

May 11, 2009

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Ms. Marlene Dortch
Secretary
Federal Communications Commission
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Re: WC Docket Nos. 08-24, 08-49
Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160(c) in Rhode Island; Petition of 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

Dear Ms. Dortch:

Cavalier Telephone & TV (“Cavalier”) submits this letter to respond to Verizon’s claim in the above-referenced proceedings that “a long line of state commission cases . . . have concluded that wireless competes with wireline based on extensive analysis.”¹ In fact, a number of states have flatly rejected that argument. The Minnesota Public Utilities Commission recently urged this Commission not to grant an incumbent carrier relief virtually identical to that sought by Verizon here, in large part because wireless services do not compete with wireline services: “In the residential sector, cable and wireless alternatives are somewhat more attractive to customers than in the business sector. However, *wireless service still remains much more of a complement to wireline service than it is a substitute.*”²

Other state commissions have reached similar conclusions. The Washington State Utilities and Transportation Commission has ruled that “Intermodal competition has not yet reached maturity Based on the evidence, evaluated in light of our experience, we find that while wireless telephony is growing, it for the most part supplements and does not displace wireline.”³ Likewise, the West Virginia Public Utilities Commission declined to designate wireline a “competitive” service for purposes of state tax law based on competition from wireless

¹ Letter from Rashann Duvall, Verizon, to Marlene Dortch, FCC, WC Docket Nos. 08-24, 08-49, at 16 (May 1, 2009) (“Verizon Ex Parte”).

² Comments of the Minnesota Public Utilities Commission, *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Minneapolis/St. Paul Metropolitan Statistical Area*, WC Docket No. 07-97, at 7 (FCC filed Feb. 8, 2008) (emphasis added).

³ *In the Matter of the Joint Application of Verizon Communications, Inc. and MCI, Inc. for Approval of Agreement and Plan of Merger*, Docket No. UT-050814, Order No. 07, 2005 Wash. UTC LEXIS 655, at *44 (Wash. UTC Dec. 23, 2005).

and VoIP, because “the Commission is not yet satisfied that such alternative technologies provide functionally substitutable services.”⁴ In fact, as the Oregon Public Utilities Commission observed, far from impeding wireline service growth, wireless and VoIP services could “well be an adjunct that could stimulate wireline growth.”⁵

Moreover, despite Verizon’s claim that those state commissions finding that wireline does compete with wireless did so “based on extensive analysis,” none of these states performed an analysis adequate to make that determination. In particular, none of these states conducted or reviewed an econometric study of the degree of wireline-wireless substitutability and the ability of the incumbent wireline carrier to raise and sustain prices above competitive levels – the kind of “analysis” that would be required to determine whether wireless services constrain wireline pricing.⁶

Finally, Verizon overstates the conclusions of these state commissions. For example, the Virginia State Corporation Commission decision relied upon by Verizon⁷ stated that “growth in wireless and broadband do not, by themselves, provide conclusive evidence of competition with or substitutability for wireline service.”⁸ The Commission explained:

For various reasons wireless telephone service may not be a reasonable substitute . . . for landline service for many consumers; for example, wireless service does not provide the same level of reliability as landline telephone service, particularly inside the home or office structure. Further, while significant technological

⁴ *Institution of General Investigation into the Certification of Competitive Telecommunications Services pursuant to West Virginia Code § 11-13B-2(b)(5)*, Docket No. 06-0959-T-GI, Commission Order, 2006 W. Va. PUC LEXIS 4025, at *15 (W. Va. PUC Dec. 18, 2006).

⁵ *In the Matter of Qwest Corp. Petition to Exempt from Regulation Qwest’s Switched Business Service*, Docket No. UX 29, Order No. 06-399, 2006 Or. PUC LEXIS 49, at *45 n.64 (Or. PUC July 12, 2006).

⁶ *Cf. Illinois Commerce Comm’n v. Illinois Bell Telephone Co.*, Docket No. 06-0027, Order, 2006 Ill. PUC LEXIS 49, at *245 (Ill. PUC Aug. 30, 2006) (finding that “the evidence regarding [wireless and VoIP] is too imprecise for the Commission to reach any conclusion regarding the propriety of including VoIP or wireless competition in our ... competitive analysis”).

⁷ Verizon Ex Parte at 16-17 n.55 (citing *Application of Verizon Virginia Inc. and Verizon South Inc. for a Determination that Retail Services Are Competitive and Deregulating and Detariffing of the Same*, Order on Application, Case No. PUC-2007-00008, at 22 (Va. State Corp. Comm’n Dec. 14, 2007)).

⁸ *Application of Verizon Virginia Inc. and Verizon South Inc. for a Determination that Retail Services Are Competitive and Deregulating and Detariffing of the Same*, Case No. PUC-2007-00008, Order on Application, at 21 (Va. State Corp. Comm’n Dec. 14, 2007) (internal quotation marks omitted). It is true that, as Verizon notes, the Virginia legislature subsequently passed legislation effectively overturning the state commission’s decision after intense lobbying by Verizon. But even Verizon does not (and cannot) claim that the legislature’s decision to overturn the expert agency in the state was based on “extensive analysis.”

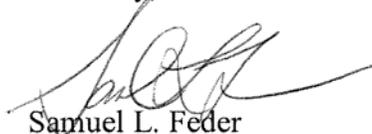
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progress has been made, wireless 911 service has yet to reach the standard of landline E-911 service, and this represents a major public safety issue that we cannot ignore when determining whether wireless telephone service is a statewide substitute to Verizon's landline service that "reasonably meets the needs of consumers" ⁹

The Virginia Commission concluded, "Because of these reliability and public safety concerns, we find that wireless cannot be considered a statewide substitute for Verizon's wireline services at this time." ¹⁰

In accordance with §1.1206 of the Commission rules, one copy of this letter is being filed electronically via ECFS.

Sincerely,



Samuel L. Feder

⁹ *Id.* (footnotes omitted).

¹⁰ *Id.* at 22.