

charges, practices, classifications, and regulations in connection with Qwest's provision, on an integrated basis, of in-region, interstate, interLATA telecommunications services are just, reasonable, and not unreasonably discriminatory, and that Qwest therefore satisfies this forbearance criterion.¹⁴¹

51. As our market analysis makes clear, we find that Qwest generally lacks classical market power in the provision of in-region, interstate, interLATA telecommunications services.¹⁴² We therefore find that Qwest will likely be unable to raise and maintain the prices of its in-region, interstate, interLATA telecommunications services above competitive levels. For the same reason, we find that Qwest will likely be unable to impose and maintain unjust or unreasonable practices, classifications, and regulations for these services. Faced with similar findings in the *LEC Classification Order*, the Commission concluded that, when carriers lack classical market power, the benefits of dominant carrier regulation are outweighed by its burdens.¹⁴³ Consistent with this precedent, we find that classical market power concerns generally do not require that we apply dominant carrier regulation to Qwest's provision of in-region, interstate, interLATA telecommunications services on an integrated basis.

52. Despite this general finding, we are concerned, as was the Commission in the *AT&T Reclassification Order*,¹⁴⁴ that Qwest residential customers who make few long distance calls and who do not also subscribe to wireless or broadband Internet access service may have fewer competitive choices among interstate, interLATA long distance providers and may not be able to avoid the impact of a price increase by engaging in usage substitution. We also are concerned that these customers may not receive the information regarding their monthly long distance usage that they need to make informed choices among alternative long-distance calling plans. As discussed below,¹⁴⁵ however, Qwest has committed itself to continue offering certain calling plans and providing billing information.¹⁴⁶ We find that Qwest's commitments adequately address these concerns. Given these commitments, we also find, consistent with the Commission's findings in the *AT&T Reclassification* and *LEC Classification Orders*,¹⁴⁷ that Qwest's possibly having classical market power with regard to these residential customers does not require that we apply dominant carrier regulation to Qwest's provision, on an integrated basis, of in-region, interLATA, telecommunications services in order to ensure that the charges, practices, classifications, and regulations for these services will be just, reasonable, and not unjustly or unreasonably discriminatory.

a. Exclusionary Market Power

53. Our assumption that Qwest continues to possess exclusionary market power raises the question whether it is necessary to apply dominant carrier regulation to any in-region, interstate,

¹⁴¹ See Qwest Petition at 15-16.

¹⁴² See *supra* part III.D.4.

¹⁴³ *LEC Classification Order*, 12 FCC Rcd at 15804, para. 85, 15806-08, paras. 88-90, and at 15812-33, paras. 98-130.

¹⁴⁴ *AT&T Reclassification Order*, 11 FCC Rcd at 3313-14, paras. 81-82.

¹⁴⁵ See *infra* Parts III.E.1.c.iii, III.E.1.c.iv.

¹⁴⁶ See Letter from Melissa E. Newman, Vice President, Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-333, Attach. at 1 (filed Feb. 8, 2007) (Qwest Feb. 8, 2007 *Ex Parte* Letter).

¹⁴⁷ *LEC Classification Order*, 12 FCC Rcd at 15806-08, paras. 88-90; *AT&T Reclassification Order*, 11 FCC Rcd at 3291, para. 33.

interLATA telecommunications services that Qwest provides on an integrated basis to ensure that the charges, practices, classifications, or regulations in connection with those services are just, reasonable, and not unjustly or unreasonably discriminatory. We conclude that it is not. Dominant carrier regulation of Qwest's in-region, interstate, interLATA telecommunications services is not the most effective and cost-efficient way to address exclusionary market power concerns resulting from Qwest's control of any bottleneck access facilities that Qwest's competitors must access in order to provide competing services.¹⁴⁸ Indeed, the existing safeguards we discuss below and the additional safeguards we adopt in this Order address these concerns far more directly than would the application of dominant carrier regulation to Qwest's in-region, interstate, interLATA telecommunications services. Consistent with the *LEC Classification Order*, we conclude that, to the extent dominant carrier regulation addresses exclusionary market power, "the burdens imposed by such regulation outweigh[] its benefits."¹⁴⁹

54. Although we recognize that the sunset of the section 272 structural safeguards has eliminated certain of the safeguards the Commission relied upon in the *LEC Classification Order*, other safeguards will continue to apply. In particular, Qwest still will be subject to: dominant carrier regulation of its access services, including price cap regulation of most telephone exchange and exchange access services;¹⁵⁰ the Commission's accounting and cost allocation rules and related reporting requirements;¹⁵¹ equal access obligations under longstanding Commission precedent and section 251(g) of the Act;¹⁵² section 251 obligations;¹⁵³ and the continuing general obligation to provide service on just, reasonable, and not unreasonably discriminatory rates, terms, and conditions pursuant to sections 201 and 202 of the

¹⁴⁸ See *LEC Classification Order*, 12 FCC Rcd at 15762-63, para. 6 (concluding that "regulating BOC in-region interLATA affiliates as dominant carriers generally would not help to prevent improper allocation of costs, discrimination by the BOCs against rivals of their interLATA affiliates, or price squeezes by the BOCs or the BOC interLATA affiliates").

¹⁴⁹ *Id.*

¹⁵⁰ Qwest is not subject to price cap regulation for: (1) the exchange access services for which it has been granted phase II pricing flexibility; (2) certain services for which it was granted forbearance from dominant carrier regulation in the Omaha MSA; and (3) certain of its services that are provided pursuant to rate of return regulation. See *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 98-157, CCB/CPD File No. 98-63, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999) (*Pricing Flexibility Order*), *aff'd sub nom. WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001); see also 47 U.S.C. §§ 203(b), 204(a)(3); 47 C.F.R. §§ 61.38, 61.41, 61.58; *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, CC Docket No. 96-187, Report and Order, 12 FCC Rcd 2170, 2182, para. 19, 2188, para. 31, 2191-92, para. 40, & 2202-03, para. 67 (1997); *Qwest Omaha Order*, 20 FCC Rcd at 19424, para. 15.

¹⁵¹ For example, Qwest is required to file on an annual basis a cost allocation manual (CAM) describing how it allocates costs between regulated and nonregulated activities, and to have an independent auditor audit that CAM every two years. See 47 C.F.R. §§ 43.21(d), 64.901-905; see also 47 C.F.R. §§ 32.23(c), 32.5280. Qwest also is subject to certain reporting requirements under the Commission's Automated Reporting Management Information System (ARMIS). See *Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules)*, CC Docket No. 86-182, Report and Order, 2 FCC Rcd 5770 (1987) (*ARMIS Order*), *modified on recon.*, 3 FCC Rcd 6375 (1988) (*ARMIS Reconsideration Order*); see also 47 C.F.R. § 43.21.

¹⁵² 47 U.S.C. § 251(g); *MTS and WATS Market Structure, Phase III*, Docket No. 78-72, Report and Order, 100 FCC 2d 860 (1985); *Investigation into the Quality of Equal Access Services*, Memorandum Opinion and Order, 60 Rad. Reg. 2d (P&F) 417, 419, 1986 WL 291752 (1986).

¹⁵³ 47 U.S.C. § 251.

Act.¹⁵⁴ In addition, the nondiscrimination requirement in section 272(e)(1) of the Act and the imputation requirement in section 272(e)(3) of the Act (which we discuss in part III.E.1.c.ii, below)¹⁵⁵ continue to apply.¹⁵⁶ Finally, in order to address concerns that Qwest might attempt to raise rivals' costs by discriminating in the provision of special access services, we impose as a condition of this Order the obligation that Qwest comply with its commitment to implement a special access performance metrics plan.¹⁵⁷ We find that these continuing existing safeguards, along with the conditions we impose here, are adequate to prevent the exercise of exclusionary market power by Qwest.

b. Specific Relief

i. Relief Granted

55. The Commission grants Qwest the relief set forth below with respect to, and only with respect to, Qwest's provision, on an integrated basis, of in-region, interstate and international, interLATA telecommunications services. To the extent our predictive judgment regarding the state of competition proves incorrect, aggrieved parties may file appropriate petitions with the Commission and the Commission has the option of revisiting this forbearance ruling.¹⁵⁸ For the sake of clarity, we emphasize that we do not forbear from the application to Qwest of any rule that applies to carriers classified as nondominant in the provision of in-region, interstate or international, interLATA telecommunications services.

56. *Price Cap, Rate of Return, and Tariffing Forbearance for Qwest's Provision of In-region, Interstate and International, InterLATA Telecommunications Services.* In light of our analysis above, we find that, subject to the conditions set forth in part III.E.1.c, below, enforcement of certain of our price cap, rate of return, and tariffing rules with respect to Qwest's provision of in-region, interstate,

¹⁵⁴ 47 U.S.C. §§ 201, 202.

¹⁵⁵ 47 U.S.C. § 272(e).

