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FILED ELECTRONICALLY VIA ECFS

April 4, 2006

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, DC 20554

Re: In the Matter of Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunset Pursuant To 47 U.S.C. § 160, WC Docket No. 05-333

Dear Ms. Dortch,

The purpose of this letter is to respond to the AdHoc Telecommunications Users Committee's ("AdHoc") late-filed comments in the above-captioned proceeding which have been mis-labelled as "reply comments."[1]

On November 22, 2005, Qwest Communications International Inc., on behalf of its affiliates Qwest Communications Corporation ("QCC"), Qwest LD Corporation ("QLDC") and Qwest Corporation ("QC") (hereafter referred to jointly as "Qwest"), filed a Petition with the Federal Communications Commission ("Commission") asking the Commission to exercise its authority under Section 10 of the Act[2] and forbear from enforcing its dominant carrier rules against Qwest in the provision of in-region interstate interLATA interexchange services ("IXC services").[3] On December 8, 2005, the Commission issued a Public Notice requesting comment on Qwest's Petition and designated January 23, 2006 as the date for comments and February 22, 2006 as the

[1] Reply Comments of AdHoc Telecommunications Users Committee, filed Feb. 22, 2006.

[2] 47 U.S.C. § 160(c).

[3] Qwest's in-region, interLATA IXC services are now provided by QCC and QLDC, Qwest's deregulated Section 272 subsidiaries, and Qwest is currently classified as "non-dominant" in the provision of these services.

date for reply comments.[4] Thus, the Commission allowed almost two months for parties to review Qwest's Petition and to prepare comments. AdHoc chose not to file comments on January 23, 2006 -- but instead waited until February 22, 2006 to file "reply comments." AdHoc's comments opposing Qwest's Petition are "reply comments" in name only. While AdHoc does make a passing reference to CompTel's and AT&T's comments,[5] for all intents and purposes AdHoc's "reply comments" are "comments." The Commission's rules clarify that "comments" are "comments in opposition to or support of" Qwest's Petition and "reply comments" are "comments in reply to the original comments."[6] Under the Commission's rules, it is impossible to label AdHoc's "reply comments" as anything other than late-filed "comments" in opposition to Qwest's Petition. By filing "comments" in the reply round, AdHoc neither gave Qwest the courtesy nor the opportunity to respond to AdHoc's opposition in its reply. As such, Qwest is filing this letter to correct mistakes, inaccuracies and mischaracterizations contained in AdHoc's comments.

AdHoc devotes virtually all of its "reply comments" to two tasks: 1) challenging the veracity of Mr. David L. Teitzel's declaration regarding the status of competition that Qwest faces in its region; and 2) injecting extraneous and irrelevant arguments on special access pricing into this proceeding. In this letter and in Mr. Teitzel's attached Supplemental Rebuttal Declaration (hereafter referred to as "Declaration"), Qwest responds to AdHoc's self-serving claims that Qwest faces little, if any, competition in the local exchange markets that it serves. However, Qwest will not respond in this proceeding to AdHoc's special access arguments -- other than to say, as Qwest did in its reply, that subjecting Qwest's in-region IXC services to dominant or non-dominant regulation has no impact on special access pricing.[7] In any event, special access pricing is the subject of another proceeding before the Commission and AdHoc's comments here merely restate its tired arguments that have already been soundly rejected by Qwest and others in the special access docket.

Qwest will also not restate its strong showing in its Petition and reply comments in this proceeding demonstrating that Qwest more than satisfies the requirements for forbearance under

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[4] *See* Public Notice, Pleading Cycle Established for Comments on Qwest's Petition for Forbearance from Enforcement of the Commission's Dominant Carrier Rules as They Apply After Section 272 Sunsets, DA 05-3163, WC Docket No. 05-333, rel. Dec. 8, 2005.

[5] *See* AdHoc at 3.

[6] *See* 47 C.F.R. § 1.415(b) and (c).

[7] *See* Qwest Reply, filed Feb. 22, 2006 at 17-18. *See also*, *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005).

Section 10 of the 1996 Act and that its Petition must be granted. AdHoc's late-filed comments do nothing to change this fact. Indeed, as discussed below, AdHoc's comments are nothing more than mere hyperbole that both exaggerates the scope of the relief sought (*e.g.*, suggesting that the Commission, if it granted Qwest's Petition, would "sweep away all regulatory oversight affecting Qwest's exchange, exchange access, and in-region IXC services" or would "prematurely remove[] all regulatory requirements for ILECs' services")[8] and relies upon mistakes, inaccuracies and mischaracterizations regarding the underlying factual record.

