

analysts identify ILEC access line losses to cable telephony providers as significant and continuing given “the widespread availability of cable telephony and its associated multi-service bundles.”⁴¹

Since Qwest’s wireline, VoIP, and cable telephony competitors are under no obligation to report customer in-service data, especially at the MSA level, precise measurements of competitor “shares” are not possible to obtain. However, independent research houses have addressed this issue by conducting primary customer research to quantify competitive telecommunications dynamics. For example, TNS Telecoms, an independent research firm, conducts a quarterly “share” analysis in each of the states to estimate competitors’ shares of the residential telecommunications markets and to provide insights into the changes in competitive trends.⁴² Brigham and Teitzel Declaration ¶ 6. In fourth Quarter 2000, TNS reported Qwest’s share of residential communications connections in the Phoenix MSA at [REDACTED]. *Id.* By third Quarter 2006, Qwest’s share of residential communications connections in the Phoenix MSA had declined to [REDACTED]. *Id.* These data confirm that Phoenix-area consumers are utilizing substitutes for Qwest’s service to satisfy their telecommunications needs.

⁴¹ *Regulatory Event Risk Headlines Fitch’s U.S. Telecom Outlook for 2007*, November 29, 2006. See Brigham and Teitzel Declaration, Exhibit 1, p.12.

⁴² In conducting its study, TNS collects actual billing information from a statistically-reliable sample of customers in each state and tabulates the number of residential customers subscribing to Qwest service (landline, Digital Subscriber Line (“DSL”) or wireless) as well as services of non-Qwest landline and wireless competitors. TNS uses this data to calculate “shares of customer connections” (excluding video connections) for each service provider in the consumer telecommunications market. In calculating “connections shares,” TNS defines a “connection” as any telecommunications service used by the customer. A residential access line, a wireless service and a broadband Internet line used by a customer would each be counted as a discrete “connection” under TNS’ definition in its calculations of “connections shares.” For example, a customer with Qwest landline service, Qwest DSL service and Verizon Wireless service would be counted as having three “connections,” and Qwest’s “connections share” in this example would be 66%. Brigham and Teitzel Declaration ¶ 6.

In the *Sunset Order*, the Commission noted that the availability of wireless and VoIP to constrain Qwest's market power given the large and growing percentage of customers who subscribe to both wireline service and wireless and/or broadband Internet access, and who thus have the ability to shift usage in response to price changes." Although the Commission reached these conclusions in the context of analyzing the market for long distance services, the conclusions are applicable here because consumers have access to a similar multiplicity of platforms. Moreover, for those services such as wireless and over-the-top VoIP, where consumers pay an "all you can eat" price, once consumers have purchased these services for use with long distance services, there is no incremental cost for local use.

In sum, Qwest faces many substitutes for its wireline services. Increasing numbers of customers subscribe to competitive wireline and cable services. Additionally, increases in subscriptions to broadband Internet access services allow customers to subscribe to over-the-top VoIP service. Moreover, there have been increased subscriptions to mobile wireless services, accompanied by a migration of wireline minutes to mobile wireless minutes. All of these trends indicate that consumers are increasingly finding that these alternative services serve as substitutes for Qwest's traditional wireline service offerings.⁴⁴ Thus, in the mass market the enforcement of unbundling is not necessary to ensure that charges are just and reasonable, and not unjustly discriminatory; nor is unbundling necessary for consumer protection. Similarly, dominant carrier tariff regulation is no longer necessary to ensure that charges are just and reasonable, nor for consumer protection.

⁴³ See *Sunset Order* ¶¶ 34, 37, 38

⁴⁴ See *Sunset Order* ¶ 38.

B. Enterprise Customers Also Have Access to a Wide Range of Competitive Alternatives

The provision of services to enterprise customers is also highly competitive. Moreover, the customers themselves are highly sophisticated purchasers of communications services.⁴⁵ They tend to make their decisions about communications services by using either communications consultants or employing in-house communications experts.⁴⁶ Accordingly, the Commission has previously expressed its expectation that enterprise customers are aware of the multitude of choices available to them,⁴⁷ and are able to take advantage of the competitive choices available to them, seeking out the best-priced alternatives.⁴⁸ In the *Omaha Forbearance Order*, the Commission decided to forbear from loop and transport unbundling based on competition from Cox, the incumbent cable operator, together with “maps and other evidence” that other competitors have deployed their own transport facilities, and additional evidence that competing carriers were using wholesale alternatives to compete successfully.⁴⁹ As in the mass market, evidence demonstrates that “the level of facilities-based competition [in the Phoenix MSA] ensures that market forces will protect the interests of consumers.” See Brigham and Teitzel Declaration ¶ 57. As the Commission has previously found, numerous categories of competitors provide services to enterprise customers.⁵⁰ These include cable companies, wireless

⁴⁵ See *id.* ¶ 46; *AT&T/BellSouth Merger Order* ¶ 82.

