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May 11, 2009

FILED/ACCEPTED
MAY 11 2009
Federal Communications Commission
Office of the Secretary

BY HAND DELIVERY

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 Broadview Networks, Inc., Cavalier Telephone, Covad Communications Company, NuVox, XO Communications, LLC, and Kelley Drye & Warren LLP, enclosed please find two copies of the Ex Parte Submission submitted in the above-referenced proceedings. This ex parte submission 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.

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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

Genevieve Morelli

Counsel to Broadview Networks, Inc., Cavalier Telephone, Covad Communications Company, NuVox, and XO Communications, LLC

Enclosures

KELLEY DRYE & WARREN LLP

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May 11, 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 May 8, 2009, the undersigned carriers filed a letter in the above-captioned dockets which utilized the April 21, 2009 data submission by Cox Communications, Inc. ("Cox")[1] to help show that there is insufficient facilities-based competition in Rhode Island and the Virginia Beach Metropolitan Statistical Area ("MSA") to warrant forbearance from Section 251(c)(3) unbundling obligations.[2] The same day, Cox filed a letter clarifying certain important elements of its April 21st filing.[3] The purpose of this letter is to update the tables contained in the *CLEC May 8th Ex Parte* with the information filed by Cox on May 8th. As shown below, the conclusions contained in the *CLEC May 8th Ex Parte* – based on the previous Cox submission – remain valid once the clarifications contained in the *Cox May 8th Ex Parte* are taken into account. Indeed, the revised tables show that Cox's market share in both Rhode Island and the Virginia Beach MSA is ***** BEGIN HIGHLY CONFIDENTIAL ***** ***** END HIGHLY CONFIDENTIAL ***** the market shares shown in the *CLEC May 8th Ex Parte*.

1 *See* Letter from Jason E. Rademacher, Counsel to Cox, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 08-24, 08-49 (filed Apr. 21, 2009) ("*Cox April 21st Ex Parte*").

2 *See* 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 May 8, 2009) ("*CLEC May 8th Ex Parte*").

3 *See* Letter from J.G. Harrington, Counsel to Cox, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 08-24, 08-49 (filed May 8, 2009) ("*Cox May 8th Ex Parte*").

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

Table 1: Analysis of Cox Share of Business Capacity (VGE) – Rhode Island

Table 2: Analysis of Cox Share of Business Capacity (VGE) – Virginia Beach

4 UNE Count includes Loops and EELs (*i.e.*, access connections to customers), but does not include interoffice facilities.

5 Cox did not report the capacity of its "OCN and other" lines. This analysis assumes a VGE capacity of 672 VGEs per line.

***** END HIGHLY CONFIDENTIAL *****

The data presented above fundamentally demonstrates the importance of non-switched capacity in today's marketplace. As indicated in the *CLEC May 8th Ex Parte*, non-switched capacity now dominates the network and underlies a wide variety of business services. Verizon's marketplace position is unique because it not only competes at the retail level, it holds (for all practical purposes) a monopoly as the only provider of such capacity as a wholesale input. Thus, it is critically important that non-switched capacity be available at cost-based rates to avoid distorting the enterprise market.

In the absence of unbundled access at cost-based rates, carriers would be forced to purchase special access from Verizon. Such an environment clearly places competitors in a precarious position, vulnerable to a price squeeze between Verizon wholesale and retail prices. Table 3 (below) illustrates the danger by showing the relative distribution of special access capacity between retail, wholesale, and affiliate sales.[6] Because Verizon is able to inflate special access prices above cost, Verizon can effectively prevent competition for retail customers that obtain special access directly. Moreover, although its affiliates (such as Verizon Wireless and Verizon Business) also "pay" the inflated special access prices, the purchase is nothing more than a transfer payment between members of the same corporate family. Consequently, the inflated special access prices paid by Verizon affiliates is simply cash moved between different pockets – which is quite a different consequence than the movement of cash out of the corporation altogether. Consequently, it is critically important that cost-based pricing of wholesale inputs be retained.

Table 3

Use of Special Access Capacity	Percentage of Special Access Capacity
Retail	27%
Wholesale	39%
Wholesale to VZ Affiliates	34%

6 The relative percentages shown in Table 3 are developed from the market and wire center-specific data filed by Verizon for Rhode Island and the Virginia Beach MSA *See* Letter from Nneka Ezenwa, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 08-24, 08-49 (filed Apr. 10, 2009). Although the relative shares shown in Table 3 are accurate, the data has been aggregated into these categories and combined for both markets to protect the confidentiality of the underlying data.

Respectfully submitted,

Broadview Networks, Inc., Cavalier Telephone, Covad Communications Company, NuVox, and XO Communications, LLC

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