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**REDACTED – FOR PUBLIC INSPECTION**

FILED/ACCEPTED
APR 27 2007
Federal Communications Commission
Office of the Secretary

***Via** Courier*

April 27, 2007

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

Re: *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to* ***47*** *U.S.C. § 160(c) in* **the** *Denver, Colorado Metropolitan Statistical Area*;
*In the Mutter of Petition of Qwest Corporation for* **Forbearance** *Pursuant to 47 U.S.C. § 160(c) in the Minneapolis-St. Paul, Minnesota Metropolitan Statistical Area;*
*In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Seattle, Washington Metropolitan Statistical Area;* and
*In the Mutter of Petition of Qwest Corporation for Forbearance Pursuant to* ***47*** *U.S.C. § 160(c) in the Phoenix. Arizona Metropolitan Statistical Area*
Request for Confidential Treatment and Confidentiality Justification

Dear Ms. Dortch:

Qwest Corporation ("Qwest") hereby requests confidential treatment for each of the attached Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Colorado; Minneapolis-St. Paul, Minnesota; Seattle, Washington; and Phoenix: Arizona Metropolitan Statistical Areas: This request also covers the appended Declaration of Robert H. Brigham and David L. Teitzel and Exhibits 2 and 4 that are associated with each Petition. Each Petition and Declaration contains some information integrated into the text that is confidential; in addition, each Petition and Declaration has associated confidential and *highly confidential* Exhibits. The pages of each Petition and Declaration, along with Exhibit 4,[1] that contain

[1] Regarding only the Minneapolis-St. Paul Petition, Exhibit 4 contains one page of non-confidential information, along with a page of confidential information (*i.e.*, a map); the corresponding Exhibit 4 in each of the other three Petitions includes only the confidential map. Thus, the non-confidential page included with Exhibit 4 of the Minneapolis-St. Paul Petition is included with the non-confidential exhibits associated with the Minneapolis-St. Paul Petition.

confidential information have been marked **"CONFIDENTIAL – NOT FOR PUBLIC INSPECTION":** Exhibit 2. which contains highly confidential information. has been marked **"HIGHLY CONFIDENTIAL – NOT FOR PUBLIC INSPECTION – COPYING PROHIBITED".** As such. Qwest requests that the non-redacted versions of the Petitions, Declarations and Exhibits containing confidential or highly confidential data be withheld from public inspection. Qwest also requests that no further copies be made of material marked highly confidential.

In each Petition, Qwest seeks forbearance from significant, burdensome regulations, particularly loop and transport unbundling and dominant carrier regulation throughout the Denver, Colorado; Minneapolis-St. Paul, Minnesota; Seattle, Washington; and Phoenix, Arizona Metropolitan Statistical Areas.

Qwest is submitting the non-redacted versions of its Petitions, the Declarations and Exhibits 2 and 4 pursuant to both Commission rules 47 C.F.R. §§ 0.457 and 0.459. The confidential and highly confidential information included in these documents is competitively sensitive information and thus should not be available for public inspection, and in the case of highly confidential information no copies should be made. **A** release of this material would have a substantial negative competitive impact on Qwest. Pursuant to Commission rule, 47 C.F.R. § 0.459(b), Qwest provides justification for the confidential treatment of this information in the Appendix to this letter. The non-redacted portions of the Petitions and associated documents contain. *inter alia*, Qwest's confidential and highly confidential information. Such information would not ordinarily be made available to the public, and disclosure may cause substantial competitive harm to Qwest. Accordingly, the non-redacted information is appropriate for non-disclosure under both Sections 0.457(d) and 0.459 of the Commission's rules.

Because it was not feasible to separate out the confidential and proprietary information, see 47 C.F.R. § 0.459(a), without destroying the integrated nature of the information presented in each Petition and associated Declaration, Qwest is also submitting today under separate cover the redacted versions of the Petitions and Declarations, along with the non-confidential Exhibits. The redacted version of each Petition and Declaration is marked **"REDACTED -- FOR PUBLIC INSPECTION',** with the confidential information redacted. Exhibits 2 and 4 have been omitted in their entirety from the redacted version of each Petition, except for the Minneapolis-St. Paul Petition, as described in the above footnote.

For the redacted version of each Petition, Qwest is providing an original and four copies. For the non-redacted version of each Petition, Qwest is providing one original copy. For both the redacted and non-redacted versions of each submission, Qwest is providing **an** extra copy of each: to be stamped and returned to the courier. In addition, Qwest is providing via hand delivery three complete copies (including confidential and highly confidential material) of each Petition and associated documents to Christi Shewman of the Wireline Competition Bureau.

Please contact me at the above contact information or Melissa Newman in Qwest's Federal Relations office (202-429-3120) if you have any questions.

