

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Qwest Corporation for Forbearance)	
Pursuant to 47 U.S.C. § 160(c) in the Denver,)	WC Docket No. 07-97
Minneapolis-St. Paul, Phoenix, and Seattle)	
Metropolitan Statistical Areas)	
)	
Petitions of the Verizon Telephone Companies)	
for Forbearance Pursuant to 47 U.S.C. §)	WC Docket No. 06-172
160(c) in the Boston, New York, Philadelphia,)	
Pittsburgh, Providence, and Virginia Beach)	
Metropolitan Statistical Areas)	

COMMENTS OF THE VOICE ON THE NET (“VON”) COALITION

I. Introduction

The Voice on the Net Coalition (“VON Coalition”) hereby files to express its concerns related to the above-captioned proceedings.¹ The VON Coalition consists of leading Voice over Internet Protocol (“VoIP”) companies on the cutting edge of developing and delivering voice innovations over the Internet.² VON Coalition members include companies that provide “over the top” VoIP services, *i.e.*, interconnected VoIP utilizing a customer’s self-provided broadband services; companies that provide interconnected VoIP services using their own broadband network facilities coupled with last-mile copper obtained from incumbent local exchange carriers

¹ We file our comments today in both the Qwest and Verizon forbearance proceedings because the VoIP-related issues and concerns are identical in all of the ten markets involved.

² VON Coalition members include AccessLine, BMX, BT Americas, CallSmart, Cisco, Convedia, Covad, EarthLink, Google, iBasis, i3 Voice and Data, Intel, Microsoft, New Global Telecom, Openwave, Pandora Networks, PointOne, Pulver.com, Skype, Switch Business Solutions, T-Mobile USA, United Online, VocalData, Veraz Networks, and Yahoo!

("ILECs") as an unbundled network element ("UNE"); non-interconnected VoIP services providers; and manufacturers of equipment used by VoIP providers and customers. VON Coalition members serve both residential and business customers in the ten markets currently at issue. As such, the VON Coalition has a significant interest in these proceedings.

The VON Coalition works to advance regulatory policies that enable Americans to take advantage of the full promise and potential of VoIP. The VON Coalition believes that, with the right public policies, Internet-based voice advances can make talking more affordable, businesses more productive, jobs more plentiful, and the Internet more valuable. We encourage the Commission to take all possible care to ensure that competitive conditions where VoIP can thrive are preserved in the Boston, Denver, Minneapolis-St. Paul, New York, Philadelphia, Phoenix, Pittsburgh, Providence, Seattle, and Virginia Beach markets.

II. The Commission Should Not Factor Competition from Over-the-Top VoIP into its Forbearance Analysis

In their forbearance petitions, Qwest and Verizon suggest that evidence of both real and potential competition from over-the-top VoIP providers should be recognized by the Commission and counsel in favor of forbearance.³ The VON Coalition strongly disagrees with such suggestions and urges the Commission to reject such "evidence" of intermodal competition as irrelevant to its analysis. The VON Coalition particularly discourages the Commission from considering as probative evidence of VoIP competition that has not yet materialized or from using its predictive judgment to determine that over-the-top VoIP will provide sufficient intermodal competition in the future to justify forbearance now.

In terms of "real" evidence, the ILECs' suggestions that growth in broadband lines translates into compelling evidence of intermodal competition from over-the-top VoIP providers

³ See, e.g., Qwest Minneapolis-St. Paul Petition at 15-17; Verizon Pittsburgh Petition at 12-14.

is highly misleading. Many over-the-top VoIP customers (directly or indirectly) use the ILECs' facilities. Further, many ILECs and cable operators essentially force customers to subscribe to service bundles that preempt use of over-the-top VoIP services or otherwise make obtaining a stand-alone ILEC or cable broadband service over which consumers would use over-the-top VoIP services cost-prohibitive.

In terms of predicted intermodal competition from over-the-top VoIP sources, the Commission should be wary of speculative (and outdated) analyst estimations provided by Qwest and Verizon and instead look to recent market developments particular to over-the-top VoIP. For instance, Sunrocket - the second largest independent over-the-top VoIP provider in the United States - recently went out of business.⁴ The Commission should also take particular note of Verizon's vigorous efforts to eliminate future over-the-top VoIP competition via patent infringement litigation while, at the same time, claiming over-the-top VoIP competition warrants forbearance.⁵ These and other developments have taken a toll on VoIP.⁶ Instead of considering action that would harm over-the-top VoIP providers in any way, the Commission should take particular care to foster the growth of this promising competitive alternative.

In similar circumstances to those at hand, the Commission wisely refused to accept evidence of over-the-top VoIP competition in its forbearance analysis. It should do so again. In both the Omaha and Anchorage forbearance proceedings, the Commission refused to consider over-the-top VoIP as intermodal competition due to the lack evidence of its

⁴ See Deborah McAdams, SunRocket Demise Casts Doubt on Business Model, *fiercevoip* (July 23, 2007) available at <http://www.fiercevoip.com/node/1778/print>.

⁵ See <http://www1.freetocompete.com/> (discussing Verizon patent litigation against Vonage).

