



May 12, 2009

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

Re: Petition of Verizon Telephone Companies For Forbearance Pursuant to 47 U.S.C. § 160(c) in Rhode Island, WC Docket 08-24; 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, WC Docket 08-49

Dear Ms. Dortch:

The AdHoc Telecommunications Users Committee ("AdHoc") urges the Commission to ensure that its resolution of the petitions captioned above is consistent with the scope of relief requested by Verizon and this Commission's precedent. Accordingly, the Commission should clarify that no forbearance can be extended to Verizon's special and enterprise switched access services because Verizon did not seek relief for those services. As to the switched access services within the scope of Verizon's petitions, the Commission must deny forbearance because Verizon failed to address the structural market failures previously identified by the Commission with respect to those services.

The members of AdHoc are among the nation's largest and most sophisticated corporate buyers of telecommunications services; the Committee counts among its members ten of the "Fortune 100" and eighteen of the "Fortune 500" companies. Members come from a broad range of economic sectors (including chemical, automotive, and aerospace manufacturing; banking and financial services; personal and business insurance; retail sales; package delivery; transaction processing, data management, and other information services) and maintain tens of thousands of corporate premises in every region of the country. Their combined spend on communications products and services is well over two billion dollars per year. As substantial, geographically-diverse end users of telecommunications service nation-wide, AdHoc members are uniquely qualified to provide a credible, unbiased, and informed perspective on the state of competition in telecommunications markets.

AdHoc admits no carriers as members and accepts no carrier funding. AdHoc members therefore have no commercial self-interest in imposing unnecessary regulatory constraints on incumbent service providers. As a



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consequence, AdHoc is a long-standing supporter of forbearance authority for the FCC and has advocated de-regulation for telecommunications services when the market for a service becomes competitive. Indeed, as high-volume purchasers of telecommunications services, AdHoc members have historically been among the first beneficiaries of the FCC's de-regulatory efforts in competitive markets. But where markets are not competitive, the Committee has consistently urged the Commission to base its decisions on marketplace facts and deny premature forbearance petitions. That is why the Committee is urging the Commission to ensure that its action in this docket does not disturb the existing regulatory regime for Verizon's special and switched access services, for which there are no competitive alternatives.

The Commission must clarify the limited scope of the forbearance relief requested by Verizon

In its Petitions, Verizon asks that it be granted "substantially the same regulatory relief that the Commission granted in the Omaha Forbearance Order."¹ That relief did not include regulatory forbearance for special access or enterprise switched access. The Commission emphasized this limitation in its order denying Verizon's earlier forbearance petitions for the Rhode Island and Virginia Beach MSAs in the *Six MSA Order*.² The Commission noted there that, "[i]n the *Qwest Omaha Forbearance Order*, Qwest did not receive forbearance from dominant carrier regulation of special access services generally or enterprise switched access services."³ Similarly, even if the Commission decides to grant any portions of Verizon's petitions in these dockets, it should clarify that the scope of relief is limited to that requested by Verizon in its petitions, which was itself limited to the forbearance granted in the *Qwest Omaha Forbearance Order*.

This clarification is necessary because, while Verizon's petitions claim to be seeking the same relief that Qwest received in Omaha and that the

¹ *Petitions* at pages 1 and 3. To avoid confusion, citations are to the pagination and footnote numbering in the confidential versions of the petitions. No confidential information is contained in this letter, however.

² *Petitions of Verizon Telephone Companies for Forbearance Pursuant to 47 USC §160 in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Memorandum Opinion and Order, 22 FCC Rcd 21293 (2007) ("*Verizon 6 MSA Forbearance Order*"), *pet. for review pending*, No. 08-1012 (DC Cir filed Jan. 14, 2008) ("*Six MSA Order*").

³ *Id.* at 21303, para.18



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Commission considered in the *Six MSA Order*, in fact the petitions fail to specify the particular services for which Verizon seeks forbearance. Instead, Verizon lists the rule sections for which it seeks forbearance, as follows:

- “loop and transport unbundling regulation pursuant to 47 U.S.C. § 251(c), see 47 C.F.R. § 51.319(a), (b), (e)”
- “dominant carrier tariffing requirements set forth in Part 61 of the Commission's rules (47 C.F.R. §§ 61.32, 61.33, 61.38, 61.58, 61.59)”
- “price cap regulation set forth in Part 61 of the Commission's rules (*id.* §§ 61.41-61.49)”
- “Computer III requirements, including Comparably Efficient Interconnection (‘CEI’) and Open Network Architecture (‘ONA’) requirements”
- “dominant-carrier requirements arising under Section 214 of the Communications Act and Part 63 of the Commission's rules concerning the processes for acquiring lines, discontinuing services, assignments or transfers of control, and acquiring affiliations (*id.* §§ 63.03, 63.04, 63.60-63.66)”

Rhode Island Petition at 3, n.4; *Virginia Beach Petition* at 3, n.5. Verizon then states that it is seeking by these petitions “the same relief” that it sought in the petitions at issue in the *Six MSA Order*, citing footnote 4 of that *Order* which lists some of the same rule sections. But the text of the *Six MSA Order* accompanying that footnote described Verizon’s request as limited to those rules as they apply to mass market switched access services. Verizon does not cite that limiting language in its petitions.

