Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Vonage Holdings Corporation Petition for a Declaratory Ruling	WC Docket No. 03-211

COMMENTS OF VERIZON

John M. Goodman
Attorney for the Verizon
telephone companies

1515 North Courthouse Road
Suite 500
Arlington, VA 22201
(703) 351-3175
john.m.goodman@verizon.com

Michael E. Glover
Edward Shakin
Of Counsel

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Summary

Vonage provides a voice Internet telephony service. It asks the Commission to preempt state regulation of that service because, Vonage says, it is an interstate information service. Verizon[1] agrees that the service is jurisdictionally interstate, but it is not an information service at all, rather it is an interstate telecommunications service. Even though Vonage is providing a telecommunications service, there is no reason to subject Vonage's service or services like it to full Title II common carrier regulation. Where Vonage's service (or other services like it) uses Verizon's network, it should have to pay for that use just like any other provider of an interstate telecommunications service.

The world of telecommunications has changed radically and continues to change. The telecommunications industry is moving towards Internet-protocol-based networks. This change is significant for consumers, service providers, manufacturers and policy makers. The use of Internet protocols in network routing and traffic management permits the creation of platforms over which a myriad of electronic communications services can be offered that challenge traditional views of telecommunications. In this new world, services can be developed using software and relatively cheap server technologies, and IP packets are routed over the most efficient routes available at a given moment, often crossing and recrossing political and jurisdictional boundaries. Devices of all kinds — from PCs to ordinary telephones — can be used to communicate via e-mail, instant messaging and IP-based voice services and offer consumers a wide range of alternatives to traditional voice services.

"VoIP" refers to a variety of services that allow users to have telephone conversations transported over IP networks. They are no longer simply "hobbyist" experiments, or as Vonage

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[1] The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc., listed in Attachment A.

puts it, "You don't have to be an engineer to use our service." Rather, they are being offered as real competitive alternatives to traditional voices services. Because voice telephone services have been the central focus of state and federal regulatory policy, these developments are attracting the attention of regulators, particularly at the state level.

Given the "boundaryless" nature of IP networks and the fact that many VoIP services are offered over broadband networks, Verizon agrees with Vonage that VoIP is an interstate service. While the service Vonage is offering is a "telecommunications service" under the Act, that does not mean it or other services like it should be subject to all the many common carrier requirements.

By the same token, the Commission must make clear that to the extent new configurations like the service offered by Vonage use the circuit switched network, they pay the same charges as other providers. Otherwise, the Commission skews competition based on judgments on technology — a policy that the Commission has rightly avoided. Vonage should, therefore, be subject to the same intercarrier compensation system, including access charges, as any other telecommunications service provider.

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You sit in your living room, pick up a telephone and punch in some numbers. A few seconds later, your brother picks up a telephone in his kitchen 500 miles away. "Hello," he says. You chat back and forth for a few minutes, then you both say, "Goodbye" and put the phones back in their holders. What just happened? Did you make a telephone call? The answer any normal person would give would be, "Of course, you did!"

So, when is a telephone call not a telephone call?

According to Vonage, when it involves "a net protocol conversion."

But this is wrong both legally and logically.

It is wrong legally because the Commission has never said that the presence of "a net protocol conversion" necessarily changes the regulatory classification of a service. To be sure, the Commission has repeatedly held that a service that does *not* include a "net conversion" remains a telecommunications service, but it has never said that the fact that a service *does* include a "net conversion" necessarily means that it is not a telecommunications service. In fact, it has repeatedly held exactly the opposite. In many circumstances, including those presented by the Vonage service, a service can include "a net protocol conversion" and still be classified as a telecommunications service.

Nor does Vonage's claim make any sense. What the caller did was call his brother to have a conversation. Does he know (or care) that somewhere along the way "a net protocol conversion" was performed? Did he want any protocols converted? Would it make any difference to him one way or the other? He just wanted to talk to his brother, that's all. He doesn't think anything is any different, and there's no reason he should.

In addition to looking to the consumer just like an ordinary telephone call, Vonage's service uses the local exchange network to terminate calls just like traditional long distance service. Unless the call is from one Vonage customer to another Vonage customer, Vonage delivers the call to the public switched network, and it is terminated by the called party's LEC through local switching and loop facilities. There is no reason that Vonage shouldn't pay the same charges for the use of those facilities that other providers of long distance service pay. Nor is there any reason that the presence of "a net protocol conversion" in this telephone service should affect the applicability of other rules and policies, such as whether CALEA applies, whether the service is subject to section 255's accessibility requirements or whether it must support the universal service system.

