Before the
Federal Communications Commission
WASHINGTON, D.C. 20554

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

MEMORANDUM OPINION AND ORDER

Adopted: December 4, 2007 **Released: December 5, 2007**

By the Commission: Chairman Martin issuing a statement; Commissioners Copps and Adelstein concurring and issuing separate statements.

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I. INTRODUCTION

1. In this Order, we address six forbearance petitions[1] filed by the Verizon Telephone Companies (Verizon) pursuant to section 10 of the of the Communications Act of 1934, as amended (Act), seeking certain forbearance relief in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas (MSAs).[2] Verizon asserts that it seeks forbearance comparable to the relief the Commission granted to Qwest Corporation (Qwest) in the Omaha MSA,[3] as well as forbearance from certain *Computer Inquiry* requirements. Specifically, Verizon seeks forbearance in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach MSAs (the 6 MSAs) from dominant carrier regulation of its mass market switched access services,[4] section 251(c)(3) loop and transport unbundling obligations (UNE obligations),[5] and all *Computer III* obligations (*e.g.,* open network architecture (ONA) and comparably efficient interconnection (CEI) requirements).[6] For the reasons set forth below, we find that the record evidence does not satisfy the section 10 forbearance standard with respect to any of the forbearance Verizon requests, and, accordingly, we deny the requested relief in the 6 MSAs.

II. BACKGROUND

A. Regulatory Requirements

2. *Dominant Carrier Regulation and Section 251(c)(3) Unbundling Obligations*. As noted above, the Verizon Petitions seek forbearance from dominant carrier regulation of mass market switched

[1] 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) (Boston Petition); Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the New York Metropolitan Statistical Area, WC Docket No. 06-172 (filed Sept. 6, 2006) (New York Petition); Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Philadelphia Metropolitan Statistical Area, WC Docket No. 06-172 (filed Sept. 6, 2006) (Philadelphia 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) (Pittsburgh 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) (Providence 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) (Virginia Beach Petition) (collectively, Verizon Petitions); *see Pleading Cycle Established for Comments on Verizon's Petitions for Forbearance in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Public Notice, 21 FCC Rcd 10174 (2006) (subsequent history extending the pleading cycle omitted). See Appendix A for a list of commenters.

[2] 47 U.S.C. § 160.

[3] Boston Petition at 1; New York Petition at 1; Philadelphia Petition at 1; Pittsburgh Petition at 1; Providence Petition at 1; Virginia Beach Petition at 1; *see also Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) (*Qwest Omaha Forbearance Order*), *aff'd, Qwest Corp. v. FCC*, 482 F.3d 471 (D.C. Cir. 2007) (*Qwest Corp. v. FCC*).

[4] Verizon seeks forbearance from the following: tariffing requirements, price cap regulation, and dominant carrier requirements concerning the processes for acquiring lines, discontinuing services, assignment or transfers of control, and acquiring affiliations. 47 C.F.R. §§ 61.32, 61.33, 61.38, 61.41-61.49, 61.58, 61.59, 63.03, 63.04, 63.60-63.66. *See, e.g.*, Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 at 7 (filed June 13, 2007) (Verizon June 13, 2007 *Ex Parte* Letter).

[5] 47 C.F.R. § 51.319(a), (b), (e).

[6] *See infra* para. 3 (discussing *Computer Inquiry III* requirements).

access services and section 251(c)(3) UNE obligations for the 6 MSAs comparable to the forbearance relief the Commission granted to Qwest in the Omaha MSA. Dominant carrier regulations include, among other things, requirements arising under section 214 related to transfer of control and discontinuance, cost-supported tariffing requirements, and price regulation for services falling under the Commission's jurisdiction.[7] In addition, section 251(c)(3) imposes on incumbent LECs "[t]he duty to provide, to any requesting telecommunications carrier . . . nondiscriminatory access to network elements on an unbundled basis . . . in accordance with . . . this section and section 252."[8] The relevant dominant carrier and UNE obligations were described in the *Qwest Omaha Forbearance Order*, so we need not repeat that summary here.[9]

3. *Computer Inquiry Requirements.* Facilities-based wireline carriers are also subject to *Computer Inquiry* requirements. In the *Computer II Orders*,[10] the Commission, in response to the convergence and increasing interdependence of computer and telecommunications technologies, established a new regulatory framework that distinguished between "basic services" and "enhanced services."[11] To protect against anticompetitive behavior, the Commission imposed structural separation requirements on AT&T and required other facilities-based common carriers to provide the basic transmission services underlying their enhanced services on a nondiscriminatory basis pursuant to tariffs governed by Title II of the Act.[12] Carriers subject to this requirement thus must offer the underlying basic service at the same prices, terms, and conditions, to all enhanced service providers, including their own enhanced services operations.[13]

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[7] *See* 47 C.F.R. §§ 61.32, 61.33, 61.38, 61.41-61.49, 61.58, 61.59, 63.03, 63.04.

[8] 47 U.S.C. § 251(c)(3).

[9] *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19417-22, paras. 3-11.

[10] *Amendment of Section 64.702 of the Commission's Rules and Regulations* (*Second Computer Inquiry*), 77 FCC 2d 384 (1980) (*Computer II Final Decision*), *recon*., 84 FCC 2d 50 (1980) (*Computer II Reconsideration Order*), *further recon*., 88 FCC 2d 512 (1981) (*Computer II Further Reconsideration Order*), *aff'd sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982) (*CCIA v. FCC*), *cert. denied*, 461 U.S. 938 (1983) (collectively referred to as *Computer II Orders*).

[11] The Commission defined basic services as the offering of "a pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer supplied information." *Computer II Final Decision*, 77 FCC 2d at 415-16, para. 83, 420, para. 96. Enhanced services, in turn, were defined as services that "combine[] basic service with computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information, or provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information." *Id*. at 387, para. 5. In other words, an "enhanced service is any offering over the telecommunications network which is more than a basic transmission service." *Id.* at 420, para. 97. Although the Commission used the term "enhanced service" in its *Computer Inquiry* decisions and the Act uses the term "information service," the Commission has determined that "Congress intended the categories of 'telecommunications service' and 'information service' to parallel the definitions of 'basic service' and 'enhanced service' developed in [the] *Computer II* proceeding . . . ." *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967, 992-94 (2005) (*NCTA v. Brand X*); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11511, para. 21 (1998) (*Report to Congress*).

[12] *Computer II Final Decision*, 77 FCC 2d at 475, para. 231; *see id.* at 435, para. 132 (discussing jurisdictional basis for the Commission's *Computer II* actions); *see also CCIA v. FCC*, 693 F.3d at 211-14 (affirming the Commission's reliance on its ancillary jurisdiction in imposing structural safeguards on AT&T's provision of enhanced services); *NCTA v. Brand X*, 545 U.S. at 996 (describing *Computer II* and stating that the Commission "remains free to impose special regulatory duties on facilities-based ISPs under its Title I ancillary jurisdiction").

[13] *See CCIA v. FCC*, 693 F.2d at 205; *see also Computer II Final Decision*, 77 FCC 2d at 474-75, para. 231. We note that the *Computer II* "unbundling" of basic services requirement is separate and distinct from the obligation, in (continued….)

4. In the *Computer III* proceedings,[14] the Commission gave the Bell Operating Companies (BOCs) the choice of continuing to comply with the *Computer II* structural separation requirements or of providing enhanced services pursuant to nonstructural safeguards. More specifically, the Commission adopted CEI, ONA, and other nonstructural requirements as an alternative to the *Computer II* structural separation requirements for the BOCs.[15]

5. In recent decisions, the Commission has granted relief from certain *Computer Inquiry* requirements with respect to wireline broadband Internet access service and certain incumbent LECs' enterprise broadband services.[16]

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section 251(c)(3) of the Act, that incumbent LECs provide access to unbundled network elements (UNEs). 47 U.S.C. § 251(c)(3).

[14] *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (*Computer III Phase I Order*), *recon*., 2 FCC Rcd 3035 (1987) (*Computer III Phase I Reconsideration Order*), *further recon.*, 3 FCC Rcd 1135 (1988) (*Computer III Phase I Further Reconsideration Order*), *second further recon.*, 4 FCC Rcd 5927 (1989) (*Computer III Phase I Second Further Reconsideration Order*); *Phase I Order and Phase I Recon. Order vacated sub nom. California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); CC Docket No. 85-229, Phase II, 2 FCC Rcd 3072 (1987) (*Computer III Phase II Order*), *recon*., 3 FCC Rcd 1150 (1988) (*Computer III Phase II Reconsideration Order*), *further recon.*, 4 FCC Rcd 5927 (1989) (*Phase II Further Reconsideration Order*); *Phase II Order vacated*, *California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceeding*, CC Docket No. 90-368, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied sub nom. California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, CC Docket No. 90-623, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), *BOC Safeguards Order vacated in part and remanded sub nom. California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 514 U.S. 1050 (1995); *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20, Notice of Proposed Rulemaking, 10 FCC Rcd 8360 (1995) (*Computer III Further Remand Notice*), Further Notice of Proposed Rulemaking, 13 FCC Rcd 6040 (1998) (*Computer III Further Remand Further Notice*); Report and Order, 14 FCC Rcd 4289 (1999) (*Computer III Further Remand Order*), *recon*., 14 FCC Rcd 21628 (1999) (*Computer III Further Remand Reconsideration Order*); *see also Further Comment Requested to Update and Refresh Record on Computer III Requirements*, CC Docket Nos. 95-20, 98-10, Public Notice, 16 FCC Rcd 5363 (2001) (asking whether, under the ONA framework, information service providers can obtain the telecommunications inputs, including digital subscriber line (DSL) service, they require) (collectively referred to as *Computer III*).

[15] *See Computer III Phase I Order*, 104 FCC 2d at 964, para. 4. An ONA plan includes a description of how a BOC unbundles its network to enable its competitors to provide enhanced services generally. *Id.* at 1019-20, para. 113, 1064-67, paras. 214-19. A CEI plan includes a description of how a BOC unbundles its network to enable its competitors to provide a particular enhanced service or set of enhanced services that the BOC intends to provide. *Id*. at 1055-56, paras. 190-91.

[16] *See, e.g.*, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) (*Wireline Broadband Internet Access Services Order*), *aff'd, Time Warner Telecom v. FCC*, No. 05-4769 (and consolidated cases) (3rd Cir. Oct. 16, 2007); *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services; Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, FCC 07-180 (rel. Oct. 12, 2007), *pets. for review pending*, Nos. 07-1426, 07-1427, 07-1429, 07-1430, 07-1431, 07-1432 (D.C. Cir. filed Oct. 22, 2007); *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements; Petition of the Frontier and Citizens ILECs for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules With Respect to Their Broadband Services,* WC Docket No. 06-147, Memorandum Opinion and Order, FCC 07-184 (rel. Oct. 24, 2007) (*Embarq and Frontier Title II and Computer Inquiry Forbearance Order*), *pet. for review pending*, No. 07-1452 (D.C. Cir. filed
(continued….)

B. Prior Forbearance Relief

6. *Qwest Omaha Forbearance Order.* On December 2, 2005, the Commission released an order granting in part a forbearance petition filed by Qwest seeking forbearance from the application of certain dominant carrier regulation and UNE obligations in the Omaha MSA.[17] Specifically, the Commission forbore from applying its dominant carrier price cap, rate-of-return, tariffing, and 60-day discontinuance and transfer of control rules to Qwest's mass market switched access and mass market broadband Internet access services in the Omaha MSA.[18] The Commission denied forbearance relief with respect to Qwest's enterprise telecommunications services because Qwest had failed to provide sufficient information to meet the statutory forbearance criteria.[19]

7. With respect to Qwest's requested forbearance from unbundling obligations, in the *Qwest Omaha Forbearance Order*, the Commission held that section 251(c)(3) had been "fully implemented" nationwide,[20] and it granted Qwest forbearance from Qwest's section 251(c)(3) unbundling obligations in nine of the 24 wire centers in the Omaha MSA. In granting this relief, the Commission relied on the state of competition and level of competitive facilities deployment in those nine wire centers, as well as certain other regulatory safeguards, such as continued availability of section 251(c)(4) resale and section 271 unbundled elements.[21] The Commission concluded that, in areas served by those nine wire centers, Cox Communications, Inc. (Cox), the local cable operator, had built out "extensive facilities" and was using those facilities to provide service to customers in competition with Qwest.[22] Although Cox leased some wholesale last-mile inputs from Qwest pursuant to voluntary commercial agreements, Cox provided competition to Qwest without accessing UNEs provided by Qwest pursuant to section 251(c)(3).[23] To

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Nov. 5, 2007). Verizon also obtained certain relief from *Computer Inquiry* requirements when its petition for forbearance regarding enterprise broadband services was deemed granted by operation of law. *See Verizon Telephone Companies' Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to their Broadband Services Is Granted by Operation of Law,* WC Docket No. 04-440, News Release (rel. Mar. 20, 2006) (announcing that Verizon's petition for forbearance from certain Title II and *Computer Inquiry* requirements for enterprise broadband services was granted by operation of law), *pets. for review pending, Sprint Nextel et al. v. FCC,* No. 06-1111 (and consolidated cases) (D.C. Cir. filed Mar. 29, 2006).

[17] *Qwest Omaha Forbearance Order,* 20 FCC Rcd at 19417, para. 2.

[18] *See id.* at 19424, para. 15.

[19] *Id.* at 19426, para. 19.

