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**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of )  
 )  
Petition of Qwest Corporation for Forbearance ) WC Docket No. 04-223  
Pursuant to 47 U.S.C. Sec. 160(c) in the )  
Omaha Metropolitan Statistical Area )

To: The Commission

**OPPOSITION TO MOTION FOR STAY**

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To: The Commission

**OPPOSITION TO MOTION FOR STAY**

Qwest Corporation (“Qwest”) hereby opposes the Motion for Stay, as revised and filed on February 3, 2006, by McLeodUSA Telecommunications Services, Inc. (“McLeod”) with respect to the *Memorandum Opinion and Order*, FCC 05-170 (released Dec. 2, 2005) (*Order*), *pets. for review pending sub nom. Qwest Corp. v. FCC*, Nos. 05-1450 *et al.* (D.C. Cir. filed Dec. 12, 2005), in the captioned proceeding. McLeod has failed to meet the requirements for a stay of agency action. The motion should be summarily denied.

**BACKGROUND**

On June 21, 2004, Qwest Corporation (“Qwest”) filed a “petition for forbearance” with the Federal Communications Commission (“FCC”) pursuant to Section 10(c) of the Communications Act, 47 U.S.C. § 160(c), seeking relief from certain regulations and statutory provisions concerning its telephone operations in the Omaha MSA because of vigorous competition in the market. Indeed, Qwest’s incumbent local exchange carrier operation is no longer the dominant service provider.

On September 16, 2005, the FCC announced it had adopted the *Order* granting the Qwest petition in part; the *Order* was released on December 2, 2006. The *Order* granted Qwest forbearance from the Section 251(c) unbundling requirement in nine wire centers in Omaha, as well

as certain other relief, and it denied Qwest's petition in other respects. The unbundling relief granted by the *Order* provided for a six-month transition period, during which Qwest would have to provide UNE loops and transport to competitors to serve their existing customer bases, and after which Qwest would no longer be subject to 251(c)'s requirement to unbundle loops and transport in the nine wire centers. The transition period expires March 16, 2006.

Qwest, McLeod, and others have sought review of the *Order* in the D.C. Circuit, where all of the cases have been consolidated with the lead case, *Qwest Corp. v. FCC*, No. 05-1450 (D.C. Cir. filed Dec. 12, 2005).

## **DISCUSSION**

### **I. A STAY IS NOT WARRANTED**

The requirements for obtaining a stay are well established: the movant must demonstrate (1) its probability of success on the merits, (2) whether it will be irreparably harmed without a stay, (3) whether others will be harmed by a stay, and (4) how a stay would affect the public interest. *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

The showing of irreparable harm is critical: The D.C. Circuit has made clear that "the injury must be both certain and great; . . . actual and not theoretical." *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). Thus, the stay motion must provide "proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future." *Id.* The movant must also "show that the alleged harm will directly result from the action which the movant seeks to enjoin." *Id.* And the harm must be truly irreparable: "economic loss does not, in and of itself, constitute irreparable harm." *Id.* "Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough." *Id.*, quoting *Virginia Petroleum Jobbers*, 259 F.2d at 925.

Finally, even if irreparable harm is shown to exist, the Commission or a court must weigh the “balance of the equities” — *i.e.*, factors (2), (3), and (4) — against the strength of the petitioner’s case on the merits. *WMATA v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). As shown below, McLeod has failed to make the case for a stay.

#### **A. Lack of Irreparable Harm**

To take the most critical factor first, McLeod has not demonstrated that it is certain to suffer any harm at all, much less irreparable harm, in the absence of a stay, and that ground alone requires that its motion be denied. McLeod’s principal claim of irreparable harm is based on the following premises: (1) on March 16, McLeod will no longer be able to obtain UNEs from Qwest in Omaha; (2) McLeod will not be able to obtain loops in the alternative form of voice grade DS0 special access channel terminations; (3) the conversion of UNE loops to DS0 special access will cause customer service disruptions, resulting in a decline in McLeod’s service quality and reputation among customers. Motion for Stay at 14-17.