¹⁵⁶ We note that the safeguards adopted in the *Non-Accounting Safeguards* and the *Accounting Safeguards Orders* to implement these provisions also remain in effect.

¹⁵⁷ See *infra* Part III.E.1.c.i.

¹⁵⁸ See *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, WC Docket No. 05-281, Memorandum Opinion and Order, FCC 06-188, n.159 (rel. Jan. 30, 2007); *Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15099, para. 6, n.25 (2005) (stating that if the Commission's "predictive judgment proves incorrect and these conditions prove to be inadequate safeguards, then parties can file appropriate petitions with the Commission and the Commission has the option of reconsidering the forbearance ruling"); see also *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, 19 FCC Rcd 21496, 21509, para. 26, n.85 (2004) (*Broadband 271 Forbearance Order*), *aff'd sub nom. EarthLink, Inc. v. FCC*, 462 F.3d 1 (D.C. Cir. 2006); *Petition of SBC Communications Inc. for Forbearance from Structural Separation Requirements of Section 272 of the Communications Act of 1934, as Amended, and Request for Relief to Provide International Directory Assistance Services*, CC Docket No. 97-172, Memorandum Opinion and Order, 19 FCC Rcd 5211, 5223-24, para. 19, n.66 (2004) (stating in a forbearance decision that to the extent carriers believe, in the future, that circumstances have changed and discriminatory practices have emerged with respect to these particular routes, they are free to file petitions); *CellNet Communications, Inc. v. FCC*, 149 F.3d 429, 442 (6th Cir. 1998) (upholding the Commission's predictive judgment stating that "[i]f the FCC's predictions about the level of competition do not materialize, then it will of course need to reconsider its sunset provision in accordance with its continuing obligation to practice reasoned decision-making").

interLATA telecommunications services on an integrated basis is not necessary to ensure that Qwest's charges, practices, classifications, or regulations in connection with those services are just, reasonable, and not unjustly or unreasonably discriminatory. Specifically: (1) Qwest will not be required to, and is in fact barred from, filing tariffs for in-region, interstate, interLATA telecommunications services pursuant to sections 61.31-.38 and 61.43 of our rules;¹⁵⁹ (2) Qwest will not be required to establish an "interexchange basket" pursuant to section 61.42(d)(4) of our rules,¹⁶⁰ to the extent that section 61.42(d)(4) would require the establishment of an interexchange basket for the integrated provision of interexchange services covered by this Order; and (3) we will forbear from applying section 61.28 of our rules to Qwest's provision of in-region, international telecommunications services on an integrated basis to the extent that, and only to the extent that, Qwest would be treated as a dominant carrier under section 61.28 for no other reason than its provision, on an integrated basis, of in-region, international telecommunications services.¹⁶¹ To the extent that Qwest otherwise would be treated as a dominant carrier under section 61.28, our forbearance action has no effect on that treatment.¹⁶²

57. *Discontinuance and Streamlined Transfer of Control Forbearance.* In light of our analysis above, we find that, subject to the conditions set forth in part III.E.1.c, below, enforcement of certain of our discontinuance and streamlined transfer of control rules with respect to Qwest's provision of in-region, interstate, interLATA telecommunications services on an integrated basis is not necessary to ensure that Qwest's charges, practices, classifications or regulations in connection with those services are just, reasonable, and not unjustly or unreasonably discriminatory. Specifically, we forbear from applying sections 63.03, 63.19, 63.21, 63.23, and 63.60-90 of our rules to Qwest's provision of in-region, interstate, interLATA telecommunications services to the extent that, and only to the extent that, Qwest would be treated as a dominant carrier under these rules for no reason other than its provision of those services on an integrated basis.¹⁶³ To the extent that Qwest otherwise would be treated as a dominant carrier under these rules, that treatment shall continue.¹⁶⁴

¹⁵⁹ See 47 C.F.R. §§ 61.31-.38 (tariffing requirements for dominant carriers); see also 47 C.F.R. § 61.43 (requiring annual price cap filings). We also forbear from section 203 of the Act to the limited extent necessary to relieve Qwest of its section 61.31-.38 obligations, implementing that section of the Act, to file tariffs for in-region interexchange services it provides on an integrated basis and to prohibit Qwest from filing such tariffs. See *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996) (*Detariffing Order*); *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Order on Reconsideration, 12 FCC 15014 (1997) (*Reconsideration Order*); *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999) (*Second Reconsideration Order*).

¹⁶⁰ 47 C.F.R. § 61.42(d)(4) (interexchange basket for services that are not classified as access services).

¹⁶¹ 47 C.F.R. § 61.28 (tariffing requirements for dominant international carriers).

¹⁶² See *infra* Part III.F (addressing Qwest's in-region, international telecommunications services).

¹⁶³ See 47 C.F.R. § 63.03 (procedures for domestic transfer of control applications); 47 C.F.R. § 63.19 (procedures for discontinuing international services); 47 C.F.R. § 63.21 (conditions that apply to international section 214 authorizations); 47 C.F.R. § 63.23 (conditions that apply to resale-based international common carriers); 47 C.F.R. §§ 63.60-90 (definitions, rules, and procedures that apply to the discontinuance, reduction, outage, and impairment of services).

¹⁶⁴ Our forbearance with respect to section 63.03 extends only to those circumstances in which Qwest seeks to assign or transfer control of assets used solely for the purpose of providing in-region, interstate, interLATA

(continued...)

58. *Contract Filing and Reporting Forbearance.* In light of our analysis above, we find that, subject to the conditions set forth in part III.E.1.c, below, enforcement of section 43.51 of our rules with respect to Qwest's provision of in-region, interstate, interLATA telecommunications services on an integrated basis is not necessary to ensure that Qwest's charges, practices, classifications, or regulations in connection with those services are just, reasonable, and not unjustly or unreasonably discriminatory. Specifically, the Commission will forbear from applying section 43.51 of our rules to Qwest's provision of in-region, interstate, interLATA telecommunications services on an integrated basis to the extent that, and only to the extent that, Qwest would be treated as a dominant carrier under section 43.51 for no other reason than its provision of in-region, interstate, interLATA telecommunications services on an integrated basis.¹⁶⁵ To the extent that Qwest otherwise would be treated as a dominant carrier under section 43.51, that treatment shall continue.

ii. Relief Denied

59. *Sections 214 (a), (c), and (d) and 272 of the Act.* The Commission does not forbear from the application of any provision of sections 214 or 272 of the Act. As an initial matter, the provisions of section 272 (other than those in section 272(e)) have sunset throughout Qwest's region,¹⁶⁶ and we need not forbear from the provisions that have sunset to allow Qwest to provide in-region, interstate, interLATA telecommunications services subject to nondominant carrier regulation, as Qwest requests in its petition. Second, although we forbear in part from the application of our discontinuance and streamlined transfer of control rules as they relate to dominant carriers,¹⁶⁷ our rules implementing sections 214(a), (c), and (d) also include discontinuance rules and transfer of control rules for nondominant carriers from which we do not forbear. Finally, enforcement of sections 214(a), (c), and (d) and section 272(e) remains necessary to ensure that the charges, practices, classifications, and regulations in connection with Qwest's provision, on an integrated basis, of in-region, interstate or international, interLATA telecommunications services are just, reasonable, and not unjustly or unreasonably discriminatory. Denying Qwest relief from the application of sections 214(a), (c), and (d) and section 272(e) also does not preclude Qwest from operating as it proposes in its petition because those provisions do not prevent Qwest from providing in-region, interstate, interLATA telecommunications services on an integrated basis subject to nondominant carrier regulation.¹⁶⁸

60. *Price Cap, Rate of Return, and Tariffing Forbearance for Qwest's Provision of In-region, Interstate, InterLATA Telecommunications Services.* We need not forbear from the application of the other dominant carrier price cap, rate of return, and tariffing rules identified by Qwest (*i.e.*, sections 61.41, 61.45, 61.46-49, 61.58-59, 65.1(b)(1), 65.1(b)(3), and 65.600 of our rules) for Qwest to be able

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telecommunications services or to transfer control of an affiliate that does not jointly own any assets with another entity that uses such assets to provide services that are subject to dominant carrier regulation.

¹⁶⁵ 47 C.F.R. § 43.51 (filing of carrier contracts and concessions).

¹⁶⁶ *See supra* n.28.

¹⁶⁷ *See supra* para. 57.

