

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of Petition of the Verizon)
Telephone Companies for Forbearance)
Pursuant to 47 U.S.C. § 160(c) in the) WC Docket No. 06-172
Philadelphia, Pittsburgh, Boston, New)
York City, Providence and Virginia Beach)
Metropolitan Statistical Areas.)

**COMMENTS
OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES,
THE PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE,
THE PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC.,
THE MASSACHUSETTS OFFICE OF ATTORNEY GENERAL,
THE VIRGINIA OFFICE OF ATTORNEY GENERAL,
THE MARYLAND OFFICE OF PEOPLE'S COUNSEL,
THE NEW JERSEY DIVISION OF RATE COUNSEL,
THE NEW HAMPSHIRE OFFICE OF CONSUMER ADVOCATE AND
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I. INTRODUCTION

On September 6, 2006, the Verizon Telephone Companies (“Verizon”) filed six separate Petitions with the Federal Communications Commission (“FCC” or “Commission”) seeking forbearance from a multitude of FCC regulations and other current obligations.¹ The six

¹ The six Petitions Verizon filed have substantially the same structure and discuss substantially the same issues. Rather than citing each of the six Petitions, these comments will principally cite Verizon’s Petition for forbearance in the Philadelphia MSA (“Verizon Philadelphia Petition”), with the understanding that Verizon takes the same position in the other five Petitions. *See generally* Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston Metropolitan Statistical Area, WC Docket No. 06-172 (filed Sept. 6, 2006)(“Verizon Boston Petition”); Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Providence Metropolitan Statistical Area, WC Docket No. 06-172 (filed Sept. 6, 2006) (“Verizon Providence Petition”); Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the New York City Metropolitan Statistical Area, WC Docket No. 06-172 (filed Sept. 6, 2006) (“Verizon New York City Petition”); Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Pittsburgh Metropolitan Statistical Area, WC Docket No. 06-172 (filed Sept. 6, 2006)

Petitions pertain individually to the Philadelphia, Pittsburgh, Boston, Providence, New York City and Virginia Beach Metropolitan Statistical Service Areas (“MSAs”). Verizon asserts that it seeks substantially the same regulatory relief the FCC granted to Qwest Corporation (“Qwest”) in the recent Omaha Order.² More specifically, Verizon requests, *inter alia*, that the FCC forbear from applying loop and transport unbundling regulation pursuant to Section 251© of the Federal Telecommunications Act of 1996 (“TA-96” or the “Act”).³ Verizon also seeks forbearance from: (a) the dominant carrier tariffing requirements set forth in Part 61 of the FCC’s rules; (b) price cap regulation set forth in Part 61 of the FCC’s rules; (c) the Computer III requirements, including Comparably Efficient Interconnection (“CEI”) and Open Network Architecture (“ONA”) requirements; and (d) dominant carrier requirements arising under section 214 of the Act.⁴

In support of its Petitions, Verizon claims that it “faces competition from a wide range of technologies and an even broader array of providers.”⁵ Verizon asserts that “‘this level of facilities-based competition ensures that market forces will protect the interests of consumers,’ and that the regulations at issue are no longer necessary.”⁶

(“Verizon Pittsburgh Petition”); Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Virginia Beach Metropolitan Statistical Area, WC Docket No. 06-172 (filed Sept. 6, 2006) (“Verizon Virginia Beach Petition”).

² Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) (“Omaha Order”).

³ Verizon Philadelphia Petition at 4, n. 3, *citing* 47 U.S.C. § 251(c).

⁴ Id. at 4, n. 3 (citations omitted).

⁵ Id. at 1.

⁶ Id., *quoting*, Omaha Order at ¶ 1.

The National Association of State Utility Consumer Advocates (“NASUCA”),⁷ the Pennsylvania Office of Consumer Advocate, the Public Utility Law Project of New York, Inc., the Massachusetts Office of Attorney General, the Virginia Office of Attorney General, the Maryland Office of People’s Counsel, the New Jersey Division of Rate Counsel, the New Hampshire Office of Consumer Advocate and the Connecticut Office of Consumer Counsel (collectively referred to as the Joint Consumer Commenters)⁸ urge the Commission to reject Verizon’s Petitions. The “market forces” alleged are not sufficient to protect the interests of consumers, particularly those consumers who subscribe to standalone basic local exchange service rather than a bundle of local and long distance calling with vertical features. Furthermore, facilities-based competition within the Verizon MSAs is not substantially similar to that in the Omaha MSA such that regulatory treatment similar to that granted for Qwest in the Omaha Order is not appropriate. Finally, the Verizon Petitions are overreaching. While forbearance from some of the regulations that Verizon proposes might be appropriate in certain wire centers in certain MSAs if Verizon had presented the required proof, forbearance should not be granted for all of the regulations that Verizon has requested in all the wire centers in all the MSAs. Therefore, the Verizon Petitions must be denied as filed.

⁷ NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio. Rev. Code Ch. 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205; Minn. Stat. § 8.33; D.C. Code Ann. § 34-804(d); Virginia Code § 2.2-517; N.J.S.A. C.52:27EE-1, *et seq*; *Mass. Gen. Laws Ch. 12, § 11e* (1997). Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers, but are not created by state law or do not have statewide authority.

⁸ Joint Consumer Commenters include parties from states other than those in which the six metropolitan cities are based because in many cases MSAs extend beyond state boundaries (*e.g.*, the Boston MSA includes portions of southern New Hampshire, as well as Massachusetts, and the Philadelphia MSA includes portions of Delaware, Maryland and New Jersey).

II. SUMMARY

The Commission must deny Verizon's six Petitions as filed. Verizon has failed to demonstrate that it has satisfied *each* of the statutory requirements for *each* of the regulations in *each* of the relevant geographic markets. The statutory test for forbearance is appropriately set very high, and the test is conjunctive so that Verizon must satisfy all three prongs. Verizon seeks forbearance from Commission regulations that provide many consumer benefits and protections. Those benefits and protections include, *inter alia*, limitations on increases in certain rates, opportunities to provide comment in certain proceedings, non-discriminatory access to the public network, and a variety of service quality protections. Each of the regulations from which Verizon seeks forbearance is instrumental in achieving the goals Congress established when it passed TA-96 to ensure that "all charges, practices, classifications and regulations for and in connection with [] communication service, [are] just and reasonable."⁹

Verizon has not carried its burden of proof to demonstrate that it has satisfied the forbearance standard Congress set forth. The "evidence" of competition Verizon provides in support of its Petitions is either based on speculation and expectations rather than determinative proof, or is not sufficiently granular to demonstrate the presence of alternatives for consumers. Verizon has also failed to demonstrate that consumers perceive intermodal services as substitutes, particularly for non-bundled basic local exchange services. Finally, Verizon's dependence on a decline in retail access *lines* to demonstrate the presence of competition is unfounded. A more accurate barometer for the presence of competition within an MSA would

⁹ 47 U.S.C. § 201(b).

be a demonstration that retail *rates* have declined. Only then will the Commission know that competition is truly present and capable of protecting consumers in the absence of regulations.

As a general matter, Verizon's reliance on the Omaha Order is without merit and should be rejected. There are significant distinctions between Qwest's Petition in that proceeding and the Petitions filed by Verizon in this proceeding. These distinctions prohibit Verizon from receiving the same regulatory relief Qwest obtained. Verizon's Petitions must be judged on the evidence contained within its filings. The Commission cannot merely extrapolate the results of another proceeding to make decisions in this proceeding. Verizon has failed to demonstrate the presence of significant facilities-based competition, particularly for residential basic local exchange service, within the six MSAs. Verizon did not provide any substantive data or analysis about market share, demand and supply elasticity, or Verizon's size, resources and technical capabilities as compared to its competitors – yet these were precisely the data and analyses the Commission relied upon in granting Qwest limited regulatory relief in portions of the Omaha MSA.¹⁰

These Comments focus primarily on the consumer benefits and protections that are directly affected by Verizon's Petitions, but the Commission must also be aware of the overall impact on competition that granting regulatory forbearance will have, particularly the impact on new entrants. In particular, granting forbearance from the section 251© unbundling requirements will forever foreclose new competitors from entering the telecommunications market in these six MSAs because wireline-based competitors will be unable to obtain unbundled loops and transport at cost-based prices. Rather than “enhance competition among

¹⁰ Omaha Order at ¶¶ 25-38. *See also*, Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area, WC Docket No. 05-281, Memorandum Opinion and Order (rel. January 30, 2007)(“Anchorage Order”).

providers,”¹¹ granting these Petitions will restrict the development of competition. Given the lack of competition for basic local exchange service from intermodal providers in the affected MSAs, granting Verizon’s Petitions will also greatly limit, or even eliminate, consumer choice for non-bundled local exchange services, which is clearly inconsistent with the public interest.¹² For these reasons, too, Verizon’s Petitions fail to meet the standard for granting forbearance.

Finally, Verizon fails to show that consumers of unbundled and unpackaged basic local exchange service have any viable substitutes based on either the technology, services, or rates provided by facilities-based competition. Yet these customers are those most in need of the protections afforded by the regulations from which Verizon seeks forbearance. If the Commission grants forbearance in the absence of competitive alternatives, consumers of basic local exchange service will be most at risk for market power abuses and anticompetitive activity. For all of these reasons, the Commission must deny Verizon’s Petitions as filed.

¹¹ 47 U.S.C. § 160(b).

¹² 47 U.S.C. § 160(a)(3).

III. COMMENTS

A. **Verizon Must Satisfy A High Standard Before The Commission Can Forbear From Enforcement Of The Vital Consumer Protections Verizon Identifies.**

The Commission must deny Verizon's Petitions for regulatory forbearance because Verizon has failed to prove that it has satisfied each of the elements required for forbearance for all the regulations in all of the relevant geographic markets in which it seeks forbearance.¹³ The regulations from which Verizon seeks forbearance provide many consumer benefits and protections, and allow for and promote the competitive provision of a variety of telecommunications services. Through this competition, consumers should receive benefits in the form of lower prices, higher quality services and a greater variety of service options. Because competition has not yet developed to the point where the market can offer the same protections as do the current regulations, granting Verizon's forbearance requests is not in the public interest. The Commission should maintain many of the regulations from which Verizon seeks forbearance because they provide vital consumer benefits and protections and are therefore necessary to protect the public.

The standard established by Congress to have forbearance granted is very high. In order for the Commission to grant a request for forbearance, a company must meet the three statutory requirements defined in section 160(a) of TA-96. This section provides:

[T]he Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or a telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that

¹³ The Commission has the authority to grant or deny the Petitions in part. If the Commission decides to exercise that authority, Verizon's Petitions could be granted in part and denied in part consistent with the discussion below.

- 1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- 2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- 3) forbearance from applying such provision or regulation is consistent with the public interest.¹⁴

In addition, Congress has directed that, in making a decision on whether forbearance is consistent with the public interest, the Commission “shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”¹⁵ The tests required in sections 160(a) and (b) are conjunctive. Verizon must pass *each* test for *each* regulation in *each* relevant geographic market for which the Company requested forbearance. Verizon’s Petitions fail to meet all of these requirements.

The FCC has previously recognized the importance of consumer protection when considering a carrier’s forbearance petition. For example, the Cellular Telecommunications and Internet Association (CTIA) sought forbearance from “further scheduled increases to the numbering resources utilization threshold.”¹⁶ CTIA argued, *inter alia*, that the scheduled

¹⁴ 47 U.S.C. § 160(a). See also, Omaha Order at ¶ 13; Anchorage Order, *supra*, at ¶ 10.

¹⁵ 47 U.S.C. § 160(b). See also, Omaha Order at ¶ 13; Anchorage Order at ¶ 10.

¹⁶ In the Matter of Numbering Resource Optimization, 18 FCC Rcd. 13311 (2003) (“CTIA Forbearance Petition”).

increases were not necessary “to protect consumers because the national numbering crisis [had] ended, and NANP exhaust [was] not foreseeable for at least 20 years.”¹⁷

The FCC denied CTIA’s request because, in part, “requiring carriers to manage their numbering inventories at increasing thresholds [was] a preventive measure that [was] necessary to *protect consumers* from premature area code changes and exhaust of NANP.”¹⁸ The District of Columbia Circuit Court of Appeals found that the Commission did not err in finding that the second prong of the test was not satisfied and affirmed the Commission’s recognition of the importance of considering consumer protection.¹⁹ According to the court, “the number portability rules are required to achieve the desired goal of consumer protection.”²⁰ Just as the FCC properly denied CTIA’s request for forbearance and refused to raise the utilization threshold because it protected consumers, so too should the FCC deny Verizon’s request for forbearance from regulations in this proceeding that provide vital consumer protections and benefits.

The FCC has also rejected petitions for forbearance filed by telecommunications carriers because the petitions were not in the public interest, and therefore violated the third prong of the section 160(a) forbearance test. For example, the FCC denied a forbearance request by

¹⁷ Id.

¹⁸ Id. at 13317 (emphasis added).

¹⁹ Cellular Telecommunications & Internet Association, et al. v. F.C.C., 330 F.3d 502, 512 (D.C. Cir. 2003). As the Court explained, “The simple truth is that having to change phone numbers presents a barrier to switching carriers, even if not a total barrier, since consumers cannot compare and choose between various service plans and options efficiently.” Id. at 513. The Court quoted the Commission: “As the Commission reasoned, consumers ‘will find themselves forced to stay with carriers with whom they may be dissatisfied because the cost of giving up their wireless phone number in order to move to another carrier is too high’.” Id.

²⁰ Id. at 512.

PageNetwork, Inc. (“PageNet”).²¹ PageNet sought a waiver of, or “in the alternative, forbearance from, the construction requirements of Section 90.665(b) and (c) of the Commission’s rules applicable to 900 MHz Specialized Mobile Radio (“SMR”) licensees.”²² The FCC determined that PageNet had not met the requirements of the third prong of the section 160(a) test that requires a showing that forbearance is in the public interest.²³ In noting that under section 160, forbearance could be applied only in situations where the “forbearance is consistent with the public interest,” the FCC stated that “we have no basis for concluding, that forbearance from Section 90.665 would enhance competition among telecommunications providers.”²⁴ Thus, the FCC has explicitly recognized enhancement of competitive opportunities as an important aspect of protecting the public interest.

More recently, the Commission also addressed the section 160 forbearance standard when denying a petition filed by Fones4All that asked the Commission to expand the unbundling obligations of incumbent local exchange carriers (“ILEC”). Fones4All requested forbearance from the rules restricting the availability of unbundled local circuit switching in instances where a competitor requests unbundling for the sole purpose of providing service to a single line

²¹ In the Matter of Paging Network, Inc., 15 FCC Rcd. 12141 (2000).

²² Id.

²³ Id. at 12145.