The Commission's decisions on protocol conversions were written more than two decades ago. If those decisions really do mean what Vonage claims — that "a net protocol conversion" does make a difference and does change a telephone call into something else — then the Commission should take a fresh look at those decisions as soon as possible. The world has changed dramatically since 1980, at least as much in telecommunications as in other areas, and it is time for the Commission to re-visit old distinctions and bring its rules into the 21st century.

The world has changed in other ways, too. And those changes do support much of what Vonage is asking the Commission to do. Vonage's service depends on the Internet and on broadband access to it. As the Commission has found in the past, the Internet is predominantly interstate in nature. Internet addressing is unrelated to geographic location, so it may be difficult, if not impossible, to determine whether a call over the Internet is interstate or intrastate. Broadband access to the Internet has been held to be jurisdictionally interstate. These facilities and the services they support need a single, coherent national policy if they are to grow and thrive. Economic regulation of the Internet and broadband services by individual states can only undermine these goals.

The changes in the world also make unnecessary any economic regulation of Vonage's services, and, in fact, of toll services generally. The Commission should impose common carrier regulation only to counteract market power, which does not exist in this marketplace. Providers may offer their services under private carriage arrangements, without all the obligations of Title II common carriers. The Act requires the Commission to forbear from the Title II requirements that are not necessary to protect consumers, and entry, exit and price regulation of these services are plainly not necessary.

Verizon and others have urged the Commission to start a proceeding to deal with Internet telephony issues, and it should do so now. The Commission does not need a new proceeding, however, to confirm that Vonage is providing a telecommunications service.

Vonage's Service Is Just Like Ordinary Phone Service.

Vonage bills itself as "The Broadband Phone Company"[2] and says that its service "is like the home phone service you have today — only better!"[3] You "use Vonage like you use any telephone" — "You pick up the phone, dial the number and it connects to whom you're calling."[4] In fact, "Vonage is an all-inclusive home phone service that replaces your current phone company."[5]

> "With Vonage, you pick up the phone, hear the dial tone and dial the telephone number of your choice. There are no extra numbers to dial and no special routines to follow. It's that simple. You don't have to be an engineer to use our service."[6]

And it works the same way in the other direction:

> "When someone calls you, they dial your number. ... Your phone rings, and all you have to do is pick up and answer it."[7]

Vonage's service also offers the full-range of telephony features. There is number portability, Caller ID, Caller ID block, three-way calling, call waiting, call transfer, call forwarding, call return and others.[8] Contrary to the suggestion in Vonage's petition,[9] an end user does not need a computer to use Vonage's service.[10]

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2 *E.g.*, http://www.vonage.com.

3 http://www.vonage.com/learn_tour.php.

4 http://www.vonage.com/learn_howitworks.php.

5 http://www.vonage.com/learn_tour.php.

6 http://www.vonage.com/learn_howitworks.php.

7 http://www.vonage.com/learn_howitworks.php.

8 http://www.vonage.com/features.php.

9 Petition at 5 ("Vonage's service requires customers to purchase special CPE, namely, a computer").

10 See http://www.vonage.com/learn_howitworks.php.

As Verizon understands it, Vonage typically provides its service in connection with various CLECs in the following way. The customer picks up an ordinary analog telephone set,[11] provided by the customer, which is connected to a telephone jack on a Vonage-provided "phone adapter"[12] on the customer's premises. This adapter converts the call from an analog telephone signal to Internet protocol and passes the call to a router on the customer's premises that provides the broadband Internet connection that is required in order to subscribe to Vonage service. The customer may use cable modem, DSL or any other broadband service. The call passes from the broadband router over the customer's broadband connection to the customer's ISP, and from there over the Internet to a Vonage gateway router. If the call is going to a customer who is not also a Vonage customer, Vonage converts the call back from IP and sends the call to another carrier for routing and completion. If both parties are Vonage customers, then Vonage routes the call in Internet protocol to its destination.

Vonage Is Providing a Telecommunications Service.

The Act defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[13] There can be little question that Vonage's Internet telephony service is "telecommunications."

The Act goes on to define a "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively

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11 An end user may also use an IP telephone set or a computer to place calls.

12 http://www.vonage.com/learn_need.php.