¹⁶⁸ We also do not forbear from the application of sections 63.10 and 63.18 of our rules, because the provisions in these rules that deal with dominant carriers apply only to carriers classified as dominant based on their affiliations with foreign carriers. We therefore do not need to forbear from these rules for Qwest to operate as it proposes to operate.

to operate as it proposes in its petition.¹⁶⁹ This is because our forbearance from sections 61.31-38¹⁷⁰ obviates the need for Qwest to file tariffs for any in-region, interstate, interLATA telecommunications services it chooses to provide on an integrated basis, and, as described below, the Commission treats, and will continue to treat, the costs and revenues associated with Qwest's provision of in-region, interstate, interLATA telecommunications services on an integrated basis as nonregulated for accounting purposes.¹⁷¹ For these same reasons, we do not forbear from the application of section 61.42(d)(4), except to the extent described in paragraph 56 above.¹⁷²

61. *Contract Filing and Reporting Requirements.* We do not forbear from two of the contract filing and reporting rules identified by Qwest,¹⁷³ sections 43.21 and 43.43 of our rules.¹⁷⁴ These rules are unrelated to the provision of the services for which Qwest seeks relief. Qwest is subject to them because it is an incumbent LEC, not because it is classified as dominant in the provision of any service. These rules are, in other words, carrier-specific, not service-specific, and forbearance from them based on an analysis of Qwest's in-region, interstate and international, interLATA telecommunications services is unwarranted.

62. *Other Matters.* On December 7, 2006, Qwest filed an *ex parte* presentation asserting that, under section 32.23(a) of the Commission's rules, in-region, interLATA telecommunications services provided on an integrated basis should be treated as *regulated* for accounting purposes.¹⁷⁵ Contrary to Qwest's position,¹⁷⁶ the condition in section 32.23(a) of the Commission's rules upon which Qwest relies applies only "until such time" as the Commission decides the accounting treatment applicable to the activities in question.¹⁷⁷ Here, the Commission has explicitly determined that the BOCs' in-region,

¹⁶⁹ See 47 C.F.R. § 61.41 (general price cap requirements); 47 C.F.R. § 61.45 (adjustments to the price cap index); 47 C.F.R. §§ 61.46-49 (specific price cap implementation rules); 47 C.F.R. §§ 61.58-59 (tariff notice requirements for price cap carriers); 47 C.F.R. § 65.1(b)(1) (application of rate of return prescription procedures and methodologies for interstate access services); 47 C.F.R. § 65.1(b)(3) (application of rate of return prescription procedures and methodologies for price cap carrier offering rate of return services); 47 C.F.R. § 65.600 (reporting requirement for carriers subject to rate of return regulation).

¹⁷⁰ 47 C.F.R. §§ 61.31-38 (tariffing requirements for dominant carriers).

¹⁷¹ See *infra* para. 62.

¹⁷² Our forbearance action thus does not relieve Qwest of its obligation to establish or maintain an "interexchange basket" for services other than those covered by this Order.

¹⁷³ Qwest Reply at 11 (citing 47 C.F.R. §§ 43.21, 43.43).

¹⁷⁴ 47 C.F.R. § 43.21 (affiliate transactions); 47 C.F.R. § 43.43 (reports of proposed changes in depreciation rates). *But see supra* para. 58 (granting limited forbearance from section 43.51).

¹⁷⁵ See Qwest Dec. 7, 2006 *Ex Parte* Letter at 8. Qwest did not, in its petition initiating this proceeding, seek forbearance from any of the Commission's rules with respect to the accounting treatment of in-region, interLATA telecommunications services provided on an integrated basis. See Qwest Petition, *passim*.

¹⁷⁶ See Qwest Dec. 7, 2006 *Ex Parte* Letter at 8 (arguing that "in accordance with Section 32.23 of the Commission's rules, in-region [interexchange] services should be accounted for as regulated services when such services are provided on an integrated basis by Qwest's LEC"). We construe Qwest's *Ex Parte* analysis to refer only to in-region, interexchange or interLATA telecommunications services.

¹⁷⁷ See 47 C.F.R. § 32.23(a) (specifying that "[a]ctivities that have been deregulated at the interstate level, but not preemptively deregulated, will be classified for accounting purposes as regulated activities *until such time as this Commission decides otherwise*") (emphasis added).

interLATA telecommunications services (services that Qwest currently offers through its section 272 separate affiliates) are to be treated as nonregulated for accounting purposes.¹⁷⁸ This treatment is consistent with the accounting treatment of incidental and out-of-region interLATA services provided on an integrated basis.¹⁷⁹ Accordingly, absent a determination to the contrary, the provision of in-region, interLATA telecommunications services on an integrated basis will continue to be treated as nonregulated for accounting purposes.¹⁸⁰ We note that Qwest does not address the policy concerns the Commission previously identified with respect to the treatment of in-region, interLATA telecommunications services provided on an integrated basis as regulated for accounting purposes.¹⁸¹ Nor do Qwest's summary assertions late in this proceeding adequately address concerns regarding potential negative implications of regulated accounting treatment on state ratemaking.¹⁸²

c. Safeguards

63. The relief we grant in this Order is conditioned on Qwest's compliance with the following safeguards, which will apply to the extent Qwest chooses to provide in-region, interstate, interLATA telecommunications services on an integrated basis through the BOC or through another affiliate that is not a section 272 separate affiliate. These safeguards include: (1) Qwest's commitment to implement special access performance metrics to prevent non-price discrimination in the provision of special access

¹⁷⁸ See *Accounting Safeguards Order*, 11 FCC Rcd at 17620, para. 176 (directing that the BOCs treat services provided by their section 272 interLATA affiliates, such as affiliates providing in-region services, as nonregulated activities for accounting purposes). The *Accounting Safeguards Order* does not limit the applicability of nonregulated accounting treatment for services provided by section 272 separate affiliates to specific services.

¹⁷⁹ See *Accounting Safeguards Order*, 11 FCC Rcd at 17573, para. 76 (noting that treating out-of-region and certain types of incidental interLATA services as nonregulated for accounting purposes will achieve greater accuracy in safeguarding against cross-subsidization and will lessen the chance that costs associated with such services are inadvertently assigned to a local exchange or exchange access category). Contrary to Qwest's assertions, see Qwest Dec. 7, 2006 *Ex Parte* Letter at 8-9, n.19, the Commission's decision in the *Wireline Broadband Internet Access Services Order* to treat as regulated the telecommunications transmission component of the wireline broadband Internet access services provides no support for treating Qwest's provision of in-region, interLATA telecommunications services on an integrated basis as a regulated activity. See *Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14924, para. 128. As Qwest recognizes, the Commission found in that Order that the burdens of requiring nonregulated treatment for the broadband transmission services at issue in that Order outweighed the benefits. See Qwest Dec. 7, 2006 *Ex Parte* Letter at 8-9, n.19 (citing *Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14924-26, paras. 129-35). Those transmission services had been treated as regulated up to that time, and thus it would have been burdensome to change the accounting treatment for them. Here, Qwest's interLATA telecommunications services are treated as nonregulated today, and continuing to treat them as nonregulated when integrated maintains the accounting status quo, consistent with the Commission's rules and the Commission's approach in the *Wireline Broadband Internet Access Services Order*.

¹⁸⁰ In its CAM updates filed pursuant to 47 C.F.R § 64.903(b), Qwest will describe how it will comply with part 64 in allocating costs and revenues from these services between its regulated and nonregulated operations.

¹⁸¹ *Accounting Safeguards Order*, 11 FCC Rcd at 17572-73, para. 74 (concluding that "if interLATA telecommunications services . . . that may be provided by incumbent local exchange carriers on an integrated basis, were treated as regulated for accounting purposes, our part 64 rules would not prevent any improper cost allocations that may occur between local exchange and exchange access services and these interLATA telecommunications services"); *id.* at 17573, para. 76 (stating that "the Part 36 jurisdictional separations process and the Part 69 access charge process were not designed to prevent subsidization of competitive telecommunications services by subscribers to exchange and exchange access services").

¹⁸² See Qwest Dec. 7, 2006 *Ex Parte* Letter at 8, n.18.

services; (2) an imputation requirement to help us evaluate whether Qwest engages in price discrimination in the provision of these services; (3) Qwest's commitment to continue offering certain calling plans to protect residential customers who make few interstate, interLATA calls; and (4) Qwest's commitment to ensure that its subscribers continue to receive in their bills the monthly usage information that they may need to make cost-effective decisions concerning alternative long-distance plans. We will carefully monitor Qwest's compliance with this condition and will not hesitate to take appropriate remedial action if necessary. We also retain the authority to adjust these safeguards in the future as appropriate to reflect any competitive changes that might occur in the markets for interLATA telecommunications services within Qwest's region.

i. Special Access Performance Metrics

64. As part of the Commission's implementation of the section 272 structural safeguards, Qwest has implemented special access performance metrics designed to ensure that Qwest does not engage in non-price discrimination in its provision of special access services.¹⁸³ Once Qwest chooses to provide in-region, interstate or international, interLATA telecommunications services on an integrated basis, those metrics would cease to be available. Therefore, Qwest has committed to implement special access metrics, detailed in Appendix C, which are similar to those imposed on AT&T and Verizon under the terms of the *SBC/AT&T* and *Verizon/MCI Merger Orders*.¹⁸⁴ The metrics Qwest has committed to implement address order taking, provisioning, and maintenance and repair of Qwest's DS0, DS1, DS3, and OCn services (collectively, covered special access services) and are designed to help ensure that Qwest provides special access services to unaffiliated entities in a non-discriminatory manner.¹⁸⁵ The information Qwest records and reports to the Commission under these metrics will provide the Commission and other interested parties with reasonable tools to monitor Qwest's performance in providing these special access services to itself and its competitors.¹⁸⁶

65. Qwest will implement these metrics to the extent it provides one or more of the covered special access services to Qwest's own operations or to third parties. Qwest will provide the Commission with its performance measurement results on a quarterly basis. Those results shall consist

¹⁸³ Qwest's implementation of these metrics is reviewed as part of the biennial audits. Qwest's current biennial audit period began January 2, 2006, and will run until January 2, 2008 or until Qwest ceases providing in-region, interLATA telecommunications services through a section 272 separate affiliate, whichever occurs earlier.

