

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
IN RESPONSE TO COMMISSION INACTION ON
VERIZON FORBEARANCE PETITION**

Re: *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 Service*, WC Docket No. 04-440 (Mar. 20, 2006).

I write separately to express my opposition to the grant of this sweeping forbearance petition. By failing to act, the Commission abdicates oversight of the telecommunications services used by America's most technology-dependent consumers. This course raises the specter of price hikes and fewer choices for businesses, banks, universities, government agencies and other high volume users of communications services, in addition to consumers in Rural America.

Congress has given the Commission a powerful tool in our section 10 forbearance authority, but the Commission must wield this tool responsibly. By allowing this petition to grant by operation of law, and without a shred of analysis, the Commission prejudices important open proceedings and ignores precedent. It helps one telecommunications giant at the expense of virtually everyone else, including small and rural telephone companies, and business users of all sizes. Moreover, the Commission creates an artificial crisis, unnecessarily jeopardizing core policy protections, including universal service, law enforcement access, consumer privacy, and interconnection, that are codified in the Communications Act, even as Congress comprehensively considers reform of our existing telecommunications law.

In past Orders, I worked with my colleagues to support regulatory relief where the record reflects the development of competition. Here, however, the petitioner fails to provide the sort of detailed evidence required for forbearance under section 10.¹ We weigh this scarcity of record evidence against the Commission's own finding, arrived at just four months ago in the Verizon-MCI Merger Order, that "for many buildings, there is little potential for competitive entry, at least in the short term" for local transmission services.² Particularly telling is the petitioner's claim that relief is necessary to offer services more flexibly to "sophisticated, high volume purchasers of communications services." Yet, those very customers argue that the requested relief is not warranted here.³

¹ See *Petition for Waiver of Pricing Flexibility Rules for Fast Packet Services, Petition for Forbearance Under 47 U.S.C. Section 160(c) from Pricing Flexibility Rules for Fast Packet Services*, Memorandum Opinion and Order, WC Docket No. 04-246, FCC 05-171 at para. 18 (rel. Oct. 14, 2005) (denying Phase II pricing flexibility where the petition failed to make a competitive showing within specific MSAs).

² *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 05-75, FCC 05-184 at 39 (rel. Nov. 17, 2005) (also citing DOJ's finding that "[a]lthough other CLECs can, theoretically, build their own fiber connection to each building in response to a price increase by the merged firm, such entry is a difficult, time-consuming, and expensive process").

³ See Letter from Colleen Boothby, Counsel for Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC at 3-4 (Mar. 16, 2006) (arguing that "[t]he marketplace experience of enterprise customers like the members of Ad Hoc is entirely inconsistent with the rosy competitive picture painted by the BOCs....").

Moreover, it is far from clear that the relief granted will impact only large volume customers.⁴ I'm particularly concerned that rural communities are put at risk. Rural carriers have raised unanswered questions about whether the petitioner will be able to exercise market power to dictate the prices, terms, and conditions of interconnection with small rural providers, potentially raising prices and eliminating choices for rural consumers.

By granting the petitioner the ability to offer these services outside of Title II, the Commission takes another step away from the core provisions that Congress mandated for telecommunications services. This leaves many troubling questions. For example, if Verizon and subsequent petitioners choose to offer these services as non-common carrier services, will the interconnection obligations of section 251 continue to apply? Or, if the non-discrimination obligations of sections 201 and 202 no longer apply, will the petitioner have a legal obligation to offer these services to unaffiliated wireless providers that compete with its own wireless service? This action also leaves open important questions about this Commission's ability, and that of State public utility commissions, to respond to disputes and complaints, particularly if the section 208 enforcement process is no longer available with respect to these services.

Without a word of explanation, the Commission undercuts the legal underpinning for critical policy objectives, like consumer privacy, law enforcement, and disability access, at a time when Congress and the Commission are professing the need to strengthen them. I find it particularly remarkable that the Commission would exempt a whole new slate of services for the consumer privacy requirements of section 222, even as Congress and the Commission contemplate tightening these rules to better protect consumers. Purchasers of these services may frequently be large volume users, but there is no record evidence to suggest that these customers no longer benefit from Congress' consumer privacy protections. I fail to see how the Commission could defend such forbearance under the section 10 analysis.

We also put at risk the law enforcement access protections under section 229 and the Communications Assistance for Law Enforcement Act (CALEA). Just last fall, we adopted a very complicated legal analysis to keep wireline broadband Internet access services within the scope of CALEA, a decision that is currently subject to appeal. Here, the Commission fails to take any such preemptive action, potentially pushing these services outside the scope of CALEA's protections. We let down our legal guard at a time when those who wish to do us harm are unlikely to wait for us to unravel a legal knot of our own tying. Nor do we answer questions about whether these services will continue to be subject to the Commission's outage reporting requirements. Exempting a new swath of services from the early warning system provided by the Commission's reporting requirements seems antithetical to our common purpose of promoting emergency preparedness and response.

⁴ Commission inaction here is particularly disappointing because the scope of the relief sought and granted is far from clear. The petition as filed sought forbearance with respect to all broadband services that the petitioner "does or may offer." More than a year after the initial filing, the petitioner sought to narrow its request, though the parameters of even this amended filing appear disputed. Moreover, the petition lacks the sort of careful analysis of the specific sections of the Act and the specific regulations for which forbearance is sought that should be required for relief. Even setting aside the question of whether this should be an independent basis for denial of the petition, this Commission must seriously consider the need for rigorous procedural rules to govern filing of forbearance petitions.

The impact on universal service contributions is also unclear. The Commission's Public Notice notes Verizon's commitment to continue to pay federal universal service for the services at issue, to the extent those services are subject to an obligation today. I certainly hope that this commitment is binding and rock-solid. If it is not, the Commission may have opened a major gap in our universal service funding base. I am deeply concerned that the Commission falls far short here of our Congressional direction to ensure that universal service remain specific, predictable, and sufficient.

Finally, I am disappointed that we allow this petition to grant by default rather than issuing a Commission order to address the request. I appreciate that this proceeding raises complex issues, but there is simply too much at stake here. In the past, I have been able to find common ground with my colleagues to avoid default grants, even where I had considerable concerns about the Commission's resolution of the issues. Here, however, I cannot support the sweeping relief contemplated and must dissent.