At the outset, it is clear from the face of McLeod’s claims that its supposed harm falls way short of the “certain and great,” “actual, not theoretical” requirements set forth in *Wisconsin Gas*. The tentative, uncertain, and theoretical nature of McLeod’s claims is clear from its language:

- “*Nor is it clear* that Qwest will have DS0 ordering processes in place by March 16, 2006, or that McLeod USA could use them effectively as of that date.” Motion at 15-16 (emphasis added).
- “Even assuming that Qwest could satisfactorily implement ordering for voice grade DS0 special access, *most likely* this will require modification of McLeodUSA’s electronic interface. Depending on the scope of the changes, this *could* involve training McLeod USA’s [sic] employee’s [sic] . . . . McLeod USA *may* need to outsource modification of its electronic interface. The contracting process . . . *can typically* require three to six months.” Motion at 16 (emphasis added).
- “[I]t is *unlikely* that McLeod USA on March 16, 2006 will be able to order DS0 UNEs seamlessly . . . .” Motion at 17 (emphasis added).

- “Absent this, McLeod USA’s service quality would *likely* decline . . . .” Motion at 17 (emphasis added).

And beyond this facial insufficiency, *all* of the premises for McLeod’s alleged injury are incorrect. **First**, nothing will happen immediately when the transition period ends on March 16. On March 16 and for some period of time thereafter, McLeod will continue to be able to obtain UNE loops and transport in the nine wire centers in which Qwest was granted relief by the *Order*, including DS0 loops. This is because the *Order* did not supersede the provisions of existing contracts and agreements, including the change of law provisions. Accordingly, until an amendment to the agreement between Qwest and McLeod has been negotiated, McLeod can continue ordering UNEs under the terms of that agreement. *See* attached Declaration of Candace Mowers. Such an amendment may result in McLeod being liable for the special access rate for loops (or other commercially reasonable rate for an alternative form of loops) effective as of the end of the transition period, consistent with the *Order*, especially if the negotiations drag on for months.<sup>1</sup>

**Second**, McLeod will be able to obtain analog voice grade DS0 special access channel terminations (*i.e.*, the special access equivalent of loops) on March 16, as well as after its current agreement with Qwest is amended — indeed, it can obtain them now. DS0 special access is available under Qwest’s interstate and state tariffs now, and has been available for many years.<sup>2</sup>

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<sup>1</sup> Indeed, McLeod agrees that the charges for the period starting March 16 are affected by the *Order*, unless it is set aside. It argues that it may be able to recoup any money erroneously paid for these services if it is successful on appeal. Motion at 14-15.

<sup>2</sup> *See, e.g.*, FCC QC Tariff No. 1, Section 17, Private Line Transport Service – Pricing Flexibility, *available at* <[http://tariffs.qwest.com:8000/idc/groups/public/documents/tariff/htmltoc\\_fcc1.htm](http://tariffs.qwest.com:8000/idc/groups/public/documents/tariff/htmltoc_fcc1.htm)>; NE QC Private Line Transport Services Catalog, Sections 5. Services and 6. Rates And Charges, *available at* <[http://tariffs.qwest.com:8000/idc/groups/public/documents/tariff/htmltoc\\_ne\\_p\\_c.htm](http://tariffs.qwest.com:8000/idc/groups/public/documents/tariff/htmltoc_ne_p_c.htm)>, <[http://tariffs.qwest.com:8000/idc/groups/public/documents/tariff/ne\\_p\\_c\\_s005p041.pdf#Page=1&PageMode=bookmarks](http://tariffs.qwest.com:8000/idc/groups/public/documents/tariff/ne_p_c_s005p041.pdf#Page=1&PageMode=bookmarks)>, <[http://tariffs.qwest.com:8000/idc/groups/public/documents/tariff/ne\\_p\\_c\\_s006p001.pdf#Page=1&PageMode=bookmarks](http://tariffs.qwest.com:8000/idc/groups/public/documents/tariff/ne_p_c_s006p001.pdf#Page=1&PageMode=bookmarks)>. *See also* Declaration of Candace Mowers.

