

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

PUBLIC UTILITIES COMMISSION
Investigation Into Line sharing
Pursuant to State Law

Docket No. 2004-809

DECLARATION OF EDWARD DINAN

Introduction

1. My name is Edward Dinan. My business address is 1 Davis Farm Road, Portland, Maine. I am employed by Verizon as State President for Maine. In that capacity I serve as the senior officer for Verizon in the state.

2. In my career with Verizon, I have held a variety of management positions of increasing responsibility in Marketing, Regulatory, External Affairs and Accounting. I have been the State President for Maine since 1992. Immediately prior to my current position, I was Vice President and Chief Financial Officer of the Worldwide Services Group at NYNEX Corporation.

3. I attended the College of the Holy Cross as a Presidential Scholar and was awarded a B.A. in Mathematics, with Honors. I did post-graduate study in Economics at Stanford University as a Stanford Fellow. I hold an M.B.A. with Honors from Boston University and a Masters in Economics with Honors from Northeastern University. I have completed all course work and comprehensive examinations for a Doctorate in Business Administration at Boston University, with a concentration in Finance and Accounting.

4. I have also been actively involved with a variety of public policy issues in Maine for over ten years. I have assumed leadership positions in a number of public policy and economic development organizations inside and outside the state. I have been

named Chair of the boards of the Maine State Chamber of Commerce and the Maine Development Foundation. Presently, I am Chair of the Board of Directors of Maine & Company, Vice-Chair of the Maine Learning Technologies Initiative, and Chair of the Technology Policy Committee of the United States Chamber of Commerce. In these capacities, I have addressed the policy challenges of the changing communications environment and the resulting impacts and opportunities for the United States and Maine, highlighting the growing importance of telecommunications infrastructure necessary to support advanced consumer, business, educational, and health care applications. I have also advocated for economic development initiatives to improve the business climate and market growth in Maine.

I. Purpose of Declaration

5. The purpose of my declaration is to show that broadband competition is, by any objective measure, thriving without a line sharing mandate and that broadband competition has increased significantly – particularly since the FCC released the *Triennial Review Order*.¹ Prices are declining, facilities deployment over cable, wireless, and wireline platforms is growing, and broadband subscribership is rising. In short, consumers are already getting all the benefits of real competition. I will also discuss the legislative history behind Section 7101(4)'s direction towards affordable access to information services.

6. As discussed in greater detail in the accompanying declaration of Paul Vasington, imposing an asymmetrical line sharing obligation on Verizon and other

¹ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (*Triennial Review Order*), corrected by Errata, 18 FCC Rcd 19020, 19021, ¶¶ 12-13, 15, 17 (2003), *vacated and remanded in part, affirmed in part*, USTA II, 359 F.3d 554 (D.C. Cir. 2004)..

incumbent LECs in such a competitive market only increases cost and decreases competition. Indeed, the FCC found that line sharing has hindered facilities-based broadband competition. In the FCC's words, line sharing "skew[ed] competitive LECs' incentives" and ran "counter to the statute's express goal of encouraging competition and innovation in all telecommunications markets."² Recent events, including the significant recent decline in broadband prices and the increases in broadband availability and subscribership, further confirm that competitors are not impaired without unbundled access to line sharing.

7. This declaration relies on information collected from publicly available sources, including the FCC's latest report on high-speed internet access services and a recent Commission report to the Maine Legislature (concerning high-speed internet and advanced services), as well as information collected from internal Verizon sources.

