



November 7, 2007

EX PARTE Via Electronic Filing

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

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

Dear Ms. Dortch:

The Office of Advocacy, U.S. Small Business Administration ("Advocacy") respectfully submits this *ex parte* filing in the above-referenced proceeding to express our concerns regarding the potential negative impact of unbundled network element (UNE) forbearance on small competitive local exchange carriers (CLECs) and the small businesses that they serve. In response to new data presented by small carriers based on recent market changes, Advocacy recommends that the Commission analyze markets where UNE forbearance has already been granted to fully understand its impact before granting additional forbearance.

Section 10 of the Communications Act of 1934, as amended ("The Act"), sets forth the Commission's forbearance procedures. Under Section 10, the FCC may forbear from regulating specified telecommunications services if it determines via a four-part analysis that the regulation is no longer necessary.<sup>1</sup> The inclusion of this multi-step analysis reflects Congress' intent to afford the FCC flexibility in regulating a rapidly-changing industry while ensuring the forbearance process fully considers all available data and market specifics.

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<sup>1</sup> 47 U.S.C. § 160 detailing in parts a and b that the Commission must determine: 1) that enforcement of the regulation is not necessary to ensure that rates and other practices are "just and reasonable;" 2) that enforcement of the regulation is not needed to protect consumers; 3) that the forbearance grant is "consistent with the public interest;" and finally stating that 4) the FCC must weigh "whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will promote competition among providers of telecommunications services."

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office within the Small Business Administration (“SBA”), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. Part of our role under the Regulatory Flexibility Act (“RFA”) is to assist agencies in understanding how regulations may impact small businesses, and to ensure that the voice of small businesses is not lost within the regulatory process.<sup>2</sup> Congress crafted the RFA to ensure that, while accomplishing their intended purposes, regulations did not unduly inhibit the ability of small entities to compete, innovate, or to comply with the regulation.<sup>3</sup> Advocacy believes that the Section 10 assessment is similar to the analysis required in rulemakings under the Regulatory Flexibility Act (RFA)<sup>4</sup> in that it directs the FCC to consider the economic impact of regulatory action.

Subsequent to the FCC’s grants of pricing flexibility for carriers, the Government Accountability Office (GAO) and QSI Consulting have published studies that indicate how recent grants of forbearance and complications in special access and UNE pricing have negatively affected competition in both the wholesale and retail telecommunications markets.<sup>5</sup> The QSI study is based in part on pricing data related to telecommunications expenditures collected in the six metropolitan statistical areas in which Verizon seeks UNE forbearance.<sup>6</sup> The evidence presented in the GAO study with respect to special access forbearance, and the data provided in the QSI study warrant further review. Raising the price of an input that enters into all small CLEC’s production functions inevitably leads to an increase in the total costs of production. Such increases will ultimately impact revenues and drive small CLECs out of the market.

Advocacy urges the Commission to consider these studies and all other available data in conducting its requisite analysis under Section 10(b). Advocacy recommends that the FCC fully analyze the impact of the grant in markets where UNE forbearance has already been allowed to see if the market conditions for the petition under current review meet the requirements of Section 10.

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<sup>2</sup> Pub. No. 96-354, 94 Stat. 1164 (1980).

<sup>3</sup> Pub. L. 96-354, Findings and Purposes, Sec. 2 (a)(4)-(5), 126 Cong. Rec. S299 (1980).

<sup>4</sup> Pub. No. 96-354, 94 Stat. 1164 (1980).

<sup>5</sup> See *FCC Needs to Improve its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, GAO-07-80 (November 2006); See also, *An Analysis of Verizon’s Petition for Forbearance: A Quantification of the Impact of Forbearance*, QSI Consulting, Inc. (October 2007).

<sup>6</sup> These areas include Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach.

Respectfully submitted,

/s/ Thomas M. Sullivan

Thomas M. Sullivan  
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/s/ Cheryl Johns

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