13 47 U.S.C. § 153(43).

available directly to the public, regardless of the facilities used."[14] A "telecommunications service," therefore, is

> "the offering of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received, for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

That would appear to be precisely what Vonage is doing, as it is offering its telecommunications for a fee directly to the public generally or, at least, to a class of users (those with broadband Internet connections).

This conclusion is supported by the Commission's analysis in its 1998 report to Congress. In that report, the Commission carefully analyzed the Act's definitional scheme and explained precisely what constitutes a "telecommunications service":

> "A telecommunications service is a telecommunications service regardless of whether it is provided using wireline, wireless, cable, satellite, or some other infrastructure. Its classification depends rather on the nature of the service being offered to customers. Stated another way, if the user can receive nothing more than pure transmission, the service is a telecommunications service. If the user can receive enhanced functionality, such as manipulation of information and interaction with stored data, the service is an information service. A functional analysis would be required even were we to adopt an overlapping definition of 'telecommunications service' and 'information service.'"[15]

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[14] 47 U.S.C. § 153(46).

[15] *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11501 ¶ 59 (1998).

Under the Commission's analysis, because a user of Vonage's service "can receive nothing more than pure transmission, the service is a telecommunications service."[16]

Vonage Is Not Providing an Enhanced or Information Service.

The Act defines an "information service" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."[17] By its terms, this definition does not cover what Vonage is providing because the service Vonage is selling to consumers is plain old voice telephony or, as Vonage itself puts it, "is like the home phone service you have today." Vonage is not offering "a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications." And if Vonage is using such capabilities to route or deliver calls, then they are within the exclusion from the definition — the "use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."

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[16] Vonage does not claim that it is not holding itself out as a common carrier with respect to its Internet telephony service. Nor does it claim that it is offering private, as opposed to common, carriage, which would exclude the service from classification as a "telecommunications service." Therefore, under the Commission's current construction of the Act, Vonage's Internet telephony is a telecommunications service under the Act, and Vonage has not offered any legal arguments that suggest that the Commission was wrong on this point.

[17] 47 U.S.C. § 153(20).

Vonage's claim is that its "service performs a net protocol conversion and, therefore, is an information service under Commission precedent."[18] This is not necessarily the case factually and, even where it is, Vonage is legally incorrect.

First, on calls between two Vonage customers, there is no protocol conversion at all — the calling customer delivers the call to Vonage in Internet protocol and Vonage delivers it to the called customer in Internet protocol.[19] It is not clear from Vonage's petition on what basis it claims that its provision of these calls is not a "telecommunications service."

Even where Vonage does perform a protocol conversion, that fact does not make the call an enhanced or information service. Vonage describes what it does as follows:

> "Vonage's service uses computerized media gateways that provide an interface between the Internet and the PSTN, including protocol conversion between the incompatible digital formats used by these two networks, and computer servers that process set-up signaling and route packetized data between the media gateways and other points on the Internet."[20]

These are functions which the Commission has repeatedly found to be basic and which do not transform a service into an information service.

As a preliminary matter, Vonage equates "enhanced services" under the Commission's Computer Rules with "information services" under the Act and relies on Commission decisions concerning enhanced services to support its claim that it is providing an information service. As shown below, Vonage's claim is wrong under the Computer Rules precedent.

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18 Petition at 2.

19 Petition at 7.

20 Petition at 6-7.

The Commission's basic/enhanced dichotomy for network services had its roots in the mid-1970's[21] and was adopted in 1980.[22] The Commission's purpose for making this distinction was to "delineate those computer processing activities and resulting services which carriers may render as part of a common carrier communications service" and to "to maintain the maximum separation policy [between communications and data processing services] and not extend the arm of regulation to data processing services."[23] In 2003, nobody would think of what Vonage is doing as "data processing" or anything other than communications.

Moreover, it is clear from the original decisions that the Commission considered all voice services to be basic. The Commission originally proposed three categories of service — voice, basic non-voice and enhanced non-voice services — a scheme in which there could be no such thing as an enhanced voice service.[24] The Commission stated that its goal was "the establishment of a regulatory structure under which carriers can provide 'enhanced non-voice' services free from regulatory constraints as to the communications or data processing nature of the service."[25] Thus, it was only non-voice services that the Commission intended not to regulate and not to be subject to the Act's provisions. In its final decision, it reduced the number

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21 See *Amendment of Section 64.702 of the Commission's Rules and Regulations*, 61 F.C.C.2d 103 (1976).

22 *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 F.C.C.2d 384 (1980) ("*CI II*").