[20] *Id.* at 19440, para. 53 (concluding that section 251(c) is "fully implemented" because the Commission has issued rules implementing section 251(c) and those rules have gone into effect). The D.C. Circuit affirmed the Commission's interpretation and we therefore reject commenters' requests to revisit the Commission's interpretation of "fully implemented" in this proceeding. *See Qwest Corp. v. FCC*, 482 F.3d at 477-79; *see also* Cavalier Comments at 2-8; COMPTEL Reply at 2; Broadview Reply at 25.

[21] 47 U.S.C. §§ 251(c)(4) (resale obligation), 271(c)(2)(B) (competitive checklist).

[22] *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19444, para. 59; *see also Wireline Competition Bureau Discloses Cable Coverage Threshold in Memorandum Opinion and Order Granting Qwest Corporation Forbearance Relief in the Omaha Metropolitan Statistical Area,* WC Docket 04-223, Public Notice, 22 FCC Rcd 13561 (2007) (*Qwest Coverage Public Notice*) (disclosing, after receiving Cox's consent to disclose the coverage threshold in the *Qwest Omaha Forbearance Order*, that Qwest was granted unbundling relief in those wire center service areas where, among other things, Cox's voice-enabled cable plant covered more than 75% of the end-user locations that were accessible from those wire centers).

[23] *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19450, para. 69 n.186 (stating that "Cox does not itself rely on Qwest's UNEs to compete").

avoid customer disruption, the Commission adopted a six-month transition period for customers of competitive LECs, other than Cox, that relied on Qwest's UNEs offered pursuant to section 251(c)(3).[24]

8. The Commission declined to grant Qwest forbearance from its section 251(c)(3) unbundling obligations in the remaining 15 wire centers in the Omaha MSA where Cox's facilities deployment was less extensive.[25] The Commission also denied Qwest forbearance from certain section 271 obligations, to which Qwest is subject as a BOC.[26] The Commission denied Qwest forbearance from section 271 checklist items 4, 5, and 6, which establish independent obligations to provide unbundled access to local loops, local transport, and local switching,[27] and it relied on the continued availability of wholesale access to Qwest's network under section 271 in determining to forbear from section 251(c)(3).[28]

9. *ACS UNE Forbearance Order.* On September 30, 2005, ACS filed a petition with the Commission seeking relief from section 251(c)(3) unbundling obligations similar to that granted to Qwest in the *Qwest Omaha Forbearance Order.*[29] On December 28, 2006, the Commission, in the *ACS UNE Forbearance Order*, granted in part ACS's petition for forbearance from section 251 unbundling. Subject to certain specific conditions, the Commission granted ACS forbearance from the obligation to provide unbundled loops and dedicated transport pursuant to sections 251(c)(3) and 252(d)(1) in those portions of its service territory in the Anchorage study area where it found that ACS's main competitor in the Anchorage study area, General Communication, Inc. (GCI), had substantially built out its network.[30] First, the Commission granted ACS relief from section 251(c)(3) unbundling obligations and section 252(d)(1) pricing obligations in the five of the 11 wire centers in the Anchorage study area where it found that the level of facilities-based competition by GCI ensured that market forces would protect the interests of consumers and that such regulation, therefore, was unnecessary. Second, as a condition of the order, the Commission required ACS to make loops and certain subloops available in those five wire centers, by

[24] *Id.* at 19452-53, paras. 73-74.

[25] *Id.* at 19444-45, para. 60.

[26] *Id.* at 19460, para. 90; *see also* 47 U.S.C. § 153(4) (defining "Bell operating company").

[27] *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19465, para. 100; 47 U.S.C. § 271(c)(2)(B)(iv)-(vi). Section 271(c)(2)(B) of the Act sets forth a fourteen point "competitive checklist" of access, interconnection and other threshold requirements that a BOC must demonstrate that it satisfies before that BOC may be authorized to provide in-region, interLATA services. 47 U.S.C. § 271(c)(2)(B). After a BOC obtains section 271 authority to offer in-region interLATA services, these threshold requirements become ongoing requirements. 47 U.S.C. § 271(d)(6).

[28] *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19446-47, 19449-50, 19452, 19455, paras. 62, 64, 67-68, 71, 80.

[29] 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 (filed Sept. 30, 2005).

[30] *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, 22 FCC Rcd 1958, 1959-60, paras. 1-2 (2007) (*ACS UNE Forbearance Order*), *appeals dismissed*, *Covad Communications Group, Inc. v. FCC*, Nos. 07-70898, 07-71076, 07-71222 (9th Cir. 2007) (dismissing appeals for lack of standing); *see also Wireline Competition Bureau Discloses Cable Coverage Threshold in Memorandum Opinion and Order Granting ACS of Anchorage, Inc. Forbearance Relief in the Anchorage, Alaska Study Area*, WC Docket No. 05-281, Public Notice, 22 FCC Rcd 11962 (2007) (*ACS Coverage Public Notice*) (disclosing, after receiving GCI's consent to disclose the coverage threshold in the *ACS UNE Forbearance Order*, that ACS was granted unbundling relief in those wire center service areas where, among other things, GCI's voice-enabled cable plant covered more than 75% of the end-user locations that were accessible from those wire centers).

no later than the end of the transition period, at the same rates, terms and conditions as those negotiated between GCI and ACS in Fairbanks, Alaska until commercially negotiated rates are reached. Third, the Commission provided for a one-year transition period before the forbearance grant takes effect.[31] Since that time, ACS and GCI reached an agreement, governing ACS's continued provision of access to the specified elements in the Anchorage study area during the next five years.[32]

10. *ACS Dominance Forbearance Order.* On August 20, 2007, the Commission granted in part, and subject to specific conditions, an additional forbearance petition filed by ACS, which sought forbearance in the Anchorage study area from certain statutory and regulatory dominant carrier obligations.[33] In particular, ACS sought forbearance comparable to the relief from dominant carrier regulation of mass market switched access service that the Commission granted to Qwest in the Omaha MSA.[34] In the *ACS Dominance Forbearance Order*, the Commission recognized that ACS's forbearance petition raised significantly different issues from those raised in the *Qwest Omaha* proceeding because ACS is a rate-of-return carrier while Qwest is a price cap carrier. Given the evidence that ACS faces extraordinary facilities-based competition from GCI in Anchorage, the Commission found that granting partial relief, subject to conditions, was justified.[35] Specifically, with respect to the requested relief that was similar to that granted to Qwest in the Omaha MSA, the Commission forbore from applying to ACS's switched access services the rate-of-return, tariffing, discontinuance, and transfer of control regulations that apply to dominant carriers, subject to various conditions.[36]

III. DISCUSSION

11. Based on the record evidence filed in this proceeding, we find that granting the Verizon Petitions for forbearance would not be consistent with section 10 of the Act. Verizon claims that competition in Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach MSAs is even more advanced than competition in the Omaha MSA, and that the level of facilities-based competition in the 6 MSAs "ensures that market forces will protect the interests of consumers, and that the regulations at issue are no longer necessary."[37] Based on the record evidence, however, we find that the criteria of section 10 are not satisfied to justify forbearance from the relevant dominant carrier requirements, UNE requirements, and *Computer III* obligations. We therefore deny the 6 Verizon Petitions in their entirety.

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[31] *ACS UNE Forbearance Order*, 22 FCC Rcd at 1960, para. 2.

[32] Letter from Karen Brinkmann, Counsel for ACS of Anchorage, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-109 at 2 (filed May 24, 2007); *see also* Letter from Karen Brinkmann *et al.*, Counsel for ACS of Anchorage, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-109 at 2 (filed June 29, 2007).

[33] *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Memorandum Opinion and Order, 22 FCC Rcd 16304, 16305-06, para. 1 (2007) (*ACS Dominance Forbearance Order*), *pets. for recon. pending*.

[34] The *ACS Dominance Forbearance Order* also addressed ACS's other requests for forbearance, including forbearance from dominant carrier regulation of enterprise switched access services, broadband Internet access services, and special access services, and forbearance from Title II and *Computer Inquiries* requirements for ACS's enterprise broadband services. *See generally ACS Dominance Forbearance Order*, 22 FCC Rcd 16304.

[35] *Id*. at 16306-07, para. 3.

[36] *Id.* at 16307, para. 4.

[37] Boston Petition at 1; New York Petition at 1; Pittsburgh Petition at 1; Philadelphia Petition at 1; Providence Petition at 1; Virginia Beach Petition at 1.

A. Sufficiency of the Verizon Petitions

12. Before considering the substantive merits of the Verizon Petitions, we first address several threshold procedural objections and other motions. For the reasons explained below, we deny or dismiss each of these requests.

13. *Broadview et al.'s Motion to Compel.* We dismiss as moot the "Motion to Compel Disclosure of Confidential Information Pursuant to Protective Order" filed by Broadview *et al*., which claims that Verizon failed to provide other parties certain confidential information filed with the Commission in this proceeding as required by the *First Protective Order*.[38] In response to the motion, Verizon expressed concern about the competitive sensitivity of the information at issue.[39] On January 25, 2007, the Bureau adopted a *Second Protective Order*,[40] which provided heightened protection to carrier-specific, geographically disaggregated E911 data, while providing participating parties access to the relevant data.[41] We find no evidence that Verizon failed to disclose the information at issue as required by the *Second Protective Order*. Thus, we dismiss as moot the Motion to Compel.[42]

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[38] *See* Letter from Brett Heather Freedson, Counsel for Broadview Networks, Inc. *et al*., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 (filed Oct. 11, 2006), amended by Letter from Brett Heather Freedson, Counsel for Broadview Networks, Inc. *et al*., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 at 2, 4-5 (filed Oct. 13, 2006) (jointly, Motion to Compel); *see also Pleading Cycle Established for Comments on Motion to Compel Disclosure of Confidential Information Pursuant to Protective Order and Motion to Dismiss*, WC Docket No. 06-172, Public Notice, 21 FCC Rcd 11775 (2006) (*Motion to Compel and Motion to Dismiss Public Notice*). On September 14, 2006, the Bureau issued a protective order regarding confidential or proprietary documents that have been or may be submitted by Verizon and others. *See Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Order, 21 FCC Rcd 10177 (WCB 2006) (*Verizon 6 MSA First Protective Order*).

[39] Verizon's Response to Motion to Compel Disclosure of Other Carriers' Confidential Information at 1 (stating that it follows this procedure to "protect the interests of other carriers who do not want their data shared with their competitors").

[40] *See Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Order, 22 FCC Rcd 892 (WCB 2007) (*Verizon 6 MSA Second Protective Order*).

[41] *Id*. at 892, para. 2.

[42] We also deny NuVox Communications and XO Communications, Inc.'s "Petition for Reconsideration of Protective Order" asking the Bureau to revise the *Verizon 6 MSA First Protective Order* to permit the use of confidential information in this docket, including the Commission's final order, in current and future Commission proceedings. *See* Letter from Brett Heather Freedson, Counsel for NuVox Communications and XO Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 at 1 (filed Oct. 16, 2006) (NuVox/XO Petition for Reconsideration of Protective Order). We are not persuaded that it would serve the public interest to alter the protective orders. The Commission has adopted similar protective orders in other forbearance proceedings and we find that any changes to this particular provision may put sensitive information at risk and would likely discourage parties from submitting sensitive proprietary information to the Commission in future proceedings. For example, such a modification would require entities that submitted information pursuant to protective order in one proceeding to monitor all future Commission proceedings, whether or not they had an interest in such proceedings, to ensure that their confidential information was not improperly used or disclosed. Such a burden could itself discourage the filing of confidential information, in addition to the concerns about possible improper discloser itself. Moreover, we find that the public versions of the Commission's prior forbearance orders adequately disclose the analytical framework it has applied to the specific facts and evidence in the record of such proceedings. Further, we note that parties are free to consent to the public disclosure of certain confidential information, as was done by Cox in the *Qwest Omaha* proceeding and GCI in the *ACS Anchorage* proceeding. *See Qwest Coverage Public Notice*, 22 FCC Rcd 13561; *ACS Coverage Public Notice,* 22 FCC Rcd 11962.

14. *ACN et al.'s First Motion to Dismiss.* We also deny the "Motion to Dismiss" filed by ACN *et al.*, which sought dismissal of the Verizon Petitions based on alleged improprieties associated with the data relied upon by Verizon.[43] First, the movants contend that the E911 database entries, relied upon by Verizon as part of its competitive evidence, are customer proprietary network information and are entitled to confidential treatment under the terms of interconnection agreements and/or under state law.[44] The movants also argue that Verizon has violated the terms of the Commission's protective order governing the Verizon/MCI merger by using confidential information submitted by carriers in that proceeding to support its petitions here.[45] On the basis of these allegations, the movants argue that the Verizon Petitions should be dismissed "to prevent further misuse" of these data.[46] We deny this motion. As discussed in greater detail below, we do not rely on the E911 data in this order.

15. We also find that Verizon did not violate the terms of the *Verizon/MCI First Protective Order*.[47] The movants argue that language in each of the six Verizon petitions stating that "during the course of the Verizon/MCI merger, for example, Verizon received *other confidential sources of data* that showed additional CLEC fiber beyond what is contained in the GeoTel data" violates the terms of the *Verizon/MCI First Protective Order*.[48] In response to this allegation, Verizon explains that the confidential sources of data were not obtained under the *Verizon/MCI First Protective Order* but "were independently obtained from another carrier."[49] The parties that filed the motion acknowledge that they are unable to rebut Verizon's response.[50] Consequently, we find that Verizon did not use or disclose information here in violation of the *Verizon/MCI* protective orders. We emphasize, however, that we take seriously the obligation of parties to handle information obtained pursuant to protective order

[43] Letter from Andrew D. Lipman *et al.*, Counsel for ACN Communications Services, Inc. *et al*., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 at 1 (filed Oct. 16, 2006) (ACN *et al.* First Motion to Dismiss); *see also Motion to Compel and Motion to Dismiss Public Notice*, 21 FCC Rcd 11775.

