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April 22, 2009

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160 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:

COMPTEL respectfully submits this letter to urge the Commission to adopt the Proposed Forbearance Standard submitted by the coalition of competitors on March 26, 2009.¹ Experience has shown that the forbearance standard applied by the Commission in Omaha, Nebraska, which relied upon the competition provided in the residential market by a single facilities-based cable provider to relieve Qwest of its statutory obligation to provide unbundled access to loops and transport pursuant to Section 251(c)(3) of the Communications Act,² is not sufficient to ensure that an incumbent local exchange carrier's charges, practices, classifications or regulations are just and reasonable and not unjustly or unreasonably discriminatory, to protect consumers or to

¹ Letter from Andrew D. Lipman, *et al.*, on behalf of Alpheus Communications *et al.* to Marlene H. Dortch filed in WC Docket Nos. 08-24 and 08-49 on March 26, 2009 ("CLECs' Proposed Standard).

² *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, FCC 05-170 (rel. Dec. 2, 2005) ("*Omaha Forbearance Order*"), *aff'd. sub nom. Qwest Corporation v. Federal Communications Commission*, 482 F. 3d 471 (D.C. Cir. 2007).

promote competitive market conditions and enhance competition among telecommunications providers.³

Verizon filed its above captioned Rhode Island and Virginia Beach forbearance petitions just two and three months respectively after the Commission found that its virtually identical petitions requesting the same relief failed to satisfy the statutory criteria of Section 10 of the Act.⁴ As many commenters have shown, Verizon has again failed to demonstrate that there is sufficient competition in either Rhode Island or the Virginia Beach MSA to keep its rates, terms and conditions of service in check, to protect consumers or to promote and enhance competition among telecommunications providers if the Commission were to decline to enforce its statutory obligations to provide unbundled loops and transport to its competitors at rates consistent with Section 252(d). For this reason, the Commission should again deny Verizon's requests for relief from regulation. At the same time, however, the Commission should use this opportunity to strengthen the standard it has applied in the past to evaluate whether a market is competitive enough to warrant deregulation. The CLECs' Proposed Standard will allow the Commission to far more accurately gauge whether lifting regulatory requirements will stifle competition at the expense of consumers and whether market forces are sufficiently strong to discipline the ILEC's rates, terms and conditions of service.

I. The Public Interest Demands That The Commission Correct Not Repeat The Omaha Mistake

In the *Omaha Forbearance Order*, the Commission found that "competition is the most effective means of ensuring that charges, practices, classifications, and regulations. . .are just and reasonable and not unreasonably discriminatory" and on that basis granted Qwest forbearance.⁵ Although the Commission found that the record developed in the Omaha Forbearance proceeding "does not reflect any significant alternative sources of wholesale inputs for carriers in this geographic market,"⁶ it nonetheless relieved Qwest of its obligations, pursuant to Section 251(c) of the

³ 47 U.S.C. §160.

⁴ *In the Matter of 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, FCC 07-212 (rel. Dec. 5, 2007) ("*Verizon 6 City Order*").

⁵ *Omaha Forbearance Order* at ¶63.

⁶ *Omaha Forbearance Order* at ¶67.

Communications Act, to make unbundled loops and transport available on a wholesale basis to competing carriers. The relief granted to Qwest was premised, at least in part, on the Commission's predictive judgment that "Qwest will not react to our decision here by curtailing wholesale access to its analog DS0-, DS1-, or DS3- capacity facilities" and that market incentives would prompt Qwest to make its network available to competitors at competitive rates and terms.⁷

Unfortunately, as McLeodUSA has informed the Commission, the prediction that Qwest would be motivated by market forces to offer loops and transport at reasonable rates and terms failed to materialize.⁸ Qwest declined to negotiate rates, terms and conditions for the loops and transport it continues to be obligated to provide pursuant to Section 271 of the Act, 47 U.S.C. §271, and instead presented McLeod with take-it-or-leave-it standard agreements and uneconomic special access pricing.⁹ The non-negotiable rates Qwest offered McLeod involved monthly recurring price increases over the UNE rates ranging from 30% for stand alone DS0 loops¹⁰ to 138% for DS1 loops in one wire center to 151.5% for DS1 loops in 5 wire centers and to 165% for DS1 loops in the remaining three wire centers.¹¹ Qwest increased its non-recurring charges for DS1 loops by 360%.¹² Because Qwest is the only wholesale source for the loops and transport competitors need to serve their customers in Omaha, competitors would have to raise