<u>Communications to Investors</u>

As Mr. Teitzel observes in his Declaration "[a] substantial portion of AdHoc's comments misrepresent Qwest's statements to the investment community in an attempt to show that Qwest is no longer suffering competitive losses, and that, in fact, Qwest's access line base is growing."[9] First, AdHoc cites to a recent Qwest news release referencing Qwest's success in selling bundled service packages to customers as evidence that Qwest has experienced access line gains.[10] Mr. Teitzel notes that Qwest's service packages could include Digital Subscriber Line ("DSL"), wireless, and satellite television service in addition to retail access lines[11] and that each one of these services is counted as an individual "customer connection." As a result, there is no inconsistency with Qwest reporting that it had more customer connections at the end of 2005 and that it served fewer retail access lines. As Mr. Teitzel points out, neither Qwest's communications with investors nor any other credible evidence supports AdHoc's erroneous claim that Qwest's share of the access line market has increased.[12] Noteably, AdHoc omits any mention of Qwest's 10-K and the statements therein relating to access line loss.[13]

Next, AdHoc claims that Qwest's investor report indicates that Qwest's access line loss trend has been reversed.[14] Mr. Teitzel points out that there is a significant difference between a trend "improving," as Qwest indicated in its investor communications, and a trend being "reversed."[15]

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[8] Ad Hoc at ii and 2.

[9] Teitzel Declaration at 2.

[10] AdHoc at 10.

[11] Teitzel Declaration at 3.

[12] *Id.*

[13] *See, e.g.,* Qwest's 10-K, filed Feb. 17, 2006 with the Securities and Exchange Commission at page 28, stating that "[t]he decrease in local voice services revenue was primarily due to access line losses from competitive pressures including technology substitution."

[14] AdHoc at 12.

[15] Teitzel Declaration at 6.

Mr. Teitzel observes that Qwest lost 783,000 lines in 2005 and 869,000 in 2004 which represents an improving trend -- not a "reversal" as AdHoc implies.[16]

Retail Access Line Loss

In attempting to deny the reality of Qwest's retail access line losses, AdHoc employs a disjointed approach. First, AdHoc claims that "the alleged shrinkage in Qwest's 'retail access line base' is not a valid indicator that Qwest has lost any customers at all, much less to competitors."[17] AdHoc argues that Qwest's DSL customer gains and sales of wholesale products to competitive local exchange carriers ("CLECs") offset the majority of Qwest's retail access line losses.[18] Mr. Teitzel disagrees. He notes that [w]hile DSL sales are contributing to Qwest's improving financial health, these gains have not offset Qwest's retail line losses over the past year and certainly have not replaced the significant line losses incurred prior to 2004."[19]

AdHoc also asserts that increased sales of wholesale lines to CLECs offset Qwest's retail line losses and implies that Qwest should be unaffected by the loss of a retail access line if the customer purchases service from a CLEC that is utilizing a Qwest wholesale product.[20] "By mixing retail and wholesale data, AdHoc grossly misrepresents the impact of local exchange competition on Qwest."[21] As Mr. Teitzel points out in his attached Declaration, "to the extent Qwest loses a retail subscriber line to a CLEC utilizing Qwest-provided wholesale services, Qwest only receives a fraction of the revenue it previously earned in serving the retail customer."[22] Also, "[i]n such cases, Qwest no longer has a direct relationship with the retail customer, which means it has lost the opportunity and ability to sell bundled services to that customer."[23] Thus, Qwest is clearly harmed when it loses a retail local exchange customer to a CLEC regardless of whether the CLEC provides service by using its own facilities or by reselling Qwest wholesale services. AdHoc's claims to the contrary should be rejected as meritless.

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[16] *Id.*

[17] AdHoc at 10-11.

[18] *Id.*

[19] Teitzel Declaration at 4.

[20] AdHoc at 10-11.

[21] Teitzel Declaration at 4.

[22] *Id.* at 5.

[23] *Id.*

Next, AdHoc asserts that Qwest's growth in voice grade equivalent ("VGE") circuits during the December, 2000 - September, 2005 period, as reported in Qwest's 10-Q Reports, "indisputably represents real growth in both the quantity and capacity of access line services being sold by Qwest."[24] AdHoc is seriously mistaken. Once again, AdHoc is "mixing apples and oranges." As Mr. Teitzel observes "[a]t best, AdHoc's claim indicates a basic misunderstanding of the relationship between the number of reported access lines and VGE circuits."[25] VGEs are indicators of the potential capacity of all services that Qwest has deployed[26] but provide no information on the number of either wholesale or retail access lines in service at any given point in time. For example, "DSL service can have anywhere from 4 to 112 VGE circuits associated with the DSL circuit, depending on the version of DSL capacity purchased by the customer. [. . .] The number of DSL VGE circuits dramatically exceeds the number of DSL lines and is simply an artifact of customer demand for greater bandwidth for internet access."[27] Thus, contrary to AdHoc's assertion, Qwest's VGE data provides no factual basis for AdHoc's erroneous conclusion that Qwest has experienced "real" access line growth over the last five years. As Mr. Teitzel demonstrated in his original and rebuttal Declarations, "Qwest has lost a significant number of retail access lines since December 2000."[28]

<u>CLEC-Owned Facilities</u>

AdHoc challenges Mr. Teitzel's claim that '"a wide range of CLECs are now offering competitive services to residential and business customers in Qwest's region' and that CLEC end-user access lines have grown exponentially since 2000."[29] While AdHoc concedes that "Mr. Teitzel's facts may be technically correct," Adhoc asserts that "they [the facts] are misleadingly incomplete and fail to support the position Qwest espouses in its petition."[30] Mr. Teitzel disagrees with AdHoc's characterization and points out that "[t]he data that AdHoc finds so misleading and deficient was drawn directly from published FCC sources and shows that

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[24] AdHoc at 13.