[44] ACN *et al.* First Motion to Dismiss at 2-3.

[45] *Id*. at 5.

[46] *Id*. at 2.

[47] The Bureau adopted two protective orders in the Verizon/MCI merger proceeding. *See Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Order Adopting Protective Order, 20 FCC Rcd 5232 (2005) (*Verizon/MCI First Protective Order*); *Verizon Communications Inc. and MCI, Inc.*, Applications for Approval of Transfer of Control, WC Docket No. 05-75, Order Adopting Second Protective Order, 20 FCC Rcd 10420 (2005).

[48] ACN *et al.* First Motion to Dismiss at 5-6 (quoting, for example, paragraph 11 of the Pittsburgh Petition, Joint Declaration from Quintin Lew, Judy Verses, and Patrick Garzillo, Attach. A (Pittsburgh Lew/Verses/Garzillo Decl.)). The movants claim that Verizon violated the following provision in the *Verizon/MCI First Protective Order*, which states in part, "[p]ersons obtaining access to Confidential information . . . under this Protective Order shall use the information solely for the preparation and conduct of this license transfer proceeding . . . and any subsequent judicial proceeding . . ., except as provided herein, shall not use such documents or information for any other purpose . . . ." *Verizon/MCI First Protective Order*, 20 FCC Rcd at 5234, para. 2.

[49] Verizon's Opposition to Motion to Dismiss at 9.

[50] The movants themselves acknowledge that "Verizon is the only party with knowledge of what information it accessed and from what sources it was obtains, so Movants are unable to rebut this allegation." Movants Reply in Support of Motion to Dismiss at 1 n.2. Commenters also complain that a separate question is whether Verizon violated the *Verizon/MCI First Protective Order* by allowing employees access to this data during the merger proceeding who did not sign the protective order. *Id*. at 4. Again, we find no evidence to conclude Verizon disclosed confidential information or gave access to those who did not sign the *Verizon/MCI First Protective Order*.

appropriately, and we will not hesitate to take appropriate action based on evidence of violations of protective orders.[51]

16. *ACN et al.'s Second Motion to Dismiss.* We also reject ACN *et al*.'s "Motion to Dismiss or in the Alternative, Deny Petitions for Forbearance on the Basis of Late-filed Data," which was filed on May 22, 2007.[52] The movants claim that a Commission decision relying on the data submitted by Verizon in conjunction with its reply comments would be contrary to the Administrative Procedures Act (APA) because Verizon should have pled the merits of its case in its initial petitions.[53] As an initial matter, we find that all interested parties had months to review, analyze, and comment on the data filed in the proceeding.[54] Moreover, we find that the movants effectively seek the adoption of new procedural rules to govern forbearance proceedings. Indeed, certain of the movants have filed a petition for rulemaking, which is pending before the Commission seeking adoption of such procedural rules.[55] We believe that these issues are better addressed in that context.

17. *Clarity of Verizon's Petitions*. In addition, we deny the request of certain parties that the Commission dismiss or deny the Verizon Petitions for lack of specificity in the relief requested.[56] For example, some commenters note that Verizon requests forbearance from dominant carrier regulation comparable to the relief granted in the *Qwest Omaha Forbearance Order*, but assert that Verizon has failed to clarify whether it is requesting relief for mass market services, enterprise services, or both.[57]

[51] *See Verizon 6 MSA Second Protective Order,* 22 FCC Rcd at 898, para. 19 (stating that "[the] Commission retains its full authority to fashion appropriate sanctions for violations of this Second Protective Order, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Highly Confidential Information in this or in any other Commission proceeding").

[52] Letter from Andrew D. Lipman *et al.*, Counsel for ACN Communications Services, Inc. *et al*., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 at 1 (filed May 22, 2007) (ACN *et al.* Second Motion to Dismiss); ACN Communications Services, Inc. *et al.*'s Reply in Support of Motion to Dismiss or, in the Alternative, to Deny Petitions for Forbearance on the Basis of Late-Filed Data, WC Docket No. 06-172 (filed June 6, 2007); Verizon's Opposition to Second Motion to Dismiss, WC Docket No. 06-172 (filed May 29, 2007) (Verizon's Opposition to Second Motion to Dismiss).

[53] ACN *et al.* Second Motion to Dismiss at 2. Verizon argues that the ACN *et al.* Second Motion to Dismiss should be denied because Verizon produced these data in response to the comments filed in the proceeding and "given that the date of the comment period was pushed back several months at the Movants' own request, they have no legitimate basis to complain." Verizon's Opposition to Second Motion to Dismiss at 1.

[54] *See* Letter from Andrew D. Lipman *et al.*, Counsel for Alpheus Communications L.P., *et al*., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 at 2-3 (filed Sept. 4, 2007) (CLEC Group Sept. 4, 2007 *Ex Parte Letter*) (providing the Commission with "a comprehensive review of the accuracy of Verizon's late-filed data"); Letter from Brad E. Mutschelknaus and Genevieve Morelli, Counsel for Covad Communications Group *et al*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 at 1 (filed Nov. 5, 2007) (stating that "the undersigned carriers once again submit evidence . . . . based on data that Verizon itself has placed in the record."); *see also Petitions of Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Order, 22 FCC Rcd 15181 (WCB 2007).

[55] *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Notice of Proposed Rulemaking, FCC 07-202 (rel. Nov. 30, 2007); *see also* Covad, *et al.* Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended, WC Docket No. 07-267 (filed Sept. 19, 2007).

[56] *See, e.g.*, Cox Comments at 13; Earthlink Comments at 58-59; Time Warner Cable Comments at 13.

[57] Cox Comments at 13.

Other parties express concern that Verizon might be seeking forbearance from dominant carrier regulation of its special access services.[58] We decline to deny Verizon's petition on the grounds of ambiguity or insufficiency of pleading.

18. In its petitions, Verizon states that its seeks "relief that is parallel to the relief granted in the *Omaha Forbearance Order* and forbearance from loop and transport unbundling regulation pursuant to 47 U.S.C. § 251(c) and dominant carrier regulations for *switched access* services . . ."[59] In the *Qwest Omaha Forbearance Order*, Qwest did not receive forbearance from dominant carrier regulation of special access services generally or enterprise switched access services. In addition, in contrast to ACS's petition in the *ACS Dominance* forbearance proceeding, for example, Verizon in its petitions does not request forbearance from dominant carrier regulation of special access services or enterprise switched access services.[60] Furthermore, as discussed below, we deny Verizon's request for forbearance from dominant carrier regulation of its switched access services in all 6 MSAs at issue in this proceeding.[61]

B. Forbearance Standard

19. The Commission is required to forbear from any statutory provision or regulation if it determines that: (1) enforcement of the regulation is not necessary to ensure that the telecommunications carrier's charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.[62] In making such determinations, the Commission also must consider pursuant to section 10(b) "whether forbearance from enforcing the provision or regulation will promote competitive market conditions."[63]

C. Application of the Section 10 Forbearance Criteria

20. In this section, we evaluate Verizon's forbearance requests under the statutory criteria of section 10(a) of the Act.[64] Forbearance is warranted under section 10(a) only if all three elements of the

[58] *See, e.g.*, Earthlink Comments at 58-59; T-Mobile Reply 3.

[59] *See, e.g.*, Virginia Beach Petition at 28.

[60] *See, e.g.*, Boston Petition at 29. As we stated in the *ACS Dominance Forbearance Order*, we would be concerned if a petitioner sought to enlarge the scope of its forbearance petition through subsequent filings. *See ACS Dominance Forbearance Order*, 22 FCC Rcd at 16317, para. 24 n.71 ("We note, however, that, although a forbearance petitioner of course may clarify or narrow the scope of a forbearance request through subsequent submissions, it would raise difficult questions if a forbearance petitioner's subsequent submissions could enlarge the scope of its initial section 10 forbearance petition to include whole categories of additional services like special access if they were not encompassed in its initial petition."). However, we find that such a situation is not present here.

[61] *See infra* para. 24.

[62] 47 U.S.C. § 160(a).

[63] 47 U.S.C. § 160(b).

[64] *See* 47 U.S.C. § 160(a). Section 10(b) provides that, in making the determination under section 10(a)(3), the Commission shall consider whether forbearance will promote competitive market conditions. We note that section 10(d) provides that the Commission may not forbear from applying the requirements of section 271 or section 251(c) unless it determines that those requirements are "fully implemented." 47 U.S.C. § 160(d). In the *Qwest Omaha Forbearance Order*, the Commission has determined that, for purposes of section 10(d), the requirements of section 251(c) are fully implemented nationwide and may be subject to forbearance. *See Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19439-42, paras. 51, 53-56.

forbearance criteria are satisfied.[65] The Commission previously has evaluated requests for relief similar to that sought by Verizon in the *Qwest Omaha Forbearance Order*, the *ACS UNE Forbearance Order*, and the *ACS Dominance Forbearance Order*, and the analytical framework established in that precedent guides our actions here.

1. Forbearance Analysis for Dominant Carrier Regulation

a. Threshold Market Analysis

21. *Services for Which Forbearance Is Requested*. Verizon seeks identical forbearance relief in each of the six Petitions at issue in this proceeding. Specifically, Verizon seeks forbearance from the following dominant carrier regulations to the extent that they apply to its mass market interstate switched access services: tariffing requirements, price cap regulation, and dominant carrier requirements concerning the processes for acquiring lines, discontinuing services, assignment or transfers of control, and acquiring affiliations.[66]

22. *Geographic Scope of Analysis*. Verizon seeks forbearance from dominant carrier regulation of its mass market switched access services on an MSA-wide basis. As indicated in the *Qwest Omaha Forbearance Order* and *ACS Dominance Forbearance Order*, we perform our analysis on that basis unless the record indicates compelling reasons to narrow it.[67] We find no such evidence here, and thus evaluate each of Verizon's mass market switched access forbearance requests on the basis of the relevant MSA.[68]

23. *Marketplace Competitors*. We find that Verizon is subject to competition in the 6 MSAs from both intra- and intermodal competitors.[69] The record indicates that a number of competitive LECs (*i.e.*, intramodal competitors) compete with Verizon for mass market customers in certain areas of the 6 MSAs. The evidence also shows, however, that in serving mass market customers many of these intramodal competitors rely on access to Verizon's last-mile network facilities, including UNEs, and Verizon's other wholesale services in all 6 MSAs.[70] We also find that Verizon is subject to intermodal

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[65] *See Cellular Telecomms. & Internet Ass'n v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003) (explaining that the three prongs of section 10(a) are conjunctive and that the Commission could properly deny a petition for failure to meet any one prong). As the Commission previously has held, it would be appropriate to deny a petition for forbearance even if only one of the three prongs of section 10(a) is not satisfied. *Petition of Core Communications, Inc. for Forbearance from Sections 251(g) and 254(g) of the Communications Act and Implementing Rules*, WC Docket No. 06-100, Memorandum Opinion and Order, 22 FCC Rcd 14118, 14125, para. 12 (2007).

[66] *See, e.g.*, Boston Petition at 3-4 n.3; New York Petition at 3 n.3; Philadelphia Petition at 4 n.3; Pittsburgh Petition at 3-4 n.3; Providence Petition at 3-4 n.3; Virginia Beach Petition at 3-4 n.3; Verizon June 13, 2007 *Ex Parte* Letter at 7 (clarifying what forbearance relief Verizon seeks); *see also* 47 C.F.R. §§ 61.32, 61.33, 61.38, 61.41-61.49, 61.58, 61.59, 63.03, 63.04, 63.60-63.66.

[67] *See Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19428, para. 24; *ACS Dominance Forbearance Order*, 22 FCC Rcd at 16320, para. 32.

[68] *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19445, para. 61 n.161 (stating that "[w]e are under no statutory obligation to evaluate Qwest's Petition other than as pled").

[69] We note that the 6 MSAs at issue in this proceeding include some of the most populous MSAs in the nation. Specifically, according to population, the New York MSA is ranked number 1; the Philadelphia MSA number 5; the Boston MSA number 11; the Pittsburgh MSA number 22; the Virginia Beach MSA number 34; and the Providence MSA number 35. In contrast, the Omaha and Anchorage petitions addressed competition in the 60th and 137th largest markets in the nation, respectively.

[70] Verizon Reply, Reply Declaration of Quintin Lew, John Wimsatt, and Patrick Garzillo (Verizon Reply Lew/Wimsatt/Garzillo Decl.) at Exh. 1.

competition, particularly competition from cable operators in the 6 MSAs, primarily for residential services.[71] We do not include providers of "over-the-top" or nomadic voice over Internet Protocol (VoIP) services in our competitive analysis because there are no data in the record that justify finding that these providers offer close substitute services.[72]

b. Forbearance Analysis

24. Verizon asks the Commission to forbear from applying certain dominant carrier rate and tariff regulations to its provision of mass market switched access services in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach MSAs.[73] Forbearing from these dominant carrier requirements would free Verizon from dominant carrier price cap rules.[74] Further, Verizon would no longer be required to file tariffs for these services on seven or more days' notice, but could file tariffs on one day's notice or could offer these services under negotiated rates and terms.[75] Verizon also seeks forbearance in these MSAs from dominant carrier requirements governing the section 214 processes for transfers of control and discontinuance of service.[76] As explained below, we conclude that Verizon is not entitled to relief from dominant carrier regulation.