⁷ *Id.* at ¶¶79, 83. Unlike what it did in Omaha, the Commission conditioned the forbearance from unbundling requirements granted to ACS in Anchorage on ACS' negotiating mutually acceptable rates, terms and conditions for continued access to loops and transport with its primary competitor. *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. §160(c)), for Forbearance from Section 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, WC Docket No. 05-281, Memorandum Opinion and Order, FCC 06-188 (rel. Jan. 30, 2007). In Omaha, Qwest has refused to negotiate rates, terms and conditions for loops and transport and instead has directed requesting carriers to its special access tariff offerings.

⁸ McLeodUSA Telecommunications Services, Inc.'s Petition for Modification of the Qwest Omaha Forbearance Order filed July 23, 2007 in WC Docket No. 04-223.

⁹ *Id.* McLeod Eben Declaration at ¶¶5 and 25 and Exhibits 1 and 3.

¹⁰ *Id.* The 30% price increase over the UNE rates is Qwest's "commercial agreement" price for stand alone DS0 loops. McLeod Eben Declaration at Exhibit 1.

¹¹ *Id.* McLeod Eben Declaration at ¶¶7-8 and Exhibit 1 at 3.

¹² *Id.* McLeod Petition at 9.

their end user rates by equivalent double and triple digit percentages in order to recover the costs they must pay to Qwest for essential inputs. Qwest's supracompetitive special access rates made it untenable for McLeod to remain in the Omaha market as a full service provider. It removed most of its employees from Omaha, limited its operations primarily to existing customers and ceased all sales of residential and small business services.¹³ Qwest's unilateral ability to increase rates for essential inputs to such levels is not reflective of a competitive marketplace and clearly shows that the Commission's decision to forbear from enforcing Section 251(c)(3) in Omaha neither promoted competitive market conditions nor enhanced competition among telecommunications providers.

In granting Qwest forbearance, the Commission committed that to the extent its predictive judgment proved incorrect, it retained the option to reconsider its forbearance ruling if carriers filed "appropriate petitions."¹⁴ McLeod filed such an "appropriate petition" nearly two years ago detailing the rate increases and other unreasonable terms Qwest made a condition of continuing access to loops and transport and alleging that such conditions made it uneconomical for McLeod to continue to provide service to residential and small business markets in Omaha.¹⁵ Despite its commitment to reconsider its forbearance ruling if its predictive judgment proved incorrect, the Commission has let two years pass with no action on the McLeod petition.

The *Omaha Forbearance Order* is not the only example of the Commission's using an inappropriate standard to determine whether a market is competitive enough to warrant deregulation and to incorrectly predict that such deregulation would produce competitive rates. McLeod showed that once Qwest was granted Phase II pricing flexibility in the Omaha MSA, it *increased* its special access monthly DS1 channel termination rates 45.83% over the price cap rate for month-to-month customers, 42.61% over the price cap rate for one year term customers and 31.58% over the price cap rate for 2 year term customers.¹⁶ McLeod's showing is consistent with the finding of the

¹³ *Id.* McLeod Shah Declaration at ¶¶ 8, 10; see also *In the Matter of the Application of McLeodUSA Telecommunications Services, Inc., Hiawatha, Iowa, Seeking To Cease Providing Local Exchange Voice Services In Nebraska Wire Centers*, available at <http://www.psc.state.ne.US/home/NPSC/communication/order/Local%20Competition/C3922080528.pdf>.

¹⁴ *Omaha Forbearance Order* at n. 204.

¹⁵ McLeod's Petition for Modification, *supra*.

¹⁶ McLeod Eben Declaration at ¶ 9.

