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*EX PARTE*

September 11, 2007

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 for Forbearance Pursuant to 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services, WC Docket No. 06-125*

Dear Ms. Dortch:

Pursuant to a request from Chris Moore, Legal Advisor to Commissioner Tate, Qwest submits the following in the above-referenced docket. Mr. Moore requested that Qwest explain which of the services for which forbearance has been requested in this docket can be characterized as “interstate interexchange services” and which are “interstate access services.”

The Qwest forbearance petition sought forbearance from Title II and *Computer Inquiry* regulation for “any broadband services it does or may offer to the extent those services are not offered as part of an Internet access service.”<sup>1</sup> The question of whether these services are “interexchange” services will depend upon the particular deployment and uses of these services. For example, an end-to-end broadband connection between two end-user customer premises in different exchange areas is an interexchange service, but the same type of broadband connection between a Qwest end office and another carrier’s point-of-presence in a different exchange is an exchange access service.

In the *272 Sunset Rulemaking Order*, the Commission detariffed all “in-region, long distance” services, including the BOCs’ in-region interstate, interexchange telecommunications services.<sup>2</sup> If the Commission limits the relief in Qwest’s pending forbearance petition to

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<sup>1</sup> See Qwest Petition for Forbearance, WC Docket No. 06-125, filed June 13, 2006, at 1 (footnote omitted).

<sup>2</sup> See *In the Matters of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section*

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interstate, interexchange services, it will be affording Qwest no incremental relief beyond which it has already received, and such an order would be roughly equivalent to denying Qwest's petition outright.

All of the services covered are either packetized services with speeds greater than 200 kbps or non-TDM-based optical networking, hubbing and transmission services. They are not traditional TDM-based special access services, such as DS-1s and DS-3s. In the *TRO* and *TRRO*, the Commission has recognized a difference between traditional TDM-based services and non-traditional packetized and optical services. For example, for packetized services, the Commission observed that "a wide range of competitors are actively deploying their own packet switches, including routers and DSLAMs to serve both the enterprise and mass markets,"<sup>3</sup> and that allowing unbundled access to packetized facilities and services would "blunt the deployment of advanced telecommunications infrastructure by incumbent LECs and the incentive for competitive LECs to invest in their own facilities, in direct opposition to the express statutory goals authorized in section 706."<sup>4</sup> With respect to optical services and facilities, the Commission found that there is "substantial deployment of competitive fiber loops at OCn capacity and competitive carriers confirm they are often able to economically deploy these facilities to the large enterprise customers that use them."<sup>5</sup> The vast majority of the services covered by Qwest's petition are sold predominately, if not exclusively, to retail customers.

Please contact me with questions.

Sincerely,

/s/ Melissa Newman

cc: (via e-mail)  
Nick Alexander ([Nicholas.alexander@fcc.gov](mailto:Nicholas.alexander@fcc.gov))  
Scott Bergmann ([Scott.bergmann@fcc.gov](mailto:Scott.bergmann@fcc.gov))

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64.1903 of the Commission's Rules, WC Docket No. 02-112, CC Docket No. 00-175, Report and Order and Memorandum Opinion and Order, FCC 07-159, at ¶ 1 n.1 (rel. Aug. 31, 2007).

<sup>3</sup> *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 and 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17321-22 ¶ 538 (footnote omitted) (2003).

<sup>4</sup> *Id.* at 17149 ¶ 288.

<sup>5</sup> *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313 and CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533, 2634 ¶ 183 (footnote omitted) (2004).

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