Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

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

REPLY COMMENTS OF THE

CITY OF HAMPTON, VIRGINIA

INTRODUCTION

On December 4, 2007, the Federal Communications Commission ("Commission") denied a petition by the Verizon Telephone Companies ("Verizon") requesting forbearance from regulatory obligations in the Virginia Beach Metropolitan Statistical Area ("Virginia Beach MSA").[1] On March 28, 2008, Verizon again filed a petition with the Commission requesting forbearance in the Virginia Beach MSA on the basis that the level of competition in the Virginia Beach MSA has changed sufficiently to warrant reconsideration of forbearance ("Verizon Petition").

The City of Hampton, Virginia ("City"), respectfully submits these reply comments in opposition to the Verizon Petition. The state of competition in our city has not changed sufficiently in the intervening four months – from the Commission's decision in the *Verizon 6*

[1] *Petitions of Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 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 (December 4, 2007) (*Verizon 6 MSA Forbearance Order*), *pet. for review pending*, File No. 08-1012 (D.C. Cir. filed Jan. 14, 2008).

MSA Forbearance Order on December 4, 2007, to the date of Verizon's petition in the present case on March 28, 2008 – to warrant a reconsideration of forbearance. The City urges the Commission to deny the Verizon Petition because Verizon is simply rearguing the same facts on which it has already lost.

Because Verizon is still the dominant incumbent local exchange carrier ("ILEC") in the Virginia Beach MSA, granting Verizon forbearance will significantly reduce telecommunications competition in our markets. This will inevitably result in fewer choices and higher prices for all telecommunications customers in our City – residential, business, and government – and is contrary to the public interest.

DISCUSSION

I. FORBEARANCE WILL SIGNIFICANTLY REDUCE TELECOMMUNICATIONS COMPETITION IN THE VIRGINIA BEACH METROPOLITAN STATISTICAL AREA

In the *Verizon 6 MSA Forbearance Order*, the Commission found that the level of competition in the Virginia Beach MSA does not justify forbearance.[2] Specifically, the Commission found that the level of competition at both the retail and wholesale level did not justify forbearance. The Commission found that the competition from cable operators and wireless "cut the cord" customers did not represent a significant portion of the market.[3] The Commission found that Verizon's competitors have not deployed their own last-mile facilities in the Virginia Beach MSA.[4] Indeed much of Verizon's competition still depends on Verizon's facilities in order to compete with Verizon.[5] Verizon has been and remains the dominant provider of telecommunications service in the Virginia Beach MSA. The level of competition in

[2] *Verizon 6 MSA Forbearance Order* at 15-16.
[3] *Id.* at 21.
[4] *Id.* at 22.
[5] *Id.* at 22.

the Virginia Beach MSA has not increased in the intervening four months by such a degree as to warrant reconsideration of forbearance.

In addition, Verizon is the largest, or at least one of the largest, wireless service providers in the Virginia Beach MSA. Verizon consistently cites wireless as a major competitor for its business, in both its prior and current forbearance petitions. Because it is the largest, or one of the largest, wireless service providers in the Virginia Beach MSA, when Verizon argues that it competes with wireless, Verizon is, in effect, arguing that it is competing against itself. While there may be other wireless competitors in the market, Verizon citing itself as a competitor highlights the existing lack of competition in the Virginia Beach MSA, and the potential for a further decrease in competition if forbearance is granted. In fact, on June 6, 2008 Verizon announced a $28.1 billion acquisition of Alltel which, when the transaction closes later this year, will make Verizon the largest cellular telephone provider in the country.

Competitive local exchange carriers ("CLECs") are the only Verizon competitors who offer traditional wireline service to customers in the Virginia Beach MSA. CLECs largely depend on Verizon facilities to provide service to their customers. As the Commission found, "there is significant record evidence that much of the competition from competitive LECs for enterprise services in these MSAs instead depends on access to Verizon's own facilities, including UNEs."[6] Again, the Commission found that CLECs have not built up their own networks in the Virginia Beach MSA, and they certainly have not done so in the intervening four month period. Therefore, the only true competitors to Verizon's traditional wireline service in the Virginia Beach MSA remain the same CLECs who rely on Verizon-owned facilities to provide service.

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[6] *Id.* at 22.

Granting Verizon's forbearance petition will allow Verizon to raise the wholesale rates it charges CLECs for the facilities CLECs need to provide service. In turn, CLECs will likely have to raise retail rates in order to recover their costs from this increase in their operating expenses. There is a substantial risk that CLECs would find it economically unfeasible to compete with Verizon in the Virginia Beach MSA and withdraw from the market altogether. This would reduce the number of competitors who can provide traditional wireline service in the Virginia Beach MSA.

Based upon the comments in the record, the City is concerned that the Virginia Beach MSA will be left with a duopoly and assuredly higher prices for consumers. In its comments, Cavalier Telephone, LLC ("Cavalier") notes that it serves a number of small business and enterprise customers of all sizes throughout the Virginia Beach MSA, including hospitals, fire departments, and schools. Cavalier's small business packages offer a 10-15% savings to consumers on average based upon comparable service offerings from Cox or Verizon. In a possible economic downturn, such a savings option is significant and an important option for our constituents.[7]

Cavalier comments that the grant of forbearance in the Virginia Beach MSA will cause it significant harm. For Cavalier, there are no available alternatives to the UNEs Cavalier leases from Verizon at regulated rates, and that are essential for Cavalier to provide service. According to Cavalier, Verizon is the only source of the facilities Cavalier needs to serve its customers. Based on Verizon's pricing for network elements that have been relieved of 251 unbundling requirements elsewhere, we understand that it will not be economically viable for Cavalier to lease facilities from Verizon if this petition is granted. Cavalier has thus concluded that if the

[7] Comments of Cavalier Telephone, LLC at 5.