Government Accountability Office that ILEC pricing flexibility rates are higher than price cap rates in the Phase II MSAs¹⁷ despite the Commission's prediction that competitive pressures in those MSAs would be sufficient to discipline special access rates and drive the rates towards the cost of providing the service.¹⁸ The Commission opened a rulemaking over four years ago to determine whether it should make revisions to the pricing flexibility rules for special access services, but to date has taken no action.¹⁹

When the Commission eliminates the obligation for an ILEC to provide unbundled loops and transport, the only alternative loops and transport available to competitors on a ubiquitous basis are those priced at the ILEC's special access rates. In light of the Commission's overly optimistic predictions that competitive pressures would drive deregulated special access rates towards cost and that market forces would drive Qwest to offer competitors access to loops and transport at competitive rates and terms, the Commission has an obligation to correct its errors.²⁰ While the Commission has declined thus far to revisit either its pricing flexibility rules or its *Omaha Forbearance Order*, it should at the very least ensure that the UNE forbearance standard it applies on a going forward basis does not assume that the presence of a single cable competitor in a market is sufficient to discipline the ILEC's rates or to warrant a conclusion that enforcement of Section 251(c)(3) is not necessary to ensure that the ILEC's rates, practices and regulations are just, reasonable and non-discriminatory, to protect consumers and to promote competitive market conditions and enhance competition.

¹⁷ Government Accountability Office, *FCC Needs To Improve Its Ability To Monitor and Determine The Extent Of Competition In Dedicated Access Services*, GAO-07-80 (Nov. 2006) at 27-28.

¹⁸ *In the Matter of Special Access Rates For Price Cap Local Exchange Carriers*, 20 FCC Rcd 1994 (rel. Jan. 31, 2005) at ¶¶18, 70.

¹⁹ *Id.*

²⁰ *See, Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428, 445 (D.C.Cir. 1991) (“should the Commission's predictions . . . prove erroneous, the Commission will need to reconsider its [decision] in accordance with its continuing obligations to practice reasoned decisionmaking”); *Cellnet Communications, Inc. v. FCC*, 149 F.3d 429, 442 (6th Cir. 1998) (deferring to the Commission's predictions about the level of competition, but stating that, if the predictions do not materialize, the Commission “will of course need to reconsider its [decision] in accordance with its continuing obligation to practice reasoned decision-making”).

II. The CLECs' Proposed Standard Will More Accurately Predict The Existence Of A Level of Competition Sufficient To Support Forbearance

COMPTTEL supports the CLECs' Proposed Forbearance Standard and the explanatory *ex partes* they have filed.²¹ Pursuant to this standard, the Commission should not grant forbearance from Section 251(c)(3) unbundling obligations unless there are (1) at least two facilities-based non-ILEC wireline competitors in the wholesale market, each of which has actually deployed end-user connections to 75% 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% of wholesale loop market share in the relevant product market; or (2) at least 75% 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% of retail market share in the relevant product market.²²

The Proposed Standard is targeted to correct deficiencies in the Commission's existing framework for analyzing whether sufficient competition exists in a market to forbear from enforcing Section 251(c)(3). Two of those deficiencies – the assumption that the existence of a single facilities-based competitor demonstrates that a market is competitive enough to relieve an ILEC of its wholesale obligations and the failure properly to analyze the impact of the lack of wholesale alternatives on competition and consumer choice in the retail market – are particularly devastating to the promotion and preservation of competition. The public interest demands that the Commission remedy these deficiencies before granting another ILEC relief from its statutory unbundling obligations based on incorrect assumptions about the competitiveness of a market and its ability to discipline prices and ill considered predictive judgments about the ILEC's post-deregulation behavior.

²¹ Letter from Andrew D. Lipman, *et al.* to Marlene H. Dortch filed in WC Docket Nos. 08-24 and 08-49 on March 26, 2009; Letter from Genevieve Morelli on behalf of Broadview Networks *et al.* to Marlene Dortch filed in WC Docket Nos. 08-24 and 08-29 on April 3, 2009; Letter from Thomas Jones on behalf of One Communications Corp, *et al.* to Marlene Dortch filed in WC Docket Nos. 08-24 and 08-49 on April 14, 2009.

²² Letter from Andrew D. Lipman, *et al.* to Marlene H. Dortch filed in WC Docket Nos. 08-24 and 08-49 on March 26, 2009.