Sincerely,

/s/ Daphne E. Butler

Attachments

Copies (via hand delivery) to: Christi Shewman

# APPENDIX

## Confidentiality Justification

Qwest requests confidential treatment of the information being provided in its Petition, the Declaration and its attached Exhibits 2 and 4 because this information is competitively sensitive and its disclosure would have a negative competitive impact on Qwest were it made publicly available. Such information would not ordinarily be made available to the public, and should be afforded confidential treatment under both 47 C.F.R. §§ 0.457 and 0.459. Throughout this Appendix. references to *a* Petition, *a* Declaration and *a* set of Exhibits (in association with each Petition and Declaration) are meant to apply to each of the four Petitions for Forbearance being filed with the FCC by Qwest on April 27,2007.

### 47 C.F.R. § 0.457

Specific information in the Petition and the Declaration. as well the attached Exhibits 2 and 4, is confidential and proprietary (and in the case of Exhibit 2 is highly confidential) to Qwest as "commercial or financial information" under Section 0.457(d). Disclosure of such information to the public would risk revealing company-sensitive proprietary infonnation in connection with Qwest's ongoing business plans and operations. 'Therefore. in the normal course of Commission practice this information should be considered "Records not routinely available for public inspection."

### 47 C.F.R. § 0.459

Specific information in the Petition and the Declaration as well as the attached Exhibits 2 and 4, is also subject to protection under 47 C.F.R. § 0.459, as demonstrated below.

### Information for which confidential treatment is sought

Qwest requests that specific information in the Petition and the Declaration (set off with two sets of three asterices) as well as the attached Exhibit 4, be treated on a confidential basis under Exemption 4 of the Freedom of Information Act and that Exhibit 2 be treated on a highly confidential basis under the same Exemption 4. This information is competitively sensitive data that Qwest maintains as confidential and is not normally made available to the public. Release of the information would have a substantial negative competitive impact on Qwest. The confidential information is contained in the non-redacted versions of Qwest's Petition and Declaration, as well as in the attached Exhibit 2 and Exhibit 4. and is marked. as appropriate, either **"CONFIDENTIAL – NOT FOR PUBLIC INSPECTION"** or **"HIGHLY CONFIDENTIAL – NOT FOR PUBLIC INSPECTION – COPYING PROHIBITED.**

Commission proceeding in which the information was submitted

The information is being submitted in the Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver. Colorado; Minneapolis-St. Paul, Minnesota; Seattle, Washington; and Phoenix, Arizona Metropolitan Statistical Areas, which will be docketed at a later date.

Degree to which the information in question is commercial or financial. or contains a trade secret or is privileged

The competitive information designated as confidential (or in the case of Exhibit 2 highly confidential) is detailed information regarding Qwest's number of access lines, retail residential lines, retail business lines. special access lines, wholesale customers, wholesale unit sales and revenue shares. As noted above, the data is competitively sensitive information which is not normally released to the public as such release would have a substantial negative competitive impact on Qwest.

Degree to which the information concerns a service that is subject to competition; and manner in which disclosure of the information could result in substantial competitive harm

This type of commercial information would generally not be subject to routine public inspection under the Commission's rules (47 C.F.R. § 0.457(d)), demonstrating that the Commission already anticipates that the release of this kind of information likely would produce competitive harm. Qwest confirms that release of its confidential and proprietary information would cause it competitive harm by allowing its competitors to become aware of sensitive proprietary information regarding the operation of Qwest's business.

Measures taken by Owest to prevent unauthorized disclosure; and availability of the information to the public and extent of any previous disclosure of the information to third parties

Qwest has treated and treats the non-public information disclosed in its Petition, the Declaration and its attached Exhibits 2 and 4 as confidential, and/or highly confidential, and has protected it from public disclosure to parties outside of the company.

Justification of the period during which Owest asserts that the material should not be available for public disclosure

Qwest cannot determine at this time any date on which this information should not be considered confidential or would become stale for purposes of the current matters, except that the information would be handled in conformity with general Qwest records retention policies, absent any continuing legal hold on the data.

Other information that Qwest believes mav be useful in assessing whether its request for confidentialitv should be granted

Under applicable Commission and court rulings, the information in question should be withheld from public disclosure. Exemption 4 of the Freedom of lnformation Act shields information that is (I) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The information in question satisfies this test.

FILED/ACCEPTED

APR 27 2007

Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| In the Matter of | ) | |
| | ) | |
| Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area | ) ) ) | WC Docket No. __________ |

# PETITION OF QWEST CORPORATION FOR FORBEARANCE PURSUANT TO 47 U.S.C. § 160(c)

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April 27, 2007

**REDACTED – FOR PUBLIC INSPECTION**

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ATTACHMENT – Declaration of Robert H. Brigham and David L. Teitzel



REDACTED – FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| In the Matter of | ) | |
| | ) | |
| Petition of Qwest Corporation for Forbearance | ) | WC Docket No. __________ |
| Pursuant to 47 U.S.C. § 160(c) in the Phoenix, | ) | |
| Arizona Metropolitan Statistical Area | ) | |