25. We begin our section 10(a)(1) analysis by considering the market for the services for which Verizon seeks relief and the customers that use them.[77] Verizon seeks forbearance from dominant carrier

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[71] *See, e.g.*, Letter from Brian Murray, Counsel for Time Warner Cable Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172, Exh. 4 (filed Nov. 5, 2007); Letter from Philip J. Macres, Counsel for RCN Telecom Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 (filed Nov. 9, 2007), corrected by errata, Exh. 2 Supplement (filed Nov. 13, 2007); Letter from J.G. Harrington, Counsel for Cox Communications, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172, Attach. 3 (filed Oct. 30, 2007); Letter from J.G. Harrington, Counsel for Cox Communications, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172, Attach. 2 (filed Nov. 14, 2007); Letter from K.C. Helm, Counsel for Charter Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 at 4 (filed Nov. 6, 2007); Letter from Michael C. Sloan, Counsel for Comcast Cable Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172, Exhs. (filed Nov. 9, 2007).

[72] *See, e.g.*, *Verizon Communications Inc. and MCI, Inc. Application for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18480-81, paras. 88-89 (2005) (*Verizon/MCI Merger Order)*. For purposes of our analysis, we recognize competition from entities such as cable operators that utilize VoIP technology to provide voice services to their customers over their own network facilities – that is, providers of "fixed" VoIP service.

[73] *See, e.g.*, Boston Petition at 3-4 n.3; New York Petition at 4 n.3; Philadelphia Petition at 4 n.3; Pittsburgh Petition at 3-4 n.3; Providence Petition at 3-4 n.3; Virginia Beach Petition at 3-4 n.3 (citing 47 C.F.R. §§ 61.32, 61.33, 61.38, 61.41-49, 61.58, 61.59); *see also* Verizon June 13, 2007 *Ex Parte* Letter at 7.

[74] *Compare* 47 C.F.R. Part 61, Subpart C, *with id*. at Subpart E; *see also Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19434, para. 39. The Part 61 rules are designed to implement the provisions of sections 201, 202, 203, and 204 of the Act to ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. Verizon specifically asks the Commission to forbear from the rules in Subpart E of Part 61; that Subpart applies exclusively to dominant carriers.

[75] *Compare* 47 C.F.R. § 61.58 (tariff notice requirements for dominant carriers), *with id*. § 61.23 (tariff notice requirements for nondominant carriers), § 61.26 (tariffing requirements for competitive interstate switched access services); *see also Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19435, para. 41.

[76] *See, e.g.*, Boston Petition at 3-4 n.3; New York Petition at 4 n.3; Philadelphia Petition at 4 n.3; Pittsburgh Petition at 3-4 n.3; Providence Petition at 3-4 n.3; Virginia Beach Petition at 3-4 n.3 (citing 47 C.F.R. §§ 63.03, 63.04, 63.60-66); *see also Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19435-36, para. 43.

[77] Although Verizon has not formally requested a declaratory ruling that it is nondominant, we recognize the strong relationship between the statutory forbearance criteria and the Commission's dominance analysis, particularly with (continued….)

regulation in its provision of mass market switched access services in 6 MSAs that overlap ten states.[78] Verizon explains that it offers interstate switched access service pursuant to Section 6 of its Tariff FCC No. 1 and states that it seeks forbearance for "all of the switched access services it provides pursuant to this FCC tariff."[79] Switched access services use local exchange switches to route originating and terminating interstate toll calls. As explained in the *Qwest Omaha Forbearance Order* and *ACS Dominance Forbearance Order*, the Commission has recognized that providers of access services serve two distinct customer groups: (1) interexchange carriers, which purchase access service as an input for the long distance service that they provide to their end-user customers; and (2) end users who benefit from the ability, provided by access service, to place and receive long distance calls.[80] Verizon's switched access charges have two essential rate components: (1) the Subscriber Line Charge, or SLC, which is a flat-rated charge imposed on end-users to recover the interstate-allocated portion of local loop costs;[81] and (2) carrier's carrier charges, which Verizon imposes on interexchange carriers for access to its

(Continued from previous page)

regard to the statutory assessment of competitive conditions and the goal of protecting consumers. Specifically, section 10(a)'s mandate to forbear for a "telecommunications service, or class of . . . telecommunications service" in any or some of a carrier's "geographic markets" closely parallels the Commission's traditional approach under its dominance assessments to product markets and geographic markets, respectively. 47 U.S.C. § 160(a). We are mindful that, when determining whether a carrier has market power in conducting a dominance analysis, the Commission must not limit itself to market share and look to all four factors that the Commission traditionally considers. *See AT&T v. FCC*, 236 F.3d 729, 736-37 (D.C. Cir. 2001) (*AT&T v. FCC*). Because we do not undertake a stand-alone market power inquiry in this proceeding, this four-factor test does not bind our section 10 forbearance analysis.

[78] Boston Petition at 1; New York Petition at 1; Pittsburgh Petition at 1; Philadelphia Petition at 1; Providence Petition at 1; Virginia Beach Petition at 1; *see also* CLEC Group Sept. 4, 2007 *Ex Parte* Letter at 29 (stating that in the 6 MSAs, there are over 34 million individuals along with numerous businesses across Delaware, Massachusetts, Maryland, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island and Virginia). In both the *Qwest Omaha Forbearance Order*, and the *ACS Dominance Forbearance Order*, the Commission divided the retail product market for switched access services into the mass market (residential consumers and small business customers) and the enterprise market (medium-sized and large business customers). *See Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19427, para. 22; *ACS Dominance Forbearance Order*, 22 FCC Rcd at 16318, para. 27. As discussed, Verizon seeks relief at the MSA level.

[79] Verizon June 13, 2007 *Ex Parte* Letter at 7. Verizon states that the four interstate switched access services contained in Section 6 are Feature Group A, Feature Group B, Feature Group C, and Feature Group D. *Id*. As described above, we interpret Verizon's forbearance requests to extend only to mass market, and not enterprise, switched access services. *See supra* paras. 17-18. We note that even if Verizon's forbearance requests extended to enterprise switched access services, we would not find sufficient evidence of competition to justify such forbearance for the reasons described below. *See infra* para. 33.

[80] *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19432, para. 33; *ACS Dominance Forbearance Order*, 22 FCC Rcd at 16323, para. 40; *see also Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9938, para. 38 (2001).

[81] *See generally Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523, 559 (8th Cir. 1998). Pursuant to the jurisdictional separations process, 25% of the cost of the loop is allocated to the interstate jurisdiction. 47 C.F.R. § 36.154(c). To promote economically efficient competition and to avoid cross-subsidization, the Commission has recognized that, to the extent possible, LECs should recover costs of interstate access in the same way that they are incurred. Because the cost of using a price cap carrier's common line does not increase with usage, the costs associated with the provision of this line are recovered through this flat, non-traffic sensitive fee. *See Access Charge Reform*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 12969-70, para. 18 (2000), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), *cert. denied*, *Nat'l Ass'n of State Util. Consumer Advocates v. FCC*, 535 U.S. 986 (2002).

end user customers for the purpose of originating or completing interstate toll calls.[82] Verizon seeks forbearance from dominant carrier regulation for both rate components.[83]

26. To grant forbearance, we first must determine that enforcement of dominant carrier regulations is unnecessary to ensure that charges, practices, classifications, or regulations for Verizon's interstate switched access services are just and reasonable and not unjustly or unreasonably discriminatory.[84] In its petition, Verizon argues that retail customers throughout the relevant MSAs have access to a wide range of competitive alternatives for affordable local telephone service, with cable and wireless offering ubiquitous facilities-based alternatives to Verizon's service.[85] Verizon argues that, due to this extensive competition, dominant carrier regulation is no longer necessary in these MSAs to ensure just, reasonable and nondiscriminatory rates but that market forces will protect the interests of consumers; thus the regulations at issue no longer are necessary for that purpose.[86] In support of its argument that it is entitled to relief from dominant carrier regulation, Verizon submitted data regarding its own access lines, the number of resale and Wholesale Advantage lines, and estimates of facilities-based residential access line counts disaggregated by capacity for each of the 6 MSAs.[87] Verizon bases these estimates of facilities-based residential access line counts upon its competitors' E911 listings data.[88]

27. Based on this record, we find that, in seeking forbearance from dominant carrier regulation of mass market switched access services, Verizon does not satisfy section 10(a)(1) in any of the 6 MSAs. In particular, Verizon's market shares in the MSAs at issue, measured consistent with our approach in the *Qwest Omaha Forbearance Order* and *ACS Dominance Forbearance Order*, are sufficiently high to suggest that competition in these MSAs is not adequate to ensure that the "charges, practices, classifications, or regulations . . . for [] or in connection with that . . . telecommunications service are just

[82] Carrier's carrier charges include local switching, tandem switched transport and direct-trunked transport. 47 C.F.R. § 69.4(b).

[83] *See* Verizon June 13, 2007 *Ex Parte* Letter at 7.

[84] 47 U.S.C. § 160(a)(1).

[85] *See, e.g.*, Boston Petition, Joint Declaration from Quintin Lew, Judy Verses, and Patrick Garzillo (Boston Lew/Verses/Garzillo Decl.), Attach. A at 6-18; New York Petition, Joint Declaration from Quintin Lew, Judy Verses, and Patrick Garzillo, Attach. A at 7-19; Pittsburgh Lew/Verses/Garzillo Decl. Attach. A at 7-16; Philadelphia Petition, Joint Declaration from Quintin Lew, Judy Verses, and Patrick Garzillo, Attach. A at 7-17; Providence Petition, Joint Declaration from Quintin Lew, Judy Verses, and Patrick Garzillo, Attach. A at 7-16; Virginia Beach Petition, Joint Declaration from Quintin Lew, Judy Verses, and Patrick Garzillo, Attach. A at 7-14; *see also* Verizon Reply at 1, 4, 7, 10, 42, 51, 53.

[86] Boston Petition at 1; New York Petition at 1; Pittsburgh Petition at 1; Philadelphia Petition at 1; Providence Petition at 1; Virginia Beach Petition at 1; *see also* Verizon Reply at 1, 6, 63, 64-65.

[87] Verizon Reply Lew/Wimsatt/Garzillo Decl. Exhs. 1, 3.

[88] *Id*. Late in the proceeding, Verizon filed additional market share estimates based in part on data submitted by competing facilities-based providers, its estimates of wireless substitution, and other evidence. *See, e.g.*, Letter from Evan T. Leo, Counsel for Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 (filed Dec. 3, 2007) (Verizon Dec. 3, 2007 *Ex Parte* Letter); Letter from Evan T. Leo, Counsel for Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 (filed Nov. 30, 2007) (Verizon Nov. 30, 2007 *Ex Parte* Letter); Letter from Evan T. Leo, Counsel for Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 (filed Nov. 28, 2007) (Verizon Nov. 28, 2007 *Ex Parte* Letter). As discussed below and in Appendix B, even if we consider multiple sources of competition in addition to the relevant cable operator, evaluated consistent with the methodologies the Commission has applied in the past, we do not find forbearance justified based on the current competitive showing.

and reasonable and are not unjustly or unreasonably discriminatory" absent the regulations at issue.[89] As a threshold matter, the record evidence does not reflect that in any of the 6 MSAs do the cable operators, even in the aggregate, have more than a **[REDACTED]** percent share of the market for mass market telephone services in an MSA.[90] Even including wireless "cut the cord" competition and competition through reliance on section 251(c)(4) resale and Verizon's Wholesale Advantage service, Verizon's estimated market shares are as follows: Boston **[REDACTED]** percent, Philadelphia **[REDACTED]** percent, Pittsburgh **[REDACTED]** percent, Providence **[REDACTED]** percent, and Virginia Beach **[REDACTED]** percent.[91] At this time, we lack sufficient evidence to determine Verizon's market share in the New York MSA consistent with our approach for the other MSAs.[92]

[89] Specifically, we rely upon the actual line counts submitted on the record by each carrier that is competing in the relevant geographic and product markets to the extent such data are available. In the present proceeding, Verizon and all of the cable operators operating in 5 of the 6 MSAs have filed their actual access line counts used to provide service to their own retail customers. The record does not include similar information from the remaining competitive LECs that also compete in these 6 MSAs or from Cablevision in the New York MSA. Nevertheless, we are able to estimate the competitive LECs' share of the mass market by attributing to the competitive LECs in the aggregate those access lines that are purchased from Verizon that are not based on UNEs, at least for services sold to mass market customers. In this case, we limit our attribution to wholesale services that are purchased to serve residential customers. Verizon submitted its own retail line counts disaggregated by residential and business customers. We follow Verizon's methodology in this respect and limit our attribution of access lines to the competitive LECs for mass market services by counting only the wholesale access lines competitive LECs use to provide service to residential end-user customers. Such estimate is conservative because it counts only those lines that are verified rather than also including access lines competitive LECs self-provision or purchase from a wholesale provider other than Verizon. We also believe this approach results in a reasonable estimate of the competitive LECs' share of the mass market in light of record evidence in this proceeding that the competitive LECs primarily provide service to mass market customers using Verizon's facilities in the 6 MSAs. Specifically, the wholesale services we include in this calculation are section 251(c)(4) resale and Verizon's Wholesale Advantage service. We note that section 251(c)(4) resale services are made available at regulated rates. Verizon's Wholesale Advantage service is a service that includes loops and switching functionality. There is no evidence to suggest that UNEs constrain the prices of Verizon's Wholesale Advantage service, and we note that switching is not available at TELRIC rates, which tends to support this conclusion. In addition, based on the record here, and consistent with recent precedent, we include cut-the-cord wireless substitution. *See, e.g.*, *Verizon/MCI Merger Order*, 20 FCC Rcd 18481-2, paras. 90-91; *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5714, para. 95 (2007) (*AT&T/BellSouth Merger Order*).