⁴⁶ See *Sunset Order* ¶ 46.

⁴⁷ See *id.*

⁴⁸ *AT&T/BellSouth Merger Order* ¶ 82.

⁴⁹ *Omaha Forbearance Order*, 20 FCC Rcd at 19448 ¶ 66; see *id.* at 19448-49 ¶ 67.

⁵⁰ *Sunset Order* ¶ 30.

providers, CLECs, data/IP network providers, VoIP providers, system integrators, and equipment vendors.⁵¹

1. Cable

First, Cox’s cable networks in the Phoenix MSA are very extensive, and these networks are capable of -- and are -- being used to serve enterprise customers. In the *Omaha Forbearance Order*, the Commission found that Cox’s cable facilities were “capable of delivering both mass market and enterprise telecommunications services.”⁵² The Commission relied on the fact that Cox had “strong success in the mass market, its possession of the necessary facilities to provide enterprise services, its technical expertise, its economies of scale and scope, its sunk investments in network infrastructure, its established presence and brand in the Omaha MSA, and its current marketing efforts and emerging success in the enterprise market.”⁵³ The Commission also noted that Cox had particularly strong incentives to compete for enterprise customers, as compared to mass market, because the “revenue potential” is greater.⁵⁴ The Commission concluded that, in light of these facts, “Cox poses a substantial competitive threat . . . for higher revenue enterprise services.”⁵⁵ In reaching this conclusion, the Commission found the fact that Cox’s existing network did not necessarily reach every individual business location as “not . . . dispositive” in light of the other evidence demonstrating Cox’s incentives and ability to serve these customers.⁵⁶

This same analysis applies with equal force here. As demonstrated above, Cox has had “strong success in the mass market” in the Phoenix MSA. Moreover, it possesses “the necessary

⁵¹ See *id.*; *AT&T/BellSouth Merger Order* ¶ 70.

⁵² *Omaha Forbearance Order*, 20 FCC Rcd at 19448 ¶ 66.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

facilities to provide enterprise services.” Indeed, Cox already markets services to business customers, including Internet access service, voice service or both. Cox maps showing its media coverage in the Phoenix area show that Cox is serving a geographic area within the Phoenix MSA encompassing Qwest wire centers that account for approximately [REDACTED] of the Qwest retail business lines in that MSA (based on December 2006 Qwest access line data). Brigham and Teitzel Declaration ¶ 19 and Exhibit 1, p.1. Moreover, Cox has over [REDACTED] route miles of fiber in the Phoenix MSA, in addition to its extensive coaxial cable network in the area.

Nationally, Cox has established a separate marketing division, Cox Business Services, to focus specifically on small and Enterprise business market segments. Brigham and Teitzel Declaration ¶ 17. Cox reported very strong growth in its commercial business sector for 2005, and noted that it had “concluded 2005 with Cox Business Services serving more than 160,000 customers and year-over-year growth of 20%.” *Id.* In emphasizing Cox’s commitment to the business market, Cox Vice President William Stemper stated: “Cox is in a unique position in the commercial services arena. All of our pieces -- from the network we own and manage, to our architecture with built-in reliability to the **business solutions and expertise we offer to small and medium-sized business owners and enterprises alike** -- contribute to the sense of trust that our customers have with us.” *Id.* (Emphasis added.) As would be expected given this strong national performance, Cox provides a broad range of business products to small business and enterprise customers in the Phoenix MSA, including voice telephone service, digital trunks, Centrex service, long distance and “toll free” services, private line service, transparent LAN service, virtual private network service and business video service. *Id.*

As an example of Cox’s success in the enterprise market, that also demonstrates wireless as a competitor for the enterprise market, Cox announced in 2006 that it has partnered with

MobilePro to deploy municipal wireless broadband services in Tempe, Chandler and Gilbert as part of the contract awarded to Cox by the State of Arizona to provide communications services to the state government. *See* Brigham and Teitzel Declaration, Exhibit 1, p.41. This arrangement will provide government employees in these geographic areas the capability to utilize high capacity wireless connections for their communications needs in lieu of traditional wireline telephone services. *Id.* ¶ 20. Clearly, Cox has moved far beyond being simply a cable provider that occasionally sells voice services to mass market consumers. As this evidence makes clear, Cox has the requisite facilities, infrastructure, “technical expertise,” “economies of scale and scope,” and “established presence and brand” to serve business customers. Cox is large and well established, both in general and in the Phoenix MSA. It has already been successful in serving business customers in the MSA.

