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October 1, 2007

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas, WC Docket No. 07-97

Petitions of AT&T Inc., BellSouth Corporation, the Embarq Local Operating Companies, and Qwest Pursuant to 47 U.S.C. 160(c) for Forbearance from Title II and Computer Inquiry Rules with Respect to Broadband Services, WC Docket Nos. 06-125 & 06-147

Petitions of Verizon Telephone Companies Pursuant to 47 U.S.C. 160(c) for Forbearance from Title II and Computer Inquiry Rules with Respect their Broadband Services, WC Docket Nos. 04-440

Dear Ms. Dortch:

In an extensive *ex parte* letter dated September 4, 2007, a large group of competitive local exchange carriers ("CLECs"), and their trade association, filed detailed evidence documenting the many flaws in the E911 and other data upon which Verizon is relying in an attempt to demonstrate that there is sufficient facilities-based competition in six of its markets to

justify a grant of forbearance from Section 251(c)(3) unbundling requirements.[1] Since then, Verizon and other incumbent local exchange carriers ("ILECs"), cognizant of the weaknesses in the evidence they have supplied to support their forbearance petitions, have employed a new argument. They contend that only the CLECs know where competitive facilities are deployed, and that CLECs have failed to put such evidence on the record. *This is false*. Covad Communications Group, NuVox Communications, and XO Communications, LLC (collectively "Joint CLECs") hereby respond to the ILECs' misleading and inaccurate claim and set the record straight.

As a threshold matter, for purposes of determining the extent of competition in a market, only facilities-based (or "Type I") deployments are relevant. As pointed out in the September 4th Letter, the E911-derived data supplied by Verizon contains (among other fatal flaws) a mixture of Type I and Type II *(i.e.,* non-facilities based) deployments. Therefore, to the extent the data has any merit at all, the Commission must parse it more closely to be able to use it (assuming, of course, that each of the other flaws with the data identified in the September 4th Letter are fixed). Contaminated Type I-Type II data also forms the basis of the evidence supplied by Qwest in its petitions seeking forbearance from Section 251(c)(3) unbundling obligations in four markets[2] and, thus, the Qwest data, if it is useful at all, must be fixed or should be ignored.

However, there is an independent source of Type I deployment data that Verizon, AT&T and other ILECs have relied upon in many proceedings before the Commission[3] – just not in these forbearance proceedings. That data is supplied by GeoResults, and it is available for purchase by any entity, including the ILECs. The GeoResults data *identifies* all

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1 Letter from Brad Mutschelknaus, Counsel to Covad Communications Group, et al. to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (filed Sept. 4, 2007) ("*September 4th Letter*").

2 *See Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97 (filed Apr. 27, 2007).

3 *See, e.g., Review of the Section 251 Unbundling Obligations of Local Exchange Carriers; Implementation of Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*"); *Unbundled Access to Network Elements*; *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533 (2005) ("*Triennial Review Remand Order*"), *affirmed Covad Communications v. FCC*, 450 F.3d 528 (D.C. Cir. 2006)..

commercial buildings in an MSA or parts of an MSA (for instance, wire centers) and *all buildings where competitors are serving customers using their own facilities.*[4]

The Joint CLECs have done what the ILECs failed to do. For the purpose of examining facilities-based competition in the six markets where Verizon seeks forbearance in WC Docket No. 06-172, the Joint CLECs purchased the GeoResults data for each market sorted by wire center so as to meet the coverage and geographic market tests set forth by the Commission in the *Omaha Forbearance Order.*[5] The overall MSA data for each of these six MSAs prove conclusively that extremely few buildings are served by competitors over Type I facilities:

Percent of Commercial Buildings in the MSA where Competitive Providers have Deployed Their Own Loop Facilities

MSA	# of Total Buildings	% Buildings with CLEC Facilities
Boston	192,227	0.1%
New York	446,122	0.1%
VA Beach	72,229	2%
Philadelphia	217,725	0.15%
Pittsburgh	85,694	0.19%
Providence	56,927	0.4%

4 A CLEC Lit Commercial Office Building is defined as any Commercial Building that has fiber-enabled network office equipment that has been placed there by one or more CLECs, which generally indicates that a CLEC has deployed its own fiber or has a long-term lease of dark fiber to that building.

5 *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) ("*Omaha Forbearance Order*"), *aff'd Qwest Corporation v. Federal Communications Commission*, Case No. 05-1450, (D.C. Cir. Mar. 23, 2007) ("*Qwest Omaha*").

The paucity of CLEC loop facilities to commercial buildings does not differ materially when viewed at the individual wire center level. As shown below, for five of the six MSAs at issue in the Verizon forbearance proceeding, the highest percentage of CLEC loop facilities in any wire center is less than 1.5%. In only one MSA, Virginia Beach, does CLEC Type I penetration exceed that percentage and, in the Virginia Beach MSA, the wire center with the highest penetration level is a mere 4.29%.