[90] The combined market share for the cable companies in the MSAs where the record evidence is complete is as follows: Boston **[REDACTED]**%, Philadelphia **[REDACTED]**%, Pittsburgh **[REDACTED]**%, Providence **[REDACTED]**%, and Virginia Beach **[REDACTED]**%. *See* Appendix B for the market share calculation methodology.

[91] *See* Appendix B. While Verizon provided certain, more recent, retail data for each of the MSAs, those data do not include updated MCI retail line counts, and we therefore do not rely on them. *See, e.g.*, Verizon Nov. 30, 2007 *Ex Parte* Letter, Attach. A. While Verizon also provided updated Verizon and MCI retail data for Providence and Virginia Beach, in reviewing Verizon's updated data, we still find that forbearance is not justified based on that competitive showing for the same reasons described above. *See* Verizon Dec. 3, 2007 *Ex Parte* Letter. Thus, we need not address possible concerns about relying on data filed late in the proceeding. *Cf.* ACN *et al.* Second Motion to Dismiss.

[92] Verizon's primary competitor for mass market interstate switched access services is Cablevision. Although Cablevision filed data purporting to be access line counts for the New York MSA on the record, it subsequently submitted a letter explaining that those data were erroneous and did not file complete and corrected data. In the absence of evidence of the total size of the market for these services in the New York MSA, we are unable to determine market shares for the competitors in this MSA consistent with our approach for the other MSAs. *See* Letter from Chérie R. Kiser, Counsel for Cablevision Lightpath, Inc. to Marlene H. Dortch, Secretary, FCC, WC (continued….)

28. We are not persuaded by Verizon's citation to the market shares relied upon in the *AT&T Domestic Nondominance Order* and the *AT&T International Nondominance Order* (collectively, the *AT&T Nondominance Orders*).[93] In particular, in the *AT&T Domestic Nondominance Order*, AT&T was declared nondominant in its provision of domestic interstate interexchange services when it had an approximate market share of "55.2 and 58.6 percent in terms of revenues and minutes respectively."[94] In addition, in the *AT&T International Nondominance Order*, the Commission classified AT&T as nondominant with respect to international message telephone service (IMTS) where it had an overall average market share of 59 percent, but had an average market share of 74 percent with respect to 76 particular countries.[95] As the Commission repeatedly has recognized, when determining whether a carrier has market power in conducting a dominance analysis, the Commission does not limit itself to market share alone, but also looks to other factors including supply substitutability, elasticity of demand, and firm cost, size, and resources.[96] As discussed below, these additional factors presented much more compelling evidence of the competitiveness of the marketplace in the *AT&T Nondominance Orders*, as well as in the *Qwest Omaha Forbearance Order* and *ACS Dominance Forbearance Order*, than we find for the 6 MSAs based on the record here.

29. In particular, the evidence relied upon in those prior orders included, among other things, much more extensive evidence of facilities-based competition than is in the record here. In the *AT&T Domestic Nondominance Order*, the Commission observed that AT&T faced actual or potential competition in the residential market from three carriers that each had competing national networks, as well as "dozens of regional facilities-based carriers," all of which collectively had significant excess capacity available to themselves and "several hundred" smaller wholesale carrier customers that used that capacity to offer competing domestic interstate interexchange services.[97] Similarly, in the *AT&T International Nondominance Order*, the Commission found that "AT&T owns 43 percent of the U.S. end of submarine cable facilities currently in use" and that "[b]y comparison, AT&T's competitors' collective ownership interest in international transmission capacity exceeds AT&T's ownership interest."[98]

(Continued from previous page)
Docket No. 06-172 (filed Nov. 5, 2007) (submitting data); Letter from Chérie R. Kiser, Counsel for Cablevision Lightpath, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 at 1 (filed Nov. 6, 2007) (stating that the November 5, 2007 filing "contains inaccurate data"); Letter from Chérie R. Kiser, Counsel for Cablevision Lightpath, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 (filed Nov. 19, 2007) (submitting certain data for business customers).

[93] *See* Verizon Reply at 41 n.80.

[94] *Motion of AT&T Corp. to Be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271, 3307, para. 67 (1995) (*AT&T Domestic Nondominance Order*).

[95] *Motion of AT&T Corp. to Be Declared Non-Dominant for International Service*, CC Docket No. 79-252, Order, 11 FCC Rcd 17963, 17978-79, paras. 39-41 (1996) (*AT&T International Nondominance Order*). The Commission also identified four countries to which AT&T faced no competition. *Id*. at 17978-79, para. 41. The Commission did not declare AT&T nondominant in the provision of IMTS to those countries, however, but instead granted forbearance from dominant carrier regulation based on evidence of potential entry, its evaluation of the rates being charged for IMTS to those countries, and the *de minimis* number of minutes associated with IMTS calls to those countries. *Id*. at 17998-99, paras. 94-97.

[96] *See Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19425, para. 17 n.52; *AT&T v. FCC*, 236 F.3d at 736-37.

[97] *AT&T Domestic Nondominance Order*, 11 FCC Rcd at 3307, para. 70. *See generally id*. at 3303-09, paras. 57-73 (evaluating market share and other market power considerations).

[98] *AT&T International Nondominance Order*, 11 FCC Rcd at 17983-84, para. 56. *See generally id*. at 17977-98, paras. 37-93 (evaluating market share and other market power considerations).

30. While there is some evidence in the record here regarding cable operators' competitive facilities deployment used in the provision of mass market telephone service in the 6 MSAs at issue, we find that it does not approach the extensive evidence of competitive networks with significant excess capacity relied upon in the *AT&T Nondominance Orders*. In the absence of comparable evidence of facilities-based competition, we are not persuaded by Verizon's suggestion that market shares in the range at issue in the *AT&T Nondominance Orders* are sufficient to justify forbearance from dominant carrier regulation here. Indeed, where the Commission has found an incumbent carrier to be nondominant in the provision of access services, it had a retail market share of less than 50 percent and faced significant facilities-based competition.[99] While our forbearance analysis here is merely guided by our dominance precedent, we find it significant that in granting forbearance from dominant carrier regulation of mass market switched access services in the *Qwest Omaha Forbearance Order*, and *ACS Dominance Forbearance Order*, the Commission similarly emphasized the evidence of the competitive gains of facilities-based competitors, in conjunction with the incumbent LECs' overall market shares, in its marketplace analysis.[100]

31. With respect to elasticity of demand and firm cost, size, and resources, we find no basis to reach different conclusions than those in the *Qwest Omaha Forbearance Order* and *ACS Dominance Forbearance Order*.[101] However, we do not find those factors, in and of themselves, adequate to conclude that competition is sufficient to ensure just, reasonable, and not unreasonably discriminatory rates and practices under section 10(a)(1), given the concerns identified above.

32. Moreover, we find no other basis in the record for concluding that section 10(a)(1) is satisfied with respect to Verizon's requested forbearance from dominant carrier regulations for mass market switched access services. We find that the evidence considered in our market analysis above provides the best evidence regarding the state of competition in the relevant markets. In particular, we reject Verizon's

[99] *Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring it to Be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2)*, WC Docket No. 02-78, 21 FCC Rcd 11506, 11519-21, paras. 29-34 (2006) (declaring Qwest to be nondominant in its provision of all interstate telecommunications services, including access services, in Terry, Montana, where a facilities-based competitor served between 85 and 93% of the access lines); *cf. Rules and Policies on Foreign Participation in the U.S. Telecommunications Market,* IB Docket No. 97-142, *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, 12 FCC Rcd 23891, 23959, para. 161 (1997) (establishing a presumption that foreign carriers with less than 50% market share in each of the relevant foreign markets, including the market for local access, lack sufficient market power to adversely affect competition in the U.S., and noting that "[a]s the authors of the 1997 edition of the American Bar Association Antitrust Law Developments publication recently concluded, '[c]ourts virtually never find monopoly power when market share is less than about 50 percent.'") (citing A.B.A. Section of Antitrust Law, Antitrust Law Developments at 235-236 (4th ed.) (1997)).

[100] *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19432-33, para. 36 (relying on "Cox's extensive facilities build-out in the Omaha MSA, and growing success in luring Qwest's mass market customers"); *ACS Dominance Forbearance Order*, 22 FCC Rcd at 16323-24, paras. 40-41 (relying on evidence that "GCI has extensive and modern facilities throughout much of Anchorage, and that its network has sufficient capacity such that GCI could easily expand the number of customers it serves," and that "the growth in GCI's residential access line base and corresponding decline in ACS's base support our forbearance determination here"). We note that the Commission relied, as a secondary matter, on competition based on wholesale inputs obtained from the incumbent LEC. *See, e.g.*, *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19432-33, para. 36. However, we do not find the limited evidence regarding competition in the 6 MSAs based on resale and Verizon's Wholesale Advantage service sufficient to overcome the significantly less convincing evidence regarding Verizon's market shares and the success of its facilities-based competitors than was present in the *Qwest Omaha Forbearance Order* and *ACS Dominance Forbearance Order*.

[101] *See, e.g.*, *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19432-33, paras. 33, 38; *ACS Dominance Forbearance Order*, 22 FCC Rcd at 16323-24, paras. 40, 42.

attempt to demonstrate that a particular MSA is competitive by calculating percentage reductions in retail lines.[102] There are many possible reasons for such decreases unrelated to the existence of last-mile facilities-based competition. For example, as the Commission explained in the *ACS UNE Forbearance Order*, the abandonment of a residential access line does not necessarily indicate capture of that customer by a competitor, but may indicate that the consumer converted a second line used for dial-up Internet access to an incumbent LEC broadband line for Internet access.[103]

33. Thus, taken in aggregate, we find that the concerns arising from the Verizon's market shares and the lack of other adequate evidence of facilities-based mass market competition distinguish this proceeding from the dominance precedent cited by Verizon, as well as our relevant forbearance precedent. Specifically, we find that the evidence of competition in this record is insufficient to demonstrate that the application of dominant carrier regulation to the services at issue is unnecessary to ensure that, in each of the 6 MSAs, charges, practices, classifications, or regulations for or in connection with those services are just and reasonable and are not unjustly or unreasonably discriminatory.[104]

34. For the same reasons, we find that Verizon has not demonstrated that enforcement of the Commission's dominant carrier regulations as they apply to Verizon's interstate switched access services is unnecessary for the protection of consumers.[105] Nor has Verizon demonstrated that forbearance from the application of these regulations to these services is consistent with the public interest.[106] Accordingly, Verizon's request for forbearance from such regulations is denied.[107]

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[102] We also note that Verizon's requested forbearance could have impacts beyond the MSA level. Our rules require incumbent LECs to geographically average their access rates. *See Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6788 (1990); *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 858, 866 (1995). This regulatory requirement causes price cap incumbents with state-wide operations, like Verizon, to effectively use their low-cost, urban and suburban operations to subsidize their higher cost rural operations. The likely effect of removing from price cap regulation lower cost operations in large urban MSAs (like the ones at issue in this matter) would be to increase the cost to Verizon's rural operations. The record does not address the implications of such effects were we to grant forbearance from dominant carrier regulation for particular MSAs or portions of MSAs. *Cf.* Verizon Nov. 28, 2007 *Ex Parte* Letter (discussing the Rhode Island portion of the Providence MSA). Because we deny Verizon's request for forbearance from dominant carrier regulation, we need not resolve the issue here. In the future, applicants for forbearance relief from dominant carrier rate regulation should address whether and how a grant of relief at the geographic level they seek would impact other rates in the applicable study area. We note that in the *ACS Dominance Forbearance Order,* the Commission granted relief at the study area level. *See ACS Dominance Forbearance Order*, 22 FCC Rcd at 16305, para. 1.

[103] *ACS UNE Forbearance Order*, 22 FCC Rcd at 1975, para. 28 n.88 (citing Trends in Telephone Service, Industry Analysis Division, Wireline Competition Bureau, 7-1 (June 2005) (noting that the decline of lines provided by wireline carriers might be due to some households eliminating second lines when they move from dial-up Internet service to broadband service)). *See also infra* at para. 39.

[104] 47 U.S.C. § 160(a)(1).

[105] 47 U.S.C. § 160(a)(2).

[106] 47 U.S.C. § 160(a)(3).

[107] Since Verizon relies on the same competitive evidence in support of its request for forbearance from dominant carrier section 214 discontinuance and transfer of control requirements, we deny such forbearance for the same reasons expressed above. *Cf. Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19435, para. 43 (evaluating forbearance from dominant carrier section 214 discontinuance and transfer of control requirements on the basis of the same competitive evidence relied upon to analyze forbearance from other dominance carrier regulations); *ACS Dominance Forbearance Order*, 22 FCC Rcd at 16333, para. 63 (same).

2. Forbearance Analysis for Section 251(c)(3) Unbundling Obligations

35. This proceeding represents the third time an incumbent LEC has sought forbearance from section 251(c)(3) UNE obligations based on claims of robust facilities-based competition. In the *Triennial Review Remand Order*, the Commission tailored its unbundling rules to account for the presence of competition by establishing "triggers" designed to eliminate high-capacity loop and transport unbundling obligations with respect to wire centers with significant demand, such as in central business districts,[108] and by declining to order unbundling of network elements to provide service in the mobile wireless services market and long distance services market, due to the evolution of retail competition that has not relied upon UNE access.[109] The Commission did not believe it was appropriate at that time to render similar judgments for local exchange service and exchange access service. Nevertheless, the Commission announced that it might one day be appropriate to conclude, based upon sufficient facilities-based competition, particularly from cable companies, that the state of local exchange competition would justify forbearance from UNE obligations.[110] The Commission now has granted such relief in the *Qwest Omaha Forbearance Order* and the *ACS UNE Forbearance Order*, based on evidence that, among other things, the incumbent LEC had lost significant market share to facilities-based competitors, which had substantial deployment of facilities capable of serving the end-user locations in the wire center service areas for which forbearance was granted.

