

**BEFORE THE
STATE CORPORATION COMMISSION
OF VIRGINIA**

Application of)
)
Verizon Virginia Inc.) **Case No. PUC-2007-_____**
and)
Verizon South Inc.)
)
For a Determination that Retail Services Are)
Competitive and Deregulating and Detariffing)
of the Same)

APPLICATION

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**BEFORE THE
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Application of Verizon Virginia Inc. and Verizon South Inc. for a Determination that Retail Services Are Competitive and Deregulation and Detariffing of the Same)
) **Case No. PUC-2007-_____**
)
)

Verizon Virginia Inc. (“Verizon VA”) and Verizon South Inc. (“Verizon South”) (collectively, “Verizon”) respectfully request that the Commission, pursuant to 5 VAC 5-20-80(A) and Va. Code § 56-235.5(E), declare certain retail services competitive and deregulate and detariff those services. Exhibit VA-1 lists these retail services, which are generally classified in Verizon’s Alternative Regulation Plan as BLETS, OLETS, and Bundled Services. Verizon does not seek to have its switched access, special access, E911 or Lifeline services declared competitive.

I. Introduction

The retail telecommunications market in Virginia is robustly competitive. Intermodal technologies now offer multiple physical connections to the customer, in turn enabling a variety of competing telecommunications platforms, including cable telephony, cable modem, wireless, fixed wireless, traditional CLEC broadband, traditional CLEC telephony, Verizon broadband, and broadband over powerline, over which dozens of competitive providers vie to meet Virginians’ communications needs. For example:

- 99.8 percent of households have access to at least one wireless provider, and 93 percent have access to at least three wireless providers.
- 81 percent of households will be able to choose cable telephony in 2007.

- 88 percent of households can choose cable modem service, 71 percent can choose fixed wireless broadband service, and 66 percent can choose Verizon broadband service, with each technology opening the door to VoIP, email, and instant messaging services to meet communications needs.
- 85 percent of households can choose service from a facilities-based traditional wireline provider other than Verizon.
- In all, 96 percent of households can choose two or more technological platforms as alternatives to Verizon's wireline service; 78 percent of households have at least four alternative platform options.

Moreover, residential and business customers are aware of these options and are taking advantage of them in ever increasing numbers:

- There are over 5 million wireless subscribers in Virginia.
- 18 percent of households with wireline and wireless phones consider their wireless phone to be their primary phone, and at least 6 percent of Virginia households have "cut the cord," disconnecting their wireline service altogether.
- One year ago, there were 1.3 million broadband subscribers, with cable modem service accounting for 60 percent of those lines and ADSL accounting for only 28 percent.
- There are over twice as many wireless and residential broadband lines combined as wireline residential lines.
- 33 percent of businesses and 24 percent of residential customers use a traditional wireline competitor other than Verizon.
- At least 50 unique competitors currently serve mass market customers in Verizon's service area.
- 67 percent of households served by Verizon have been approached by other local service providers in the previous twelve months or are aware of other local service providers.
- As a result of customer migration to these competitive alternatives, Verizon's residential access lines have dropped substantially since January 2004, as have its minutes of use.

These trends are not limited to Virginia's larger metropolitan areas. Virginia's smaller cities enjoy not only the ubiquitous availability of wireless services, but also

widely available cable modem service, cable facilities that are telephony-ready, and substantial wireline competition. Virginia's most rural areas also have alternatives, including fixed wireless from regional carriers with a particular focus on these smaller communities. The amounts and types of choices vary among customers, but the choices are there nonetheless, no matter how the data is parsed.

In this environment, with customers aware of their many alternatives and choosing them every day, competition effectively regulates Verizon's retail prices. Long gone is the era when Verizon provided virtually the only telecommunications connection for customers in its territory. Today, customers connect over multiple telecommunications platforms, including cellular wireless, broadband, cable telephony, and fixed wireless, with each platform using its own facilities. In turn, multiple providers, including cable companies, wireless carriers, VoIP providers and traditional CLECs ride over those connections to compete for the customer's voice communications business. At the same time, customers' communications options have expanded far beyond voice calling to encompass skyrocketing increases in other real time communications vehicles, such as wireless data, e-mail, and instant and text messaging.