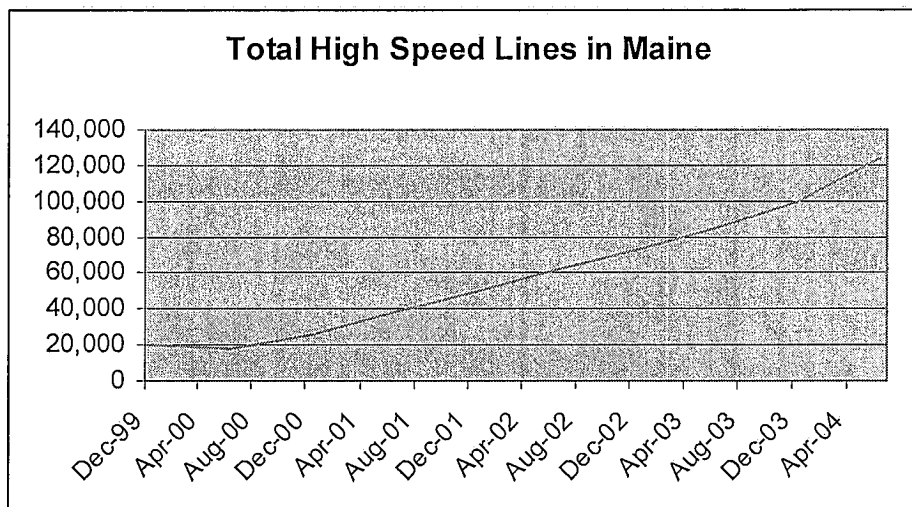
II. Broadband Competition Is Thriving Without Line Sharing.

8. Cable modem service and other broadband services are widely available and residence and small business customers in Maine are buying broadband services at an increasingly rapid rate. Indeed, facilities-based broadband providers reported serving a total of 124,191 high speed lines³ in Maine, as of June 30, 2004.⁴ As seen on the following chart, subscribership to high-speed services in Maine has increased dramatically over the past five years.

² *Triennial Review Order* at ¶ 261

³ The FCC defines "high speed lines" as connections that deliver services at speeds exceeding 200 kilobits per second (kbps) in at least one direction.

⁴ See Indus. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *High-Speed Services for Internet Access: Status as of June 30, 2004*, at Table 8 (rel. Dec. 22, 2004) ("*2004 High-Speed Internet Report*").



In fact, broadband subscribership in Maine increased by over 25% during the first half of 2004 and by over 45% during the twelve month period ending June 2004.⁵ In addition to cable and DSL, there are numerous additional platforms and technologies already competing in, or poised to enter, the broadband mass market, including power lines, fixed wireless, 3G mobile wireless, and satellite.⁶

9. The PUC itself has reached similar conclusions.⁷ As the PUC acknowledges, “Broadband availability in Maine has increased dramatically since the PUC began tracking it in mid-2002. Both the number of towns where broadband is available and the number of providers and varieties of service have increased.”⁸ The PUC also found that “[W]hile in 2002 the market was dominated by either the local incumbent telephone

⁵ *Id.*

⁶ See, e.g., *Inquiry Concerning the Deployment of Advanced Telecommunications Capability*, Third Report, 17 FCC Rcd 2844, ¶¶ 79-88 (2002); *Triennial Review Order* ¶ 263 (“[T]he Commission also has acknowledged the important broadband potential of other platforms and technologies, such as third generation wireless, satellite, and power lines.”) (citing *Third Section 706 Report 2002*, 17 FCC Rcd 2844, ¶¶ 79-88 (2002)); R. Mark, *Broadband over Power Lines: FCC Plugs In*, Internetnews.com (Apr. 23, 2003), <http://dc.internet.com/news/article.php/2195621> (Chairman Powell: “[t]he development of multiple broadband-capable platforms – be it power lines, Wi-Fi, satellite, laser or licensed wireless – will transform the competitive broadband landscape.”).

⁷ See Maine Public Utilities Commission, *Report In Response to Letter Dated March 17, 2004, Concerning Expanding High-Speed Internet and Advanced Communications Services Statewide*, dated December 30, 2004, submitted to Maine Legislative Joint Standing Committee on Utilities and Energy, (“PUC Report”).