¹⁸⁴ See Letter from Melissa E. Newman, Vice President, Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-333 (filed Feb. 9, 2007) (Qwest Feb. 9, 2007 *Ex Parte* Letter); see also *SBC/AT&T Order*, 20 FCC Rcd at 18415-21 (App. F, Attach. A); *Verizon/MCI Order*, 10 FCC Rcd at 18563-69 (App. G, Attach. A).

¹⁸⁵ These metrics thus are consistent with Qwest's obligation under section 272(e)(1) to "fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates." 47 U.S.C. § 272(e)(1).

¹⁸⁶ For example, the "Firm Order Confirmation Timeliness" metric should provide data measuring whether Qwest confirms orders for the covered special access services within nondiscriminatory time frames. Similarly, the "Percent Installation Services Met" and "New Installation Trouble Report Rate" metrics should measure whether Qwest provisions these special access services to itself and its competitors in nondiscriminatory time frames and with nondiscriminatory levels of quality. In addition, the "Failure Rate/Trouble Rate" metric should measure whether Qwest provides its competitors with the same level of special access quality as that provided to its own operations. Finally, the "Average Repair Interval/Mean Time to Restore" metric should measure whether Qwest repairs covered special access services in a nondiscriminatory manner.

of data collected in accordance with the metrics set forth in Appendix C to this Order. Such reports will be provided in an Excel spreadsheet format and will be designed to demonstrate the Qwest BOCs' monthly performance in delivering the covered interstate special access services within each of the states in Qwest's region. These data will be reported on an aggregated basis for interstate special access services as identified in the attachment. Qwest will provide performance measurement results (broken down on a monthly basis) for each quarter to the Commission by the 45th day after the end of the quarter with the exception of the New Installation Trouble Report Rate, which will be provided by the 60th day after the end of the quarter. Qwest will implement these metrics for the first full quarter following the effective date of this Order.¹⁸⁷ This commitment shall terminate on the earlier of: (i) 30 months and 60 days after the beginning of the first full quarter following the effective date of this Order; or (ii) the effective date of a Commission order adopting performance metrics for interstate special access services.

66. We conclude that the metrics and the associated reporting requirements that Qwest has committed itself to implement adequately address the parties' concerns about Qwest's incentive and ability to discriminate in its provisioning of special access services in order to impede competition in the market for interstate, interLATA telecommunications services.¹⁸⁸ At the same time, these metrics should not in any way impede Qwest's ability to compete.¹⁸⁹

ii. Imputation

67. We also provide guidance to Qwest regarding its compliance with its ongoing obligations under section 272(e)(3) of the Act.¹⁹⁰ That provision requires each BOC that uses access to its local

¹⁸⁷ We anticipate that Qwest's performance under these metrics will be evaluated in connection with the CAM review process.

¹⁸⁸ See, e.g., Level 3 Comments at 10 (stating that Level 3 and other buyers find it largely impossible to find viable alternatives to incumbent LEC special access services); AdHoc Reply at 8 (stating that enterprise networks are dependent upon Qwest's access services); see also *Triennial Review Order*, 18 FCC Rcd at 17012, para. 45 (recognizing that special access services provide competitors with wholesale inputs that they typically combine with other competitively provisioned services or facilities to build complete services for sale to retail customers), corrected by *Errata*, 18 FCC Rcd 19020 (2003), *aff'd in part, remanded in part, vacated in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*), *cert. denied sub nom. National Ass'n Regulatory Util. Comm'rs v. United States Telecom Ass'n*, 534 U.S. 925 (2004).

¹⁸⁹ AdHoc maintains that the most effective measure for preventing potential price squeezes for access services is to ensure special access prices are at competitive levels. See AdHoc Reply at 25-26. Imposing dominant carrier regulation on Qwest in its provision of in-region, interstate and international, interLATA telecommunications services will not address AdHoc's concerns. Rather, the targeted safeguards adopted in this Order specifically address Qwest's control over bottleneck access facilities in its region. Accordingly, we find that, in comparison to dominant carrier regulation of those services, the safeguards adopted in this Order, together with other existing safeguards, provide a cost-effective means of limiting Qwest's ability to use any market power it has in the local exchange and exchange access markets to impede competition in the enterprise market.

¹⁹⁰ 47 U.S.C. § 272(e)(3). Imputation is an accounting and, at times, ratemaking device that reflects a policy decision to depart from historical costs in recognizing intra-company transactions. In the context of access services, this Commission and state commissions have long recognized the potential for LECs to use their control over their local networks to impede competition in services for which local network access is a needed input. See, e.g., *Application of Access Charges to the Origination and Termination of Interstate, IntraLATA Services and Corridor Services*, Memorandum Opinion and Order, FCC 85-172, 1985 FCC Lexis 3510, para. 9 & n.22 (Apr. 12, 1985) (*Corridor Services Order*) (requiring that LECs impute access charges to themselves in calculating their interstate, intraLATA toll rates); see also *1998 Biennial Regulatory Review – Part 61 of the Commission's Rules and Related Tariffing Requirements*, CC Docket No. 98-131, Report and Order and First Order on Reconsideration, 14 FCC Rcd

(continued....)

network for the provision of its own services to “impute to itself . . . an amount for access . . . that is no less than the amount charged to any unaffiliated interexchange carriers for such access.”¹⁹¹ Consistent with this requirement, Qwest acknowledges that it must impute to itself, at its tariffed rates, charges for access services used to provide interLATA services.¹⁹² Qwest will revise its CAM filed pursuant to section 64.903 of our rules to include its imputation methodology, and the revised CAM will be subject to public comment.¹⁹³

68. Qwest indicates that a significant reason underlying its desire to provide in-region, interstate, interLATA telecommunications services on an integrated basis is to realize the efficiencies of an integrated network over time.¹⁹⁴ This integration will over time change both how Qwest’s in-region, interLATA network interconnects with its local network and the degree to which some facilities are jointly used to provide both local and interLATA services. The degree of integration does not alter Qwest’s imputation obligation under section 272(e)(3).¹⁹⁵ In order to ensure Qwest’s continued compliance with this obligation, we direct Qwest to continue to impute to itself its tariffed rates for access, including access provided over joint-use facilities, where it sells comparable access to unaffiliated interexchange carriers.¹⁹⁶ We also direct Qwest to modify its CAM as necessary to ensure that its imputation methodology remains consistent with section 272(e)(3) as Qwest changes the degree to which it integrates its interLATA and BOC operations.¹⁹⁷

69. Finally, under our rules, amounts imputed to Qwest’s in-region, interLATA services pursuant to section 272(e)(3) must be debited to account 32.5280,¹⁹⁸ which includes nonregulated operating revenue.¹⁹⁹ To facilitate transparency of Qwest’s imputation of integrated, in-region, interLATA costs,

(Continued from previous page)

12293, 12312, para. 53 (1999) (requiring that price cap LECs offering interexchange services impute to themselves the same access charges that they impose on interexchange carriers).

¹⁹¹ 47 U.S.C. § 272(e)(3); see also *Accounting Safeguards Order*, 11 FCC Rcd at 17577, para. 87 (“the BOC must impute to its integrated operations the highest rate paid for such access by unaffiliated carriers”). This safeguard remains applicable to Qwest’s provision of in-region, interLATA telecommunications services. See *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22035-36, para. 270.

¹⁹² See Qwest Dec. 7, 2006 *Ex Parte* Letter at 9.

¹⁹³ 47 C.F.R. § 64.903 (CAM requirements).

¹⁹⁴ See Letter from Melissa E. Newman, Vice President, Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-333, Attach. at 3-6 (filed July 26, 2006).