[25] Teitzel Declaration at 6.

[26] As Mr. Teitzel points out in his Declaration "a single fiber can accommodate as many as 168,840 VGE circuits." *Id.* at 7.

[27] *Id.* at 7-8.

[28] *Id.* at 7. *See also* Declaration of David L. Teitzel, filed with Qwest's Petition for Forbearance, Nov. 22, 2005 at 2-3; *and see*, Rebuttal Declaration of David L. Teitzel, filed with Qwest's Reply, Feb. 22, 2006 at 6 ¶ 7.

[29] AdHoc at 16.

[30] *Id.*

CLEC access lines in Qwest's 14-state area have grown significantly between 2000 and 2004."[31] He also observes that "AdHoc provides no justification or evidence to support its claim that 'a more probative measure of CLEC health would be the trends in wholesale line purchases by CLECs in the time frame leading up to and following [the] December 2004 [. . .].'"[32] Mr. Teitzel also notes that "solely looking at CLECs' wholesale purchases from Qwest is very myopic in that it totally ignores self-provisioning by CLECs, an increasing source of competition."[33] In fact, contrary to AdHoc's assertion, the Commission's recent Triennial Review Order on Remand encourages CLECs to utilize CLEC-owned facilities rather than Qwest's wholesale services, as Mr. Teitzel has shown in his Declaration.[34] "Ad Hoc's failure to acknowledge the use of CLEC-owned facilities and its narrow focus on CLEC purchases of Qwest wholesale services is simply a self-serving attempt to understate the competition that Qwest faces in its local exchange markets and should be recognized as such."[35]

<u>Competition from Wireless and Voice over Internet Protocol ("VoIP")</u>

In an attempt to downplay the competition that Qwest faces from wireless providers, AdHoc focuses on the fact that only a small percentage of customers have "cut the cord" and exclusively use wireless service for all their communications needs.[36] As Mr. Teitzel points out in his Declaration, there are two problems with AdHoc's analysis. First, AdHoc bases its analysis on <u>2003</u> data and fails to reference more current Commission data that indicates that the number of households that "cut the cord" rose by approximately 50% between 2003 and 2004.[37] Needless to say, this trend is unlikely to change in the near future and the number of households relying exclusively on wireless service is even higher today than in 2004. Second, AdHoc entirely ignores current market data "showing that customers are increasingly utilizing wireless phones to place local and long distance calls in lieu of using landline services […]."[38] Thus, it is not

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[31] Teitzel Declaration at 9-10.

[32] *Id.* at 10.

[33] *Id.*

[34] *See id.* at 11-13.

[35] *Id.* at 13.

[36] AdHoc at 18-20.

[37] Teitzel Declaration at 13 citing the Commission's latest Commercial Mobile Radio Service report.

[38] *Id.* In fact, Carlton, Sider and Shampine provided evidence, based on Commission long distance statistics, of the magnitude of the wireless substitution effect on wireline long distance services when they showed that wireline long distance minutes-of-use per month declined by approximately 42% from 1995 through 2002. *See* Qwest Comments, WC Docket No. 02-112

necessary for wireless users to "cut the cord" in order for wireless providers to represent a significant competitive threat to Qwest and other landline providers. Contrary to AdHoc's contention, it is quite "clear" that wireless subscribers use their wireless phones as a substitute for landline telephones.[39]

AdHoc also dismisses as "premature," Mr. Teitzel's claim that VoIP represents a competitive threat to Qwest and other local exchange carriers).[40] AdHoc's position is based on its erroneous assumption that "the vast majority of customers do not subscribe to [broadband service] … offerings [*i.e.*, DSL, cable modem or wireless broadband services] and therefore cannot utilize VoIP services as a replacement for their Qwest voice services."[41] AdHoc is seriously misinformed about the state of broadband service deployment. Mr. Teitzel notes that recent research indicates that "42% of U.S. households now subscribe to broadband internet access"[42] and the number is growing. "For these customers, VoIP is certainly a viable option, and the decision to purchase VoIP is simply an incremental decision […]."[43] In fact, as Mr. Teitzel notes, the increased availability of broadband connections is "fueling explosive growth in the number of VoIP subscribers."[44] Thus, while there is no doubt that VoIP will represent an even greater competitive threat to Qwest in the future, VoIP's presence cannot be ignored in today's competitive environment. The Commission should dismiss AdHoc's comments on VoIP as totally at odds with the facts.

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and CC Docket No. 00-175, filed June 30, 2003, Declaration of Dennis W. Carlton, Hal Sider and Allan Shampine at 19-20.

