

March 26, 2009

VIA ECFS

EX PARTE

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Suite TW-A325
Washington, DC 20554

Re: *Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160(c) in Rhode Island, WC Dkt. 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 Dkt. No. 08-49*

Dear Ms. Dortch:

The undersigned parties, by their counsel, hereby submit the attached summary of a proposed standard for FCC consideration of petitions for forbearance from Section 251(c)(3) unbundling obligations filed pursuant to Section 10 of the Communications Act. In subsequent filings in the above-referenced docket, the undersigned will provide detailed explanations of and support for the attached proposal.

Please do not hesitate to contact the undersigned if you have any questions or concerns about this submission.

Respectfully submitted,

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cc: Acting Chairman Michael Copps
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Commissioner Robert McDowell
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Proposed Standard For Consideration of Petitions for Forbearance from Unbundling Obligations

Petitions for forbearance from Section 251(c)(3) unbundling obligations filed pursuant to Section 10 of the Act shall be considered on a Metropolitan Statistical Area (“MSA”) basis. In determining what level of competition in the MSA is sufficient under Section 10, the Commission should determine, for each MSA in which forbearance is sought, whether

(1) there are at least two facilities-based non-ILEC wireline competitors in the wholesale loop market, each of which has actually deployed end-user connections to 75 percent of end-user locations, each of which has deployed wholesale operations support systems sufficient to support the wholesale demand in the relevant product market, and each of which has garnered at least 15 percent of wholesale loop market share in the relevant product market (“Wholesale Test”);

or

(2) at least 75 percent of end-user locations are served by two or more facilities-based non-ILEC wireline competitors that offer retail service in the relevant downstream product market to the locations in question via loops that the competitors have actually deployed, and there are at least two facilities-based competitors to the ILEC that have each garnered at least 15 percent of retail market share in the relevant product market (“Retail Test”).

A petition shall only be granted if either the Wholesale Test or the Retail Test is satisfied in an MSA for a relevant product market. The FCC shall forbear from enforcing the incumbent LEC’s Section 251(c)(3) unbundling obligation only in the product market in which the Wholesale Test or Retail Test is satisfied.

For purposes of determining the relevant product market, when applying the Wholesale Test, the FCC shall examine the relevant markets for wholesale loop inputs. When applying the Retail Test, the FCC shall examine the relevant markets for retail services that are provided using UNE loop inputs. The FCC shall treat inputs used to serve residential customers as belonging to a different product market from inputs used to serve business customers. Similarly, the FCC shall treat downstream retail services provided via UNE loops to residential customers as belonging to a different product market from downstream retail services provided via UNE loops to business customers.

In extraordinary circumstances, the FCC may depart from this standard and reach a different conclusion as to whether to grant or deny a petition for forbearance from unbundling obligations than would otherwise apply under this standard.