Wire Center in Each MSA With Highest % of CLEC Type I Buildings	**Number of Commercial Buildings**	**% Commercial CLEC Type I Buildings**
Boston WLHMMAWE	1,007	1.49%
New York NYCMNYBS	4,008	1.07%
Philadelphia PHLAPALO	4,676	0.68%
Pittsburgh PITBPADT	4,137	1.09%
Providence PRVDRIWA	8,129	0.97%
Virginia Beach NRFLVABL	1,654	4.29%

In addition, as illustrated in the next table, the number of wire centers in each MSA in which CLECs have *no* Type I facilities to buildings is similarly dramatic:

MSA	Number of Wire Centers	Number of Wire Centers With No CLEC Type I Facility	% of Wire Centers With No CLEC Type I Facility
Boston	131	69	53%
New York	115	52	45%
Philadelphia	156	78	50%
Pittsburgh	149	114	77%
Providence	33	11	33%
VA Beach	58	16	28%

The conclusions reached for Verizon using the GeoResults data can be found in all other MSAs served by other incumbent providers. In previous proceedings, the Joint CLECs have submitted GeoResults data for other MSAs around the United States,[6] and that data also demonstrates that very few buildings in an MSA are served by CLEC Type I facilities. Even if the GeoResults data is imperfect and the penetration level is doubled or even tripled, the number of buildings where CLECs have facilities is still extremely small, indicating that no appreciable Type I facilities-based competition to enterprise customers yet exists.

Finally, it is important that the Commission place these results of Type I competition in their proper context in making predictive judgments about the growth of facilities-based competition. Notwithstanding the jump-start provided by the Telecommunications Act of 1996, facilities-based CLECs have taken a decade and well over $100 billion of investment to reach the meager penetration levels shown above. Assuming CLECs continue to invest at past levels – a highly questionable assumption given the high risk of the business and potential regulatory uncertainty – they would not reach penetration levels exceeding 10% for decades. Thus, the

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6 *See, e.g., SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Wilkie Ex Parte Presentation (Jun. 15, 2005), at pp. 13-15; Wilkie Ex Parte Presentation (Aug. 1, 2005), at pp. 8-10.

Commission has no basis upon which to predict the widespread availability of facilities-based competitors to enterprise customers.

Presumably because the GeoResults data do not support its claim of widespread CLEC facilities deployment, Verizon instead relies on maps of metro fiber rings to argue that competitors have deployed extensive fiber networks that serve or could serve enterprise customers. However, such fiber maps cannot be used to demonstrate which buildings are actually served by competitors. Fiber maps only show fiber running down the middle of the street – not which buildings or how many buildings are served by the fiber. In addition, the maps cannot be used to predict which buildings might be served by competitors within a commercially reasonable period of time for a variety of reasons, including where the fiber can be tapped, whether building owners will grant entrance, the distance to the building, whether capacity is available, whether aggregate demand in the building warrants facility construction, and whether the provider is willing to wholesale capacity.[7]

It is instructive to view the fiber map data used by Verizon in WC Docket 06-172 to more closely examine the faults with these data. Verizon claims that competitors are operating between two and 24 fiber networks within the MSAs that are the subject of Verizon's petitions.[8] Verizon offers maps claiming to show these fiber routes are within each of these MSAs,[9] and represents that "these fiber routes reach virtually all areas of the . . . MSA where enterprise customers are concentrated."[10] There are fundamental problems with Verizon's data, however, rendering it of little to no probative value. Specifically:

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7 For these reasons, for example, XO Communications – one of the nation's largest facilities-based CLECs, with over $6 billion in network investment – has been able to build directly into only approximately 3,000 buildings out of 6.9 million nationwide.

8 Verizon Petition – Boston, at 20 (12 competitive fiber networks); Verizon Petition – New York, at 24 (24 competitive fiber networks); Verizon Petition – Philadelphia, at 24 (12 competitive fiber networks); Verizon Petition – Pittsburgh, at 21 (four competitive fiber networks); Verizon Petition – Providence, at 21 (three competitive fiber networks); and Verizon Petition – Virginia Beach, at 20 (two competitive fiber networks).

9 *See, e.g., Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston Metropolitan Statistical Area*, WC Docket No. 06-172, Declaration of Quintin Lew, Judy Verses, and Patrick Garzillo Regarding Competition in the Boston Metropolitan Statistical Area, (filed Sept. 6, 2007) ("*Lew/Verses/Garzillo Decl. – Boston*"), Exhibits 5, 6.

10 Verizon Petition – Boston, at 21. *See also* Verizon Petition – New York, at 23; Verizon Petition – Philadelphia, at 23; Verizon Petition – Pittsburgh, at 21; Verizon Petition – Providence, at 20; Verizon Petition – Virginia Beach, at 20.