²⁴ Id. at 12146. Furthermore, in the CTIA case, *supra*, the FCC denied the CTIA argument that “forbearance from further [threshold] increases [was] in the public interest because it [would] reduce regulatory costs which [would] promote competitive market conditions.” CTIA Forbearance Petition at 13315-16; *see also* In the Matter of Warren C. Havens, 18 FCC Rcd. 26509 (2003) (FCC denied a request that it forbear from applying a section of the Commission’s rules regarding Automated Maritime Telecommunications Systems because no evidence was submitted that granting such request was in the public interest). In addition to finding that the CTIA request did not meet the first or second prongs of the section 160(a) forbearance test, the Commission also found that the request was not “consistent with the public interest to increase the threshold because [the threshold would] continue to require carriers to use numbering resources more efficiently, which [would] benefit carriers and consumers.” CTIA Forbearance Petition at 13315-16.

residential user under a state or federal Lifeline program.²⁵ In applying the three-pronged statutory test to that Petition, the Commission determined that Fones4All did not meet either of the first two prongs of the test.²⁶ Among other things, the Commission held that forbearance from the regulation at issue was not necessary to ensure that the relevant charges, practices, classifications or regulations were just and reasonable and not unjustly or unreasonably discriminatory.²⁷ While the Commission found the Fones4All business plan laudable because it sought to serve low-income customers, the Commission did not believe that gave rise to a need for forbearance from the identified regulation.²⁸

The FCC must deny Verizon's Petitions because they fail to satisfy all of the requirements of section 160(a). It would not be in the public interest, and therefore a violation of the third prong of the forbearance test, for the Commission to grant Verizon's Petitions and permit Verizon to forbear from following the important consumer protection regulations. Granting Verizon's Petitions and waiving application of Verizon's existing obligations in its provision of various services will jeopardize vital consumer benefits and protections and contravenes the public policy embodied in the statute. Enforcement of those provisions is necessary for the protection of consumers and is in the public interest.

Finally, section 160, and the Commission's exercise of its authority under section 160, may violate the Separation of Powers Doctrine and Equal Protection Clause contained in the

²⁵ In the Matter of Fones4All Corp. Petition for Expedited Forbearance Under 47 U.S.C. § 160(c) and Section 1.53 from Application of Rule 51.319(d) to Competitive Local Exchange Carriers Using Unbundled Local Switching to Provide Single Line Residential Service to End Users Eligible for State or Federal Lifeline Service, WC Docket No. 05-261, Memorandum Opinion and Order (rel. Sept. 29, 2006), at ¶ 3.

²⁶ Id. at ¶ 10.

²⁷ Id. at ¶ 12.

²⁸ Id. at ¶ 15.

United States Constitution. The legislative branch can delegate to the executive branch the authority to implement the laws made by Congress by issuing administrative rules and regulations, but it cannot delegate authority to amend, repeal or modify those laws.²⁹ One branch of government cannot delegate an essential function of that branch to another branch. This delegation is the practical effect of section 160 and is a violation of the Separation of Powers Doctrine. Furthermore, the limitations contained in section 160© that permit only telecommunications carriers to seek forbearance from the provisions of TA-96 is on its face a violation of the Equal Protection Clause as afforded by the Fifth Amendment of the Constitution.³⁰

B. Verizon’s Petitions Seek Significantly More Relief Than Qwest’s Request In The *Omaha Order*.

In its Petitions, Verizon argues that it seeks “substantially the same regulatory relief the Commission granted [Qwest] in the Omaha Order.”³¹ Although Verizon compares its Petitions to the Omaha proceeding on several instances, there are significant differences between the Qwest Petition and Verizon’s Petitions. Verizon seeks relief from some of the same regulations as did Qwest, but expands the list to include many other key regulations and requirements for which Qwest did not seek forbearance. Qwest sought forbearance from certain dominant carrier

²⁹ See, e.g., Bowsher v. Synar, 478 U.S. 714, 92 L.Ed.2d 583, 106 S.Ct. 3181 (1986) (“Congress cannot reserve for itself the power of removal of an officer charged with the execution of the laws except by impeachment”). See also, Metropolitan Washington Airports Authority, et al. v. Citizens for the Abatement of Aircraft Noise, 501 U.S. 252, 115 L.Ed.2d 236, 111 S.Ct. 2298 (1991) (a Congressional Board with the power to veto and overturn decisions of an airport authority with federal power violates the Separation of Power Doctrine); and INS v. Chada, 462 U.S. 919, 77 L.Ed.2d 317, 103 S.Ct. 2764 (1983) (once Congress makes its choice in enacting legislation, its participation ends and Congress can only control the execution of its enactment indirectly – by passing new legislation).

³⁰ For a further discussion of the constitutional infirmities of section 160, see In the Matter of Review of Section 251 Unbundling Obligations of Local Exchange Carriers, CC Docket No. 01-338 and WC Docket No. 04-313, Ex Parte, New Jersey Office of Ratepayer Advocate (December 7, 2004). The constitutional issues related to section 160 are not limited to the Equal Protection Clause and the Separation of Powers Doctrine but may also include issues related to the Tenth and Eleventh Amendments.

³¹ Verizon Philadelphia Petition at 1; Verizon Boston Petition at 1.

regulations, all section 251© obligations and various section 271 checklist requirements in its Petition.³² Verizon, on the other hand, seeks forbearance from the same dominant carrier and section 251 obligations as Qwest, but also seeks forbearance from certain price cap regulations, Computer III requirements and service quality regulations, and other Commission regulations.

With its request for forbearance from Computer III regulations, Verizon is attempting to avoid its obligation to provide non-discriminatory access to its network. This obligation, which has widely been referred to as “network neutrality,” is the subject of an ongoing national debate in other political and regulatory venues. Granting Verizon’s forbearance request on this matter would allow Verizon to elude debate on this key national policy issue.

Furthermore, review of the Qwest Petition is not entirely relevant to this proceeding because Verizon seeks relief from many provisions that the Commission recently imposed on its approval of Verizon’s acquisition of MCI so that the acquisition would be in the public interest.³³ For example, the Commission conditioned its approval of the acquisition upon Verizon continuing certain of its unbundling obligations, providing assurances regarding the Internet backbone, and providing non-discriminatory access to its network.³⁴ The Commission had not previously placed any similar conditions on Qwest when it reviewed Qwest’s forbearance Petition. The Commission must review Verizon’s forbearance Petitions in the context of those recent merger conditions for the purpose of protecting consumers and promoting the public interest. The Commission cannot grant Verizon’s forbearance request from obligations it

³² Omaha Order at 19416 (Qwest also requested forbearance from “all other regulations to which it is subject as an incumbent LEC,” but the Commission dismissed this outright because it was not sufficiently specific. Id. at ¶ 111).

³³ In the Matter of Verizon Communications, Inc. and MCI, Inc., Applicants for Transfer of Control, WC Docket No. 05-75, 20 FCC Rcd 18433, 2005 FCC LEXIS 6386, Memorandum Opinion and Order (rel. Nov. 17, 2005) (“Verizon/MCI Order”).

³⁴ Id. at App. G.

imposed as a condition of Verizon's acquisition of MCI, particularly since it imposed those conditions approximately one year ago.³⁵

The Commission must also recognize that, although specific data is considered proprietary and therefore not publicly available, the level of facilities-based competition in the Omaha MSA greatly exceeded the level of competition Verizon demonstrates in the six MSAs in which Verizon now seeks forbearance. Qwest demonstrated that a majority of customers had selected a carrier other than Qwest for local exchange service in certain wire centers in the Omaha MSA.³⁶ Verizon, however, has failed to identify any exchanges in any of the six MSAs where a single carrier, or even multiple carriers, has succeeded in acquiring such a significant share of the market. The few overall market share estimates provided by Verizon indicate that the overwhelming majority of residential customers in the six MSAs continue to be customers of Verizon, not its competitors.³⁷

Verizon's Petition, therefore, is not the "me too" Petition it purports it to be. Rather, it is significantly more expansive than Qwest's Petition despite being based on the existence of more limited competition. There are more differences than similarities between the two proceedings, and the Commission must recognize the distinctions when conducting its review of Verizon's Petition. Indeed, in its Omaha Order, the Commission based its decision on "factors unique to

³⁵ Granting Verizon forbearance from obligations connected to approval of the merger would represent a material change in the Commission's decision in that proceeding. Such a change should only be implemented through formal reconsideration of the merger proceeding.

³⁶ Omaha Order at ¶ 43. Furthermore, the Commission found in the Anchorage Order that retail competition was "robust" in the Anchorage study area. Anchorage Order at ¶ 28.

³⁷ See, e.g. Verizon Philadelphia Petition, App. A, Declaration of Quintin Lew, Judy Verses, and Patrick Garzillo Regarding Competition in the Philadelphia Metropolitan Statistical Area ("Lew/Verses/Garzillo Philadelphia") at ¶ 8.

the Omaha MSA.”³⁸ The Commission must consider factors unique to Verizon’s six MSAs, rather than simply rely on either the analysis or the conclusions from the Omaha Order.

Where the Commission determined that Qwest failed to meet its burden of proof on certain issues in its proceeding, so too must the Commission make a similar finding in this proceeding where Verizon has also not met the evidentiary standard. Both Qwest and Verizon present similar evidentiary deficiencies in their respective Petitions. The Commission determined in several instances in the Omaha Order that Qwest failed to provide adequate evidence to support certain assertions.³⁹ Verizon makes similar errors in its Petitions. Treating these evidentiary deficiencies the same would be reasonable and in harmony with Commission policy to be consistent among its decisions.⁴⁰ This requires Verizon’s Petitions to be denied in their entirety.

The Commission must also recognize the requests for forbearance that it denied when it addressed the Qwest Petition. The Commission determined to grant in part and deny in part several of Qwest’s forbearance requests. In particular, the Commission denied numerous portions of Qwest’s request for forbearance from a variety of Section 251⁴¹ and 271

³⁸ Id. at n. 4. The Commission also noted that its decision was “based on the totality of the record evidence particular to the Omaha MSA. The presence of a subset of similar facts in other markets – such as an equivalent degree of coverage by an incumbent cable operator that was not actively engaged in providing competitive telecommunications offerings over its own facilities – might result in a different outcome.” Id. at n. 46. Furthermore, the Commission noted that economic barriers can differ “from city to city, within the same city, or between a city and its suburbs.” Id. at ¶ 104. *See also*, Anchorage Order at ¶ 1 (“each case must be judged on its own merits”) and ¶ 9 (“this proceeding considers factors unique to the Anchorage study area”).

³⁹ *See, e.g.* Id. at ¶ 38.

⁴⁰ Committee for Community Access v. F.C.C., 737 F.2d 74, 77 (D.C. Cir 1974) (the FCC cannot “silently depart from previous policies or ignore precedent”).

⁴¹ Omaha Order at ¶¶ 37, 57, 60, 84, 87 and 88.

obligations,⁴² and analyzed competitive data on a wire center basis rather than the MSA-wide basis Qwest had requested.⁴³ The Commission appropriately parsed the multiple requests for forbearance filed by Qwest in the Omaha Order, and should apply similar scrutiny in this proceeding when disposing of Verizon's multiple Petitions.

In summary, the Commission must recognize the distinctions between the Verizon Petitions and the Qwest Petition. Verizon's Petitions are not merely "me too" filings; rather, they are distinct filings that must be independently analyzed. Nonetheless, where Verizon has presented the same deficient evidence as Qwest did in its Petition, the Commission must likewise limit any regulatory relief granted to Verizon.

C. Granting Verizon's Forbearance Petitions Will Eliminate Many Consumer Benefits And Protections.

Verizon's Petitions seek much broader regulatory relief than that requested by and granted to Qwest in the Omaha Order. The regulations from which Qwest sought forbearance primarily related to competitive wholesale issues. In addition to those issues, however, Verizon's Petitions also seek forbearance from Commission regulations that provide substantial consumer benefits and protections affecting retail customers. In addition to rate protections, these regulations also provide quality of service and other protections that ensure that basic local exchange telecommunications services are just and reasonable. The regulations from which Verizon seeks forbearance are identified only in a footnote in Verizon's Petitions, and are not mentioned again anywhere in the Petitions or the accompanying Declarations, which focus on

⁴² Id. at ¶¶ 37, 90, 95, 97 and 100.

⁴³ *See, e.g., Id.* at ¶¶ 15 (denying in part and affirming in part Qwest's request for forbearance from the application of dominant carrier regulation), 59 and 61 (denying in part and affirming in part Qwest's request for forbearance from unbundled access to loops and transport on a wire center by wire center basis). The Commission noted "we are under no statutory obligation to evaluate Qwest's Petition other than as pled; nevertheless, sections 10(a) and 10(c) each provide this Commission sufficient authority to grant Qwest's Petition in part – that is, only in certain wire centers." Id. at n. 161.

issues relating to competition. However, these regulations have a substantial impact on consumers' daily use of their telecommunications services.

Verizon fails to differentiate its forbearance requests from Qwest's, when in fact they are very different. In so doing, Verizon evades its burden to present a *prima facie* case justifying forbearance for each regulation in each exchange, and attempts to place the burden on the Commission and other commenting parties to discern the impact forbearance from these regulations would have on consumers in these distinct markets. Verizon clearly is requesting more than "substantially the same regulatory relief" as Qwest requested or received in the Omaha Order proceeding.

Verizon has also failed to demonstrate that facilities-based competition exists for consumers throughout each MSA, particularly those consumers who continue to subscribe to basic local exchange services rather than a bundle of local, long distance and vertical calling features. While customers increasingly subscribe to bundled packages, including low-income customers, many customers still rely substantially on basic local exchange services. For those customers, Verizon continues to be the dominant carrier for retail local exchange services in these six MSAs; hence, Verizon has market power, and the regulations from which Verizon seeks forbearance must remain so consumers will continue to have necessary regulatory protections.

1. Verizon's Unbundling Requirements For Loops And Transport Continue To Be Necessary To Enable The Provision Of Competitive Telecommunications Services (47 C.F.R. § 51.319(a), (b) and (e)).

In its Petitions, Verizon seeks forbearance from section 251© unbundling requirements governing loops and transport. These are the same regulations from which the Commission granted Qwest forbearance, although the Commission granted relief "only in locations where

Qwest faces sufficient facilities-based competition to ensure the interests of consumers and the goals of the Act are protected under the standards of section 10(a).”⁴⁴ The Commission did not grant Qwest forbearance from these provisions in a vast majority of the areas where it requested forbearance. Indeed, the Commission granted Qwest’s request in only 9 of 24 wire centers (*i.e.*, 38%) in the Omaha MSA.⁴⁵ The Commission has also recently addressed this issue in the Anchorage Order where ACS of Anchorage, Inc. filed a petition pursuant to section 160 seeking forbearance from the unbundling obligations of section 251(c)(3) throughout the Anchorage, Alaska study area.⁴⁶ In the Anchorage Order, the Commission denied the requested forbearance in 6 out of 11 wire centers (*i.e.*, 55%).⁴⁷ As demonstrated below, Verizon has failed to provide sufficient evidence of facilities-based competition within the six MSAs where it seeks forbearance, preventing the Commission from reaching the wire center analysis it performed in the Omaha Order and the Anchorage Order.

The section 251© unbundling requirements for loops and transport, set forth at 47 C.F.R. § 51.319(a), (b) and (e), continue to be necessary to enable the provision of competitive telecommunications services, particularly those that compete with Verizon’s standalone residential basic local exchange service offering. The heart of TA-96 is to encourage the competitive provision of telecommunications service to ensure reasonable rates.⁴⁸ Through that

⁴⁴ Omaha Order at ¶ 61.

⁴⁵ Id. at ¶ 59.

⁴⁶ Anchorage Order at ¶ 1.

⁴⁷ Id. at ¶ 2. Furthermore, the grant of forbearance that was given to the other 5 wire centers was conditioned upon “ACS providing local ‘legacy’ loop access, including access to the same subloops from which we forbear unbundled local switching or other services, pursuant to commercially negotiated rates specific to the Anchorage study area.” Id. at ¶ 39.

⁴⁸ 47 U.S.C. § 151.

competition, consumers could enjoy lower prices, greater service quality, and a wider variety of service options. Allowing Verizon to forgo these section 251 unbundling requirements diminishes the consumer benefits Congress intended when it passed TA-96.