2. Wireline CLECs

Second, a large number of other competitors provide extensive retail business competition in the Phoenix MSA. As stated above, CLECs are utilizing Qwest resale or QPP/QLSP wholesale services to compete with Qwest in every wire center in the Phoenix MSA. Brigham and Teitzel Declaration, Highly Confidential Exhibit 2. Qwest estimates that CLECs competing through QPP/QLSP and Resale are providing approximately [REDACTED] business lines. *Id.* This does not take into account any CLECs competing via Special Access services, or CLEC-owned switches and loops or network facilities leased from non-Qwest providers.

As explained above regarding mass market services, to the extent CLECs are utilizing their own networks to serve enterprise 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 36% of its business lines⁵⁷ 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] business lines associated with facilities-based CLECs in the rate centers in the Phoenix MSA. Brigham and Teitzel Declaration ¶ 23.

In the *Omaha Forbearance Order*, the Commission also considered "evidence that a number of carriers . . . had success competing for enterprise services using DS1 and DS3 special access channel terminations obtained from Qwest" as relevant in its analysis of enterprise competition.⁵⁸ The Commission held that "this competition that relies on Qwest's wholesale inputs -- which must be priced at just, reasonable and nondiscriminatory rates . . . supports our conclusion that section 251(c)(3) unbundling obligations are no longer necessary to ensure that the prices and terms of Qwest's telecommunications offerings are just and reasonable and nondiscriminatory under section 10(a)(1)."⁵⁹

As in Omaha, competitors in the Phoenix MSA are competing extensively using Special Access obtained from Qwest. As of December 2006, competitors purchased over [REDACTED] [REDACTED] Special Access channels from Qwest in the Phoenix MSA. The number of VGE

⁵⁷ In particular, business customers often elect to list only their primary telephone number in the white pages directory. To the extent customers of facilities-based CLECs do not request that their telephone numbers be reported to Qwest for input to the white pages database, these telephone numbers are not reflected in the facilities-based CLEC customer white pages listings at all.

⁵⁸ *Omaha Forbearance Order*, 20 FCC Rcd at 19449-50 ¶ 68.

⁵⁹ *Id.* (Footnote omitted.) The forbearance that Qwest seeks here will not eliminate Qwest's obligations under Sections 201 and 202 to provide its services on just and reasonable, and not unreasonably discriminatory terms.

circuits being provided by competitors using Qwest Special Access services exceeds the number of VGE circuits being provided by CLECs using UNEs, QPP/QLSP, and resale combined.

Brigham and Teitzel Declaration ¶ 10. Over ██████████ of the Special Access VGEs in the Phoenix MSA are in wire centers that also have competitive fiber in place. *Id.* ¶ 33.

3. System Integrators, IP-Enabled Service Providers and Other Competitors

Third, as the Commission recently acknowledged in the context of the AT&T/BellSouth merger, “systems integrators and the use of emerging technologies, including various Internet Protocol enabled (IP-enabled) technologies, are likely to make [the enterprise] market more competitive, and this trend is likely to continue in the future.”⁶⁰ Demand for systems integrators is driven by the need for the extensive planning and management necessary to create communications systems blending voice, data, video, Internet, and wireless applications. *Id.*

¶ 55. In the enterprise market, nearly half of all medium and large enterprises use some form of managed telecommunications and IT services. *Id.* at 56. The North American managed telecom service market generated \$18.6 billion in revenues in 2006.⁶¹ Equipment vendors and systems integrators such as IBM, New Edge Networks, Mammoth Networks, and others compete in Phoenix. *Id.* For example, New Edge provides managed telecom services to small businesses, large corporations and telecom carriers.⁶² IBM helps customers “design, deploy and manage an IP telephony infrastructure that can help reduce the costs associated with managing and maintaining separate voice and data equipment and networks.”⁶³ Mammoth Networks provides

⁶⁰ See *AT&T/BellSouth Merger Order* ¶ 81.

⁶¹ *Id.* n.172.

⁶² See Brigham and Teitzel Declaration ¶ 56; Exhibit 8, p.2

⁶³ *Id.*, Exhibit 8, p.3.

DSL, Frame Relay and ATM service aggregation. allowing customers to connect circuits to its network.⁶⁴

The increasing role of system integrators in the enterprise market may be based in part on the fact that VoIP providers are also making competitive inroads into the enterprise market. In 2005, 36% of large and 23% of medium North American organizations interviewed by a major research firm were already using VoIP products and services. That research firm estimated that by 2010, almost half of small and two-thirds of large organizations in North America would be using VoIP products and services.⁶⁵

4. Competitive Fiber

Finally, there are extensive competitive fiber networks in the Phoenix MSA. According to GeoTel, a leading provider of telecommunications facilities information, approximately [REDACTED] miles of fiber (excluding fiber owned by Qwest and Qwest's affiliates) is now in place in the Phoenix MSA, and is typically used by Qwest's competitors to serve enterprise and wholesale customers. Brigham and Teitzel Declaration ¶ 34. At least one fiber-based competitor is in [REDACTED] of Qwest's wire centers in the Phoenix MSA, and these wire centers contain [REDACTED] of Qwest's residential lines and [REDACTED] of Qwest's retail business lines in the MSA. In addition, competitive fiber is now being used to serve over [REDACTED] buildings in the Phoenix MSA. *Id.*

Given its extensive fiber network, Cox now offers its Carrier Access loop and transport services to other carriers as an alternative to Qwest's wholesale services. *Id.* ¶ 18. Cox states that its Carrier Access services allow carriers to:

⁶⁴ *Id.*; Exhibit 8, p.4.