Facilities, technology, customer choice, and customer usage have all changed. So too has the General Assembly's telecommunications policy – now promoting competition, investment, innovation *and* equal regulation. The Commission has the power to implement these policies, at least in part, by deregulating and detariffing the services of the companies over which it exercises jurisdiction. The largest competitive forces in today's market—wireless, cable, broadband and VoIP—already largely are unregulated, and lie beyond the Commission's jurisdiction. The Commission can take a

major step forward to level the competitive playing field by removing legacy regulation that constrains only traditional wireline carriers.

In testimony and exhibits submitted with this Application, Verizon presents a comprehensive analysis of Virginia's current communications market. Based on a broad range of internal and external data, the analysis demonstrates that Virginia residential and business customers have numerous options to meet their communications needs. Given these trends, the Commission can be assured that competition or the potential for competition in Verizon's incumbent service territories is or can be an effective regulator of the price of its retail services. The Commission should therefore declare these services competitive. The Commission, however, should not stop there.

The Commission should adapt its regulatory framework to the drastically changed nature of the communications industry, as other states have done.¹ Given the significant and growing level of competition and the dramatic increase in intermodal competition brought about by accelerating network convergence, the Commission's current regulatory requirements are no longer necessary to constrain Verizon's pricing or to ensure that Verizon provides adequate service at just and reasonable rates. That is the market's job. Indeed, where market forces govern, lingering regulatory burdens serve only to rob Virginia customers of the full benefits of competition.

¹ Twenty-three states have engaged in some form of telecommunications deregulation in response to competition. See "Briefing Paper, State Retail Rate Regulation of Local Exchange Providers as of September 2005", The National Regulatory Research Institute (April 2006) at 3, 9 (Fig. 4) (attached as Exhibit Misc.App-1); see also, *Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities*, Rulemaking 05-04-005, Draft Opinion (CAPUC adopted July 25, 2006); *Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services*, Case 05-C-0616, "Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings" (NY PSC April 11, 2006) ("*NY Competition III Order*").

Va. Code § 56-235.5(E) permits the Commission to provide, “by rule or case-by-case determination, for deregulation, detariffing, or modified regulation determined by the Commission to be in the public interest” for competitive services. As outlined below, it is in the public interest to deregulate and detariff Verizon’s competitive services so as to avoid the market distortions that result from retaining widely varying regulatory restraints on different competitors in a competitive market.

II. Verizon’s Retail Services Satisfy the Standard for Competitive Services Set Forth in Va. Code § 56-235.5(F).

The Commission may declare telephone services competitive when it finds that “competition or the potential for competition in the market place is or can be an effective regulator of the price of those services.” Va. Code § 56-235.5(F). To determine whether competition effectively regulates the prices of services, the Commission must consider:

- (i) the ease of market entry,
- (ii) the presence of other providers reasonably meeting the needs of consumers, and
- (iii) other factors the Commission considers relevant.²

Id. These criteria, coupled with the mandate that the Commission consider the effects of “potential competition” on Verizon’s prices, require the Commission to conduct a forward-looking analysis of competition. An effective forward-looking analysis considers not only current market conditions, but also marketplace dynamics, to examine the potential for increases in competition in response to any attempt to increase rates in an anti-competitive manner. Thus, the Commission must consider the dramatic increase

² The Commission has not identified any other factors it considers relevant.

in intermodal competition and customer preferences for bundled services in examining the competitiveness of Verizon's services.

With this Application, Verizon presents the testimony of five witnesses, the bulk of which demonstrates that Verizon's retail services meet the competitive test set forth in Va. Code § 56-235.5(F). First, Mr. Harold West presents empirical evidence demonstrating that there are no barriers to entry into the mass market and enterprise market in Verizon's service territory and that competitors are present and reasonably meeting the needs of customers, regardless of whether they are located in urban areas or the less densely populated rural parts of Virginia. Mr. West also demonstrates that competitors are present and reasonably meeting the directory assistance needs of Virginia customers.³ Mr. William Newman presents the results from two surveys that demonstrate the extent to which customers are aware of competitive alternatives to Verizon's services, purchasing services from a Verizon competitor, or have been contacted by a competitor seeking to win their business. Dr. William Taylor explains how, as a matter of economic principle, Verizon's evidence proves that competition or the potential for competition is or can be an effective regulator of the price of the services Verizon seeks to have declared competitive. Dr. Jeffrey Eisenach presents a detailed analysis of the state of competition in each of the ten MSA and six non-MSA regions that comprise Verizon's service territory.⁴ Specifically, he examines trends in the growth of competition in those areas and explains how, based on those trends, competition is or can be an effective regulator

³ Although there is not a separate market for directory assistance services, as these are part of the services provided to mass market and enterprise customers, Mr. West presents a separate analysis for these services.