[39] AdHoc at 19. The best example of the wireless substitution effect is to observe payphone usage in any major airport -- that is, if you can find a payphone.

[40] *Id.* at 20.

[41] *Id.*

[42] Teitzel Declaration at 14, citing findings of Park Associates.

[43] *Id.*

[44] *Id.* at 15.

Summary

AdHoc's late-filed comments provide no arguments or facts that undermine Qwest's showing that it faces significant competition in the provision of local exchange and in-region IXC services. Nor does AdHoc provide any reasoned-justification for subjecting in-region IXC services to dominant carrier regulation after Section 272 sunset. Therefore, as demonstrated in Qwest's Petition and Reply, the Commission should find that forbearance from dominant carrier regulation of Qwest's in-region IXC services is justified under Section 10 of the Act and grant Qwest's Petition.

Respectfully,

/s/ Timothy M. Boucher

SUPPLEMENTAL REBUTTAL DECLARATION OF DAVID L. TEITZEL

1. My name is David L. Teitzel. I am employed by Qwest Services Corporation ("QSC")[1] as Staff Director-Public Policy. I am the same David L. Teitzel who prepared a declaration, discussing the status of telecommunications competition in Qwest's 14-state region, filed November 22, 2005, and a rebuttal declaration, filed February 22, 2006, in conjunction with Qwest's petition for forbearance from dominant carrier regulation after sunset of Section 272's separate subsidiary requirements occurs in Qwest's states.[2]

2. The purpose of this declaration is to respond to inaccuracies and mischaracterizations contained in the reply comments of the AdHoc Telecommunications Users Committee,[3] filed on February 22, 2006 in this proceeding regarding the status of telecommunications competition in Qwest Corporation's[4] 14-state service territory. Because AdHoc waited until the reply round to comment on the competitive analyses contained in my November 22, 2005 declaration, I was unable to respond in my February 22, 2006 rebuttal declaration to AdHoc's unsubstantiated criticisms. This declaration shows how AdHoc has misused and misinterpreted data, and why AdHoc's reply comments should be disregarded.

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[1] QSC performs support functions, such as regulatory support, for other Qwest entities.

[2] Qwest originally filed its Petition on November 22, 2005 and subsequently filed an Errata on November 30, 2005, WC Docket No. 05-333.

[3] All references to the AdHoc Telecommunications Users Committee in the remainder of my declaration will be characterized as "AdHoc."

[4] All references to "Qwest" in the remainder of my declaration refer to Qwest Corporation.

ADHOC'S MISUSE AND MISCHARACTERIZATIONS OF MARKET DATA

3. A substantial proportion of AdHoc's comments misrepresent Qwest's statements to the investment community in an attempt to show that Qwest is no longer suffering competitive losses, and that, in fact, Qwest's access line base is growing. AdHoc's advocacy fails to distinguish between Qwest's financial progress and the continuing erosion of its local access line base. For example, AdHoc states:

> [T]he information Qwest provides to the FCC in support of its petition is suspect because it differs significantly from the information Qwest recently provided to investors and analysts in the investment community. To the FCC, Mr. Teitzel reports that "[w]hile competitive local exchange alternatives have enjoyed significant customer growth, Qwest's retail access line base has declined significantly [footnote omitted]" between December, 2000 and September, 2005. But Qwest's most recent briefing to its investors reported the opposite. To investors, Qwest's most recent quarterly briefing touts the fact that the downward trend has stopped, and Qwest is once again experiencing *gains*.[5]

AdHoc then proceeds to present various data to craft an illusion worthy of David Copperfield that competition is not affecting Qwest in a significant way. In the remainder of my declaration, I respond to each of AdHoc's misrepresentations and show that there is no basis for AdHoc's deceptive claims concerning the amount of competition that Qwest faces in its local exchange markets.

4. AdHoc cites a Qwest news release of February 14, 2006 in which Qwest stated its mass market results "reflect the success of new bundles launched earlier this year [and the]

[5] AdHoc at 10.

company ended 2005 with more customer connections than it began the year" as evidence that Qwest has experienced access line gains.[6] Qwest's news release provides no basis for AdHoc to draw such an erroneous conclusion. AdHoc ignores the fact that the "bundles" referenced in the quote from Qwest's news release include Qwest retail lines, DSL, wireless and satellite television service. Service bundling is a component of Qwest's strategy to improve its financial standing. Each of the four possible elements of a bundle is counted as a "customer connection." The fact that Qwest's number of "customer connections" has increased is not an indication that Qwest has gained access lines. For example, to the extent Qwest succeeds in selling a Qwest-branded satellite television service to a customer, that sale contributes to the total number of Qwest "customer connections" but is not a functional substitute for a lost retail access line. In addition, AdHoc fails to recognize that the overall telecommunications and video entertainment market, which encompasses these four "bundle" elements, continues to grow. Therefore, the fact that Qwest reported more customer connections at the end of 2005 than it had at the beginning of the year provides no support for AdHoc's claim that Qwest's share of the access line market has increased. Neither Qwest's communications with investors nor any other credible evidence supports such an erroneous conclusion.