In fact, McLeod itself acknowledges that “McLeodUSA does currently order some data DS0 special access circuits from Qwest.” Motion at 15 n.39.

Moreover, McLeod will also be able to purchase DS0 loops pursuant to Section 271 when the Section 251 forbearance has been fully implemented in its agreement with Qwest. The ordering process and pricing for UNEs under Section 271 will differ from that used under Section 251. *See* Declaration of Candace Mowers.

The fact that the ordering interface for obtaining DS0 loops as either special access channel terminations or as wholesale loops pursuant to Section 271 will in the future differ from the interface currently employed by McLeod to order such loops as UNEs under its existing agreement does not constitute irreparable harm. Any change in the way in which McLeod orders DS0 loops in Omaha as a result of the *Order* will come only after McLeod and Qwest have negotiated an amendment to their agreement, and will not occur suddenly on March 16.

With regard to the ordering interface, McLeod suggests that it has been informed in the course of discussions with Qwest that a new interface for DS0 loops in Omaha will be specified on February 9. *See* Motion at 15-16. McLeod appears to have either misunderstood or mischaracterized the discussions it has had with Qwest. Those discussions pertained to *TRRO*<sup>3</sup> implementation, not implementation of the Omaha *Order*. Moreover, the *TRRO* changes affect DS1 and DS3 UNEs, not DS0 UNEs. In point of fact, Qwest’s February 9 web posting of documents concerning the interface changes pertained to DS1 and DS3 loops, not DS0 loops.<sup>4</sup> The ordering interface and process for DS0 loops will not change March 16, as McLeod seems to believe.

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<sup>3</sup> *Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket 04-313, *Order on Remand*, 20 F.C.C.R. 2533 (2005) (*TRRO*).

<sup>4</sup> *See* <<http://www.qwest.com/cgi-bin/wholesale/trrologin.cgi>> (login required).

*Third*, although the conversion of DS0 UNEs to DS0 special access channel terminations (or other alternative arrangement) — when it occurs at some point in the future — will require a “design change,” it will not require technical interruption of the service causing disruption to customers, as McLeod fears. Motion at 15. The design change is necessary because McLeod will go from purchasing a standalone network element to a finished service, which requires changes to the circuit identifiers and other recordkeeping elements, as well as providing channel performance specifications that are not applicable to a bare loop. Under normal circumstances a design change requires a disconnect and reconnect, but in the case of DS0 UNE conversion to alternative DS0 arrangements, such as special channel terminations, this will not be necessary, because the actual changeover can be accomplished entirely as a matter of recordkeeping. Qwest will bill appropriate cost-based rates for this change. *See* Affidavit of Candace Mowers. As a result, there will be no interruption of service and no concomitant disruption to McLeod’s customers. No harm will result at all, much less irreparable harm.

McLeod also makes the alternative claim that it will be irreparably harmed by having to incur significant unrecoverable expenses in transitioning to a new ordering system for DS0 special access that would be unnecessary if it prevails in its appeal. Motion for Stay at 17-18. This alternative claim is also without merit. There is no immediate need for transitioning to a new ordering system for DS0 special access channel terminations because, as discussed, Qwest and McLeod will have to negotiate and implement an amendment to their current agreement before McLeod must transition its DS0 requirements from UNEs to special access — a process that will take months, at a minimum. The timing of the transition to a new ordering system *vis-à-vis* any ruling of the court of appeals would be an appropriate subject for discussion in those negotiations. In any event, the purely economic cost of a new ordering system does not constitute irreparable harm. *Wisconsin Gas*, 758 F.2d at 674.

## **B. Harm to Others and the Public Interest**

McLeod gives only brief lip service to how its requested stay will affect the public interest and even less attention to the harm that a stay will cause to others. McLeod's only discussion of the public interest relates to its concern over the implementing of new ordering systems on March 16 "on a hurry-up last-minute basis." Motion at 18. As discussed, there is no impending change on March 16, so this concern is unfounded. More importantly, a stay would conflict with the Commission's determination in the *Order* that the public interest would be served by granting forbearance in nine wire centers with respect to Qwest's Section 251(c) unbundling obligation. With respect to harm to others, McLeod contends that Qwest would not be harmed by a stay because it would continue to receive compensation for UNEs. Motion at 18. In fact, a stay would harm Qwest by preventing it from going forward with negotiation of amendments to its agreements with McLeod and other purchasers of UNEs to implement the terms of the *Order* and, through such amendments, seeking to reclassify the UNE loops purchased to commercially reasonable rates for alternative sources for such loops in accordance with the schedule specified in the *Order*.