⁴ Verizon presents evidence of competition at a statewide market level. Verizon also presents snapshots of evidence by discreet geographic areas consisting of the ten Metropolitan Statistical Areas ("MSAs") and six rural areas served by Verizon that are not located within an MSA (the "non-MSA regions").

of price in all parts of Verizon's service area, including the rural areas where competition currently is less robust than the more densely populated urban areas. Finally, based on the other witnesses' evidence that Verizon's services meet the statutory standard for competitive services, Mr. Robert Woltz explains why the Commission should deregulate and detariff these services, and proposes safeguards that the Commission could adopt that will protect consumers and preserve the competitive markets once these services are deregulated.

A. Verizon's Retail Services Are Competitive Statewide.

The Commission may determine services to be competitive "on a statewide or a more limited geographic basis, such as one or more political subdivisions or one or more telephone exchange areas." Va. Code § 56-235.5(F). From an economic perspective, the appropriate market to consider in the Commission's analysis is, at a minimum, statewide. Cable, wireless, VoIP, and traditional wireline competitors offer statewide or even nationwide pricing plans and market their services on these broad scales. Accordingly, prices charged in a given MSA, for example, are affected by prices in other areas.

Moreover, from an operations and network standpoint, the market is at least statewide. Wireless providers operate on a national scale. While cable companies operate local or regional networks, the networks themselves are ubiquitous and virtually all of them have been upgraded to allow for two-way broadband services capable of carrying voice traffic. Geography has no meaning to VoIP providers, who can sell services to Virginia customers from anywhere in the country using any area code whatsoever. Moreover, current technology makes it possible for CLECs to use any of the switches they have deployed in Virginia, and the countless switches that have been deployed elsewhere, to serve customers located hundreds of miles away.

Any geographic market definition must account for the breadth and scope of competitors' reach. Verizon's evidence demonstrates that Virginia customers have competitive alternatives to Verizon's services regardless of their geographic location within the Commonwealth, even if the identity of the provider differs across locations such as MSAs or wire centers. The evidence plainly reveals that competitors are capable of serving – at least – Verizon's entire incumbent service area in Virginia and, indeed, are doing so already. Because customers can turn to one or more competitive alternatives for Verizon's services in every MSA and non-MSA region, the market is properly defined as statewide in scope.

B. Competition or the Potential for Competition in the Marketplace is or Can Be an Effective Regulator of the Price of Verizon's Retail Services.

Verizon's retail services meet the competitive standard throughout its service territories for two classes of customers: (i) the mass market (residential and small business customers) and (ii) the enterprise market (medium-sized and large business customers). For each customer set, barriers to entry have been eliminated, and competitors are currently present and reasonably meeting the needs of customers in the market. Moreover, trends toward further growth in intermodal competition and wireline displacement are increasing rapidly such that competition and the potential for competition is or can be an effective regulator of the prices of Verizon's services.

1. Ease of Entry

The clearest testimonial to the ease of entry is the significant number of successful intermodal and traditional wireline competitors in the market. As explained by Mr. West, at least 50 unique competitors currently provide services to mass market

customers. The Commission needs look no further for proof that this statutory criterion is met.

Competitors could not currently enjoy this success if legal or economic barriers remained. The 1996 Act eliminated both explicit legal barriers to entry, as well as statutes or regulations that may have the effect of prohibiting a competitor from providing telecommunications services.⁵ There are also no economic barriers to entry into the Virginia communications market. Technological developments in switching technology have facilitated entry into the market by greatly reducing entry and expansion costs. Moreover, competitors have deployed significant amounts of fiber in Virginia, and in places where fiber has not been deployed, fixed wireless transport has emerged as an increasingly viable network alternative. The requirement that Verizon make all of its communications services available for resale at a wholesale discount enables competitors to enter the Virginia market with little or no capital investment. Indeed, in 2002, the FCC expressly found that that Verizon's local exchange markets have been opened to competition.⁶

2. The Presence of Other Providers Reasonably Meeting the Needs of Consumers

Competitors have made very substantial inroads in Virginia. Essentially every household has access to two or more competitive service providers, and almost 75 percent can choose among eight or more providers. Competition is intense, as evidenced by aggressive intermodal marketing, declining Verizon access lines, and the rising market

⁵ 47 U.S.C. § 253(a).