⁶⁵ *Id.* ¶ 45; <http://www.infonetics.com/resouces/purple.shtml?upna06.ipv.nr.shtml>.

Choose from multiple bandwidths to connect your network to your customer's location, to provide connectivity between your POPs, or to connect you with other serving wire centers. You may also select the right interconnection bandwidth you need to meet your capacity requirements for your demand set. You'll be sure to get the right fit every time.⁶⁶

Id. In describing its Carrier Access service, Cox further states:

Built on our own fiber-based SONET self-healing network, Cox Carrier Access service gives you high-capacity communications that set the standard for high-speed and high-quality digital transmissions at a cost-effective price.⁶⁷

Id. ¶ 18. Other carriers with significant fiber include [REDACTED]
[REDACTED]
[REDACTED]. See Brigham and Teitzel Declaration ¶ 35

Given these significant facilities-based competitors, who can provide retail or wholesale services, it is clear that Qwest faces competition in its efforts to reap more revenue “indirectly from retail customers who choose a retail provider other than Qwest.”⁶⁸

5. Decline in Qwest's Retail Lines

Given the competition from Cox, wireline CLECs, systems integrators, VoIP providers, entities with competitive fiber networks and other players it is not surprising that Qwest has lost a significant proportion, [REDACTED], of its retail business lines from December 2000 to December 2006. *Id.* Qwest had [REDACTED] business retail access lines in December 2000, and just [REDACTED] in December 2006. *Id.* Just as in the mass market, developing precise measurements of “share” in the business market is difficult, given the diverse scope of intramodal and intermodal competition that now exists in the Phoenix MSA and the general lack

⁶⁶ <http://www.coxbusiness.com/products/other/carrierservices.html>. See Brigham and Teitzel Declaration, Exhibit 1, p.40.

⁶⁷ *Id.*

⁶⁸ *Omaha Forbearance Order*, 20 FCC Rcd at 19448-49 ¶ 67.

of available customer in-service data for these competitors. However, TNS Telecoms conducts primary research in the small business and Enterprise business segments and has assembled “revenue share” estimates for those markets as indicators of competitive trends. In stratifying the business market, TNS classifies businesses generating less than \$1,500 in monthly telecom spending as small business customers, and business customers spending at or above this level as “enterprise” business customers. In the small business category, TNS’ research shows that Qwest’s revenue share in the Phoenix MSA was [REDACTED] in fourth Quarter 2006. In the enterprise market, Qwest’s revenue share in the Phoenix MSA was [REDACTED] in fourth Quarter 2006. These data confirm that Phoenix MSA businesses are utilizing substitutes for Qwest’s service to satisfy their communications needs, particularly at the high end of the market. Systems integrators and the increased use of IP-enabled technologies are likely to make this market more competitive in the future.

III. THE THIRD PART OF THE FORBEARANCE TEST IS SATISFIED BECAUSE THE REQUESTED RELIEF IS IN THE PUBLIC INTEREST

As the Commission found in the *Omaha Forbearance Order*, evidence of competition satisfies not only the first two prongs of the forbearance test, but also supports a finding that the third prong of the forbearance test is met, *i.e.*, it is in the public interest to eliminate the regulations in question.⁶⁹ In the *Omaha Forbearance Order* the Commission also identified two additional reasons why forbearance from the regulations at issue was in the public interest. Both reasons apply with equal force in the Phoenix MSA.

First, as the Commission found in Omaha, the costs of the unbundling obligations that Qwest faces in the Phoenix MSA outweigh the benefits. Both the Commission and the D.C. Circuit have recognized the harm to the public interest and to competition from excessive

⁶⁹ See *Omaha Forbearance Order*, 20 FCC Rcd at 19437747, 19453 775.

unbundling. As the Commission has explained, “excessive network unbundling requirements tend to undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology.”⁷⁰ Similarly the D.C. Circuit has recognized that mandated unbundling “imposes costs of its own, spreading the disincentive to invest in innovation and creating complex issues of managing shared facilities.”⁷¹ Given the extensive facilities-based competition that already exists in the Phoenix MSA, and the potential for even greater facilities-based competition to emerge, any potential benefits from unbundling regulation are slim, while the costs of such regulatory intervention are significant.⁷² Forbearance will give Qwest, and other facilities-based competitors, greater incentives to continue to invest in facilities, which will ensure the continued growth of long-lasting facilities-based competition.