A. Duopolies Do Not Produce Competitive Rates

There is an extensive and growing body of literature that demonstrates that duopoly market conditions produce high prices, frustrate innovation and can lead to tacit collusion by providers. Telecommunications (and its close relative, the multi-channel video distribution market) provide ample real-world evidence of these consumer harms.

The wireless markets have been studied to determine the effect of duopoly structure on pricing and possible collusion.²³ In the United States, Parker and Roller (1997) evaluated wireless pricing during 1984 and 1988 when the Commission licensed only two competing cellular services in each geographic area,²⁴ thereby creating a duopoly.²⁵ Their analysis concluded that the carriers' behavior was consistent with tacit collusion to sustain higher prices.²⁶ Consumer harm from duopoly conditions in wireless markets is not limited to the United States. Stuetzler and Tewes concluded that tacit collusion characterized the German market during similar conditions,²⁷ while Valletti and Cave argue that tacit collusion explained seven years of stable prices in the United Kingdom followed by a sudden decrease in prices following the entrance of two new competitors in 1993.²⁸

²³ A useful survey addressing pricing in the wireless markets (summarized above) can be found in: Gans, J.S., King, S.P. and Wright, J., *Wireless Communications, Handbook of Telecommunications Economics V2*, M. Cave, S. Majumdar and I. Vogelsang, eds., North-Holland, 2005 at 260-264.

²⁴ See, *In the Matter of the Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect To Commercial Mobile Services*, 10 FCC Rcd 8844 (1995) at ¶3.

²⁵ See *Collusive Conduct in Dupolies: Multimarket Contact and Cross-ownership in the Mobile Telephone Industry*, P. Parker, and L.H. Roller, *RAND Journal of Economics*, 28(2) 1997 at 304-322.

²⁶ See also *Multimarket Contact and Price Coordination in the Cellular Telephone Industry*, M. Busse, *Journal of Economics and Management Strategy*, 9(3) 2000, at 287-320.

²⁷ *Competition in the German Cellular Market*, M. Stuetzler and D. Tewes, *Telecommunications Policy*, 1996, 20, 303-310.

²⁸ *Competition in UK Mobile Communications*, T. Valletti and M. Cave, *Telecommunications Policy*, 1998, 22, 109-131.

Several years ago, the GAO did a study of the video distribution market, which at the time was highly concentrated, with consumer choice limited to an incumbent cable provider and a broadcast satellite provider. The GAO estimated that the addition of a single *additional* competitor (*i.e.*, a broadband service provider) produced lower rates and better service.²⁹ Based on the GAO's analysis, moving away from a duopoly-like structure (cable plus satellite) produced rates 15% to 41% lower in five of the six markets studied.³⁰

Finally, there is a growing body of evidence that duopoly conditions in residential telephone markets are producing higher rates for consumers when prices are deregulated. In California, the Public Utility Commission lifted a number of price controls, relying on competition from cable (as well as wireless and VoIP) to constrain the ILECs' pricing behavior. A recent analysis concluded that most California consumers have a choice of only two wireline providers – the ILEC and the cable provider.³¹ Since 2006, AT&T and Verizon have increased basic local service rates by between 13% and 26%, increases that are estimated to cost California consumers more than \$100 million annually.³² During that same period, Verizon has increased Lifeline rates by 12%, directory assistance rates by 188%, the price of a three minute toll call by 171%, and returned check charges by 233%.³³

The California experience – *i.e.*, deregulation producing higher retail rates – has been repeated in other states. In 2006, the Illinois Commerce Commission deregulated most residential rates in the Chicago MSA, where AT&T and Comcast dominate the market, while the rest of the state remained under price cap regulation. As a

²⁹ U.S. General Accounting Office, *Wire-based Competition Benefited Consumers in Selected Markets*, Report to the Subcommittee on Antitrust, Competition Policy and Consumer Rights, Committee on the Judiciary, U.S. Senate, GAO 04-241 (February 2004). Consistent with overall trends towards integrated services, entrant video distribution providers offered other services such as Internet access and telecommunications (as do the incumbent cable providers). The GAO used the term “broadband service provider” to reflect the fact that providers offer multiple services.

