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Federal Communications Commission
Office of the Secretary

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Dortch:

This letter briefly addresses two points in connection with the above-captioned petitions. First, Verizon respectfully renews the request in its original petitions that the Commission ask Cox Communications Inc. ("Cox") to provide the same types of data for Rhode Island and Cox's service territory in the Virginia Beach MSA that Cox has supplied in prior forbearance proceedings[1], such as those initiated by Qwest's petition for forbearance in the Omaha MSA[2] and Verizon's petition for forbearance in six

[1] These data include: (1) for each wire center service area and/or rate center service area, an estimate of the percentage of all end-user locations where Cox is willing and able, within a commercially reasonable time, to provide over its own network the full range of services that are substitutes for Verizon's local service offerings; (2) for each wire center and/or rate center service area, the number of customers and end-user access line counts served by Cox, separately by residential and business customers, and by capacity (*e.g.*, DS0, DS1, DS3, OCn), with the proportion of these end-user access lines that are served over Cox's own last-mile facilities.

[2] *See* Letter from J.G. Harrison, Cox Communications, to Marlene Dortch, FCC, WC Docket No. 04-223 (June 30, 2005).

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metropolitan areas ("Verizon 6 MSA").[3] The Commission has relied on such data in prior decisions involving the same forbearance relief that Verizon requests here. In the interest of ensuring that the Commission has an accurate and complete record in the above-captioned proceedings, Verizon has requested verbally and in writing that Cox submit the same types of data in these proceedings that it has submitted in prior forbearance proceedings.[4] Verizon also indicated in its Petitions in the above-captioned proceedings that the Commission should request that Cox provide this data.[5] To date, Cox has not voluntarily provided the requested data, and is unlikely to do so unless the Commission requires it.

Second, the Commission should reject arguments in the *ex parte* letter by One Communications Corp., tw telecom inc., Integra Telecom, Inc., and Cbeyond, Inc. ("the Joint Commenters").[6] The Joint Commenters' Ex Parte simply recycles old arguments that Verizon has previously refuted. These recycled arguments do not provide any basis for denying the relief requested in the Rhode Island Petition.

### 1. Analyzing Forbearance for the State of Rhode Island is Consistent with the Act and the Commission's Prior Forbearance Orders.

Verizon has previously refuted the Joint Commenters' objection to the fact that Verizon's petition is based on the state of Rhode Island rather than the larger Providence MSA. As explained in the Rhode Island Petition, while it is true that prior petitions were based on an MSA, there is no reason under the Act or public policy that they need to be so limited.[7] Indeed, as Verizon has demonstrated, the state of Rhode Island is a reasonable geographic market for purposes of the Commission's forbearance analysis because the state of Rhode Island is served by a single cable network (Cox) that provides service throughout Rhode Island, but not in parts of the Providence MSA that are outside the state.[8] Nothing in the statute limits forbearance petitions to an MSA-level analysis.[9] Given the central importance of competition from cable in the Commission's prior

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[3] *See* Letter from J. G. Harrison, Cox Communications, to Marlene Dortch, FCC, WC Docket No. 06-172 (Oct. 30, 2007).

[4] *See, e.g.,* Letter from Nneka Ezenwa, Verizon, to Marlene Dortch, FCC, WC Docket Nos. 08-24, 08-49 (Feb. 10, 2009) (submitting Verizon's letter to Jennifer Hightower, Cox, requesting that Cox provide market data for Rhode Island and Cox's service territory in the Virginia Beach MSA).

[5] *See, e.g., Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160 in Rhode Island,* WC Docket No. 08-24, at 6 fn.8 (Feb. 14, 2008) ("Rhode Island Petition"); *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in Cox's Service Territory in the Virginia Beach Metropolitan Statistical Area,* WC Docket No. 08-49, at 6 fn. 9 (Mar. 31, 2008).

[6] *See* Letter from Thomas Jones, One Communications et al, to Marlene Dortch, FCC, WC Docket No. 08-24 (Dec. 3, 2008) ("Joint Commenters' Ex Parte").

[7] *See* Rhode Island Petition at 3-4.

[8] *See* Rhode Island Petition at 3-4; Reply Comments of Verizon, WC Docket No. 08-24, at 21-24 (May 12, 2008) ("Reply Comments").