**PETITION OF QWEST CORPORATION FOR FORBEARANCE PURSUANT TO 47 U.S.C. § 160(c)**

## I. INTRODUCTION AND SUMMARY

Qwest Corporation ("Qwest") seeks forbearance from significant, burdensome regulation, particularly loop and transport unbundling and dominant carrier regulation throughout the Phoenix Metropolitan Statistical Area ("MSA"), where Qwest faces competition from a wide range of technologies and a broad array of service providers. Multiple competitive alternatives are available to mass market and enterprise customers alike. This competition includes wireline and cable-based services. Moreover, intermodal competition, particularly from wireless and Voice over Internet Protocol ("VoIP") providers is more advanced than it was in Omaha, Nebraska in mid-2005, when the Federal Communications Commission ("Commission") voted on the *Omaha Order.*[1]

Mass market consumers throughout the Phoenix MSA now have access to a wide range of competitive alternatives for affordable local telephone service. As was the case in Omaha, Cox is the largest provider of competitive voice services. Based upon publicly available information, Cox currently appears to offer voice services even more widely in Phoenix than it

[1] *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) (*"Omaha Order"* or *"Omaha Forbearance Order"*), *aff'd sub nom., Qwest Corp. v. FCC*, Nos. 05-1450, *et al.* (D.C. Cir. Mar. 23,2007).

did in Omaha in 2005. Other types of mass market competition are also more advanced now than they were in Omaha two years ago. Each of the nation's major wireless carriers serves the entire Phoenix MSA, offering service that is competitive with Qwest's wireline services. Consumers in the Phoenix MSA appear more willing to replace wireline service with wireless service than do consumers in the nation as a whole. Consumers can also obtain telephone service from several dozen "over-the-top'' VoIP providers,[2] which can be accessed over competitive wireline, cable and wireless networks. Qwest also continues to face competition from traditional competitive local exchange carriers ("CLECs"), including carriers that obtain wholesale service from Qwest, which the Commission in the *Omaha Forbearance Order* deemed relevant to forbearance inquiries such as this one.

These various competitive alternatives are widely used by consumers in the Phoenix MSA. Between 2000 and 2006, Qwest's retail mass market residential switched access lines in the Phoenix MSA declined by [redacted] percent, even though the number of households in the MSA increased by approximately 20 percent during that time.

There is likewise intense competition for enterprise business services in the Phoenix MSA. **As** the Commission has found, cable companies are capable of using their networks to serve enterprise customers. As was the case in Omaha, Cox is actively marketing its services to small business, large enterprise, and government customers. Apart from cable, there are 24 competitive fiber providers that operate networks in areas where enterprise customers are concentrated in the Phoenix MSA, including wire centers that account for [redacted] percent of Qwest's retail switched business lines in the MSA.

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[2] "Over-the-top" VoIP providers are those that offer VoIP as an incremental, stand-alone service on top of an existing broadband Internet connection (*e.g.*, Vonage), as opposed to providers of integrated VoIP telephone services offered by carriers such as cable television service providers.

These competitive alternatives are widely used among enterprise customers in the Phoenix MSA. Since 2000, Qwest's business lines in the Phoenix MSA declined by approximately [redacted] percent, even though the business segment grew overall. Moreover, these declines took place on top of the inroads that competitors made prior to 2000.

In this competitive environment, imposing regulation crafted in and for an earlier era is unnecessary and counterproductive.

## 11. THE FIRST TWO PARTS OF THE FORBEARANCE TEST ARE SATISFIED AS A CONSEQUENCE OF THE FACT THAT TELECOMMUNICATIONS COMPETITION IN THE PHOENIX MSA IS ROBUST AND RAPIDLY GROWING

Qwest asks that the Commission forbear from applying loop and transport unbundling regulation pursuant to 47 U.S.C. §§ 251(c) and 271(c)(2)(B)(ii), *see* 47 C.F.R. § 51.319 (a), (b) and (e). For mass market and enterprise services, Qwest also seeks forbearance from the dominant carrier tariff requirements set forth in Part 61 of the Commission's rules,[3] from price cap regulations set forth in Part 61 of the Commission's rules,[4] from the Computer III requirements including Comparably Efficient Interconnection ("CEI") and Open Network Architecture ("ONA") requirements, and from dominant carrier requirements arising under Section 214 of the Act and Part 63 of the Commission's rules concerning the process for acquiring lines, discontinuing services, making assignments or transfers of control.[5]

The Commission must forbear from regulating where the Commission determines that:

> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

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[3] 47 C.F.R. §§ 61.32, 61.33, 61.38, 61.58 and 61.59.

[4] 47 C.F.R. §§ 61.41-61.49.

[5] 47 C.F.R. §§ 63.03, 63.04, 63.60-63.66.

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

**(3)** forbearance from applying such provision or regulation is consistent with the public interest.

47 U.S.C. § 160(a). In making the public interest determination the Commission may weigh the competitive effect of forbearance. "If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest." 47 U.S.C. § 160(b).[6]

In Omaha, where the Commission has already granted similar relief, consistent with the Commission's predictive judgment, Qwest is continuing to grant competitors wholesale access to its loop and transport facilities. Qwest's motivation is to sell as much service as possible, while making a reasonable profit. Thus, Qwest is committed to its wholesale customers as a distribution channel. In Omaha, as in virtually every instance in which Qwest has received regulatory relief, Qwest has voluntarily made available commercial products to replace the products that had previously been mandated by regulation. Accordingly, after the Commission issued the *Omaha Forbearance* ***Order*** Qwest reached agreement to provide loops and transport to a number of CLECs in the Omaha **MSA.** If the Commission were to grant this forbearance petition, Qwest would similarly continue to make loops and transport available on a commercial basis in Phoenix.