Eliminating unbundling regulation will also “further the public interest by increasing regulatory parity” among telecommunications providers in the Phoenix MSA. These regulations were imposed at a time when Qwest’s narrowband circuit-switched network was a dominant technology, but this is far from the case today. Qwest is now losing mass market and enterprise lines and customers to wireless and broadband competitors. As the Commission noted, it is “in the public interest to place intermodal competitors on an equal regulatory footing by ending unequal regulation of services provided over different technological platforms.”⁷³ In the face of

⁷⁰ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 16984 ¶ 3 (2003) (subsequent history omitted).

⁷¹ *United States Telecom Ass’n v. FCC*, 290 F.3d 415,427 (D.C. Cir. 2002).

⁷² *See Omaha Forbearance Order*, 20 FCC Rcd at 19454 ¶ 77.

⁷³ *Id.* at 19454-55 ¶ 78

such competition, asymmetrical regulation imposes artificial price constraints that delay and impede full and fair competition among providers and harms consumers.⁷⁴

Second, as the Commission also found in Omaha, eliminating dominant carrier regulations that apply to interstate switched access services is consistent with the public interest where vigorous local competition has emerged.⁷⁵ As demonstrated above, cable voice services in the Phoenix MSA are more widely available than they were in Omaha, and other types of competition are even more widespread than they were in December 2005 when the Commission issued the *Omaha Forbearance Order*. Moreover, with respect to interstate switched access services, competitive wireless services are particularly significant because customers can use their wireless phones for long distance calls even where they do not abandon their wireline phone entirely. In fact, large fractions of long distance calls and minutes have already migrated to wireless. Brigham and Teitzel Declaration 737.

As the Commission found in Omaha, eliminating dominant carrier regulation for interstate switched access services also will promote the public interest by eliminating the unnecessary costs such regulations impose. In particular, “[i]n these environments that are competitive for end users, applying these dominant carrier regulations to Qwest limits its ability to respond to competitive forces and, therefore, its ability quickly to offer consumers new pricing plans or service packages.”⁷⁶

⁷⁴ See, e.g., *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14878 ¶ 45, 14890-91 ¶ 71, 14895-96 ¶ 79 and n.241 (2005), *appeal pending sub nom. Time Warner Telecom v. FCC*, No. 05-4769 (and cons. cases) (3rd Cir.), *oral argument held*, Mar. 16, 2007.

⁷⁵ See *Omaha Forbearance Order*, 20 FCC Rcd at 19437 ¶ 47.

⁷⁶ *Id.*

The Commission has similarly recognized in other contexts that certain “regulations associated with dominant carrier classification can also have undesirable effects on competition.”” For example, the Commission has recognized that tariffing requirements “impose significant administrative burdens on the Commission and the BOC[s],” and “adversely affect competition.”⁷⁸ Such regulations reduce the incentive and ability to discount prices in response to competition and to make efficient price changes in response to changes in demand and cost. Likewise, the Commission’s price cap regulations limit Qwest’s ability to respond to market conditions and competition. Unlike other providers in the Phoenix MSA, to whom price cap regulation does not apply, Qwest is restricted from responding to competition with deaveraged rates and cannot respond to competitors’ bundled service offerings. Competitors also can use these regulations to their advantage, both to undercut each others’ pricing or to maintain artificially high prices.

For these reasons, dominant carrier regulation of the switched-access market is not only unnecessary to ensure just, reasonable, and not unjustly or unreasonably discriminatory rates, and to protect consumers, but it also impedes Qwest’s ability to compete,⁷⁹ dampens competition,” and is thus harmful to the public interest.

⁷⁷ *In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15808 ¶ 90 (1997) (“*LEC Classification Order*”), *on recon.*, 12 FCC Rcd 8730 (1997), *Order*, 13 FCC Rcd 6427 (1998), *on further recon.*, 14 FCC Rcd 10771 (1999); *see also Sunset Order I* 78.

⁷⁸ *LEC Classification Order* at 15807 ¶ 89.

⁷⁹ *See Sunset Order* ¶ 78.

⁸⁰ *See id*

IV. CONCLUSION

For the foregoing reasons, Qwest requests that in the Phoenix MSA the Commission forbear from loop and transport unbundling regulation, dominant carrier regulation, price cap regulation of switched access services **and** CEI/ONA requirements.