36. We continue to follow the approach that the Commission adopted in the in the *Qwest Omaha Forbearance Order* and *ACS UNE Forbearance Order* for determining whether forbearance from unbundling obligations is warranted under the section 10 criteria. By applying this precedent, we determine that forbearance from the application to Verizon of the section 251(c)(3) obligations to provide unbundled access to loops, certain subloops, and transport to competitors in the 6 MSAs does not meet the standards set forth in section 10(a) of the Act. Specifically, the record evidence in this proceeding demonstrates that Verizon is not subject to a sufficient level of facilities-based competition in the 6 MSAs to grant relief under the Commission's *Qwest Omaha* and *ACS UNE* precedent, and we thus deny the Verizon Petitions with respect to the request for forbearance from UNE obligations the 6 MSAs at issue in this proceeding. While the current evidence of facilities-based competition in these MSAs is insufficient to justify forbearance, we note that the evidence does show that cable operators have deployed facilities that meet the 75 percent coverage threshold in some wire centers. Thus, future relief from unbundling obligations might be warranted in such wire centers upon a showing of a more competitive environment in these MSAs.[111]

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[108] *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533, 2588 - 97, 2625-29, paras. 93-106, 167-73 (2004) (*Triennial Review Remand Order*), *aff'd*, *Covad Communications Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

[109] *Triennial Review Remand Order*, 20 FCC Rcd at 2553-55, para. 36; 47 C.F.R. § 51.309(b) ("A requesting telecommunications carrier may not access an unbundled network element for the exclusive provision of mobile wireless services or interexchange services.").

[110] *Triennial Review Remand Order*, 20 FCC Rcd at 2556-57, paras. 38-39; *see also id*. at 2556, para. 39 n.116.

[111] *See, e.g.*, Letter from John T. Nakahata and Stephanie Weiner, Counsel for EarthLink, Inc. & New Edge Networks, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 at 2-3 (filed Nov. 21, 2007) (contending that Verizon has not shown how the level of facilities-based retail competition in the 6 MSAs is consistent with granting forbearance under the Commission's *Qwest Omaha* and *ACS UNE* precedent); Letter from Brad Mutschelknaus and Genevieve Morelli, Counsel for Covad Communications Group *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 at 1-5 (filed Nov. 20, 2007) (same).

37. *Section 10(a)(1) – Charges, Practices, Classifications, and Regulation*. We begin our analysis by examining competition in the retail and wholesale markets in the relevant MSAs.[112] With respect to retail competition for mass market customers, Verizon's MSA-wide mass market market shares, even including wireless "cut the cord" competition and competition from section 251(c)(4) resale and Verizon's Wholesale Advantage service, and taken in conjunction with other factors, are not sufficient to warrant forbearance from dominant carrier regulation. Consistent with our precedent, we likewise are not persuaded that these data, in themselves, support the grant of forbearance from UNE obligations.[113] Moreover, the record evidence indicates that competition from cable operators in the 6 MSAs currently does not present a sufficient basis for relief.[114] Although the record lacks sufficient information for us to determine the cable operators' market shares for enterprise services,[115] we find that

[112] *See Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19447, para. 65; *ACS UNE Forbearance Order*, 22 FCC Rcd at 1974, para. 27.

[113] *See supra* para. 27. For purposes of our analysis of forbearance from dominant carrier regulation, we rejected Verizon's reliance on the market shares at issue in the *AT&T Nondominance Orders*. *See supra*, paras. 28-29. Neither Verizon nor other parties offer persuasive evidence regarding alternative the market share levels or other evidence of market competition by facilities-based providers that should be the focus of our analysis of forbearance from UNE obligations. In particular, we reject Verizon's suggestion that, in prior orders, the Commission granted forbearance based simply on cable coverage. *See, e.g.*, Verizon Nov. 30, 2007 *Ex Parte* Letter. Rather, the "[m]ost important[]" factor in the Commission's analysis in the *Qwest Omaha Forbearance Order* was evidence of "successful" facilities-based competition. *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19447, para. 64. In measuring such success, the Commission did not look solely at facilities coverage. *See, e.g.*, *id*. at 19448, para. 66 (discussing the factors that led the Commission to conclude that Qwest faced successful competition from Cox); *see also id*. at 19449, para. 67 (considering Cox's successful retail competition as creating incentives for Qwest to make available reasonable wholesale offerings); *see also ACS UNE Order*, 22 FCC Rcd at 1963-63, 1974-76, paras. 9, 27-29 (explaining the importance of retail competition in the Commission's UNE forbearance analysis). Given the overall record here, we find it reasonable, and consistent with our precedent, to focus on the evidence relied upon in this Order.

[114] *See, e.g.*, Cox Comments at 27-28 (discussing competition from Cox in Virginia Beach); *see also infra* note 115.

[115] We do not rely on E911 data for purposes of analyzing competition in the business market. Parties contend that the E911 data submitted by Verizon is significantly overstated, and those claims largely are unrebutted in the record. For example, parties cite specific examples of alleged overstatements in Verizon's business E911 data in Virginia. *See* CLEC Group Sept. 4 2007 *Ex Parte* Letter at 16. *See also id*. Supplemental Declaration of Joseph Gillian, Attach. A at para. 12 (quoting Rebuttal Testimony of Harold E. West III, State Corporation Commission of Virginia, Case No. PUC-2007-00008 at 7 (filed July 16, 2007) that it is not unexpected for a carrier's E911 business listings in a state to be twice as high as its number of access lines in that state); *id.* at paras. 9-10 (providing evidence that in the state of Virginia, Verizon's E911 business listings are 40% higher than Verizon's actual business line counts, and that MCI's E911 listings are approximately 900% greater than MCI's number of access lines). We recognize that these statistics in isolation may not accurately describe the overall accuracy of the business E911 data Verizon filed in this proceeding; nevertheless, we find the record evidence taken as a whole casts significant doubt on the reliability of Verizon's business E911 data and suggests that carriers may have significantly fewer access lines than would be suggested by their E911 listings. Verizon notes that commenters have not submitted their own line counts for comparison with the E911 data to help evaluate its reliability, and asserts that the Commission thus should not give their claims weight. *See* Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 (filed November 6, 2007), corrected by errata at 11 (filed November 7, 2007) (Verizon Nov. 7, 2007 *Ex Parte* Letter). However, we note that Verizon relies upon its own access line counts to support its requested relief, and only recently submitted its own residential E911 listing totals. Letter from Evan T. Leo, Kellogg, Huber, Hansen, Todd, Evans & Figel, Counsel for Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 at Attach. D (filed November 16, 2007) (Verizon Nov. 16, 2007 *Ex Parte* Letter). As noted by parties, Verizon, however, did not provide its own *business* E911 data. *See* Letter from Andrew D. Lipman *et al.*, Counsel for Alpheus Communications L.P., *et al*., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 at 14 (filed Nov. 20, 2007). Although Verizon asserts that the Commission and other (continued….)

other evidence in the record demonstrates the comparatively limited role of the cable operators in serving enterprise customers in these MSAs today.[116] Nor does the record reveal other competitors in these MSAs that have deployed their own extensive last-mile facilities for use in serving the enterprise market. Indeed, there is significant record evidence that much of the competition from competitive LECs for enterprise services in these MSAs instead depends on access to Verizon's own facilities, including UNEs.[117] While Verizon and other parties submitted certain evidence from a commercial data provider regarding competitive LEC lit buildings, the facilities "coverage" suggested by those data do not approach the 75 percent threshold relied upon by the Commission in the past.[118] Lacking significant evidence of the type of last-mile facilities-based competition the Commission relied on in the *Qwest Omaha* and *ACS UNE* forbearance proceedings to grant relief, we find that the criteria of section 10(a) are not satisfied with respect to Verizon's request for forbearance from UNE obligations in these MSAs.

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government entities have relied on E911 data in other contexts, we must consider the evidence submitted here suggesting that the business E911 data in the record of this proceeding are unreliable. *See Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19430, para. 29. In any event, the Commission did not rely on E911 data in the *Qwest Omaha* or *ACS UNE* forbearance proceedings to calculate market shares. In both proceedings the Commission relied upon actual line counts submitted by the incumbent LEC and the major cable provider in the market consistent with our approach in this order. *See Id*. at 19430-31, 19443, paras. 28-29, 58 n.152; *ACS UNE Forbearance Order*, 22 FCC Rcd at 1975, para. 28.

[116] Most of the cable operators state that their networks are primarily in residential areas and their provision of services to enterprise customers are still in the initial stages. For example, Comcast states that its cable networks are primarily in residential areas and to the extent small businesses are in the areas, Comcast does make its services, including voice to those entities in the Boston, Pittsburgh and Philadelphia MSAs. Comcast Comments at 4. Comcast further states that commercial phone has not been a focus until 2006 and it "has not, to date, made any significant or sustained entry into the business market and enterprise markets." *Id.* at 5. Both Charter and Verizon recognize that Charter's network only passes in largely residential areas. Charter Reply at 4; Boston Petition at 18 n.25. Similarly, RCN, in the Boston, Philadelphia, and New York MSAs indicates that it provides **[REDACTED]**. Letter from Philip J. Macres, Counsel for RCN Telecom Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172, Exh. 2 at 1-3 (filed Oct. 9, 2007). While Time Warner Cable indicates that it has built out facilities enabling the provision of voice service to most households in the portions of the New York MSA in which it operates, Time Warner Cable explains that it is unable to reach most enterprise customers using its own last-mile facilities. Time Warner Cable Comments at 17. Overall, in all of the 6 MSAs, it appears that cable operators are presently making some competitive gains against Verizon by providing voice service to consumers in the residential markets, however competition from cable operators does not yet present a sufficient basis for relief. *See generally* Letter from Thomas Jones and Jonathan Lechter, Counsel for Time Warner Telecom *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 Attach. at 5-10 (filed Nov. 16, 2007) (summarizing cable business share data). We nevertheless recognize that the cable operators are emerging sources of competition, and do not prejudge what future competitive evidence might show. However, the present record does not justify forbearance.

[117] Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172, Exh. 10 Supplement (filed Oct. 10, 2007) (Verizon Oct. 10, 2007 *Ex Parte Letter*).

[118] Verizon asserts that the competitive LEC lit building data is understated. *See* Verizon Nov. 7, 2007 *Ex Parte* Letter at 13. Even if that is true, the data are so far below the 75% level, that it appears unlikely that any understatement would affect the ultimate result. We likewise conclude that even if we were to draw an adverse inference from the failure of the competitive LECs participating in this proceeding to submit their own customer counts and facilities deployment data as Verizon suggests, we are unlikely to reach a different result. *See* Verizon Nov. 7 *Ex Parte* Letter at 2. Notably in this regard, Verizon does not attempt to justify the use of a different threshold when evaluating competitive LEC lit buildings, other than the 75% threshold relied upon in the context of cable facilities deployment in prior orders. Nor do we find any other basis in the record here to adopt a different approach.

38. We also examine the role of the wholesale market. The record does not reflect any significant alternative sources of wholesale inputs for carriers in the 6 MSAs.[119] We disagree with Verizon's argument that forbearance could be justified based simply on the claim that competitors overall primarily are using special access rather than UNEs when providing service over Verizon's facilities.[120] For the reasons set forth in the *Triennial Review Remand Order*, the Commission already has rejected the argument that use of special access, in itself, is a reason to forbear from UNE obligations, based on a number of different factors.[121] While Verizon cites a significant amount of retail enterprise competition relying upon Verizon's special access services and UNEs, we cannot readily determine the extent to which these wholesale inputs are used to compete for local exchange services, interexchange services, or mobile wireless services.[122] The Commission already has eliminated UNE obligations for the exclusive provision of interexchange service or mobile wireless service based on the fact that competition for such services arose in the absence of UNEs.[123] Similarly, Verizon has received relief from unbundling obligations in wire centers in all 6 MSAs other than Virginia Beach, based on the competitive triggers established in the *Triennial Review Remand Order*.[124] We do not find it in the public interest to grant additional relief from UNE obligations based on that same competition.[125] Furthermore, the Commission repeatedly has recognized that the availability of UNEs is a competitive constraint on special access pricing.[126]

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[119] *See, e.g.*, Letter from Andrew D. Lipman *et al.*, Counsel for Alpheus Communications L.P., *et al*., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 at 4 (filed Nov. 16, 2007) (arguing that there are no alternative wholesale providers of copper loops Cavalier is using to provide service in Virginia Beach); Letter from Brad Mutschelknaus, Counsel for Broadview *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 at 6-7 (filed Nov. 19, 2007) (arguing that there are few wholesale alternatives to Verizon's last-mile facilities).

[120] *See, e.g.*, Verizon Reply at 5, 59-62.

[121] *See Triennial Review Remand Order,* 20 FCC Rcd at 2560, para. 46.

[122] Verizon Oct. 10, 2007 *Ex Parte Letter*, Exh. 10 Supplement. While the Commission noted in the *Qwest Omaha Forbearance Order*, for example, the number of UNEs and special access circuits of particular capacities sold by Qwest, it did not cite, or rely upon, any particular ratio of special access usage vs. UNE usage as a basis for forbearance, and those individual data were only a small part of the Commission's overall analysis. *See Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19449-50, para. 68. Significantly, the Commission did point out that reliance on UNEs constituted "only a fraction of the overall local exchange and exchange access market in this MSA." *Id*. For the reasons described in the text above, we are not able to reach a similar conclusion based on the record here.

[123] *See Triennial Review Remand Order,* 20 FCC Rcd at 2551-58, paras. 34-40.