The Phoenix **MSA** is one of the most competitive areas within Qwest's 14-state region. Many carriers now actively compete in that market. In each of Qwest's 64 wire centers in the

[6] The Commission may not forbear from the requirements of Sections 251(c) or 271 until those requirements have been fully implemented. 47 U.S.C. § 160(d). The Commission has previously determined that Section 251(c) has been "'fully implemented' for all incumbent LECs nationwide." *Omaha Forbearance Order*, 20 FCC Rcd at 19439-40 ¶¶ 51-53.

Phoenix MSA,[7] customers now have the choice of at least one, and often many more, alternatives to Qwest's retail telecommunications services. This collection of competitors ranges from a cable-based service provider, to traditional wireline CLECs, to wireless (narrowband and broadband) providers, to VoIP providers. As one would expect given this wide range of options, Qwest has experienced significant access line loss in the Phoenix **MSA** and greatly reduced market share.

### A. Mass Market Consumers Have Access to a Wide Range of Competitive Alternatives

Mass market consumers throughout the Phoenix **MSA** now have access to a wide range of competitive alternatives for affordable local telephone service. "In prior proceedings, the Commission has defined mass market customers as residential and small business customers that purchase standardized offerings of communications services."[8] Consistent with the Commission's earlier findings, Qwest faces competition from a variety of providers of retail mass market services. These competitors include a cable service provider (currently providing both circuit switched and VoIP-based services), wireline CLECs, wireless carriers, and over-the-top VoIP providers.[9] Moreover, there are non-unbundled network element ("UNE") wholesale alternatives available to CLECs including wholesale services offered by other CLECs. As the Commission found in the *Sunset Order,* intermodal competition between wireline service and services provided on alternative service platforms, including VoIP and wireless, has been

[7] Highly Confidential Exhibit 2 lists Qwest's Phoenix MSA wire centers by name.

[8] *See In the Mutter of Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Currier Rules As They Apply After Section 272 Sunsets,* Memorandum Opinion and Order, WC Docket No. 05-333, FCC 07-13, rel. Mar. 9, 2007 at n.56 ***('Sunset** Order").*

[9] ***See** id.* ¶ 29.

increasing and is likely to continue to increase.'" Cox is the leading competitor in Phoenix. Traditional CLECs, including carriers that obtain wholesale service from Qwest, provide additional competition. Moreover, any consumer with a broadband connection (*e.g.*, cable modem, DSL or wireless) can obtain telephone service from literally dozens of "over-the-top'' VoIP providers, which can be accessed over competitive networks. Throughout the Phoenix MSA, these competitors offer voice services that are competitive with Qwest's service offerings and are comparably priced. As demonstrated below, in addition to being widely available, each of these competitive alternatives is also widely used by consumers in the Phoenix MSA.

**1. Cable**

The most prevalent source of competition in the Phoenix MSA is Cox, which offers facilities-based alternatives to Qwest's service. Cox offers both circuit switched telephony and facilities-based VoIP in the Phoenix MSA, and does not seem to differentiate between the two. Brigham and Teitzel Declaration, Exhibit 1, p.20. Moreover, the Commission in its recent *AT&T/BellSouth Merger Order* found that "facilities-based VoIP services clearly fall within the relevant service market for local services. Facilities-based VoIP services have many similar characteristics to traditional wireline local service. There is also significant evidence indicating that mass market subscription to cable-based VoIP continues to increase nationwide as cable operators continue to roll out these services throughout their footprints.""

[10] *See id.* ¶ 20.

[11] *In the Mutter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 06-74, FCC 06-189, rel. Mar. 26,2007 ¶ 93 ("*AT&T/BellSouth Merger Order*"), *pet. for rev. withdrawn,* Order, No. 07-1009 (D.C. Cir. Apr. 3,2007).

In the *Omaha Forbeurance Order*, the Commission held that Cox's voice services "compete as substitutes for Qwest's wireline telecommunications service offerings."[12] The same is true in Phoenix where, as of December 2006, Cox was serving a geographic area encompassing Qwest wire centers that account for approximately [redacted] of the Qwest retail residential lines in that MSA. Brigham and Teitzel Declaration ¶ 8 and Exhibit 1, p.1. Cox is the U.S. cable industry's biggest overall provider of cable telephony, with 1.8 million circuit-switched and VoIP subscribers. *Id.* ¶ 14. It is aggressively expanding its base of telephone subscribers system-wide, and specifically in the Phoenix MSA.

