

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
Petition of the Verizon Telephone Companies)	WC Docket No. 08-49
For Forbearance Pursuant to 47 U.S.C. § 160(c))	
In Cox’s Service Territory in the Virginia)	
Beach Metropolitan Statistical Area)	
)	

**SPRINT NEXTEL CORPORATION’S COMMENTS IN SUPPORT OF THE
MOTION TO DISMISS OR, IN THE ALTERNATIVE, DENY THE VERIZON
TELEPHONE COMPANIES’ PETITION FOR FORBEARANCE**

In response to the Commission’s Public Notice issued May 2, 2008,¹ Sprint Nextel Corporation (“Sprint Nextel”) hereby respectfully submits its comments in support of the “Motion to Dismiss or, in the Alternative, Deny” the above-captioned forbearance petition of the Verizon Telephone Companies (“Verizon”), which numerous competitive local exchange carriers (“CLECs”) filed on April 29, 2008.²

Verizon asks the Commission to forbear from enforcing the loop and transport unbundling requirements of section 251(c) of the Telecommunications Act of 1996 (“Act”),³ the dominant carrier regulations applicable to its mass market switched access services under

¹ Public Notice, “*Pleading Cycle Established for Comments on Motion to Dismiss or Deny Verizon Virginia Beach Petition for Forbearance*,” WC Docket No. 08-49, DA 08-1056 (May 2, 2008). The Commission set a due date for initial comments of May 19, 2008 and a reply comment deadline of May 27, 2008.

² The CLECs include Access Point, Inc.; Alpheus Communications, L.P.; ATX Communications, Inc.; Bridgecom Intl, Inc.; Broadview Networks, Inc.; Cavalier Telephone Corp.; CIMCO Communications, Inc.; CloseCall America, Inc.; CP Telecom, Inc.; Deltacom, Inc.; DSLnet Communications, LLC; Globalcom, Inc.; Lightyear Network Solutions, LLC; Matrix Business Technologies; McLeodUSA Telecom Services, Inc.; MegaPath, Inc.; PAETEC Holding Corp.; Penn Telecom, Inc.; RNK Inc.; segTEL, Inc.; Talk America Holdings, Inc.; TDS Metrocom, LLC; U.S. Telepacific Corp. and Mpower Communications Corp., both d/b/a Telepacific Communications; Covad Communications Group; NuVox Communications; XO Communications, LLC; Cbeyond Inc.; Integra Telecom, Inc.; One Communications Corp.; Time Warner Telecom Inc.; and Cox Communications, Inc. (collectively, “CLEC Group”).

³ 47 U.S.C. § 251(c); 47 C.F.R. § 51.319(a), (b), (e).

Title II of the Act,⁴ and the obligations imposed in the *Computer III Inquiry*, including open network architecture (“ONA”) and comparably efficient interconnection (“CEI”) requirements, governing Verizon’s incumbent local exchange operations in that portion of the Virginia Beach Metropolitan Statistical Area (“MSA”) served by Cox Communications, Inc. (“Cox”).⁵ As the CLEC Group points out, Verizon seeks the identical relief it requested in its previous petition seeking forbearance for the entire Virginia Beach MSA and it relies on substantially the same facts to support its forbearance claim.⁶ The Commission, however, in December 2007, unanimously denied in its entirety Verizon’s Virginia Beach MSA forbearance petition – as well as the identical requests it filed for the Boston, New York, Philadelphia, Pittsburgh and Providence MSAs -- finding that the “record evidence does not satisfy the section 10 forbearance standard” for any of Verizon’s forbearance requests.⁷

Verizon has failed to present any fresh or additional evidence that should cause the Commission to depart from its prior rulings and arrive at a different conclusion from the one it reached a little over five months ago. The CLEC Group argues that the well-established doctrine of issue preclusion applies in this instance to prohibit Verizon from seeking the same relief based on the same set of facts.⁸ The CLEC Group convincingly shows that all four prerequisites for issue preclusion have been satisfied in the present case and the Commission

⁴ Specifically, Verizon seeks forbearance from tariffing requirements (47 C.F.R. §§ 61.23, 61.33, 61.38, 61.58, 61.59), price cap regulation (47 C.F.R. §§ 61.41-61.49), and dominant carrier obligations associated with the processes for acquiring lines, discontinuing services, assignment or transfers of control, and acquiring affiliations (47 C.F.R. §§ 64.03, 63.04, 63.60-63.66).