⁶ *I/M/O Application by Verizon Virginia Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc. for Authorization to Provide In-Region InterLATA Services in Virginia*; WC Docket No. 02-214, FCC 02-297, Rel. Oct. 30, 2002 at ¶ 1.

share of competitors. Verizon's competitors have made substantial infrastructure investments in every MSA and non-MSA region served by Verizon, and are providing alternatives for all of the services Verizon seeks declared competitive. As a result, Verizon has suffered substantial and continuing switched access line losses, despite continued population growth. As Verizon loses ground, its competitors are growing rapidly.

A key factor in the explosive growth of competition—as well as its continued expansion in the near future—is the development of next generation broadband infrastructures that allow carriers to provide multiple services over a single connection. This network convergence has shifted the market from simple wireline carrier versus wireline carrier competition to even more vibrant competition between wireline and intermodal carriers. Now cable telephony, wireless, and VoIP services also are reasonably meeting the communications needs of increasing numbers of residential and business customers across Verizon's incumbent service territories.

Cell phones and high speed internet services offered by multiple providers enable flexibility, and diverse services such as e-mail, instant messaging, and VoIP further expand consumers' communications options that directly compete with traditional wireline telephone services. Businesses often combine voice and data communications onto a single IP-based platform, and residential customers increasingly have that same capability. Verizon continues to lose customers to intermodal competitors who can provide savings and innovative value-added services. As the New York Commission recently recognized, "Plain Old Telephone Service" will not mean a wireline telephone

much longer.⁷ Indeed, through December 2004, mass market conventional wireline (ILEC *plus* CLEC) access lines in Virginia had dropped 11 percent since their peak in December 2002. Other platforms have taken up the slack.

Cable companies, most notably Cox and Comcast, lead the intermodal assault in Virginia, having deployed broadband facilities to 99 percent of their homes passed and 88 percent of total households in Verizon's Virginia incumbent service territory. At least 12 other cable companies operate in various parts of Verizon's service territory. Cable telephony is available to 67 percent of cable homes passed, and 60 percent of total households. Cable providers serve customers throughout Verizon's service territory and hundreds of thousands of residential customers already receive cable telephone service from one of the two largest cable providers in the state. Cable telephony competition is expected to continue its rapid expansion, as Comcast and Charter have both announced plans to deploy cable telephony throughout their service territories.⁸

Wireless providers also compete heavily for voice customers. Currently, nine wireless providers serve customers in Virginia. Between year end 2000 and 2005, the number of wireless subscribers in Virginia increased by 89 percent or about 2.4 million new subscribers. At least three wireless providers are available to 93 percent of the households in Verizon's service territory, and over 99.8 percent of households have at least one wireless carrier available. A growing percentage of households in Virginia have "cut the cord," disconnecting their wireline service altogether and relying exclusively on wireless service. And even those customers that use both platforms can and do readily

⁷ *NY Competition III Order* at 4.

⁸ Comcast has acquired all of Adelphia's Virginia assets, and announced plans to deploy IP-based telephony over those lines. Once this roll out is complete, over 80 percent of all households in Virginia will be able to purchase cable telephony. *See West Testimony* at 41.

shift their usage in response to price, feature, and quality changes. Customer surveys indicate that over 76 percent of all households and 55 percent of all businesses in Virginia use wireless service.

Increased broadband deployment has opened the market to voice competition from VoIP providers. Broadband subscribership in Virginia increased to over 1.3 million lines by year end 2005. Cable modem service accounts for over 60 percent of broadband lines serving Virginia, with ADSL serving 28 percent, and emerging technologies such as fixed wireless and broadband over powerlines serving the rest.

