

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

In the Matter of)	
)	
Promotion of Competitive Networks in Local)	WT Docket No. 99-217
Telecommunications Markets)	
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VERIZON’S PETITION FOR CLARIFICATION AND/OR RECONSIDERATION

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INTRODUCTION AND SUMMARY

The Commission should confirm that the prohibition on exclusive access agreements for providers serving residential multi-tenant environments (MTEs) adopted in the recent *MTE Voice Exclusivity Order*² applies to all providers of voice services that interconnect with the public switched telephone network (PSTN), regardless of history, technology, or regulatory classification.

The Commission adopted this prohibition on exclusive access agreements for voice services just a few months after adopting a similar prohibition in the context of video services and with the express purpose of creating regulatory parity among providers – including traditional cable operators and the traditional telephone companies – as they compete across the “triple play” of voice, video and Internet access services.³ Indeed, the order on video services expressly applied

¹ The Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² Report and Order, *Promotion of Competitive Networks in Local Telecommunications Markets*, 23 FCC Rcd 5385 (2008) (“*MTE Voice Exclusivity Order*”).

³ See Report and Order and Further Notice of Proposed Rulemaking, *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate*

not only to the traditional cable incumbents, but also to competing cable operators, telephone companies, and open video system providers as they offer video services. In adopting the *MTE Voice Exclusivity Order*, the Commission intended to accomplish the same result. In fact, the *MTE Voice Exclusivity Order* recognizes the significance of regulatory parity, and seeks to align the rules of the game for competing providers offering multiple services, including all providers of voice services.

Notwithstanding this clear intent, the Commission's choice of words in its final rules attached to the *MTE Voice Exclusivity Order* could be twisted by some competitors to cause just the kind of regulatory disparity that the Commission aimed to avoid. Given the Commission's previous decision to defer classification of certain types of voice services – namely, those provided using voice-over-Internet-Protocol (VoIP) technology – and the fact that the newly adopted rules speak only to “common carriers,” there is some possibility that competitors may engage in regulatory gamesmanship and claim that their voice services are not subject to the Commission's prohibition. *See id.* Appendix B. Although there would be no justification for such an interpretation – whether legal, policy, or under the logic of the order itself – the Commission should foreclose any such efforts now and confirm that, notwithstanding any regulatory classifications of competing voice services, the recently adopted rules apply across the board just as it did in the *MDU Video Exclusivity Order*. Given the fierce competition among intermodal competitors offering a full range of voice, video, and data services, subjecting only a subset of competing voice services to the Commission's rule would skew the competitive playing field and be entirely contrary to the Commission's purposes in this proceeding and this order. Such a result would also undermine the

Developments, 22 FCC Rcd 20235 (2007) (“*MDU Video Exclusivity Order*”), petition for review pending sub nom., *National Cable & Telecomms. Ass'n. v. FCC*, Case No. 08-1016 (D.C. Cir. filed Jan. 16, 2008).

Commission's goal of encouraging broadband deployment by creating a regulatory disadvantage for some of the very providers currently investing heavily in next-generation broadband networks.

ARGUMENT

In order to avoid unintended consequences and to ensure regulatory parity for competing services, the Commission should confirm that the rules adopted in the *MTE Voice Exclusivity Order* apply to all providers of voice services that interconnect with the PSTN.

As the Commission has recognized, consumers are now benefitting from intermodal competitors like the traditional cable and telephone companies competing directly for the provision of the "triple play" of services over competing broadband networks. This intermodal competition for a full range of services "will benefit consumers by driving down prices and improving the quality of service offerings."⁴ As intermodal competition for the "triple play" expands, it is essential that, absent a good reason to the contrary, competitors enjoy a level playing field with respect to all of the services on which they compete, notwithstanding their historical classifications for regulatory purposes or the technologies that they employ. In fact, the Commission has recognized that the result of maintaining disparities in the regulation of the services offered by intermodal competitors will be to "reduce competition in the provision of triple play services and result in inefficient use of communications facilities."⁵ Indeed, the Commission recognized as much in the *MTE Voice Exclusivity Order* itself, stating that "[i]n an environment of increasingly

⁴ Report and Order and Further Notice of Proposed Rulemaking, *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 22 FCC Rcd 19633, ¶ 2 (2007) ("621 Order"); see also *MDU Video Exclusivity Order* ¶ 20 ("The offering of, and competition in, the triple play brings to consumers not just advanced telecommunications capability, but also a simplicity and efficiency that is proving to be highly attractive in the marketplace.").

⁵ *MDU Video Exclusivity Order* ¶ 21.

competitive bundled service offerings, the importance of regulatory parity is particularly compelling in our determination” to prohibit exclusive access agreements for telephone services. *Id.* ¶ 5.

In fact, ensuring parity was one of the driving forces behind the adoption of the *MTE Voice Exclusivity Order*. Just a few months earlier, the Commission decided to prohibit video providers – including not only the cable incumbents, but also competitive cable operators, traditional telephone companies, and OVS providers – from entering or enforcing exclusive access agreements for video services. *MDU Video Exclusivity Order* ¶ 51 (noting that “[t]his prohibition necessarily also applies to common carriers and open video systems” in addition to “cable operators”). At the time that the Commission adopted those rules for the video context, it resolved to quickly consider comparable rules for voice services “[i]n light of the competitive parity implications.” *Id.* ¶ 36 n. 109.