Respectfully submitted,

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

DECLARATION OF ROBERT H. BRIGHAM AND DAVID L. TEITZEL
REGARDING THE STATUS OF TELECOMMUNICATIONS COMPETITION IN
THE PHOENIX, ARIZONA METROPOLITAN STATISTICAL AREA

I. INTRODUCTION AND SUMMARY.

1. My name is Robert H. Brigham. My business address is 1801 California Street, Denver, Colorado 80202, and I am currently employed by Qwest Service Corporation (“QSC”)¹ as a Staff Director in the Public Policy department. In my current position, I develop and present Qwest’s advocacy before regulatory bodies concerning pricing, competition and regulatory issues. I have been employed by Qwest and its predecessor companies for over 30 years, holding various management positions in Marketing, Costs and Economic Analysis, Finance and Public Policy. I have testified before numerous state commissions in the Qwest region.

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

2. My name is David L. Teitzel. My business address is Room 3214, 1600 7th Ave., Seattle, WA 98191. My title is Staff Director and I am a member of QSC's Public Policy organization. In that position I develop and present company advocacy in matters relating to the manner in which Qwest Corporation ("Qwest") is regulated for retail services. These matters include regulatory reform in dockets before state commissions and the FCC. I have been employed by Qwest and its predecessor companies for over 32 years and have held a number of management positions in various departments, including Regulatory Affairs, Network and Marketing.

3. The purpose of this declaration is to demonstrate that extensive competition exists for Qwest's mass market and enterprise telecommunications services in the Phoenix Metropolitan Statistical Area ("MSA") from a wide variety of intramodal and intermodal competitors. Consistent with the analytical framework the Commission applied to Qwest's earlier request for forbearance with respect to the Omaha MSA, the facts and evidence contained herein show that these competitors are competing with Qwest in the Phoenix MSA via a full range of telecommunications service platforms; including the purchase of unbundled network elements, Qwest Platform Plus ("QPP"),² Special Access, resale of Qwest retail services, as well as via non-Qwest facilities (including competitive fiber cable networks, coaxial cable networks, wireless services, internet-based services, etc).

² In January 2007, CLECs began converting their QPP-based services to the new Qwest Local Services Platform ("QLSP) wholesale service as discussed later in this declaration.

4. Our declaration and associated exhibits contain information obtained from publicly-available sources and internal Qwest databases, and the sources of data upon which we rely in this declaration are fully identified. We attest that all Qwest data in this declaration is accurate as of the filing date of Qwest's petition in this proceeding and that any information obtained from non-Qwest sources is shown precisely as it is reported by the source. A summary of the competitive information in our declaration is set forth below.

5. As of 2005, U.S. Census data shows that there were approximately 1.59 million households and 3.9 million people in the Phoenix MSA,' up from 1.33 million and 3.28 million respectively in 2000.' Clearly, the Phoenix MSA is experiencing a strong growth trend, with households up 20% and population up 19% over this timeframe, and it can be conservatively assumed that demand for telecommunications services in the Phoenix area has increased apace. However, Qwest's retail access line base in the Phoenix area has fallen sharply since 2000, contrary to the upward trends in housing and population, as residential and business customers have availed themselves of the ever-expanding array of competitive alternatives to Qwest's services. As shown in Table 1 below, Qwest's retail residential, business and public coin access line base in the Phoenix MSA has declined dramatically since 2000:⁵

³ The Phoenix MSA encompasses Maricopa and Pinal counties.

⁴ <http://www.census.gov/popest/housing/HU-EST2005-CO.html>;

http://www.census.gov/population/www/estimates/Estimates%20pages_final.html (Table 1).

⁵ These results exclude any access line losses occurring prior to December 2000 and therefore understate the extent of competitive losses in the Phoenix MSA.

<u>Retail Service</u>	<u>Dec. 2000</u>	<u>Dec. 2006</u>	<u>Difference</u>	<u>% Difference</u>
Residential	██████████	██████████	██████████	██████████
Business	██████████	██████████	██████████	██████████
Public	██████████	██████████	██████████	██████████
Total	██████████	██████████	██████████	██████████

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These access line trends are clearly being driven by the proliferation of intramodal and intermodal competitive alternatives to Qwest’s services in the Phoenix MSA, and the range of alternatives continues to expand, as we discuss in our declaration.

6. The mix of competitive alternatives in the Phoenix MSA continues to evolve, with traditional competitors such as CLECs continuing to aggressively compete with Qwest and intermodal forms of competition, such as wireless and Voice over Internet Protocol (“VoIP”),⁶ rapidly gaining significant portions of the communications market. It is noteworthy that CLECs are lightly regulated and intermodal competitors are subject to very limited regulation. Since these competitors are under no obligation to report customer in-service data,⁷ especially at the MSA level, precise measurements of

⁶ VoIP services are now offered on a “stand-alone” basis by providers such as Vonage, SunRocket, Packet8, etc., as well as on an “integrated” basis by Cable MSOs such as Cox, Comcast, Time Warner Cable, etc.