At least 50 unique competitors currently provide service to mass market customers in various parts of Verizon's service territory, including 24 CLECs, 14 cable companies, nine wireless providers, countless broadband providers, and at least six VoIP providers. With these competitors in the marketplace, 99 percent of households in Verizon's service territory can purchase service from at least two providers besides Verizon; 92 percent can purchase service from at least five providers; and 73 percent can purchase services from eight or more providers.⁹

Moreover, customers are aware of their competitive options. Survey results show that 67 percent of households served by Verizon have been approached by or are aware of providers other than Verizon available to serve their communications needs. Indeed, many customers are exercising these options. Survey data show that competitors provide local telephone service to over 24 percent of residential customers in Verizon's territory. Four percent of households currently use VoIP service.

⁹ Additionally, numerous Internet service providers, such as Earthlink, Yahoo, AOL, and Microsoft, enable email and instant messaging services to displace a significant and growing amount of telephone usage altogether.

In addition to the intermodal deployment discussed above, traditional wireline CLECs remain a significant competitive option for Virginia consumers. CLECs have deployed 69 switches in Virginia, and are using those switches to serve customers in every MSA and non-MSA region of Verizon's service territory. Moreover, CLECs have collocated in over 100 Verizon wire centers of all sizes, enabling them to reach almost three-quarters of total access lines in Verizon's territory. Over a half a million residential lines in Verizon's service territory are served by CLECs, a substantial increase since 2003.

Competition is increasing rapidly in the enterprise market as well. A variety of providers, including CLECs, cable companies, wireless service providers, global network service providers, IP applications providers, equipment manufacturers, and systems integrators are competing nationally and here in Virginia to meet the full communications needs of enterprise customers. Moreover, some of these service providers themselves depend to varying degrees on multiple equipment vendors and may collaborate with several facilities-based carriers to create a network that can serve commercial and institutional customers. In recognition of these circumstances, the FCC has found that:

[T]here are numerous categories of competitors providing services to enterprise customers. These include interexchange carriers, competitive LECs, cable companies, other incumbent LECs, systems integrators and equipment vendors.¹⁰

For enterprise customers with locations predominantly in Verizon's region, we find that myriad providers are prepared to make competitive offers. We further find that available market share data does not reflect the rise in data services, cable and VoIP competition, and the dramatic increase in wireless usage. Foreign-based companies, competitive LECs, cable companies, systems

¹⁰ *I/M/O Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control; Memorandum Opinion and Order*; WC Docket No. 05-75; FCC 05-184; Rel. November 17, 2005 at ¶64.

integrators, and equipment vendors and value-added resellers are also providing services in this market.¹¹

The same is true in Virginia.

3. In Areas Where Competition Is Not As Strong, The Potential For Competition Is Great.

Verizon's evidence in this case shows that competition or the potential for competition exists throughout its incumbent service territory. Multiple competitive alternatives to Verizon's residential and business services are available in each MSA and non-MSA region in Verizon's incumbent service territory. While more competitive activity is taking place in Richmond, Roanoke, Northern Virginia, and Virginia Beach, areas such as Danville, Blacksburg, Lynchburg, Harrisonburg, Northwest and Winchester are also experiencing rapidly increasing competitive penetration. At least one cable provider serves residential telephone customers in each MSA and non-MSA region in Verizon's territory. Wireless providers offer service coverage to virtually every household in Verizon's incumbent territory; of the 2.5 million households in Verizon's territory, *only 5,270* do not have wireless coverage. CLECs currently offer local exchange and a full range of other residential services to customers even in the more rural parts of the state, such as southwest Virginia. VoIP competition exists everywhere that customers have (or soon will have) access to broadband services from cable, wireline providers, broadband over power lines or wireless sources. Moreover, Verizon continues to lose wireline access lines and overall market share to competition in every region of its territory.

¹¹ See *id.* at ¶ 74.

Dr. Eisenach demonstrates that virtually all customers throughout the state have access to a “competitive baseline” of alternative services provided by CLECs using resale and/or Wholesale Advantage services purchased from Verizon, and to mobile wireless services provided by CMRS companies. Beyond this competitive baseline, the nature of the additional layers of competition varies from region to region.

Competition in the most urban areas is intense and mature. Specifically, in areas such as the Richmond, Roanoke, Virginia Beach and Northern Virginia regions, competition is fully developed, and Verizon is losing customers and revenues to competitors daily. Here, actual competition effectively regulates the price of Verizon’s services.