## **C. Likelihood of Success on the Merits**

McLeod advances three legal theories on which it claims it has a significant likelihood of success on the merits at the D.C. Circuit. These theories are: (1) that the Commission erroneously interpreted the requirement of Section 10 of the Act<sup>5</sup> that the requirements of Section 251(c)<sup>6</sup> be "fully implemented" before forbearance from the latter requirements may be granted; (2) that the Commission's "predictive judgment" that Qwest would make its network available on competitive terms was arbitrary and capricious; and (3) that the Commission failed ade-

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<sup>5</sup> 47 U.S.C. § 160(d).

<sup>6</sup> 47 U.S.C. § 251(c).

quately to reconcile its decision to forbear in nine wire centers with its determination in the *TRRO* that competitive carriers in wire centers such as those are “impaired.” Motion at 2-14.

Section 405 of the Act bars a petitioner from raising for the first time on appeal “questions of fact or law upon which the Commission . . . has been afforded no opportunity to pass.”<sup>7</sup> Thus, it is unnecessary to discuss the substance of McLeod’s first argument, which was never raised before the Commission. The D.C. Circuit has made clear that it will not entertain challenges to Commission decisions when the arguments have not previously been presented to the Commission for consideration, either prior to its decision or in a petition for reconsideration.<sup>8</sup> Given McLeod’s failure to do so, there is no likelihood that McLeod will prevail on the merits of its first argument, which cannot even be considered.

With respect to the second argument, the FCC’s prediction that Qwest will make its network available on competitive terms is less a predictive judgment than a certainty. In the nine wire centers at issue, Qwest is no longer the principal local exchange carrier, and if it does not make its network available on a commercially reasonable wholesale basis it will lose both retail and wholesale revenues as customers move to the other facilities-based competitor, Cox. The

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<sup>7</sup> 47 U.S.C. § 405(a).

<sup>8</sup> *E.g.*, *ICO Global Communications (Holdings) Ltd. v. FCC*, 428 F.3d 264, 267 (D.C. Cir. 2005); *New Jersey Television Corp. v. FCC*, 393 F.3d 219, 222 (D.C. Cir. 2004); *EMR Network v. FCC*, 391 F.3d 269, 273 (D.C. Cir. 2004), *cert. denied*, 125 S.Ct. 2925 (2005); *American Family Association v. FCC*, 365 F.3d 1156, 1166 (D.C. Cir.), *cert. denied*, 543 U.S. 1004 (2004); *AT&T Wireless Services, Inc. v. FCC*, 365 F.3d 1095, 1101-02 (D.C. Cir. 2004); *AT&T Corp. v. FCC*, 317 F.3d 227, 235 (D.C. Cir. 2003); *Verizon Telephone Cos. v. FCC*, 292 F.3d 903, 909-10 (D.C. Cir. 2002); *AT&T Corp. v. FCC*, 86 F.3d 242, 246 (D.C. Cir. 1996); *AT&T Corp. v. FCC*, 974 F.2d 1351, 1354 (D.C. Cir. 1992), *quoting City of Brookings Municipal Telephone Co. v. FCC*, 822 F.2d 1153 (D.C. Cir. 1987); *ACLU v. FCC*, 823 F.2d 1554, 1575 (D.C. Cir. 1987); *accord Sims v. Apfel*, 530 U.S. 130, 107-108 (2000).

Commission's acknowledgment of that obvious fact is extremely unlikely to be set aside by a reviewing court.<sup>9</sup>

McLeod's third argument also fails. The Commission did not fail to reconcile the Omaha *Order* with the *TRRO*, because there was nothing to reconcile. Both decisions recognized that different statutory provisions are involved in the two proceedings, and that the statutory standards for forbearance are not the same as the statutory standards for impairment.<sup>10</sup> There is no likelihood that a reviewing court will consider that determination to be arbitrary and capricious.