⁸ *Id.*

company (Verizon or one of several independent telephone companies) providing DSL service or cable TV companies providing cable broadband service in a few areas, currently many areas are served by a combination of DSL, cable, Fixed Wireless and WiFi broadband service.”⁹

10. Most of the cable companies in Maine also provide cable modem broadband service. According to the *PUC Report*, Adelphia added “nearly 70 municipalities since the March 2004 PUC survey” and is providing service “in over 200 communities, passing almost 300,000 homes.”¹⁰ The *PUC Report* also indicates that Time Warner “passes over 150,000 homes with 48,000 high-speed internet customers.”¹¹ The PUC also found that “[t]here are at least six fixed wireless providers in Maine and many of them serve some of the more rural areas (e.g., Matinicus Island).”¹² Evidence of the ubiquity of broadband deployment throughout Maine is further available on the Commission’s own website.¹³

11. Verizon has significantly increased the reach of its broadband services. Verizon invested more than \$1.4 million since the beginning of last year to increase the availability of Verizon’s DSL services in Maine. By the end of last year, Verizon had expanded the reach of its broadband services and now offers DSL service in 111 of its 138 central offices and has also equipped 80 remote terminals. The 111 central offices and 80 remote terminals serve approximately 90 percent of Verizon’s customers, with over 65 percent of the working lines in those offices qualified for DSL service. Despite such widespread deployment of DSL service by Verizon, Maine’s Independent

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ See “Broadband Availability in Maine,” at <http://megisims.state.me.us/website/BroadBand2/viewer.htm>

Telephone Companies, and Maine CLECs, ADSL lines in total (including those provided by Verizon on both a retail and wholesale basis) are still less than 25 percent of the total number of broadband “lines” reported to be in-service in Maine using all technologies.¹⁴

12. Facilities-based broadband investment and competition is not limited to cable and wireline. Broadband Internet access services are rapidly being developed or provided over technologies other than wireline and cable, such as wireless and powerline. And, as FCC Chairman Powell emphasized in June 2004, “[w]e’re beginning to see greater uses of wireless mobile broadband products, such as EvDO coming into the market place . . . These are true commercial applications that are rapidly spreading throughout the market place.” Wireless carriers are now deploying broadband capabilities that are comparable to cable and DSL.

13. Another major development is the adoption of an industry-wide standard for fixed wireless broadband, commonly known as WiMax, which is designed to provide a wireless alternative to cable, DSL and T1 for last mile broadband access. It is now estimated that these advances could make last-mile WiMAX connections cheaper than cable and DSL solutions.

14. This robust competition in broadband has led to the consumer benefits one would expect. Broadband prices are falling, with DSL providers leading the way in reducing prices and in increasing download speeds. Verizon was the leader in cutting DSL prices. Earlier this year, Verizon lowered its DSL prices to \$34.95 per month (or \$29.95 when bundled with phone service), while increasing its download speeds to 1.5 Mbps from 768 kbps. In May 2004, Verizon announced an additional tier of consumer DSL service with a maximum connection speed of 3 Mbps/768 kbps. In addition,

¹⁴ 2004 *High-Speed Internet Report*, at Table 7.

Verizon has rolled out a new symmetrical DSL offering designed to compete with cable modem services for small and medium-sized business customers.

15. Broadband competitors have responded in kind with promotional and targeted price reductions and by increasing data speeds (which effectively lowers the price of bandwidth).

16. In addition, the advent of VoIP over the past year itself undermines any possible regulatory rationale for mandating line sharing. Line sharing assumes that, while the high-frequency portion of the loop is used to provide data services, the incumbent carrier will continue to use the low-frequency portion to offer voice services. But with the advent of VoIP, voice and data are no longer carried on different wavelengths. Voice is just another application over broadband. Thus there is no plausible argument that competitors need unbundled access to line sharing.

