

**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))	WC Docket No. 06-172
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**

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SUMMARY

The 1996 Act allows the Commission to forbear from applying certain provisions of the 1996 Act, or certain of its rules and regulations, only if the Commission affirmatively finds that each of the requirements established by Congress is satisfied, for each of the markets within which forbearance is requested. Under section 10, a grant of forbearance relief is lawful if the Commission determines that:

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

Importantly, the Commission's public interest analysis also must address whether a grant of forbearance will promote competitive market conditions, or otherwise will enhance competition among providers of telecommunications services. The 1996 Act places the full burden of proving that forbearance relief is warranted on the petitioning party, and does not obligate the Commission to consider evidence not pled by the petitioner.

The Verizon Petitions do not support a grant of forbearance by the Commission, and should be summarily dismissed. The legal arguments made by Verizon inappropriately rely on the market-specific framework set forth in the Commission's confidential *Omaha Forbearance Order*, and effectively deny interested parties a meaningful opportunity to evaluate whether the Verizon Petitions, in fact, justify a finding that ongoing unbundling and dominant carrier regulations are not necessary to ensure that Verizon's charges and practices are just and reasonable and likewise are unnecessary for the protection of consumers. Furthermore, the supporting "data" presented in the Verizon Petitions includes E911 listings disclosed to the

Commission by Verizon in violation of federal and state laws. Moreover, this data does not accurately reflect the nature and scope of competition within the wire centers for which forbearance is requested by Verizon. Similarly, other evidence proffered by Verizon, including marketing statements by would-be service providers, is not sufficiently detailed to demonstrate the existence, on a wire center-specific basis, of actual facilities-based competition within each of the six MSAs that are the subject of the Verizon Petitions.

In addition to the facial shortcomings of the Verizon Petitions, each of the forbearance claims raised by Verizon fail on the merits. A grant of forbearance by the Commission is lawful only if the Verizon Petitions demonstrate that substantial actual facilities-based competition exists for each relevant product market, and within each relevant geographic market. Contrary to Commission precedent, the Verizon Petitions rely only on MSA-wide, statewide, and nationwide information; Verizon does not proffer any of the wire center-specific data necessary to support its forbearance claims. Moreover, the Verizon Petitions improperly rely on general statistical information, including line loss and market coverage figures, without providing any data regarding the actual market presence of competing telecommunications service providers.

With regard to Verizon's requests for relief from Part 61 dominant carrier tariffing requirements, dominant carrier requirements under Section 214 of the Act and Part 63 of the Commission's rules, and the Commission's *Computer III* requirements, including CEI and ONA requirements, the Verizon Petitions lack *any* analysis of the statutory requirements of section 10. Significantly, the Verizon Petitions do not address whether Verizon maintains market power within the wire centers subject to its forbearance requests, nor do the Petitions discuss supply and demand elasticities, or Verizon's costs, resources, structure and size within

those markets. Absent any such analysis, a grant of forbearance by the Commission for those non-section 251 dominant carrier obligations is not justified.

The Commission must consider whether a grant of forbearance would leave providers of competing telecommunications services without meaningful wholesale alternatives, including the network facilities and services that Verizon must offer pursuant to section 271 of the 1996 Act. Verizon has sought to evade its section 271 obligations through repeated challenges to state commission oversight, including requirements for the tariffing of section 271 network elements and services. Moreover, Verizon fails to negotiate in good faith commercial contracts that govern the rates, terms and conditions of its section 271 offerings. At bottom, Verizon has not shown that its treatment of its obligations under section 271 would provide a sufficient backstop to protect consumers and competition if section 251(c)(3) unbundling were to be granted by the Commission.

It is also clear that the Verizon Petitions are not consistent with the public interest, and therefore do not satisfy the third prong of the section 10(a) test. Verizon offers no evidence that the regulations at issue are hindering its ability to compete. Rather, despite the costs of unbundling, competition and consumer interests will continue to benefit from unbundling throughout the six MSAs. Indeed, the evidence is compelling that competitive conditions in these MSAs are such that continued unbundling is required because market forces alone cannot be relied upon to sustain competition. In making its public interest determinations, Section 10(b) requires the Commission to consider whether forbearance will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. The Commission must not only establish that forbearance would not unduly *harm* consumers and competition, it also must find that substantial

competitive *benefits* would arise from forbearance. Verizon has failed to establish such benefits would accrue to the public and, accordingly, the Commission should conclude that the Section 10 standard has not been met.