As discussed in section III.D. below, “intermodal” providers do not provide substitute services for Verizon’s basic local exchange service. Where there is competition for basic services in any of these MSAs,⁴⁹ it is most likely to come from wireline competitive local exchange carriers (“CLECs”) making use of the unbundled network elements, specifically loops and transport, provided by Verizon. This is particularly true for any new CLEC. By granting Verizon’s requests for forbearance from these unbundling regulations, the Commission would effectively be foreclosing entrance into the local exchange market by any new wireline CLEC.

In support of its Petitions, Verizon points to the wholesale alternatives available in the six MSAs.⁵⁰ Verizon claims it offers its unbundled network element platform (“UNE-P”) equivalent “Wholesale Advantage” service at “negotiated market rates” “even when it has no obligation to do so.”⁵¹ It is unclear, therefore, why forbearance from the unbundling requirement is necessary if Verizon will continue to provide the unbundling. Verizon shows no harm imposed by these regulations, but a grant of forbearance could cause consumers, not to mention competitors, and specifically new entrants, great harm if Verizon no longer offered these services.

Verizon also provides a count of voice-grade equivalent residential lines served by CLECs using Wholesale Advantage and resale arrangements as of December 2005. Even though

⁴⁹ Verizon’s Petitions do not address competition for basic local exchange service, as opposed to packages of local, toll and vertical features, at any level.

⁵⁰ Verizon Philadelphia Petition at 14; Verizon Boston Petition at 14.

⁵¹ Id. at 14.

Verizon rejects the use of “static” market share elsewhere in its pleading,⁵² it relies upon static data here. The changes in the availability of UNE-P and the increased prices for equivalent Wholesale Advantage offerings, which led to market exit by, and acquisition of, AT&T and MCI, have surely had an impact upon the number of lines served by CLECs. By showing data for one point in time, and at a time just prior to the departure of two major competitors and also already 9 months old, Verizon attempts to rely on the same type of analysis it claims elsewhere misrepresents the true state of competition for telecommunications services. Unsurprisingly, in this situation, examining the trends in the market would not work in Verizon’s favor.

The deterioration of CLEC-based competition resulting from forbearance from loop unbundling requirements would accelerate the potential creation of an ILEC-cable duopoly where ILECs and cable are the only network owners with access to the end user premises.⁵³ The duopoly result would apply to both retail telecommunications services and broadband Internet services. As the Commission is aware, duopoly market structure does not result in an efficient, vibrant competitive market; therefore, regulatory forbearance that promotes the development of a duopoly market result would not promote competitive market conditions or enhance competition among providers, as required by section 160(b).

Verizon’s Petitions fail to demonstrate satisfaction of the forbearance standards for regulations relating to unbundling of loops and transport, as found in 47 C.F.R. 51.319 (a), (b) and (e). The lack of competition for residential basic local exchange services means that enforcement of these regulations continues to be necessary to protect consumers and ensure that the charges, practices, classifications and regulations remain just and reasonable, and that it is in

⁵² *Id.* at 16-17.

⁵³ Of course, not all areas will have even those two choices because cable coverage is less extensive than ILEC coverage. *See, Omaha Order* at ¶ 60.

the public interest to enforce the regulation. No longer requiring Verizon to provide competitors with the ability to provide competing telecommunications service through the section 251 unbundling requirements does not ensure that charges, practices, classifications and regulations remain just and reasonable. Instead, forbearance would eliminate competitors and create a greater opportunity for price increases.⁵⁴ Rather than enhancing competition, forbearance from these regulations is more likely to have a dire impact on competition, particularly for residential basic local exchange service. For these reasons, the Commission must deny Verizon's request for forbearance from these regulations.

2. Dominant Carrier Regulations Related To Tariffing Continue To Provide Verizon's Customers Important Consumer Protections Because Verizon Continues To Hold Market Power (47 C.F.R. §§ 61.32, 61.33, 61.38, 61.58 and 61.59).

In its Petitions, Verizon seeks forbearance from certain tariffing regulations that apply to dominant carriers. These regulations establish Verizon's notice and filing requirements for tariff changes and were not included by Qwest in its Petition. Without explanation or support, Verizon has expanded the list of regulations from which it seeks forbearance compared to the single rule (47 C.F.R. § 61.38) from which Qwest sought forbearance in the Omaha MSA. Verizon's Petitions also fail to explain how forbearance from these additional regulations would be in the public interest, or would promote competitive market conditions.

⁵⁴ Even in the presence of regulations, Verizon has shown a tendency toward rate *increases*, rather than rate decreases, to respond to "competition" in the market for its bundled services. For example, Verizon recently petitioned the Maryland Public Service Commission (MD PSC) to increase the unlimited intraLATA toll portion of its "Regional Essentials" and "Regional Value" bundles by \$5.04 per month. Verizon Maryland Transmittal No. 1420, November 8, 2006. This transmittal was filed in the midst of a MD PSC investigation into Verizon Maryland's request to reclassify all of its intrastate bundled services as "competitive" within the Verizon Maryland Price Cap Plan (MD PSC Case No. 9072). Verizon has also implemented this same \$5.04 rate increase to these two bundles in other states affected by these Petitions as well. As discussed in more detail in Section III.D.3, *infra*, the Commission should not measure the presence of competition, or lack thereof, by the reduction of access lines, but rather in the reduction of rates. In that light, Verizon's ability to impose sizeable rate increases provides clear evidence of the limited presence of competitors.

Verizon has failed to demonstrate that it is anything but the dominant carrier in these six MSAs, particularly in the provision of residential basic local exchange service. The tariffing regulations to which Verizon adheres continue to offer important consumer protections. The current regulations permit Verizon to file new service tariffs on one day's notice,⁵⁵ which provide Verizon with the same advantages as any competitor. Notice requirements for changes to existing rates must continue at existing levels because of Verizon's position as the dominant carrier and the market power that it continues to hold.

Verizon has failed to demonstrate the presence of significant facilities-based competition, particularly for residential basic local exchange service, within the six MSAs. Because Verizon remains the dominant carrier, the Commission must deny Verizon's request for forbearance from dominant carrier tariffing regulations.

3. The Level Of Competition In The Affected Areas Is Insufficient To Warrant Removal Of Verizon's Price Cap Regulations, Particularly For Basic Local Exchange Services (47 C.F.R. §§ 61.41-49).

Verizon has requested forbearance from the same price cap regulations for which Qwest requested forbearance. Here again, however, Verizon's Petitions must be denied. Qwest's request was based on the extensive facilities deployed and substantial market share gained in Omaha by Cox Communications. Despite Verizon's assertions, however, the level of competition in the six MSAs affected by its Petitions is insufficient to warrant Verizon's forbearance request, particularly with regard to the level of competition for residential basic local exchange service. When competition is not present within a particular market segment, as is the case here for basic residential service, market forces will not protect consumers of those services if price cap regulations are eliminated. Verizon has neglected to provide any substantive data or

⁵⁵ 47 C.F.R. § 61.58(b).

analysis about market share, demand and supply elasticities, or Verizon's size, resources and technical capabilities, which were substantially greater than Qwest's even before Verizon acquired MCI as compared to its competitors. Yet these are the areas upon which the Commission must focus its analysis in this proceeding.⁵⁶ The Commission is therefore unable to draw the same conclusions as it did when reviewing Qwest's petition, and so must deny Verizon's request for forbearance from price cap regulations.

Most notably, granting the requested forbearance may allow Verizon to increase its Subscriber Line Charge ("SLC"). Sections 61.48(m)(2)(vi) and (vii) of the Commission's regulations specifically prohibit Verizon from recovering unallocated pooled revenues under its price cap plan "from the CCL charge, the primary residential and single-line business SLC, a non-primary residential SLC or from CMT elements in any other filing entity."⁵⁷ Allowing Verizon to forbear from this regulation may result in an increase to the residential SLC.⁵⁸ This would be particularly troublesome given the current examination of the SLC in the intercarrier compensation reform proceeding now pending before the Commission.⁵⁹ Under the industry-sponsored "Missoula Plan," about which the FCC is currently receiving comments, the residential SLC may be increased to \$10 in five years, and continue to increase with the rate of

⁵⁶ Omaha Order at ¶¶ 25-38.

⁵⁷ 47 CFR § 61.48(m)(2)(vi) and (vii).

⁵⁸ In light of the FCC's grant of Qwest's forbearance request, Joint Consumer Commenters examined Qwest's 2006 Annual Access Charge Tariff filing to ascertain whether Qwest had altered the SLC. Qwest acknowledged that it had received forbearance from price cap regulations for mass-market switched access services in the Omaha MSA, but that it needed to reach "customer agreements ... that would allow Qwest to execute the relief granted in this Order." Qwest 2006 Annual Access Charge Tariff filing, Transmittal No. 283, at 1.

⁵⁹ In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92.

inflation.⁶⁰ The Commission should not remove any restrictions that would allow Verizon to increase the residential SLC even further, because doing so would neither be in the public interest nor ensure that Verizon's charges are reasonable.

To the extent that regulatory forbearance provides the opportunity to exceed the current caps on rates, including the residential SLCs, Joint Consumer Commenters further oppose forbearance from price cap regulations. Elimination of these regulations would not protect consumers nor be consistent with the public interest.

4. Regulations Related To Transfers Of Control And Discontinuance, Reduction Or Impairment Of Service Provide Important Consumer Protections That Should Still Be Applied To Verizon (47 C.F.R. § 63.03, 63.04, 63.60-63.66).

Verizon seeks forbearance from certain dominant carrier regulations arising under section 214 of TA-96 and in Part 63 of the Commission's rules concerning transfers of control and discontinuance, reduction or impairment of service. These regulations for dominant carriers provide important consumer protections and should remain in place. This is particularly true given Verizon's recent announcement that it will be divesting its wireline operations in New Hampshire, Vermont and Maine.⁶¹

For example, section 63.03 of the Commission's regulations requires a public notice and comment period for each application for a transfer of control.⁶² Relieving Verizon of this

⁶⁰ See Letter from Tony Clark, Chair, NARUC Committee on Telecommunications, Ray Baum, Chair, NARUC Task Force on Intercarrier Compensation, and Larry Landis, Vice-Chair, NARUC Task Force on Intercarrier Compensation to Chairman Kevin C. Martin, Chairman, Federal Communications Commission, CC Docket No. 01-92, Appendix A ("Missoula Plan") at 7 (filed July 24, 2006). Furthermore, many states are independently conducting proceedings that may also raise related rates. See, e.g. AT&T Communications, Inc. v. Verizon North Inc. and Verizon Pennsylvania, Inc., PaPUC Docket No. C-20027195.

⁶¹ See, "Verizon and FairPoint Agree to Merger Verizon's Wireline Businesses in Maine, New Hampshire and Vermont With Current Operations of FairPoint," FairPoint/Verizon News Release, January 16, 2007.

⁶² 47 C.F.R. § 63.03.

important requirement would eliminate the opportunity for the public to have a voice in assessing the impact of the application on the telecommunications services they receive. The public should continue to have an opportunity to express opinions on transfers that affect the provision of their telecommunications services, which are no longer luxuries but have become vital necessities for today's personal and business uses. The Commission should continue to hear from the public in these proceedings as it analyzes such applications.

When reviewing applications for transfers of control, the Commission must determine that the proposed transaction will serve the public interest, convenience, and necessity.⁶³ In making this determination, the Commission may approve mergers contingent upon the adoption of various conditions that may provide consumer protections. For example, the Commission conditioned its approval of Verizon's acquisition of MCI on a two-year requirement that the merged entity conduct business in a manner that comports with the principles set forth in the FCC's "Net Neutrality" Policy Statement issued September 23, 2005.⁶⁴ Granting Verizon's request for forbearance from sections 63.03 and 63.04, would eliminate both the Commission's overall review of the transaction and "public interest" finding, and the opportunities to create important consumer benefits. Absent these regulations, consumers would not have realized the consumer benefits that may have resulted from the numerous mergers Verizon has been involved

⁶³ See 47 U.S.C. §§ 214(a), 310(d). See also Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18026-27, 18030-32 at ¶¶ 1, 8-10 (1998); Applications of NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, File No. NSD-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd 19985, 19987, 20000-04 at ¶¶ 2, 29-32 (1997); Verizon/MCI Order, *supra*; In the Matter of Review of AT&T and BellSouth Corp Application for Consent to Transfer of Control, WC Docket No. 06-74 (Dec. 29, 2006).

⁶⁴ Verizon/MCI Order, n. 33, *supra*, at App. G. These "network neutrality" principles are discussed further in section III.C.5, *infra*.

in over the past decade. Verizon has provided no evidence to demonstrate that forbearing from the regulations that provide for scrutinizing proposed mergers would be in the public interest.

Similarly, the Commission should not grant Verizon forbearance from section 63.60-63.66 of the Commission's regulations.⁶⁵ These regulations provide important consumer protections against the discontinuance, reduction, outage and impairment of services provided by dominant carriers. These protections are fundamental to protect consumers and ensure that Verizon's charges and practices are reasonable. In the effort to create a competitive marketplace for the provision of telecommunications services, the Commission must not lose sight of the importance of basic telephone service upon which so many Americans rely. This particular forbearance request may have the greatest impact on consumers, and the Commission should give this request significant consideration as it reviews these Petitions.

The FCC requires large ILECs to file various reports under the ARMIS (Automated Reporting Management Information System) program. ARMIS report 43-05, for example, shows annual service quality data for large carriers, aggregated by state or by company study area, and is useful in showing overall trends for these carriers. The information collected and reported for service quality in ARMIS includes: 1) Installation and Repair Intervals (Interexchange Access), 2) Installation and Repair Intervals (Local Service),⁶⁶ 3) Common Trunk Blockage, 4) Total Switch Downtime, 5) Occurrences of Two Minutes or More Duration Downtime and 6) Service Quality Complaints. The ARMIS reports are useful in monitoring the

⁶⁵ Verizon Philadelphia Petition at 4, n. 3; Verizon Boston Petition at 4, n. 3.

⁶⁶ This includes: 1) average installation intervals in days, 2) percent local installation commitments met, 3) out-of-service repair intervals in hours, 4) repeat out of service trouble reports as a percentage of initial out-of-service trouble reports, 5) state complaints per 1,000,000 lines and 6) total trouble reports per month per 100 lines.

reliability of the interstate network, and losing access to this type of data would not be in the public interest.⁶⁷

Joint Consumer Commenters welcome the competitive provision of various telecommunications services to the extent it provides lower prices, greater service quality and greater variety of service options. However, the existence of competition should not also result in fewer consumer protections from discontinuance or impairment of service. Reliable basic local telephone service must still be available to consumers as a fundamental necessity and for public safety. For many of the same reasons that universal service is an important public policy, so too are the discontinuance and outage regulations contained in sections 63.60 to 63.66 from which Verizon now seeks forbearance important. Those protections are particularly important given the recent decline in telephone subscribership across the nation.⁶⁸ Granting Verizon's forbearance request from the regulations that provide such important consumer protections in the name of "competition" would be detrimental to consumer interests in all of the affected MSAs.

The discontinuance, reduction and impairment regulations apply to dominant carriers, and Verizon seeks forbearance from these dominant carrier regulations throughout the six identified MSAs. Verizon's Petitions do not present sufficient information to demonstrate the presence of competition throughout each of the MSAs, particularly facilities-based competition, much less whether Verizon remains dominant, which was the basis for the FCC's decisions on Qwest's similar forbearance requests in the Omaha Order. Granting the requested relief could especially harm consumers in those parts of the MSA without competitive alternatives. The

⁶⁷ Unfortunately, major ARMIS 43-05 reporting categories show negative trends for Verizon.