**D. Neither the Balance of the Equities Nor the Merits Warrant a Stay**

As previously discussed, McLeod has not made even a weak case that it will be irreparably harmed absent a stay, and the harm to others and the public interest militate against a stay. McLeod would need to have an overwhelming case on the merits under these circumstances to counterbalance its weak position on the balance of the equities. Instead, McLeod presents legal arguments that are virtually certain not to be successful at the court of appeals. Under these circumstances, there can be no justification for the grant of a stay.

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<sup>9</sup> What is more, facilities-based competition in these wire centers ensures that consumers will receive competitive choices, whether a wholesale provider is available or not. McLeod's argument is irrelevant as well as inaccurate.

<sup>10</sup> See *Order* at ¶ 10 & n.48; *TRRO* at ¶ 39 & nn.120-121.

**CONCLUSION**

For the foregoing reasons, the motion for stay should be summarily denied.

Respectfully submitted,

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February 10, 2006

## DECLARATION

I, Candace Mowers, under penalty of perjury under the laws of the United States, hereby declare as follows:

1. My name is Candace Mowers. I have worked for Qwest Communications (formerly U S West Communications and Mountain Bell) in various positions since 1972. I joined Wholesale Product Management in 1990 as a Pricing Analyst for Switched Access. My job responsibilities were to price switched access as part of General Rate Case proceedings filed with state Commissions.
2. I became a Group Product Manager in 1997 supervising the development of Unbundled Network Element products and processes under Section 271 of the Act. In 2003, I assumed the role of Project Manager for implementation of the FCC's *Order on Remand*, In the Matter of Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 20 F.C.C.R. 2533 (2005) ("*TRRO*") and recently assumed responsibility for implementation of the *Memorandum Opinion and Order*, FCC 05-170 (released Dec. 2, 2005), (the "*Order*"). As Project Manager, my role is to ensure that product implementation is consistent with the conditions of the *TRRO* and the *Order*.
3. I received a Bachelor of Science Degree in Business Administration – Summa Cum Laude with a double major in Marketing and Management from Regis University in May, 1995. I completed a Master of Science in Management degree with Honors, also from Regis University, in May, 2000.

4. I have reviewed the Motion for Stay filed by McLeodUSA Telecommunications Service, Inc. (“McLeod”) with respect to the Order. Several of the factual statements in McLeod’s motion are inaccurate, as described herein.

**Status of UNE Facilities as of March 16, 2006**

5. Qwest has entered into an interconnection agreement with McLeod that allows the purchase of UNE loop and transport facilities. This contract has not yet been amended to reflect the rulings in the *Order*. Accordingly, Qwest will not terminate UNE loop and transport facilities in the nine wire centers in which it has been granted forbearance by the *Order* on March 16, 2006 until after the contract has been appropriately amended. Thus, no customers of any telecommunications carrier, including McLeod, who are being served via UNE facilities in those nine wire centers will be cut-off from service by virtue of the *Order*.
6. Prior to Qwest implementing the relief from Section 251(c) obligations granted in the *Order*, Qwest first will negotiate and have in place amendments to the interconnection agreements governing Qwest’s relationships with other telecommunications carriers. Qwest has not yet even sent notices to other telecommunications carriers with whom Qwest has interconnection agreements that are implicated by the *Order* advising them that Qwest seeks to commence negotiation of such amendments. Consequently, such amendments will not be negotiated, or approved by the relevant state commissions, by March 16, 2006, or even any time soon thereafter. Thus, pursuant to their ex-

isting interconnection agreements, those telecommunications carriers will be able to continue ordering facilities as UNEs even after March 16, 2006.