[9] *See* Rhode Island Petition at 3-4; 47 U.S.C. § 160(a) (providing that forbearance from applying any regulation to a telecommunications carrier should be determined with respect to "any or some of its geographic markets.").

forbearance decisions, it is appropriate to analyze forbearance for the state of Rhode Island rather than the larger MSA of which it is a part.

While arguing for a larger MSA-level review, the Joint Commenters also argue paradoxically for a smaller, wire center-level analysis.[10] This too should be rejected. As explained in the Rhode Island Petition and Reply Comments, and consistent with the Commission's prior forbearance orders, a granular analysis is not necessary here because the evidence shows that Cox provides voice services throughout the state of Rhode Island.[11] The Joint Commenters have not refuted this evidence, which should be the end of the matter.

In any event, even if the Commission were to conduct a granular analysis, Verizon explained that the Commission should do so on a rate center rather than a wire center basis because rate centers equally reflect the areas in which Verizon and competing providers provide local telephone service.[12] Moreover, Cox has previously indicated that "it does not provide service or track customer locations by wire center because Cox's network does not correspond with Verizon's wire centers."[13] The fact that Cox maintains its data on a rate-center basis makes clear that a wire center-level analysis serves no purpose here.

### 2. The Commission Should Reject the Joint Commenters' Attempts to Change the Test With Respect to Business Customers.

Unable to refute the evidence showing that Cox provides service throughout the state of Rhode Island, the Joint Commenters seek to change the test with respect to business customers. Specifically, the Joint Commenters argue that Verizon should be required to provide coverage data for business locations.[14] As Verizon has previously explained, the test that the Joint Commenters propose is more stringent than and at odds with the Commission's prior forbearance orders.[15] In the *Omaha Forbearance Order*, the

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[10] Joint Commenters' Ex Parte at 2-5.

[11] *See* Rhode Island Petition at 7; Reply Comments at 4; *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 carriers 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) (using a national geographic market to determine whether AT&T was non-dominant).

[12] *See* Rhode Island Petition at 8; Reply Comments at 5.

[13] Letter from J.G. Harrington, Cox Communications, to Marlene Dortch, FCC, WC Docket No. 06-172, attachment at 1 (Nov. 21, 2007).

[14] Joint Commenters' Ex Parte at 6-7.

[15] *See* Rhode Island Petition at 22; Reply Comments at 17; *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 ¶ 66, n.174, ¶ 69 (2004) ("*Omaha Forbearance Order*") (granting forbearance from unbundling regulations in Omaha and finding that the fact that Cox's existing network did not

Commission concluded that Cox "pose[d] a substantial competitive threat" for enterprise customers based on several factors including "Cox's strong success in the mass market, its possession of the necessary facilities to provide enterprise services, its technical expertise, its economies of scale and scope, its sunk investments in network infrastructure, its established presence and brand in the Omaha MSA, and its current marketing efforts and emerging success in the enterprise market."[16] Verizon has demonstrated that each of these factors is satisfied in Rhode Island.[17] Contrary to the Joint Commenters' claims, looking to these factors as a proxy for Cox's coverage of business locations is the right approach, because these factors are critical indicators that Cox has both the ability and incentive to significantly grow the number of enterprise customers it currently serves in Rhode Island.

In any event, Cox's comments filed in response to the Rhode Island Petition confirm that Cox alone is serving a significant percentage of business customers in Rhode Island.[18] Specifically, the Cox Comments concede that Cox's network passes **[Begin Confidential]** **[End Confidential]** of business lines in Rhode Island and also concede that Cox serves **[Begin Confidential]** **[End Confidential]** businesses in Rhode Island, which, according to Cox, represents **[Begin Confidential]** " **[End Confidential]** the approximately 44,000 business in Rhode Island."[19] While Cox's own data provides an additional basis for granting forbearance, Verizon has also provided evidence that other providers serve significant numbers of business customers in Rhode Island. For example, Verizon has provided evidence that CLECs served approximately 98,000 retail business switched access lines (not including served via UNEs) in Rhode Island as of December 2006.[20] Verizon has also provided evidence, based on Verizon's wholesale billing records, that as of December 2007, competitors other than major wireless carriers served approximately **[Begin Confidential]** **[End Confidential]** voice-grade equivalent lines in Rhode Island using special access including, **[Begin Confidential]** **[End Confidential]** voice-grade-equivalent lines using DS3s and approximately **[Begin Confidential]** **[End Confidential]** voice-grade-equivalent lines using DS1s.[21]

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necessarily reach every business location was not dispositive to the Commission's forbearance decision in light of other evidence demonstrating Cox's incentives and ability to serve enterprise customers).