⁶⁸ The percentage of households with telephone service nationwide as of March 2006 is 92.8%, down 1.2% since July 2005, after having reached a high of 95.5% in March 2003. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Telephone Subscribership in the United States, Data through March 2006" (rel. October 2006) at Table 1.

Commission cannot give Verizon the unfettered ability to discontinue, reduce or impair service in areas, such as specific wire centers, regardless of whether competition has emerged. Those actions could seriously disrupt or impair service and diminish service quality for consumers without competitive alternatives, and also harm customers even where there is some competition. The Commission must reject Verizon's request for forbearance from these regulations in their entirety, and continue to require Verizon to submit applications or requests to discontinue, reduce or impair services as required under the current regulations.

Outage reporting requirements are important consumer protections to ensure that consumers receive adequate telephone service.⁶⁹ The Joint Consumer Commenters support the competitive provision of telecommunications if it results in lower prices, higher quality of service and greater service options. The presence of competition, however, should not result in more frequent service outages or other decreases in service quality. NASUCA, and some of the Joint Consumer Commenters, have advocated for the maintenance of outage reporting requirements in other proceedings.⁷⁰ Maintaining those requirements ensures that consumers receive safe, adequate and reliable service, while still receiving the benefits of competition. Verizon's request to forbear from outage reporting requirement regulations will not enhance

⁶⁹ Concerns about Verizon's outage reporting requirements are evidenced by a recent Buffalo, New York snowstorm when "Verizon was the last of the three major service providers to return to normal, on November 9 – *a week after cable, and more than two weeks after power was restored*. It had a total of 90,000 customers with no dial tone or some other service trouble, the company said." Verizon Cut Repair Worker Jobs Before October Snowstorm: Before Cuts Were Made, Firm Wasn't Meeting Repair Goals Statewide, Buffalo News, November 18, 2006 (emphasis added).

⁷⁰ See, e.g. Re: In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications, ET Docket No. 04-35, Ex Parte of the National Association of State Utility Consumer Advocates (March 22, 2005); In the Matter of 2000 Biennial Regulatory Review – Telecommunications Service Quality Telecommunications Act of 1996 Reporting Requirements, CC Docket No. 00-229, Comments of the National Association of State Utility Consumer Advocates on the Notice of Proposed Rulemaking: Elimination of the Reporting of Various Categories of Performance Information (January 12, 2001).

service quality. In fact, forbearance from outage reporting requirements may create public safety hazards if service is not available in the event of an emergency. The Commission must deny Verizon's request for forbearance from these important requirements.

Verizon seeks forbearance from its requirements to maintain public toll stations (*i.e.*, payphones).⁷¹ The use of payphones may be dramatically decreasing, particularly as many consumers now use cell phones to make calls for which they previously used payphones. Payphones, however, remain a vital consumer benefit and protection for the millions of consumers who still do not use cell phones, including many low-income and homeless consumers who may rely on payphones as their sole source of communications.⁷² For many people, the payphone represents the only lifeline to the "connected" world, and is a necessity to call prospective employers, various government assistance agencies, and many other resources that are an important part of their daily existence.

The FCC has previously concluded that payphones are in the public interest.⁷³ The FCC found that there is a need to ensure the maintenance of public interest payphones that serve public policy interests in health, safety, and welfare in locations where there might not otherwise

⁷¹ 47 CFR § 63.65.

⁷² Other consumers continue to rely on payphones as well. Although cell phone use has likely contributed to a decline in payphone use, cell phone users may continue to rely on payphones when they receive poor reception, their phones run out of battery power, or they place a call from outside their service plan coverage area.

⁷³ See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (1996) ("Payphone Order"). See also, Re: Designation of a Public Interest Payphone at the Stinson Lake Store in Rumney, 90 N.H. PUC 78, 2005 WL 711751 (N.H. P.U.C. 2005) (New Hampshire Commission ruled that it is a matter of public health and safety to have a public interest payphone in a certain location to ensure access to emergency calling service).

be a payphone as a result of the operation of the market.⁷⁴ Verizon has simply made no showing that the public interest is served by forbearance from the FCC's position on public interest payphones. The Commission should reject Verizon's forbearance request that would enable it to eliminate this vital consumer resource in the name of "competition," regardless of how many other competitive alternatives there may be for some consumers.

In specifically addressing Qwest's request for forbearance from the discontinuance requirements, the Commission determined that "[w]here *the majority of customers have selected carriers other than Qwest*, we find that continuing to impose more onerous discontinuance requirements is no longer necessary" to satisfy the "just and reasonable" standard associated with section 160(a)(1).⁷⁵ In this proceeding, Verizon has made no similar showing that a *majority* of its customers have selected carriers other than Verizon, so the Commission cannot have the same reassurances if it no longer required Verizon to comply with these vital discontinuance requirements.⁷⁶ Verizon has not established that it is no longer the dominant provider of retail mass-market services, particularly residential basic local exchange services; for that reason, the Commission must deny Verizon's request for forbearance. Because Verizon remains dominant in the provision of mass-market local exchange services, and thus exchange access services, the important consumer protections contained within the regulations governing transfers of control and discontinuance, reduction or impairment of service must remain intact.

⁷⁴ Id. at 20671; *see also* Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order on Reconsideration, 11 FCC Rcd 21233, 21340 (1996) ("Payphone Reconsideration Order"). The FCC has also concluded that the primary responsibility for administering and funding public interest payphones programs should be left to the states, subject to guidelines adopted by the FCC. Payphone Reconsideration Order at ¶¶ 278-280.

⁷⁵ Omaha Order at ¶ 43 (emphasis supplied).

⁷⁶ *See* n. 38, *supra*.

By virtue of Verizon's dominant status in the market, lessening regulations governing discontinuance, reduction or impairment of service would be contrary to the clear intent of Congress in enacting TA-96 promoting the competitive provision of telecommunications services to encourage, *inter alia*, better service quality. Lessening transfer of control regulations, for example, may seem somewhat innocuous but merger activity will likely continue to require rigorous examination in order to protect consumers from further market dominance by carriers like Verizon.⁷⁷ Further streamlining treatment of those transfers of control is not in the public interest.

5. Granting Verizon's Request For Forbearance From The Computer III Rules and Open Network Architecture Requirements Is Not In The Public Interest Because It Will Limit Consumer Benefits Associated With The Internet.

Verizon's Petitions seek forbearance from "the Computer III requirements, including Comparably Efficient Interconnection ... and Open Network Architecture requirements."⁷⁸ Qwest did not make a similar request for forbearance from the CEI and ONA requirements in its Petition. Rather, Verizon's request parallels its efforts, along with other ILECs, to defeat any efforts at ensuring "network neutrality" in other forums, such as the United States Congress. The Commission should reject these efforts to ensure that all telecommunications services and access to the Internet remain open and continue to offer great public and economic benefit.

CEI and ONA requirements ensure that consumers have access to content, applications, and equipment on a non-discriminatory basis as they use the Public Switched Telephone

⁷⁷ In lieu of RBOC competition across service area boundaries, passage of TA-96 prompted consolidation within the RBOC ranks through a spate of mergers that were not envisioned when the Act was drafted, legislated and ratified. As the industry continues to change, it would be imprudent to lessen the regulations that apply to Verizon regarding changes or transfers of control.

⁷⁸ See, e.g., Verizon Philadelphia Petition at 4, n. 3; Verizon Boston Petition at 4, n. 3.

Network (PSTN). The Commission should reject Verizon's Petitions because they seek to eliminate Verizon's obligations to provide competitors with non-discriminatory access to its network so that competitors can provide competing services. Maintaining non-discriminatory access to the network is vital for the public interest, and will provide substantial consumer benefits. This is consistent with the pro-competitive policies articulated by Congress in TA-96 and decades of precedent codified in the Act.⁷⁹

The underlying premise of CEI and ONA regulation is that "the facility owner must make those facilities available to all who wish to use them, and in general may not control the content or services offered by others over those facilities."⁸⁰ Verizon is required to sell its telecommunications services on non-discriminatory terms and conditions to any consumer who requests them. Maintaining CEI and ONA obligations maintains consumer rights to use an open network. This right of non-discriminatory consumer use differs from the right of carrier interconnection. TA-96 clearly articulates the interconnection and non-discriminatory obligations of carriers for consumers such as Verizon.

ONA is a concept where:

the telephone companies are obliged to provide a certain class of service to their own internal value-added divisions and the same class of service to a nonaffiliated (*i.e.*, outside) value-added company. The concept is that the phone company's architecture is

⁷⁹ Section 201(a) states, "it shall be the duty of every common carrier... to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes." 47 U.S.C. § 201(a). Section 202(a) states, "it shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly...". 47 U.S.C. § 202(a).

⁸⁰ See Earl W. Comstock and John W. Butler, "Access Denied: The FCC's Failure to Implement Open Access to Cable as Required by the Communications Act," (posted June 23, 2004), Compiled as a part of Open Architecture as Communications Policy at 284 <<http://cyberlaw.stanford.edu/blogs/cooper/archives/002272.shtml#comments>> ("Access Denied").

to be “open” and that everyone and anyone can gain access to it on equal footing.⁸¹

The Commission must deny Verizon’s Petitions for forbearance because granting the Petitions would effectively preclude consumers from receiving the benefits of an open network, including unfettered access to the Internet and the competitive provision of telecommunications services. Without ONA and CEI requirements, Verizon customers may not be able to have access to Internet content of their choice, may be required to pay an additional surcharge to access content of their choice, or may suffer lower service quality when doing so. The FCC has long recognized the benefits of allowing end users to have the ability to gain access to the public network through alternative applications or equipment as long as those alternatives do not have a detrimental effect on the network.⁸² Denying Verizon’s Petitions is consistent with long-standing FCC precedent that recognized the benefits to consumers of network neutrality.

Such long-standing precedent also recognizes the value to consumers in being able to attach equipment of their choice to the network for their benefit. These ONA and CEI requirements are equally applicable today to Internet access and Verizon’s provision of telephone services as well. Commissioner Michael Copps has stated:

More than thirty-five years ago, the Commission decided to let consumers attach devices like the Carterfone to the end of the network. And you know what? The doomsday loss of quality and

⁸¹ Newton’s Telecom Dictionary at 598.

⁸² As early as 1956, the FCC addressed the value of allowing consumers to attach equipment of their choice to the network. Hush-a-phone Corporation v. F.C.C., 238 F.2d 266 (D.C. Cir. 1956) (the D.C. Circuit directed the FCC to find that the AT&T tariff that prohibited “foreign” devices resulted in unjust and unreasonable service given the consumer benefits resulting from the use of the device). *See also* In the Matter of Use of the Carterfone Device in Message Toll Telephone Service; 13 FCC 2d 420 (1968) reconsideration denied, 14 FCC 2d 571 (1969) (“application of the tariff to bar the Carterfone in the future would be unreasonable and unduly discriminatory.”). *See also* Payphone Order, *supra*, at 20640-20642, and Payphone Reconsideration Order, *supra*, at 21324-21326 (concluding that CEI and ONA nonstructural safeguards were in the public interest).

control didn't come to pass. Instead, a right to attachment came into being. It brought consumers the basic freedom to attach any device to the network as long as it causes no network harm. And look at its benefits – fax machines and computer modems are direct descendants of this principle.⁸³

Commissioner Copps' comments articulate the benefits resulting from the FCC's decisions nearly half a century ago to require non-discriminatory access to the network. Such access has resulted in essential consumer benefits and is in the public interest. For example, the Internet's success was driven, in large part, by the fact that it was open during its initial deployment, which allowed virtually any user to create or have access to websites. Still, it remains available to all potential users on identical terms and conditions. Today's innovations include telephone service provided over broadband Internet connections with unlimited calling and a multitude of features. Open access is critical to the public's availability to these and other technological developments.

The Computer II proceeding perhaps best exemplifies the FCC's efforts to create consumer benefits. In Computer II, the FCC stated that the "essential thrust" of the proceeding was to "provide a mechanism whereby non-discriminatory access can be had to basic transmission services by all enhanced service providers."⁸⁴ In reaching its decision, the FCC also found that the "importance of control of local facilities, as well as their location and number, cannot be overstated. As we evolve into more of an information society, the access/bottleneck

⁸³ Michael J. Copps, Opening Comments of Michael J. Copps, (posted June 23, 2004), Compiled as a part of Open Architecture as Communications Policy at 6 <<http://cyberlaw.stanford.edu/blogs/cooper/archives/002272.shtml#comments>>.

⁸⁴ Computer II, 77 F.C.C.2d at 475.

nature of the telephone local loop will take on greater significance.”⁸⁵ The FCC also reaffirmed the Carterfone decision in 1997.⁸⁶

The importance of ONA and CEI has increased because of the transformation of the traditional circuit switched telephone network for carrying voice communications from one location to another. New high-bandwidth applications may also develop that will offer further benefits and competition for existing video services as well. As the Internet increasingly carries voice grade telephony, CEI and ONA requirements will become even more important in the future. To the extent that the level of services carried over the Internet is growing, broadband providers will increasingly be able to discriminate and restrict certain services.

The Commission recently recognized the importance of CEI and ONA by adopting then-Chairman Michael K. Powell’s “Net Freedom” principles in a Policy Statement. Chairman Powell issued a challenge to high-speed Internet providers urging them to adopt voluntary “Net Freedom” principles that focus on non-discriminatory access to the broadband network as a means of bringing benefits to consumers and the industry itself.⁸⁷ Chairman Powell’s “Net Freedom” principles included: 1) Freedom to Access Content - Consumers should have access

⁸⁵ Id. at 468; *see also* Access Denied at 290-91. The FCC discussed the positive aspects of an ONA framework: “we tentatively conclude that the application of ONA and nondiscrimination safeguards ... would yield substantial public interest benefits by bringing to customers and [enhanced service providers] ... the benefits of ONA, and by safeguarding against discrimination.” In the Matter of Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation, 7 FCC Rcd. 8664 (1993) at 8667. Since the passage of TA-96, the FCC has held on multiple occasions that Congress incorporated the Computer II basic/enhanced distinctions into TA-96 and affirmed the FCC’s holdings for the preceding two decades that facilities-based carriers cannot escape the otherwise-applicable common carrier regulation of transmission services by bundling those services with unregulated information services.

⁸⁶ In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, 12 FCC Rcd. 5639, 5643 (1997) (the Commission “progressively adopted regulations that ensured that telephone customers could freely connect [Customer Premises Equipment] to the telephone network so long as the connections did not cause harm.”).

⁸⁷ *See*, “Powell Urges Industry to Adopt ‘Net Freedom’ Principles,” Federal Communications Commission Press Release, dated February 9, 2004, quoting Remarks of Chairman Powell at the Silicon Flatirons Symposium on “The Digital Broadband Migration: Toward a Regulatory Regime for the Internet Age,” University of Colorado School of Law, Boulder, Colorado (Feb. 8, 2004).

to their choice of legal content; 2) Freedom to Use Applications - Consumers should be able to run applications of their choice; 3) Freedom to Attach Personal Devices; and 4) Freedom to Obtain Service Plan Information - Consumers should receive meaningful information regarding their service plans.⁸⁸ The FCC adopted these principles in a 2005 Policy Statement and vowed to incorporate the principles into its ongoing policymaking activities.⁸⁹ Furthermore, Verizon agreed to adhere to these principles for a limited time as part of the Commission's approval of its acquisition of MCI.⁹⁰ If the Commission grants Verizon's Petitions, however, these Net Freedom principles could be in jeopardy.