23 *Tentative Decision and Further Notice of Inquiry and Rulemaking*, 72 F.C.C.2d 358, ¶ 60 (1979) ("*CI II Tentative Decision*").

24 *CI II Tentative Decision* ¶ 61.

25 *CI II Tentative Decision* ¶ 71.

of categories to two, but was clear that "basic" included voice and basic non-voice services and "enhanced" included enhanced non-voice services.[26]

At that time and over the following years, the Commission considered various protocol processing functions that were performed in the provision of data services and concluded that such functions were generally enhanced.[27] However, it consistently held that protocol conversion in connection with the provision of a telecommunications service did not transform the telecommunications service into an enhanced service.[28] Where, as with Vonage's service, the voice that goes in at one end comes out at the other, the service is not enhanced.

In 1983, the Commission held "there are forms of processing within such networks which might be thought of as 'processing' or 'conversions' of protocols within the meaning of the definition of enhanced service, although they are not within the intent of the definition."[29] Thus, "protocol processing involved in the initiation, routing and termination of calls (or subelements of calls, e.g., packets) is inherent in switched transmission and is not within the definition of enhanced service."[30] Similarly, "functions necessary to route a message through the network"

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[26] It explained that confusion "should be alleviated by our use of more descriptive 'basic' and 'enhanced' terminology in differentiating services falling within the former 'voice,' 'basic non-voice,' and 'enhanced non-voice' categories." *CI II* ¶ 91.

[27] *E.g.*, *CI II* ¶ 99.

[28] *E.g.*, *CI II* ¶¶ 12-17.

[29] *Communications Protocols under Section 64.702 of the Commission's Rules and Regulations*, 95 F.C.C.2d 584, ¶ 14 (1983) ("*Protocols Order*").

[30] *Protocols Order* ¶ 28. Similarly, *Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 2 FCC Rcd 3072, ¶ 64 (1987) ("*CI III*").

are basic, not enhanced.[31] Therefore, Vonage's use of "computer servers that process set-up signaling and route packetized data between the media gateways and other points on the Internet"[32] does not make its service enhanced.

Another use of protocol conversion that does not make a service enhanced is in connection with "the introduction of new technology in basic service."[33] As the Commission explained twenty years ago, "appropriate conversion equipment is used within the network to maintain compatibility" between otherwise incompatible network equipment or CPE.[34] "This concept is intended to exclude [from the definition of enhanced] applications such as a carrier-provided end office analog to digital conversion that permits an analog terminal to be accommodated by a network that is evolving to digital status."[35] Thus, a carrier does not provide an enhanced service when its network performs the conversions necessary to allow customers with ISDN equipment to talk to customers with analog equipment.

This, of course, is precisely what is involved here and why Vonage must "provide an interface between the Internet and the PSTN, including protocol conversion between the incompatible digital formats used by these two networks."[36] The telecommunications network is evolving from circuit switching to packet switching and the use of Internet protocol. This cannot be accomplished with a flash-cut replacement of service provider and customer premises

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31 *Protocols Order* ¶ 14, quoting *CI II* ¶ 90.

32 Petition at 7.

33 *Protocols Order* ¶ 16.

34 *Protocols Order* ¶ 16.

35 *CI III* ¶ 70.

36 Petition at 6.

equipment. Thus, where both parties to a call are Vonage customers and have evolved to IP, no protocol conversion is necessary and the service is unquestionably a telecommunications service. When the evolution is complete, there will be no need for any protocol conversion to enable these voice calls. And while the evolution is in progress, performing these conversions does not turn the call into an information service.[37]

Vonage's Service, Like the Internet and Broadband Internet Access, Is Inherently Interstate in Nature.

The Commission has described the Internet as "an international network of interconnected computers enabling millions of people to communicate with one another and to access vast amounts of information from around the world."[38] It permits users to access information — and to have telephone conversations with other people — with no knowledge of the physical location where the information resides or the people are located.[39] As Vonage explains,[40] it does not know whether individual calls originate and terminate in the same state or in different states. It is, therefore, legally appropriate for the Commission to assume jurisdiction over all Internet-based services under the inseverability doctrine, which permits preemption of state regulation "where it is not possible to separate the interstate and the intrastate components of the asserted FCC regulation."[41]

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[37] This can also be seen as an internetworking protocol conversion, which the Commission has concluded does not make a service enhanced. *CI III* ¶ 71.