17. Even without a regulatory imposed line sharing mandate, competing broadband providers will continue to have access to line sharing arrangements to provide DSL services. Verizon and competing broadband providers have negotiated commercial agreements to continue line sharing arrangements and other wholesale DSL services on mutually agreed upon terms and conditions. These negotiations have already successfully concluded with agreements with Covad Communications and with two Maine-based CLECs. With the availability of commercial agreements, there is no reasonable prospect that CLECs will be unable to continue to provide DSL services to customers. Accordingly, there is no reason to establish a state-mandated line sharing requirement.

III. State Policy Favoring Affordable Access to Information Services

18. The Commission's *Notice of Investigation* indicates that the source of the Commission's state authority to order unbundled access to line sharing is the direction in

Section 7101 that the Commission promote a modern, state-of-the-art telecommunications network and that affordable access to computer-based information services be available to all Maine citizens. (*Notice* at 5). While I agree the Legislature intended to promote investment in a cutting-edge network for Maine, capable of providing broadband services, I do not believe it was the Legislature's intent that the Commission mandate any specific commitment in that regard from any individual firm.

19. Section 7101(4) was enacted in 1995 as part of Chapter 631, PL 1996. The full bill passed by the 117th Legislature, only a portion of which is codified as § 7101(4), is entitled: "Public Utilities – Access to Information Services – Enhanced Library and School Telecommunications." The measure is also sub-titled "An Act to Provide Affordable Access to Information Services in All Communities of the State through Enhanced Library and School Telecommunications." The bill titles alone plainly suggest a much more limited Legislative intent in Section 7101(4) than a purported delegation of state power to compel unbundling of the incumbent LEC's network.

20. Chapter 631, in addition to adding the policy statement of subsection 4 of §7101, simultaneously enacted the substantive provisions of Section 7104-A (subsequently amended and presently replaced by Section 7104-B) for promoting "Access to Information Services." Thus, any discussion of legislative intent in Section 7101(4) must be read in conjunction with the rest of Chapter 631 (now codified at section 7104-B) to endorse and expressly authorize supporting access to information services by Maine's schools and libraries.¹⁵ Section 7104-B provides that to carry out the policy goals expressed in subsection 4 of §7101, the Commission shall establish a

¹⁵ Subsections 4, 5 and 6 of Chapter 631 expressly identify and sanction the Commission's allocation in Docket Nos. 94-123 and 94-254 of \$4 million in Verizon Maine's intrastate earnings for the initial support of the School and Library information services program crafted in the Commission's final order in those proceedings.

telecommunications education access fund” for “qualified libraries [and] schools ... to assist in paying the costs of acquiring and using advanced telecommunications technologies.” (Section 7104-B (2)).

21. Accordingly, Legislative intent expressed in section 7101(4) for promoting, as a policy objective, “affordable access to ... information services” is explained in, and implemented by, section 7104-A (now §7104-B). Section 7101(4) *is not* a plenary delegation to the Commission to mandate that Verizon lease portions of its network to its competitors. Rather, as its title and sub-title indicate, Chapter 631 is meant as a legislative endorsement of targeted support to schools and libraries for assistance in purchasing and utilizing advanced telecommunications services.

22. Other provisions in Chapter 631 further confirm that Section 7101(4) cannot be read as expansively as the *Notice* proposes. In addition to carefully proscribing the intended recipients of targeted state support, Chapter 631 is also unambiguous on “how” that support is to be provided. Section 7104-B, subsection 3, limits all regulatory programs to foster information access at no more than 0.5% of a carrier’s intrastate revenues, and mandates that all funding be collected from all carriers “in a competitively neutral manner.” Thus, section 7101(4) is not legislative *carte blanche* to mandate that certain carriers (incumbent LECs) must, in addition to participating in the fund, lease portions of its network at state mandated rates.

23. In short, the policy pronouncements of the Legislature in section 7101 neither envision nor support a Commission order mandating that Verizon must lease portions of its network to its competitors.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ Edward Dinan

Edward Dinan