Cox has enjoyed significant system-wide success in selling its Digital Telephone service to residential customers. In February 2004, Cox Communications announced it was then serving one million digital telephone subscribers nationwide, with one in three subscribers taking phone service in its mature markets[13] By 2006, just two years later, Cox doubled its digital telephone subscriptions, and increased its penetration rate. In reporting full year 2006 financial results, Cox stated:

> Cox ended 2006 with 5.4 million basic video customers, representing a net gain of more than 30,000 customers over 2005; 5.9 million total residential customer relationships, an increase of nearly 2%; 3.3 million high-speed Internet customers, an increase of more than 16%; and over 2 million telephone customers, representing growth of over 21%. Additionally, sell-in--the percentage of new cable customers who subscribe to Cox Digital Telephone and/or Cox High Speed Internet--is also at a record high, about 60%.[14]

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[12] *Omaha Forbeurance Order*, 20 FCC Rcd at 19447 ¶ 65; *see id.* at 19432 ¶ 33.

[13] "Cox's successful seven-year history of providing telephone service is key to its bundling strategy and has resulted in more than one million telephone customers. In Cox's most mature markets, one in three homes subscribe to Cox Digital Telephone." Cox *Communications Surpasses Five Million Digital Service Subscriptions*, February 12,2004; *see* Brigham and Teitzel Declaration, Exhibit 1, p.4.

[14] *News Release: A Decade of Bundling Delivers Cox Communications Considerable Competitive Advantages*, http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irol-newsArticle&t=Regular&id=955911&,. ***See*** Brigham and Teitzel Declaration, Exhibit 1, p.6.

Based on this Cox news release, Cox now enjoys a penetration rate of approximately 37% (*e.g.*: 2 million/5.4 million) in the markets it serves. Brigham and Teitzel Declaration ¶ 16. Clearly Cox is expanding its base of subscribers for cable-based telephone services as it seeks to sell multi-product bundles, rather than simply selling basic cable television service. *See id.* ¶ 15.

Looking specifically at the Phoenix MSA, in June 2006, Cox completed its purchase of the CableAmerica cable system, bringing Cox's cable customer base in Phoenix and southern Arizona to "more than 1 million customers in 42 communities."" *Id.* ¶ 16. Assuming that Cox's public statements regarding its penetration rate on a system-wide level hold true for the Phoenix MSA, Cox now provides Digital Telephone service to at least 370,000 homes in that MSA, without relying on Qwest's loops or transport. *Id.* That is over 20 percent of the 1.59 million homes in the Phoenix MSA. *See* id. ¶ 5.

In sum, Cox has extensive facilities in the Phoenix MSA capable of delivering mass market services. *See Omaha Forbearance Order*[16] (finding that such facilities demonstrate that supply elasticity is high). Cox has been "successfully providing local exchange and exchange access services . . . without relying on Qwest's loops or transport."" Thus, as the Commission held in the *Omaha Forbearance Order,* this competition is, standing alone, "sufficient to justify forbearance" from loop and transport unbundling regulations," and from dominant carrier regulation of switched access services,[19] Cox's extensive facilities build-out in the Phoenix MSA,

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[15] http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irol-newsArticle&t=Regular&id=870537&. *See* Brigham and Teitzel Declaration, Exhibit 1, p.22.

[16] *See Omaha Forbearance Order*, *20* FCC Rcd at 19448 ¶ 66; *see id.* at 19432-33 ¶¶ 35-36.

[17] *Id.* at 19447 ¶ 64.

[18] *Id.* at 19450-51 ¶ 69.

[19] *Id.* at 19432-33 ¶ 36.

and growing success in luring Qwest's mass market customers, indicates that the first factor is easily satisfied for switched access services."

### 2. Wireline CLECs

In addition to Cox, over [redacted] unaffiliated CLECs are currently competing with Qwest within this geographic area. Of this number, [redacted] CLECs are using non-Qwest network facilities to provide service, [redacted] are using the Qwest Platform Plus ("QPP")[21] finished wholesale service and [redacted] are reselling Qwest retail services.[22] CLECs are utilizing Qwest resale or QPP/QLSP[23] wholesale services to compete with Qwest in every Qwest wire center in the Phoenix MSA. Brigham and Teitzel Declaration, Highly Confidential Exhibit 2.[24] Qwest estimates that CLECs competing through QPP/QLSP and Resale are

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[20] *Id.*

[21] Qwest recently replaced QPP with a new product, the Qwest Local Service Platform ("QLSP"). During the time periods for which data is presented in this petition, QPP was the relevant product. With the exception of Omaha, where Qwest is no longer required to provide unbundled loops at TELRIC rates, QPP/QLSP relies upon an unbundled loop. In Omaha, Qwest includes terms and conditions for unbundled loops in the QPP/QLSP agreement and has not to date raised its unbundled loop prices when purchased as part of QPP/QLSP.

[22] Qwest wholesale tracking systems, December 2006. Some of the CLECs are serving end users via more than one platform (*e.g.*, a CLEC may use both resale and QPP/QLSP to serve its customers). Therefore, one cannot add the number of CLECs using each platform in order to determine the total number of CLECs.