¹⁹⁵ 47 U.S.C. § 272(e)(3). The section 272(e)(3) obligation to impute an amount for access “that is no less than the amount charged to any unaffiliated interexchange carriers for such service” is unqualified; it does not vary with Qwest’s network configuration or how Qwest provides access to itself. See *id.*

¹⁹⁶ *Accounting Safeguards Order*, 11 FCC Rcd at 17577, para. 87 (stating that “where a BOC charges different rates to different unaffiliated carriers for access to its telephone exchange service, the BOC must impute to its integrated operations the highest rate paid for such access by unaffiliated carriers”).

¹⁹⁷ 47 C.F.R. § 64.903(b) (accuracy of CAMs).

¹⁹⁸ 47 C.F.R. § 32.5280 (nonregulated operating revenue).

¹⁹⁹ 47 C.F.R. § 32.5280; *Accounting Safeguards Order*, 11 FCC Rcd at 17576-77, para. 86; see also 47 C.F.R. § 64.901(b)(1) (specifying that tariffed services, such as exchange access services, provided to a nonregulated operation must be charged to nonregulated activities at the tariffed rates and credited to the regulated revenue account for that service).

we require Qwest, as a condition of this Order, to include the imputation charges it debits to account 32.5280 in its ARMIS filings, accompanied by an explanatory footnote for each line item identifying the amount imputed.²⁰⁰ This requirement should pose at most a minimal additional burden to Qwest because Qwest already records imputation charges in a subsidiary record account for revenues derived from regulated services treated as nonregulated for federal accounting purposes,²⁰¹ and already must file ARMIS reports.²⁰²

70. We conclude that such imputation requirements adequately address the parties' concerns about Qwest's incentives and ability to use its pricing of special access services to impede competition in the provision of in-region, interstate, intraLATA telecommunications services.²⁰³ At the same time, imputation requirements should not in any way impede Qwest's ability to compete. Instead, they should give Qwest, Qwest's special access services customers, and the Commission meaningful information for evaluating whether Qwest's imputation practices and procedures comply with section 272(e)(3). We also believe that, in comparison with dominant carrier regulation, these imputation requirements provide a less costly but more effective method of assuring that Qwest will not discriminate between its own operations and its competitors in the pricing of special access services.

iii. Low Volume Usage Plans

71. As discussed above, although we find that Qwest generally lacks classical market power in the provision of interstate, interLATA telecommunications services, we are concerned that Qwest customers who make few long distance calls and who do not also subscribe to wireless or broadband Internet access service may have fewer competitive choices among interstate, interLATA long distance providers and may not be able to avoid the impact of a price increase by engaging in usage substitution. To address this concern, Qwest has committed for two years to freeze the per-minute prices for two calling plans that it currently offers which are tailored to these customers' needs, and not to increase the monthly fee that applies to one of these plans by more than one dollar.²⁰⁴ We find that this commitment helps protect against any classical market power that Qwest may have in relation to these customers in its provision of interstate, interLATA telecommunications services and therefore helps ensure that these customers receive those services at just and reasonable charges within the meaning of section 10(a)(1). Moreover, we find that this condition provides more effective and less costly protection than applying

²⁰⁰ These data values with explanatory footnotes are to be provided in FCC Report 43-01, ARMIS Annual Summary Report, Table I, row 1045, columns (b) and (c); FCC Report 43-02, ARMIS USOA Report, Table I-1, row 5280, column (b); and in FCC Report 43-03, ARMIS Joint Cost Report, Table I, row 5280, columns (b), (d), and (j).

²⁰¹ See 47 C.F.R. § 32.5280(c) (specifying that separate subsidiary record categories be maintained for nonregulated revenues).

²⁰² See, e.g., *ARMIS Order*, 2 FCC Rcd at 5772, para. 22; see also 47 C.F.R. § 43.21.

²⁰³ See, e.g., AdHoc Reply at 8 (stating that enterprise networks are dependent upon Qwest's access services); Level 3 Comments at 9-13.

²⁰⁴ Qwest Feb. 8, 2007 *Ex Parte* Letter, Attach. at 1. Specifically, for 24 months after this Order becomes effective, Qwest commits to freeze the per minute price of both its *Managed Long Distance Plan* (\$0.18 per minute; no monthly fee; predetermined monthly limit of \$20.00) and its *15 Cent Single Rate Plan* (\$0.15 per minute, monthly fee of \$0.99). In addition, Qwest commits for the same period of time to charge no monthly fee for its *Managed Long Distance Plan* and not to raise the monthly fee for its *15 Cent Single Rate Plan* by more than \$1.00. *Id.*, nn.3-4.

dominant carrier regulation to Qwest's in-region, interstate, interLATA telecommunications services.²⁰⁵ We accordingly make Qwest's adherence to this commitment a condition of our grant of forbearance.

iv. Monthly Usage Information

72. We also are concerned that long distance consumers need adequate information regarding their monthly usage in order to make informed choices among alternative long-distance calling plans. To address this concern, Qwest has committed to continue to provide, for at least two years, the same thorough monthly usage information that it currently provides to all residential long distance customers, including customers who take bundled long distance plans.²⁰⁶ Again, we find that this commitment helps protect against any classical market power that Qwest may have in relation to these customers in its provision of interstate, interLATA telecommunications services, and we make Qwest's adherence to it a condition of our grant of forbearance. We also find that this condition will help ensure just and reasonable charges within the meaning of section 10(a)(1). Moreover, we find that this condition is likely to be more effective and less costly than applying dominant carrier regulation to Qwest's in-region, interstate, interLATA telecommunications services.

2. Section 10(a)(2) – Protection of Consumers

73. Section 10(a)(2) of the Act requires us to determine whether dominant carrier regulation of Qwest in its provision, on an integrated basis, of in-region, interstate long distance services is necessary to protect consumers.²⁰⁷ Qwest argues that, as a result of the level of competition in its region, application of dominant carrier rules is unnecessary to protect consumers.²⁰⁸ For reasons similar to those given in part III.E.1, we conclude that these regulations are not necessary for the protection of consumers. More specifically, we find that, because Qwest lacks classical market power in the provision of in-region, interstate, interLATA telecommunications services, it rationally would not act in a way that was inconsistent with the best interests of consumers. If, for example, it attempted to raise the prices or reduce the quality of its in-region, interstate, interLATA telecommunications services, Qwest would simply lose market share as consumers shifted to other providers.²⁰⁹ Moreover, while we assume that Qwest still possesses exclusionary market power as a result of its control of bottleneck facilities, we find

²⁰⁵ In this regard, we agree with the New Jersey Ratepayer Advocate that customers need transparency in pricing to ensure that they choose the carrier that best suits their needs. See New Jersey Ratepayer Advocate Comments at 12. We reject, however, the New Jersey Ratepayer Advocate's argument that we should apply our dominant carrier tariff rules to Qwest's interstate long distance services in order to protect those consumers who make relatively few long distance calls. *Id.* at 14. To the extent that additional safeguards for these consumers are desirable, we disagree that dominant carrier tariff regulation is a necessary or appropriate regulatory response to this concern. See *id.*; New Jersey Ratepayer Advocate Reply at 6-7. Instead, we find that Qwest's commitments offering low-cost per-minute plans that are appropriate for such customers and, as discussed *infra* in Part III.E.1.c.iv, to continue providing informative invoices detailing long distance usage, will address this concern.

²⁰⁶ Qwest Feb. 8, 2007 *Ex Parte* Letter, Attach. at 1. Qwest will provide the same usage information to all of its residential consumers of interstate, interexchange services, including new and bundled offerings. Specifically, Qwest will provide the following usage information for in-region, interLATA calls: the date of the call, the time of the call, the place called, the number called, the duration of the call, and amount charged for the call. *Id.*, n.5.

²⁰⁷ 47 U.S.C. § 10(a)(2).

²⁰⁸ Qwest Petition at 16.

²⁰⁹ Cf. *Competitive Carrier First Report and Order*, 85 FCC 2d at 31, para. 88 (noting that, if a carrier lacking market power imposed "unreasonably high rates" or "unreasonable terms or conditions," it would lose market share as consumers shifted to competitors).

that existing safeguards and the conditions set forth above are adequate to address this concern. Accordingly, based on our analysis of Qwest's market power and other factors discussed above, we find that the Commission's dominant carrier requirements are not necessary to protect consumers.

74. Moreover, with respect to the concerns discussed above,²¹⁰ relating to Qwest residential customers that either make relatively few long distance calls or that lack sufficient monthly usage information, we find that the conditions we adopt today are adequate to address these issues. Specifically, we take comfort in Qwest's commitments to continue providing detailed monthly usage information to all residential customers who take Qwest's long distance plans, and to continue offering plans that have either a nominal monthly charge or none at all, and are thus cost-effective for customers who make relatively few long distance calls. Finally, we are not forbearing from other rules and obligations currently applicable to Qwest's interstate, interLATA telecommunications services, including those related to 911, emergency preparedness, customer privacy, or universal service. Accordingly, we find that the application of dominant carrier rules described in this Order to any interstate long distance service that Qwest chooses to provide on an integrated basis is not necessary to protect customers and thus, that section 10(a)(2) is satisfied.