In six other regions, competition is advanced and expanding, especially through cable telephony deployment. Specifically, in the Blacksburg, Danville, Harrisonburg, Lynchburg, Northwest Virginia and Winchester regions, Verizon is already losing customers to competitors at a rapid pace, and will continue to do so. While competition in these areas is still growing, it currently is an effective regulator of the prices of Verizon’s services.

In the more rural regions of Verizon’s service territory, competition is present and expanding. In Charlottesville, the Eastern Shore, the North, Northern Neck, Southside and Southwest regions, competition is not yet as advanced as in other areas. However, Verizon has already begun to lose customers to competitors in these areas, even at existing prices, indicating that competition is already present and playing a role in regulating prices. Equally important, viable entry is continuing, even at current prices,

demonstrating that the potential for competition also regulates the price of Verizon's services.

Dr. Taylor and Dr. Eisenach present data trends demonstrating that intermodal competition will continue to grow rapidly, displacing traditional wireline service. Consequently, in areas where competition is not as strong, the potential for competition is great. Network convergence has led to fierce competition among bundles of voice, data, and video services, increasing the potential for competition in all areas of Verizon's incumbent service territory. Virtually all new telecommunications infrastructure being deployed in Virginia is capable of offering at least voice and data services. These technologies include wireline infrastructures utilizing optical fiber, hybrid-fiber-coax and broadband over power lines; fixed wireless technologies (e.g., Wi-Fi and Wi-Max); and mobile wireless technologies (e.g., EVDO and High-Speed Downlink Packet Access.)

With more services to offer, expected revenues per customer over these next generation networks have increased. The majority of the costs to build these networks, however, are fixed. Consequently, entrants are entering more territories that were previously marginally profitable. Additionally, the increasingly pervasive availability of optical fiber backbone throughout Virginia, and the availability of significant government support for construction of next generation broadband infrastructure in rural areas, make entry viable in all corners of the state, even the less densely populated areas where competition has been slower to develop.¹² Indeed, Verizon's evidence shows that broadband penetration is increasing in low density areas even faster than in high density areas.

¹² Available government support for next generation broadband infrastructure in rural areas include the Tobacco Fund, Rural Utility Service Broadband Access Loans and Broadband Community Grant Program and Appalachian Regional Commission funding.

Moreover, traditional wireline competitors are positioned to expand their current service reach. First, CLECs can—and do—use Verizon resale, Wholesale Advantage, or UNEs to enter and expand their presence in Virginia with very little additional investment. Second, CLECs can deploy a single switch in one central office and use collocation arrangements to expand the reach of that switch to other geographic areas. CLECs have strategically placed their collocation arrangements in those central offices that provide access to the greatest number of customers. CLEC collocation arrangements in Verizon central offices give them the capability to reach a substantial percent of the total access lines in Verizon’s service territory. Finally, CLECs can use interconnection trunks to expand their reach and capacity in Virginia.

III. The Commission Should Deregulate Verizon’s Competitive Services.

Given the pervasive and effective competition Verizon faces for its retail voice services across the Commonwealth, the Commission should not stop at reclassifying those services as competitive. It should exercise the further discretion the Code grants to deregulate and detariff those services.

Virginia law imposes on all telephone companies a public duty to “furnish reasonably adequate service and facilities at reasonable and just rates.” Va. Code § 56-234. The Commission is generally charged with enforcing this statutory duty. *See* Va. Code § 56-247. In a monopoly environment, substantial regulation of telephone service quality and prices ensured these duties were fulfilled. Traditionally, the Commission regulated the rates of telephone companies through rate based, rate-of-return ratemaking. *See* Va. Code § 56-235.2. In 1993, as the telephone market began to open to competition, the General Assembly permitted the Commission to adopt alternative forms of rate

regulation. *See* Va. Code § 56-235.5. In so doing, the General Assembly granted the Commission the power to deregulate and detariff competitive services, envisioning a time when a competitive market—rather than regulations imposed by the Commission—would regulate the price and quality of telephone companies’ services. *See* Va. Code § 56-235.5(E).