[124] *See* Verizon Reply Lew/Wimsatt/Garzillo Decl. Exh. 8.

[125] Thus, even assuming arguendo that evidence of competition that already implicitly formed the basis of UNE relief under our rules could satisfy the other criteria of section 10, we would not find granting forbearance on that basis consistent with the public interest under section 10(a)(3). Rather, as we have held in other contexts, we find it in the public interest to maintain the balance struck by the Commission in the *Triennial Review Remand Order*. *See 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, 21 FCC Rcd 11125, 11132-22, para. 14 (2006) (concluding that it would not be in the public interest for the Commission to forbear from its unbundling rules where the petitioner had not presented any new evidence or change in circumstances that would warrant revisiting the Commission's carefully calibrated balancing test under section 251(d)(2)(B) to determine the appropriate amount of unbundling).

[126] *See Triennial Review Remand Order*, 20 FCC Rcd at 2570, para. 63.

39. Finally, we place little weight on or otherwise reject the other evidence that Verizon has submitted in support of its petitions to establish facilities-based competition in the 6 MSAs. First, we reject Verizon's attempt to demonstrate the MSA is competitive by calculating percentage reductions in retail lines.[127] As the Commission explained above, the abandonment of a residential access line does not necessarily indicate capture of that customer by a competitor, but, for example, may indicate that the consumer converted a second line used for dial-up Internet access to an incumbent LEC broadband line for Internet access.[128] The record in this proceeding also indicates that there are other possible reasons for such decrease.[129]

40. Second, in terms of granting MSA-wide relief, we do not find persuasive any of the competitive fiber network data that Verizon has filed in this docket, including fiber network maps; the number of route miles on these networks; the number of wire centers in an MSA that a competing fiber provider can reach; or the materials from competitors' web-sites describing their service offerings and territories.[130] For example, we reject the fiber maps submitted by Verizon as indicative of last-mile facilities competition because these maps cover only a small fraction of Verizon's territory within each of the 6 MSAs, and the Commission previously has found that such maps provide only limited evidence of MSA-wide deployment.[131] We agree with commenters that Verizon's reliance on fiber route maps have

[127] Verizon has submitted tables summarizing its loss of switched access lines from 2000 to 2006. Verizon Reply Lew/Wimsatt/Garzillo Decl., Attach. A at 4-5; Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172, Attach. 1 at 7 (filed Nov. 9, 2007) (Verizon Nov. 9, 2007 *Ex Parte* Letter); Verizon Nov. 16, 2007 *Ex Parte* Letter at 4-5; *see also* Verizon Dec. 3, 2007 *Ex Parte* Letter, Attach. (showing the decrease in Verizon's retail residential lines from their peak in 1999 to October 2007 for certain geographic areas).

[128] *ACS UNE Forbearance Order*, 22 FCC Rcd at 1975, para. 28 n.88 (citing Trends in Telephone Service, Industry Analysis Division, Wireline Competition Bureau, 7-1 (June 2005) (noting that the decline of lines provided by wireline carriers might be due to some households eliminating second lines when they move from dial-up Internet service to broadband service)). Verizon relies on a footnote in the *Qwest Omaha Forbearance Order* as precedent for Commission reliance on line loss. Verizon Nov. 9, 2007 *Ex Parte* Letter, Attach. 2 at 3 (citing *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19431, para. 28 n.79). Not only would any reliance on that aspect of that decision outdated by the *ACS UNE Forbearance Order*, but the *Qwest Omaha Forbearance Order* explicitly found compelling and relied on the actual access line data submitted by the incumbent LEC and the facilities-based cable competitor. *Id*. at 19431, para. 28.

[129] *E.g.*, CLEC Group Comments at 20 (Verizon's access line loss percentages are invalid and overstated, because they do not attribute MCI to Verizon); COMPTEL Comments at 16 (Verizon's decline in access lines do not attribute MCI data to Verizon and "the only inference to be drawn from this omission is a negative one – *i.e.*, that Verizon did not attribute the MCI data to itself because the resulting decline in residential access lines would have been much smaller").

[130] *E.g.*, Boston Petition at 20-21; Boston Lew/Verses/Garzillo Decl. para. 40 & Exhs. 5-6; Verizon Reply at 51-53; Verizon Oct. 10, 2007 *Ex Parte* Letter, Attachs. G, I, Exh. 1.

[131] *See, e.g.*, *Triennial Review Remand Order*, 20 FCC Rcd at 2583, para. 82 ("These maps confirm that competitive fiber consistently is located in and around the core business district of every major city – and not necessarily elsewhere. Due to the wide variability in market characteristics within an MSA, MSA-wide conclusions would substantially over-predict the presence of actual deployment, as well as the potential ability to deploy.") (citations omitted); *Verizon/MCI Merger Order*, 20 FCC Rcd at 18455-56 n.123 (cautioning that the evidence such maps provide is limited). *See also* Time Warner Telecom Comments at 29 (stating that Verizon supplied the same types of fiber data that the Commission explicitly rejected as not complete and they do not, for example show the capacity of the loops serving lit buildings). Verizon asserts that its case for forbearance in the instant Petitions is greater than the relief afforded in Omaha because of the greater extent of competitive fiber within the 6 MSAs. *E.g.*, Verizon Nov. 7, 2007 *Ex Parte* Letter at 11. However, the Commission's reference to competitive deployment in the *Qwest Omaha Forbearance Order* was incidental and supplemental to the Commission's determination that Cox was a (continued….)

little probative value.[132] Similarly, just as the *Triennnial Review Remand Order* found the number of route miles, lists of fiber wholesalers, and counts of competitive networks to be unreliable and unsuitable as triggers for the impairment test,[133] we also find that such data are not informative for identifying where any unbundling relief would be warranted or where a competitive carrier might serve a substantial number of buildings within a wire center. Many of these data are even less relevant in the MSAs at issue here, as Verizon's submissions combine competitive deployment in those wire centers where the triggers have already been satisfied with those wire centers that do not meet the triggers.

41. Third, we are also unable to rely on the lists of lit buildings in Verizon's petitions to support its request for forbearance. Verizon has submitted exhibits identifying the "Number of Known Buildings to which Competitive Carriers Have Deployed Fiber-Based Equipment in Verizon ILEC Territory" that it has culled from the GeoResults Building Database.[134] However, evidence derived from this database does not support relief because Verizon does not provide any comparative data for the number of buildings with demand for high-capacity services or lit buildings that Verizon serves, and the percentage of all commercial buildings that competitors light is extremely small on a relative basis – only 0.25 percent in the 6 MSAs, with the highest percentage in Virginia Beach of only 1.9 percent.[135] More problematically in those MSAs where relief has already been partially granted by virtue of the impairment triggers, Verizon's submission counts all lit buildings indistinguishably. Although the accuracy and reliability of the GeoResults data are challenged on our record,[136] we do not reach the question of whether we could forbear based on these data.

42. In support of its request for UNE relief, Verizon also argues that competitors are overall primarily using special access rather than UNEs when providing service over Verizon's facilities.[137] For the reasons set forth in the *Triennial Review Remand Order*, the Commission already recognized that the availability of UNEs is a competitive constraint on special access pricing.[138] While Verizon can

(Continued from previous page)
substantial competitive threat to Qwest for higher revenue enterprise services, and was limited to the deployment of transport rather than last-mile facilities. *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19448, para. 66.

[132] *See e.g.,* CLEC Group Comments at 24 (Verizon's reliance on fiber route maps have little probative value, fail to indicate the capacity of services, whether locations require capacity only at multiple DS3 or whether they are transport, long-distance service, wireless or some other combination other than local).

[133] *Triennial Review Remand Order*, 20 FCC Rcd at 2597, para. 110 ("These data are not complete, not representative of the entire industry, not readily confirmable, and aggregated at too high a level to be informative of local market conditions.").

[134] Verizon Oct. 10, 2007 *Ex Parte* Letter at 2, Exh. 2.

[135] *See* Letter from Brett Heather Freedson, Counsel for XO Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 (filed Nov. 8, 2007) Attach. at 6. Verizon counters that it the competitors improperly compare competitor-lit buildings with all commercial buildings, where not all commercial buildings have demand for the high-capacity services that these competitors provide. Verizon Nov. 7, 2007 *Ex Parte* Letter at 13. However, where Verizon does not submit the number of such buildings, nor the number of buildings which Verizon itself lights, it is not unreasonable for the Commission to use the GeoResults total number of commercial buildings.

[136] *E.g.*, *id*. at 2-3 (arguing that the GeoResults data are incomplete and underrepresent competitive deployment in certain ways); *but see* Letter from Genevieve Morelli, Counsel for Covad Communications Group and XO Communications, LLC to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-172 at 2-5 (filed Nov. 13, 2007) (responding that GeoResults is a reliable, independent source of competitive market data relied on by incumbents, competitors, and regulators).

[137] Verizon Reply at 5, 56-61; Verizon Oct. 10, 2007 *Ex Parte* Letter, Exh. 3.

[138] *Triennial Review Remand Order*, 20 FCC Rcd at 2571-5, paras. 64-65. Among other reasons, the Commission explained that "even assuming that some competitive LECs are providing services profitably using special access, (continued….)

demonstrate a fair amount of retail enterprise competition using Verizon's special access services and UNEs, competition that relies on Verizon's own facilities is not a sufficient basis to grant forbearance from UNE requirements.

43. *Section 10(a)(2) – Protection of Consumers*. The second prong of section 10(a) states that the Commission shall forbear if "enforcement of such regulation or provision is not necessary for the protection of consumers."[139] For reasons similar to those set forth in the previous section, we conclude that UNEs are still necessary for the protection of consumers in these MSAs. There is insufficient evidence of competition from other last-mile facilities-based providers for us to determine that consumers will be protected if we forbear from Verizon's unbundling obligations.

44. *Section 10(a)(3) – Public Interest*. We also find that relieving Verizon from the section 251(c)(3) access obligations for loop, certain subloop, and transport elements is not in the public interest under section 10(a)(3).[140] Having found above that UNEs remain necessary for the protection of consumers and to ensure just and reasonable and not unjustly and unreasonably discriminatory, prices, terms and conditions in these MSAs, we conclude that forbearing from UNE obligations is not in the public interest.

3. Forbearance Analysis for *Computer III* Requirements

45. We deny Verizon's request for forbearance from *Computer III* requirements.[141] We cannot find on the record before us that forbearance from the application of the *Computer III* requirements is unnecessary within the meaning of section 10(a) of the Act.[142] Although Verizon suggests there are costs associated with the *Computer III* requirements, there is no evidence in the record demonstrating why, on balance, the *Computer III* requirements are not necessary to ensure that the "charges, practices, classifications, or regulations . . . for[] or in connection with [Verizon's local exchange and exchange access services] are just and reasonable and are not unjustly or unreasonably discriminatory" and necessary for the protection of consumers.[143] Indeed, there is scant evidence in the record regarding the requested relief from *Computer III* requirements at all. The Commission adopted the *Computer II* structural safeguards and the *Computer III* non-structural safeguards in order to prevent the BOCs from using "exclusionary market power" arising from their control over ubiquitous local telephone networks to impede competition in the enhanced services market.[144] The record here does not demonstrate that

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the record indicates that the availability of UNEs is itself a check on special access pricing, and that elimination of UNE availability to customers using tariffed alternatives might preclude competition using those tariffed services going forward. Specifically, without recourse to TELRIC-priced UNEs, carriers using special access could lose substantial bargaining power when negotiating special access rates." *Id*. at 2574, para. 65.

[139] 47 U.S.C. § 160(a)(2).

[140] 47 U.S.C § 160(a)(3). In making its public interest determination, the Commission must consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. *Id*. § 160(b).

[141] We note that Verizon previously has obtained significant relief from *Computer III* requirements. *See, e.g.*, *Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14875-76, para. 41. Our actions in this Order do not disturb regulatory relief from *Computer III* requirements that Verizon already has obtained.

[142] 47 U.S.C. § 160(a).

[143] *See* Verizon Reply at 65.

[144] *Computer II Final Decision*, 77 FCC 2d at 475, para. 231; *Computer III Phase I Order*, 104 FCC 2d at 964, para. 4. "Exclusionary" (or "Bainian") market power, which is the "ability of a firm profitably to raise and sustain its price significantly above the competitive level by raising its rivals' costs and thereby causing the rivals to restrain their output." *See Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's* (continued….)

Verizon no longer possesses exclusionary market power, and thus as in the *Section 272 Sunset Order*, we must assume that Verizon still possesses such market power.[145] Verizon's exercise of exclusionary market power could both lead to "charges, practices, classifications, or regulations . . . for[] or in connection with" Verizon's interexchange services are unjust, unreasonable, or unjustly or unreasonably discriminatory" and could harm consumers. Such results would be contrary to the public interest. We thus are unable to find on this record that forbearance from the *Computer III* requirements satisfy any of the criteria of section 10(a).

IV. EFFECTIVE DATE

46. Consistent with section 10 of the Act and our rules, the Commission's forbearance decision shall be effective on Wednesday, December 5, 2007.[146] The time for appeal shall run from the release date of this order.

V. ORDERING CLAUSES

47. Accordingly, IT IS ORDERED, pursuant to section 10(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 160(c), that the Verizon Telephone Companies' Petition for Forbearance in Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach MSAs, filed September 6, 2006, ARE DENIED as set forth herein.

48. IT IS FURTHER ORDERED that, for the reasons set forth above, Broadview *et al.*'s Motion to Compel, filed on October 11, 2006 and amended on October 13, 2006, IS DISMISSED.

49. IT IS FURTHER ORDERED that, for the reasons set forth above, ACN's *et al.* First Motion to Dismiss, filed on October 16, 2006, IS DENIED.