[16] *Omaha Forbearance Order* ¶ 66.

[17] *See* Rhode Island Petition at 20-26; Reply Comments at 17-21.

[18] Comments of Cox Communications, Inc., WC Docket No. 08-24 (Mar. 28, 2008) ("Cox Comments").

[19] Cox Comments at 8.

[20] *See* Rhode Island Petition at 31; Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, *Local Telephone Competition: Status as of December 31, 2006*, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-279231A1.pdf, Tables 11 and 12 (Dec. 2007).

[21] *See* Rhode Island Petition at 30; Rhode Island Petition at Attachment E, Declaration of Quintin Lew, John Wimsatt, and Patrick Garzillo Regarding Competition in Rhode Island, ¶ 39 ("Garzillo Rhode Island Declaration").

### 3. The Commission Should Include Wireless Competition in its Analysis.

The Joint Commenters next argue that the Commission should exclude wireless competition from its calculation of competitors' share of residential lines because they claim that wireless service is not in the same product market as wireline service.[22] The Commission should reject this argument in its entirety. Verizon has demonstrated that all wireless competition should be included in the Commission's analysis because wireless subscribers are shifting significant minutes from Verizon's wireline business to wireless providers and are also "cutting the cord" entirely.[23] While the Commission has taken a more conservative approach in its prior forbearance orders and included only those wireless subscribers that have completely eliminated their wireline service, the significant shifting of minutes from wireline service to wireless service makes it appropriate for the Commission to include *all* wireless competition in its analysis.[24] Regardless, there is no basis for the Joint Commenters' claim that customers who have actually terminated their wireline service in favor of wireless-only service do not view their wireless service as a complete alternative to wireline service.

The Commission should also reject the Joint Commenters' argument that AT&T Wireless subscribers and Verizon Wireless subscribers should be excluded from the Commission's analysis.[25] The FCC's own report confirms that "there is effective competition" in the wireless market and that "[n]o single competitor has a dominant share of the market."[26] This report also confirms that "[a] number of mobile wireless providers offer service plans with a price point designed to compete directly with wireline local telephone service" and that many wireless providers offer "bucket of minutes" plans that compete with wireline toll service.[27] Further, wireless prices and plans are based on market forces regardless of which wireless carrier the customer selects.[28] Verizon's

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[22] *See* Joint Commenters' Ex Parte at 7 ("[M]obile wireless service should not be included in the same product market as wireline voice service.")

[23] *See* Margo DeBoer, Yankee Group, *One in Seven US Households Say "No Thanks" to Wireline Phone Service in 2010* at 4 and Exh. 2 (Dec. 2006) (estimating that wireless subscribers make 68 percent of their long-distance calls and 51 percent of their local calls on their wireless phones); *See also* Garzillo Rhode Island Declaration ¶¶ 24-27 (describing the displacement of wireline minutes with wireless minutes).

[24] *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas,* Memorandum Opinion and Order, 23 FCC Rcd 11729, ¶ 15 (2008).

[25] *See* Joint Commenters' Ex Parte at 10.

[26] *Implementation of Section 602(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services,* Thirteenth Report, WT Docket No. 08-27, DA 09-54, ¶¶ 1-2 (Jan. 16, 2009).

[27] *See id.* ¶¶ 231-232.