³⁰ *Ibid.*, at 1. GAO did not provide an explanation for the exception where the price of cable television service was 3% higher than the price in its matched market.

³¹ *Why “Competition” is Failing to Protect Consumers*, T. Roycroft, TURN, March 25, 2009, at iii.

³² *Id.*, at i.

³³ *Id.*

consequence, AT&T implemented significant rate increases for residential local telephone services in the Chicago MSA. Indeed, the rates were raised to levels higher than the rates in the areas of the state where the services are deemed to be “non-competitive.” Thus, rather than reducing rates to respond to competitive pressures in the market, AT&T has been able to take advantage of the absence of price constraining regulation to increase rates in the allegedly “competitive” Chicago market, generating net revenue increases of \$149 million per year.³⁴ As the Illinois Attorney General concluded, “[t]he absence of serious price competition between AT&T Illinois and Comcast at the retail level and their combined . . . retail market share is by itself a compelling demonstration of the existence of a duopoly exhibiting implicit, if not explicit coordinated conduct.”³⁵

Similarly, in 2005, the Texas Legislature deregulated all of AT&T’s markets that had a population exceeding 30,000 and at least two competitors (including wireless). The only price protection provided consumers was for a “stand-alone” residential local exchange voice service which remained subject to price caps. Once deregulated, AT&T introduced a “new” version of its residential local exchange service, which it called “Standard Plus,” that automatically applied to any residential line that included *some* additional feature or service.³⁶ Since May 2006, AT&T has used Standard Plus to increase local rates (at least for any customer that subscribes to more than simply stand-alone basic local service) by between 58% (in its largest exchanges) and 90% (in its smallest markets).³⁷

³⁴ See *Report on the Competitiveness of the Residential Telecommunications Market and Price Changes in Illinois MSA 1 Since Entry of 2006 Final Order Submitted By The People Of The State Of Illinois*, filed in Illinois Commerce Commission Docket 06-0027 by the Illinois Attorney General’s Office on December 2, 2008.

³⁵ *Id.* at 16.

³⁶ Notably, customers did not affirmatively select Standard Plus service, as much as they were converted to the “new” local service by virtue of their decision under the prior rate schedule to add a feature or service to their account. Among the decisions that would land a consumer on “Standard Plus” service was the decision to add an additional directory listing.

³⁷ See Direct Testimony Of Joseph Gillan, Petition For Review Of Monthly Per Line Support Amounts From The Texas High Cost Universal Service Plan Pursuant To PURA § 56.031 And P.U.C Subst. R. 26.403, Texas Public Utilities Commission, PUC Docket No. 34723/SOAH Docket No. 473-08-0288, January 11, 2008, at 42-48. In Illinois, AT&T adopted similar rate increases for *uSelect 3* (local services with 3 custom calling

What these examples show is that retail markets with only two facilities-based wireline providers are not competitive and that consumers in such markets are likely to experience an increase, rather than a decrease, in their rates. Clearly, granting forbearance from UNE obligations based on retail competition from a single cable competitor is not consistent with the mandate of Section 10, which authorizes forbearance only where enforcement of the statute is not necessary to protect consumers, promote competitive market conditions or enhance competition among telecommunications providers. The Proposed Standard will ensure that the Commission does not again characterize a duopoly market as competitive and does not grant forbearance from Section 251(c)(3) unless there are at least two competitors in addition to the ILEC in the retail market and that each of those competitors serves at least 75% of end user locations with its own facilities.

B. Reasonably Priced Wholesale Inputs Are Necessary For Retail Competition

The Proposed Standard would also require the Commission to review the level of competition in the wholesale market as part of the forbearance analysis. Where there are no wholesale providers except the ILEC, as was the case in Omaha, a premature grant of forbearance from wholesale obligations creates the very real possibility that competitors dependent on the ILEC's facilities will be forced to exit the market, thereby reducing both customer choice and savings. As demonstrated by actual experience in Omaha and in the attached paper on The Importance of Wholesale Competition to Market Performance,³⁸ there is no basis for assuming that functioning wholesale markets will emerge when unbundling obligations are eliminated. Because competition at the retail level is dependent upon the availability of reasonably priced wholesale inputs, the Commission must examine the state of competition in the wholesale market before relieving an ILEC of its statutory obligation to provide access to unbundled loops and transport. Duplicating the last mile connections to customers is not economically feasible for most carriers and competitors must have access to those connections at reasonable rates in order to provide competitively priced alternative services to their customers.

