

Dee May  
Vice President  
Federal Regulatory



1300 I Street, NW, Suite 400 West  
Washington, DC 20005

Phone 202 515-2529  
Fax 202 336-7922  
dolores.a.may@verizon.com

May 14, 2009

## **Ex Parte**

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

**Re: *Petition of Verizon New England Inc. for Forbearance Pursuant to 47 U.S.C. § 160(c) 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:

In a letter submitted yesterday, a few carriers claim that the Commission should issue an order denying these petitions that are no longer before the Commission. Their claims are misplaced.

As an initial matter, we previously explained that Verizon withdrew its petitions in light of the fact that, contrary to the expectations of all concerned, the D.C. Circuit has yet to rule on the Commission's previous order denying forbearance in the six MSAs and the significant possibility that any Commission order issued in advance of the court's decision would have to be revisited in response to that decision. We did so reluctantly. As the Commission itself recognized in its last unbundling order, in highly competitive areas such as these, there must be some mechanism to conform the Commission's unbundling requirements to the standards in the Act and the governing court decisions. The Commission therefore directed parties to submit forbearance petitions in these circumstances, and we followed that direction. Indeed, the need for such a mechanism is particularly pronounced in markets where competition not only is demonstrably possible without unbundled elements, but already is so advanced that the supposed "incumbent" is not even the leading provider.

To be sure, the forbearance process is imperfect. The Commission in the past has routinely taken the maximum period of time allowed under the statute, 15 months, which is a lifetime in today's rapidly changing technological and competitive landscape. The process also has been subject to blatant gaming by other carriers, such as those complaining here, which

first refuse to produce the very information that would confirm the extent of competition, then urge the Commission to deny the petitions because it lacks that information, and all while urging the Commission to flout the unbundling standards established by Congress. The Commission also has yet to implement any mechanism to collect information from the numerous other carriers operating in the relevant areas that would give it a complete picture of the competitive environment. And the forbearance process itself has been subjected to malleable and changing standards that leave all concerned with no certainty as to the rules that apply. But, as noted above, the Act does require the Commission to have some mechanism to bring its requirements into conformance with the statute, and the virtues of the Commission's chosen vehicle are that it provides all interested parties an opportunity to comment and includes at least some deadline for a decision, even if far too long in today's world.

Nevertheless, given the lack of a decision from the court, there was little point in pressing the Commission to issue a decision at this point. Regardless of what that decision might be, one party or the other inevitably would appeal and, if the oral argument on the prior decision is an accurate predictor, there is a significant likelihood that the order would be returned to the Commission to revisit in light of the Court's decision. Accordingly, the better, if reluctant, course was to await guidance from the court to provide all parties with greater certainty as to the governing standards.

To the extent some carriers now claim that the Commission nonetheless should "*sua sponte*" issue a decision, their claims are misplaced. In the first place, they ignore the fact that any decision issued now, regardless of result, may well be meaningless and merely have to be revisited once the court decides the pending appeal. They also ignore the fact that there is no petition pending for the Commission to decide, nor, of course, is there any requirement to obtain leave to withdraw. And they ignore the fact that, while section 10 of the Act does allow the Commission to "grant relief *sua sponte*," it nowhere says the Commission can *sua sponte* issue an advisory opinion to deny relief where no petition is pending before it.

Thank you for your attention to this matter.

Sincerely,



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