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May 12, 2009

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Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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Federal Communications Commission
Office of the Secretary

Re: Petition of Verizon New England Inc. and the Verizon Telephone Companies for
Forbearance Pursuant to 47 U.S.C. § 160(c) in Rhode Island, WC Docket No. 08-
24, and Virginia Beach, WC Docket No. 08-49
Ex Parte Presentation

Dear Ms. Dortch:

Cox Communications, Inc. ("Cox") urges the Commission to reject Verizon's effort to evade carrier regulations that remain necessary to the continued growth of telephone competition in Rhode Island and Virginia Beach. In particular, Cox writes to respond to certain meritless arguments that Verizon has made in response to recent filings by other participants in this proceeding.

First, Verizon continues to argue that competition from wireless providers, when coupled with competition from Cox, is sufficient to justify forbearance. Regardless of the propriety of considering wireless competition in the forbearance analysis as a general matter, Verizon has failed to provide the Commission with market-specific data justifying consideration of wireless competition in this case. Verizon's reliance on non-granular data from the Centers for Disease Control and other sources provides the Commission with no information regarding the number of actual cut-the-cord wireless customers who reside in the market areas for which Verizon seeks forbearance. Essentially, Verizon asks the Commission to conclude that wireless competition exists in Rhode Island and Virginia Beach because sources suggest it exists generally. Relying on general data with no particular tie to the markets at issue in these proceedings would be inconsistent with the Commission's forbearance decisions and the requirements of Section 10.

Verizon mocks the other parties for trying to place the burden on Verizon to provide granular wireless data, but Verizon ignores that the statute already places that burden on the petitioner. Forbearance is extraordinary relief – a literal lifting of obligations placed on Verizon by Congress. The least the Commission can require (and always has required) is that Verizon provide granular data showing actual cut-the-cord wireless competition in its market areas before granting forbearance. With respect to wireless competition in Rhode Island and Virginia Beach,

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Verizon has failed to carry that burden. Accordingly, its cut-the-cord wireless data should not be considered in these proceedings.¹

The Commission also should reject Verizon's argument that it cannot be required to provide unbundled loop and transport facilities absent a showing that competitors are impaired within the meaning of Section 251. The impairment standard – which governs the Commission's general implementation of Section 251 – does not address whether local market conditions exhibit sufficient competition to justify forbearance. Section 10 of the Act – not Section 251 – provides the relevant standard for granting forbearance. Contrary to Verizon's claims, the Commission is not required to “square” its market share and deployment tests developed under Section 10 with the impairment standard under Section 251 because they are not related provisions. Section 10 makes no mention of impairment and the important public interest standards established by Section 10 require the Commission to take a much broader look at the local competitive market than it may take in determining whether competitors are impaired without access to specific UNEs. The statute places the burden on Verizon to prove that forbearance is justified, not on the Commission to show that competitors are impaired without access to unbundled loop and transport facilities. Verizon has failed to carry that burden.

Ultimately, Verizon's Virginia Beach and Rhode Island forbearance petitions show markets that have changed little since the Commission rejected similar requests just last year. Indeed, in Cox's experience, the nationwide economic slowdown has blunted the thrust towards more fully competitive markets in Virginia Beach and Rhode Island. In any case, no significant changes have occurred that would justify the Commission reversing its recent decisions to deny forbearance in these markets.

¹ Moreover, the Commission should specifically reject Verizon's continued argument that “competition” from Verizon Wireless should factor into considering forbearance in any Verizon market. Verizon's co-branded wireless service trades on the good will built up by Verizon's wireline service, in many cases shares billing arrangements so that Verizon can bundle wireline and wireless service, and even uses the same logo. The operating companies that filed the Virginia Beach and Rhode Island forbearance petitions may view customers lost to Verizon Wireless as “lost customers,” but the parent company that owns all those entities surely does not. Indeed, Verizon's marketing of its wireless and wireline services ensures that customers who view those services as substitutes will not see cutting the cord as anything more than shifting among Verizon services. From the standpoint of the competitive market, the Verizon/Verizon wireless partnership does not represent competing entities, but rather two different ways Verizon has to take customers from other providers.

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In accordance with the requirements of Section 1.1206 of the Commission's rules, an original and one copy of this written *ex parte* communication are being filed with the Secretary's Office on this date.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J.G. Harrington".

J.G. Harrington
Jason E. Rademacher
Counsel to Cox Communications, Inc.

cc: Timothy Stelzig