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**Melissa E. Newman**
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*EX PARTE*

*Filed electronically via ECFS*

July 26, 2006

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
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

*In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of §64.1903 of the Commission's Rules* - WC Docket No. 02-112; CC Docket No. 00-175

Dear Ms. Dortch:

On July 25, 2006, Melissa Newman, Tim Boucher, Mary Retka and Ed Henry, in person, and Glenda Weibel, by phone, all of Qwest, and Jim Hannon, by phone, representing Qwest, met with Randy Clarke, Bill Dever, Heather Hendrickson, William Kehoe, Albert Lewis, Tamara Preiss, Deena Shetler, and Debra Weber of the Wireline Competition Bureau to discuss the above-captioned proceedings.

The attached document was used as the basis for discussion.

Sincerely,

/s/ Melissa E. Newman

Attachment

Copy via email to:
Randy Clarke
Bill Dever
Heather Hendrickson
William Kehoe
Albert Lewis
Tamara Preiss
Deena Shetler
Debra Weber

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**July 25, 2006**

# Background

- On December 3, 2006, Section 272 will sunset in all Qwest states.
- At that time, Qwest's in-region interLATA ("IXC") services will become subject to dominant carrier regulation unless Qwest continues to comply with pre-sunset rules.
- Congress intended Section 272's sunset provisions to reduce regulation -- not increase it.

# The Business Impact of Compliance with Section 272 Constraints Post-Sunset

- Slower Customer Service
  - Section 272 imposes unnecessary burdens and costs on Qwest and its retail customers in responding to customer installation and repair requests.
  - Qwest's service delivery and repair costs are higher than necessary due to duplicative and over-lapping work efforts.
  - Qwest's service delivery times are greater than necessary due to multiple "hand-offs" – particularly for large business customers.

# The Business Impact of Compliance with Section 272 Constraints Post-Sunset *(continued)*

- Higher Operational Costs
  - Qwest must maintain separate “back-office” support systems.
  - Qwest’s in-region network investment must be duplicated including switching and plant investment.

# The Business Impact of Compliance with Section 272 Constraints Post-Sunset *(continued)*

- Network Planning Impeded
  - Qwest's network planning efforts are seriously hindered by the uncertainty of the regulatory environment governing provision of in-region IXC services, post-sunset.
  - The time period from planning to installation of a new operating and support systems may be several years.
  - The most significant post-sunset savings arise from the elimination of duplicative systems – these savings can only be achieved with the installation of new integrated "next generation" systems.

# The Business Impact of Compliance with Section 272 Constraints Post-Sunset *(continued)*

- Higher Administrative Costs
  - Qwest must separately track, train, pay and accommodate other support needs of Section 272 subsidiary employees, including real estate/office needs.
  - Qwest's Biennial Section 272 audits impose significant costs including:
    - external audit fees.
    - internal employee expenses associated with collecting audit materials and responding to inquiries.
    - Commission audit charges.



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# There is No Legal Basis for Classifying Qwest as a Dominant Provider of IXC Services

- Traditionally, the Commission has found carriers with market power to be dominant.
  - Market power is defined as "the ability of a carrier to unilaterally raise and sustain price above a competitive level by restricting output."
- It is undeniable that Qwest has no market power in the provision of in-region IXC services.
- In-region IXC service prices are set by the competitive market in the absence of tariffs.
  - Prices of IXC services have fallen dramatically since 1995 and there is no reason to believe that prices will rise with sunset of Section 272's requirements.