[28] *See id.* ¶ 111 ("The continued rollout of differentiated pricing plans also indicates a competitive marketplace... Today, all of the nationwide operators, and many smaller operators, offer some version of a national rate pricing plan in which customers can purchase a bucket of minutes to use on a nationwide or nearly nationwide network without incurring roaming or long-distance charges. . . . [A]ll the nationwide operators also offer some version of a family plan.. . .The *Twelfth Report* highlighted the experimentation by a number of operators with various types of "unlimited" calling options. . . . Finally, a number of smaller and regional carriers, like Leap and MetroPCS, have been offering unlimited local calling plans for

Rhode Island Petition also demonstrates that when a customer eliminates its wireline service with the Verizon ILEC in favor of Verizon Wireless, this results in a customer loss for the regulated ILEC.[29] Thus, contrary to the Joint Commenters' argument, there is no basis for excluding AT&T Wireless or Verizon Wireless subscribers from the Commission's analysis, let alone attributing Verizon Wireless customers to the Verizon ILEC.

### 4. The Commission Should Continue to Include Competition Using Special Access or Non-UNE Wholesale Alternatives in its Analysis.

Next, the Joint Commenters recycle the argument that the Commission should exclude competition that uses special access or non-UNE wholesale alternatives, such as resale or Verizon's Wholesale Advantage service.[30] Verizon has already explained, however, that the Commission rejected this argument in the *Omaha Forbearance Order* and the *Verizon/MCI Order* where the Commission concluded that competition using special access and non-UNE wholesale alternatives was relevant to its analysis.[31] Verizon has demonstrated that its competitors are competing in the retail market in Rhode Island using special access and non-UNE alternatives.[32] Competition using these sources is therefore relevant to the Commission's analysis and should be included.

Nor is there is any merit to the Joint Commenters' claim that Wholesale Advantage is not a non-UNE wholesale alternative because "Verizon's Wholesale Advantage product consists of a UNE loop combined with non-UNE switching and transport."[33] Verizon has previously stated in the Verizon 6 MSA proceeding that "[t]here is no UNE loop or other UNE component that is part of Verizon's Wholesale Advantage service" and Wholesale Advantage is "sold pursuant to commercially negotiated agreements and neither the loop nor any other portion of that service is purchased as a UNE pursuant to an interconnection agreement."[34] Accordingly, Wholesale Advantage is a non-UNE wholesale alternative and, like similar services offered by Qwest, should be included in the Commission's analysis as non-UNE competition.[35] There is no basis for the Commission to take a different approach here.

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years.") *See also* Rhode Island Petition at 15; Garzillo Rhode Island Declaration, Exhibit 1; Reply Comments at 11.

[29] *See* Rhode Island Petition at 14.

[30] *See* Joint Commenters' Ex Parte at 11-13.

[31] *See* Reply Comments at 16; *Omaha Forbearance Order* ¶ 68 (considering competition using resale and non-UNE wholesale alternatives as further evidence to justify the elimination of unbundling requirements because competitors were using these services to compete in the retail market); *Verizon Communications Inc. and MCI Inc., Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433, ¶¶ 52, 56, 81 (2005) ("*Verizon/MCI Order*").

[32] *See* Reply Comments at 16.

[33] Joint Commenters' Ex Parte at 12.

[34] Letter from Joseph Jackson, Verizon, to Marlene Dortch, FCC, WC Docket No. 06-172, at 3 (Nov. 20, 2007).

[35] *See Omaha Forbearance Order* ¶¶ 67-68 (including Qwest's UNE-P replacement service as non-UNE competition and relying upon the fact that CLECs were using that service to compete as further evidence to justify the elimination of unbundling requirements).

**5. Verizon's Lower Price Term Plan Offerings and Pricing Do Not Provide Evidence That Competition is Lacking in the Enterprise Segment in Rhode Island.**

Lacking any evidence that competition is not present in Rhode Island, the Joint Commenters claim that the fact that some of Verizon's business month-to-month rates in Rhode Island have increased is evidence that enterprise competition is lacking in Rhode Island.[36] This claim does not make sense, and, in any event, fails to refute the evidence of extensive enterprise competition in Rhode Island. The changes in Verizon's month-to-month and term rates in Rhode Island are a direct response to competition, not evidence that competition is lacking. It is expected that in a competitive market, such as this one, standard month-to-month rates would be higher than term rates. This is due to the fact that, in the face of competition, the risks that customers on month-to-month plans will change providers before Verizon has an opportunity to recover the costs of installing the circuit for that customer are much greater. Moreover, as Verizon has previously explained, while there have been changes in Verizon's month-to-month rates in Rhode Island, those changes were accompanied by rate *decreases* in Verizon's term plans.[37] Accordingly, contrary to the Joint Commenters' claims, those rate changes are not evidence that competition is lacking, but rather a competitive response to competition.