3. Section 10(a)(3) – Public Interest

75. We further find that, subject to the safeguards set forth in part III.E.1.c of this Order, it serves the public interest to forbear from imposing dominant carrier regulation on Qwest in its provision of in-region, interstate, interLATA telecommunications services on an integrated basis. In making this determination, we consider whether forbearance from enforcing the provisions at issue “will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”²¹¹ Although we assume that Qwest continues to possess market power in the provision of local exchange and exchange access services within its region, we find that the burdens imposed by dominant carrier regulation outweigh the potential benefits in this case. The factors upon which we base our conclusions above also convince us that granting Qwest relief from dominant carrier regulation for its interstate, interLATA telecommunications services is in the public interest and will help promote competitive market conditions and enhance competition among providers of telecommunications services as contemplated by section 10(b).

76. As previously discussed, under our current rules, Qwest faces the unappealing choice between two alternative regulatory regimes, both of which impose significant costs on Qwest itself and on society in general.²¹² Qwest can either provide its in-region, interstate, interLATA telecommunications services on a nondominant carrier basis through a section 272 separate affiliate, or it can provide these services on an integrated basis, subject to dominant carrier regulations (including rate regulation and tariff-filing requirements). Based on the record before us, we conclude that, as applied to Qwest, both of these regulatory regimes impose costs that exceed their benefits.

77. If Qwest decides to provide interstate, interLATA telecommunications services through a section 272 separate affiliate, then it will have to forego the economies of scope and scale that its competitors are able to realize. For example, providing interstate, interLATA telecommunications services through a section 272 affiliate requires Qwest, *inter alia*, to operate independently of the BOC

²¹⁰ See *supra* Parts III.E.1.c.3, III.E.1.c.4.

²¹¹ 47 U.S.C. § 160(b).

²¹² See *supra* para. 9.

and maintain separate officers, directors, and employees from the BOC.²¹³ These restrictions are inefficient not only because they impose additional costs on Qwest (such as requiring duplicative facilities), but also because they prevent Qwest from taking advantage of the economies of scope and scale associated with integrated operation. These restrictions may also prevent Qwest and the affiliates from quickly responding to technological and marketplace developments.²¹⁴ As a general matter, these restrictions and their associated costs make Qwest a less effective competitor in the market.

78. On the other hand, if Qwest chooses to provide interstate, interLATA telecommunications services on an integrated basis, it would be subject to dominant carrier regulation, which imposes its own significant costs and burdens, including the costs associated with dominant carrier price regulation, tariff-filing requirements, and reporting requirements.²¹⁵ As the Commission recognized in the *LEC Classification Order*, these regulatory requirements would restrict Qwest's ability to respond to competitors' pricing and product initiatives, and would give competitors advance notice of Qwest's own pricing plans and new products.²¹⁶ By impeding Qwest's ability to compete, these requirements also could dampen competition. The relief we grant Qwest today is narrowly tailored to allow it to take advantage of the economies associated with integration and avoid the unnecessary costs and burdens of the existing regulatory regimes, while continuing to comply with the obligations described herein. It also should result in increasing competition in the markets for interstate, interLATA telecommunications services.

79. Moreover, as discussed above, we find that dominant carrier regulation is neither necessary to ensure that "charges, practices, classifications, or regulations ... are just and reasonable and not unjustly or unreasonably discriminatory," nor to protect consumers. Because we find that Qwest lacks classical market power in the provision of in-region, interstate, interLATA telecommunications services and that existing safeguards and the safeguards set forth in part III.E.1.c adequately address any ability Qwest might have to raise rivals' costs, we conclude that imposing dominant carrier regulation on Qwest's provision of interstate, interLATA telecommunications services would realize few benefits. We further conclude that any benefits that might derive from imposing dominant carrier regulation on these services are far outweighed by the costs associated with such regulation. Accordingly, we find that it is in the public interest to forbear to the extent described above. Moreover, as discussed above, we find that forbearance will promote competitive market conditions by freeing Qwest to compete and innovate in the provision of interstate, interLATA telecommunications services.

80. Finally, the targeted safeguards set forth in this Order will place less of a burden on Qwest than would dominant carrier regulation and will better enable Qwest to compete in the interstate long distance market within its region.²¹⁷ Accordingly, we conclude that forbearance from applying our

²¹³ See 47 U.S.C. § 272(b); see generally *Accounting Safeguards Order*, 11 FCC Rcd 17539; *Non-Accounting Safeguards Order*, 11 FCC Rcd 21905.

²¹⁴ Cf. *Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14895, para. 79.

²¹⁵ Qwest Jan. 16, 2007 *Ex Parte* Letter at 7-9; see also *LEC Classification Order*, 12 FCC Rcd at 15806-08, paras. 88-90.

²¹⁶ See *LEC Classification Order*, 12 FCC Rcd at 15806-08, paras. 88-90; see also Qwest Jan. 16, 2007 *Ex Parte* Letter at 6-7.

²¹⁷ See *LEC Classification Order*, 12 FCC Rcd at 15806-08, paras. 88-90; see also Qwest Jan. 16, 2007 *Ex Parte* Letter at 6-7.

dominant carrier rules to Qwest's in-region, interstate, interLATA telecommunications services is consistent with the public interest and therefore satisfies the requirements of section 10(a)(3).

F. International Services

81. Consistent with the Commission's conclusions in the *LEC Classification Order*, we find no practical distinctions between Qwest's incentive and ability to use any in-region market power in its provision of international and interstate, interLATA telecommunications services.²¹⁸ Therefore, as a general matter, we forbear from applying dominant carrier regulation to Qwest's in-region provision of international services to the same extent that we forbear from applying those requirements to Qwest's in-region provision of domestic interstate services. We do not forbear, however, from our dominant carrier rules that apply specifically to United States carriers that provide international telecommunications services.²¹⁹ For example, to the extent that Qwest becomes affiliated, within the meaning of section 63.09 of our rules, with a foreign carrier that has the ability to discriminate against Qwest's rivals through control of bottleneck services or facilities in a foreign destination market,²²⁰ Qwest will continue to be presumptively classified as dominant under section 63.10 of our rules and subject to the safeguards in that rule, which apply to carriers that we classify as dominant based on a foreign carrier affiliation.²²¹ Thus, our framework for addressing issues raised by the provision of international services, either by Qwest or by a Qwest affiliate, will remain in effect.

IV. ORDERING CLAUSES

82. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), 10, 201, 202, 203, 214, and 272, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, 201, 202, 203, 214, and 272, the Petition for Forbearance that was filed on November 22, 2005 by Qwest Communications International Inc. IS GRANTED to the extent set forth herein and SUBJECT TO THE CONDITIONS set forth herein and otherwise IS DENIED.

83. IT IS FURTHERED ORDERED that, pursuant to sections 4(i), 4(j), 10, 201, 202, 203, 214, and 272, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, 201, 202, 203, 214, and 272, and section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), the Commission's forbearance decision SHALL BE EFFECTIVE on February 20, 2007. Pursuant to

²¹⁸ *LEC Classification Order*, 12 FCC Rcd at 15838, para. 138.

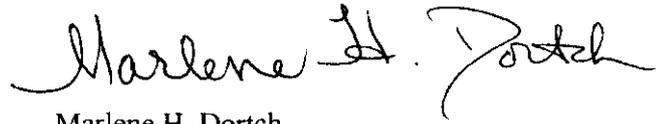
²¹⁹ 47 C.F.R. § 63.10 (regulatory classification of United States international carriers); see *LEC Classification Order*, 12 FCC Rcd at 15838-39, para. 139 (preserving rules designed to address the incentive and ability of a foreign carrier to discriminate against the rivals of its United States affiliate).

²²⁰ We are not aware of any filings made by Qwest or by a Qwest affiliate, pursuant to section 63.11 or section 63.18 of our rules, notifying the Commission that Qwest is affiliated with a foreign carrier that we then determined to possess market power in a foreign country. Cf. Letter from Timothy M. Boucher, Qwest Corporate Counsel, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1, (filed Jan. 22, 2007) (Qwest Jan. 22, 2007 *Ex Parte* Letter) (stating that Qwest is not affiliated with any foreign carrier that is a monopoly provider of telecommunications services in a relevant market in any destination country).

²²¹ See 47 C.F.R. § 63.10. Qwest is presently classified as a nondominant provider of telecommunications services under section 63.10. Qwest's status under section 63.10 will not change if it provides international telecommunications services on an integrated basis, rather than through a section 272 separate affiliate. See Qwest Jan. 22, 2007 *Ex Parte* Letter at 1.

sections 1.4 and 1.13 of the Commission's rules, 47 C.F.R. §§ 1.4 and 1.13, the time for appeal shall run from the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink that reads "Marlene H. Dortch". The signature is written in a cursive style with a large, stylized initial "M".