As with Verizon’s earlier petitions at issue in the *Six MSA Order*, the instant petitions are unclear as to their scope because they fail to specify the services for which Verizon seeks regulatory forbearance. Ad Hoc does not, however, ask the Commission to deny the petitions on the grounds of ambiguity. We ask only that the Commission ensure clarity in the scope of any forbearance that it may grant and specify that any grant does not apply to special access and enterprise switched access services. As the Commission pointed out in the *Six MSA Order*, those services clearly fall outside the scope of forbearance granted in the *Qwest Omaha Forbearance Order*.



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The Commission must deny forbearance as to switched access services because of the structural failures in those markets that the Commission identified previously

The Commission concluded long ago that terminating switched access will require continuing regulatory oversight because of the structural market failure associated with the service.⁴ This failure results because, when a long distance call is handed off to a LEC for termination to an end user or a toll-free call is initiated by an end user and handed off to the interexchange carrier (“IXC”),⁵ the IXC does not select the access provider who sets the terminating rate the IXC must pay. That selection is governed by the end user’s choice of LEC. The IXC therefore has no ability to discipline the terminating LEC’s prices by “voting with its feet” – *i.e.*, using alternative market sources where terminating access charges are excessive.⁶ In short, no price-constraining competition can exist. As a result, Verizon cannot demonstrate that a grant of forbearance from the tariffing and price caps rules that apply to Verizon’s terminating switched access rates in Providence and Virginia Beach would be in the public interest.

For similar reasons, the Commission has previously concluded that effective competition cannot exist with respect to originating access service. The Commission initially did not regulate the access service rates imposed by competitive local exchange carriers (“CLECs”), believing that the rates charged by ILECs would constrain CLEC pricing.⁷ But in the *Seventh and Eighth Reports and Orders in the Access Charge Reform* proceeding,⁸ the Commission addressed disputes between long distance carriers and CLECs over the CLECs’

⁴ See *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, 16135-36 (1997), *aff’d sub. nom. Southwestern Bell v. FCC*, 153 F.3d 523 (8th Cir.1998).

⁵ Terminating access charges apply to the originating end of a toll-free call. 47 C.F.R. § 69.105(b)(1)(iii).

⁶ When an enterprise customer in California originates a call to a customer in Rhode Island that is terminated over switched access purchased by an interexchange carrier – the enterprise customer that ultimately pays for the call has no control over what local exchange carrier that customer uses to provide its local service. The competitive conditions for local service in Rhode Island – no matter how wonderful they may be – offer it no protection from being charged unjust and unreasonable prices for that terminating access.

⁷ Of course, the Commission has always regulated the access service rates charged by the ILECs.

⁸ *Access Charge Reform*, CC Docket No. 96-262, Seventh Report and Order, 16 FCC Rcd 9923 (2001) (“*Seventh Report and Order*”); *Access Charge Reform*, CC Docket No. 96-262, Eighth Report and Order, 19 FCC Rcd 9108 (2004) (“*Eighth Report and Order*”).



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access rates. The Commission essentially concluded that the competition which may exist for *end user access lines* does not equate to competition for *carrier access service*.⁹

Verizon has submitted no evidence in support of its Petitions that undermines these earlier determinations or justifies a conclusion that the structural market failures identified by the Commission have been eliminated. Absent such evidence, the Commission has no justification for eliminating its regulatory oversight of switched access service.

For the reasons discussed above, the Ad Hoc Telecommunications Users Committee urges the Commission to clarify that the scope of relief requested by Verizon does not extend to Verizon's special access and enterprise switched access services. In addition, the Commission should clarify that its prior determinations regarding the structural market failure for switched services foreclose forbearance of those services.

Sincerely,

A handwritten signature in cursive script that reads 'Colleen Boothby'.

Susan M. Gately
Economics and Technology, Inc.
Economic Consultant to
Ad Hoc Telecommunications Users
Committee

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⁹ In the *Seventh Report and Order*, the Commission explained that “although the end user chooses her access provider, she does not pay that provider’s [carrier] access charges. Rather, the access charges are paid by the caller’s IXC, which has little practical means of affecting the caller’s choice of access provider (and even less opportunity to affect the called party’s choice of provider) and thus cannot easily avoid the expensive ones. ...[T]he Commission has [also] interpreted section 254(g) to require IXCs geographically to average their rates and thereby to spread the cost of both originating and terminating access over all their end users. Consequently, IXCs have little or no ability to create incentives for their customers to choose CLECs with low access charges. Since the IXCs are effectively unable either to pass through access charges to their end users or to create other incentives for end users to choose LECs with low access rates, the party causing the costs – the end user that chooses the high-priced LEC – has no incentive to minimize cost.” *Seventh Report and Order*, 16 FCC Rcd at 9935 (para. 31).