise customers in Rhode Island differs in any respect from its success in Omaha. To the contrary, Cox acknowledges (at 8) that its “network passes” [Begin Confidential]

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[End Confidential] of business lines in Rhode Island.²¹ In recent public statements Cox has also stated, “[a]s far as telephony, we’re *fully built out* . . . Wherever residential is, commercial is.” Jennifer Rinaldi, *Business Telephony Takes Off: Soaring from Home to Office*, Communications Technology (Apr. 15, 2008) (quoting Charles Scarborough, Director, Product Development, Cox Business Services; emphasis added), available at http://www.cable360.net/business_services/news/28854.html.

Cox also confirms that it is currently serving a large number of business customers. Cox states (at 8) that it alone serves more than **[Begin Confidential]** **[End Confidential]** businesses, which it states represents **[Begin Confidential]**

[End Confidential] the approximately 44,000 businesses in Rhode Island.”

This appears to be considerably greater than the business competition that Cox claimed to be providing in Omaha. See *Omaha Forbearance Order* ¶¶ 66 & n.174, 69. Thus, even the limited data that Cox has provided is a complete answer to various claims that Verizon has failed to provide sufficient data substantiating that Cox is a significant

²¹ Covad *et al.* claim (at 40-41), without support, that cable companies “can only serve businesses within close proximity” to their networks. This flies in the face of what independent experts have found. Buckingham Research Group, for example, has estimated that cable companies can use their existing plant to target more than 85 percent of commercial revenues. See Quasir Hasan & May Tang, Buckingham Research Group, *Cable Goes Commercial: Examining Cable’s Next Growth Phase* at 20, Exh. 14 (Jan. 11, 2007).

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competitor for enterprise customers. *See Access Point et al.* at 25-26; *One Communications et al.* at 33, 36; *Covad et al.* at 39-41; *Sprint* at 6.²²

Some commenters rehash the claim that, even assuming cable companies could reach business customers with their networks, they would not necessarily be able to provide the types of services that business customers purchase. *See Access Point et al.* at 25; *Covad et al.* at 41.²³ Tellingly, however, Cox itself does not indicate that its service offerings for enterprise customers are limited. To the contrary, as Verizon has demonstrated, Cox indicates that it provides voice and data services that meet the needs of enterprise customers. *See Lew/Wimsatt/Garzillo Decl.* ¶¶ 42-43. Moreover, it is incredulous to suggest that Cox has invested heavily to serve business customers (as it admits), yet does not plan to offer the services that business customers require.

Several commenters argue that the competition Cox provides is insufficient, and that Verizon has failed to provide sufficient evidence of the extent to which other

²² The key cable data on which the Commission relied in the past was produced by the cable operators themselves. Thus, there is no basis to find that Verizon failed to establish a *prima facie* case by failing to include data not in its possession.

²³ *Access Point et al.* argue (at 2) that the Commission should modify the coverage threshold test to apply only to carriers “ready” to serve, not just those “willing and able.” But as the Commission and the courts have repeatedly recognized, the relevant test is whether competition is possible, not whether it already exists. *See, e.g., Omaha Forbearance Order* ¶ 69 (competition from Cox is “sufficient to justify forbearance in wire center service areas where Cox is willing and able within a commercially reasonable time of providing service”); *United States Telecom Ass’n v. FCC*, 359 F.3d 554, 575 (D.C. Cir. 2004) (“*USTA II*”) (the critical inquiry is whether “competition is possible” without the UNE); *United States Telecom Ass’n v. FCC*, 290 F.3d 415, 427 (D.C. Cir. 2002) (“*USTA I*”) (FCC must limit unbundling to elements “for which multiple, competitive supply is unsuitable”). In any event, the facts here show that Cox is willing, able, and ready to serve customers statewide.

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competitors are serving enterprise customers in Rhode Island, both as a general matter and with respect to specific categories of enterprise customers. See *One Communications et al.* at 19-20, 41-44; *Covad et al.* at 10, 17-19, 29-30, 39-40; *Access Point et al.* at 7-9.²⁴ In Omaha, however, 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.131.²⁵ The evidence that Verizon provided that there are other extensive competitive facilities-based networks in Rhode Island, as well as many CLECs that provide retail competition in the state, is mainly

²⁴ To further support this claim, *One Communications et al.* assert (at 34-36) that Verizon has increased its business rates numerous times since September 2006. These commenters neglect to mention that such increases apply only to standard month-to-month prices, and were accompanied by rate *decreases* for customers who sign up for Term (e.g., 24 month) and Package (e.g., Freedom for Business) plans. Verizon introduced these lower priced offerings in response to competitive pressures. Given that these offerings are available to all customers (e.g., there is no volume commitment), there is no plausible claim that competition is inadequate to constrain price in Rhode Island.

²⁵ In the *Six MSA Order*, the Commission found that, unlike in Omaha and Anchorage, competition from cable did not, standing alone, satisfy the coverage threshold test. As a result, 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 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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