Marlene H. Dortch
Secretary

APPENDIX A
COMMENTERS

Commenter	Abbreviation
AT&T Inc.	AT&T
BellSouth Corporation	BellSouth
Level 3 Communications, LLC	Level 3
COMPTEL	COMPTEL
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer Advocate

Reply Commenter	Abbreviation
AdHoc Telecommunications Users Committee	AdHoc
AT&T Inc.	AT&T
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer Advocate
Qwest Communications International Inc.	Qwest

APPENDIX B

MARKET DATA

Table 1 - Mass Market Customers (December 2006)			
	Long Distance Service	Wireline and Wireless Long Distance Usage	Local and Long Distance Bundle
Arizona	REDACTED		
Colorado			
Iowa			
Idaho			
Minnesota			
Montana			
North Dakota			
Nebraska			
New Mexico			
Oregon			
South Dakota			
Utah			
Washington			
Wyoming			
Minimum			
Maximum			
Median			
<p>Source: Market shares are calculated using data submitted in this proceeding. See Qwest Jan. 8, 2007 <i>Ex Parte Letter</i>, Attachs. 1.b, 1.d, 1.h, 1.j; Qwest Jan. 10, 2007 <i>Ex Parte Letter</i>, Attachs. 1.f, A at 4; Qwest Jan. 17, 2007 <i>Ex Parte Letter</i>, Attachs. 1.a.i (corrected), 1.a.ii (corrected), 1.a.iii (corrected), 1.i.i (corrected). See <i>supra</i> paras. 33-35 for the underlying assumptions.</p>			

Table 2 – Large Enterprise Customers (2006)

Long Distance Voice Services			
State	Qwest Market Share	Market HHI	Number of Rivals in Market
Arizona	REDACTED		
Colorado			
Iowa			
Idaho			
Minnesota			
Montana			
North Dakota			
Nebraska			
New Mexico			
Oregon			
South Dakota			
Utah			
Washington			
Wyoming			
Minimum			
Maximum			
Median			
Frame Relay			
Arizona	REDACTED		
Colorado			
Iowa			
Idaho			
Minnesota			
North Dakota			
Nebraska			
New Mexico			
Oregon			
South Dakota			
Utah			
Washington			
Minimum			
Maximum			
Median			

Table 2 – Large Enterprise Customers (2006) (Continued)			
T1 Services			
State	Qwest Market Share	Market HHI	Number of Rivals in Market
Arizona	REDACTED		
Colorado			
Iowa			
Idaho			
Minnesota			
Montana			
North Dakota			
Nebraska			
New Mexico			
Oregon			
South Dakota			
Utah			
Washington			
Wyoming			
Minimum			
Maximum			
Median			
T3 Services			
Arizona	REDACTED		
Colorado			
Iowa			
Idaho			
Minnesota			
Oregon			
Utah			
Washington			
Minimum			
Maximum			
Median			
Source: Qwest Jan. 16, 2007 <i>Ex Parte Letter</i> , Attachs. 4.a-b (Franchise Area data). Staff calculations based upon product market/geographic area combinations with at least 30 observations. Large enterprise customers are defined as businesses with at least 250 employees.			

Table 3 – Small/Medium Business Customers (2006)			
Long Distance Voice Services			
State	Qwest Market Share	Market HHI	Number of Rivals in Market
Arizona	REDACTED		
Colorado			
Idaho			
Iowa			
Minnesota			
Montana			
Nebraska			
New Mexico			
North Dakota			
Oregon			
South Dakota			
Utah			
Washington			
Wyoming			
Minimum			
Maximum			
Median			
Frame Relay			
Arizona	REDACTED		
Colorado			
Iowa			
Minnesota			
New Mexico			
Oregon			
Utah			
Minimum			
Maximum			
Median			

Table 3 – Small/Medium Business Customers (2006) (Continued)			
T1 Services			
State	Qwest Market Share	Market HHI	Number of Rivals in Market
Arizona	REDACTED		
Colorado			
Idaho			
Iowa			
Minnesota			
Montana			
Nebraska			
New Mexico			
North Dakota			
Oregon			
South Dakota			
Utah			
Washington			
Wyoming			
Minimum			
Maximum			
Median			
T3 Services			
Minnesota	REDACTED		
Source: Qwest Jan. 16, 2007 <i>Ex Parte Letter</i> , Attachs. 4.a-b (Franchise Area data). Staff calculations based upon product market/geographic area combinations with at least 30 observations. Small/medium businesses are businesses with 5 to 249 employees.			

APPENDIX C

**SERVICE QUALITY MEASUREMENT PLAN
FOR INTERSTATE SPECIAL ACCESS**

Contents

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NITR: New Installation Trouble Report Rate

Section 3: Maintenance and Repair

CTRR: Failure Rate/Trouble Report Rate

MAD: Average Repair Interval/Mean Time to Restore

Section 4: Glossary

Section 1: Ordering**FOCT: Firm Order Confirmation (FOC) Timeliness****Definition**

Firm Order Confirmation (FOC) Timeliness measures the percentage of FOCs returned within the Company-specified standard interval.

Exclusions

- Service requests identified as “Projects” or “ICBs”
- Service requests cancelled by the originator
- Weekends and designated holidays of the service center
- Unsolicited FOCs
- Administrative or test service requests
- Service requests that indicate that no confirmation/response should be sent
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules

Counts are based on the first instance of a FOC being sent in response to an ASR. Activity starting on a weekend or holiday will reflect a start date of the next business day. Activity ending on a weekend or holiday will be calculated with an end date of the last previous business day. Requests received after the company’s stated cutoff time will be counted as a “zero” day interval if the FOC is sent by close of business on the next business day. The standard interval will be that which is specified in the company-specific ordering guide.

Calculation

Firm Order Confirmation (FOC) Interval = (a - b)

- a = Date and time FOC is returned
- b = Date and time valid access service request is received

Percent within Standard Interval = (c / d) X 100

- c = Number of service requests confirmed within the designated interval
- d = Total number of service requests confirmed in the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

- State

SQM Disaggregation (Percent FOCs returned within Standard Interval)

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

Section 2: Provisioning

PIAM: Percent Installation Appointments Met

Definition

Percent Installation Appointments Met measures the percentage of installations completed on or before the confirmed due date.

Exclusions

- Orders issued and subsequently cancelled
- Orders associated with internal or administrative (including test) activities
- Disconnect Orders
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules

This measurement is calculated by dividing the number of service orders completed during the reporting period, on or before the confirmed due date, by the total number of orders completed during the same reporting period. Installation appointments missed because of customer caused reasons shall be counted as met and included in both the numerator and denominator. Where there are multiple missed appointment codes, each RBOC will determine whether an order is considered missed.

Calculation

Percent Installation Appointments Met = $(a / b) \times 100$

- a = Number of orders completed on or before the RBOC confirmed due date during the reporting period
- b = Total number of orders where completion has been confirmed during the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

- State

SQM Disaggregation

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

NITR: New Installation Trouble Report Rate**Definition**

New Installation Trouble Report Rate measures the percentage of circuits or orders where a trouble was found in RBOC facilities or equipment within thirty days of order completion.

Exclusions

- Trouble tickets issued and subsequently cancelled
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- RBOC troubles associated with administrative service
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions defined by each RBOC to reflect system and operational differences
- Subsequent trouble reports

Business Rules

Only the first customer direct trouble report received within thirty calendar days of a completed service order is counted in this measure. Only customer direct trouble reports that required the RBOC to repair a portion of the RBOC network will be counted in this measure. The RBOC completion date is when the RBOC completes installation of the circuit or order.

Calculation

Trouble Report Rate within 30 Calendar Days of Installation = $(a / b) \times 100$

- a = Count of circuits/orders with trouble reports within 30 calendar days of installation
- b = Total number of circuits/orders installed in the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

- State

SQM Disaggregation

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

Section 3: Maintenance & Repair

CTRR: Failure Rate/Trouble Report Rate

Definition

The percentage of initial and repeated circuit-specific trouble reports completed per 100 in-service circuits for the reporting period.

Exclusions

- Trouble reports issued and subsequently cancelled
- Employee initiated trouble reports
- Trouble reports/circuits associated with internal or administrative activities
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- Tie Circuits
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules

Only customer direct trouble reports that require the RBOC to repair a portion of the RBOC network will be counted in this report. The trouble report rate is computed by dividing the number of completed trouble reports handled during the reporting period by the total number of in-service circuits for the same period.

Calculation

Percent Trouble Report Rate = $(a / b) \times 100$

- a = Number of completed circuit-specific trouble reports received during the reporting period
- b = Total number of in-service circuits during the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

- State

SQM Disaggregation

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

MAD: Average Repair Interval/Mean Time to Restore**Definition**

The Average Repair Interval/Mean Time to Restore is the average time between the receipt of a customer trouble report and the time the service is restored. The average outage duration is only calculated for completed circuit-specific trouble reports.