Regulatory parity and competitive neutrality are particularly important in furthering the Commission’s broadband goals. In the broadband context, the Commission has identified the importance of adopting rules that further “the goal of developing a consistent regulatory framework across platforms by regulating like services in a similar functional manner.”⁶ With the competition for multiple services offered over competing broadband platforms, regulatory impediments to the offering of any particular service affects the providers’ ability to compete for the full range of services or to invest in the broadband network in the first place. As the Commission noted in its order in this proceeding:

⁶ Report and Order and Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853, ¶ 1 (2005), *petitions for review denied*, *Time Warner Telecomms. v. FCC*, 507 F.3d 205 (3rd Cir. 2007); *see also id.* ¶ 17 (describing its regulatory goal of “crafting an analytical framework that is consistent, to the extent possible, across multiple platforms that support competing services”). Most recently, in the context of wireless broadband internet access, the Commission established a regulatory approach that “furthers [its] efforts to establish a consistent regulatory framework across broadband platforms by regulating like services in [a] similar manner.” Declaratory Ruling, *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, 22 FCC Rcd 5901, ¶ 2 (2007).

The shift from competition between stand-alone services to that between service bundles, as well as the integration of service providers, supports the removal of obstacles to facilities-based entry. Given that the same facilities used to provide video and data services often can readily be used to provide telephone service, as well, denying such providers the right to do so only serves to reduce the entry incentives of competing providers, and thus competition, for each of those services.

MTE Voice Exclusivity Order ¶ 9; *see also id.* ¶ 10 (noting that “allowing the imposition of restrictions on competitive offerings to residents in a multiunit premise would deter competitors from offering broadband service in combination with video, voice, or other telecommunications services”).

Notwithstanding the Commission’s goal of crafting rules that apply equally to all competing services and providers – including the Commission’s statements in both the *MDU Video Exclusivity Order* and in the *MTE Voice Exclusivity Order* itself to that effect – the final rules attached to the recent order unfortunately create some ambiguity in that they speak only in terms of “common carriers.” *Id.* Appendix B. Although the logic and language of the Commission’s order indicate that these rules should apply to all competing providers when they offer voice services – and no legal or policy arguments to the contrary are even suggested in the order – the use of the term “common carriers” could potentially be used by some competitors in an effort to circumvent the Commission’s decision. Therefore, the Commission should foreclose any such regulatory gamesmanship by confirming that its rule applies to all voice providers.

As the Commission is well aware, many providers of voice service, including both traditional cable companies, traditional telephone companies, competitive local exchange carriers, and others, now offer voice service using VoIP rather than traditional circuit-switched technology. In fact, VoIP technology is the technology of choice for many significant providers of voice services, including most traditional cable companies. Although the Commission has extended several provisions from Title II to interconnected VoIP services – including certain E-911, universal

service, customer proprietary network information, and disability access obligations to such services⁷ – the Commission has repeatedly deferred any decision on the “ultimate classification of these services as telecommunications services or information services.” *Id.* ¶ 10 n. 50. As the Commission has noted, this regulatory classification issue is “significant” because only “telecommunications services” are treated as common carriage services “generally . . . subject to a comprehensive regulatory regime under Title II of the Act.” *Id.*

Particularly in light of the significant number of providers relying on VoIP technology to offer voice services, the Commission should not permit either the current uncertainty concerning the regulatory classification of these services or any future decision concerning the proper label for these services to leave any space for arguing that a loophole exists in the Commission’s rules.⁸ Indeed, in the *MTE Voice Exclusivity Order*, the Commission already rejected any notion that the nature of the provider of voice services should limit the sweep of the Commission’s rules, noting that “the cost/benefit analysis for consumers” is the same regardless of the provider. *Id.* ¶ 13.

In order to accomplish its goals concerning regulatory parity and to encourage full and fair competition by all providers of the “triple play” of voice, video and Internet services, the Commission should confirm that its prohibition on exclusive access agreements for voice services

⁷ Report and Order, *IP-Enabled Services*, 22 FCC Rcd 11275, ¶¶ 15-16 (2007) (describing Commission decisions concerning obligations that have been extended to interconnected VoIP services).

⁸ To be clear, Verizon is not advocating sweeping new regulation for VoIP services or suggesting that all of the regulations that have traditionally applied in the “one-wire,” Title II world would be justified in the case of VoIP services (or even for traditional circuit-switched services) offered in today’s competitive voice marketplace. To the contrary, Verizon has urged the Commission to reaffirm that all VoIP services — regardless of the technology or provider — are interstate services, subject to the same rules and regulations, and that none is saddled with regulations designed for different services in a different era. But in order to ensure fair competition for the “triple play” of services by all providers, the same rules concerning the permissibility of exclusive access arrangements should apply evenly.

in residential MTEs applies to all competing providers, regardless of their identity, history, or technological approach.

Respectfully submitted,



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