⁶ See, e.g., http://www.myvoipprovider.com/VoIP_Provider_Graveyard/ (maintaining a listing VoIP providers that have gone out of business).

substitutability for ILEC services.⁷ For the ten markets at issue now, Qwest and Verizon have similarly failed to provide convincing evidence regarding the substitutability of over-the-top VoIP to warrant its consideration as competition to the ILECs in the Commission's forbearance analysis.

In proceedings unrelated to forbearance, the Commission has likewise refrained from considering over-the-top VoIP as a substitute for ILEC services. For instance, the in the *Triennial Review Remand Order*, the Commission found that VoIP is not yet a substitute for the ILECs' wireline services.⁸ And it is telling that the Commission does not include over-the-top VoIP in its semi-annual Local Telephone Competition reports and has only recently initiated a proceeding on whether it should collect information on interconnected VoIP subscribership.⁹ It is clear that consideration of over-the-top VoIP providers as being significant intermodal competition for Qwest and Verizon is unwarranted at this time.

⁷ See *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 ¶ 72 (2005), *aff'd Qwest Corporation v. FCC*, Case No. 05-1450, (D.C. Cir. Mar. 23, 2007); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, As Amended, for Forbearance From Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, Memorandum Opinion and Order, 22 FCC Rcd 1958 ¶ 29 (2007).

⁸ See *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, ¶ 38 n. 114 (2005), *affirmed Covad Communications v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

⁹ *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, Notice of Proposed Rulemaking, 22 FCC Rcd 7760 (2007).

III. The Commission Should Not Stifle VoIP Services by Jeopardizing Competitive Sources of Broadband

As mentioned above, a significant reason why the Commission should not consider over-the-top VoIP competition in its forbearance analysis is the fact that much over-the-top VoIP competition can be traced back, directly or indirectly, to Qwest or Verizon itself. This fact, in the face of potential Section 251(c)(3) forbearance, could prove extremely harmful to both the future of VoIP competition and consumer choice. Accordingly, the Commission should act to preserve the beneficial intramodal competition provided by competitive local exchange carriers ("CLECs"), which in turn facilitates fixed, over-the-top, and non-interconnected VoIP competition.

The VON Coalition believes that VoIP plays an increasingly important role as an innovative competitive alternative to traditional telephone service and as a driver of demand for broadband services. To that end, the VON Coalition must express its concern regarding Qwest's and Verizon's requests to be exempted from the pro-competitive provisions of the Telecommunications Act of 1996 in ten major markets. Such requests to essentially eliminate the statutory obligation to provide competitive carriers access to legacy last-mile facilities, if granted, have the potential to materially undermine the competitive role of VoIP in the United States.

More specifically, grant of Section 251(c)(3) forbearance would likely have a detrimental impact on VoIP competition due to the simple reduction in broadband Internet access alternatives that would likely occur in each of the affected markets, as Qwest and Verizon could effectively eliminate competition from all UNE-based broadband providers. This likelihood has already shown itself to be the case in Omaha, where the Commission partially granted Qwest Section 251(c)(3) forbearance in 2005. McLeodUSA recently petitioned the Commission to

modify its decision to forbear from basic unbundling obligations in Omaha on the grounds that the Commission's predictions regarding post-forbearance competition have not materialized. In its petition, McLeodUSA notes that the failure of the Commission's predictive judgment regarding competition in Omaha, and the market exodus of CLECs, directly detriments over-the-top VoIP providers that rely on CLEC broadband services.¹⁰

The broad sweep of these petitions cannot be ignored. Together, the Qwest and Verizon petitions affect broadband and VoIP choices for 48 million Americans in nearly 18 million households across 13 states. If granted, the petitions signal the end of independent intramodal broadband competition. Such a reduction in competitive alternatives also undermines one of the primary "checks" to potential net neutrality abuses currently relied on by many innovative and competitive service and applications providers. The potential result of granting Qwest and Verizon broad forbearance, as is possible given vagueness in the petitions and the potential for default grants, could also extend to the stifling of new, planned, and future VoIP innovations such as VoIP over Ethernet.

The harms caused by the reduction in competition if forbearance is granted also would likely be felt far beyond the ten markets currently at issue. The aggregate impacts of forbearance across these ten markets would inevitably have negative ancillary impacts on other areas, since the Qwest and Verizon petitions impact so many consumers and span major markets from coast to coast. The overall reduction of broadband competition, rational business decisions that would have to be made by competitors regarding whether to stay or leave

¹⁰ *See Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area, Petition for Modification of McLeodUSA Telecommunications Services, Inc., WC Doc. No. 04-223, at 15 n. 47 (filed July 23, 2007).*

markets or go out of business entirely, and the reduction in potential VoIP choices for consumers that forbearance would usher in would certainly be contrary to the public interest.

IV. Conclusion

VoIP providers and consumers that use VoIP services benefit from the greatest possible degree of competition and the greatest number of broadband providers in any given market, because that level of competition provides a basis and platform for VoIP competition. The VON Coalition urges the Commission to refrain from considering over-the-top VoIP competition as a sufficient present or future basis for forbearance. We also urge the Commission to take extreme care when considering Qwest's and Verizon's forbearance requests to ensure that VoIP and broadband competition can flourish.

Respectfully submitted,

THE VON COALITION

By: /s/ Staci L. Pies
Staci L. Pies
President

August 31, 2007