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April 24, 2009

**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th St., SW  
Washington, DC 20554

Re: **Ex Parte Submission, WC Docket Nos. 08-24, 08-49**  
**REDACTED – FOR PUBLIC INSPECTION**

Dear Ms. Dortch:

On April 21, 2009, Cox Communications, Inc. (“Cox”) submitted information in the above-captioned dockets concerning its service to customers in Rhode Island and the Virginia Beach Metropolitan Statistical Area (“MSA”).<sup>1</sup> The filing by Cox of customer data allows for the calculation of facilities-based (*i.e.*, competitive loop-based) competition in those geographic markets as described in this letter. This calculation unequivocally shows that the level of facilities-based competitive activity in Rhode Island and the Virginia Beach MSA falls short of the level required to satisfy the requirements of Section 10 of the Act.<sup>2</sup>

As a threshold matter, Cavalier Telephone continues to urge the Commission to abandon the Section 251(c)(3) forbearance test applied in previous orders and to adopt the

<sup>1</sup> Letter from Jason Rademacher, Counsel to Cox Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 08-24 (filed Apr. 21, 2009) (“*Cox Rhode Island Ex Parte*”); Letter from Jason Rademacher, Counsel to Cox Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 08-49 (filed Apr. 21, 2009) (“*Cox Virginia Beach Ex Parte*”).

<sup>2</sup> 47 U.S.C. § 160.

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standard described in its March 26<sup>th</sup> and April 3<sup>rd</sup> *ex parte* submissions.<sup>3</sup> Unquestionably, Verizon fails to satisfy that proposed standard in either market.<sup>4</sup> Should the Commission decide to continue to apply the standard used in previous Section 251(c)(3) forbearance proceedings, however, the data provided by Cox demonstrates that residential facilities-based competition is not sufficiently robust to warrant forbearance.

The level of residential facilities-based competition in Rhode Island and the Virginia Beach MSA – using the current standard with the assumptions described below – is detailed in the following table:

**\*\*\* BEGIN HIGHLY CONFIDENTIAL \*\*\***

Metric	State-Specific CDC		National CDC	
	Virginia Beach	Rhode Island	Virginia Beach	Rhode Island
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**\*\*\* END HIGHLY CONFIDENTIAL \*\*\***

<sup>3</sup> Letter from Andrew D. Lipman, *et al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 08-24, 08-49 (filed March 26, 2009); Letter from Brad Mutschelknaus, Counsel to Broadview Networks, Inc., *et al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 08-24, 08-49 (filed April 3, 2009) (“*CLEC April 3<sup>rd</sup> Ex Parte*”).

<sup>4</sup> *CLEC April 3<sup>rd</sup> Ex Parte*, at 16-17.

<sup>5</sup> The Rhode Island line/customer ratio provided by Cox was used to estimate customer counts in Virginia Beach. Cox provided a line count for Virginia Beach but not a customer count. Because Verizon calculates share based on directory listings – and because directory listings are a better measure of customers than lines – the Cox customer data is used in the calculations above.

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The calculations contained in the table above include several important assumptions. First, the calculations utilize the best-available estimate of Verizon Wireless's market share in Rhode Island and the Virginia Beach MSA. In deriving the market shares contained in its April 10, 2009 *ex parte* letter,<sup>6</sup> Verizon appears to have used the Verizon Wireless national share of the wireless market. That is inappropriate. Information provided to the Virginia State Corporation Commission ("VCC") by Verizon in the VCC's recent retail services deregulation proceeding demonstrates that Verizon Wireless's in-region market share is significantly higher than the national average and is more than 50%.<sup>7</sup> Thus, the calculations in the table above ascribed a 55% wireless market share to Verizon Wireless based on Verizon's discovery responses in the recent VCC proceeding. This is the best available data estimating Verizon Wireless's market share in a state where Verizon is the dominant local exchange carrier. In addition, because the data reflects Verizon Wireless's share of wireline numbers ported to a wireless carrier, the data better estimates Verizon Wireless's share of cut-the-cord wireless customers.

Second, resale and Wholesale Advantage lines were included in the Verizon line counts and excluded from the line counts for competitive carriers. This adjustment is proper based on the Commission's long-standing definition of facilities-based competitor for purposes of its forbearance analysis as a carrier that can successfully provide local exchange and exchange access services without relying on the ILEC's loops or transport.<sup>8</sup> Lines served via unbundled network element ("UNE-P") replacement services (*e.g.*, Wholesale Advantage) and Section 251(c)(4) resold lines must be excluded from the competitive side of the analysis since, by definition, they rely on use of Verizon-provided local loops.

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<sup>6</sup> Letter from Nneka Ezenwa, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 08-24, 08-49 (filed Apr. 10, 2009) ("*Verizon April 10<sup>th</sup> Ex Parte*").

