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May 7, 2009

BY HAND DELIVERY AND ECFS

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

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

*In the Matter of 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*

REDACTED FOR PUBLIC INSPECTION

Dear Ms. Dortch:

On behalf of XO Communications, LLC and Kelley Drye & Warren LLP enclosed please find two copies of the Ex Parte Communication submitted in the above-referenced proceedings. This ex parte communication has been redacted for public inspection.

In accordance with paragraph 14 of the *Second Protective Order* issued in each of the above-captioned proceedings, respectively dated February 27, 2008 (DA 08-471) and April 15, 2008 (DA 08-880), a copy of the Ex Parte Communication containing Highly Confidential information are being submitted to your attention under separate cover.

Kindly date stamp the duplicate of this letter and return it to the courier. Please contact the undersigned at (202) 342-8400, if you have any questions about this letter.

Respectfully submitted,



Genevieve Morelli

Counsel to XO Communications, LLC

Enclosures

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VIA ECFS

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

Re: *Ex Parte Communication*: WC Docket Nos. 08-24, 08-49

Dear Ms. Dortch:

Verizon has repeatedly contended in the above-captioned proceedings that competition for business customers in Rhode Island and the Virginia Beach MSA from alternative technologies such as fixed wireless is more advanced than in Omaha at the time of the *Omaha Forbearance Order* and that such competition – in combination with competition from cable – justifies a grant of forbearance from unbundling obligations in both markets.¹ Although XO Communications, LLC (“XO”) previously has responded to inaccurate and misleading statements regarding fixed wireless provider Nextlink Wireless Inc.’s (“Nextlink’s”) enterprise market activities,² a brief reminder of the facts is nevertheless in order.

¹ See *Verizon Rhode Island Petition*, at 21-26; *Verizon Virginia Beach Petition*, at 21-26. See also Letter from Nneka Ezenwa, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 08-24, 08-49 (filed April 10, 2009), at 6.

² See, e.g., Letter from Brad Mutschelknaus, Counsel to Covad Communications Group, *et al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97 (filed Jun. 16, 2008) (“*June 16th Qwest 4-MSA Ex Parte*”). In support of its petitions seeking forbearance from unbundling obligations in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas (“MSAs”), Qwest contended that the fixed wireless services provided by Nextlink in those four MSAs constitute a

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Nextlink's actual market presence in the markets at issue is reflected in the empirical data previously submitted in the instant dockets by competitive carriers. The GeoResults lit commercial building data provided to the Commission in both dockets includes the extent to which enterprise customers use any fixed wireless alternatives to Verizon's loops in Rhode Island and the Virginia Beach MSA.³ More specifically, currently, Nextlink **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** in the state of Rhode Island. Likewise, Nextlink **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** in the Virginia Beach MSA.

Not surprisingly, Verizon fails to provide any data purporting to show the number of commercial buildings in Rhode Island or the Virginia Beach MSA that currently are served via Nextlink's fixed wireless services, nor does it attempt to quantify the number of commercial buildings that it believes Nextlink can serve in this manner within a commercially reasonable period of time. That is not surprising in light of the fact that overall fixed wireless technologies do not currently represent a widespread alternative to wireline transport or last-mile facilities. To that end, in April 2008 the Commission granted a nearly four year extension of the construction requirement for 678 licenses in the Local Multipoint Distribution Service ("LMDS").⁴ The Commission allocated 1,300 megahertz of LMDS spectrum in 1997 for wireless local loop applications. At the end of a ten-year term from the initial license grant date, LMDS licensees are required to demonstrate to the Commission that they are providing "substantial service" in each licensed area.⁵ The significant extensions of the "substantial service" requirement granted by the Commission reflect the licensees' showing that they cannot economically build out their planned LMDS systems in those locations for which the waiver was sought prior to the 2008 and 2009 construction deadlines. As stated in the LMDS Coalition waiver request, "unexpectedly high equipment costs, driven in large part by technical restraints

viable alternative to the wireline broadband services offered by Qwest. *See* Letter from Daphne Butler, Corporate Counsel, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97 (filed Jul. 1, 2008).

³ *See* Reply Comments of Covad Communications Group, *et al.*, WC Docket No. 08-24 (filed May 12, 2008), at 13-15; Comments of NuVox Communications and XO Communications, LLC, WC Docket No. 08-49 (filed May 13, 2008), at 48-49.

⁴ *In the Matter of Applications Filed by Licensees in the Local Multipoint Distribution Service (LMDS) Seeking Waivers of Section 101.1011 of the Commission's Rules and Extensions of Time to Construct and Demonstrate Substantial Service*, Memorandum Opinion and Order, DA 08-54 (rel. Apr. 11, 2008) ("*LMDS Extension Order*").

⁵ *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies For Local Multipoint Distribution Service and for Fixed, Satellite Services*, CC Docket No. 92-297, *Second Report and Order, Order on Reconsideration and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 125445, 12658 (1997).

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and unfavorable propagation characteristics, [have] prevented LMDS from emerging as a viable competitor to either the local telephone exchange or cable television businesses.”⁶

The difficulties inherent in deploying fixed wireless technologies have prevented fixed wireless services from becoming a generally-available substitute for incumbent local exchange carrier (“ILEC”) network facilities today.⁷ The Economics and Technology, Inc. (“ETI”) White Paper filed in the Commission’s special access reform docket confirms this fact. ETI noted that since its inception, [fixed wireless] technology has been bogged down with operational troubles . . . Due to these problems, fixed wireless has remained a marginal technology for serving the needs of enterprise customers.”⁸ ETI pointed out that current deployment in the enterprise market is minimal – a little over 25,000 lines across the country – and concluded that “even if one were (unrealistically) to assume that all of those fixed wireless lines were being used as substitutes for ILEC special access, they would account for *two one-hundredths of one percent*” of the special access market in the United States.⁹ Similarly, as of June 2007, the wireless backhaul services offered by FiberTower Corporation (“FiberTower”) – a leading provider of alternative wireless backhaul services – accounted for less than one percent of the total market for wireless backhaul services and it has taken five years to reach this level.¹⁰

In short, Verizon’s efforts to discredit the record evidence submitted by interested parties and to suggest that competitive carriers have misrepresented the presence of Nextlink in

⁶ *LMDS Extension Order*, at ¶ 6, quoting LMDS Coalition Waiver Request, at 5.

⁷ *See, e.g., Comments of XO Communications, LLC, et al.*, WC Docket No. 05-25, Declaration of Ajay Govil, at ¶ 21 (filed Aug. 8, 2007).

⁸ *Comments of the Ad Hoc Telecommunications Users Committee*, WC Docket No. 05-25, ETI White Paper, at 23-24 (filed Aug. 8, 2007).

⁹ *Id.*, at 24 (emphasis in original).

¹⁰ *See Reply Comments of XO Communications, LLC, et al.*, WC Docket No. 05-25, Second Declaration of Ajay Govil, at ¶ 5 (filed Aug. 15, 2007). FiberTower uses common carrier spectrum as well as its 24 GHz and 39 GHz licenses to provide its wireless backhaul services.

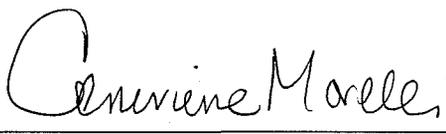
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the enterprise market in the geographic markets at issue fall far short of the mark and should be rejected by the Commission.

Respectfully submitted,

XO COMMUNICATIONS, LLC

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