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features) after deregulation. In addition to imposing rate increases on existing *uSelect 3* customers, it grandfathered the offering to existing customers only, replacing it for new customers with the *Select Feature Package* priced 12% higher. *Report on the Competitiveness of the Residential Telecommunications Market and Price Changes in Illinois MSA 1 Since Entry of 2006 Final Order Submitted By The People Of The State Of Illinois* at 8.

³⁸ Attachment 1 hereto.

Refraining from granting forbearance from Section 251(c)(3) unbundling obligations until there are at least two facilities-based wholesale competitors that can serve 75% of the customer locations in a market is necessary to ensure that retail competition will not be adversely affected if the Commission relieves an ILEC of its statutory unbundling duties.

Congress and the Administration have allocated billions of dollars to expand access to and stimulate demand for broadband service.³⁹ Although broadband is available in most areas of the country, subscribership remains relatively low. One sure way to stimulate demand for broadband is by promoting competition in the provision of the service. Only competition will drive rates down and increase the availability of offerings. Prematurely relieving an ILEC of its obligation to provide access to its loop and transport network at regulated rates will do neither where competitors have no alternative wholesale options. To ensure that the Administration's plan to increase both access to broadband and subscribership is capable of being realized, the Commission must do its part to promote competition.

Verizon's allegations that that "continuing to impose UNE obligations in the face of vibrant competition is not only unnecessary, but harms consumers – rather than 'protect[s]' them, *id.* § 160(a)(2) -- because it discourages investment in, and deployment of, innovative products and services"⁴⁰ are entitled to no weight. Those allegations are directly contradicted by the subsequent representations made by Verizon's Chairman in its recently released 2008 Annual Report. In the Letter to Shareholders that accompanies its 2008 Annual Report, Verizon's Chairman reported that its "main growth engines are wireless voice and data; high speed consumer broadband and video services; and Internet Protocol (IP) networks, application and professional services for global businesses," all of which can only be characterized as "innovative products and services."⁴¹ With respect to its network investments, Verizon's Chairman added that

³⁹ American Recovery and Reinvestment Act, Pub. L. No. 111-5, Section 6001.

⁴⁰ Verizon Rhode Island Petition at 32; Verizon Virginia Beach Petition at 33.

⁴¹ Chairman Ivan Seidenberg's Letter To Shareholders at 1, available at http://investor.verizon.com/financial/annual/2008/fea_02.html.

only three companies in the Dow Jones 30 generated more cash from operations than Verizon. Because of our strong financial position, *we were able to invest \$17.2 billion in networks*, pay \$5 billion in dividends and repurchase \$1.4 billion of Verizon stock.⁴²

Based on these statements by its Chairman, Verizon's representations in the forbearance petitions that continuing regulation of its wholesale offerings discourage investment and innovation simply strain credulity.

Conclusion

Both Section 10 of the Communications Act and the public interest demand that the Commission apply a more exacting standard than was applied in the *Omaha Forbearance Order* before determining that a market is so competitive that it is no longer necessary to enforce the provisions enacted by Congress to promote the development of competition, including Section 251(c)(3). Rather than repeat the Omaha mistake, the Commission should adopt the CLECs' Proposed Standard which will prove a far more accurate barometer of the level of competition necessary to support deregulation. Under either the existing or the Proposed Standard, Verizon is not entitled to forbearance in Rhode Island or Virginia Beach.

Respectfully submitted,

/s/

Mary C. Albert

cc: Julie Veach
Marcus Maher
Tim Steilzig
Randy Clarke
Don Stockdale
Scott Deutchman
Jennifer Schneider
Nick Alexander
Mark Stone

⁴² *Id.* at 2, emphasis added.