- Verizon does not present the data on a wire center level, consistent with the *Omaha Forbearance Order* and the *Anchorage Forbearance Order*.

- Verizon fails to indicate how many competing fiber providers operate in each wire center, and it does not identify the fiber providers it claims are operating each route.

- Verizon fails to identify which (if any) of these fiber networks in each wire center reach, and can support the offering of a full range of services within a commercially reasonable period of time to, individual customer locations.[11]

- Verizon fails to identify whether (and to what extent) the competitive fiber on its route maps is being used to provide competitively-available telecommunications services (versus fiber being put to private use) and Verizon fails to differentiate between fiber transport and fiber being used to provide local exchange access.

- Verizon does not identify which (if any) competitive fiber is being offered to carrier customers on a wholesale basis.

- Verizon fails to acknowledge that merely passing a customer location does not necessarily enable the owner of competitive fiber to provide service at that customer location.[12]

Thus, the fiber map data relied upon Verizon is wholly inadequate to demonstrate either current or future competition.

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11 *See, e.g., Petitions of the 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*, Comments of Broadview Networks, Inc., Covad Communications Group, NuVox Communications, and XO Communications, LLC, WC Docket No. 06-172 (filed Mar. 5, 2007), at 45-46.

12 While some competitive carriers have constructed fiber rings in geographic areas where they offer local exchange services, the vast majority of commercial buildings are not located on those fiber rings and the carriers must construct building "laterals" to serve customers located in those commercial buildings. The construction of laterals is extremely difficult, time consuming, and costly. According to XO Communications, LLC ("XO"), the extraordinary costs of constructing laterals results in XO not being able, realistically, to add a building to its network unless customer demand at that location exceeds three DS-3's of capacity. *See In the Matter of Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM-10593, *Declaration of Ajay Govil on Behalf of XO Communications, Inc.* (filed Aug. 8, 2007), at 10.

Finally, Verizon and the other ILECs argue that cable companies are major facilities-based providers of telephony services to businesses because they have deployed coaxial cable to many commercial buildings for the purpose of providing cable services. Existing cable technology, however, does not support the provision of reliable, economic, or large scale services at a DS1 level to enterprise customers, primarily because of the timing/clocking and upstream bandwidth problems.[13] While CableLabs, the recognized standards body for the cable industry, issued specifications in May 2006 to address the timing/clocking problems in part, commercial deployment is expected no sooner than mid-2008.[14] Then, to provide enterprise-level telephony services, cable systems must make significant upgrades to their network capacity at substantial cost.[15] It is thus not surprising that Credit Suisse noted that the country's largest cable operator, Comcast, "is still in the early stages of starting up its commercial telecom business...It's going to take some time to develop business plans, establish operations (*e.g.*, product development, customer support, field operations, and sales), and to then ramp up the business throughout Comcast's footprint."[16] In sum, the provision of competitive facilities-based telephony to enterprise customers using cable technology is unproven, yet unknown and several years in the future, at the very least.

The arguments of Verizon and the other ILECs about the extent of facilities-based competition ring hollow. The evidence presented here by the Joint CLECs demonstrates that competitors have spent enormous sums of money to build networks, but these networks only serve – or are capable of serving in a commercially reasonable period of time – an extremely small portion of buildings in each local market at issue. If the Commission wishes network deployment to continue so that facilities-based competition can develop more ubiquitously, it needs to maintain its current unbundling policies. The Commission also needs to account for the lack of facilities-based alternatives when considering the deregulation of other services used by enterprises.

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13 *See, e.g.,* Letter from John Nakahata, Counsel for General Communications Inc. ("GCI"), to Marlene Dortch, Secretary, FCC, WC Docket No. 05-281 9nov. 14, 2006, at 9; Comments of GCI on ACS Anchorage, Inc. Forbearance Petition, WC Docket No. 05-281, (Aug. 11, 2006), at 14-15, 17.

14 *Id.*

15 The Commission acknowledged these issues in the *Anchorage Forbearance Order*, referencing GCI's statements that "it will need to undertake a 'large-scale upgrade of its network capacity before it can provide all business customers with DS1 services over its [cable] plant.'" *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*, Memorandum Opinion and Order, 22 FCC Rcd 1958, at n. 137 (2007) ("*Anchorage Forbearance Order*").

16 Credit Suisse, More Upside in Comcast: Comcast Report, 8 (Sept. 22, 2006).

In sum, the ILEC argument that CLECs are withholding information on the extent of their facilities deployment is a "red herring." The submission of network deployment by any single CLEC would not answer the question, since ILECs would surely argue that information from a single provider paints an incomplete picture. But data is readily available from commercial sources that disproves ILEC contentions that Type I facilities-based competition is widespread, and the Joint CLECs have filed the relevant information in the record.

Respectfully submitted,

Brad E. Mutschelknaus

BEM:cpa
cc: Chairman Kevin Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Tate
Commissioner Robert McDowell
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