That time has come. Once the Commission determines in this case that services are competitive under Va. Code § 56-235.5(F) (*i.e.*, “when it finds competition or the potential for competition in the market place is or can be an effective regulator of the price of those services”), regulatory mechanisms intended to approximate market forces are no longer required. Instead, market forces themselves determine “reasonably adequate service” and “reasonable and just rates.” Indeed, in a competitive market, regulations developed under a monopoly regime can hinder a company’s ability to provide adequate service at reasonable and just rates by preventing it from responding to changes in the marketplace as rapidly as its competitors. This is the situation Verizon faces today.

A. The Definition of Deregulation

While the Code does not define deregulation, it does authorize the Commission to establish the regulations that should apply to competitive services under Verizon’s Alternative Regulation Plan – and the Commission has done so. Any services the Commission finds meet the criteria for competitive classification under the Code will, by definition, be categorized as competitive under Verizon’s Alternative Regulation Plan. Thus, the Plan’s regulations governing competitive services set the *de facto* maximum level of regulation that could apply to any services the Commission determines to be competitive in this case.

The Commission should take a further step, however, and deregulate Verizon's competitive services by exempting them from the Alternative Regulation Plan altogether. In a competitive environment, the price, quality and characteristics of service are regulated by competition itself, and the Commission can accordingly take a more reactive role, stepping in only if market forces fail to ensure Verizon meets its statutory duties. Such a market failure would be evident if customer complaints rise to a level that demonstrates that market forces are not ensuring "reasonably adequate service" or "reasonable and just rates."

B. Once Deregulated, Verizon's Services Are Subject Only To Safeguards The Commission Deems Necessary To Protect Consumers and Competitive Markets.

Whenever the Commission finds that a service is competitive and should be deregulated under Va. Code §§ 235.5 (E) and (F) respectively, it must adopt safeguards to protect consumers and competitive markets. Va. Code § 235.5(H). Consequently, once deregulated, Verizon's competitive services should be subject only to any safeguards the Commission finds necessary to protect consumers and competitive markets. In a robustly competitive market such as Virginia, few safeguards are required to protect consumers. As the New York Commission recently observed, "[a]ll aspects of the companies' provision of telephone service—not just price—are affected by the competitive environment in which they now operate."¹³

Few additional safeguards can be justified. Under the Code, the Commission will retain its authority to review the market and any complaints over Verizon's rates or services, and take corrective action should the market fail to protect either consumers or

¹³ *NY Competition III Order* at 97.

competitors. *See e.g.* Va. Code §§ 56-235.5(G) and 56-247. Other existing regulatory protections are already in place.

1. The Commission’s Complaint Process Protects Consumers.

The Code grants the Commission the authority to investigate Verizon’s services and correct any found to be “unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise in violation of law” or correct any service that is “inadequate or that any reasonable service cannot be obtained.”¹⁴ The Commission has established informal and formal complaint procedures to conduct such an investigation.¹⁵ Deregulating Verizon’s competitive services will not change the Commission’s authority to investigate such complaints and take corrective action should market forces fail.

2. Competitors Remain Protected Through Numerous Rules and Regulations.

Currently, Verizon is subject to several regulations that protect competitors. These include federal interconnection rules, interconnection agreements, the Commission’s Alternative Dispute Resolution Process rules,¹⁶ and Verizon’s Carrier to Carrier Guidelines and Performance Assurance Plan. Deregulation of Verizon’s retail services will not affect these wholesale obligations, which the Commission will continue to enforce through its established procedures.

3. Proposed Safeguards

While the Commission’s complaint process and the rules and regulations described above are sufficient to protect consumers and competitive markets, the

¹⁴ Va. Code § 56-247.

¹⁵ Moreover, Va. Code § 56-247.1 (C) requires Verizon to have customer complaint procedures that are approved by the Commission and distributed to residential customers.

¹⁶ 20 VAC 5-405-10(A).

Commission may find that additional safeguards are appropriate to ensure a smooth transition to a deregulated environment. As set forth in Mr. Woltz's testimony, Verizon proposes to tariff Lifeline as a BLETs service, cap monthly increases for residential unlimited usage dialtone to no more than \$1 per year for three years, continue offering E-911 as a tariffed service, keep the Service Quality rules in effect, and mirror the cross-subsidy filing requirement the Commission has imposed on the CLECs.