If the Commission forbears from applying CEI and ONA requirements to Verizon, Verizon could determine which, *if any*, of its competitors will have the opportunity to interconnect with Verizon and use its facilities to offer competing services. Consumers then may not be able to gain access to the web sites of their choice as they currently are accustomed to doing and which has become a vital element of the vibrant digital economy.

It is clear that the FCC has a long-standing policy that recognizes the value to consumers in allowing non-discriminatory access to the PSTN. This legacy has remained a cornerstone of telecommunications regulation for half a century, and the source of many consumer benefits. Non-discriminatory access to the PSTN by consumers and competitors is clearly in the public

⁸⁸ Id.

⁸⁹ In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, CC Docket No. 02-33; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunication Services, CC Docket No. 01-337; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements, CC Docket Nos. 95-20, 98-10; Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, GN Docket No. 00-185; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet over Cable Facilities, CS Docket No. 02-52; Policy Statement, FCC 05-151 (rel. Sept. 23, 2005) at 3.

⁹⁰ Verizon/MCI Order at App. G.

interest, and the Commission should not allow Verizon to restrict that access. Verizon has failed to provide sufficient evidence in its Petitions for this Commission to forbear from applying these obligations. The Commission should not take lightly the consequences of granting Verizon's Petitions and the loss of consumer benefits that would result. Therefore, it must deny Verizon's Petitions.⁹¹

D. The Demonstrated Levels Of Competition In The Respective MSAs Do Not Support Forbearance From Vital Consumer Benefits And Protections.

In its Petitions, Verizon claims that the section 160(a) forbearance tests are satisfied in each of the six MSAs because telecommunications competition is “robust and rapidly growing,”⁹² and because competition in the identified MSAs is “more advanced” than it was in the Omaha MSA.⁹³ Verizon points to competition from specific facilities-based cable operators, wireless carriers, “over-the-top” Voice over Internet Protocol (“VoIP”) service providers and traditional wireline CLECs that rely on wholesale service from Verizon as evidence of this “robust” competition.⁹⁴ However, Verizon's Petitions fail on a number of levels to satisfy the statutory requirements necessary to grant forbearance, and do not meet the standards set forth by the Commission when it addressed Qwest's forbearance request in the Omaha Order.

⁹¹ For a further discussion of the importance and history of the CEI and ONA requirements, please see the Comments filed by NASUCA In the Matter of Petition of Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services, Docket No. WC 04-440 (dated February 8, 2005).

⁹² Verizon Philadelphia Petition at 3.

⁹³ Id. at 26.

⁹⁴ Id. at 4-17. The term “over the top” refers to the use of one competitor's network by another competitor to provide competing service.

In the Omaha Order, the Commission relied on a demonstration of facilities-based competition generally when it granted forbearance from certain dominant carrier regulations.⁹⁵ It then relied on a demonstration of facilities-based competition on a granular basis to grant forbearance in certain areas from certain aspects of the unbundling regulations found at section 251(c).⁹⁶ In particular, the Commission was convinced that the market share captured by Cox was sufficient to allow the three prongs of the section 160(a) forbearance test to be satisfied.⁹⁷ In the Anchorage Order, the Commission considered it appropriate to consider the competitive effects of the facilities-based competitor’s “long-established, concrete and partially realized plans to fully upgrade its cable system in determining the scope of forbearance relief.”⁹⁸

In this proceeding, Verizon has failed to provide sufficient competitive data, such as line counts at the required level of granularity that the Commission used in addressing Qwest’s forbearance request. Without the necessary granular detail for competition on a wire center basis and a demonstration that facilities-based competition has met or exceeded “specific thresholds,” Verizon’s requests for forbearance from these regulations fail. Furthermore, Verizon’s attempt to satisfy the first and second prongs of the forbearance test by demonstrating the presence of intermodal competition fails because there is no competition for Verizon’s basic local exchange

⁹⁵ Omaha Order at ¶¶ 15-50.

⁹⁶ Id. at ¶¶ 57-89. *See also*, Anchorage Order at ¶¶ 14, 16.

⁹⁷ Id. at ¶ 62 (“We tailor Qwest’s relief to specific thresholds of facilities-based competition from Cox.”); ¶ 64 (“[W]e conclude that sufficient facilities-based competition for local exchange and exchange access services exists in certain of Qwest’s Omaha MSA wire center service areas to justify forbearance relief for several reasons. Most importantly, we find that Cox has been successfully providing local exchange and exchange access services in these wire center service areas without relying on Qwest’s loops or transport.”); and ¶ 65 (“Of greatest importance in our analysis is competition from Cox, which uses its cable plant to provide circuit-switched local exchange and exchange access services in this market.”).

⁹⁸ Anchorage Order at ¶ 37.

service. None of the identified intermodal providers offers a service that is a substitute for basic local exchange service with regard to functionality, scope of services or rates.

Finally, Verizon's claim about loss of market share in the mass market exaggerates the Company's position and fails to account for the fact that Verizon continues to be the dominant provider of basic local exchange services in the mass market because none of the identified competitors offer a substitutable service. The presence of competition in a market should not be dictated by some nominal decrease in access lines, but rather by reductions in retail rates due to the presence of other providers of basic services. Only then will the Commission know that the market is truly competitive and will ensure just and reasonable rates, protect consumers and promote the public interest.

1. A More Granular Analysis Of Competition Is Required To Demonstrate The Presence Of Alternatives To Consumers.

Verizon has followed Qwest's example and submitted its Petitions for forbearance at the MSA level. However, the Commission has found that the MSA is not the appropriate geographic market to examine to demonstrate the presence of competition for residential consumers. Verizon should have tailored its application to follow the Commission's analysis in the Omaha Order when it reviewed Qwest's Petition on a wire center basis. In the Omaha Order, the Commission granted Qwest forbearance from "applying ... the requirements arising under section 251(c)(3) to provide unbundled access to loop and transport elements *in certain wire centers* in the Omaha MSA *based upon the development of sufficient facilities-based*

competition and other factors....”⁹⁹ The Commission granted forbearance in only 9 of the 24 wire centers within the Omaha MSA.¹⁰⁰ In reaching this determination, the Commission stated:

The merits of [Qwest’s] Petition warrant forbearance only in locations where Qwest faces sufficient facilities-based competition to ensure that the interests of consumers and the goals of the Act are protected under the standards of section 10(a). We are persuaded by record evidence, some of which Qwest and Cox submitted on a wire center basis, that such a level of competition exists in certain of Qwest’s wire center service areas located in the Omaha MSA. We are equally convinced that in other wire center service areas in this market, Qwest is not subject to this level of competition.¹⁰¹

The Commission’s decision appropriately addressed competition at a more granular level than the MSA. A granular analysis is important because facilities-based cable operators whose franchise areas cover part but not all of an exchange do not and cannot serve the entire exchange. As the Commission found in the Omaha Order, a cable operator, such as Cox in Omaha, is:

not able to provide the same level of competition where it does not have extensive coverage as where it has such coverage. We find that forbearing from section 251(c)(3) and the other market-opening provisions of the Act and our regulations where no competitive carrier has constructed substantial competing “last-mile” facilities is not consistent with the public interest and likely would lead to a substantial reduction in [] retail competition ...¹⁰²

Unlike traditional CLECs providing resale-based or Wholesale Advantage-based residential service that can obtain facilities from the ILEC to serve anyone within a wire center in which the ILEC operates, cable operators face substantial economic barriers to providing service to

⁹⁹ Id. at ¶ 57 (emphasis supplied). Those “other factors” are “other statutory and regulatory safeguards that facilitate additional competition.” Id. at ¶ 59. Although these “other factors” went unnamed in the Omaha Order, the Commission should clearly identify factors it may use to evaluate Verizon’s Petitions in any of the six MSA.

¹⁰⁰ Id. at ¶ 59.

¹⁰¹ Id. at ¶ 61 (footnotes omitted).

¹⁰² Id. at ¶ 60.

customers that are not “passed” by the cable operator’s distribution plant. As the Commission has recognized, a given cable operator will not serve customers whose homes are not passed by that cable operator’s outside plant.¹⁰³ Further, to the extent that the cable operator provides IP-based voice service, it will not be able to market and provide identical circuit-switched and IP-based services because of the technical differences and capabilities of each.¹⁰⁴

Despite the Commission’s clear preference for and reliance on granular evidence of competition from facilities-based providers at the wire center level, Verizon’s Petitions are devoid of any similar evidence that would permit the Commission to grant the requested forbearance. Verizon’s overbroad claims about the presence of facilities-based cable operators in the six MSAs fail to address the Commission’s stated preference for granular evidence in order to grant forbearance from its various existing regulatory obligations.

Verizon claims, based on E911 listings, that cable providers such as Comcast and RCN provide mass-market voice service in wire centers that account for certain, confidential percentages of Verizon’s residential access lines in the MSA.¹⁰⁵ This is not the same type of analysis the Commission conducted when it granted Qwest forbearance from certain regulations based on a showing that Cox had met certain threshold levels of facilities-based competition in specific wire centers.

¹⁰³ Id.; *see also*, Anchorage Order at ¶¶ 31-34.

¹⁰⁴ Comcast, for example, began offering “Digital Phone” circuit-switched voice services years ago, but today only markets its IP-based “Digital Voice” service. Comcast has decided to discontinue circuit-switched voice service to certain customers in at least one instance, even though it provides IP-based services in that same market. *See In the Matter of Section 63.71 Application of Comcast Phone of Maryland, Inc. for Authority Pursuant to Section 214 of the Communications Act to Discontinue the Provision of Residential Facilities-Based and Resold Telecommunications Services in Laurel, Maryland*, WC Docket No. 06-204, Section 63.71 Application, October 31, 2006 at Attachment 1.

¹⁰⁵ *See, e.g. Lew/Verses/Garzillo Philadelphia* at ¶¶ 18, 21; Verizon Pittsburgh Petition, App. A, Declaration of Quintin Lew, Judy Verses, and Patrick Garzillo Regarding Competition in the Pittsburgh Metropolitan Statistical Area (“Lew/Verses/Garzillo Pittsburgh”) at ¶ 19.

The standard for competition Verizon applies in its Petitions is far from rigorous, particularly when applied to cable-based providers who own and operate their distribution networks.¹⁰⁶ For example, while Verizon serves every in-region household in the Philadelphia MSA from one of its own wire centers, cable providers have deployed their networks without regard to the location or coverage of Verizon's, or any other ILEC's, wire centers.¹⁰⁷ Indeed, Verizon acknowledges that Comcast passes only 87% of homes in the Philadelphia MSA.¹⁰⁸ Hence, Verizon acknowledges that cable networks, and thus the availability of its voice service, are *not* ubiquitous throughout these MSAs. The lack of a ubiquitous cable network was a critical finding of the Commission in its Omaha Order when denying Qwest's request for regulatory forbearance in wire centers in which Cox either did not operate or meet a specific threshold of coverage.¹⁰⁹ Importantly, the homes Comcast or RCN do not pass may be spread throughout any or all of the Verizon wire centers in the MSA, or they may be concentrated in several wire centers. Verizon's data does not allow such a determination.

The Commission has acknowledged that simply because a cable operator (*e.g.*, Comcast) serves some portion of a wire center does not mean that all potential customers of the ILEC (*e.g.*,

¹⁰⁶ As noted above, cable operators are not able to provide competition where they do not have extensive coverage. Omaha Order at ¶ 60.

¹⁰⁷ Id. at ¶ 70 (“a facilities-based competitor such as Cox that does not compete through reliance on section 251(c)(3) access to unbundled loops is unlikely to pattern the architecture of its network after wire center service area boundaries”).

¹⁰⁸ Lew/Verses/Garzillo Philadelphia at ¶ 14 (combining Comcast with newly acquired portions of Time Warner's network). Verizon makes no comparable assessment for RCN in the Philadelphia MSA other than to say it operates an “overbuilt” network. Id. at ¶ 20. Verizon does not indicate whose network RCN “overbuilt,” nor does Verizon indicate the extent of the “overbuilt” network, such that it may cover some but not all of the network that was “overbuilt.”

¹⁰⁹ Omaha Order at ¶¶ 62, 69.

Verizon) in that wire center are potential customers of the cable operator.¹¹⁰ Unlike a CLEC providing service via resale or Verizon's Wholesale Advantage which may be able to purchase the necessary network elements from Verizon to serve any given Verizon customer, a cable-based provider of IP-based voice service can only provide service to those customers whose homes are passed by the cable operator's network. Plainly, Comcast cannot serve Verizon's entire potential customer base with its cable network, and Verizon has not made a sufficient showing for granting forbearance compared to that the Commission used in the Omaha Order. The interests of those consumers in the portions of Verizon's wire centers who a cable provider does not reach must remain protected by the regulations from which Verizon now seeks forbearance.

Furthermore, throughout its discussion of cable-based service, Verizon points to statements from cable operators about their anticipated and expected service availability. For example, Verizon claims that as of June 2006, Comcast offered "circuit-switched" voice telephone service and VoIP to 60 percent of Comcast's footprint nationwide, but that the company "*plans to market* its voice service to 80 percent of its footprint by the end of 2006."¹¹¹ Verizon also notes Comcast's claims that "[t]he *next several years* will provide tremendous growth *opportunities* for Comcast."¹¹² Verizon's reliance on these marketing statements is misplaced because companies routinely issue disclaimers when making such forward-looking

¹¹⁰ Id. at ¶ 60; Anchorage Order at ¶¶ 31-34.

¹¹¹ Lew/Verses/Garzillo Philadelphia at ¶ 16.

¹¹² Id.

statements since expectations of future plans do not always come to fruition.¹¹³ The Commission should not rely on these assertions as accurate representations of a competitive market.

Verizon's claim that "virtually all" of the cable plant "throughout the Philadelphia MSA" either has been upgraded to provide telephone service or "will be capable of doing so very shortly"¹¹⁴ is not sufficient evidence for the Commission to remove vital consumer benefits and protections.

The Commission must base its decision on evidence of competition that is present today, not the specter of competition that may or may not emerge in the future.¹¹⁵

As the Commission noted in the Omaha Order, it is under no statutory obligation to evaluate Verizon's Petitions "other than as pled."¹¹⁶ The Commission granted Qwest's forbearance request in part rather than reject it outright because it found evidence in the record to make a finding on a wire center basis.¹¹⁷ The Commission must categorically deny Verizon's requests for forbearance in whole because no similar evidence exists in this proceeding.

2. Verizon's Attempt To Demonstrate Mass-Market Competition In Order To Satisfy The Forbearance Test Does Not Capture Competition For Standalone Basic Local Exchange Service.

In the Omaha Order, the Commission granted in part Qwest's request for forbearance only "where the level of facilities-based competition ensures that market forces will protect the

¹¹³ Indeed, the April 27, 2006 Comcast Press Release regarding the company's first quarter 2006 earnings from which the Verizon witnesses quote carries the following disclaimer: "This press release contains forward-looking statements. Readers are cautioned that such forward-looking statements involve risks and uncertainties that could cause actual events or our actual results to differ materially from those expressed in any such forward-looking statements. Readers are directed to Comcast's periodic and other reports filed with the Securities and Exchange Commission (SEC) for a description of such risks and uncertainties."

¹¹⁴ Verizon Philadelphia Petition at 5; Verizon Boston Petition at 5.