Exclusions

- Trouble reports issued and subsequently cancelled
- Employee initiated trouble reports
- Trouble reports associated with internal or administrative activities
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- Tie Circuits
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules

Only customer direct trouble reports that require the RBOC to repair a portion of the RBOC network will be counted in this measure. The average outage duration is calculated for each restored circuit with a trouble report. The start time begins with the receipt of the trouble report and ends when the service is restored. This is reported in a manner such that customer hold time or delay maintenance time resulting from verifiable situations of no access to the end user premise, other CLEC/IXC or RBOC retail customer caused delays, such as holding the ticket open for monitoring, is deducted from the total resolution interval ("stop clock" basis).

Calculation

Repair Interval = (a – b)

- a = Date and time trouble report was restored
- b = Date and time trouble report was received

Average Repair Interval = (c / d)

- c = Total of all repair intervals (in hours/days) for the reporting period
- d = Total number of trouble reports closed during the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

- State

SQM Disaggregation

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

GLOSSARY

Access Service Request (ASR)	A request to the RBOC to order new access service, or request a change to existing service, which provides access to the local exchange company's network under terms specified in the local exchange company's special or switched access tariffs.
RBOC 272 Affiliates Aggregate	RBOC Affiliate(s) authorized to provide long distance service as a result of the Section 271 approval process.
RBOC Affiliates Aggregate	RBOC Telecommunications and all RBOC Affiliates (including the 272 Affiliate). Post sunset, comparable line of business (e.g., 272 line of business) will be included in this category.
Business Days	Monday thru Friday (8AM to 5PM) excluding holidays
CPE	Customer Provided or Premises Equipment
Customer Not Ready (CNR)	A verifiable situation beyond the normal control of the RBOC that prevents the RBOC from completing an order, including the following: CLEC or IXC is not ready to receive service; end user is not ready to receive service; connecting company or CPE supplier is not ready.
Firm Order Confirmation (FOC)	The notice returned from the RBOC, in response to an Access Service Request from a CLEC, IXC or affiliate, that confirms receipt of the request and creation of a service order with an assigned due date.
Unsolicited FOC	An Unsolicited FOC is a supplemental FOC issued by the RBOC to change the due date or for other reasons, e.g., request for a second copy from the CLEC/IXC, although no change to the ASR was requested by the CLEC or IXC.
Project or ICB	Service requests that exceed the line size and/or level of complexity that would allow the use of standard ordering and provisioning interval and processes. Service requests requiring special handling.
Repeat Trouble	Trouble that reoccurs on the same telephone number/circuit ID within 30 calendar days
Service Orders	Refers to all orders for new or additional lines/circuits. For change order types, additional lines/circuits consist of all C order types with "I" and "T" action coded line/circuit USOCs that represent new or additional lines/circuits, including conversions for RBOC to Carrier and Carrier to Carrier.

**JOINT STATEMENT OF
COMMISSIONER MICHAEL J. COPPS AND
COMMISSIONER JONATHAN S. ADELSTEIN,
CONCURRING**

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*, WC Docket No. 05-333

In this Order, the Commission conditionally grants forbearance to allow Qwest to provide long distance services on an integrated basis and subject to non-dominant carrier regulations. We support a conditional grant of relief here because the Commission must take into account the rapidly changing long distance market and the unique competitive position of the petitioner, and because this outcome is clearly superior to allowing this petition to be granted by Commission inaction without the safeguards described below. This Commission repeatedly has recognized that Section 272 provides for structural and accounting safeguards that form the principal guarantees against improper accounting practices and cross-subsidization. We concur because we remain concerned that the Commission has not completed its industry-wide review of these issues and does not have in place a comprehensive mechanism for monitoring changes in the marketplace (*e.g.*, in the long distance, wireless, and access markets) that would enable the Commission to reliably make decisions in this area.¹

Nearly four years ago the Commission issued the *Section 272 Sunset Further Notice*, which was the second notice seeking comment on changes to the long distance market and the appropriate regulatory framework for carriers like the petitioner. That proceeding – much like this forbearance petition – addresses the important issue of what rules should govern Bell Operating Companies' (BOCs) provision of long distance services after the sunset of the Section 272 separate affiliate and related requirements. While we recognize that Congress specifically contemplated that Section 272's separate affiliate and related requirements sunset after three years, we have repeatedly urged the Commission to engage in a rigorous analysis of the need for alternative safeguards on an industry-wide basis.² Yet, rather than complete this rulemaking, the Commission adopts through this Order a combination of conditions – some voluntarily offered, others not – in order to facilitate the grant of a forbearance petition, which would raise serious questions if granted as filed.³

Although we would have preferred the Commission complete its Section 272 sunset proceeding, we recognize the efforts undertaken here to conduct a rigorous market analysis to provide a picture of petitioner's unique circumstances and the competitive landscape in which it operates. Indeed, there are notable changes to the long distance market in petitioner's territory that the Commission must account for. For many, though not all, consumers, the available options are being reshaped by the rise of wireless, cable, and over-the-top VoIP services. We have also seen an increasing trend toward the

¹ See *Joint Statement of Commissioner Michael J. Copps and Commissioner Jonathan S. Adelstein, Concurring, Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, Further Notice of Proposed Rulemaking*, WC Docket No. 02-112, FCC 03-111 (May 19, 2003) ("*Section 272 Sunset Further Notice*").

² Such an approach is also contemplated in the statute, which specifically preserves the Commission's ability to prescribe safeguards consistent with the public interest. See 47 U.S.C. § 272(f)(3).

³ While these conditions help to mitigate the concerns we have regarding petitioner's market power and the impact of integrating their businesses on residential and business consumers, petitioner does not exist in a vacuum and the question of whether these conditions are appropriate on an industry-wide basis is not before us. The fact may well be that they are insufficient as applied to the situation of industry participants not present here.

availability and desirability of bundled services. We appreciate that this Order acknowledges these developments and takes steps to adjust our regulatory framework accordingly. In particular, we find persuasive the relative market shares of the petitioner in the long distance, and, in particular, the wireless market, which make potential unlawful discrimination less likely and relief more compelling in this case.

At the same time, it is not clear that all customers have benefited as dramatically from these changes, as many customers lack an effective choice of providers due to price or availability. It is imperative that the Commission remain vigilant about the continued evolution of this market. The most notable change in the long distance market, of course, is the entry of the BOCs such as the petitioner, which less than 5 years ago did not even compete in the long distance market. It therefore is important to remember that the market share levels analyzed in this Order have developed from a zero-baseline over a relatively short period of time. We have also seen increasing consolidation in this industry, including the merger of the two largest independent long distance companies into the two largest incumbent LECs. There have also been recent suggestions that the pricing for bundled services is evolving in a duopolistic manner, with higher prices for consumers.⁴ We have repeatedly stated that competition must mean more for consumers than a choice between two providers, a cable and telephone company, and such a result would be an unfortunate back-sliding for long distance customers.

We appreciate that the Commission does adopt some notable and necessary safeguards in this Order to address some of these concerns. We were particularly pleased that the petitioner has committed to offering certain calling plans targeted for residential consumers who make relatively few long distance calls and to provide call detail information to enable consumers to make informed decisions about the most cost effective long distance plans. Regrettably, the needs of low volume consumers are often overlooked, although they have a real need for our vigilance.

This Order also makes some important findings with respect to the potential for price and performance discrimination. Notably, the Order acknowledges that incumbent providers like the petitioner retain the ability to raise their rivals' costs, and the Order maintains dominant carrier regulation for critical access services used by alternative long distance providers. The Order correctly concludes that certain requirements of Section 272 will continue to apply and adopts rules for imputation and reporting that should help the Commission and competitors evaluate whether the petitioner is engaging in price discrimination. In addition, we are pleased that petitioner has committed to comply with special access performance metrics to ensure that it does not engage in non-price discrimination in its provision of special access services.

Although these conditions may not be tailored in exactly the manner we would have crafted, their adoption is certainly preferable to the granting of the forbearance petition as filed. It is imperative for the Commission to monitor the effect of these safeguards, and we encourage the Commission to diligently verify whether its predictions about their sufficiency are accurate. In the meantime, we again encourage the Commission to return to its consideration of the Section 272 sunset rulemaking proceeding expeditiously and to evaluate the need for rigorous and more lasting conditions than the voluntary, time-limited conditions offered here.

⁴ See "Battle for the Bundle, 4Q06 Wireline Pricing Trends: Bells Turn the Corner on Price, Voice, & Data Bundles Up Y/Y", Bank of America (Jan. 24, 2007) (noting that "data appear to support our view that the emerging cable/telecom competitive price structure is unfolding in a duopolistic manner").