⁵ *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. 08-49 (filed March 31, 2008) (“Verizon Virginia Beach Petition”).

⁶ CLEC Group Motion to Dismiss at 5-9, referencing *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Virginia Beach Metropolitan Statistical Area*, WC Docket No. 06-172 (filed September 6, 2006).

⁷ *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*, WC Docket No. 06-172, Memorandum Opinion and Order, 22 FCC Rcd 21293 at ¶ 1 (2007) (“Six MSA Order”).

⁸ *Id.* at 8-10.

would be entirely justified in dismissing Verizon's latest Virginia Beach forbearance petition on these grounds.⁹

Moreover, Sprint Nextel agrees that Verizon's petition is nothing more than an improper and untimely petition for reconsideration of the Commission's *Six MSA Order*.¹⁰ Verizon's attempt to have the Commission apply a different analysis to the same set of facts it offered in its earlier forbearance petition by presenting different product and geographic markets amounts to a request for reconsideration of the Commission's previously-established forbearance tests. Because the time period under which such reconsideration requests may be properly entertained has long since expired, it would be inappropriate for the Commission to consider Verizon's request and let it reargue the same issues decided in the *Six MSA Order*.¹¹

Sprint Nextel concurs with each of the arguments raised in the CLEC Group's motion to dismiss. Verizon has filed an appeal of the Commission's decision denying it forbearance relief in the six MSAs, including Virginia Beach, and will have ample opportunity in that forum to seek to convince the Court to overturn the Commission's ruling in the *Six MSA Order*.¹² The Commission should not permit Verizon to reproduce its Virginia Beach MSA petition simply by styling it as a request for forbearance in just Cox's service territory within the Virginia Beach MSA in the hopes of obtaining a different result this time around.¹³ Nor

⁹ The four prerequisites of issue preclusion are: i) the presence of an issue identical to the one previously litigated and essential to the prior decision; ii) the prior decision has become a final judgment on the merits; iii) the estopped party was a party to the prior litigation; and iv) the estopped party had a full and fair opportunity to litigate the issue in the prior proceeding. *Id.* at 9-10.

¹⁰ *Id.* at 10-11.

¹¹ Commission rules require petitioners to file for reconsideration within thirty days from the date upon which public notice is given of the order, decision, report or action complained of. 47 U.S.C. § 405; 47 C.F.R. § 1.106(f).

¹² *Verizon Telephone Companies v. Federal Communications Commission*, Case No. 08-1012 (D.C. Cir., filed January 14, 2008).

¹³ Verizon acknowledges that the cities and counties that comprise Cox's service territory account for approximately 91% of the population within the Virginia Beach MSA – one of the six MSAs in which the Commission previously found the extent of facilities-based competition insufficient to warrant forbearance. Verizon Virginia Beach Petition at 4-5.

should the Commission permit Verizon to continue to clog its docket with a series of repetitive, virtually identical, forbearance petitions that merely rehash arguments and evidence that the Commission has previously considered and rejected.¹⁴ The Commission should not endorse Verizon attempts to sidestep the results of its *Six MSA Order* by undertaking a review of the instant forbearance petition.

Accordingly, Sprint Nextel urges the Commission to grant the CLEC Group's motion and dismiss, or in the alternative, summarily deny Verizon's latest petition for forbearance in that part of the Virginia Beach MSA in which Cox operates.

Respectfully submitted,

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¹⁴ On February 14, 2008, Verizon filed a petition seeking forbearance from the same set of statutory and regulatory obligations that make up the instant request in the state of Rhode Island – a subset of the Providence MSA and part of the group of six MSAs for which forbearance was rejected in the *Six MSA Order*.