5. AdHoc claims that shrinkage in Qwest's retail access line base "is not a valid indicator that Qwest has lost any customers at all, much less to competitors."[7] AdHoc attempts to

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[6] *Id.*
[7] *Id.* at 10-11.

support its claim by stating that DSL gains have offset the bulk of Qwest's access line reductions. AdHoc is wrong. While Qwest has aggressively marketed DSL internet access service to respond to customer demand for high speed internet access, DSL customer gains have not offset Qwest's retail access line losses. For example, in my rebuttal declaration in this proceeding, I reported at page 7 that Qwest's retail access line base declined by 783,000 lines between December 2004 and December 2005.[8] Qwest's DSL subscriber gains over that same period were 443,000. While DSL sales are contributing to Qwest's improving financial health, these gains have not offset Qwest's retail access line losses over the past year and certainly have not replaced the significant line losses incurred prior to 2004.[9] AdHoc's arguments to the contrary should be rejected as unsubstantiated by the facts.

6. AdHoc claims that Qwest's retail line losses are not significant, since a portion of Qwest's retail losses are replaced by DSL services or wholesale services purchased by CLECs. AdHoc states "all but about a quarter of Mr. Teitzel's reported 'loss' is actually a migration to *other* Qwest services, such as DSL, or to Qwest-provided wholesale services…"[10] By mixing retail and wholesale data, AdHoc grossly misrepresents the impact of local exchange competition on Qwest.

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[8] Qwest Communications International, Inc. Selected Consolidated Data, Attachment D, released February 14, 2006. In addition, as shown at page 2 of my November 22, 2005 Declaration in this docket, Qwest's retail line base declined from 17,091,000 in December 2000 to 13,177,000 in September 2005, a reduction of over 3.9 million lines.

[9] Since Qwest's reply comments and my associated Reply Declaration were filed on February 22, 2006, the same day on which AdHoc's reply comments were filed, AdHoc did not have the benefit of reviewing the data contained therein regarding Qwest's DSL successes versus Qwest's retail line losses prior to filing their "reply" comments.

[10] AdHoc at 11.

As I have already discussed above, DSL service sales have not nearly replaced access line losses Qwest has incurred in recent years. Moreover, to the extent Qwest loses a retail subscriber line to a CLEC utilizing Qwest-provided wholesale services, Qwest only receives a fraction of the revenue it previously earned in serving the retail customer. In such cases, Qwest no longer has a direct relationship with the retail customer, which means it has lost the opportunity and ability to sell bundled services to that customer. As reported earlier in this declaration, service bundling is a key element in Qwest's marketing strategy (as it is in most of Qwest's competitors' strategies). As such, Qwest is clearly harmed when it loses a retail local exchange customer to a CLEC. Qwest's ability to sell interexchange long distance and other services to the customer is curtailed when it loses the retail relationship with that customer, whether or not the CLEC relies on Qwest's wholesale services in delivering telephone service to its customer. Despite AdHoc's unsuccessful attempts to explain away Qwest's retail access line losses by including wholesale lines in its calculations, Qwest's declining share of retail local exchange markets is a reality.

7. AdHoc states that Qwest's loss '"trend' has been reversed" and "Qwest's investor report from two weeks ago states that '[a]ccess line trends improved year-over-year in both mass market and business retail channels.'"[11] Once again, AdHoc is playing "fast and loose" with both the facts and the English language. There is a significant difference

[11] *Id.* at 12.

between trends "improving" and trends "reversing." As I reported in my February 22, 2006 Rebuttal Declaration at page 6, Qwest lost 783,000 lines in 2005. In contrast, Qwest lost 869,000 lines in 2004.[12] In other words, it can accurately be stated, as Qwest did in its report to investors, "Qwest's access line trends improved year-over-year" in 2005 as compared to 2004. However, contrary to AdHoc's implication, these data do not show that Qwest's retail access line competitive loss trend has been reversed.

8. AdHoc asserts that Qwest has experienced "real growth in [*sic*] both the quantity and capacity of access line services being sold" during the December 2000 to September 2005 period.[13] AdHoc is mistaken. As support for its erroneous claim, AdHoc cites to data in Qwest's 10Q reports showing "the number of voice-grade equivalent ["VGE"] circuits sold by Qwest <u>increased by 47 million</u>, a 100% increase."[14] At best, AdHoc's claim indicates a basic misunderstanding of the relationship between the number of reported access lines and VGE circuits. At worst, AdHoc's claim is disingenuous. VGE circuits are indicators of the potential capacity of all services Qwest has deployed, but they should not, and cannot, be used as a barometer of the growth of Qwest retail lines in service. For example, roughly 40% of the 47 million VGE circuits cited by AdHoc are associated with services sold directly to interexchange carriers (not retail customers) to carry long distance traffic and is not relevant to the local exchange market at all. Approximately 30% of the total VGE circuits are associated with fiber-based services

[12] Qwest ARMIS data, FCC Report 43-08, Table III.
[13] AdHoc at 13.
[14] *Id.* (emphasis in original).