[23] Even though QPP/QLSP includes unbundled loops, as described above in footnote 21 in connection with Qwest's practices in Omaha, QPP/QLSP will remain available to CLECs should the Commission grant forbearance.

[24] Highly Confidential Exhibit 2 shows the distribution of Qwest wholesale services, including UNEs, purchased by CLECs as of December 2006 in each Qwest wire center, segmented by residential and business line categories. Since Qwest has no means of determining the type of retail service for which CLECs are utilizing stand-alone UNE-L and enhanced extended loop ("EEL") services, these wholesale services are attributed to the "business" category in this summary. It is important to note that the information shown in Highly Confidential Exhibit 2 *excludes* any data associated with access lines served via: (1) CLEC-owned network facilities; (2) Special Access service purchased from Qwest; or (3) network facilities leased from non-Qwest providers. It therefore represents only a subset of CLEC lines in service in the Phoenix MSA. Brigham and Teitzel Declaration ¶ 22.

providing approximately [redacted] residence lines. *Id.* This does not take into account any CLECs competing via Special Access services, or CLEC-owned switches and loops.

To the extent CLECs are utilizing their own networks to serve residential customers in the Phoenix MSA, Qwest has no means to obtain precise in-service access line counts for these CLECs. However, Qwest does track the number of white pages listings, by rate center, of CLECs that are "facilities-based" (those utilizing CLEC-owned switches and loops and/or CLEC-owned switches and unbundled loops or Special Access services purchased from Qwest), and Qwest can thereby estimate the number of lines served by such CLECs, based on Qwest's internal data showing that about 75% of Qwest's residential lines are listed in the white pages directories. Based upon white pages listings data as of January 2007, and presuming facilities-based CLECs' customers choose to list their telephone numbers in the white pages directory in the same proportions as Qwest's customers, there were approximately [redacted] residential lines associated with facilities-based CLECs in the rate centers in the Phoenix MSA. Brigham and Teitzel Declaration ¶ 23.

### 3. Wireless

Wireless use in Arizona is extensive. According to the Commission's most recent data, there were nearly 4.2 million wireless subscribers in Arizona as of the end of June 2006. Brigham and Teitzel Declaration ¶ 36. By comparison, as of the same date, incumbent local exchange carriers ("ILECs") and CLECs reported serving approximately 3.2 million wireline access lines, jointly. *Id.* Thus, wireless subscribers in Arizona exceed the combined total of ILEC and CLEC wireline access lines in the state by about 1 million. *Id.* Moreover, from June 2000 to June 2006, the number of Arizona wireless subscribers grew exponentially (by approximately 156 percent), while the number of wireline access lines has declined. *Id.* Qwest also faces competition in the Phoenix MSA from multiple wireless providers. Mass market customers are increasingly using wireless services in place of traditional wireline telephone services?

As demonstrated in the maps attached as Exhibit 5, p.11 to the Brigham and Teitzel Declaration, various major carriers such as Sprint PCS, T-Mobile, Verizon, and AT&T (formerly known as Cingular) all offer telephone services in the Phoenix MSA, and competitive wireless service from at least one of these carriers is available throughout the Phoenix MSA. *See* Brigham and Teitzel Declaration ¶ 39 and Exhibit 5. In addition, other smaller wireless carriers, such as Alltel and Cricket, also serve the Phoenix MSA. *See id.* ¶ 39 and n.90. Moreover, to capitalize on its strong success in selling bundles of services to its target markets, Cox has launched in Arizona an integrated bundle of services which incorporates "Mobile Access" wireless service into the Cox service package.[26] Each of these carriers offers packages of services that are competitive with Qwest's wireline services for comparable offerings.

It is important to note that a significant number of Phoenix residents are now "cutting the cord"[27] more readily than in most other parts of the country. In fact, 13.5 percent of Phoenix area respondents to a recent survey reported that they are relying upon wireless services for all of their communication needs. *Id.* ¶ 38. That translates to over 207,000 Phoenix area households (*i.e.*, 1.59 million x 13.5%) using wireless services instead of wireline. This total excludes customers who have elected to remove an additional line in favor of wireless service or who have shifted a significant amount of usage from their landline to their wireless telephones. *Id.* In

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[25] *See generally Sunset Order* ¶ 17 and n.61

[26] *Cox Customers in Arizona and San Diego are First to Experience Integration and Mobility of* ***Cox*** *Services*, http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irol-newsArticle&t=Regular&id=962949&. *See* Brigham and Teitzel Declaration, Exhibit 1, p.10.