¹¹⁵ The prognostications upon which Verizon relies in its Petitions should not even qualify as "potential" competition.

¹¹⁶ Omaha Order at n. 161.

¹¹⁷ Id.

interests of consumers... .”¹¹⁸ In reaching this determination, the Commission found facilities-based competition to be “intense” in Omaha and specifically noted that it is “ready and willing to step aside as regulators and let market forces prevail where facilities-based competition is robust.”¹¹⁹ The Commission, however, overlooked a critical point in its analysis of the presence of facilities-based competition: whether competition existed for standalone basic local exchange service. The Joint Consumer Commenters recognize the potential benefit of bundled packages for consumers, including low-income users. However, the Commission cannot make the same mistake with regard to Verizon’s Petitions by overlooking the importance of basic local exchange service. As demonstrated below, the information presented by Verizon about residential competitive services offered by facilities-based providers fails to show the existence of substitutable services for standalone basic local exchange service offered by other carriers. The reason for this is simple: the alternative carriers do not offer substitutable services.

In order to grant Verizon’s request for forbearance, the Commission must conclude that all three prongs of the forbearance test have been satisfied.¹²⁰ In the Omaha Order, the Commission reached that conclusion based on the presence of facilities-based competition – but it cannot make a similar finding with regard to Verizon’s requests because consumers of standalone basic local exchange service do not have facilities-based competitive alternatives. Granting Verizon’s Petitions in the absence of competition for standalone basic local exchange service means that “market forces” will not “prevail” to ensure just and reasonable charges,

¹¹⁸ Id. at 1.

¹¹⁹ Id. Similarly, in the Anchorage Order, the Commission determined that retail competition was “robust.” Anchorage Order at ¶ 28.

¹²⁰ *See* Section III.A, *supra*.

practices, classifications or regulations, or protect consumers of standalone basic service.¹²¹

Therefore, that finding would not be consistent with the public interest, nor would it enhance competition.¹²²

Furthermore, Verizon provides no true analysis of the substitutability, or interchangeability, of the services that it claims provide sufficient reason to grant its Petitions. To measure quantitatively the extent to which two products or services are economic substitutes for one another requires an examination of the price elasticity of the product or a service, and the cross-price elasticity of that product or service vis-à-vis another product or service that is a possible substitute. The “reasonable interchangeability” test is measured by, and is substantially synonymous with, cross-elasticity.¹²³ Such an analysis must look at the available substitutes from the perspective of the purchasers, rather than the sellers.¹²⁴ On that basis, Verizon’s Petitions must be denied because Verizon has provided no real economic evidence to show the substitutability of those services it claims provide the competition necessary to support its Petitions.

a. Most intermodal technologies are insufficient substitutes for wireline service.

Verizon relies on intermodal technologies to demonstrate the presence of competition, but these intermodal alternatives are not substitutes for basic wireline service. In the Omaha Order, the Commission did not rely on intermodal competition from wireless and interconnected

¹²¹ 47 U.S.C. § 160(a)(1) and (2).

¹²² 47 U.S.C. § 160(a)(3) and (b).

¹²³ Telecor Communications, Inc. et al. v. Southwestern Bell Telephone Co., 305 F.3d 1124 (10th Cir., 2002); *accord* Eichorn et al. v. AT&T Corp. et al., 248 F.3d 131 (3rd Cir. 2001).

¹²⁴ Id., 305 F.3d at 1131-1136.

VoIP services to “rationalize” forbearance from unbundling obligations because Qwest did not submit sufficient data concerning the “full substitutability” of these services in its service territory in the Omaha MSA, and the data submitted did not allow the Commission to further refine its wire center analysis.¹²⁵ In this proceeding, Verizon has also provided no data concerning the “full substitutability” of wireless and over-the-top VoIP services in any of the six identified MSAs, or any data on a wire center basis. As with Qwest’s forbearance request, the Commission must not include wireless and VoIP intermodal services in order to “rationalize” forbearance for Verizon.

The Commission has often heard the arguments for and against the substitutability of wireless and VoIP services. The great majority of consumers use wireless service as a *supplement* to their wireline service, rather than as a substitute. While the quantity of wireless minutes has certainly increased as wireless subscription rates have increased, it is unrealistic to conclude that every call placed from a wireless phone “displaces” a call that would have been placed from a wireline phone.¹²⁶ Wireless service enables consumers to place calls from locations and at times when they previously were unable to do so – and many of those calls would never have been placed from any wireline phone, much less the consumers’ home phone.¹²⁷

Of course, even if precisely quantifying the minutes associated with these types of calls is not possible, it is undeniable that the calls are made and have contributed to the increase in

¹²⁵ Omaha Order at ¶ 72.

¹²⁶ *See, e.g. Lew/Verses/Garzillo Philadelphia* at ¶ 28.

¹²⁷ For example, in the past, it was not possible for a spouse to call from the car on the way home to report that traffic was heavy, or that he or she would be home “in two minutes.” Calls are now placed from the aisle in the grocery store to simply ask, “Do we need milk?” People do not hesitate to place calls whenever and wherever they happen to be bored or alone, such as when they are stuck in traffic, waiting to pick up the kids after soccer practice or while roaming the mall.

wireless usage. It should also come as no surprise that consumers use their wireless phone for toll calls¹²⁸ since the increasing popularity of “free long distance” wireless calling plans in essence requires long distance to be paid for in advance.¹²⁹ Consumers also adopt a “use it or lose it” attitude toward their wireless minute allocations.

Even though some amount of substitution is taking place between wireless and wireline service,¹³⁰ there are many differences between the technologies used to provide these services that prevent wireless service from substituting for wireline service for the great majority of consumers. Wireless service quality is notorious for its lack of clarity, choppy connections, echo, delay associated with transmitting the signal and the propensity for dropped calls. Wireline service is much less likely to suffer from these flaws, if at all. Furthermore, since mobile service was the primary intent of introducing wireless service, network deployment, and thus coverage, was focused along highways and other routes of travel, as opposed to providing ubiquitous coverage of the areas where people live.¹³¹ Verizon contends that wireless service is

¹²⁸ Lew/Verses/Garzillo Philadelphia at ¶ 28.

¹²⁹ Wireless substitution for toll calling is distinctly different than wireless substitution for the wireline access line outright. Id. (“These findings ‘suggest[] that wireless is eroding the usage of wireline long distance and local toll services twice as much as the rate of complete wireless substitution,’” *quoting* D. Chamberlain, In-State/MDR, Cutting the Cord: Consumer Profiles and Carrier Strategies for Wireless Substitution (Oct 2005) at 6).

¹³⁰ Verizon’s own quote from a Commission order indicates that wireless-for-wireline substitution is present “for particular segments of the mass market.” *See, e.g.* Verizon Philadelphia Petition at 8, *citing* Verizon/MCI Order at ¶ 91. Even so, such substitution is minimized by the fact that Verizon Wireless, an affiliate of the Petitioner in this proceeding, is the largest wireless carrier operating in the United States and so would acquire a significant share of those “lost” minutes. *See also* Verizon Boston Petition at 8.

¹³¹ Indeed, Verizon’s CEO, Ivan Seidenberg, has publicly stated that people have unrealistic expectations about a wireless service working everywhere. He is reported to have said, “Why in the world would you think your (cell) phone would work in your house? The customer has come to expect so much. They want it to work in the elevator; they want it to work in the basement.” “Verizon CEO sounds off on Wi-Fi, customer gripes. Seidenberg also explains phone company’s reasons for wanting to buy MCI,” *San Francisco Chronicle*, April 16, 2005, at C1, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/04/16/BUGJ1C9R091.DTL&hw=seidenberg&sn=001&sc=1000> (October 15, 2006).

available throughout the identified MSAs.¹³² Wireless carriers typically provide coverage area maps on their websites but service is not completely reliable even in those geographic areas where coverage is allegedly “best” because of the technical limitations of wireless service.¹³³ This is particularly true when placing and receiving calls inside a home, which is the critical location to consider when assessing the substitutability of wireless for wireline service.

In addition to service quality and coverage concerns, additional technological barriers to displacement between wireline and wireless service exist. Consumers recognize the need for wireline service in order to (1) connect to the Internet; (2) use digital video recorder services (like TiVo), fax machines, satellite television services, and alarm/security systems; (3) have reliable emergency services; and (4) have multiple extensions of phones to easily place and receive calls.¹³⁴ If consumers continue to require wireline connectivity for these other services, the propensity to substitute wireless for wireline will lessen. Ultimately, even when approximately 10% of users have totally abandoned their wireline phone for wireless, the fact that approximately 90% of consumers have maintained their wireline phone despite the availability of wireless phones, means that wireless phones then cannot truly be considered substitutes for wireline phones.

¹³² See, e.g. Verizon Philadelphia Petition at 9; Verizon Boston Petition at 9.

¹³³ See http://onlinecare.cingular.com/coverageviewer/popUp_legend.html; http://coverage.sprintpcs.com/IMPACT.jsp?mapcity=Philadelphia&mapstate=PA&returnUrl=http%3A%2F%2Fwww1.sprintpcs.com%2Fexplore%2FservicePlansOptionsV2%2FFairFlexiblePlans.jsp%3FFOLDER%253C%253Efolder_id%3D1436723%26CURRENT_USER%253C%253EATR_SCID%3DECOMM%26CURRENT_USER%253C%253EATR_PCode%3DNone%26CURRENT_USER%253C%253EATR_cartState%3Dgroup; and <http://www.t-mobile.com/coverage/default.aspx?zip=19127> (October 15, 2006).

¹³⁴ See, e.g., Id.; see also “Nearly One in Ten U.S. Adults Use Wireless Phones Exclusively and Landline Displacement Expected to Grow,” Harris Interactive News Room, June 27, 2005, available at <http://www.harrisinteractive.com/news/allnewsbydate.asp?NewsID=943> (October 15, 2006).

VoIP services have their own set of functional and technical characteristics that keep these services from being effective substitutes for wireline service. VoIP services are either provided by pure facilities-based providers, such as cable operators, or by companies that provide an “over-the-top” application using an existing broadband connection. Cable-based VoIP services are close in functional equivalency to wireline service, but they still suffer from many important technical limitations. Enhanced 911 (E911) service is almost ubiquitous for wireline service but is not as reliable, or prevalent, for VoIP service providers because of the lack of direct association between the customer location and the customer’s connectivity to the Internet. Similarly, wireline service is designed to work when the power is out, provided the customer maintains use of a corded phone.¹³⁵ Because VoIP service depends on modem-based broadband connections, any disruption in power will render the modem, and consequently the VoIP service, useless unless the provider includes a battery backup. In addition, any disruption in the broadband service itself will render VoIP service useless regardless of the existence of battery-powered backup. Comcast acknowledges the differences and limitations of its E911 service and shortcomings regarding lack of power backup as compared to that of wireline service.¹³⁶

Other functional and technical impediments to substitution of VoIP service for wireline service include: (1) poor service quality marked by dropped calls, echo, and dialing

¹³⁵ Even so, most cordless phones will stay charged for many hours during a power outage.

¹³⁶ “Comcast Digital Voice Residential Subscriber Agreement, Version 2.0; Effective: January 1, 2006” (“Comcast Digital Voice Agreement”) at sections 2 (911) and 4 (power), available at <http://www.comcast.com/MediaLibrary/1/About/PhoneTermsOfService/PDF/DigitalVoice/SubscriberAgreement/Z33T86CDV%20Agreement1103051.pdf> (September 20, 2006).

irregularities, particularly when obtained from an over-the-top provider;¹³⁷ (2) the requirement of a broadband connection to the Internet, whether or not the broadband service provider requires the consumer to incur the additional expense of purchasing a high-speed data service such as cable modem;¹³⁸ (3) a lack of support for 0+ or operator assisted calling, including collect calls, third party billing calls or calling card calls;¹³⁹ and (4) like wireless, the inability to support services that require a wireline telephone (*e.g.*, fax, alarm systems). Recently, Verizon has promoted the dependability of its network over its competitors' networks based on these issues to discourage customers from switching to other providers.¹⁴⁰

Additionally, Verizon's request for forbearance from ONA and CEI requirements could suppress the continued availability of over-the-top VoIP services because Verizon could restrict the ability of VoIP providers to interconnect if it was no longer required to comply with the ONA and CEI requirements. Indeed, the current ability of VoIP providers to interconnect with

¹³⁷ Congestion over the public Internet also disrupts VoIP communications. Such disruptions may worsen over time as Internet usage continues to increase.

¹³⁸ In other words, while it may be obvious that a consumer must have a high-speed data service, like DSL or cable modem, in order to subscribe to over-the-top VoIP service, it is less obvious, but also true, that the consumer must have broadband connectivity to a cable company in order to subscribe to that cable company's VoIP service, even if the customer does not purchase high-speed data services from the cable company.

¹³⁹ *See, e.g.* Vonage, Terms of Service at section 2.14 (updated July 24, 2006), available at http://www.vonage.com/features_terms_service.php (September 15, 2006).

¹⁴⁰ "Verizon Beams Quality Message to Customer Living Rooms: Network Dependability Influences Purchase Choice; New Ads Stress Confidence, Peace of Mind That Cable and VoIP Can't Provide," Verizon Press Release (dated February 8, 2007). Judy Verses, a witness for Verizon in this proceeding, stated in the Press Release: "All calling services are not created equal, and dependability matters to customers. Competitors' alluring promotional pricing pitches gloss over the fact that Verizon's nationwide telecommunications network is more dependable, reliable and secure than many alternatives." Verses added: "Parity is something cable competitors can't claim, and they know it." Verizon should not be allowed to argue in this proceeding that its competitors provide substitutable competitive service sufficient to support their Forbearance Petitions while at the same time running an ad campaign arguing that those same competitors' supposed lack of network reliability is a reason not to use the competing service. Verizon even notes on its website the deficiencies with regard to its own VoIP service, VoiceWing. There, Verizon notes that the primary differences between VoIP service and traditional phone service include "a few unique characteristics" regarding power outages, 911 coverage, minimum broadband bandwidth and failure to support home networking systems such as home monitoring alarms. *See*, www22.verizon.com/CustomerHelp.

ILECs like Verizon is tenuous at best, because the section 251 interconnection obligations imposed on Verizon extend only to telecommunications carriers,¹⁴¹ and the FCC has not yet determined whether over-the-top VoIP service is a telecommunications service or an information service.¹⁴² In the absence of ONA and CEI requirements, from which Verizon seeks forbearance in this proceeding, Verizon would have the opportunity to discriminate against rival VoIP service providers. In so doing, Verizon would have the ability to decrease the presence of the same competitive providers upon which it currently relies as evidence for repealing ONA and CEI requirements.¹⁴³

The Commission must not forbear from regulations that would decrease competition, which is what would occur if it were to grant Verizon's Petitions. The Commission should continue to require network neutrality in order to foster competition. Otherwise, the potential for VoIP and other applications to compete against Verizon's existing services may be lost.

b. The intermodal services Verizon discusses are not substitutes for standalone basic local exchange service.

Even assuming, without accepting, that in theory the service intermodal service providers provide is substitutable for some wireline-based services Verizon provides, the actual services offered by intermodal providers are *not* substitutable for Verizon's standalone basic local

¹⁴¹ 47 U.S.C. § 251(a)(1).

¹⁴² In the Matter of IP-Enabled Services, WC Docket No. 04-36; In the Matter of E911 Requirements for IP-Enabled Service Providers, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking (rel. June 3, 2005) at ¶ 22.