(*e.g.*, LAN and OCN) provided by Qwest to retail customers and represent increased demand for network bandwidth. It is important to note that a single fiber can accommodate as many as 163,840 VGE circuits. When Qwest sells a fiber LAN service to a customer, the total number of available VGE circuits are tracked and reported in Qwest's 10Q, regardless of the number of VGE circuits actually used by the customer. In other words, a customer may purchase such a service and actually use only 20% of the VGE circuit capacity of the service, holding the remainder for future growth. The number of available VGE circuits does not, in any way, serve as an indicator of actual access lines in service.

Furthermore, DSL service can have anywhere from 4 to 112 VGE circuits associated with the DSL service, depending on the version of DSL capacity purchased by the customer. As of September 2005, there were approximately 1.5 million Qwest high speed internet subscribers,[15] which include DSL subscribers, in service. The number of DSL VGE circuits dramatically exceeds the number of DSL lines and is simply an artifact of customer demand for greater bandwidth for internet access. In summary, VGE circuit data do not provide a factual basis for AdHoc's erroneous claim that Qwest has experienced "real" access line growth since December 2000. As I have shown in my prior declaration, Qwest has lost a significant number of retail access lines since December 2000.

[15] Qwest Communications International Inc., Selected Consolidated Data, Attachment D, data as of 12/31/05.

9. AdHoc dismisses my use of TNS Telecoms' ("TNS") connections share data[16] by flatly stating that, since the "connections" calculation includes "services like cellular phones and wireless PDAs which are purchased as additions rather than substitutes for traditional connections," Qwest's declining connections share "has no relevance to the question of whether Qwest should be classified as dominant in the provision of in-region IXC services."[17] I disagree with AdHoc's unsupported assertion. As I demonstrated in my rebuttal declaration, wireless service is indeed a substitute for a significant, and ever-increasing, segment of the wireline customer base.[18] For example, at page 8 of my Rebuttal Declaration, I cited the FCC's latest Commercial Mobile Radio Service ("CMRS") report which found that 5.5% of adults in the second half of 2004 (nearly two years ago) lived in households with only wireless phones, an increase from 2.8% in the first half of 2003. This trend is clearly increasing at a rapid rate. At page 12 of my November 22, 2005 Declaration, I quoted research from the Yankee Group predicting that "by 2009, 13.6% of U.S. households will cut the cord."

However, with respect to competition in the long distance telecommunications market, these data only tell part of the story. Many customers are now using wireless phones to place long distance calls rather than using landline telephone service, causing a shift in usage volume from landline carriers to wireless carriers. In June 2005, Harris Interactive

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[16] In my use of TNS connections share data (*see* page 3 of my November 22, 2005 Declaration), I excluded video connections to ensure the values reported were relevant only to telecommunications services.
[17] AdHoc at 14-15.
[18] *See* February 22, 2006 Rebuttal Declaration at 8-10.

(a division of Harris Polls) released research findings showing that "73% of respondents use a wireless phone instead of a landline to make a long distance call at least occasionally, while 65% do so to make local calls."[19] Clearly, customers are now utilizing wireless service as a competitive alternative to Qwest's long distance services either by entirely foregoing Qwest landline service or shifting a significant proportion of their long distance calling to wireless service. Thus, despite AdHoc's claims to the contrary, TNS' connections share data are very good indicators of the broad spectrum of competition that Qwest is facing both in the provision of local exchange services and long distance services.

10. AdHoc takes issue with my statement that "a wide range of CLECs are now actively offering competitive services to residential and business customers in Qwest's region" and asserts that while my "facts may be technically correct as far as they go, they are misleadingly incomplete and fail to support the position that Qwest espouses in its petition."[20] I disagree with AdHoc's characterization of the CLEC data that I have cited in my November 22, 2005 Declaration (at pp. 5-6) and believe that it is neither misleading nor incomplete. I also believe that these data fully support Qwest's claim that it faces significant competition in the provision of local exchange service. The data that AdHoc finds to be so misleading and deficient was drawn directly from published FCC sources and shows that CLEC access lines in Qwest's 14-state region have grown

[19] *Consumers and Communications Technologies: Current and Future Use,* Harris Interactive, Final Report, P. 10, June 29, 2005.
[20] AdHoc at 16.

significantly between 2000 and 2004.[21] AdHoc provides no justification or evidence to support its claim that "[a] more probative measure of CLEC health would be the trends in wholesale line purchases by CLECs in the time frame leading up to and following [the] December 2004…"[22] In fact, as I point out below, solely looking at CLECs' wholesale purchases from Qwest is very myopic in that it totally ignores self-provisioning by CLECs, an increasing source of competition.