C. Deregulation Is In the Public Interest

The Local Competition Policy adopted by the General Assembly requires the Commission to "consider it in the public interest to ... to the greatest extent possible, apply the same rules to all providers; ... and ... reduce or eliminate any requirement to price retail and wholesale products and services at levels that do not permit providers of local exchange telephone services to recover their costs of those products and services."¹⁷ This policy encourages the Commission to apply the same rules to all providers as soon as possible and, from an economic standpoint, will if applied, further the public interest by promoting "competitive product offerings, investments, and innovations."¹⁸ In contrast, prolonging asymmetric regulation of Verizon would hinder the Commission's ability to achieve the goals of the Local Competition Policy.

The Commission's current regulations, designed to manage the transition from a monopoly, wireline-only world, inhibit the efficient operation of the modern voice communications market. In today's dynamic, robustly competitive communications market, continuing to impose complex economic regulations on wireline incumbents (or new wireline entrants for that matter), but not their competitors, depresses the full

¹⁷ Va. Code § 56-235.5-1.

¹⁸ *See id.*

potential of the market and harms consumers. As long as Verizon is constrained in its ability to respond quickly to consumer demand, offer new services and new bundles, innovate, provide leading-edge technologies, respond to other competitor's packaging and pricing moves, and realize the full risks and rewards of their actions, competition as a whole suffers. So, too, do consumers.¹⁹ The Commission should therefore eliminate all regulatory constraints that hamstring the development of competitive products, pricing plans, and services tailored to customer demand and designed to differentiate the provider. Eliminating these constraints serves the public interest by promoting competition and innovation so that market forces—not obsolete regulatory requirements—dictate the winners and losers in today's robustly competitive environment.

¹⁹ In a recent decision deregulating its own telecommunications market, the New York Commission observed:

Technology is changing the nature of telecommunications services and accelerating the rate and level of competition in a historically monopolistic industry. Failure to adapt New York's regulatory regime to these changing dynamics will place the State at a competitive disadvantage by stifling investments and upgrades to the telecommunications infrastructure that is supporting the State's economic activities.

The efficient exchange of information and data is critical to economic development in New York State. The ability of corporations to outsource jobs to foreign countries is evidence that proximity to markets is less relevant in today's economy than in the past. Rather, the information economy requires widespread access to broadband, wireless, and flexible telecommunications applications that facilitate economic development and investments in jobs from the private sector. Achieving that objective requires a level playing field where all telecommunications service providers have the proper market-based incentives to invest in infrastructure.

With that need in mind, we seek to maintain New York as the most competitive market in the nation for new telecommunications services by eliminating unnecessary, bureaucratic and anachronistic requirements that hamstring investment and the expansion of competition. While fair treatment of customers and the state of the underlying public switched telephone network remain primary concerns, the traditional methods used to achieve those ends are increasingly ineffective.

See NY Competition III Order at 3. The same holds true in Virginia.

IV. The Commission Should Detariff Verizon's Competitive Services.

One constraint that hamstrings Verizon's ability to develop products and services tailored to customer demand in response to competition is its tariffing requirement. Although the Commission has granted Verizon the authority to seek detariffing of individual competitive services on a case-by-case basis (Plan at § E), detariffing all competitive services on a going-forward basis would permit more flexibility in forming legal relationships with customers as intermodal competitors, such as wireless and VoIP, do today. Detariffing also enhances competitors' flexibility to convey information about new offers using the most efficient means possible and, thus, intensifies price competition. Such flexibility is more appropriate in the current competitive environment. The Commission should abandon its "one size fits all" approach governing customer-carrier relationships in favor of one that allows Verizon to tailor contracts, short term agreements, and/or price lists to best serve customers' needs and minimize undue administrative burdens.

V. Conclusion

For these reasons stated above, as well as in the accompanying testimony and exhibits, Verizon respectfully requests that the Commission declare the services listed in Exhibit VA-1 as competitive under Va. Code § 56-235.5(F), detariff them pursuant to Va. Code § 56-235.5(E), deregulate them pursuant to Va. Code § 56-235.5(E) by declaring

that they are no longer subject to Verizon's Alternative Regulatory Plan, and provide such other relief as appropriate.

Respectfully submitted,



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