

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Promotion of Competitive Networks in) WT Docket No. 99-217
Local Telecommunications Markets) CC Docket No. 96-98

COMMENTS OF QWEST CORPORATION

Qwest Corporation (“Qwest”) hereby responds to the Federal Communications Commission’s (“Commission”) *Public Notice* which requested comments to refresh the record on the state of the market for local and advanced service in multi-tenant environments (“MTEs”).¹ Anecdotally Qwest has found that it is increasingly encountering residential buildings or housing developments where it is prohibited from selling its voice services due to another carrier having an exclusive access arrangement. Qwest believes that the Commission should use its authority under Section 201 to ban exclusive access arrangements or other restrictions and agreements that effectively result in exclusive access in residential MTEs.

Qwest does not have statistics on the status of the market for the provision of telecommunications services in residential MTEs. While there are thousands of residential MTEs in Qwest’s territory, Qwest has not collected data on sales of telecommunications services into MTEs, as such information is of limited business value to Qwest. Anecdotally, Qwest is increasingly encountering residential buildings or whole developments where it is prohibited from access to sell its voice services. For example, in the Gateway project, a mixed use development in Salt Lake City, Utah, an affiliate of the developer appeared to be the only common carrier allowed to install telecommunications facilities in the development. In 2002,

¹ *Public Notice*, Parties Asked to Refresh Record Regarding Promotion of Competitive Networks in Local Telecommunications Markets, 22 FCC Rcd 5632 (2007).

Qwest turned to the Enforcement Bureau's Accelerated Docket Process because Qwest had been barred from provisioning facilities or providing service directly to any Gateway tenants. The matter was resolved before any action.

As predicted when Congress passed the Telecommunications Act of 1996, competitive telecommunications carriers are installing their own facilities,² either overbuilding the incumbent local exchange carrier's ("ILEC's") facilities, or exclusively placing facilities. When a competitive carrier has sufficiently overbuilt the ILEC's facilities, the ILEC may be relieved of dominant carrier and unbundling obligations.³ Or, if the competitive carrier wins sufficient market share, it may become the new ILEC.⁴ Thus, as competitive facilities become more prevalent in areas currently served by ILECs, the need to regulate the ILEC differently than its competitors diminishes as market forces begin to govern the ILEC's prices, terms and conditions.

While a large portion of facilities-based competition comes from competitive local exchange carrier ("CLECs") that overbuild ILEC facilities, an increasing number of proprietors (*e.g.*, property owners and developers) are exclusively placing their own telecommunications facilities within the property, as occurred in the Gateway development. These proprietors are then offering telecommunications services to the tenants in that area or are conveying ownership

² *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15509 ¶ 12 (1996) (subsequent history omitted).

³ *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, 19417 ¶ 2 (2005), *pets.for rev. denied in part and dismissed in part, Qwest Corp. v. FCC*, 482 F.3d 471 (D.C. Cir. 2007).

⁴ *In the Matter of Petition of Mid-Rivers Cooperative, Inc. for Order Declaring It to be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2)*, Report and Order, 21 FCC Rcd 11506, 11511-12 ¶ 12 (2006).

or giving sole use of those exclusive facilities to a CLEC which then offers telecommunications services to the tenants in that area. The trend of exclusive ownership or use of facilities is not only inhibiting Qwest's, and other providers', ability to provide service to end users in those areas, it is also limiting consumer choice and potentially driving up the costs of telecommunications services for consumers in those areas.

The Commission should ban exclusive access in residential MTEs pursuant to its authority under Section 201 for two reasons. First, exclusive access agreements reduce consumer choice.⁵ Eventually, they may adversely affect rates, quality and innovation.⁶ Second, specifically as to Qwest and other ILECs, instances where another provider has exclusive access to a building or development create difficulties in fulfilling the ILEC's Provider of Last Resort obligations. Exclusive access arrangements increase the cost of provisioning service, and hinder the ability to do so expeditiously, in the event that the provider granted exclusive access exits the market. Both of these reasons apply to small carriers, as well as large, so small carriers should no more be allowed to enter into exclusives, than should large carriers. The rationale for the proposed bar on exclusive access arrangements in residential MTEs is the same as the rationale supporting 47 C.F.R. § 64.2500, which prohibits exclusive access arrangements in commercial MTEs. This rule evidences a public policy of encouraging access for all carriers. Exclusive access arrangements in residential MTEs defeat this policy.

Qwest does not have similar concerns regarding preferential marketing arrangements. In such arrangements a building may have a preferred provider, but others are free to market and sell to tenants. Such arrangements provide tenants with information about the preferred

⁵ *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets*, First Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 22983, 22996 ¶ 26 (2000).

⁶ *Id.*

provider's services, but leave tenants free to make their own choice and buy another provider's services should they so choose.

Respectfully submitted,

QWEST CORPORATION

By: /s/Daphne E. Butler
Craig J. Brown
Daphne E. Butler
Suite 950
607 14th Street, N.W.
Washington, DC 20005
(303) 383-6653

Its Attorneys

July 30, 2007

CERTIFICATE OF SERVICE

I, Eileen Kraus, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST CORPORATION** to be: 1) filed with the FCC via its Electronic Comment Filing System in WT Docket No. 99-217 and CC Docket No. 96-98; 2) served via e-mail on Ms. Janice M. Myles, Competition Policy Division, Wireline Competition Bureau at janice.myles@fcc.gov; and 3) served via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com.

/s/Eileen Kraus

July 30, 2007