In attempting to support its position, AdHoc cites to the fact that, in July 2004, AT&T "announced it would no longer solicit 'mass market' customers."[23] AdHoc's reference to AT&T's announcement is misleading. In fact, AT&T announced only that it would discontinue soliciting new customers via its UNE-P based residential local exchange service, but would continue to serve its existing customer base. In addition, this announcement was but a signal of AT&T's strategic shift with respect to the mass market. In 2005, AT&T launched its VoIP-based local and long distance services for residential and small business customers. AT&T's current web site promotes the availability of these services, and also highlights the availability of internet access, wireless and satellite television service in their product bundle, similar to Qwest's own

[21] November 22, 2005 Declaration at page 6, referencing the FCC's Local Telephone Competition Report, Table 8, rel. July 8, 2005.
[22] AdHoc at 17. The CLEC data reported in my declaration was drawn directly from the FCC's Local Telephone Competition report, released July 2005, which contains CLEC self-reported access line data as of December 2004. Full year 2005 CLEC data will not be released in the FCC's report until July 2006.
[23] AdHoc at 17.

service bundling strategy.[24] Contrary to AdHoc's contention, AT&T is actively marketing its services to mass market customers.[25]

Further, AdHoc suggests that the FCC's *Triennial Review Order on Remand*[26] has led directly to a decline in the number of CLEC access lines.[27] However, AdHoc focuses its discussion only on wholesale access lines purchased by CLECs from Qwest and ignores entirely access lines provided via CLEC-owned facilities. In fact, the FCC's clear objective is to encourage CLECs to utilize their own facilities to a greater degree. Therefore, it is not surprising, and is expected, that Qwest's wholesale line quantities will decline over time as CLECs provide an increasing number of services via CLEC-owned facilities. In fact, CLECs have already responded to market opportunities created by the FCC's *TRRO*. For example, XO Communications issued a press release in February

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[24] http://att.sbc.com/gen/landing-pages?pid=3308&phase=check

[25] In the FCC's order approving the merger of AT&T with SBC the FCC stated: "Based on record evidence, we define the market for local service to include not only wireline local service, but also certain types of VoIP service to the extent that consumers view them as close substitutes for wireline local service." *In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290 ¶ 85 (2005). AT&T is now marketing its own version of VoIP as a substitute for wireline local service, as discussed above, in competition with other wireline carriers. In that same paragraph, the FCC also stated: "In addition, the record evidence suggests that for certain categories of customers, mobile wireless service is viewed as a close substitute to wireline local service." Interestingly, AT&T's proposed merger with BellSouth, announced on March 4, 2006, will result in 100% control of Cingular Wireless (now jointly owned by BellSouth and AT&T) by AT&T alone. To the extent Cingular Wireless succeeds in winning a Qwest wireline local service customer, that benefit will fall solely to AT&T.

[26] *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carrier*, Order on Remand, 20 FCC Rcd 2533 (2005) ("*TRRO*"), *appeal pending sub nom. Covad v. FCC*, No. 05-1095 (D.C. Cir.) (oral argument scheduled for May 15, 2006).

[27] AdHoc at 17.

2005 entitled "XO Communications Ready to Provide UNE Alternatives to Carriers Affected by FCC's New Network Unbundling Rules."[28] In its release, XO states:

> As one of the largest facilities-based national local exchange carriers, XO is ready to offer carriers a wide range of cost-effective transport and local service alternatives that will enable them to transition off the RBOC unbundled network elements, including the UNE platform, and onto XO's network facilities and fiber.

Similarly, in December 2004, McLeodUSA issued a press release announcing its commercial agreement with MCI whereby McLeodUSA is selling network access to MCI as a surrogate for UNE-P services MCI previously purchased from Qwest.[29] In its release, McLeodUSA states:

> In the first quarter of 2005, MCI and McLeodUSA will begin migrating a minimum of **200,000 local lines** onto the McLeodUSA UNE-L network with a goal to complete the transition by the third quarter." (Emphasis added.)

Further, in the same release, MCI offers its view of the benefits of this agreement by stating:

> "This agreement is designed to help us reach customers in the McLeodUSA service area through a facilities-based approach," said Wayne Huyard, MCI President of U.S. Sales and Service. "As the regulatory environment becomes more difficult and we continue to seek alternatives to UNE-P, this kind of relationship can be mutually beneficial."

These CLECs are each significant competitors in Qwest's service territory, and these are clear examples of CLECs working together, with diminishing reliance on Qwest's network facilities, to find ways of serving local and long distance customers. These

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28 www.xo.com/news/214.html

29 http://www.mcleodusa.com/ResourceRetrieval?fileId=354

actions are in clear alignment with the FCC's goals in encouraging facilities-based telecommunications competition. AdHoc's failure to acknowledge the use of CLEC-owned facilities and its narrow focus on CLEC purchases of Qwest wholesale services is simply a self-serving attempt to understate the competition that Qwest faces in its local exchange markets and should be recognized as such.