[17] Customers that have "cut the cord" have disconnected wireline telephone service and rely exclusively on wireless service for their voice telecommunications needs. Brigham and Teitzel Declaration ¶ 37.

contrast to Phoenix's 13.5 percent rate for cord-cutting reported in the study referenced above, the reported national average proportion of households with only wireless phones was 9.6% in June 2006.[28]

In many instances, even if they do not "cut the cord" subscribers will remove a second landline in favor of wireless service and/or shift a significant amount of telephone usage to wireless service. In each of these instances, demand for Qwest wireline telephone service is reduced, even though the customers have not disconnected their wireline telephone service entirely. The Commission states:

> Even when not "cutting the cord" completely, consumers appear increasingly to choose wireless service over traditional wireline service, particularly for certain uses. For example. according to one analyst, customers in nearly a third of American households make at least half their long distance calls at home from their cell phones rather than from their landlines. In the early 2006 survey of cellphone users described above, an additional 42 percent of cellphone users said that they also had a landline phone, but that they used their cellphones "most."[29]

Wireless service subscribers are undeniably using wireless service as a direct substitute for traditional wireline telephone services. In this context, it is not surprising that the Yankee Group reports that "more than 51% of local calls and **68%** of long distance calls have been replaced by wireless." Brigham and Teitzel Declaration ¶ **38.**

The Commission's analysis of the extent of competition between wireless and wireline services conducted in connection with the AT&T/BellSouth merger supports including wireless

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[28] http://www.cdc.gov/nchs/products/pubs/pubd/hestats/wireless2006/wireless2006.htm. ***See*** Brigham and Teitzel Declaration, Exhibit 5, pp.1-2. There has been a steady increase in households with only wireless phones. In a 2005 study, 7.8 percent of adults lived in households with only wireless phones in the second half of 2005, up from 5.5 percent in the first half of 2004 and 3.5 percent in the first half of 2003. Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Tenth Report, September 29,2006, p.89 ¶ 205.

[29] Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Tenth Report, September 29,2006, p.90 ¶ 206.

services in the forbearance analysis. In the *AT&T/BellSouth **Merger** Order,* the Commission recognized that “growing numbers of subscribers in particular segments of the mass market are choosing mobile wireless service instead of wireline local services”; that “approximately ***6*** percent of households have chosen to rely upon mobile wireless service for all of their communications needs”; that certain wireless carriers such as Sprint Nextel Corporation (“Sprint Nextel”) “would likely take actions that would increase intermodal competition between wireline and mobile wireless services”; and that “intermodal competition between mobile wireless and wireline service will likely increase in the near term.”” The Commission also recognized that “even if most segments of the mass market are unlikely to rely upon mobile wireless services instead of wireline local services today,” in order for wireless service to constrain prices for wireline service the analysis “only requires that there be evidence of sufficient substitution for significant segments of the mass market.”” The Commission accordingly concluded that “mobile wireless services should be included within the product market for local services to the extent that customers rely on wireless service as **a** complete substitute for . . . wireline service.”[32]

Significantly, the Commission’s conclusions with respect to wireless were not confined or unique to any particular geographic market but instead applied generally to all relevant geographic markets. The Commission also recognized that it was not necessary to evaluate competition on a granular geographic basis and that a state-level analysis was reasonable.” Although the Commission reached these conclusions in the context of analyzing a merger, the purpose o fthat analysis -- determining the extent of mass market competition -- is identical to

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[30] *AT&T/BellSouth **Merger Order*** ¶ 96.

[31] *Id.*

[32] *Id.*

[33] ***See id.*** ¶ 104.

the one here, and the Commission's conclusions should therefore hold the same weight here as they did in that context.

Evidence shows that, particularly in the Phoenix MSA, wireless service is another form of facilities-based competition. Wireless, both taken alone, and particularly in combination with other forms of facilities-based competition, is sufficient to ensure that market forces will protect the interests of consumers. Data indicate that customers would have a viable alternative should Qwest attempt to raise its wireline prices. Moreover, Qwest's extremely limited presence as a wireless service provider, strongly suggests that if the price of wireline service went up, few of Qwest's customers would switch to a Qwest wireless service.[34] Wireless competition accordingly protects against wireline price increases in the first instance.

### 4. Over-the-Top VoIP Providers

Industry experts forecast exponential VoIP growth through at least 2010. For example, Frost and Sullivan found that VoIP market revenue totaled $295.1 million in 2004 and expect it to reach $4,076.7 million in 2010, **a growth rate of over 1,200%**. *See* Brigham and Teitzel Declaration, n.37. Additionally, the Yankee Group reported that roughly 44% of all U.S. households now subscribe to broadband Internet access. This percentage is expected to reach 58% by 2010. *Id.* ¶ 45.

Since VoIP calls do not rely on Qwest's switched network (and calls transported via non-Qwest broadband facilities do not rely on Qwest's local loop network), the rapid customer adoption of VoIP represents an additional form of competition that bypasses Qwest. These competitive networks are not limited to competitive wireline broadband services, but also include cable and wireless services. According to the Commission, broadband access lines in

[34] *See Sunset **Order*** ¶ 34. Qwest Wireless has [redacted] market share of the consumer wireless market in the Phoenix MSA. Brigham and Teitzel Declaration n.17.