## There is No Legal Basis for Classifying Qwest as a Dominant Provider of IXC Services *(continued)*

- Wireless competition has exploded since 2000 with the number of wireless subscribers growing by almost 11 million, or 92% from June 2000 to June 2005.
- In excess of 100 VoIP providers *(Vonage, Skype, Sunrocket, Comcast, etc.)* are offering telephone service, including unlimited long distance to retail customers at highly competitive (or even at free) rates.
- As a group, wireline providers of interLATA interstate services have experienced significant declines in usage as a result of increased competition from wireless providers and other competitors. For example, during the period from 1995 through 2002, average residential monthly minutes declined from 71 MOUs per month to 41 MOUs, a 43% decline. *(Source: Statistics of the Long Distance Telecommunications Industry, Industry Analysis and Technology Division, Wireline Competition Bureau, May 2003, Table 20)*



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# Subjecting In-Region IXC Services to Dominant Carrier Regulation Post-Sunset Makes No Sense

- Tariffing “competitive” in-region IXC services would “dampen competition,” as the Commission has recognized.
- Subjecting BOCs and their affiliates to dominant carrier regulation of in-region IXC services would be a return to the “asymmetrical” regulation that the Commission rejected when it granted AT&T dominant carrier relief in 1995.
- The existing dominant carrier rules do not contemplate dominant carrier regulation of IXC services and would have to be re-written by the Commission.



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# Section 10 Requires that the Commission Forbear from Applying Its Dominant Carrier Rules to Qwest's Provision of In-region IXC Services

- **Dominant carrier regulation is not necessary to ensure that rates and practices (of IXC services) are just, reasonable and not unreasonably discriminatory.**

- **Dominant carrier regulation is not necessary to protect consumers.**
  - Currently, prices of in-region IXC services are not regulated.
  - Customers have a wide array of IXC product and service provider choices.

- **Forbearance is consistent with the public interest.**
  - Forbearance "will promote competitive market conditions" by ensuring that Qwest will be able to provide in-region IXC services on a non-dominant basis post-sunset regardless of which Qwest entities provide these services.
  - Forbearance would avoid unnecessary and inappropriate "re-regulation" of Qwest's IXC services post-sunset.
  - Forbearance would allow Qwest to reduce unnecessary costs and compete more effectively.
  - "The Commission has long recognized that the regulations associated with dominant carrier classification can dampen competition." (*LEC Classification Order* at ¶88).



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# No Additional Safeguards Are Necessary Post-Sunset -- The Statute and Existing Commission Rules Provide Adequate Protection Against Cross-subsidization, Discrimination and Anticompetitive Conduct

- Section 272(e) does not sunset and prohibits Qwest from discriminating against unaffiliated carriers in the provisioning and pricing of telephone exchange service and exchange access services.
- Section 251(c)(5) ensures that Qwest's competitors will have timely information on changes to Qwest's local exchange network and other changes that could affect interoperability.
- Qwest will continue to be classified as a dominant carrier in the provision of local exchange services at the federal level.
  - Qwest's exchange access services are subject to price cap regulation and Part 61's tariffing requirements.
  - Qwest is prohibited from favoring its affiliates or itself in the provision of access services.

## No Additional Safeguards Are Necessary Post-Sunset -- Existing Commission Rules Provide Adequate Protection Against Cross-subsidization, Discrimination and Other Anticompetitive Conduct *(continued)*

- The Commission’s affiliate transactions rules will continue to apply post-sunset to all transactions between Qwest’s BOC and any affiliates providing in-region IXC services.
- Qwest’s intrastate local exchange services will continue to be subject to regulation in each of the 14 in-region states that Qwest’s BOC serves.
- Federal and State antitrust laws are available to Qwest’s competitors if they believe that Qwest has engaged in anticompetitive conduct in providing in-region IXC services.

# The Solution

- The Commission should either grant Qwest's petition for forbearance <u>or</u> take action in the *LEC Non-Dominant Proceeding*
- A grant of Qwest's forbearance petition would allow Qwest to provide IXC services as a non-dominant carrier regardless of whether these are provided directly by Qwest's BOC or by other Qwest subsidiaries (i.e., without complying with pre-sunset Section 272 rules).
- A grant of Qwest's petition will serve the Commission's long-standing goal of furthering competition.



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