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FILED/ACCEPTED

APR 27 2007

REDACTED - FOR PUBLIC INSPECTION

Federal Communications Commission  
Office of the Secretary

Via Courier

April 27, 2007

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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 Matter 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 Matter 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,<sup>1</sup> that contain

<sup>1</sup> 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.

Ms. Marlene H. Dortch

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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.

Ms. Marlene H. Dortch  
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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 information 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 Qwest 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 Qwest 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.

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Other information that Qwest believes may be useful in assessing whether its request for confidentiality 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 Information Act shields information that is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The information in question satisfies this test.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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

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

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

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QWEST CORPORATION

April 27, 2007

**REDACTED – FOR PUBLIC INSPECTION**

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

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Petition of Qwest Corporation for Forbearance ) WC Docket No. \_\_\_\_\_  
Pursuant to 47 U.S.C. § 160(c) in the Seattle, )  
Washington 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 Seattle 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*.<sup>1</sup>

Mass market consumers throughout the Seattle MSA now have access to a wide range of competitive alternatives for affordable local telephone service. As was the case in Omaha, with respect to Cox Communications, a cable competitor, Comcast, is the largest provider of

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<sup>1</sup> *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).

competitive voice services in the Seattle MSA.<sup>2</sup> In Seattle, the cable providers are Comcast and Millennium. Cable voice services appear to be offered more widely in Seattle than they were in Omaha two years ago. 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 Seattle MSA, offering service that is competitive with Qwest's wireline services.

Consumers in the Seattle 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,<sup>3</sup> 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 in the Seattle MSA. Between 2000 and 2006, Qwest's retail residential mass market switched access lines in the Seattle MSA declined by [REDACTED] percent,<sup>4</sup> even though the number of households in the MSA increased by approximately seven percent during this time.

There is likewise intense competition for enterprise business services in the Seattle MSA. As the Commission has found, cable companies are capable of using their nearly ubiquitous cable networks to serve enterprise customers. As was the case in Omaha, cable voice services

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<sup>2</sup> Millennium Digital Media ("Millennium") is another cable-based competitor in the Seattle MSA, serving the core downtown Seattle area.

<sup>3</sup> "Over-the-top" VoIP providers are those that offer VoIP as an incremental, stand-alone service on top of an existing broadband Internet connection, as opposed to providers of integrated VoIP telephone service, such as cable-based service providers.

<sup>4</sup> See Brigham and Teitzel Declaration ¶ 5.

are available to business customers. Apart from cable, there are approximately 20 competitive fiber providers that operate networks in areas where enterprise customers are concentrated in the Seattle MSA, including wire centers that account for [REDACTED] percent of Qwest's retail switched business lines in the MSA.<sup>5</sup>

These competitive alternatives are widely used among enterprise customers in the Seattle MSA. Since 2000 Qwest's business lines in the Seattle 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.

**II. THE FIRST TWO PARTS OF THE FORBEARANCE TEST ARE SATISFIED AS A CONSEQUENCE OF THE FACT THAT TELECOMMUNICATIONS COMPETITION IN THE SEATTLE 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,<sup>6</sup> from price cap regulations set forth in Part 61 of the Commission's rules,<sup>7</sup> from the Computer III requirements including Comparably Efficient Interconnection ("CEI") and Open Network Architecture ("ONA") requirements, and from dominant carrier requirements arising under

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<sup>5</sup> *Id.* ¶ 37.

<sup>6</sup> 47 C.F.R. §§ 61.32, 61.33, 61.38, 61.58 and 61.59.

<sup>7</sup> 47 C.F.R. §§ 61.41-61.49.

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.<sup>8</sup>

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;

(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).<sup>9</sup>

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

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<sup>8</sup> 47 C.F.R. §§ 63.03, 63.04, 63.60-63.66.

<sup>9</sup> 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.

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 Seattle.

The Seattle 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 26 wire centers in the Seattle MSA,<sup>10</sup> 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 Seattle MSA and greatly reduced market share.

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

Mass market consumers throughout the Seattle 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."<sup>11</sup> Consistent with the Commission's earlier findings, Qwest faces competition from a variety of providers of retail mass market services. These competitors include cable service providers (both circuit switched

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<sup>10</sup> Highly Confidential Exhibit 2 lists Qwest's Seattle MSA wire centers by name.