¹⁴³ Furthermore, the long-term viability of over-the-top VoIP carrier is not assured. As the "triple-" or "quadruple-play" bundles become more prevalent in the market, over-the-top VoIP providers who only offer a voice product, and one with many technical and economic disadvantages, may find themselves with a shrinking customer pool and extremely thin margins. The recent initial public offering of Vonage provides some insight as to how the market views this situation. *See, e.g.* Meyerson, Bruce, "Phone, Cable Companies To Battle in 2007," Philadelphia Inquirer (Dec. 16, 2006). Vonage is clearly the market leader in the over-the-top VoIP sector but its stock has fallen roughly 60% since the IPO in May, 2006. *See also*, "Alabama VoIP Provider Seeks Bankruptcy Protection," Telecommunications Reports, March 1, 2007 at 38.

exchange service. Most intermodal service providers, and most wireline CLECs, offer only bundles or packages of local, toll and vertical features to residential customers.¹⁴⁴ Indeed, as demonstrated in Exhibit 1 of the Declarations submitted by Verizon’s witnesses in support of the Petitions,¹⁴⁵ none of the services the intermodal providers offer are comparable to standalone basic local exchange service. All of the service plans include unlimited local and toll calling with anywhere from 4 to 18 calling features included. It is telling that Verizon did not attempt to compare these service offerings to its own standalone basic local exchange service but rather to its “Freedom Essentials” bundle, which also includes unlimited local, long distance and three calling features. Bundled packages are valuable to consumers¹⁴⁶ but basic local exchange services must remain a viable and protected alternative for those who do not obtain a bundle of services.

Wireless service plans typically offer buckets of any-distance minutes for one monthly fee. The fee will vary considerably depending on the number of minutes purchased, but the price of the buckets invariably exceeds the rates charged by Verizon for its standalone basic local exchange service. Wireless plan minute allotments also frequently have time-of-day restrictions. A customer who exceeds the monthly allotment of minutes, whether overall or within the time-of-day category, faces steep overage charges for every additional minute of use – even if there are extra minutes left over in another time category. One solution to this issue might be for the customer to switch to a flat-rate “unlimited” any-distance plan. Yet, the rates for these plans,

¹⁴⁴ Verizon acknowledges that: “...each of these [wireless] carriers offers packages of services that are competitive with Verizon’s wireline service *for comparable offerings*.” Verizon Philadelphia Petition at 10 (emphasis added). *See also, Lew/Verses/Garzillo Philadelphia* at Exhibit 1.

¹⁴⁵ *See, e.g., Lew/Verses/Garzillo Philadelphia* at Exhibit 1.

¹⁴⁶ Bundles are important for all income classes of residential customers, from the well-to-do to the low-income.

discussed below, are many multiples of the charge for traditional flat-rate basic local exchange service.

Many VoIP service providers also offer only “all you can eat” bundled services, rather than “stripped down” basic local exchange service. This is most prevalent for service offerings from facilities-based providers such as cable operators. Some customers may neither want nor need “any-distance” calling packages with multiple features, nor are they willing to pay for such packages. For those residential consumers who continue to subscribe to standalone basic local exchange service, few service options provided by Verizon’s competitors exist, and those that do exist are not competitively priced.

c. Rates for intermodal services are not comparable to or competitive with standalone basic local exchange service.

The difference in the scope of services intermodal providers offer is reflected in the prices charged for those services, which exceed the rates Verizon charges for basic local exchange service by a wide margin as demonstrated in Tables 1 and 2 below. The gulf between the rates of the intermodal offerings and the rates Verizon charges for standalone basic local exchange service further demonstrates why many consumers do not have viable substitutes from the intermodal competitors. Because competition is not “robust and rapidly growing” for all consumers, there is no assurance that market forces will keep prices just and reasonable. As such, regulations continue to be necessary to protect consumers and promote the public interest. As a result, Verizon fails to satisfy the section 160(a) forbearance test.

A Verizon customer pays different amounts for standalone basic local exchange service depending upon the state of residence, as shown in Table 1 below. For purposes of comparison,

Table 1 shows the monthly recurring rate for a single (primary) residential flat-rate service line (1 FR) plus the monthly recurring federal SLC levied by Verizon in the Philadelphia MSA.¹⁴⁷

Table 1 - Philadelphia MSA Monthly Rates for Residential Flat-Rate Basic Local Exchange Service (excluding other taxes and fees)			
State/Rate Group	Monthly Rate – 1 FR	Federal SLC	Monthly Total
New Jersey	\$8.95	\$6.50	\$15.45
Delaware Group X	\$10.96	\$6.50	\$17.46
Delaware Group Z	\$11.62	\$6.50	\$18.12
Pennsylvania cell 3	\$13.29	\$6.16	\$19.45
Pennsylvania cell 1	\$14.63	\$6.16	\$20.79
Pennsylvania cell 2	\$14.93	\$6.16	\$21.09
Maryland Group B	\$15.81	\$5.91	\$21.72
Maryland Group A	\$17.01	\$5.91	\$22.92

Source: Verizon Tariffs

Intermodal providers offer a distinctly different set of services that are much wider in scope than standalone basic local exchange services, and they price their services accordingly. Wireless carriers like Cingular, Sprint and T-Mobile, that Verizon identified in its Petitions, offer service plans that vary from about \$30 with 200 included any-time/any-distance minutes plus features to \$150 or more for near-flat-rate service plans with 6,000 minutes plus features (*e.g.*, Call Waiting, Caller ID, Call Forwarding, Voice Mail) included.¹⁴⁸ As demonstrated in Table 2 below, the cost of wireless plans that could reasonably be considered to substitute for flat-rate residential service, assuming that there are no functional or service-related impediments to

¹⁴⁷ This analysis of rates and charges applies only to the Philadelphia MSA. Although the rate analysis does not translate precisely across all MSAs with their different providers and slightly different rates charged, the policy positions regarding competition and the criticism of the information provided in Verizon’s Petitions apply equally to all six Petitions.

¹⁴⁸ Lew/Verses/Garzillo Philadelphia at Exhibit 1; Lew/Verses/Garzillo Pittsburgh at Exhibit 1. The Lew/Verses/Garzillo Declarations for each MSA do not identify or provide pricing information for the costly wireless plans, with the highest number of monthly minutes, that come closest to approximating flat rate service.

substitutability, far exceed the cost of Verizon's wireline basic local exchange service in the Philadelphia MSA.¹⁴⁹

Cable-based VoIP services provided by Comcast, a key cable operator identified by Verizon,¹⁵⁰ vary in price from \$39.95 to \$54.95 and include unlimited local and toll calling and numerous vertical services. Comcast does not market standalone basic local exchange service without all the "bells and whistles" to prospective residential customers. Table 2 also shows the enormous rate discrepancy between the cable-based all-you-can-eat VoIP services and Verizon's monthly rates for basic local exchange service in the Philadelphia MSA.

¹⁴⁹ The figures represent two general wireless profiles: 1) a single user requiring 450-600 minutes of monthly usage, depending on the provider's available plans, and 2) a "family share" plan with two handsets and 1,000-1,400 minutes, which closely mimic two of the three wireless service plans appearing in Exhibit 1 to the Lew/Verses/Garzillo Declarations. Neither of these assumptions actually capture the "flat-rate" local calling provided by Verizon with its basic local exchange service.

¹⁵⁰ Verizon Philadelphia Petition at 4; Verizon Pittsburgh Petition at 4; Verizon Boston Petition at 4-5.

Table 2 - Philadelphia MSA
Comparison of Monthly Rates
Intermodal Service vs. Verizon PA Basic Local Exchange Service

Verizon Basic Local Exchange Service	Monthly Rate (1FR + SLC)		Percent above Verizon PA cell 1	
Verizon Pennsylvania cell 1	\$20.79		NA	
Verizon Pennsylvania cell 2	\$21.09		NA	
Verizon Pennsylvania cell 3	\$19.45		NA	
Wireless				
Cingular Nation 450 w/rollover	\$39.99		92%	
Sprint PCS Fair & Flexible 450	\$39.99		92%	
T-Mobile Get More 600	\$39.99		92%	
T-Mobile Family 1000, 2 phones	\$59.99		189%	
Cingular Nation Family 1350, 2 phones	\$89.99		333%	
Sprint Fair & Flex. Family 1350, 2 phones	\$89.99		333%	
Cable-Based CLEC				
Comcast Digital Voice (w/cable and data)	\$39.95		92%	
	with standalone DSL	with Cable Modem	with standalone DSL	with Cable Modem
“Over-the-top” VoIP				
ZingoTel Plus 400	\$34.95	\$49.90	68%	140%
Earthlink trueVoice Basic	\$39.94	\$54.90	92%	164%
Lingo Basic 500	\$39.94	\$54.90	92%	164%
ZingoTel Residential Unlimited	\$39.94	\$54.90	92%	164%
Net2Phone VoiceLine 500	\$39.98	\$54.94	92%	164%
Vonage Basic 500	\$39.98	\$54.94	92%	164%
AT&T CallVantage Local	\$44.98	\$59.94	116%	188%
MyPhoneCompany Unl. Local Home	\$44.98	\$59.94	116%	188%
Packet8 Freedom Unlimited	\$44.98	\$59.94	116%	188%
Lingo Unlimited	\$46.94	\$61.90	126%	198%
Earthlink trueVoice Unlimited	\$49.94	\$64.90	140%	212%
AT&T CallVantage	\$49.98	\$64.94	140%	212%
MyPhoneCompany Unl. Home/US/Can	\$49.98	\$64.94	140%	212%
Vonage Premium Unlimited	\$49.98	\$64.94	140%	212%
BroadVox Res. Unlimited	\$54.94	\$69.90	164%	236%
Net2Phone VoiceLine Unlimited	\$54.98	\$69.94	164%	236%
Sources: Table 1; carrier websites; Lew/Verses/Garzillo Philadelphia Exhibits 1 and 2. Subscriber line charges are included where appropriate; all other taxes and fees excluded.				

Verizon claims that over-the-top VoIP providers offer services at “prices that typically are lower than Verizon’s prices, even when the price of the underlying broadband connection needed for VoIP service is taken into account.”¹⁵¹ Although Verizon acknowledges that it is appropriate to evaluate the total cost to the consumer for obtaining over-the-top VoIP service by combining the cost of the service with the cost of the broadband connection, Verizon’s analysis falls short of its goal.

First, despite Verizon’s assertion that rates for over-the-top VoIP service plus the associated cost of the broadband connection are lower than Verizon’s prices, neither the Petitions nor Exhibits 1 and 2 of the Lew/Verses/Garzillo Declarations provide any factual support showing the total cost to the consumer of obtaining over-the-top VoIP service.¹⁵² Second, even if Verizon had incorporated the cost of broadband into the overall cost presented for over-the-top VoIP service, Exhibit 1 of the Lew/Verses/Garzillo Declarations compares rates from other service providers to Verizon’s “Freedom Essentials” bundle. Verizon has presented no information that supports its claim for basic service. Nor has Verizon provided any data demonstrating that over-the-top VoIP service is priced at rates comparable to Verizon’s standalone basic local exchange service, particularly when the necessary cost of the broadband connection is included.

Table 2 also shows the total cost to consumers for the over-the-top VoIP services identified in Exhibit 1 of the Lew/Verses/Garzillo Declaration for the Philadelphia MSA, as compared to the cost of standalone basic local exchange service offered by Verizon. The total

¹⁵¹ See, e.g. Verizon Philadelphia Petition at 12-13; Verizon Boston Petition at 12-13.

¹⁵² Exhibit 1 of the Lew/Verses/Garzillo Declarations notes that each over-the-top VoIP service “requires broadband connection at additional cost,” but does not specify that additional cost. Exhibit 2 of the Lew/Verses/Garzillo Declarations simply provides additional rate information for over-the-top VoIP services, ignoring the added cost of the broadband connection.

cost is calculated for both types of broadband connections: Digital Subscriber Line (DSL) service, using Verizon's current standalone DSL rate of \$24.99,¹⁵³ and cable modem service, using Comcast's high-speed data service rate of \$39.95, which assumes the customer also purchases cable television service from Comcast.

The Lew/Verses/Garzillo Declaration for the Philadelphia MSA shows a number of over-the-top VoIP calling plans that are less broad in scope than the calling plans identified by the witnesses.¹⁵⁴ Table 2 presents the total consumer cost of these "scaled-down" over-the-top VoIP service plans, again looking at the costs with DSL-based and cable modem-based broadband connections. As the numbers demonstrate, when the broadband connection is considered as part of the total cost of VoIP, "over-the-top" VoIP service is not offered to consumers at rates that are comparable to or competitive with Verizon's basic local exchange service rates.

Verizon attempts to convince the Commission that the presence of intermodal service providers offering expensive bundles of local and toll calling with features is sufficient to ensure: (1) the justness and reasonableness of rates going forward; (2) that consumers will be protected in the absence of regulations; and (3) that the public interest will be preserved. However, Verizon fails to show that consumers of unbundled and unpackaged basic local exchange service have *any* viable substitutes for Verizon's basic local exchange service from facilities-based competitors based on the technology used, the services offered or the rates for those services.

¹⁵³ The purpose of the analysis is to examine the total cost of over-the-top VoIP service in the context of being a substitute for Verizon's wireline service. It is appropriate to use Verizon's standalone DSL rate, which is generally \$5 higher than its "regular" DSL rate that applies when the customer is also a Verizon wireline subscriber because consumers using over-the-top VoIP would neither need nor require Verizon's wireline service, which is required in order to obtain the best price for DSL from Verizon. Verizon's "regular" DSL rate is currently \$19.99 per month for 768 kbps service with a 12-month commitment. The month-to-month rate for DSL service is \$37.99. *See*, <http://www22.verizon.com/content/consumerdsl/plans/all+plans/all+plans.htm> (accessed December 6, 2006). Notably, Verizon *raised* its entry-level DSL rate to \$19.99 on December 1, 2006.

¹⁵⁴ Lew/Verses/Garzillo Declaration for the Philadelphia MSA, Exhibits 1 and 2.

Yet these are the customers most in need of the protections afforded by the regulations from which Verizon seeks forbearance.

In the absence of viable substitutes, demand elasticity for Verizon’s basic local exchange service, and consequently its interstate exchange access services as required by end users, is far lower than the demand elasticity for bundled service offerings for which competitive options appear to exist. Similarly, supply elasticity must be low, and economic barriers to entry high, for basic local exchange service as a result of the dearth of competitive options available from facilities-based carriers in these MSAs. From the information provided by Verizon in its Petitions and by the Joint Consumer Commenters in this pleading, the Commission cannot conclude that charges, practices, classifications or regulations by Verizon are not unjustly or unreasonably discriminatory as required by section 160(a)(1) of the forbearance test. Likewise, the absence of competition for basic local exchange service means that the section 160(a)(2) “consumer protection” test cannot be satisfied.¹⁵⁵ Because the first two prongs of the forbearance test are not satisfied, the “public interest” requirement of section 160(a)(3) also fails.

The dominant carrier regulations from which Verizon seeks forbearance apply generally across Verizon as a whole, and the section 251(c) unbundling regulations from which Verizon seeks forbearance apply to all types of loops and transport used to provide residential services. Based on its findings in the Omaha Order, the Commission appears to consider the substantial presence of facilities-based competition sufficient to protect consumers from market power abuses. Verizon, however, has not demonstrated the presence of facilities-based competition *for the full range of services it provides*, even though all of these services provide consumer benefits and protections, and all are affected by the application of the regulations from which

¹⁵⁵ See Omaha Order at ¶ 45 (the second prong of the forbearance test was satisfied “for many of the same reasons” that the first prong of the forbearance test was satisfied).