Arizona have grown from 109,867 in June 2000 to 1,392,711 in June 2006 -- increase of over 1,165%. Brigham and Teitzel Declaration ¶ 43. In fact, in the first six months of 2006 alone, broadband access lines in Arizona increased by nearly 35%. *Id.* As of June 2006, approximately 55% of the broadband access lines in Arizona were served by cable modem. *Id.* The Commission found that "more than 99% of the country's population lives in the 99% of zip codes where a provider reports having at least one high-speed service subscriber," *(id.)* and every zip code in Arizona has at least one broadband service provider available as of June 2006. *Id.* Competitive broadband services are now widely available from multiple providers in the Phoenix MSA, and have been embraced by a rapidly increasing number of customers. Each broadband customer represents a potential VoIP subscriber. *See id.* ¶ 43.

The non-Qwest broadband facilities capable of carrying VoIP calls include wireless broadband ("WiFi") service, which is being actively deployed in many communities within Qwest's service territory in the Phoenix **MSA.** *See id* ¶ 40 and Exhibit 5, p.12. Consumers can utilize the WiFi connection in any WiFi "hotspot" to access the Internet and use VoIP services to make and receive telephone calls without reliance on Qwest's local network. See Brigham and Teitzel Declaration ¶ 40.

The Commission has previously acknowledged that some portion of mass market consumers view certain over-the-top VoIP services as substitutes for wireline local service." Currently there are at least 48 VoIP providers (excluding Qwest) serving the Phoenix MSA including Vonage, Lingo/Primus, Clearwire, Skype, Speakeasy, SunRocket and others. Many of these providers (including Vonage, Lingo/Primus and Clearwire) offer service options for both residential and business markets. *Id.* ¶ 44. Other providers such as Speakeasy and SunRocket,

[35] *AT&T/BellSouth Merger Order* 794.



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focus primarily on the residential market. *Id* Since VoIP calls do not rely on Qwest switched network (and calls transported via non-Qwest broadband facilities do not rely on Qwest local loop network), the rapid customer adoption of VoIP represents an additional form of competition that bypasses Qwest. Thus, VoIP should be included in the forbearance analysis because it too constrains Qwest's ability to raise its prices or otherwise harm consumers.

**5. Qwest Wholesale Alternatives**

In the *Omaha Forbearance Order,* the Commission also relied in part on competitors' ability to use the ILEC's wholesale offerings pursuant to "provisions of the Act designed to develop and preserve competitive local markets."[36] The Commission recognized that where there are "very high levels of retail competition that do not rely on the Qwest facilities -- and for which Qwest receives little to no revenue" Qwest has "the incentive to make attractive wholesale offerings available so that it will derive more revenue indirectly from retail customers who choose a retail provider other than Qwest."[37]

As demonstrated above, there is extensive facilities-based retail competition in the Phoenix MSA. Qwest has in fact made attractive wholesale offerings available even when it has no obligation to do so. Following the Commission's decision to eliminate the UNE platform, Qwest began offering its QPP/QLSP service, which provides the same features and functionality as the UNE platform, but at negotiated, market rates. **As** of December 2006, [redacted] competitors in the Phoenix MSA were serving approximately [redacted] VGE residential lines using this wholesale product. *Id* ¶ 21 and Highly Confidential Exhibit 2. As of that same date, [redacted] competitors were reselling approximately [redacted] VGE residential lines in the Phoenix MSA pursuant to the resale provisions of Section 251(c)(4). *Id*

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[36] *Omaha Forbearance Order, 20* FCC Rcd at 19447 ¶ 64; see *id.* at 19433 ¶ 37.

[37] *Id.* at 19448-49 ¶ 67.

### 6. Decline in Qwest's Retail Lines

In the *Omaha Forbearance Order,* the Commission held that the proper focus should be on the availability of competitive alternatives, rather than on the number of customers who have already chosen to switch to such alternatives. The Commission will look at both "actual and potential competition" that "either is present, or readily could he present."[38] This focus on the availability of actual and potential competitive alternatives rather than static market share is consistent with the approach the Commission has taken in other contexts. The Commission has long held that "an analysis of the level of competition for LEC services based solely on a LEC's market share at a given point in time would be too static and one-dimensional."[39] "[T]he presence and capacity of other firms matter more for future competitive conditions than do current subscriber-based market shares."[40]

As demonstrated above, there are multiple competitive alternatives that are widely available in the Phoenix MSA and that also are being used by mass market consumers. This fact is further confirmed by the declines that Qwest has experienced in its base of switched access lines. Between 2000 and 2006 Qwest's residential switched access lines have declined by approximately [redacted] percent, from [redacted] to [redacted] even though the number of households in the Phoenix **MSA** increased by approximately 20 percent during the period from 2000 to 2005. *See* Brigham and Teitzel Declaration ¶ 5. Independent industry

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[38] *Id.* at 19446 ¶ 62.

[39] *In the Matter of Price Cap Performance Review-for Local Exchange Carriers, Treatment of Operator Services Under Price Cap Regulation, Revisions to Price Cup Rules for AT&T,* Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1, Further Notice of Proposed Rulemaking in CC Docket No. 93-124, and Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197, 11 FCC Rcd 858,922-23 ¶ 143 (1995).

[40] *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporationfor Consent to Transfer Control of Licenses and Authorizations,* Memorandum Opinion and Order, 19 FCC Rcd 21522,21579 ¶ 148 (2004).



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