<sup>11</sup> See *In the Matter of Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, Memorandum Opinion and Order, WC Docket No. 05-333, FCC 07-13, rel. Mar. 9, 2007 at n.56 ("*Sunset Order*").

and VoIP), wireline CLECs, wireless carriers, and “over-the-top” VoIP providers.<sup>12</sup> 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 increasing and is likely to continue to increase.<sup>13</sup> Comcast and Millennium are the cable competitors in Seattle. Traditional CLECs, including carriers that obtain wholesale service from Qwest, provide additional competition. Moreover, any consumer with a broadband Internet connection (*e.g.*, cable modem, Digital Subscriber Line (“DSL”), wireless, etc.) can obtain telephone service from literally dozens of “over-the-top” VoIP providers, which can be accessed over competitive networks. Throughout the Seattle 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 Seattle MSA.

### **1. Cable**

Two cable companies serve the Seattle MSA. The most prevalent source of competition in the Seattle MSA is Comcast, which offers both circuit switched telephony and facilities-based VoIP in the Seattle MSA. Brigham and Teitzel Declaration n.29. Millennium serves approximately 17,000 subscribers in the core Seattle area. *Id.* ¶ 14. Both the cable telephony and the facilities-based VoIP fall within the relevant market for local services. 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

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<sup>12</sup> *See id.* ¶ 29.

<sup>13</sup> *See id.* ¶ 20.

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.”<sup>14</sup>

In the *Omaha Forbearance Order*, the Commission held that Cox’s voice services “compete as substitutes for Qwest’s wireline telecommunications service offerings.”<sup>15</sup> The same is true of Comcast’s and Millennium’s services in Seattle, where as of December 2006, Comcast 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 ¶ 17 and Exhibit 1, p.1. When Millennium services are included in this calculation, [REDACTED] of Qwest’s residential access lines in the Seattle MSA are in wire centers served by either Comcast or Millennium. *Id.* n.13. Like all of Qwest’s VoIP-based competitors, Comcast and Millennium are not obligated to report customer in-service data, particularly at the MSA level. Nonetheless, reasonable estimates of Comcast’s voice customer base range from 103,000 (which is based upon Comcast’s system-wide voice penetration rate) (*id.* n.26) to 380,000 (which is based upon Comcast’s publicly-stated goal for its penetration rate in Spokane, Washington). *Id.* ¶ 16. Comcast expects its customer base to increase rapidly over the next few years to an even more robust level. At a national level, Comcast expects its telephone subscriber base to grow by nearly 400% between 2007 and 2010. *Id.* ¶ 18. Comcast is actively ramping up its infrastructure in Washington State to prepare for this growth by adding office space and a significant number of customer service representatives. *Id.*

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<sup>14</sup> *In the Matter 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).

<sup>15</sup> *Omaha Forbearance Order*, 20 FCC Rcd at 19447 ¶ 65; *see id.* at 19432 ¶ 33.

Comcast and Millennium are competing aggressively based upon price. Comcast offers VoIP-based Comcast Digital Voice (“CDV”) service, which includes unlimited local and long distance calling, including free calls to Canada, and 12 standard calling features. *Id.* ¶ 17. This service is offered to residential customers already subscribing to cable and high speed Internet at a monthly price of \$39.95, with lower promotional prices regularly offered.<sup>16</sup> Millennium’s residential Internet-based telephone service is even less expensive, ranging from \$19.99 to \$39.99 per month depending on the package. *Id.* ¶ 15. Based on the rapid and continuing rate of Qwest retail losses, customers in the Seattle MSA appear to be responding favorably to these offerings.

Understanding that customers prefer one-stop shopping for communications services, Comcast is involved in a joint venture with Sprint Nextel Corporation (“Sprint Nextel”) to provide integrated mobile phone service to its cable customers. *Id.* ¶ 21. This arrangement will enable Comcast to offer the “quadruple play” bundle of video, broadband Internet access, digital telephone and wireless service. *Id.* Comcast expects to use mobility as a means of adding value to its customer base, using wireless to tie its services together and thereby make its services even more compelling to potential customers. *Id.* Comcast plans to allow customers to access e-mail, cable TV guide and home voice mail from their cell phones. *Id.* Moreover, Comcast will allow consumers to access video content, and eventually program DVRs remotely from their cell phone handsets. *Id.* Industry analysts expect incumbent local exchange carrier (“ILEC”) access line losses to cable telephone providers to continue in light of cable’s multi-service bundles. *Id.* ¶ 22.

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<sup>16</sup> Residential customers taking only one of those services must pay \$44.95 a month. If the customer wishes to subscribe only to CDV service, the rate is \$54.95, absent promotional offers which are regularly available. Comcast recently offered a promotional price of \$19.99 for the first six months for new CDV customers. *Id.* ¶¶ 19, 20.