### **DS0 Ordering**

7. As described above, until a carrier executes an amendment to its interconnection agreement with Qwest, such carrier may continue to order DS0 facilities as UNEs from Qwest.
8. Carriers also may order voice-grade DS0 special access channel terminations from Qwest's interstate and state tariffs<sup>11</sup> DS0 facilities have been available under Qwest's tariffs for several years.
9. Carriers also may order DS1 and DS3 loop and transport facilities from Qwest's tariffs. Further, with respect to DS1 and DS3 loops and transport facilities which are no longer required to be unbundled pursuant to the *TRRO*, Qwest posted on its website, as of February 9, 2006, information pertaining to implementation of these provisions of the *TRRO*, Product Catalogs related to the facilities that Qwest is providing on a commercial basis, and transition information. These documents and ordering interfaces are available to all carriers who have amended their interconnection agreements with Qwest to reflect the provisions of the *TRRO*.

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<sup>11</sup> FCC QC No. 1, Section 17; NE QC Private Line Transport Services Catalog, Sections 5 and 6.

10. Qwest has not yet completed documentation pertaining to the implementation of the relief granted by the *Order*. Thus, Qwest does not yet have an ordering interface, separate and apart from the process which carriers may utilize to order special access DS0 channel terminations from Qwest's tariffs, to order DS0 facilities from Qwest on an alternative basis. Qwest is in the process of evaluating its DS0 facilities rates and market conditions in order to determine an appropriate product replacement for DS0 facilities. Only after Qwest has completed such analysis, developed Product Catalogs and information materials regarding the transition of facilities pursuant to the *Order*, and executed interconnection agreement amendments with affected carriers will Qwest begin implementing the Section 251(c) relief granted by the *Order*. Thus, no carrier will be placed into a circumstance in which it is no longer able to secure DS0 loop UNEs prior to Qwest's introduction of a commercial package and related ordering interface with respect to a DS0 loop commercial product.
  
11. Contrary to the statement in McLeod's motion, Qwest has not advised carriers that it will have a DS0 product ordering interface available as of February 9 for the nine wire centers impacted by the *Order*. Rather, Qwest has posted, as of February 9, information pertaining to the implementation of the relief granted by the *TRRO* with respect to carriers who have executed amendments to their interconnection agreements to reflect the holdings of the *TRRO*. The information now posted on Qwest's website in that regard may be found at <<http://www.qwest.com/cgi-bin/wholesale/trrologin/cgi>> (login required).

12. It is Qwest's intention to bill carriers at the reasonable rate (*i.e.*, non-TELRIC) for loops and transport in the wire centers covered by the *Order* beginning on March 16, 2006. This billing will be effectuated by back-billing the proper rate. The back-billing, if it occurs, will not affect service received by McLeod or other carriers after March 16, 2006.

### **Uninterrupted Service to Competing Carriers' Customers**

13. As described above, loop and transport facilities serving customers of competing carriers will not be cut-off on March 16, 2006 by virtue of the *Order*. Only after Qwest develops an alternative product package with respect to DS0 facilities and documentation concerning the product and a transition process, and only after a carrier executes an amendment to its interconnection agreement with Qwest, will a carrier be transitioned to ordering DS0 facilities on a non-UNE basis.
14. Further, once the parties to interconnection agreements execute amendments to those agreements reflecting the relief granted in the *Order*, and Qwest implements the relief granted by the *Order*, no loop and transport facilities will be cut-off in connection with the conversion of such facilities to alternate arrangements – whether those arrangements are for tariffed special access facilities or for commercial agreements.
15. Once all of the steps outlined above have been completed, the change of a DS0 loop facility to an alternative arrangement will be conducted by Qwest as a design change but will not result in any disconnection of the facility or any

interruption of service to the carrier's customer. Qwest will perform the change as a "records change," and effectively will tie together the old and new records pertaining to the particular DS0 facilities being changed. The circuit identifier for the facility will be changed, but Qwest will suppress that portion of the programming message that would otherwise treat such change as a "disconnect" and "reconnect" of the circuit. Qwest will bill appropriate cost-based rates for this change. No testing of the circuit is necessary, because the circuit is not classified as a reconnected circuit.