<sup>7</sup> See Verizon Response to Cox Data Request Nos. 19 – 21, *Application of Verizon Virginia Inc. and Verizon South Inc. for a Determination that Retail Services are Competitive and Deregulating and Detariffing of the Same*, Virginia State Corporation Commission, Case No. PUC-2007-00008 ("*Virginia Deregulation Proceeding*"). Discovery responses in that proceeding provided the share of wireline numbers ported to wireless carriers that were ported to Verizon Wireless in Virginia in 2006. The specific Verizon Wireless porting share is confidential. The public record makes clear, however, that "significantly more than half ported their number to Verizon Wireless." Pre-filed Direct Testimony of Joseph Gillan on Behalf of Cox Virginia Telecom, Inc. (Revised), *Virginia Deregulation Proceeding* (filed June 1, 2007), at 18.

<sup>8</sup> *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, ¶ 64 (2005) ("*Omaha Forbearance Order*").

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Third, as discussed in numerous previous submissions, Cavalier Telephone steadfastly maintains that mobile wireless services are not adequate substitutes for wireline services today and that the Commission therefore should not include mobile wireless services in the same product market as wireline services when conducting its competitive market analysis.<sup>9</sup> If wireless services are excluded from the Commission's analysis, based on the data filed by Cox, facilities-based competitors' share of the residential market in Rhode Island \*\*\* **BEGIN HIGHLY CONFIDENTIAL** \*\*\* **END HIGHLY CONFIDENTIAL** \*\*\* and facilities-based competitors' share of the residential market in the Cox service territory in the Virginia Beach MSA \*\*\* **BEGIN HIGHLY CONFIDENTIAL** \*\*\* **END HIGHLY CONFIDENTIAL** \*\*\*.<sup>10</sup>

Should the Commission decide to include cut-the-cord wireless lines in its analysis, however, – which it should not – the conclusion remains that facilities-based competitors' share in neither market meets the Commission's previously applied standard. Cavalier maintains that the state-specific point estimates of cut-the-cord wireless percentages contained in the Center for Disease Control's ("CDC's") March 2009 report are not sufficiently reliable to be used in the Commission's competitive analysis.<sup>11</sup> However, as shown in the table above, if the state-specific point estimates are used,<sup>12</sup> facilities-based competitors' residential share in Rhode Island and the Cox territory in the Virginia Beach MSA<sup>13</sup> \*\*\* **BEGIN HIGHLY CONFIDENTIAL** \*\*\* **END HIGHLY**

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<sup>9</sup> See, e.g., Letter from Brad Mutschelknaus, Counsel to Broadview Networks, Inc., *et al.* to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 08-24, 08-49 (filed Apr. 20, 2009) ("*CLEC April 20<sup>th</sup> Ex Parte*"); Letter from Brad Mutschelknaus, Counsel to Broadview Networks, Inc., *et al.* to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 08-24, 08-49 (filed Apr. 24, 2009) ("*CLEC April 24<sup>th</sup> Ex Parte*").

<sup>10</sup> These percentages assume resale and Wholesale Advantage lines are included in Verizon's line counts and excluded from competitors' line counts.

<sup>11</sup> See *CLEC April 24<sup>th</sup> Ex Parte*, at 3.

<sup>12</sup> The CDC provides two state-specific estimates calculated using different methodologies. The calculation in the table above uses the simple average as the state-specific estimate for Rhode Island and Virginia Beach. See Steven J. Blumberg, *et al.*, Nat'l Center for Health Statistics, CDC, *Wireless Substitution: State-Level Estimates from the National Health Interview Survey, January-December 2007* (rel. Mar. 11, 2009) ("*CDC State Estimates*"), available at <http://www.cdc.gov/nchs/data/nhsr014.pdf>.

<sup>13</sup> An additional problem with using the state-level estimates for the Virginia Beach MSA was pointed out in the *CLEC April 24<sup>th</sup> Ex Parte*. Verizon is seeking forbearance in the Cox service territory in the Virginia Beach MSA, not the state of Virginia. The Virginia-specific estimate in the CDC report therefore is inapposite. *CLEC April 24<sup>th</sup> Ex Parte*, at 3.

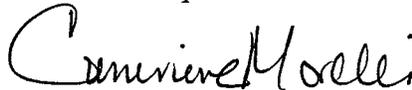
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**CONFIDENTIAL \*\*\***. Similarly, if the national cut-the-cord wireless percentage is used – as Verizon advocates –<sup>14</sup> facilities-based competitors' residential share in Rhode Island and the Cox territory in the Virginia Beach MSA \*\*\* **BEGIN HIGHLY CONFIDENTIAL \*\*\***  
**\*\*\* END HIGHLY CONFIDENTIAL \*\*\***.

As shown herein, under any reasonable application of the Section 251(c)(3) forbearance standard previously applied by the Commission, facilities-based competitors have not captured sufficient market share to satisfy the requirements of Section 10. Thus, Verizon's petitions for forbearance from unbundling obligations in Rhode Island and the Cox territory in the Virginia Beach MSA must be denied.

Respectfully submitted,

*Cavalier Telephone*



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<sup>14</sup> *Verizon April 10<sup>th</sup> Ex Parte*, at 4.