In sum, Comcast and Millennium have extensive facilities in the Seattle MSA capable of delivering mass market services. *See Omaha Forbearance Order*<sup>17</sup> (finding that such facilities demonstrate that supply elasticity is high). Comcast and Millennium have been “successfully providing local exchange and exchange access services . . . without relying on Qwest’s loops or transport.”<sup>18</sup> 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,<sup>19</sup> and from dominant carrier regulation of switched access service.<sup>20</sup> Comcast’s extensive facilities build-out in the Seattle MSA, and growing success in luring Qwest’s mass market customers, indicates that the first factor is easily satisfied for switched access services.<sup>21</sup>

## 2. Wireline CLECs

In addition to Comcast and Millennium, over [REDACTED] unaffiliated CLECs are currently competing with Qwest within the Seattle MSA. Brigham and Teitzel Declaration ¶ 23. Of this number, [REDACTED] CLECs are using non-Qwest network facilities to provide service, [REDACTED] are using the Qwest Platform Plus (“QPP”)<sup>22</sup> finished wholesale service and [REDACTED] are reselling Qwest retail services.<sup>23</sup> *Id.* ¶ 23. CLECs are utilizing Qwest wholesale services to

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<sup>17</sup> *See Omaha Forbearance Order*, 20 FCC Rcd at 19448 ¶ 66; *see id.* at 19432-33 ¶¶ 35-36.

<sup>18</sup> *Id.* at 19447 ¶ 64.

<sup>19</sup> *Id.* at 19450-51 ¶ 69.

<sup>20</sup> *Id.* at 19432-33 ¶ 36.

<sup>21</sup> *See id.*

<sup>22</sup> 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. There, Qwest has not to date raised its unbundled loop prices when purchased as part of QPP/QLSP.

<sup>23</sup> 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

compete with Qwest in every Qwest wire center in the Seattle MSA. *Id.* ¶ 24 and Highly Confidential Exhibit 2.<sup>24</sup> Qwest estimates that CLECs competing through QPP/QLSP and Resale are providing approximately [REDACTED] residence lines. Highly Confidential Exhibit 2. This does not take into account any CLECs competing via Special Access services, or those serving customers via CLEC-owned switches and loops.

To the extent CLECs are utilizing their own networks to serve residential customers in the Seattle 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. Brigham and Teitzel Declaration n.48. 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 Seattle MSA. *Id.* ¶ 25.

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customers). Therefore, one cannot add the number of CLECs using each platform in order to determine the total number of CLECs.

<sup>24</sup> 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 Seattle MSA. Brigham and Teitzel Declaration ¶ 24.

### 3. Wireless

Wireless use in Washington State is extensive. According to the Commission's most recent data, there were 4.4 million wireless subscribers in Washington State as of the end of June 2006. Brigham and Teitzel Declaration ¶ 39. By comparison, as of the same date, ILECs and CLECs jointly reported servicing approximately 3.5 million wireline access lines. *Id.* Thus, wireless subscribers in Washington exceed the combined total of ILEC and CLEC wireline access lines in the state by a wide margin. *Id.* Moreover, from June 2000 to June 2006, the number of Washington wireless subscribers grew exponentially (by approximately 110 percent), while the number of wireline access lines has declined. *Id.* Qwest also faces competition in the Seattle MSA from multiple wireless providers. Mass market customers are increasingly using wireless services in place of traditional wireline telephone services.<sup>25</sup>

As demonstrated in the map attached as Exhibit 5, p.5 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 Seattle MSA, and competitive wireless service from at least one of these carriers is available throughout the Seattle MSA. *See* Brigham and Teitzel Declaration ¶ 42 and Exhibit 5. In addition, other smaller wireless carriers, such as Alltel, also serve the Seattle MSA. *See id.* ¶ 42 and n.102. 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 Seattle MSA residents appear to "cut the cord"<sup>26</sup> at a more robust rate than people in most other parts of the country. In fact, 13.2 percent of Seattle area

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<sup>25</sup> *See generally* *Sunset Order* ¶ 17 and n.61.

<sup>26</sup> 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 ¶ 40.

respondents to a recent survey reported that they are relying upon wireless services for all of their communication needs. Brigham and Teitzel Declaration ¶ 41. That translates to over 105,000 Seattle area households that use wireless services instead of wireline. *Id.* 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 contrast to Seattle's 13.2 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.<sup>27</sup> *Id.* ¶ 40.

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 cell phone users described above, an additional 42 percent of cell phone users said that they also had a landline phone, but that they used their cell phones "most."<sup>28</sup>

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 ¶ 41.

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<sup>27</sup> <http://www.cdc.gov/nchs/products/pubs/pubd/hestats/wireless2006/wireless2006.htm>. See Brigham and Teitzel Declaration Exhibit 5, p.1.

<sup>28</sup> Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Tenth Report, September 29, 2006, p.90 ¶ 206.