11. AdHoc criticizes my citation to FCC data "that somewhere between 5% and 6% of wireless subscribers rely 'solely' on wireless service."[30] Remarkably, AdHoc supports its criticism with <u>2003</u> research showing that "3.1% of civilian, non-institutionalized adults have only a wireless phone, and 3.7% of households are wireless only"[31] and completely ignores the FCC's more current data in its CMRS report showing the number of households using only wireless service had increased to 5.5% by 2004.[32] AdHoc also ignores primary research showing the strong upward trend in customers electing to "cut the cord" and abandon wireline service. Additionally, AdHoc entirely ignores the current market data, as discussed earlier in this declaration, showing that customers are increasingly utilizing wireless phones to place local and long distance calls in lieu of using landline services for such purposes. There is no question that this phenomenon represents a tangible form of competition for Qwest's interLATA long distance service

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[30] AdHoc at 19.
[31] *Id.* at n.37.
[32] *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Tenth Report, 20 FCC Rcd 15908, 15979-80 ¶ 196 (2005).

offered through Qwest's Section 272 subsidiary -- the very service at issue in this proceeding.

12. AdHoc flatly dismisses VoIP service as a competitive factor in the telecommunications market by stating "Mr. Teitzel's reliance on VoIP *now* as a competitive alternative is premature."[33] AdHoc goes on to opine that the "vast majority" of customers do not subscribe to broadband internet services "and therefore cannot utilize VoIP services as a replacement for Qwest voice services." Clearly, AdHoc's position regarding VoIP shows a lack of awareness of recent trends in the telecommunications market. For example, Parks Associates issued research findings in February 2006 showing that 42% of U.S. households now subscribe to broadband internet access.[34] For these customers, VoIP is certainly a viable option, and the decision to purchase VoIP is simply an incremental purchase decision (*e.g.*, the broadband internet connection will continue to be used by the customer whether or not VoIP is purchased). In addition, the Parks Associates study found that an additional 4% of U.S. households currently using narrowband internet access plan to upgrade to broadband. In other words, according to the Parks Associates' findings, roughly 50% of U.S. households either have broadband internet access now or soon will have it. These findings are directly contrary to AdHoc's assertion that the "vast majority" of customers do not have broadband internet access and don't therefore have the option of subscribing to VoIP. Rather, current data shows a <u>major</u> segment of the

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[33] AdHoc at 20.

[34] http://www.parksassociates.com/press/press_releases/2006/nat-scan_pr1.html

telecommunications market does, indeed, have the option of subscribing to VoIP as a direct alternative to local and long distance services offered by Qwest.

Increases in broadband internet connections are fueling explosive growth in the number of VoIP subscribers. An article in the March 1, 2006 USA Today highlights this fact:

> Last year was a breakout year for internet telephone services, with the number of U.S. subscribers more than tripling to 4.5 million and industry revenue surpassing $1 billion. When 2005 began, there were 1.3 million subscribers of Voice over Internet Protocol services, according to a survey by analysis firm TeleGeography. In the ***last three months of the year alone, 900,000 people signed up for VoIP services…***Cable companies are now the largest providers of VoIP services, with 52% of the market compared to 45% a year ago…TeleGeography predicts that VoIP companies will continue to add about 3 million subscribers a year for the next three or four years.[35] (Emphasis added.)

Importantly, VoIP service is a direct substitute for Qwest local and long distance services. In fact, most VoIP providers, such as Vonage, Sunrocket, Comcast and others, offer long distance service as a "free" component of their flat-rated VoIP package prices. There can be no doubt that VoIP is currently a competitive factor in the telecommunications market and that the number of VoIP subscribers will continue to grow at an exponential rate over the next several years. AdHoc's ill-founded opinion that VoIP should be ignored as a factor in this proceeding should be disregarded.

[35] http://www.usatoday.com/tech/products/services/2006-03-01-voip-use-up_x.htm

SUMMARY

13. Contrary to AdHoc's assertions, Qwest's local and long distance services are currently subject to strong and expanding competition from intramodal and intermodal competitors. AdHoc has misused and mischaracterized Qwest's statements to the investor community in an attempt to show that competition is not actually impacting Qwest. AdHoc's self-serving claims and so-called analysis cannot withstand close scrutiny. Qwest's statements in February 2006 to the investor community simply affirm that Qwest's strategies around product bundling, service improvements and cost containment are bearing fruit in helping Qwest improve its financial status. Regardless of Qwest's improving financial condition, Qwest continues to be subject to intense competition from CLECs, wireless carriers, cable service carriers and VoIP providers and continues to lose retail access lines and associated telecommunications service revenues to these competitors. Plainly, AdHoc has failed to support its arguments with current, sound market facts and has instead supported its arguments largely with self-serving propositions. In view of the facts regarding the current, and growing, level of competition in the telecommunications markets that Qwest serves, the FCC should reject AdHoc's unsupported claims and grant Qwest's petition for forbearance from dominant carrier regulation.

I certify under penalty of perjury that the forgoing is true and correct to the best of my information and belief.

David L. Teitzel

David L. Teitzel

Executed on March 20, 2006.

David L. Teitzel
Staff Director
Qwest Services Corp.