[38] *GTE Telephone Operating Cos.*, 13 FCC Rcd 22466, ¶ 5 (1998).

[39] *See id.*

[40] Petition at v.

[41] *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 375 n.4 (1986); *see also Illinois Bell Tel. Co. v. FCC,* 883 F.2d 104, 113 (D.C. Cir. 1989) *citing North Carolina Utils. Comm'n v. FCC*, 537 F.2d 787 (4th Cir. 1976), *cert. denied*, 429 U.S. 1027 (1976).

Commission jurisdiction is also the correct result as a matter of public policy. There is general consensus that the Internet and the broad deployment of broadband access to it are good things, that will benefit consumers and the economy generally. Providers need to know what the rules are, so that they can make decisions concerning investment and deployment. And if nationwide deployment is to occur, those rules should be consistent from state to state. We, therefore, need a coherent national policy that fosters their development and deployment, not a patch-work of dozens of overlapping and inconsistent regulatory regimes.

Just Because Vonage Is Providing a Telecommunications Service Does Not Mean That It Must Be Subject to All Title II's Requirements.

While Vonage's service is a "telecommunications service" under the Act, the Commission has imposed common carrier regulation only to counteract market power in the underlying transport market.[42] Where competition can be counted on to restrain market power, the Commission lets market forces, rather than Title II regulation, guide the development of the marketplace. The Commission has often either mandated that services or facilities be taken outside of Title II completely, or allowed providers to choose whether to offer service on a common- or non-common-carrier basis, particularly when those services are innovative or involve emerging technologies.[43] This would be an appropriate result here.

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[42] *E.g.*, *AT&T Submarine Systems, Inc.*, 13 FCC Red 21585, ¶ 9 (1998); *Cox Cable Communications, Inc.*, 102 F.C.C.2d 110, ¶¶ 26-27 (1985).

[43] *E.g.*, *Computer & Communications Indus. Assoc. v. FCC*, 693 F.2d 198, 208-09 (D.C. Cir. 1982) (affirming the reasonableness of the Commission's determination that enhanced services and customer premises equipment were outside the scope of Title II); *Philadelphia Television Broad. Co. v. FCC*, 359 F.2d 282 (D.C. Cir. 1966).

Alternatively, the Act expressly allows the Commission not to subject a telecommunications service to full common carrier regulation — in fact, it requires that it not apply rules and regulations that are not necessary in the public interest. In today's marketplace, there is no reason that there be any economic regulation of services like Vonage's.

Thus, section 10 of the Act requires that the Commission not enforce rules that are "not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory" and are "not necessary for the protection of consumers."[44] Although Vonage has not attempted to make out a case under section 10, it is hard to imagine that it could not do so.

Economic deregulation of a service does not mean, of course, that the provider does not have to pay for other services it uses. For example, where Vonage uses the public switched telephone network to terminate a long distance call to someone who is not a Vonage customer, Vonage should pay interstate access charges, as required by the Commission's regulations.[45] Nor does it necessarily mean that it should be free of "social" responsibilities, such as support of universal service and compliance with accessibility requirements.

Finally, the existence of services like Vonage's is further evidence of today's vibrantly competitive telecommunications marketplace. Vonage says that you "use Vonage like you use

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[44] 47 U.S.C. § 160(b).

[45] Section 69.5(b) of the rules requires, "Carrier's carrier charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services." The ESP exemption, which exempts enhanced services from the assessment of access charges, does not apply to Vonage's telecommunications service.

any telephone" — "You pick up the phone, dial the number and it connects to whom you're calling." In fact, it says, "Vonage is an all-inclusive home phone service that replaces your current phone company." In a marketplace like this, with competition from established providers and new entrants alike, little economic regulation, of any provider, is necessary at all.

Conclusion

Vonage is providing a "telecommunications service," as defined in the Act, and the Commission should clearly so state. It should also rule that services like Vonage's are jurisdictionally interstate, even though they may be used to complete calls that originate and terminate in the same state. There is no reason, however, for the Commission to subject such services to economic regulation under Title II of the Act. As a telecommunications service provider, Vonage should pay for the use of other carriers' networks in the same way as other telecommunications service providers.

Respectfully submitted,

John M. Goodman

Attorney for the Verizon
telephone companies

1515 North Courthouse Road
Arlington, VA 22201
(703) 351-3175
john.m.goodman@verizon.com

Michael E. Glover
Edward Shakin
Of Counsel

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ATTACHMENT A

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.