**6. The Commission Should Consider Evidence of Non-Impairment in Its Forbearance Analysis.**

Finally, the Joint Commenters argue that Verizon is improperly seeking to replace the forbearance standard with the impairment standard.[38] On the contrary, Verizon has previously explained that the two standards differ in that the Commission can grant forbearance even in the presence of impairment provided that the forbearance criteria are satisfied, but cannot maintain unbundling where the evidence shows that competition is occurring without UNEs.[39] Here, because the evidence shows that competition is possible without UNEs and, therefore, that there is no impairment, each of the forbearance criteria is satisfied and forbearance from unbundling requirements is mandatory. The Joint Commenters have not offered, nor could they offer, any basis for maintaining unbundling in Rhode Island under either the impairment or the forbearance standard.

The Joint Commenters further claim that the Commission did not invite ILECs to make non-impairment showings through forbearance petitions and that the Commission's prior forbearance orders prohibit the Commission from making non-impairment findings

[36] *See* Joint Commenters' Ex Parte at 13.
[37] *See* Reply Comments at 20, fn. 24.
[38] *See* Joint Commenters' Ex Parte at 13.
[39] *See* Reply Comments at 25, citing *United States Telecom Ass'n v. FCC*, 290 F.3d 415, 422 (D.C. Cir. 2002) (Commission may not impose unbundling "without regard to the state of competitive impairment in any particular market").

in the context of a forbearance proceeding.[40] As Verizon has previously explained, these claims are based upon a misreading of the Commission's prior forbearance orders. Despite the Joint Commenters' claims to the contrary, the Commission designated forbearance petitions as the vehicle for altering incumbents' unbundling obligations in specific geographic markets, and the Commission's *Anchorage Forbearance Order* and *Omaha Forbearance Order* invite ILECs to make non-impairment showings through forbearance petitions.[41]

Verizon has also explained that the language the Joint Commenters cite from the *Omaha Forbearance Order* and *Anchorage Forbearance Order*, which prohibits the Commission from promulgating new rules or making other general determinations in a forbearance proceeding, cannot be read, as the Joint Commenters suggest, as prohibiting the Commission from granting forbearance based on evidence that competitors are competing without UNEs.[42] Indeed, that language in those orders merely states that with respect to the "promulgat[ion] [of] any new rules or otherwise mak[ing] any general determinations," the Commission "d[id] not — and cannot — issue comprehensive proclamations" in the context of forbearance proceedings.[43] The language does not forbid the Commission from granting forbearance from unbundling based on evidence of competition without UNEs, and interpreting this language to indicate otherwise would be incompatible with the Commission's invitation to ILECs to file forbearance petitions to eliminate unbundling requirements in certain geographic areas.

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[40] *See* Joint Commenters' Ex Parte at 15 (citing *Petition of ACS Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(1)(c)(3) and 252(d)(1) in the Anchorage Study Area*, Memorandum Opinion and Order, 22 FCC Rcd 1958 (2007)("*Anchorage Forbearance Order*").

[41] *See* Rhode Island Petition at 35; Reply Comments at 26; *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* Order on Remand, 20 FCC Rcd 2533 ¶ 39 (2005) ("[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"); *Anchorage Forbearance Order* ¶ 5 (explaining that the Commission elected not to "initiat[e] a number of separate proceedings to address, case-by-case, situations where the Commission's [nationwide] impairment findings did not . . . match market realities" and "instead invited incumbent LECs to seek forbearance from the application of the Commission's unbundling rules in specific geographic markets."); *Omaha Forbearance Order* ¶ 63, n.164 (same).

[42] *See* Reply Comments at 27.

[43] *Anchorage Forbearance Order* ¶ 11; *accord Omaha Forbearance Order* ¶ 14.

For these reasons and the information in Verizon's prior filings, the Commission should approve the pending petitions.

Sincerely,

Dee May

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