50. IT IS FURTHER ORDERED that, for the reasons set forth above, NuVox/XO Petition for Reconsideration of Protective Order, filed on October 16, 2006, IS DENIED.

51. IT IS FURTHER ORDERED that, for the reasons set forth above, ACN's *et al.* Second Motion to Dismiss, filed on May 22, 2007, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket Nos. 96-149, 96-61, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15802-03, para. 83 (1997) (citing Thomas G. Krattenmaker, Robert H. Lande & Steven C. Salop, *Monopoly Power and Market Power in Antitrust Law,* 76 GEO. L. J. 241, 249-53 (1987)), *recon. denied*, Second Order on Reconsideration and Memorandum Opinion and Order, 14 FCC Rcd 10771 (1999).

[145] *See Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements et al., CC Docket No. 00-175, WC Docket Nos. 02-112, 06-120*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440, 16473, para. 64 (2007) (*Section 272 Sunset Order*).

[146] *See* 47 U.S.C. § 160(c) (deeming the petition granted as of the forbearance deadline if the Commission does not deny the petition within the time period specified in the statute); 47 C.F.R. § 1.103(a) ("The Commission may, on its own motion or on motion by any party, designate an effective date that is either earlier or later in time than the date of public notice of such action.").

APPENDIX A

Comments/Oppositions to the Verizon 6 MSA Petitions for Forbearance in WC Docket No. 06-172

Commenter/Opponent	Abbreviation
ACN Communications Services, Inc. *et al.*	CLEC Group
Ad Hoc Telecommunications Users Committee	Ad Hoc
Broadview Networks, Inc., Covad Communications Group, NuVox Communications and XO Communications, LLC	Broadview
California Public Utilities Commission	California Commission
Cavalier Telephone Subsidiaries	Cavalier
Centennial Ventures, Columbia Capital, M/C Venture Partners and Tennenbaum Capital Partners	Telecom Investors
City of New York	City of New York
Comcast Corporation	Comcast
COMPTEL	COMPTEL
Cox Communications, Inc.	Cox
Delaware Public Service Commission and the Delaware Division of the Public Advocate	Delaware Commission
Earthlink, Inc. and New Edge Network, Inc.	Earthlink
Integra Telecom, Inc.	Integra Telecom
Mammoth Telephone & Telegraph, Inc.	Mammoth
National Association of State Utility Consumer Advocates	NASUCA
National Cable & Telecommunications Association	NCTA
National Telecommunications Cooperative Association	NTCA
Pennsylvania Public Utility Commission	Pennsylvania Commission
Sprint Nextel Corporation	Sprint Nextel
Time Warner Cable	Time Warner Cable
Time Warner Telecom Inc., CBeyond Inc., and One Communications Corp.	Time Warner Telecom
Virginia State Corporation Commission	Virginia Commission

Replies to the Verizon 6 MSA Petitions for Forbearance in WC Docket No. 06-172

Replies	Abbreviation
ACN Communications Services, Inc. *et. al.*	CLEC Group
BestWeb CLEC, Ltd	BestWeb
Broadview Networks, Inc., Covad Communications Group, NuVox Communications and XO Communications, LLC	Broadview
Charter Communications, Inc.	Charter
City of Philadelphia	City of Philadelphia
COMPTEL	COMPTEL
Full Service Network	FSN
Ionary Consulting	Inonary Consulting

Massachusetts Department of Telecommunications and Cable	MDTC
National Association of State Utility Consumer Advocates	NASUCA
National Telecommunications Cooperative Association	NTCA
New Hampshire Public Utilities Commission	New Hampshire Commission
New Jersey Board of Public Utilities	New Jersey Board
New York State Department of Public Service	NYSDPS
PAETEC Communications, Inc. and US LEC Corp.	PAETEC
Pennsylvania Public Utilities Commission	Pennsylvania Commission
Qwest Corporation	Qwest
T-Mobile USA, Inc.	T-Mobile
Verizon Telephone Companies	Verizon

Comments to the Verizon 6 MSA Motion to Compel Disclosure of Confidential Information Pursuant to Protective Order in WC Docket No. 06-172

Commenter	**Abbreviation**
Ad Hoc Telecommunications Users Committee	Ad Hoc
Alpheus Communications, L.P. *et al.*	Alpheus
CBeyond Inc., and One Communications Corp., and Time Warner Telecom Inc.	Time Warner Telecom
Cox Communications, Inc.	Cox
Sprint Nextel Corporation	Sprint Nextel
Verizon Telephone Companies	Verizon

Replies to the Verizon 6 MSA Motion to Compel Disclosure of Confidential Information Pursuant to Protective Order in WC Docket No. 06-172

Replies	**Abbreviation**
Broadview Networks, Inc., Covad Communications Group and XO Communications, LLC	Broadview
City of Philadelphia	City of Philadelphia
Time Warner Telecom Inc., CBeyond Inc., and One Communications Corp.	Time Warner Telecom

Comments to the Verizon 6 MSA
Motion to Dismiss in WC Docket No. 06-172

Commenter	Abbreviation
Ad Hoc Telecommunications Users Committee	Ad Hoc
COMPTEL	COMPTEL
Cox Communications, Inc.	Cox
Sprint Nextel Corporation	Sprint Nextel
Qwest Communications International Inc.	Qwest
Verizon Telephone Companies	Verizon

Replies to the Verizon 6 MSA
Motion to Dismiss in WC Docket No. 06-172

Replies	Abbreviation
ACN Communications Services, Inc. *et al.*	CLEC Group
Broadview Networks, Inc., Covad Communications Group and XO Communications, LLC	Broadview
City of Philadelphia	City of Philadelphia
COMPTEL	COMPTEL
Time Warner Telecom Inc., CBeyond Inc., and One Communications Corp.	Time Warner Telecom
Verizon Telephone Companies	Verizon

APPENDIX B

We estimate Verizon's market share as discussed above by employing a two step procedure for each MSA.[1]

Step 1. We estimate the total number of customers that have telephone service (whether wireline or mobile wireless) and the number of customers that exclusively subscribe to mobile wireless service (*i.e.* customers that have cut-the-cord). We assume 12.8 percent of households have cut-the-cord[2] and that the typical wireline household has one wireline phone.[3]

(Verizon + CLEC) = (1-.128) * $C_{telephone}$

Where,

$C_{telephone}$ = The total number of customers that have telephone service (whether wireline or mobile wireless).

Verizon = Verizon residential local service customers.[4]

CLEC = Verizon Resold Lines + Verizon Residential Wholesale Advantage Lines + Cable Providers Residential Access Lines.[5]

Rearranging the expression yields,

$C_{telephone}$ = (Verizon + CLEC)/(1-.128).

We estimate, $Wireless_{CTC}$, the total number of customers that have cut-the-cord, by

$Wireless_{CTC}$ = $C_{telephone}$ - Verizon - CLEC.

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[1] *See supra* para. 27. This approach is consistent with our methodology for calculating market share in prior orders. *See, e.g.*, *Section 272 Sunset Order*, 22 FCC Rcd at 16461-63, paras. 41-42 & App. B; *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules as They Apply After Section 272 Sunsets*, WC Docket No. 05-333, Memorandum Opinion and Order, 22 FCC Rcd 5207, 5225-26, para. 34 (2007); *AT&T/BellSouth Merger Order*, 22 FCC Rcd at 5714, para. 95; *Verizon/MCI Merger Order*, 20 FCC Rcd 18481-82, paras. 90-91.

[2] The Centers for Disease Control estimates that 12.8% of households exclusively subscribe to a mobile wireless service. Centers for Disease Control and Prevention, *Wireless Substitution: Early Release of Estimates Based on Data from the National Health Interview Survey, July - Dec. 2006* at 1 (rel. May 14, 2007), *available at* http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200705.pdf. Reliance on this government estimate of "cut the cord" wireless substitution is consistent with the Commission's reliance on such government survey data in prior proceedings, *see, e.g.*, *Verizon/MCI Merger Order*, 20 FCC Rcd at 18482, para. 91 n.270 (relying on Bureau of Labor Statistics estimate of "cut the cord" wireless substitution for purposes of market share calculation), and corresponds most closely with the time period covered by Verizon's data.

[3] In December 2005, there were 95.6 million primary residential lines and 12.1 non-primary residential lines nationwide. *See* Trends in Telephone Service, Table 4, *available at* http:hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270407A1.pdf. This suggests that 89% of households with wireline service have a single wireline phone.

[4] Verizon Reply Lew/Wimsatt/Garzillo Decl. Exh. 1 (providing residential data as of December 2006).

[5] *Id.* For cable providers' residential access lines, see *supra* note 71.

Step 2. We estimate Verizon's market share as follows:

$MS_{Verizon} = [Verizon + VerizonWireless_{CTC}] / [Verizon + CLEC + Wireless_{CTC}]$[6]

Where,
$VerizonWireless_{CTC}$ = Verizon Wireless customers that have cut-the-cord.[7]

[6] As noted above, attributing Verizon Wireless' share to Verizon is consistent with our methodology in prior orders. *See supra* note 1. This approach is warranted because, as the Commission repeatedly has found, "a wireline-affiliated [wireless] carrier would have an incentive to protect its wireline customer base from intermodal competition." *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967, 14018, para. 142 (2005); *see also Applications of AT&T Wireless Services, Inc., Transferor, and Cingular Wireless, Corp., Transferee*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21615, para. 243 (2004).

[7] As in prior proceedings, we use the National Resource Utilization and Forecast (NRUF) database to estimate Verizon's market share of mobile wireless numbers in the geographic area at issue. *See supra* note 1.

STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

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

The Commission adopted an Order denying forbearance petitions by Verizon for relief from network sharing and other obligations in six cities. Verizon requested relief similar to the relief the Commission granted to Qwest in Omaha. Although significant competition exists in Verizon's markets, particularly in Providence and Virginia Beach, the Commission determined based on the specific market facts before us that Verizon's petitions do not warrant regulatory relief like that afforded to Qwest in Omaha. As competition in these markets continues to develop, I am happy to reevaluate these markets based on updated market facts.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
CONCURRING

Re: *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Memorandum Opinion and Order

I support today's Order which denies petitioner forbearance relief from dominant carrier regulation and from its UNE and *Computer III* obligations. In doing so, the Commission further supports its view that *Qwest-Omaha* and *ACS-Anchorage* were truly unique situations. I concur in this decision because the Commission continues to rely too heavily on the intermodal efforts of a single alternative provider to decide whether we should forbear from the incumbent's retail and wholesale obligations. The Telecom Act envisioned more than just a cable-telephone duopoly as sufficient competition in the marketplace. In this case, the Order fortunately finds that forbearance is inappropriate because the petitioner does not face enough facilities-based competition from the local cable operator to meet Section 10's forbearance standard. However, I remain concerned that under the Commission's analysis, forbearance might be deemed appropriate were cable found to have a larger market share. Such a finding in the future would put at risk smaller competitive providers as evidenced by the fact that some competitors chose not to compete in Omaha after the *Qwest-Omaha* forbearance decision. I would have been more comfortable with an analysis less accepting of duopoly as a competitive marketplace and that did not lead us further down this road.

While the final outcome in this case is a good one, I continue to be less than enthused about the process that got the Commission here at all. Just consider the amount of resources the Commission has expended in the last 15 months working to adjudicate this matter. And this is not to mention the resources spent by numerous competitors with far less resources than the incumbent telephone company. Further, the Commission's policy making was dictated largely by the petitioner. The Commission's decision would not have applied on an industry-wide basis as it typically does in a rulemaking. Instead, granting the petition would have merely sparked more forbearance petitions. And just imagine the wholly wasted resources had the petitioner decided to withdraw the petition at the eleventh hour as others have done when they were unhappy with the proposed result. The Commission could have addressed some of the procedural flaws in the context of this Order but chose not to do so. In light of all this, I certainly hope that we complete the recently announced NPRM on forbearance procedures as expeditiously as possible.

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
CONCURRING

Re: *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas;* WC Docket No. 06-172, Memorandum Opinion and Order (Dec. 5, , 2007).

In today's decision, the Commission addresses a petition filed by the incumbent local telecommunications provider, seeking a broad exemption from the Act and the Commission's rules for dominant providers. The petition seeks relief for six of the most populous regions of the country, so the outcome here stood to dramatically affect the telecommunications choices available to millions of Americans. The Commission's recent history on forbearance petitions – including failing to even issue an order addressing the merits of a sweeping petition – has been less than enviable. So, I'm pleased that this Order denies the petition and takes a step towards a better reconciliation of the pro-competitive and deregulatory goals set out in the Act.

I agree with the Order's finding that the petitioner has fallen short of its burden, although I still believe that the Commission could improve its analysis of local competitive conditions and its framework for considering changes to our rules. There will always be imperfections in the data available to outside parties, but I would have preferred that the Commission take a finer look at specific geographic and product markets in this Order. In a welcome break from many recent Commission Orders, this Order does not place unwavering reliance on "predictive judgments" about our hopes for the development of competition but, instead, takes a closer look at the facts on the ground. In order to restore integrity to the forbearance process, the Commission simply must require petitioners to come forward with credible evidence regarding competitive conditions for the products and markets at issue.

Finally, as I've stated before, I continue to believe that the Act contemplates a competitive environment based on more than a simple rivalry – or duopoly – of a wireline and cable provider. Section 10 requires the Commission to consider, among other things, competitive conditions, the protection of consumers, and the public interest. The Commission must be ready to respond to a dynamic marketplace but it must also beware of the potential to lock consumers into a choice between two providers, a result that would have been more likely were relief granted here and one that would fall far short of the vital goals of the 1996 Act.