### **Cox as a Substitute for Local Service Business Customers**

16. Contrary to McLeod's assertions, Cox is a formidable competitor to Qwest in the provision of local service not only to residential users, but also to businesses. Qwest provided evidence in the record of Qwest's Petition for Forbearance with respect to Cox's strategic objectives and success in the business market, including the following:<sup>12</sup>

- Cox began providing telecom services in June, 1998, and focused on small-to-medium businesses.
- Cox's objective is to "own the business customer relationship for all services Voice-Video-Data."
- As of year-end 2002, Cox Business Services was realizing almost \$1.2M per month in revenue, from almost 16,000 business customers.
- Cox boasts of its 4,000 network miles, its Master Telecommunications Center with six Secondary Centers and its high reliability – features which are used to target business users in the Omaha MSA.

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<sup>12</sup> See Affidavit of David L. Teitzel, submitted as Exhibit A to Qwest's Petition for Forbearance, at pp. 12-13, 15.

- Cox announced in the first quarter of 2004 that it is “in a unique position in the commercial services arena” and that “all of our pieces – from the network we own and manage, to our architecture with built-in reliability to the business solutions and expertise we offer to small- and medium-sized business owners and enterprise alike – contribute to the sense of trust that our customers have with us.”

17. Qwest also provided in the record a copy of a Cox PowerPoint sales presentation that was made to a Qwest business customer.<sup>13</sup> In that presentation, Cox made the following claims regarding its business services division:

- Cox Business Services enterprise sales growth has been 100% per year for five consecutive years.
- Cox offers the following business telephony services in the Omaha MSA: Voice Services (digital business lines, digital trunks, ISDN-PRI, Toll Free and Long Distance services) and Private Line Services (DS1, DS3, Ethernet over SONET, Virtual Private Line and Local Loop Connectivity to IXC).
- Cox is now serving a large number of significant Omaha businesses.
- Cox’s network spans over 4,100 network miles in the Omaha metro area.
- Cox has over 1,000 miles of fiber network in the Omaha metro area.
- Cox’s network for business services assures business continuity and features such as redundancy, diverse routes, independent power, and dual entrances/dual hubs.
- Cox’s Omaha network has four SONET rings (ring-in-ring architecture) with six hubs.
- Cox now has over 165,000 phone lines (residence and business combined) on its Omaha MSA network and over 100,000 broadband internet customers.

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<sup>13</sup> See Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Cronan O’Connell, Vice President – Federal Regulatory, Qwest Corporation, filed July 27, 2005 in WC Docket No. 04-223.

18. Qwest also provided maps depicting the coverage area of Cox's footprint in the Omaha/Council Bluffs area. Qwest generated the maps based upon information from Cox's website. That map reflects the substantial area in which Cox's system – offering the “triple play” of cable television, cable modem, and telephone service – overlaps Qwest's system.
19. The breadth of Cox's network, its overlap of Qwest's network in the Omaha MSA, and its success in securing business customers demonstrate that Cox has proven itself to be a viable alternative supplier of local services to business users, and that the telephony services that Cox offers to business users are a substitute for the local services that Qwest offers.
20. The presence of Cox as a formidable facilities-based competitor in the Omaha MSA for both residential and business customers places pressure on Qwest to ensure that the commercial wholesale products that Qwest offers to competing carriers are priced rationally such that Qwest is able to make a reasonable profit from the provision of such services, while still providing an incentive for competing carriers to lease such wholesale products from Qwest. If Qwest were to price its wholesale products at too high a rate to sustain wholesale-based competitors, Qwest ultimately could lose not only that wholesale revenue, but also any and all revenue provided by that end-users customer, who could switch to Cox for telephone service. The growth of Cox's business customer base by 100% for each of the past five years provides ample evidence of this threat.

Executed this <sup>9<sup>th</sup></sup> day of February, 2006.

A handwritten signature in cursive script that reads "Candace Mowers". The signature is written in black ink and is positioned above a solid horizontal line.

Candace Mowers

**CERTIFICATE OF SERVICE**

I, Donna M. Crichlow, hereby certify that on this 10<sup>th</sup> day of February 2006, copies of the foregoing Opposition to Motion for Stay were served by first class United States mail on the following:

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/s/ Donna M. Crichlow  
Donna M. Crichlow