Verizon seeks forbearance. If the Commission grants forbearance in the absence of competitive alternatives, consumers of basic local exchange service – arguably those who need regulatory protections the most – will instead be most at risk of market power abuses and anticompetitive activity at the hands of Verizon. The Commission must therefore deny Verizon’s Petitions.

3. Verizon’s Reliance On The Reduction In Its Retail Access Lines To Demonstrate The Presence Of Competition Is Flawed.

The Commission should also examine Verizon’s underlying claims that the decline in the number of its retail lines demonstrates competition. Generally, the existence of competition in the local exchange market should not be determined based on a reduction in access *lines*. Given the varied reasons customers’ may terminate service or lines may otherwise be lost, the more accurate barometer for the presence of competition within an MSA in classic economic terms would be a demonstration that retail *rates* have declined in the face of that competition. Only then will the Commission know that competition is truly present and capable of protecting consumers’ rates in the absence of most regulations.¹⁵⁶

Recent pricing activity in a number of Verizon states, including Maryland, Massachusetts, New Jersey and Pennsylvania, reveals the true state of competition for Verizon’s bundled services. Over the last few months, Verizon has filed tariff transmittals in these states seeking to *increase* rates for its Regional Essentials and Regional Value packages.¹⁵⁷ In Maryland, for example, the \$5.04 rate increase raises the total price of the Regional Essentials

¹⁵⁶ Given the public interest considerations in the provision of telecommunications services, it is likely that the need for service quality and universal service regulations will continue regardless of any determination.

¹⁵⁷ See, e.g., Verizon Maryland Inc. Transmittal No. 1420, filed with the MD PSC on November 8, 2006 (a portion of Maryland falls within the Philadelphia MSA).

package by 19%, from \$27.00 to \$32.04, and raises the total price of the Regional Value package by 23%, from \$22.00 to \$27.04.¹⁵⁸

Verizon's request for a rate increase for these two bundles demonstrates the lack of competition even for the bundled services offered by Verizon. What is most interesting, and confounding, about this proposed rate increase is that Verizon is applying it to two packages that, in the Company's own words, Verizon introduced as "lower cost versions of its Regional Package" in response to "intensified competitive pressure."¹⁵⁹ If "intensified competitive pressure" caused Verizon to introduce cheaper bundles in the form of Regional Essentials and Regional Value, Verizon's decision to *raise* rates for these bundles by between 19% and 23% appears to show that the competitive pressure has abated, or never existed in the first place. Indeed, by proposing a significant rate increase to Regional Essentials and Regional Value, Verizon is confirming that sufficient competition for these bundles does not exist now to avoid rate increases.

A rate increase of this magnitude would send a clear signal to consumers of those bundles to look for alternatives to Verizon. If competitors were actually providing like or substitute services at rates, terms and conditions comparable to Verizon's Regional Essentials or Regional Value bundles, then Verizon's price increase would trigger an exodus from Regional Essentials and Regional Value bundles. The fact that Verizon has raised its prices for its Regional Essentials and Regional Value bundles shows that the Company is not concerned about the

¹⁵⁸ Verizon Maryland's requested rate increase is being investigated in MD PSC Case No. 9090. The Commission recently denied Verizon Maryland's request because it violated the terms of the company's Price Cap Plan which limits price increases for an individual service within the Discretionary Basket to 15% over any 12-month period. See In the Matter of Verizon Maryland, Inc.'s Transmittal No. 1420 Proposing to Increase Rates for the IntraLATA Toll Component of the Regional Essentials and Regional Values Packages, MD PSC Case No. 9090, Proposed Order of Hearing Examiner, December 21, 2006 at 9.

¹⁵⁹ Petition for Reclassification of Certain Bundled Services, Verizon Maryland, Inc. Transmittal No.1394, filed with the MD PSC on April 26, 2006, Attachment A at 1.

potential loss of customers to its competitors that the rate increase might cause. Hence, the decision to raise prices by such a significant amount and percentage indicates that Verizon does not consider its own bundled services to be like or substitute services compared to the bundles offered by its competitors. Verizon must be confident that customer defections to its competitors are unlikely, or at the very least that the bottom-line revenue impact would not be negative.¹⁶⁰

An incumbent carrier's ability to impose and sustain a substantial price increase (in the Maryland case, either 19% or 23%) for services in a market it contends is competitive is itself evidence that the market is not competitive. Verizon's decision to significantly raise prices for two of its bundled service offerings is *not* the type of behavior in which a carrier in a competitive market would engage. Verizon's pricing actions speak far louder than any theoretical discussion of the current state of competition for residential wireline bundled services from intermodal providers. And if there is little competition for these bundles, there is far less for standalone basic service.

Even if line losses might indicate the presence of competition, Verizon's analysis is faulty. Verizon claims that the Commission in the past has stated its preference for analyzing "actual and potential competition" that "either is present, or readily could be present,"¹⁶¹ eschewing "an analysis of the level of competition for LEC services based solely on a LEC's

¹⁶⁰ The "bottom-line impact" is dictated by whether the additional revenue generated by the price increase would be offset by customer disconnections. For example, if a rate increases from \$20 to \$25, every retained customer generates \$5 in additional revenue, while every lost customer generates a loss of \$20 in previously realized revenue. In order to "break even," the carrier must retain 4 out of 5 customers, or 80%. However, it is reasonable to assume that such a price increase would be implemented with the expectation that the bottom-line will be *improved*. In this example, the carrier would *expect* a retention rate in excess of 80%.

¹⁶¹ Verizon Philadelphia Petition at 16, *citing* Omaha Order at ¶ 62; Verizon Boston Petition at 16.

market share at a given point in time.”¹⁶² Verizon’s description of its residential line losses between 2000 and 2005, however, is misleading, and it does not provide an accurate picture of the current state of competition in the market for customers of standalone basic local exchange service.¹⁶³

First, Verizon’s claim of residential market share loss fails to demonstrate the lack of competition for standalone basic local exchange service. Those competitors identified by Verizon as providing sufficient mass market competition to satisfy the forbearance test do not offer services that substitute for standalone basic local exchange service at rates that are competitive with Verizon’s rates for standalone basic local exchange service. Those customers who have left Verizon for a competitor may purchase bundles of local, toll and features, not standalone basic local exchange service.

Second, Verizon has selected a starting point for its calculation of market loss that maximizes this loss. According to year-end line count data reported by the FCC, total residential end-user switched access lines (ILECs *and* CLECs) hit its peak in December 2000.¹⁶⁴ Thus, the start of Verizon’s data range coincides with the time when the size of the residential wireline market reached its peak due to demand for primary *and* non-primary lines. Verizon should not be allowed to attribute the entirety of its access line decline to competition for primary line voice

¹⁶² Id. at 16-17, *citing* Price Cap Performance Review for Local Exchange Carriers, Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1, Further Notice of Proposed Rulemaking in CC Docket No. 93-124, and Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197, 11 FCC Rcd 858, ¶ 143 (1995).

¹⁶³ Verizon Philadelphia Petition at 17; Verizon Pittsburgh Petition at 16.

¹⁶⁴ FCC, Industry Analysis and Technology Division, “Local Telephone Competition: Status as of December 31, 2005” (July 2006) at Table 2 (summing the columns for ILEC and CLEC lines).

services.¹⁶⁵ For example, many non-primary lines used for dial-up Internet access have since migrated to broadband, which on its own is *not* a substitute for voice service.¹⁶⁶ Not only has Verizon experienced a significant decline in non-primary residential access lines during this time,¹⁶⁷ many customers who disconnected their non-primary residential line in favor of a broadband connection opt for Verizon's own DSL service.¹⁶⁸

Third, Verizon provides no distinction between lines lost for competitive reasons and those lost for non-competitive reasons, such as customers who may have disconnected service completely without migrating to any other service provider or moved out of Verizon's territory. Recent trends in telephone penetration rates further demonstrate it is improper to represent calculations of line losses as being indicative of a competitive market. The FCC's "Telephone Penetration by Income by State" report shows that since 2003 there has been a significant decline in the overall telephone penetration rates in many states, including those represented within the six MSAs for which Verizon seeks forbearance.¹⁶⁹ For example, penetration rates for all

¹⁶⁵ See Lew/Verses/Garzillo Philadelphia at 7 and Lew/Verses/Garzillo Pittsburgh at 7 (proprietary tables depicting decline in retail lines due to competition).

¹⁶⁶ Broadband subscribership started to advance at a rapid pace in 2000, and has increased more than eight-fold between year-end 2000 and year-end 2005, from 5.2 million to 42.9 million lines. FCC, Industry Analysis and Technology Division, "High-Speed Services for Internet Access: Status as of December 31, 2005" (July 2006) ("FCC High-Speed Services Report") at Table 1. Total high-speed lines in Pennsylvania, for example, grew by 1000% in that five-year period. Id. at Table 10.

¹⁶⁷ Public data on residential non-primary line counts is apparently not available for the entire five-year period between 2000-2005. However, the FCC tracked non-primary residential line counts between 2002 and 2004. That data indicates that residential non-primary lines in Pennsylvania, for example, declined 40% over that two-year period. FCC, Statistics of Communications Common Carriers, 2002/2003 and 2004/2005 Editions at Table 2.6.

¹⁶⁸ Residential DSL net additions outpaced residential cable modem net additions by a margin of nearly 2.5 to 1 in the second half of 2005. FCC High-Speed Services Report at Table 3.

¹⁶⁹ FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, "Telephone Penetration by Income by State (Data through March 2005)," May 2006.

households in Massachusetts declined from 97.3% in 2003 to 93.9% in 2005.¹⁷⁰ In Rhode Island, penetration rates for all households declined from 97.4% in 2003 to 94.0% in 2005.¹⁷¹ While these declines in telephone penetration occurred across all income levels, the most significant declines were seen at the lower income levels.¹⁷² The decline in penetration rates shown in the FCC's report is particularly relevant when discussing the issue of whether line loss can serve as an indication of wireless substitution. The data is acquired from the Census Bureau, whose questions "are intended to be neutral as to whether the household has wireline or wireless phones,"¹⁷³ so the decline in telephone penetration is not necessarily attributable to any wireless substitution for wireline service. The decline in residential subscribership levels indicates that the presence, or absence, of competition had nothing whatsoever to do with a significant portion of the decline in residential access lines experienced by Verizon in the six MSAs.

Fourth, because Verizon does not provide the two data points, or even a source to those data points, for its calculation of residential access line decline between 2000 and 2005, it is unclear how Verizon has accounted for those lines previously served by MCI.¹⁷⁴ For example, on page 17 of the VZ Philadelphia Petition, Verizon identifies the decline in retail residential switched access lines between 2000 and 2005. Verizon cites the Lew/Verses/Garzillo

¹⁷⁰ Id., at Table 4.

¹⁷¹ Id.

¹⁷² Id. In Pennsylvania, for example, penetration rates fell from 97.0% to 93.8% over this two-year period in households with between \$10,000 and \$19,999 in total household income (in March 1984 dollars).

¹⁷³ Id. at 2; *see also*, n. 4. For example, when the survey was conducted, participants were asked, "Does this house, apartment, or mobile home have telephone service from which you can both make and receive calls? Please include cell phones, regular phones, and any other type of telephone."

¹⁷⁴ There also is no explanation for why Verizon selected December 2005 as the "end point" of its data range when it filed its Petitions in September 2006. More recent access line counts were certainly available to Verizon, and its decision to use then 9-month old data is unclear when more recent data was readily available.

Declaration and in a footnote refers to the count of residential voice-grade equivalent access lines in the Philadelphia MSA as of December 2005, including MCI. It is not clear whether the calculation performed by Verizon to arrive at its alleged line loss percentage uses that number or not. To further confuse matters, Lew/Verses/Garzillo state in the Declarations, “[f]or purposes of this declaration, all competitive data that were previously attributed to MCI (such as line counts) have been attributed to Verizon.”¹⁷⁵ But in the footnote attached to that sentence, the witnesses state, “Calculations involving declines in access lines over time and the percentage of Verizon lines in wire centers served by competitors do not attribute MCI data to Verizon.”¹⁷⁶ It would be disingenuous of Verizon to calculate its alleged loss of residential access lines to competitors without including the residential lines it acquired through its merger with MCI. Certainly, as one of Verizon’s former largest competitors, the actual treatment of the MCI lines will have a large impact on the resulting line loss calculations.

Finally, Verizon’s reliance on the residential E911 database to show competitive presence is not valid. An individual E911 database entry does not necessarily equate to an individual telephone service customer. Instead, each separate dial tone access line or PBX trunk group of a telephone subscriber can constitute a separate subscription.¹⁷⁷ A CLEC may service a single customer which has multiple E911 listings, thus inflating Verizon’s stated competitive presence. Verizon’s presumption that E911 listings are evidence of competitive presence is not sustainable. More importantly, Verizon’s use of the E911 database to support its Petitions is not a permitted

¹⁷⁵ See, e.g. Lew/Verses/Garzillo Philadelphia at ¶ 5.

¹⁷⁶ Id. at n. 2.

¹⁷⁷ See, e.g. 35 P.S. § 7012; 4 Pa.Code § 120b.102.

use by law and Verizon's own tariff.¹⁷⁸ The integrity of the E911 database as a vital public safety service must be maintained by not allowing Verizon to use the database for inappropriate purposes.

Ultimately, the Commission must closely analyze the underlying data that Verizon has provided to support its Petitions. The Joint Consumer Commenters have raised significant questions about the data sufficient to cast doubt on whether the use of the data is appropriate to eliminate the vital consumer protections and benefits that Verizon seeks forbearance from in this proceeding. As indicated above, however, the real test for the presence of competition should be a reduction in Verizon's rates, not a reduction in Verizon's access lines.

IV. CONCLUSION

WHEREFORE, the National Association of State Utility Consumer Advocates, the Pennsylvania Office of Consumer Advocate, the Public Utility Law Project of New York, Inc., the Massachusetts Office of Attorney General, the Virginia Office of Attorney General, the Maryland Office of People's Counsel, the New Jersey Division of Rate Counsel, the New Hampshire Office of Consumer Advocate and the Connecticut Office of Consumer Counsel respectfully request that the Federal Communications Commission deny the Petitions for Forbearance filed by Verizon consistent with these Comments. The Petitions fail to satisfy the very high standard required by Congress for the FCC to forbear from applying its regulations

¹⁷⁸ See, e.g., 35 P.S. § 7019(a) (E911 information "shall be used only in providing emergency response services to a 911 call. A person who discloses database information for purposes other than handling a 911 call commits a misdemeanor of the third degree."). See also Petition of Bell Atlantic-Pennsylvania, Inc. for a Declaratory Order Relating to the Provision of Master Street Address Guides to Competitive Local Exchange Carriers, Docket No. P-00971203, *et al.*, Supplemental Final Order, 30 Pa.Bull 2864 (May 27, 2000) ("the service provider agrees not to use the county's/municipality's [Master Street Address Guides] for any purpose that is not directly related to and required for the provision of 9-1-1 service to its customers"); Verizon Pennsylvania Inc. Tariff Pa.P.U.C. – No. 1, Sec. 2, original sheet 10C, 4.w. Regulations (effective Sept. 7, 2000).

applicable under the forbearance standard of section 160. Accordingly, it is in the public interest for the Commission to maintain the specific regulations that protect consumers.

Respectfully submitted,

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