⁷ The regulatory status of local telephone service provided by VoIP technology is the subject of an open FCC proceeding (IP-Enabled Services, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863).

competitor "shares" are not possible to obtain. However, independent research houses have addressed this issue by conducting primary customer research to quantify competitive telecommunications dynamics, and Qwest has purchased such research to gain insights into market trends. For example, TNS Telecoms, an independent research firm, conducts a quarterly "share" analysis in each of the states to estimate competitors' shares of the residential telecommunications markets and to provide insights into the changes in competitive trends. In conducting its study, TNS collects actual billing information from a statistically-reliable sample of customers in each state⁸ and tabulates the number of residential customers subscribing to Qwest service (landline, DSL or wireless) as well as services of non-Qwest landline and wireless competitors. TNS uses this data to calculate "shares of customer connections" (excluding video connections) for each service provider in the consumer telecommunications market.⁹ In calculating "connections shares," TNS defines a "connection" as any telecommunications service used by the customer. A residential access line, a wireless service and a broadband internet line used by a customer would each be counted as a discrete "connection" under TNS' definition in its calculations of "connections shares." For example, a customer with Qwest landline service, Qwest DSL service and Verizon Wireless service would be counted as having three "connections," and Qwest's "connections share" in this example would be 66%. In fourth Quarter 2000, TNS reported Qwest's share of residential

Currently, telecom providers are not required by FCC instructions for Form 477, which is the reporting tool used by telecom providers to report in-service access line counts to the FCC, to report VoIP-based access lines. If the FCC rules in its pending IP services proceeding that VoIP service is a telecommunications service; providers of these services may be required to report in the future access lines served via VoIP. However, until that time, providers utilizing VoIP to provide service are not required to report in-service data to the FCC.

⁸ In Qwest's 14 state territory, the TNS research sample is drawn strictly from exchanges within the Qwest service area footprint and does not include data from Independent service territory

⁹ TNS Telecoms does not conduct a "connections share" analysis for the business market, and instead produces a "share of total telecom spend analysis for the business segment.

communications connections in the Phoenix MSA at [REDACTED]. By fourth Quarter 2006, Qwest's share of residential communications connections in the Phoenix MSA had declined to [REDACTED].¹⁰ Clearly, this data confirms that an increasing number of Phoenix-area consumers are utilizing non-Qwest telecom alternatives to satisfy their telecommunications needs.

7. In the Business market, developing precise measurements of "share" is equally difficult, in view of the diverse scope of intramodal and intermodal competition that now exists in the Phoenix MSA, and the general lack of availability of customer in-service data for these competitors. However, TNS Telecoms also conducts primary research in the small business and Enterprise business segments and has assembled "revenue share" estimates for those markets as indicators of competitive trends." In stratifying the business market, TNS classifies businesses generating up to \$1,500 in monthly telecom spending as "mass market" business customers, and business customers spending at or above this level as "enterprise" business customers. TNS' research shows that Qwest's revenue share in the Phoenix MSA was [REDACTED] for small business and [REDACTED] in the Enterprise market in fourth Quarter 2006." As in the Consumer market, a large and expanding proportion of both the small business and Enterprise business customer segments in the Phoenix MSA are employing alternatives to Qwest's services offered by a wide array of competitors, as described in the following sections of our declaration.

¹⁰ Source: TNS Telecoms, February 2007.

¹¹ TNS Telecoms does not collect "connections share" data in *the* business market. and instead, determines "revenue share" **for** the various competitors in the market based on the amount of monthly spending of the survey respondents with each telecommunications service provider from whom they report they are purchasing service.

¹² Source: TNS Telecoms. February 2007.

8. Similar to the competitive dynamics in the Omaha MSA discussed in an earlier Qwest forbearance petition, Cox Communications is the predominant cable provider serving the Phoenix MSA and is aggressively competing with Qwest in the residential and business telecommunications markets. As of December 2006, Cox was serving a geographic area within the Phoenix MSA encompassing Qwest wire centers that account for approximately [REDACTED] of the Qwest retail residential lines and [REDACTED] of the Qwest retail business lines in that MSA.¹³ As is discussed in our following declaration, Cox competes with Qwest via an extensive coaxial cable and fiber network and utilizes Cox-owned switches. Cox offers a broad range of telecommunications services to residential, small business and Enterprise business customers in the Phoenix MSA

9. In addition to Cox, there are at least [REDACTED] unaffiliated CLECs actively competing with Qwest in the Phoenix MSA, ranging from CLECs of national scope, such as AT&T, Verizon and XO Communications, to regional CLECs such as Arizona Dial Tone, Eschelon and Integra. As discussed in following sections of our declaration, this group of CLECs is serving residential customers as well as business and governmental customers of virtually all sizes. As of December 2006, CLECs are competing with Qwest in 100% of the wire centers in the Phoenix MSA.¹⁴

¹³ Based on Cox media coverage map of the Phoenix, AZ DMA. http://www.coxmedia.com/markets.aspx?market=DA_792987 See Exhibit 1, Page 1. The coverage area of the Cox media map was compared to the list of communities Cox has reported to the FCC it now serves in the Phoenix MSA to confirm the accuracy of the Cox DMA map for the greater Phoenix area (see <http://www.fcc.gov/mb/engineering/liststate.html>).