Commission grants the requested forbearance relief, Cavalier will likely exit the entire Virginia Beach MSA. This is an untenable option for the City.[8]

Granting Verizon's petition for forbearance in the Virginia Beach MSA would result in a significant decrease in competition and customers paying a monopoly toll to Verizon due to the lack of competition.

II. FORBEARANCE WILL NEGATIVELY IMPACT THE CITY AND BUSINESSES IN OUR CITY.

Business and local government customers have specific telecommunication needs that are only found in traditional wireline service. As the Commission found, cable and wireless services are not substitutes for traditional wireline service.[9] Cable and wireless do not have the security, reliability, dedicated bandwidth, and quality of service found in traditional wireline service.

Cable uses voice over IP ("VOIP") to transmit calls over the internet, while wireless transmits calls over the air, both of which are inherently insecure. Public safety and emergency services depend on traditional wireline service during power outages and for its better location determination capabilities. Given the large military presence in the Virginia Beach MSA, it is imperative that the City and other governmental entities maintain affordable wireline service to address crucial public safety and emergency services. Cable and wireless also do not have the dedicated bandwidth and high voice quality of traditional wireline service. Cable's sharing of bandwidth and wireless' quality of service limit their ability to act as true substitutes.

From the standpoint of cost and available features, businesses and governments generally need to provide multiple lines with multiple numbers within a complex and feature-rich system. The cost per line of wireless makes it impractical as a line for line replacement of traditional

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[8] *Id* at 6-7.
[9] Verizon 6 MSA Forbearance Order at 12-13.

wireline service, while cable does not have the depth of features businesses need. Customers look to traditional wireline service for these and other qualities that cable and wireless cannot provide. This makes cable and wireless distinct and different services compared to traditional wireline service. As the Commission noted, cable and wireless may be considered complements to traditional wireline service as opposed to complete substitutes for traditional wireline service.[10]

Verizon and competitive local exchange carriers ("CLECs") remain the only providers of traditional wireline service in the Virginia Beach MSA. Verizon cites the competition from cable as a major reason behind both the *Verizon 6 MSA Forbearance* petition and its current forbearance petition. Cox Communications, Inc. ("Cox") noted in its comments that Verizon remains the dominant service provider in the enterprise market.[11] Cox also noted that its network is "far from ubiquitous, particularly in business areas that are not immediately adjacent to residential communities."[12] Cable's availability for the business and local government markets is not as widespread as Verizon's network, and cable has a market share well below that of Verizon's.[13] As also noted in the prior petition by the Ad Hoc Telecommunications Users Committee, a group of high volume consumers of telecommunication services, while Verizon may claim an increased level of competition, "the reality is that the vast majority of businesses – small and large – are served either directly or indirectly using ILEC facilities."[14]

Because only traditional wireline service has the features and qualities of service that business and local government customers need, and because the only real competitors for

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[10] *Id.* at 13-14.
[11] *Comments of Cox Communications, Inc.*, WC Docket No. 08-49, at 8-9 (May 13, 2008)
[12] *Id.* at 8.
[13] *Id.* at 9.
[14] *Comments of Ad Hoc Telecommunications Users Committee*, WC Docket No. 06-172, at 5 (March 8, 2007)

Verizon's traditional wireline service are CLECs who depend on Verizon-owned facilities to provide service, forbearance would negatively impact businesses and local governments in the Virginia Beach MSA. Businesses and local governments are large consumers of traditional wireline service. They depend on affordable access to traditional wireline service in order to operate, and they benefit from a competitive marketplace that keep prices low and choices high. Granting Verizon's forbearance petition would allow Verizon the opportunity to drive out its only competitors for traditional wireline service, and would place business and local government customers in the Virginia Beach MSA at the mercy of Verizon's monopoly power.

III. FORBEARANCE IS INCONSISTENT WITH THE PUBLIC INTEREST OF OUR COMMUNITIES.

Verizon remains the primary and dominant provider of telecommunications services and facilities in the Virginia Beach MSA. Our City, and in particular, businesses and local governments, depend on meaningful competition to keep prices low and foster innovation in the telecommunications marketplace. Granting Verizon's petition for forbearance would result in Verizon having little competition, little need to innovate, and the ability to raise prices for its customers. Verizon would be collecting monopoly tolls at the expense of our communities, businesses, and local governments, without advancing the public good. If Verizon is allowed to raise wholesale rates with impunity, and the CLECs are priced out of Verizon's facilities in the Virginia Beach MSA, then our businesses and local governments will be left with fewer choices – and in many cases, no effective competitive choices – to meet their telecommunications needs.

Conclusion

The Commission has already denied Verizon's petition for forbearance in the Virginia Beach MSA. For Verizon to come back four months later and argue that the level of competition has significantly changed in our markets would seem disingenuous at best. Granting Verizon's

forbearance petition would pose a substantial risk to the availability of competitive telecommunications choices, and result in fewer choices and higher prices for our community and local businesses.

Our community looks to their local officials to protect them from anti-competitive behavior and abuses in the marketplace. In turn, our City looks to the Commission to regulate monopoly power and maintain a level playing field in the telecommunications marketplace. Accordingly, the City urges the Commission to deny the Verizon Petition.

Respectfully submitted,

CITY OF HAMPTON, VIRGINIA

By _____

Joyce A. Melvin-Jones
Chief Deputy City Attorney

Dated: June 9, 2008