¹⁴ Source: Qwest Wholesale Database.

10. A significant amount of fiber optic cable has been placed by competitive service providers in the Phoenix MSA for use in bypassing Qwest's network. According to GeoTel, over [REDACTED] miles of fiber (excluding fiber owned by Qwest and Qwest's affiliates) is now in place in the Phoenix MSA, and is typically used by Qwest's competitors to serve Enterprise and wholesale customers.¹⁵ Based on this GeoTel data, at least one fiber-based competitor is in [REDACTED] of Qwest's wire centers in the Phoenix MSA, and these wire centers contain [REDACTED] of Qwest's retail residential lines and [REDACTED] of Qwest's retail business lines in the MSA. In addition, competitive fiber is now being used to serve over [REDACTED] buildings in the Phoenix MSA.¹⁶

11. Landline-based competitors are also using Special Access services purchased from Qwest to serve customers in the Phoenix MSA. As of December 2006, competitors purchased almost [REDACTED] Special Access channels from Qwest in the MSA. In fact, the number of Voice Grade Equivalent ("VGE") circuits provided by competitors using Qwest Special Access services exceeds the number of VGE circuits provided by CLECs using unbundled network elements, Qwest Platform Plus and resale combined.

12. Wireless service is being used as a direct substitute for traditional landline service by an ever-increasing number of customers and is contributing to Qwest's retail access line reductions. At least five major wireless service providers, excluding Qwest Wireless and including Alltel, Verizon, AT&T, T-Mobile and Sprint, are now providing service in

¹⁵ GeoTel continually works to update its data regarding fiber-based competitors and provides updated data approximately every six months. However, GeoTel does not possess complete data regarding each fiber-based competitor, and the data reported above is therefore likely understated. GeoTel data underlying the numbers above was provided to Qwest in October 2006.

¹⁶ Source: GeoTel. October 2006.

the Phoenix MSA,¹⁷ with at least one wireless provider providing wireless service in every Qwest wire center. The Commission's recent Commercial Mobile Radio Services ("CMRS") report released on September 29, 2006 cites various sources in estimating that 6 to 12 percent of U.S. households have replaced their landlines with wireless service.¹⁸ Other research, however, suggests that these estimates actually understate the proportion of customers in the Phoenix MSA who have "cut the cord." On October 18, 2006, Telephia, an independent research entity specializing in Consumer market research, released results of primary research conducted during second Quarter 2006 in 20 major U.S. markets showing that 13.5% of the households polled in the Phoenix metropolitan area used only wireless service in their homes and no longer subscribed to landline telephone service." There can be no doubt that wireless service is a significant and continually growing form of direct competition to Qwest's landline service business in the Phoenix MSA.

13. As discussed later in our declaration, the number of wireless subscribers in Arizona climbed to 4.2 million in June 2006 and now significantly exceeds the number of ILEC and CLEC lines combined in the state. This dramatic increase continues to fuel a fundamental shift in the manner in which callers communicate. For example, as described later in our declaration, recent Yankee Group research found that more than 51% of local calls and 68% of long distance calls have been replaced by wireless. As customers find that an increasingly significant proportion of their voice calls (as well as

¹⁷ Qwest also provides wireless service in the Phoenix MSA. According to TNS Telecoms data, however, Qwest holds only a [REDACTED] share of the consumer wireless market in the greater Phoenix area.

¹⁸ CMRS Report at pp 89-90.

¹⁹ *Midwesterners Cut the Cord: Households in Detroit and Minneapolis-St. Paul Have The Highest Rate of Wireless Substitution Among 20 Largest U.S. Cities*, According to Telephia: Oct. 18, 2006. See Exhibit 1, Page 2.

internet access functionality) can be accommodated via cellular phones, an even greater proportion of Qwest's residential and business *landline* customer base will be encouraged to "cut the cord."

II. CABLE SERVICES COMPETITION.

14. Cox is one of Qwest's major competitors in the Phoenix MSA and has enjoyed significant success in marketing its Digital Telephone service to residential and business customers. In February 2004, Cox Communications announced it was serving one million digital telephone subscribers nationwide: "Cox's successful seven-year history of providing primary line 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."²⁰ Only two years later, in reporting full year 2006 financial results, Cox reported a 100% increase in its telephone service subscriber base versus 2004:

"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%."²¹ (Emphasis added).

²⁰ *Cox Communications Surpasses Five Million Digital Service Subscriptions*. February 12, 2004, www.cox.com. See Exhibit 1, Page 4.

²¹ *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 Exhibit 1, Page 6.